

**Minutes of the Meeting of the
Board of University and School Lands
January 31, 2019**

The January 31, 2019 meeting of the Board of University and School Lands was called to order at 9:02 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 (via Telephone)
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Susan Dollinger	Unclaimed Property Administrator
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Director
Kate Schirado	Administrative Assistant
Gerard Schwan	Grants Administrator

Guests in Attendance:

Leslie Bakken Oliver	Governor's Legal Counsel
David Garner	Attorney General's Office
Jen Verleger	Attorney General's Office
Charles Carvell	Attorney General's Office
Geoff Simon	Western Dakota Energy Association (WDEA)
J. Roger Kelley	Continental Resources

APPROVAL OF MINUTES

A motion to approve the minutes of the December 31, 2018 meeting was made by Attorney General Wayne Stenehjem and seconded by Superintendent Kirsten Baesler and the motion carried unanimously on a voice vote.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Contingency Grant

Section 10 of Senate Bill 2013 allows the use of unexpended funds to provide for grants and administrative costs during the 2017-2019 biennium:

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017 and ending June 30, 2019. (Emphasis added).

(01/31/19)

The current members serving on the Contingency Grant Advisory Committee (Committee):

Dan Kalil	Williston Township Chair
Jay Elkin	Stark County Commissioner
Philip Reily	Mayor of Watford City
Marcia Lamb	Billings County Auditor
Mark Spooner	Border Township Chair
Allen Ryberg	Burke County Commissioner
David Wegner	Beach PSD Superintendent
Gary Weisenberger	Mayor of Stanley
Reinhard Hauck	Dunn County Commissioner

Per the Board's approved grant requirements, the grant announcement closed on December 31, 2018. EIIO received and scored five applications. The Committee reviewed and discussed each application thoroughly before finalizing its recommendations during a public meeting on January 14, 2019. The Committee recommends three of the five applications be approved by the Board:

CONTINGENCY GRANT RECOMMENDATIONS						
Political Sub Name	County	Application Number	Short Description	Project Total	Amount Requested	Amount Recommended
MOUNTRAIL COUNTY	MOUNTRAIL	A190022	4MI ROAD REPAIR OF 96TH AVE	\$1,633,951	\$1,225,463	\$408,488
CITY OF STANLEY	MOUNTRAIL	A190023	CIVIL WARNING SIRENS	\$89,248	\$89,248	\$60,000
DICKINSON AIRPORT	STARK	A190024	LAND ACQUISITION / LITIGATION FEES	\$71,500	\$71,500	\$0
RENVILLE COUNTY	RENVILLE	A190025	LAW ENFORCEMENT VEHICLES	\$47,665	\$43,000	\$0
CITY OF PORTAL	BURKE	A190026	FIRE HALL REPLACEMENT	\$639,089	\$539,089	\$539,089
				\$2,481,453	\$1,968,300	\$1,007,577

If the grants are approved the remaining balance of approximately \$2.19 million is available for further grant round consideration. EIIO will re-advertise the next round for February 1, 2018 – April 30, 2018.

Motion: The Board awards three grants under the Contingency Grant to Mountrail County, the City of Portal, and the City of Stanley for a total of \$1,007,577.00.

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		

Retirement of Grants

There are eight grants awarded during Fiscal Years 2014 through 2017 were fully completed and have balances remaining are ready for retirement. These grants have finished their project under budget or no longer need the funds. The total of \$59,975.35 will be moved to the contingency's allocation for future use where there are unmet needs or used as administrative or operational costs.

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

Grant Retirements					
Political Sub	Grant	Awarded	Paid	Balance	Project
PHERRIN TOWNSHIP	G140282	\$200,000	\$160,586.48	\$39,413.52	133RD AVE NW ROAD REPAIR PROJECT
BOWBELLS PSD #14	G150061	\$220,000	\$218,453.25	\$1,546.75	TEACHER HOUSING
CHATFIELD TOWNSHIP	G150159	\$25,000	\$24,884.10	\$115.90	ROAD CONSTRUCTION AND DUST CONTROL
SCOTIA TOWNSHIP	G150166	\$36,000	\$33,098.50	\$2,901.50	ROAD REPAIR
MINOT INTERNATIONAL AIRPORT	G160001	\$46,800	\$46,711.67	\$88.33	2015 FAA AIP #49 MASTER PLAN/ AIRPORT LAYOUT PLAN UPDATE WITH AGIS
TWIN BUTTES PSD #37	G160097	\$87,937	\$74,826.40	\$13,110.60	RENOVATION AND IMPROVEMENT PROJECTS
MINOT INTERNATIONAL AIRPORT	G160204	\$12,675	\$10,250.00	\$2,425.00	FAA 2015 AIP #51: Detention Pond Design
KILLDEER AREA AMBULANCE DIST.	G170039	\$12,975	\$12,601.25	\$373.75	DISPATCH EQUIPMENT
				\$59,975.35	Aggregate

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

Motion: The Board retired the eight grants identified in the preceding list for a total of \$59,975.35. Subsequently, that the Board declare these funds within the oil and gas impact grant fund as contingent for future unmet needs.

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

R E P O R T S

Report of Easements Issued by Land Commissioner 12/10/18 to 1/15/19

Granted to: HENRY HILL OIL SERVICES LLC, WILLISTON-ND
For the Purpose of: Easement: Salt Water Pipeline
Right-of-Way Number: RW0008371
Trust: A - Common Schools
Legal Description: WIL-154-100-16-NE4, NW4, SE4

Granted to: MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of: Easement: Drop Line-Buried Electric Distribution Line
Right-of-Way Number: RW0008385
Trust: A - Common Schools
Legal Description: DUN-146-94-36-SW4

Granted to: SINCLAIR OIL & GAS CO, SALT LAKE CITY-UT
For the Purpose of: On-lease Act. Amend: Horizontal Oil Well
Right-of-Way Number: RW0008390
Trust: A - Common Schools
Legal Description: MOU-154-93-36-SE4

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Granted to: **LOGAN COUNTY, NAPOLEON-ND**
 For the Purpose of: Easement: Road Right-of-Way
 Right-of-Way Number: RW0008391
 Trust: A - Common Schools
 Legal Description: LOG-134-71-36-NW4, SW4

Granted to: **HILAND CRUDE, LLC, WILLISTON-ND**
 For the Purpose of: Easement: Oil Gathering Pipeline
 Right-of-Way Number: RW0008402
 Trust: N – North Dakota State University
 Legal Description: WIL-154-99-20-NE4

Granted to: **BRAUN INTERTEC CORPORATION, BISMARCK-ND**
 For the Purpose of: Permit: Soil Testing
 Right-of-Way Number: RW0008412
 Trust: A - Common Schools
 Legal Description: MCK-151-95-16-NW4
 Legal Description: MCK-151-98-16-NE4

Granted to: **MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND**
 For the Purpose of: Easement: Drop Line-Electric Distribution Line
 Trust: A - Common Schools
 Legal Description: MCK-150-95-16-NE4

Granted to: **MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND**
 For the Purpose of: Easement: Drop Line-Electric Distribution Line
 Right-of-Way Number: RW0008414
 Trust: A - Common Schools
 Legal Description: MCK-150-95-16-NW4

Granted to: **COBRA OIL & GAS CORPORATION, WICHITA FALLS-TX**
 For the Purpose of: Permit-Amend: Access Road
 Right-of-Way Number: RW0008415
 Trust: A - Common Schools
 Legal Description: BIL-144-101-16-NW4

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: **DEEP CREEK ADVENTURES, WATFORD CITY-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008417
 Trust: A - Common Schools
 Legal Description: MCK-149-96-36-NE4, SE4

Granted to: **ND ENERGY SERVICES INC, DICKINSON-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008422
 Trust: A - Common Schools
 Legal Description: DUN-146-94-16-NE4, NW4

Granted to: ND ENERGY SERVICES INC, DICKINSON-ND
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008423
Trust: A - Common Schools
Legal Description: DUN-146-94-36-NW4, SE4, SW4

Granted to: AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND
For the Purpose of: Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number: RW0008424
Trust: A - Common Schools
Legal Description: WIL-154-99-16-SW4
Legal Description: WIL-154-99-20-NE4

Investment Updates

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of December 31, 2018. Due to nature of real estate reporting, Core Plus real estate values still reflect values as of 9/30/18.

Account/Asset Class	Long-Term Asset Allocation	12/31/18 Actual Allocation \$	12/31/18 Actual Allocation %	12/31/18 %Diff.
Large Cap US Equity	13.3%	\$ 547,390,171	12.5%	-0.8%
Mid/Small Cap US Equity	3.7%	\$ 147,420,573	3.4%	-0.3%
International Equity	13.3%	\$ 548,973,149	12.6%	-0.7%
Emerging Market Equity	3.7%	\$ 162,890,829	3.7%	0.0%
Total Equities	34.0%	\$ 1,406,674,724	32.2%	-1.8%
Core Fixed Income	12.6%	\$ 664,730,350	15.2%	2.6%
Non-Core Fixed Income	8.4%	\$ 293,306,559	6.7%	-1.7%
Total Fixed Income	21.0%	\$ 958,036,909	21.9%	0.9%
Total Absolute Return	20.0%	\$ 891,628,820	20.4%	0.4%
Commodities	3.0%	\$ 126,130,496	2.9%	-0.1%
MLPs	3.0%	\$ 118,392,580	2.7%	-0.3%
TIPS	2.0%	\$ 88,326,014	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 77,315,191	1.8%	-0.2%
Total Inflation Strategies	10.0%	\$ 410,164,281	9.4%	-0.6%
Core Real Estate	8.0%	\$ 388,040,625	8.9%	0.9%
Core Plus Real Estate	7.0%	\$ 314,628,272	7.2%	0.2%
Total Real Estate	15.0%	\$ 702,668,897	16.1%	1.1%
Total Asset	100.0%	\$ 4,369,173,631	100.0%	

Angelo Gordon (\$54.75 million, 1.3% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending portfolio was initially funded in late-August 2018. To date, a total of \$54.75 million dollars has been transferred; the last capital call was funded on December 10, 2018. A total of 36.5% has now been transferred for a total of \$150 million commitment. Angelo Gordon is two calendar quarters ahead of the initial funding schedule.

BND Farm Loan Pool (\$17.89 million, 0.4% of PTF assets)**Direct Farm Lending**

On December 28, 2018, an additional \$5.0 million was sent to the Farm Loan Pool. Since restarting the program in late October 2018, a total of \$10 million has been transferred to the loan pool account.

According to BND the market for farm real estate loans remains strong. As a result, we can expect to transfer more money into this program going forward.

Summary of Assets (Unaudited) for Period Ended October 31, 2018 was presented to the Board.

LITIGATION**Whiting Litigation**

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/Charles Carvell**
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. 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 held and a trial was scheduled for April 20-24, 2020. The parties will prepare a scheduling order once field work is complete and the resulting geomorphologist's report is received.**

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Wilkinson Litigation

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. **The Court issued its Order on December 12, 2018 denying the State's Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2018.**

Continental Interpleader Litigation

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. **The Order Denying the United States'**

Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States' Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the "action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions." A January 10, 2019 docket entry provides "Deadlines and Hearings Terminated."

Newfield – Royalty Litigation

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 was held on January 4, 2019 at 1:30 p.m., McKenzie County. Trial is scheduled for September 10 and 11, 2019.**

Continental Resources – Royalty Litigation

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

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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.

DW Slate, LLC

On February 16th, 2018 the North Dakota Department of Trust Lands, on behalf of the Board of University and School Lands (Board), received a letter from the attorneys for DW Slate, LLC (DW Slate) regarding thirteen leases issued by the Board and currently held by DW Slate. DW Slate alleges that the Board does not own the leased interest and has requested, pursuant to N.D.C.C. § 32-12-03, that the Board refund \$8,409,094.07 for the bonuses, rentals, leasing fees and interest on the thirteen leases.

The Department is seeking guidance on any further developments in this case.

Sorum Litigation

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

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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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019.**

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

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Newfield
- Continental Royalty
- Continental Interpleader
- DW Slate LLC
- Paul Sorum, et. al. v. The State of North Dakota, et al

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State (via Telephone)
Wayne Stenehjem	Attorney General
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
Adam Otteson	Revenue Compliance Director
Kate Schirado	Administrative Assistant

Guests in Attendance:

Leslie Bakken Oliver	Governor's Legal Counsel
Mark Hanson	Nilles Law Firm – Paul Sorum Case Only
Charles Carvell	Attorney General's Office
Jen Verleger	Attorney General's Office
Dave Garner	Attorney General's Office

The executive session adjourned at 11:26 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 Newfield, Continental Royalty, Continental Interpleader, DW Slate LLC and Paul Sorum, et. al. v. The State of North Dakota, et al litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:27 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
February 13, 2019**

The February 13, 2019 special meeting of the Board of University and School Lands was called to order at 1:32 PM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (via Telephone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Peggy Gudvangen	Accounting Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager

Guests in Attendance:

Amy Dalrymple	Bismarck Tribune
Tom Stromme	Bismarck Tribune
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
David Paul Garner	Attorney General's Office

Motion: The Board expresses opposition to the amendments that move Common Schools Trust Fund and other investments under control of the Board of University and School Lands to the State Investment Board as proposed in House Bill 1013 Amendment 19.0201.01003 Sections 6, 7 and 12.

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		

A D J O U R N

There being no further business, the meeting was adjourned at 2:04 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

(02/13/19)

**Minutes of the Meeting of the
Board of University and School Lands
February 28, 2019**

The February 28, 2019 meeting of the Board of University and School Lands was called to order at 9:10 AM in the Governor's Conference Room of the State Capitol by Vice Chairman Al Jaeger.

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
Susan Dollinger	Unclaimed Property Administrator
Jeff Engleson	Investments Director
Mike Humann	Surface Director
Kristie McCusker	Paralegal
Allie Nagel	Mineral Title Specialist
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Director
Kate Schirado	Administrative Assistant
Gerard Schwan	Grants Administrator

Guests in Attendance:

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Levi Bachmeier	Governor's Policy Advisor
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Firm
John Paczkowski	Office of the State Engineer
Fintan Dooley	Litigation Plaintiff
Dani Wieland	XTO Energy
Teresia McGinnis	XTO Energy
Amy Dalrymple	Bismarck Tribune
Lawrence Bender	Fredrickson & Byron
Ed Murphy	DMR – Geological Survey
Travis Stollendorf	DMR – Geological Survey
Darren Schulz	ND RIO
Gerald Heiser	OSE/SWC
Marcia Beard	RVK

APPROVAL OF MINUTES

A motion to approve the minutes of the January 31, 2019 and February 13, 2019 meetings was made by Attorney General Wayne Stenehjem and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Retirement of Grants

Of the grants awarded during Fiscal Years 2015 through 2016, two are complete and two have remaining balances available for retirement as the grant holders are non-responsive. The list of recommended retirement of grants for the Board's consideration is as follows (map of locations attached):

Grant Retirements					
Political Sub	Grant	Awarded	Paid	Balance	Project
OSBORN TOWNSHIP	G150185	\$300,000	\$280,088.00	\$19,912.00	REPAIR 41ST STREET
THORSON TOWNSHIP	G150237	\$300,000	\$236,525.18	\$63,474.82	ROAD WORK
WHITE SHIELD PSD #85	G160103	\$31,731		\$31,731.00	Renovation and improvement projects
EPPING RURAL FIRE DISTRICT	G160170	\$37,260	\$37,194.46	\$65.54	SCBA UPDATE AND PORTABLE RADIOS
				\$115,183.36	Aggregate

Osborn Township and White Shield PSD are non-responsive grant holders per N.D. Admin. Code § 85-02-04-02, which states:

A grantee that does not respond to the director's notice is deemed to concur with the cancellation of the grant. The board may cancel the grant immediately and retire the remaining balance to the originating grant fund. If an extension of an aged grant is not granted, the board may cancel the grant immediately and retire the remaining balance to the originating grant fund.

Osborn Township and White Shield Public School District PSD failed to submit progress reports and to respond to repeated communications with the Energy Infrastructure and Impact Office (EIIO). EIIO attempted communication via emails, phone calls, and letters. Additionally, Osborn Township failed to respond to EIIO's scheduled site visit and the review was conducted without a representative from the township.

Final notifications were sent to Osborn Township and White Shield PSD on December 27, 2018, stating their grants were considered delinquent and in order to avoid retirement of funding, EIIO needed a written grant status response no later than January 21, 2019. Additionally, each of the grantee's legislators were included in the notification process. White Shield PSD has failed to respond to the December 2018 letter. Osborn Township submitted a request for full funding on February 15, 2019.

Thorson Township and Epping Rural Fire District have completed their projects and have remaining balances that the grantees have authorized for retirement.

All four of the grantees will receive additional notice that their grant is retired upon board action. The total of \$115,183.36 will be moved to the contingency allocation for future distribution.

Motion: The Board retires the four grants identified in the preceding list for a total of \$115,183.36. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.

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

(02/28/19)

O P E R A T I O N S

Legislative Bill Status as of February 21, 2019

At this time, the Department of Trust Lands is monitoring 46 bills.

DEPARTMENT BUDGET BILL

HB 1013 **Legislative appropriation and budget for the Commissioner of University and School Lands**

Introduced/Sponsored by: Appropriations Committee
House Appropriations Committee - Government Operations Division (Chairman Vigesaa)
Status: PASSED House; INTRODUCED Senate
Senate Appropriations Committee (Chairman Holmberg)
Committee Hearing: 02/28

DEPARTMENT SUBMITTED BILLS

SB 2081 **Continuing authority for building repairs and investment due diligence**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Government and Veterans Affairs Committee
Senate Government and Veterans Affairs Committee (Chairman Davison)
Status: PASSED Senate, INTRODUCED House
House Government and Veterans Affairs Committee (Chairman Kasper)

SB 2082 **Repeal of N.D.C.C. §§ 15-04-02 Lease of Cultivated Lands for Summer Fallow, and 15-04-04, Failure to Summer-Fallow Cultivated Lands, Use for Cancellation of Lease**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Agriculture Committee
Senate Agriculture Committee (Chairman Luick)
Status: PASSED Senate, INTRODUCED House
House Agriculture Committee (Chairman D. Johnson)

DEPARTMENT SUPPORTED BILLS

HB 1392 **Confidentiality of records received by the Board of University and School Lands**

Introduced/Sponsored by: Representatives Zubke, Dockter, Nathe, Westlind
House Government and Veterans Affairs Committee (Chairman Kasper)
Status: PASSED House, INTRODUCED Senate
Senate Government and Veterans Affairs Committee (Chairman Davison)
Committee Hearing: 02/28

SB 2211 **Amend N.D.C.C. §§ 61-33.1-04 and 61-33.1-05 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, House received from Senate

SB 2212 **Relating to authorization for the Board of University and School Lands to impose a civil penalty for failure to produce records; and to provide penalty**

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, House received from Senate

SB 2264 **Relating to meetings and policy approval process of the Board of University and School Lands exempt administrative agencies**

Introduced/Sponsored by: Senators Unruh, Klein, Schaible Representatives Howe, Nathe, Porter
 Senate Government and Veterans Affairs Committee (Chairman Davison)
 Status: PASSED Senate, INTRODUCED House
 House Government and Veterans Affairs Committee (Chairman Kasper)

Other bills that have a direct impact on the Board of University and Schools Lands, the Department of Trust Lands, or the trusts and funds that they manage.

HB 1192 **Relating to defining and delineating the ordinary high water mark of a navigable body of water; and to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to the definition and determination of ordinary high water mark.**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Representatives Keiser, Martinson Senator Unruh
 House Energy and Natural Resources Committee (Chairman Porter)
 Status: PASSED House, INTRODUCED Senate
 Senate Energy and Natural Resources Committee (Chairman Unruh)

HB 1275 **Relating to limitations on the adoption of administrative rules.**

Introduced/Sponsored by: Rep. K. Koppelman, D. Anderson, Hatlestad, Heinert, Lefor, Louser, Toman, Sen. Heckaman, Kreun, J. Roers
 House Judiciary Committee (Chairman K. Koppelman)
 Status: PASSED House, INTRODUCED Senate
 Senate Government and Veterans Affairs Committee (Chairman Davison)

HB 1383 **Relating to the creation of an environmental impact mitigation fund and to mitigating direct environmental impacts and the federal environmental law impact review committee, exclusion and avoidance areas and the factors considered by the public service commission when evaluating and designating sites, corridors, and routes; to provide for a report to the budget section; to provide an appropriation; and to provide a continuing appropriation.**

Introduced/Sponsored by: Rep. Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt, Sen. Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek
House Agriculture Committee (Chairman Johnson)
Status: PASSED House, House motion to reconsider laid on table

HB 1521 **Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota.**

Introduced/Sponsored by: Rep. Pollert, Sen. Wardner
House Ethics Committee (Chairman Kasper)
Status: PASSED House, House motion to reconsider laid on table

SB 2037 **Relating to the disposal and storage of high-level radioactive waste and subsurface storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or disposal of radioactive waste material or hazardous waste and disposition of unusable products; to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear waste material; and to provide a penalty.**

Introduced/Sponsored by: Legislative Management
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, House received from Senate

SB 2148 **Relating to restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota.**

Introduced/Sponsored by: Sen. Mathern
Senate Ethics Committee (Chairman Hogue) and then rereferred to Appropriations Committee (Chairman Holmberg)
Status: PASSED Senate, House received from Senate

SB 2254 **Relating to liens and wind energy property rights.**

Introduced/Sponsored by: Sen. Kannianen, Dwyer, Patten, Rep. Longmuir, Schatz, Zubke
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, INTRODUCED House
House Energy and Natural Resources Committee (Chairman Porter)

SB 2261 **Relating to mitigating adverse environmental impacts.**

Introduced/Sponsored by: Sen. Unruh, Cook, Wardner, Rep. Keiser, Lefor, Schmidt
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, House received from Senate

SB 2315 **Relating to identifying private land open to hunters; to amend and reenact sections 12.1-22-03, 20.1-01-18, 20.1-01-19, 20.1-01-20, and 20.1-03-42 of the North Dakota Century Code, relating to criminal trespass and hunting on private land; to repeal section 20.1-01-17 of the North Dakota Century Code, relating to posting land; and to provide a penalty.**

Introduced/Sponsored by: Sen. Erbele, Patten, Unruh, Rep. Boe, Schmidt, Westlind
Senate Agriculture Committee (Chairman Luick)
Status: PASSED, House received from Senate

SB 2344 **Relating to injection or migration of substances into pore space.**

Introduced/Sponsored by: Sen. Unruh, Cook, Schaible, Rep. Kempenich, Porter
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, INTRODUCED House
House Energy and Natural Resources Committee (Chairman Porter)
Committee Hearing: 03/01 – 8:30am

HCR 3008 **Relating to allowable uses of the common schools trust fund. (HB 1350)**

Introduced/Sponsored by: Rep. Paulson, Hoverson, Johnston, M. Nelson, M. Ruby, Simons, Sen. Kannianen, O. Larsen
House Judiciary Committee (Chairman K. Koppleman)
Status: INTRODUCED
01/03 H Introduced, first reading, referred Judiciary Committee

HCR 3012 **Relating to the members of the board of university and school lands; and to provide an effective date.**

Introduced/Sponsored by: Rep. M. Nelson
House Judiciary Committee (Chairman K. Koppleman)
Status: INTRODUCED
Committee Hearing: 02/27 – 2:30pm

HCR 3013 **Relating to exercising eminent domain over certain mineral rights and pore space for the benefit of private industry; and to amend and reenact section 16 of article I of the Constitution of North Dakota, relating to an exception to the limitations on exercising eminent domain.**

Introduced/Sponsored by: Rep. M. Nelson
House Judiciary Committee (Chairman K. Koppleman)
Status: INTRODUCED
Committee Hearing: 02/27 – 10:30am

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

Roughrider Electric Cooperative Request to Purchase Trust Land Under NDCC Ch. 15-09

Roughrider Electric Cooperative Inc. has submitted an application to purchase approximately 5 acres in the SE4 of Section 36, Township 142 North, Range 101 West, Billings County. The described property has an existing electric substation currently under easement held by Roughrider Electric Coop which expires in October of 2019. This proposed purchase includes the existing substation and additional acreage for a laydown yard. The existing electric substation provides services to rural

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residents and the oil industry in the surrounding area. The original easement had a term of 30 years, however due to the long term power needs in the local area, Roughrider would rather purchase the property rather than extend the easement.

An appraisal has been requested from Billings County as required under NDCC Ch. 15-09 and a second appraisal will be completed by a qualified commercial real estate appraiser. The approximated location of the tract is 12 miles north of Medora, ND.

A parcel map and location map were provided to the Board and are available at the Department upon request.

MINERALS MANAGEMENT

XTO Energy, Inc.'s Proposed Grinnell-Bakken Unit & Hofflund-Bakken Unit

XTO Energy, Inc. (XTO) is seeking support from the Board of University and School Lands (Board) and the Department of Trust Lands (Department) in its effort to create two large units, the Hofflund-Bakken (Hofflund) and Grinnell-Bakken (Grinnell), in McKenzie and Williams Counties. XTO seeks to safely and efficiently develop a little over 25,000 mineral acres in and around Lake Sakakawea. Both units comprise portions of the Alkali Creek, Capa, Charlson, Grinnell, Hofflund, and West Capa fields. All of the current spacing units have at least one producing well and have produced an estimated 1% (7.3 million barrels) of the original oil in place (OOIP) from the Bakken system through November 30, 2017. XTO believes this unitization would lead to the production of approximately 100 million barrels of oil from this area. XTO estimates this is approximately 14% of the OOIP. Both units and their associated drilling plans have been approved by the North Dakota Industrial Commission (NDIC), subject to sufficient ratifications by mineral owners, including the Board.

The proposed units would be located 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, which limits where specific wells can be connected to a central tank battery. Additionally, a large portion of the proposed units' boundaries are within Lake Sakakawea, which further complicates development. Removal of spacing unit boundaries will allow XTO to have more flexibility in locating wells and other key infrastructure, thereby allowing strategic and environmentally conscious placement of infrastructure.

The Board manages approximately 4,279 net mineral acres within the proposed units' boundaries. There are no surface tracts administered by the Board within the boundaries of the units. Due to the current ordinary high water mark (OHWM) work being conducted, the Board's exact acreage interest is unclear. Estimates from XTO place the Board's royalty interests between 11.84% - 16.23% for the Hofflund Unit and 7.14% - 15.03% for the Grinnell Unit. The Department agrees with these estimates; however, the exact data will not be known until the Department completes its survey, which is currently being procured. The tables below show the Board's current leased interests; however, it should be noted that it is possible the acres designated with an "R" Trust code will change after completion of the survey.

Grinnell-Bakken Unit				
County	T-R-S	Legal	Trust(s)	Net Acres
Williams	154-96-14	W2SW4	L	40
Williams	154-96-15	E2SE4	L	40
Williams	154-95-22	SE4SW	L	20
McKenzie	154-96-24	Missouri River in SE4; and Missouri River in SW4	R	4.66

McKenzie	154-96-25	Missouri River in entire Section *	R	540.38
McKenzie	154-96-26	Missouri River in entire Section *	R	251.89
McKenzie	154-96-27	Missouri River in entire Section	R	377.19
McKenzie	154-96-36	Lots 1, 2, 3, SW4NE4, NW4, W2SE4, SE4SE4 plus accretions and the Missouri River in NE4	A; R	639.38
McKenzie	154-95-29	Missouri River in entire Section	R	242.61
McKenzie	154-95-30	Missouri River in entire Section	R	550.03
		* Includes a "pending tract"		
Total				2706.14

Hofflund Bakken Unit				
County	T-R-S	Legal	Trust(s)	Net Acres
McKenzie	154-95-16	All	A	640
McKenzie	154-95-21	Missouri River in SE4 *	R	5.49
McKenzie	154-95-22	Missouri River in S2 *	R	51.14
McKenzie	154-95-25	Missouri River in entire Section *	R	347.61
McKenzie	154-95-26	SW4SW4, Missouri River in entire Section *	L, R	324.78
McKenzie	154-95-27	Lot 8, S2SE4, Missouri River in entire Section	L, R	442.85
McKenzie	154-95-28	Missouri River in NE4 and Missouri River in S2	R	161.28
McKenzie	154-95-36	Missouri River in N2	R	41.07
		* Includes a "pending tract"		
Total				1973.15

The Department, in an effort to provide the Board with the most accurate information possible, has been developing a procedure for analyzing the benefits of proposed units or similar proposals. Part of this procedure is to engage the NDIC to provide science based analysis of proposals. The overall mission of assigned personnel is to evaluate these units based on the interests of the Board. It is also worth noting that, for reasons of conflict, persons employed by the NDIC that work on the Department/Boards behalf are precluded from matters pertaining to the permitting the units. The Department is pleased to announce that these units were the first cases utilizing this procedure. Attached are Travis Stollendorf's, the NDIC Geologist assigned to this case, justifications and notes of his recommendation of the ratification of both units.

As mentioned in previous Board memos regarding large units, the Board should be aware of disadvantages to unitizing large areas, including:

- 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 ensure that XTO is in compliance with the unitization 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 units against their objections.

- 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 OHWM survey will impact ownership of the proposed unit.
- Revenues may decrease over the short term, as certain wells go offline to accommodate the additional drilling of neighboring wells.

Motion: The Board authorizes the Commissioner to approve ratifications for XTO's Hofflund – Bakken and Grinnell – Bakken Units.

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

The following items were presented to the Board and area available at the Department upon request: XTO Request to the Board to Consider Ratification, Map of XTO Proposed Unitization, North Dakota State Geologist Report.

R E P O R T S

Report of Easements Issued by Land Commissioner (1/16/2019 to 2/19/19)

Granted to: **WBI ENERGY TRANSMISSION INC, GLENDIVE-MT**
 For the Purpose of: Easement-Amend: Gas Gathering Pipeline
 Right-of-Way Number: RW0008211
 Trust: A - Common Schools
 Legal Description: BRK-161-93-36-NW4, SW4

Granted to: **ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX**
 For the Purpose of: Easement: Oil Gathering Pipeline
 Right-of-Way Number: RW0008260
 Trust: A - Common Schools
 Legal Description: MCK-150-97-36-SE4, SW4

Granted to: **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**
 For the Purpose of: Easement: Easement Release
 Right-of-Way Number: RW0008399
 Trust: A - Common Schools
 Legal Description: WIL-154-100-16-SE4

Granted to: **BRIDGER PIPELINE LLC, CASPER-WY**
 For the Purpose of: Easement: Oil Gathering Pipeline
 Right-of-Way Number: RW0008403
 Trust: A - Common Schools
 Legal Description: MCK-151-96-36-SE4, SW4

Granted to: **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**
 For the Purpose of: Easement: Gas Gathering Pipeline
 Right-of-Way Number: RW0008406
 Trust: A - Common Schools
 Legal Description: MCK-150-97-36-NW4

Granted to: ROUGHRIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND
For the Purpose of: Easement: Electric Distribution Line - Buried
Right-of-Way Number: RW0008409
Trust: A - Common Schools
Legal Description: BIL-141-101-13-NE4, NW4

Granted to: RRC POWER & ENERGY LLC, ROUND ROCK-TX
For the Purpose of: Permit: Soil Testing
Right-of-Way Number: RW0008418
Trust: A - Common Schools
Legal Description: WIL-157-95-16-NW4, SW4
WIL-158-96-16-NE4, SE4
WIL-159-97-16-SW4
WIL-159-97-36-SE4, SW4

Investment Updates

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of January 31, 2019.

After a rough 4th Quarter 2018, permanent trust fund assets grew by more than \$200 million during January 2019. Also note that the portfolio recovered during the month in a way that naturally brought the portfolio back close to the target allocation, without any transaction costs.

Account/Asset Class	Long-Term Asset Allocation	1/31/19 Actual Allocation \$	1/31/19 Actual Allocation %	1/31/19 % Diff.
Large Cap US Equity	13.3%	\$ 593,270,789	12.9%	-0.4%
Mid/Small Cap US Equity	3.7%	\$ 162,686,231	3.6%	-0.1%
International Equity	13.3%	\$ 590,046,797	12.9%	-0.4%
Emerging Market Equity	3.7%	\$ 178,778,325	3.9%	0.2%
Total Equities	34.0%	\$ 1,524,782,142	33.3%	-0.7%
Core Fixed Income	12.6%	\$ 665,887,727	14.5%	1.9%
Non-Core Fixed Income	8.4%	\$ 299,765,538	6.5%	-1.9%
Total Fixed Income	21.0%	\$ 965,653,265	21.1%	0.1%
Total Absolute Return	20.0%	\$ 932,717,627	20.4%	0.4%
Commodities	3.0%	\$ 135,834,538	3.0%	0.0%
MLPs	3.0%	\$ 136,617,406	3.0%	0.0%
TIPS	2.0%	\$ 89,569,611	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 92,562,757	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 454,584,312	9.9%	-0.1%
Core Real Estate	8.0%	\$ 388,040,625	8.5%	0.5%
Core Plus Real Estate	7.0%	\$ 315,866,607	6.9%	-0.1%
Total Real Estate	15.0%	\$ 703,907,232	15.4%	0.4%
Total Asset	100.0%	\$ 4,581,644,578	100.0%	

Angelo Gordon (\$54.75 million, 1.3% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending portfolio was initially funded in late-August 2018. To date, a total of \$54.75 million dollars has been transferred; the last capital call was funded on December 10, 2018. A total of 36.5% has now been transferred for a total of \$150 million commitment.

Investments in North Dakota

Over the years, the Board has invested funds throughout the State. Beyond the appropriated funds to various projects from the Strategic Investments and Improvements Fund, the Board has directly invested over \$250 million in various projects throughout the State over the past 30 years.

The amounts shown below are current balances.

Coal Development Trust Fund Loans

\$45 million: School Construction/Emergency Repair loans

\$11.6 million: Coal Impacted Political Subdivisions

Permanent Trust Funds

\$17.9 million: Farm Loan Pool

\$1.1 million: Participated with BND in direct loans for hotel, apartments, etc. in western ND

Other Permanent Trust Funds indirect investments

Master Limited Partnerships (pipeline infrastructure)

Energy Equities (invest in many independent exploration and production companies)

Results of Online February Oil and Gas Mineral Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction which concluded on February 5, 2019, on <https://www.energynet.com/>.

There were 18 tracts offered and all received competitive bids. The highest bid per acre was \$1,509.00 for 5.39 net mineral acres in McLean County.

There were 34 bidders registered, 18 of which submitted bids in the seven-day auction. Bidders were from 10 states (CA, CO, LA, MO, MT, ND, TN, TX, WA and WY).

A total \$508,285.35 of bonus was collected from the auction.

The Financial position of the Department was presented to the Board and is available at the Department upon request.

INVESTMENT MANAGEMENT

Quarterly Investment Reports – 4th Quarter 2018

Marcia Beard from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending December 31, 2018.

The first report to be 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 will review 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.

Benchmarking Portfolio Performance

Marcia Beard from RVK went over the benchmarking portfolio performance which is available at the Department upon request.

Considered were the comparisons being made by the legislature and others between the investment programs managed by the Land Board and the State Investment board, understanding the nature of benchmarking and what comparisons are relevant and which are not.

Fixed Income Benchmark Discussion and Recommendation

During 2018, the Board made changes to the structure of the permanent trusts' fixed income portfolio. Those changes included eliminating allocations to high yield bonds and international fixed income allocations and adding allocations to securitized credit (Schroders) and direct lending (Angelo Gordon).

Now that most of these changes have been implemented, it is important for the Board to review the benchmark it uses to help evaluate the performance of the trusts' fixed income portfolio. Marcia Beard from RVK is here today to review the trusts' fixed income benchmark and to make a recommendation to revise the benchmark used going forward.

Motion: The Board adopted the Bloomberg US Universal Index as the benchmark to be used to evaluate the performance of the permanent trusts' fixed income portfolio effective January 1, 2019.

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

L I T I G A T I O N

Wilkinson Litigation

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. **The Court issued its**

Order on December 12, 2018 denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019 and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing on the Motion for Scheduling Order for March 5, 2019 at 2:00 p.m.

Tennille, et al. v. The Western Union Co., et al.

Case No. 09-cv-000938-JKL, U.S. District Court, District of Colorado

In 2009, a class action suit was filed in the United States District Court for the District of Colorado (Court) against Western Union Financial Services Inc. and The Western Union Co. alleging the companies failed to adequately notify customers of unredeemed (failed) money transfer transactions. The class included hundreds of thousands of class members, including several hundred individuals and entities from North Dakota, with such claims. All class members were given the opportunity to opt out the class action. Those that remained were subject to any decision of the court.

In 2013, the Court entered an amended final judgment approving a settlement by the parties. The Class Settlement Fund included \$145,449,963.37. Pursuant to the terms of the amended judgement 139,528 class members submitted valid claims and have been paid with interest out of the Class Settlement Fund. Attorneys' fees and administrative costs were also paid out of the Class Settlement Fund.

In 2018, the Court created a *cy pres* fund from the funds remaining in the Class Settlement Fund totaling \$57,828.625.04. The *cy pres* fund was created pursuant to the Court's Order providing distribution of remaining funds directly to the states, territories, districts, and U.S. jurisdictions in proportion to the amount that would have been escheated.

The Court determined that 0.1360011% of the total fund was attributable to transaction initiated in North Dakota. As such, pursuant to the Court's amended final judgment, the State of North Dakota is eligible to receive \$78,647.56 from the *cy pres* fund at this time if it executes by April 3, 2019, a release approved by the Court which has been distributed to the states..

The states voiced concerns regarding precedent that would be set by allowing class action suits to administer unclaimed funds, without providing the states the detailed consumer transaction information involved in the settlement. In December 2018, we contacted legal counsel for Western Union regarding these concerns. Thereafter, the third party settlement administrator, Epiq, was forthright in producing transaction records for North Dakota which identify the names of the class members who have not been paid, the amounts originally claimed and the amount to be distributed to the class member based on the settlement agreement.

At present, at least 23 states have executed releases.

Per order of the Court if North Dakota does not execute the release, it will lose all rights to such funds it has been allocated under the *cy pres* fund and require North Dakota to reinstitute legal action to claim any amounts it believes should be escheated to it. The results of such legal action are highly speculative and would likely be very costly and ultimately ineffective given the terms of the judgment in the class action suit.

Motion: **The Board authorizes the Unclaimed Property Division to execute the release in order that it may return these funds to the rightful owners within North Dakota.**

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

Newfield Litigation

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 was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. Trial is scheduled for September 10 and 11, 2019.**

Sorum Litigation

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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019.**

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 close the meeting to the public and enter into executive session for attorney consultation related to:

- **Wilkinson**
- **Tenille vs. Western Union**
- **Newfield**
- **Paul Sorum, et al. v. The State of North Dakota, et al.**
- **Whitetail Wave LLC**
- **Starin/Weyrauch**
- **Sovereign Mineral Dispute**
- **Trust Lands Allocation Matter**

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 10:08 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
Susan Dollinger	Unclaimed Property Administrator
Kristie McCusker	Legal Assistant
Allie Nagel	Mineral Title Specialist
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Director
Kate Schirado	Administrative Assistant

Guests in Attendance:

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Levi Bachmeier	Governor's Policy Advisor
Dave Garner	Attorney General's Office
Charles Carvell	Attorney General's Office – Sovereign Mineral Dispute Only
Mark Hanson	Nilles Law Firm – Sorum, Whitetail, Weyrauch Only
Ryan Skor	State Treasurer's Office

The executive session adjourned at 12:21 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.

A D J O U R N

There being no further business, the meeting was adjourned at 12:22 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
March 11, 2019**

The March 11, 2019 special meeting of the Board of University and School Lands was called to order at 2:00 PM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (via Telephone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Director

Guests in Attendance:

Brent Sanford	Lt. Governor
Dave Garner	Attorney General's Office
Mike Nowatski	Governor's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Charles Tuttle	Minot
Patrick Fridgen	Water Commission
Garland Eberle	SWC
Nick Archuleta	ND United
Ryan Skor	State Treasurer's Office
Luke Shields	Senate Majority Office
Ray Holmberg	Senate
Emily Thompson	Legislative Council
Andrew Horn	KFYR
James MacPherson	AP
?	Fargo Forum

O P E R A T I O N S

Legislative Bill Status

Senate Bill 2362 relating to the allocation of the oil extraction tax; to provide an effective date; and to declare an emergency was discussed.

Motion: The Board directs the Commissioner to support Senate Bill 2362 in testimony while implicating it is essential to look retroactively to fill the constitutional funds and look to the Office of Management and Budget (OMB) to find the funds to do so.

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		

LITIGATION

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

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

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

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (via Telephone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Adam Otteson	Revenue Compliance Director

Guests in Attendance:

Brent Sanford	Lt. Governor
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Dave Garner
Mike Nowatski
Leslie Bakken Oliver
Reice Haase

Attorney General's Office
Governor's Office
Governor's Legal Counsel
Governor's Office

The executive session adjourned at 2:52 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 Wilkinson litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 2:53 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
March 28, 2019**

The March 28, 2019 special meeting of the Board of University and School Lands was called to order at 9:03 AM in the Governor's Conference Room 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
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant

Guests in Attendance:

Brent Sanford	Lt. Governor
Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office
Charles Carvel	Attorney General's Office
James MacPherson	AP
John Hageman	Fargo Forum
Amy Dalrymple	Bismarck Tribune
Marcel Staub	Novarca
Thomas Welsh	Novarca
Geoff Simon	Western Dakota Energy Assn
Ron Ness	ND 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 February 28, 2019 and March 11, 2019 meetings was made by Secretary Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Legislative Bill Status

At this time, the Department of Trust Lands is monitoring 36 bills.

DEPARTMENT BUDGET BILL**HB 1013 Legislative appropriation and budget for the Commissioner of University and School Lands**

Introduced/Sponsored by: Appropriations Committee
 House Appropriations Committee - Government Operations Division (Chairman Vigesaa)
 Status: PASSED House; INTRODUCED Senate
 Senate Appropriations Committee (Chairman Holmberg)
 Subcommittee Hearing: 03/27 – 3:00pm

DEPARTMENT SUBMITTED BILLS**SB 2081 Continuing authority for building repairs and investment due diligence
 *Fiscal Note Filed by Department**

Introduced/Sponsored by: Government and Veterans Affairs Committee
 Senate Government and Veterans Affairs Committee (Chairman Davison)
 Status: PASSED Senate, PASSED House
 House Government and Veterans Affairs Committee (Chairman Kasper)
 H Reported back, do pass, place on calendar
 Second reading, passed

**SB 2082 Repeal of N.D.C.C. §§ 15-04-02 Lease of Cultivated Lands for Summer Fallow, and 15-04-04, Failure to Summer-Fallow Cultivated Lands, Use for Cancellation of Lease
 *Fiscal Note Filed by Department**

Introduced/Sponsored by: Agriculture Committee
 Senate Agriculture Committee (Chairman Luick)
 Status: PASSED Senate, PASSED House
 House Agriculture Committee (Chairman D. Johnson)
 Signed by Governor
 Filed with Secretary Of State

DEPARTMENT SUPPORTED BILLS**HB 1392 Confidentiality of records received by the Board of University and School Lands**

Introduced/Sponsored by: Representatives Zubke, Dockter, Nathe, Westlind
 House Government and Veterans Affairs Committee (Chairman Kasper)
 Status: PASSED House, PASSED Senate
 Senate Government and Veterans Affairs Committee (Chairman Davison)
 Signed by Governor
 Filed with Secretary of State

SB 2211 **Amend N.D.C.C. §§ 61-33.1-04 and 61-33.1-05 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, INTRODUCED House
 House Energy and Natural Resources Committee (Chairman Porter)
 Rereferred to Appropriations

SB 2212 **Relating to authorization for the Board of University and School Lands to impose a civil penalty for failure to produce records; and to provide penalty**

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, INTRODUCED House
 House Energy and Natural Resources Committee (Chairman Porter)
 Amendment Introduced

SB 2264 **Relating to meetings and policy approval process of the Board of University and School Lands exempt administrative agencies**

Introduced/Sponsored by: Senators Unruh, Klein, Schaible Representatives Howe, Nathe, Porter
 Senate Government and Veterans Affairs Committee (Chairman Davison)
 Status: PASSED Senate, RECONSIDERED House
 House Government and Veterans Affairs Committee (Chairman Kasper)
 H Reconsidered
 H Rereferred to Government and Veterans Affairs

Other bills that have a direct impact on the Board of University and Schools Lands, the Department of Trust Lands, or the trusts and funds that they manage.

HB 1192 **Relating to defining and delineating the ordinary high water mark of a navigable body of water; and to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to the definition and determination of ordinary high water mark.**
***Fiscal Note Filed by Department**

Introduced/Sponsored by: Representatives Keiser, Martinson Senator Unruh
 House Energy and Natural Resources Committee (Chairman Porter)
 Status: PASSED House, INTRODUCED Senate
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 H Returned to House

HB 1383 **Relating to the creation of an environmental impact mitigation fund and to mitigating direct environmental impacts and the federal environmental law impact review committee, exclusion and avoidance areas and the factors considered by the public service commission when evaluating and designating sites, corridors, and routes; to provide for a report to the budget section; to provide an appropriation; and to provide a continuing appropriation.**

Introduced/Sponsored by: Rep. Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt, Sen. Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek
House Agriculture Committee (Chairman Johnson)
Status: PASSED House, INTRODUCED Senate
Senate Energy and Natural Resources Committee (Chairman Unruh)

HB 1521 **Relating to reporting campaign contributions, restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota.**

Introduced/Sponsored by: Rep. Pollert, Sen. Wardner
House Ethics Committee (Chairman Kasper)
Status: PASSED House, INTRODUCED Senate
Special Committee on Ethics Committee
03/28 Senate Committee Hearing 03:45 PM

SB 2037 **Relating to the disposal and storage of high-level radioactive waste and subsurface storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or disposal of radioactive waste material or hazardous waste and disposition of unusable products; to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear waste material; and to provide a penalty.**

Introduced/Sponsored by: Legislative Management
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, INTRODUCED House
House Energy and Natural Resources Committee (Chairman Porter)
Passed as amended, yeas 88 nays 4
S Returned to Senate

SB 2148 **Relating to restrictions on public officials and lobbyists, investigations of ethics violations, and implementing requirements of article XIV of the Constitution of North Dakota.**

Introduced/Sponsored by: Sen. Mathern
Senate Ethics Committee (Chairman Hogue) and then rereferred to Appropriations Committee (Chairman Holmberg)
Status: PASSED Senate, INTRODUCED House
Referred Ethics Committee (Chairman Hogue)

SB 2261 Relating to mitigating adverse environmental impacts.

Introduced/Sponsored by: Sen. Unruh, Cook, Wardner, Rep. Keiser, Lefor, Schmidt
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, INTRODUCED House
 House Agriculture Committee (Chairman Johnson)

SB 2315 Relating to identifying private land open to hunters; to amend and reenact sections 12.1-22-03, 20.1-01-18, 20.1-01-19, 20.1-01-20, and 20.1-03-42 of the North Dakota Century Code, relating to criminal trespass and hunting on private land; to repeal section 20.1-01-17 of the North Dakota Century Code, relating to posting land; and to provide a penalty.

Introduced/Sponsored by: Sen. Erbele, Patten, Unruh, Rep. Boe, Schmidt, Westlund
 Senate Agriculture Committee (Chairman Luick)
 Status: PASSED, INTRODUCED House
 House Agriculture Committee (Chairman Johnson)
 03/26 House Committee Hearing 08:00 AM

SB 2344 Relating to injection or migration of substances into pore space.

Introduced/Sponsored by: Sen. Unruh, Cook, Schaible, Rep. Kempenich, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 Status: PASSED Senate, INTRODUCED House
 House Energy and Natural Resources Committee (Chairman Porter)

SB 2362 Relating to the allocation of oil extraction tax; to provide an effective date; and to declare an emergency.

Introduced/Sponsored by: Sen. Cook, Holmberg, Wardner, Rep. Delzer, Headland, Pollert
 Senate Finance and Taxation Committee (Chairman Cook)
 Status: INTRODUCED Senate

Minerals Policy Manual – Chapter 2 Oil & Gas – 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 Lands' (Board) Oil and Gas 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 adopted Chapter 1 of the Minerals Policy Manual, relating to Coal, in December 2018. The Department met with representatives from the Petroleum Council on January 9, 2019 and requested they provide comments on the proposed North Dakota Board of University and School Lands Minerals Policy Manual – Chapter 2, Oil & Gas. The first reading of the policies were held at the January 31, 2019 meeting. The Commissioner requested the Board provide input on the proposed Chapter 2 Oil & Gas of the Minerals Policy Manual. Additionally, an open comment period was held and no comments were received.

In reviewing the proposed policies for this Board meeting, a typographical error was found in Section 2 of the Audit and Examination section of the policies. The reference to the sixty day deadline to request an extension of time to produce documents should have stated a deadline of

thirty days. That has now been corrected as can be seen in the attached redline version of the proposed policies.

In addition, non-substantive changes were made to include definitions in Chapter 2 for Board, Commissioner, and Department, and to remove the definition of coal mining operation.

The Board's Oil and Gas rules are long-standing. Each lease that is entered into is bound by the rules in place at the time of the lease execution. With the Board revising the rules into Board Policies, the Board's Oil and Gas Lease will need to be revised to reflect the word "policies" instead of "rules and regulations".

Motion: The Board adopt the proposed North Dakota Board of University and School Lands Minerals Policy Manual – Chapter 2, Oil & Gas and amend the Board Oil and Gas Lease to reflect these policies including the amendment of the definition Freight on Board (FOB) to Free on Board (FOB).

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		

The following documents were provided to the Board for review and are available at the Department upon request: North Dakota Board of University and School Lands Policy Manual Chapter 2, Oil & Gas and Oil and Gas Lease of the North Dakota Board of University and Schools Lands.

I N V E S T M E N T S

Novarca – Investment Fees and Costs Analysis Services

Marcel Staub, CEO and Founder of Novarca Group, and Thomas Welsh, managing partner of Novarca North America (Novarca), will discuss the company's capabilities for identifying excessive investment fees and expenses.

Novarca's general approach involves a detailed look at costs experienced by a given investment mandate, with a focus on identifying and reducing fees and expenses related to managing, transacting, and holding assets. The firm reviews expenses and identifies options that can serve as a basis to renegotiate fee arrangements with investment managers.

Novarca has served public clients in Europe and the United States, including the North Dakota State Investment Board (SIB), Sonoma County Employees' Retirement Association in California, and the Regents of the University of California. SIB staff are happy with Novarca's approach while working with investment managers and with the results achieved.

Novarca is compensated solely through a contingency fee in which they are only paid a portion of realized savings. Fifty percent of the savings realized over a two-year period is typical but the exact details of the contingency fee will be determined in negotiations.

While the Board's current fee schedules are very good, some of the lowest available for similar strategies, it is appropriate to continually review investment costs. Contracting with Novarca on a contingency basis may help realize additional savings for the trusts and other funds.

(03/28/19)

Motion: The Board direct the Commissioner to enter into an agreement with Novarca to review the Department's current investment expenses and work with investment managers to reduce trust fees, subject to final review and approval of all legal documents by the Office of the Attorney General.

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		

R E P O R T S

Report of Easements Issued by Land Commissioner 2/20/19 to 3/18/2019

Granted to: BURLINGTON RESOURCES OIL & GAS CO LP, BARTLESVILLE-OK
 For the Purpose of: On-lease Act. Amend: Multiple Pipelines
 Right-of-Way Number: RW0008345
 Trust: A - Common Schools
 Legal Description: MCK-149-96-16-NE4, NW4

Granted to: BRIDGER PIPELINE LLC, CASPER-WY
 For the Purpose of: Easement: Oil Gathering Pipeline
 Right-of-Way Number: RW0008403
 Trust: A - Common Schools
 Legal Description: MCK-151-96-36-SE4, SW4

Granted to: PIERCE COUNTY WATER DISTRICT, RUGBY-ND
 For the Purpose of: Easement: Flowage
 Right-of-Way Number: RW0008419
 Trust: N – North Dakota State University
 Legal Description: PIE-157-69-20-SE4

Granted to: ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX
 For the Purpose of: Easement: Oil Gathering Pipeline
 Right-of-Way Number: RW0008440
 Trust: A - Common Schools
 Legal Description: DUN-146-94-36-NW4, SW4

Granted to: COBRA OIL & GAS CORPORATION, WICHITA FALLS-TX
 For the Purpose of: Assignment: Salt Water Disposal Well-Assignment
 Right-of-Way Number: RW0008442
 Trust: A - Common Schools
 Legal Description: DIV-161-98-36-NE4

Granted to: SLOPE ELECTRIC COOPERATIVE INC, NEW ENGLAND-ND
 For the Purpose of: Easement: Electric Distribution Line - Buried
 Right-of-Way Number: RW0008446
 Trust: A - Common Schools
 Legal Description: BOW-131-106-16-SW4

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Granted to: MARATHON OIL COMPANY INC, DICKINSON-ND
 For the Purpose of: On-lease Act. Amend: Drop Line-Saltwater Pipeline
 Right-of-Way Number: RW0008447
 Trust: A - Common Schools
 Legal Description: DUN-146-94-36-SW4

Granted to: MARATHON OIL COMPANY INC, DICKINSON-ND
 For the Purpose of: Easement-Amend: Multiple Pipelines
 Right-of-Way Number: RW0008448
 Trust: A - Common Schools
 Legal Description: DUN-146-94-36-SW4

Granted to: MCKENZIE ENERGY PARTNERS LLC, WATFORD CITY-ND
 For the Purpose of: Assignment: Salt Water Disposal Well-Assignment
 Right-of-Way Number: RW0008451
 Trust: A - Common Schools
 Legal Description: WIL-156-95-16-SE4

Granted to: ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
 For the Purpose of: Easement-Amend: Drop Line-Pipeline
 Right-of-Way Number: RW0008454
 Trust: A - Common Schools
 Legal Description: WIL-154-100-16-SE4

Investment Updates

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of February 28, 2019.

After a rough 4th Quarter 2018, permanent trust fund assets have grown by almost \$270 million during the first two months of 2019. The strong showing during January and February resulted in total trust assets reaching an all-time high as of the end of February 2019.

Another item worth noting is that without any selling, the portfolio brought itself back into balance over the past two months.

Account/Asset Class	Long-Term Asset Allocation	2/28/19 Actual Allocation \$	2/28/19 Actual Allocation %	2/28/19 % Diff.
Large Cap US Equity	13.3%	\$ 613,321,952	13.2%	-0.1%
Mid/Small Cap US Equity	3.7%	\$ 169,639,906	3.7%	0.0%
International Equity	13.3%	\$ 604,234,480	13.0%	-0.3%
Emerging Market Equity	3.7%	\$ 179,181,180	3.9%	0.2%
Total Equities	34.0%	\$ 1,566,377,517	33.8%	-0.2%
Core Fixed Income	12.6%	\$ 670,801,118	14.5%	1.9%
Non-Core Fixed Income	8.4%	\$ 298,359,001	6.4%	-2.0%
Total Fixed Income	21.0%	\$ 969,160,118	20.9%	-0.1%
Total Absolute Return	20.0%	\$ 937,234,643	20.2%	0.2%
Commodities	3.0%	\$ 139,405,380	3.0%	0.0%
MLPs	3.0%	\$ 137,717,528	3.0%	0.0%
TIPS	2.0%	\$ 89,532,855	1.9%	-0.1%
Natural Resource Equities	2.0%	\$ 91,910,518	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 458,566,282	9.9%	-0.1%
Core Real Estate	8.0%	\$ 388,040,625	8.4%	0.4%
Core Plus Real Estate	7.0%	\$ 319,722,649	6.9%	-0.1%
Total Real Estate	15.0%	\$ 707,763,275	15.3%	0.3%
Total Asset	100.0%	\$ 4,639,101,835	100.0%	

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Angelo Gordon (\$55.94 million, 1.2% of PTF assets)**Direct Lending Fund**

The Angelo Gordon Direct Lending portfolio was initially funded in late-August 2018. To date, a total of \$54.75 million dollars has been transferred to the fund; the last capital call was funded on December 10, 2018. A total of 36.5% has now been transferred of the total commitment of \$150 million.

Westwood Holdings Group (\$312.28 million, 6.7% of PTF assets)**Global Tactical/Absolute Return**

Last week the Commissioner was informed of major changes within Westwood's multi-assets strategy group. These changes are in addition to former Chief Investment Officer and Portfolio Manager Mark Freeman's recent departure.

Current co-portfolio managers Todd Williams and Dan Barnes will be stepping down from the portfolio management roles they shared with Mr. Freeman prior to his leaving Westwood. Mr. Williams will go back to spending 100% of his time leading the research team at Westwood, while Mr. Barnes will be leaving the firm to pursue other opportunities. Mr. Barnes is leaving voluntarily, as he did not like the changes at the firm that resulted from Mr. Freeman's departure.

Replacing Mr. Williams and Mr. Barnes are Adrian Helfert and David Clott. Mr. Helfert was hired by Westwood in January 2019 to lead the multi-asset strategies group as a part of firm restructuring related to Mr. Freeman's departure. Mr. Helfert formerly worked for Amundi Asset Management, and has a strong background in managing multi-asset portfolios. Mr. Clott joined Westwood in 2014, when they acquired Mr. Clott's Boston based convertible securities team. Mr. Clott has worked closely with the multi-asset strategies group since joining Westwood.

Part of the reason RVK and staff recommended Westwood as a manager 5 years ago was due to their team approach to investing. In fact, Westwood is consistently rated one of the best places to work in money management by Pensions and Investments magazine. However, the amount and magnitude of the changes that have occurred with the multi-asset team at Westwood are of great concern to both the Commissioner and RVK.

Jeff Engleson had a conference call with Mr. Helfert and Mr. Clott last week. RVK will be meeting with leadership at Westwood this week to learn more about the recent changes. We expect to get a report from RVK within the next week or so. Depending on the results of RVK's review, additional due diligence may be required of the Commissioner and staff. The Commissioner will report back to the Board as more is learned about changes at Westwood

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. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

April 10, 2019, 10:30 AM**PIMCO – All Assets All Authority Fund**

Absolute Return (\$314.5 million, 6.8% of PTF assets)

Matt Clark and Yinyin Wu

April 17, 2019, 9:00 AM**Prologis – U.S. Logistics Fund**

Logistics Real Estate (\$117.2 million, 2.5% of PTF assets)

Bobby Bransfield and Nathan Paine

The Department's Financial Position was distributed to the Board.

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L I T I G A T I O N

Newfield Litigation

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 was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal. The trial scheduled for September 10 and 11, 2019 has been cancelled.**

Wilkinson Litigation

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. **The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs**

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filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The Court didn't rule on the scheduling motions but granted Plaintiffs request to file a motion for Summary Judgment within 30 days of the hearing.

Continental – Interpleader Litigation

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, John S. Most

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. **The Order Denying the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United**

States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States' Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the "action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions." A January 10, 2019 docket entry provides "Deadlines and Hearings Terminated." The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019, due to appointment of Magistrate Judge Clare Hochalter, replacing Magistrate Judge Charles Miller, and the recusal of Shaun Pettigrew of the Environment and Natural Resources Division of the Department of Justice, with John S. Most as his replacement. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019.

Sorum Litigation

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 (03/28/19)

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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. **The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days.**

The March 19, 2019, Letter from Terrance W. Moore to the Honorable John C. Irby was provided to the Board and is 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

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

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

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		

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

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Department of Trust Lands Personnel present:

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

Guests in Attendance:

Brent Sanford	Lt. Governor
Dave Garner	Attorney General's Office – during Continental Interpleader and Newfield
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office – during Paul Sorum
Charles Carvel	Attorney General's Office – during Continental Interpleader

The executive session adjourned at 10:56 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 Wilkinson litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 10:57 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
April 25, 2019**

The April 25, 2019 special meeting of the Board of University and School Lands was called to order at 9:03 AM in the Governor's Conference Room 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

Member Absent:

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

Jodi Smith	Commissioner
Drew Combs	Minerals Division Director
Mike Humann	Surface Division Director
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Allisen Nagel	Mineral Title Specialist
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant

Guests in Attendance:

Dave Garner	Attorney General's Office
Matt Sagsveen	Attorney General's Office
Charles Carvell	Special Assistant Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office
Amy Dalrymple	Bismarck Tribune
Brady Pelton	ND Petroleum Council
Zac Weis	Marathon Oil
Ron Ness	Marathon Oil
Ed Seymour	Marathon Oil
Brenda Selinger	Marathon Oil
Craig Smith	Crowley Fleck
Geoff Simon	Western Dakota Energy Association

APPROVAL OF MINUTES

A motion to approve the minutes of the March 28, 2019 meetings was made by Attorney General Wayne Stenehjem and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Legislative Bill Status (as of April 25, 2019)

Currently the Department of Trust Lands is monitoring approximately 20 bills.

DEPARTMENT BUDGET BILL

HB 1013 **Legislative appropriation and budget for the Commissioner of University and School Lands**

Introduced/Sponsored by: Appropriations Committee
House Appropriations Committee - Government Operations Division (Chairman Vigesaa)
Status: Passed Conference Committee
Representatives: Kempenich, Bellew, Mock
Senators: Wanzek, Hogue, Grabinger

DEPARTMENT SUBMITTED BILLS

SB 2081 **Continuing authority for building repairs and investment due diligence** ***Fiscal Note Filed by Department**

Introduced/Sponsored by: Government and Veterans Affairs Committee
Senate Government and Veterans Affairs Committee (Chairman Davison)
Status: PASSED Senate, PASSED House
Signed by Governor
Filed with Secretary of State

SB 2082 **Repeal of N.D.C.C. §§ 15-04-02 Lease of Cultivated Lands for Summer Fallow, and 15-04-04, Failure to Summer-Fallow Cultivated Lands, Use for Cancellation of Lease** ***Fiscal Note Filed by Department**

Introduced/Sponsored by: Agriculture Committee
Senate Agriculture Committee (Chairman Luick)
Status: PASSED Senate, PASSED House
House Agriculture Committee (Chairman D. Johnson)
Signed by Governor
Filed with Secretary of State

DEPARTMENT SUPPORTED BILLS

HB 1392 **Confidentiality of records received by the Board of University and School Lands**

Introduced/Sponsored by: Representatives Zubke, Dockter, Nathe, Westlind
House Government and Veterans Affairs Committee (Chairman Kasper)
Status: PASSED House, PASSED Senate
Senate Government and Veterans Affairs Committee (Chairman Davison)
Signed by Governor
Filed with Secretary of State

SB 2211 Amend N.D.C.C. §§ 61-33.1-04 and 61-33.1-05 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: Passed Conference Committee
Representatives: Keiser, Martinson, Porter
Senators: Unruh, Schaible, Piepkorn

SB 2212 Relating to authorization for the Board of University and School Lands to impose a civil penalty for failure to produce records; and to provide penalty

Introduced/Sponsored by: Senators Bekkedahl, Dwyer, Unruh Representatives Keiser, Porter
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, INTRODUCED House
House Energy and Natural Resources Committee (Chairman Porter)
Signed by Governor
Filed with Secretary of State

SB 2264 Relating to meetings and policy approval process of the Board of University and School Lands exempt administrative agencies

Introduced/Sponsored by: Senators Unruh, Klein, Schaible Representatives Howe, Nathe, Porter
Senate Government and Veterans Affairs Committee (Chairman Davison)
Status: PASSED Senate, PASSED House
Signed by Governor
Filed with Secretary of State

Other bills that have a direct impact on the Board of University and Schools Lands, the Department of Trust Lands, or the trusts and funds that they manage.

HB 1192 Relating to defining and delineating the ordinary high-water mark of a navigable body of water; and to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to the definition and determination of ordinary high water mark.

Introduced/Sponsored by: Representatives Keiser, Martinson Senator Unruh
House Energy and Natural Resources Committee (Chairman Porter)
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: Failed House, applicable language to be included in 2211.

HB 1202 Relating to determinations of navigability; to amend and reenact sections 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Introduced/Sponsored by: Rep. Delzer, Porter, Zubke, Sen. Schaible
House Energy and Natural Resources Committee (Chairman Porter)
Senate Energy and Natural Resources Committee (Chairman Unruh)
Status: PASSED Senate, PASSED House
Sent to Governor

HB 1320 **Relating to the Theodore Roosevelt presidential library and museum endowment fund; to provide a continuing appropriation; to provide for a transfer; to authorize a loan; and to declare an emergency.**

Introduced by Rep. Pollert, Headland
 Introduced by Sen. G. Lee, Wanzek
 Status: Laid Over One Legislative Day

SB 2037 **Relating to the disposal and storage of high-level radioactive waste and subsurface storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or disposal of radioactive waste material or hazardous waste and disposition of unusable products; to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear waste material; and to provide a penalty.**

Introduced/Sponsored by: Legislative Management
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 House Energy and Natural Resources Committee (Chairman Porter)
 Status: Returned from Conference Committee, Conference committee report adopted
 Representatives: J. Roers, Kreun, Piepkorn
 Senators: Lefor, Roers Jones, Marschall
 Senate Second reading, passed, yeas 43 nays 3
 House Second reading, passed, yeas 85 nays 5

SB 2315 **Relating to identifying private land open to hunters; to amend and reenact sections 12.1-22-03, 20.1-01-18, 20.1-01-19, 20.1-01-20, and 20.1-03-42 of the North Dakota Century Code, relating to criminal trespass and hunting on private land; to repeal section 20.1-01-17 of the North Dakota Century Code, relating to posting land; and to provide a penalty.**

Introduced/Sponsored by: Sen. Erbele, Patten, Unruh, Rep. Boe, Schmidt, Westlind
 Senate Agriculture Committee (Chairman Luick)
 House Agriculture Committee (Chairman Johnson)
 Status: Conference Committee
 Representatives: Schreiber-Beck, Heinert, Tveit
 Senators: Luick, Erbele, O. Larsen

SB 2344 **Relating to injection or migration of substances into pore space.**

Introduced/Sponsored by: Sen. Unruh, Cook, Schaible, Rep. Kempenich, Porter
 Senate Energy and Natural Resources Committee (Chairman Unruh)
 House Energy and Natural Resources Committee (Chairman Porter)
 Status: Returned from Conference Committee, Conference committee report adopted
 Representatives: Keiser, Roers Jones, Mitskog
 Senators: Unruh, Schaible, Piepkorn
 Senate Second reading, passed, yeas 34 nays 12
 House Second reading, passed, yeas 66 nays 24

SB 2362 Relating to the allocation of oil extraction tax; to provide an effective date; and to declare an emergency.

Introduced/Sponsored by: Sen. Cook, Holmberg, Wardner, Rep. Delzer, Headland, Pollert
Senate Finance and Taxation Committee (Chairman Cook)
House Finance and Taxation Committee (Chairman Headland)
Status: PASSED Senate, PASSED House
Signed by Governor

Unclaimed Property Information Technology Project Status Update

The Department of Trust Land's (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

The Department signed a contract with Kelmar, a software company providing specialized services and solutions to assist governments with the management and administration of unclaimed property programs. With substantial knowledge of state governments, system tools, and process workflows, Kelmar has been helping unclaimed property departments across the United States since 2001. By dedicating their organization exclusively to matters of unclaimed property, they maintain the necessary subject matter expertise and reliability to serve as a partner in unclaimed property resources and offer the next step in unclaimed property management. Not only will the Department partner with them on software, we will draw on their unclaimed property experience to; increase the amount of unclaimed property returned and reunited with rightful owners; reduce risk associated with administering unclaimed property program operations; implement efficiencies and best practices to manage unclaimed property in safekeeping, and; achieve program goals using dedicated and cost-effective unclaimed property resources.

The go-live date for Kelmar is April 29, 2019. The URL for the new cloud-based software is <https://unclaimedproperty.nd.gov>.

Department of Trust Lands Website

After months of hard work and dedication, led by Catelin Newell and in collaboration with Marketing & Advertising Business Unlimited, Inc. (MABU), the Department will launch a new website in May 2019.

The URL will remain the same <https://land.nd.gov>. The goal with the new website is to provide our visitors an easier way to learn about the Department of Trust Lands with maps depicting the history of the trusts, submit right-of-way applications, search for unclaimed property claims and upload holder reports and allow for a more interactive experience for all customers. The Department focused on communications planning, user experience, analytics to assist in determining the websites structure and content re-organization. The website pages have been re-written to place an emphasis on communicating clear and concise messaging that provides visitors with information they are seeking. Additionally, the "look and feel" of the new website places an emphasis the Department's mission and the encapsulates the work of the Board.

(04/25/19)

Performance Audit Follow-Up

In February 2019 the State Auditor initiated a performance audit of the Department of Trust Lands (Department) under N.D.C.C. § 54-10-01(4) in conjunction with the study proposed under Senate Bill 2130 of the 66th Legislative Assembly:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - STATE AGENCY

FEES. During the 2019-20 interim, the legislative management shall study, in coordination with the state auditor, the provisions of the North Dakota Century Code relating to state agency fees. The study must include a review of the dates state agency fee provisions were created and modified, the revenue generated by the fee as compared to the expenditures related to the purpose or purposes for which the fee is imposed, and the fund or funds in which fee revenue is deposited and from which fee revenue is expended; consideration of whether the amounts of fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

The objectives of the audit are as follows:

1. Are all fees collected by state agencies and the university system authorized?
2. What are the revenues and expenditures associated with state agency and university system fees?

The State Auditor's planned methodologies include researching and reviewing the North Dakota Century Code, North Dakota Administrative Code, and State Board of Higher Education policy. In addition, there will be inquiries into management and identification of revenues and expenditures related to fees.

The Department has been working with the State Auditor's Office and will continue to do so, providing information as requested. The audit is anticipated to be complete by December 31, 2019.

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

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

Marathon experienced extreme difficulties in developing these mineral tracts, including; complex stakeholders, environmental concerns, and rough terrain which have impeded timely development of the area. The North Dakota Department of Trust Lands (Department) has been working with Marathon since late 2015 in search of a viable solution to develop the section.

On November 20, 2017, a formal request was directed to Commissioner Gaebe requesting a 365-day extension. On January 23, 2018, Commissioner Smith received another formal request for a 365-day extension.

On February 22, 2018, Marathon sought two 180-day extensions for all four leases, for a total extension of 360 days from the Board.

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

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

All parties recognized the initial request for an extension did not constitute the activation of paragraph 8; however, given the circumstances, it was beneficial to all parties to come to a mutually acceptable solution in granting Marathon a 360-day amendment to the leases.

At the February 2018 Board meeting, a Board member specifically asked Department staff and the Commissioner if an extension could be granted in lieu of paragraph 8 but they could still come back to the Board and ask for another extension if they met the criteria of paragraph 8. Department staff and the Commissioner at that time noted to the Board that there would not grant the opportunity for an additional extension. The Board accepted the terms to not offer the opportunity to grant an additional extension beyond the 360-days.

The Board voted unanimously at the February 2018 Board meeting to direct the Commissioner to negotiate a one-time 360-day extension for leases OG13-00342, OG13-00343, OG13-00344, and OG13-00345 and bring those negotiated terms to the Board's regularly scheduled meeting in March 2018.

The Commissioner and Department staff worked with Marathon to reach mutually acceptable terms.

The Board's initial terms of the lease(s) for this area set for a royalty rate of 3/16 (18.75%). Marathon agreed to increase the royalty to a flat 20%. Marathon also agreed to pay a \$100 per net mineral acre, for a total of \$46,952.

At the March 2018 Board meeting, the Board authorized Marathon Oil Company a three hundred sixty day (360) extension of the four leases (OG13-00342, OG13-00343, OG13-00344, and OG13-00345) in exchange for \$100 per net mineral acre and increasing the royalty rate to 20%.

(04/25/19)

Amended lease(s) were executed on May 4, 2018. The terms of the lease(s) that the Lessor and Lessee agreed to are as follows:

Lessor hereby amends the Lease by extending the leases(s) for a period of three hundred and sixty (360) days after May 6, 2018. The amended term shall commence on May 7, 2018, and terminate on May 1, 2019, but shall continue beyond the termination date of the Amended Term for as long thereafter as oil and/or gas may be produced in commercial quantities from the Leases Premises. Notwithstanding anything to the contrary in the Lease, including, but not limited to, the terms and conditions in Paragraphs 6, 8, and 11 of the Lease, the Amended Term will expire and the Lease will terminate if the Lessee has not obtained oil and/or gas production in commercial quantities from the Leased Premises as of the Termination Date.

Pursuant to paragraph 4(A) of the Lease, the royalty rate is increased from "three sixteenth" to "20%" during the Amended Term and the Secondary Term.

Section 8 is hereby deleted from the Lease during the Amended Term and the Secondary Term.

In all other respects, except as expressly provided herein, the Lease shall continue in full force and effect as originally written.

The Commissioner and Department staff met with Marathon on January 22, 2019, and were made aware of concerns to obtain commercial production before expiration of the amended terms. The Commissioner and Department staff met with Marathon on January 25, 2019, and Marathon requested permission to explore the opportunity to place an off unit pad north of Enerplus's well pad located on State surface. Department staff contacted Enerplus and requested a formal response to Marathon's request to locate an off unit pad north of Enerplus's well pad. In a letter dated February 12, 2019, Enerplus denied the request stating a violation of correlative rights and therefore opposed Marathon's proposed pad location.

On March 26, 2019, the Commissioner and Department staff met with Marathon to discuss concerns that commercial production would be obtained prior to the expiration of the amended terms. On April 4, 2019, the Commissioner received a formal request for extension from Marathon. The Commissioner responded on April 16, 2019, to Marathon's request for an extension that the determination had been made that circumstances do not warrant extension of the leases per the Amendment of the Oil and Gas Lease dated May 4, 2018.

Additionally, per N.D.C.C § 39-09-18. Terms of lease – Unit operation.

All leases for the purposes as hereinbefore provided shall be made by the state of North Dakota and all agencies and departments and political subdivisions thereof for not less than twenty-five cents per acre [.40 hectare] per year for deferred drilling and shall be made with a royalty reservation of not less than one-eighth of all oil and gas produced from said land as long as oil and gas may be produced from said land. The term one-eighth as used herein must be construed to mean one-eighth of such interest as may be owned by the lessor. All leases hereunder must be made for a period of not less than five years and must continue in effect under the terms thereof as long as oil or gas may be produced thereon in commercial quantities.

N.D.C.C. § 38-11-14.

No lands owned in whole or in part, or on which a reservation of oil and gas rights has been made in a conveyance thereof, by the State of North Dakota or by any department or agency thereof or by any county or other political subdivision of this state, may be leased

for oil and gas exploration or production except as provided for in sections 38-11-14 through 38-09-20.

The Board is only authorized under N.D.C.C. § 15-07-20 to lease nongrant lands without advertisement or competitive bidding and the four leases Marathon is requesting a 3rd and 4th extension are grant lands.

The board of university and school lands may lease nongrant lands under reasonable rules as it may establish. The rules may provide for leasing with or without advertisement or competitive bidding. Leases made under this section must be for cash only, and the rental must be collected in advance except that the board may collect a share of a conservation reserve program payment paid by the federal government. A lease of nongrant lands may not extend for a period of more than five years, except any land accepted into the conservation reserve program may have a lease term that coincides with the term of the conservation reserve program contract if so provided in the lease. Leases may be renewed at the discretion of the board. When nongrant lands are leased without advertisement or competitive bidding, the board shall determine the rental by taking into consideration the nature and adaptability of the lands and the improvements thereon.

There are several century code sections that address mineral leasing. N.D.C.C. Chapter 38-09 outlines procedures for leasing oil and gas rights for exploration and production which applies to all departments or agencies of the state government as well as any county or political subdivision. Id. The procedure requires public notice of the time and place for leasing and must allow for written or oral bidding. N.D.C.C. §§ 38-09-15, 38-09-17. N.D.C.C. Chapter 15-05 addresses mineral leasing specifically for lands under the control of the Board. This chapter allows these lands to be leased for oil and gas development but does not provide any specific procedure. N.D.C.C. § 15-05-09. This section allows the Board to establish rules and regulations for development and drilling operations. Id. N.D.C.C. Chapter 15-07 addresses sale and leasing of nongrant lands. The legislature again did not provide any specific procedure but specified that leasing can be with or without advertisement and competitive bidding and directs the Board to establish reasonable rules and regulations for the leasing of nongrant lands. N.D.C.C. § 15-07-20.

In conclusion, Marathon was unable to satisfy the terms of the amendment therefore the lease(s) will expire per the terms of the amendment on May 1, 2019. The Commissioner, Department staff and the assistant attorney general took all necessary factors into consideration when making the determination to not authorize a third and forth extension to Marathon, which is not allowed under the terms of the Board lease or the amended terms of the lease.

Motion: The Board directs the Commissioner to grant Marathon Oil a 30-day extension for leases OG13-00342, OG13-00343, OG13-00344, and OG13-00345 in order for the Board to further investigate the information provided to them in the request for extension.

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		

Supported documents provided to the Board are available at the Department upon request and included: previous Marathon Oil extension request Board memorandums, amended oil and gas lease documents and addendums, April 2019 Marathon Oil extension request letter, and April 2019 Commissioner Smith response letter.

(04/25/19)

R E P O R T S**Report of Easements Issued by Land Commissioner (3/19/19 to 4/16/2019)**

Granted to:	XTO ENERGY INC, SPRING-TX
For the Purpose of:	On-lease Act. Amend: Horizontal Oil Well
Right-of-Way Number:	RW0008347
Trust:	A - Common Schools
Legal Description:	MOU-157-93-36-SE4
Granted to:	XTO HOLDINGS LLC, SIDNEY-MT
For the Purpose of:	Easement: Subsurface Well Bore
Right-of-Way Number:	RW0008428
Trust:	A - Common Schools
Legal Description:	MOU-154-94-16-SW4
Granted to:	WEST RIVER TELECOMMUNICATIONS, HAZEN-ND
For the Purpose of:	Easement-Amend: Communication Cable
Right-of-Way Number:	RW0008429
Trust:	A - Common Schools
Legal Description:	GRA-137-89-36-SE4, SW4
Granted to:	BNN NORTH DAKOTA LLC, LAKEWOOD-CO
For the Purpose of:	Easement-Amend: Drop Line-Pipeline & Communication
Right-of-Way Number:	RW0008438
Trust:	A - Common Schools
Legal Description:	MCK-150-98-36-SE4, SW4
Granted to:	HYDRA XL, LLC, HOUSTON-TX
For the Purpose of:	Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number:	RW0008455
Trust:	A - Common Schools
Legal Description:	MOU-154-93-36-NW4, SW4
Granted to:	BRUIN E & P OPERATING LLC, HOUSTON-TX
For the Purpose of:	Letter of Permission: Temporary Water Layflat Line
Right-of-Way Number:	RW0008463
Trust:	A - Common Schools
Legal Description:	WIL-157-100-16-SE4 LESS 10 ACRES, SW4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement-Amend: Drop Line-Electric
Right-of-Way Number:	RW0008471
Trust:	A - Common Schools
Legal Description:	MCK-153-94-16-NW4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement: Electric Distribution Line - Above Ground
Right-of-Way Number:	RW0008472
Trust:	A - Common Schools
Legal Description:	DUN-146-95-36-SE4

Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND Easement: Drop Line-Electric Distribution Line RW0008473 A - Common Schools DUN-146-95-36-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	ETHNOSCIENCE INC, BILLINGS-MT Permit: Planning & Preconstruction Survey RW0008483 A - Common Schools N/A
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	PURITY OILFIELD SERVICES LLC, WILLISTON-ND Letter of Permission: Temporary Water Layflat Line RW0008484 A - Common Schools MCK-152-96-36-SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	MBI ENERGY SERVICES, DICKINSON-ND Letter of Permission: Temporary Water Layflat Line RW0008486 A - Common Schools MCK-150-98-36-SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	WEST DAKOTA WATER LLC, WILLISTON-ND Letter of Permission: Temporary Water Layflat Line RW0008490 A - Common Schools WIL-155-99-16-NE4, NW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	GOLDEN FIELD SERVICES INC, WATFORD CITY-ND Permit: Planning & Preconstruction Survey RW0008491 A - Common Schools N/A
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	NDSU (DEPT 2715), FARGO-ND Letter of Permission: Access to School Land RW0008492 A - Common Schools BRK-164-93-36-NE4, NW4, SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	USDA-NRCS, BISMARCK-ND Letter of Permission: Access to School Land RW0008493 A - Common Schools BEN-151-70-16-NE4 PIE-158-72-16-SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description: (04/25/19)	SELECT ENERGY SERVICES LLC, WILLISTON-ND Letter of Permission: Temporary Water Layflat Line RW0008495 A - Common Schools MCK-151-96-16-SE4

Spring Surface Lease Auction Summary

The Department of Trust Lands (Department) hosted six staff members of the Manitoba Agriculture Crown Lands (Crown Lands) during the week of the surface lease auctions. Crown Lands staff traveled onsite to two of the Department's auctions before spending a day in the office with Department staff to discuss auction procedures as they look to bring Manitoba Agriculture Crown Lands into a modernized leasing process.

The communication stemmed from the Minister of Crown Lands Ralf Eichler expressing his full support of Manitoba and North Dakota collaborating after having signed an MOU with North Dakota's Agriculture Commissioner Doug Goehring at the Tri-National Agricultural Accord in Mexico last October. The visiting staff has expressed the hope to improve connections with North Dakota.

Department staff have remained in communication with Crown Lands staff as a resource during the remodel of Crown Lands' leasing process.

The 2019 spring surface lease auctions were completed in March 2019. The following table is a summary for this spring compared to last spring.

	2018	2019
Number of counties	26	27
Total tracts offered	82	99
Number of tracts bid	66 (80.5%)	79 (79.8%)
Number of tracts bid-up	14 (21.2% of bid tracts)	27 (34% of bid tracts)
Total amount of minimum advertised bids	\$151,276.00	\$220,960.00
Total amount received	\$156,286.00	\$273,177.00
Competition factor (% collected over minimum bid)	\$5,010.00 (3.3%)	\$52,217.00 (23.6%)

Investment Updates

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of March 31, 2019. Due to the timing of certain fund reporting, the numbers provided do not include end of March valuation updates for the core plus real estate portfolios and for the Angelo Gordon direct loan portfolio.

Account/Asset Class	Long-Term Asset Allocation	3/31/19 Actual Allocation \$	3/31/19 Actual Allocation %	3/31/19 % Diff.
Large Cap US Equity	13.3%	\$ 623,989,566	13.3%	0.0%
Mid/Small Cap US Equity	3.7%	\$ 171,472,759	3.7%	0.0%
International Equity	13.3%	\$ 606,600,217	13.0%	-0.3%
Emerging Market Equity	3.7%	\$ 181,693,668	3.9%	0.2%
Total Equities	34.0%	\$ 1,583,756,210	33.8%	-0.2%
Core Fixed Income	12.6%	\$ 677,768,502	14.5%	1.9%
Non-Core Fixed Income	8.4%	\$ 299,942,208	6.4%	-2.0%
Total Fixed Income	21.0%	\$ 977,710,710	20.9%	-0.1%
Total Absolute Return	20.0%	\$ 941,899,511	20.1%	0.1%
Commodities	3.0%	\$ 140,885,081	3.0%	0.0%
MLPs	3.0%	\$ 143,158,072	3.1%	0.1%
TIPS	2.0%	\$ 91,193,026	1.9%	-0.1%
Natural Resource Equities	2.0%	\$ 94,096,541	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 469,332,719	10.0%	0.0%
Core Real Estate	8.0%	\$ 391,544,331	8.4%	0.4%
Core Plus Real Estate	7.0%	\$ 319,722,649	6.8%	-0.2%
Total Real Estate	15.0%	\$ 711,266,979	15.2%	0.2%
Total Asset	100.0%	\$ 4,683,966,130	100.0%	

Angelo Gordon (\$55.94 million, 1.2% of PTF assets)**Direct Lending Fund**

The Angelo Gordon Direct Lending portfolio was initially funded in late-August 2018. To date, a total of \$54.75 million dollars has been transferred to the fund; the last capital call was funded on December 10, 2018. A total of 36.5% has now been transferred of the total commitment of \$150 million.

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. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

May 7, 2019, 8:30 AM

Angelo Gordon – Direct Lending Fund III

Non-Core Fixed Income (\$55.9 million, 1.2% of PTF assets)

Bill Cullinan and Drew Guyette

The Financial Position was provided to the Board and is available at the Department upon request.

I N V E S T M E N T S**Absolute Return Strategies Portfolio**

Over the past 9 months the Commissioner, with the help of RVK, has provided the Board with information about changes at Westwood Holdings Group. Westwood manages an absolute return strategy for the Board that is one-third of the Board's 20% allocation to absolute return strategies; the portfolio is currently valued at approximately \$319.0 million.

When it was announced last summer that CIO and co-portfolio manager Mark Freeman was leaving the firm in March 2019, it appeared as if Westwood had a well thought out transition plan in place for the strategy. RVK spent time at Westwood's offices and was comfortable with the transition plan; the Commissioner and staff also held discussions with Westwood and were comfortable with the planned changes.

As the Commissioner reported last month, RVK and the Commissioner recently learned of other changes at Westwood that will have a major impact on how this product is managed going forward. Those changes include:

- The two seasoned individuals that were expected to be co-lead portfolio managers for the strategy have both left that role, with one leaving the firm entirely.
- The individual that was brought in from the outside in early 2019 to manage the multi-asset strategies team is now a co-lead portfolio manager. The other new co-lead portfolio manager is the firm's convertible bond expert, who previously worked some with the multi-asset team. Neither of these portfolio managers has worked together before, nor do they have direct experience with this strategy.
- RVK now believes that there was a lack of transparency during the extensive discussions they had with Westwood last fall related to the transition, given the new portfolio manager team for the strategy.
- During RVK's recent on-site visit with Westwood, RVK was informed that the firm now believes the capacity for this product is \$10 billion, not the \$5 billion amount former CIO Freeman has always maintained was the capacity for this product.

Any one of the items noted above could be considered a reason to terminate a manager, but all four occurring in a short period of time should be considered a red flag. Therefore, both RVK and the Commissioner are recommending termination of Westwood as a portfolio manager for the permanent

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trusts. A copy of RVK's recommendation to terminate Westwood was presented to the Board and is available at the Department upon request.

As the securities held in this portfolio are primarily high-quality, large cap stocks and high-quality bonds, liquidity concerns are minimal. Because the strategy remains supported by a deep and experienced team of analysts at Westwood, and the underlying portfolio does not turn over with high frequency, neither RVK or the Commissioner have concerns about having Westwood manage this portfolio in the short-term. The Commissioner will work with RVK and Westwood to ensure a smooth transition of these assets going forward.

Board policy states it is the Board's intent to have a plan in place before termination of a manager. Due to the short time frame since being notified of the major changes noted above (late-March), a specific plan has not been put in place yet. However, the Commissioner and RVK have begun working on several options as to what should be done with these assets; they plan to have a recommendation ready for the Board in May.

Motion: The Board directs the Commissioner to place Westwood on formal watch as a money manager, with the understanding that Westwood will continue to manage the portfolio in the short-term until the Board makes a final determination as to how the assets will be reallocated.

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

Roughrider Electric Cooperative, Inc., N.D.C.C. ch. 15-09 Purchase Request (five acres within the SE4 Section 36, Township 142 North, Range 101 West, Billings County)

At the February 28, 2019 Board of University and School Lands' (Board) meeting, information was provided to the Board regarding Roughrider Electric Cooperative, Inc.'s (Roughrider) application under N.D.C.C. ch. 15-09 to purchase an existing substation currently held by easement and additional acreage for a laydown yard, a total of approximately five acres. The existing electric substation provides services to rural residents and the oil industry in the surrounding area. The original easement had a 30-year term; however, due to the long term power needs in the area, Roughrider would rather purchase the property than extend the easement.

Two appraisals have been completed as follows:

Billings County Appraisal	\$5,900.00/acre
Point Value Appraisal	\$5,000.00/acre

The Billings County Appraisal was completed by the Billings County Tax and Zoning Director and is comprised of three comparable sales. The Point Value Appraisal was completed by Chris Chase, a certified general appraiser, and is comprised of the same three sales, plus five additional comparable sales in the area. It is the Department's position that the Point Value Appraisal is well-documented, complete, and a more accurate reflection of the property's value.

N.D.C.C. § 15-09-04 states:

The board of university and school lands may sell the property described in the application to the applicant at a price not less than the appraised value if the board concludes that the land described in the application is required for the purposes stated in such application and that a conveyance of the property is consistent with this title and the fiduciary responsibilities of the board. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant agrees to the price fixed by the board for the land described in the application and pays the full purchase price therefor, the board shall cause the tract to be conveyed to the applicant.

The sale of a five-acre parcel to Roughrider will leave 155 acres more or less in the SE4 of Section 36 for pasture purposes.

Motion: The Board 1) approves the appraised value of \$5,000 per acre for the five acres of land within Billings County, SE4 Section 36, Township 142 North, Range 101 West, Billings for public purpose and a total sales price of \$25,000, plus appraisal (\$2,500) and sales costs, including a Land Sale Fee for conveyance preparation and recording costs (\$100 total), and advertising costs (amount to be determined); and 2) authorizes the Commissioner to advertise the proposed sale, conduct a public hearing, and refer the matter to the Board if needed or complete the sale to Roughrider Electric Power Cooperative, Inc. on the Board's behalf.

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

LITIGATION

Continental Interpleader

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, John S. Most**

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

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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. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” A January 10, 2019 docket entry provides “Deadlines and Hearings Terminated.” The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019, due to appointment of Magistrate Judge Clare Hochhalter, replacing Magistrate Judge Charles Miller, and the recusal of Shaun Pettigrew of the Environment and Natural Resources Division of the Department of Justice, with John S. Most as his replacement. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. **The Scheduling Conference was held on April 15, 2019. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter.**

Wilkinson

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

(04/25/19)

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 District 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 North Dakota Industrial Commission (NDIC). 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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. **On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston.**

The Plaintiffs' Brief in Support of Motion for Summary Judgment was provided to the Board and is available at the Department upon request.

Sorum

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).

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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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. **Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019.**

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

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

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

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		

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EXECUTIVE SESSION**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Member Absent:

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

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

Guests in Attendance:

Dave Garner	Attorney General's Office
Matt Sagsveen	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office
Charles Carvell	Special Assistant Attorney General

The executive session adjourned at 10:52 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 Continental Interpleader, Wilkinson, and Paul Sorum litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 10:52 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
May 30, 2019**

The May 30, 2019 special meeting of the Board of University and School Lands was called to order at 8:02 AM in the Governor's Conference Room 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
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Dennis Chua	Investment Analyst
Drew Combs	Minerals Division Director
Rob Dixon	Computer Network Specialist
Jeff Engleson	Investments Director
Kayla Graber	Land Management Specialist
Mike Humann	Surface Division Director
Kristie McCusker	Paralegal
Allisen Nagel	Mineral Title Specialist
Catelin Newell	Office Manager
Rick Owings	Grants Administrator
Kate Schirado	Administrative Assistant

Guests in Attendance:

Dave Garner	Attorney General's Office
Matt Sagsveen	Attorney General's Office
Troy Seibel	Attorney General's Office
Charles Carvell	Special Assistant Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office
Brady Pelton	ND Petroleum Council
Zac Weis	Marathon Oil
Ed Seymour	Marathon Oil
Brenda Selinger	Marathon Oil
Craig Smith	Crowley Fleck
Jack Dura	Bismarck Tribune
Gray Stevens	Sandy Creek Partners
Kyle Wanner	ND Aeronautics Commission
Taylor Roberts	Marathon Oil
Aaron Carranza	NDOSE
Josh Kevan	RVK

APPROVAL OF MINUTES

A motion to approve the minutes of the April 25, 2019 meetings was made by Secretary Al Jaeger and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.
(05/30/19)

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Energy Infrastructure and Impact Office (EIIO) Contingency Grant

Section 10 of Senate Bill 2013 allows the use of unexpended funds to provide for grants and administrative costs during the 2017-2019 biennium:

SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND. The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019. (Emphasis added).

The current members serving on the Contingency Grant Advisory Committee (Committee):

Dan Kalil (Williston Township Chair), Jay Elkin (Stark County Commissioner), Philip Reily (Mayor of Watford City), Marcia Lamb (Billings County Auditor), Mark Spooner (Border Township Chair), Allen Ryberg (Burke County Commissioner), David Wegner (Beach PSD Superintendent), Gary Weisenberger (Mayor of Stanley), and Reinhard Hauck (Dunn County Commissioner)

Per the Board's approved grant requirements, the grant announcement closed on April 30, 2019. EIIO received and scored ten applications. The Committee reviewed and discussed each application thoroughly before finalizing its recommendations during a public meeting on May 21, 2019. The Committee recommends six of the ten applications be approved by the Board:

APPLICANT	COUNTY	APPLICATION NUMBER	SHORT DESCRIPTION	PROJECT TOTAL	AMOUNT REQUESTED	AMOUNT RECOMMENDED
CITY OF WATFORD CITY	MCKENZIE	A190027	RECONSTRUCTION AND SEWER REPAIRS	\$608,927.00	\$570,000.00	\$200,000.00
SCOTIA TOWNSHIP	BOTTINEAU	A190028	2019 GRAVELING	\$15,000.00	\$7,500.00	\$0.00
MISSOURI RIDGE TOWNSHIP	WILLIAMS	A190029	PAVING 3 MILES OF 139TH AVE, 56TH ST, AND 138TH AVE	\$1,674,532.00	\$1,674,532.00	\$0.00
MCKENZIE PSD #1	MCKENZIE	A190030	PORTABLE CLASSROOMS	\$99,588.00	\$99,588.00	\$50,000.00
BOTTINEAU COUNTY	BOTTINEAU	A190031	BOTTINEAU COUNTY ROAD IMPROVEMENTS	\$237,910.00	\$190,300.00	\$100,000.00
WILLISTON PSD #1	WILLIAMS	A190032	WHS COMMONS EXPANSION	\$3,100,000.00	\$3,100,000.00	\$1,300,000.00
CITY OF NEW ENGLAND	HETTINGER	A190033	STREET AND SEWER IMPROVEMENTS- 2019 N SIDE GROWTH AREA	\$1,442,000.00	\$1,000,000.00	\$0.00
WILLIAMS COUNTY	WILLIAMS	A190034	COUNTY ROAD 19 BRIDGE REPLACEMENT	\$1,835,505.00	\$209,000.00	\$0.00
WILLIAMS COUNTY	WILLIAMS	A190035	COUNTY ROAD 42 RECONSTRUCTION	\$6,148,427.00	\$245,700.00	\$175,000.00
NOONAN FIRE DEPARTMENT	DIVIDE	A190036	FIRE FIGHTING GEAR	\$20,400.00	\$15,300.00	\$15,300.00
				15,182,289	7,111,920	\$1,840,300.00

(05/30/19)

Motion: **The Board awards six grants under the Contingency Grant to Williams County, Noonan Fire Department, Williston PSD #1, City of Watford City, McKenzie PSD #1, and Bottineau County for \$1,840,300.00.**

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		

Airport Grants Delegation of Authority

In the 2013-2015 Biennium the Legislative Assembly appropriated the following (HB 1358):

OIL AND GAS IMPACT GRANT FUND - GRANT RECOMMENDATIONS. There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$239,299,174, or so much of the sum as may be necessary, to the board of university and school lands for the purpose of oil and gas impact grants, for the biennium beginning July 1, 2013, and ending June 30, 2015.

\$60,000,000, or so much of the sum as may be necessary, for grants to airports impacted by oil and gas development. The director of the energy infrastructure and impact office shall adopt grant procedures and requirements necessary for distribution of grants under this subsection, which must include cost-share requirements. Cost-share requirements must H. B. NO. 1358 - PAGE 10 consider the availability of local funds to support the project. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.

Of the \$60,000,000 awarded to Airports, 4 grants to the Sloulin International Airport remain with a current balance of \$1,292,633.71. Federal funding has been awarded since these grants were originally granted.

During the 2015- 2017 Biennium the Legislative Assembly appropriated the following (HB 1176):

OIL AND GAS IMPACT GRANT FUND - GRANT RECOMMENDATIONS - EXEMPTION - REPORT TO BUDGET SECTION. There is appropriated out of any moneys in the oil and gas impact grant fund in the state treasury, not otherwise appropriated, the sum of \$139,300,000, or so much of the sum as may be necessary, to the board of university and school lands for the purpose of oil and gas impact grants, for the biennium beginning July 1, 2015, and ending June 30, 2017.

\$48,000,000, or so much of the sum as may be necessary, for grants to airports impacted by oil and gas development. The director of the energy infrastructure and impact office, in consultation with the aeronautics commission, shall adopt grant procedures and requirements H. B. NO. 1176 - PAGE 12 necessary for the distribution of grants under this subsection, which must include cost-share requirements. Cost-share requirements must consider the availability of local funds to support the project. Grant funds must be distributed giving priority to projects that have been awarded or are eligible to receive federal funding.

Of the \$48,000,000 awarded to Airports, 5 grants to remain with a current balance of \$533,793.91. Federal funding has been awarded since these grants were originally granted.

In the 2017- 2019 Biennium the Legislative Assembly appropriated the following (SB-2013):

OIL AND GAS IMPACT GRANT FUND - AIRPORT GRANTS. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$25,000,000 from the oil and gas impact grant fund for grants to airports, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$25,000,000, the board of university and school lands shall award a grant of \$20,000,000 to the Williston airport and a grant of \$5,000,000 to the Dickinson airport. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

SECTION 14. ENERGY IMPACT FUND - WILLISTON AIRPORT GRANT. The grants line item and the total special funds line item in section 1 of this Act include the sum of \$15,000,000 from the energy impact fund for a grant to the Williston airport, for the biennium beginning July 1, 2017, and ending June 30, 2019. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

Of the \$40,000,000 awarded to the Sloulin International Airport and Dickinson Municipal Airports, 26 grants remain with a current balance of \$20,554,915.53. Federal funding has been awarded since these grants were originally granted.

The North Dakota Aeronautics Commission has identified numerous grants that will be complete in the upcoming months with remaining balances available. The current process for approval for a Scope of Work change can take up to three months which has the potential to delay progress on the airport projects. During the 2013-2015 biennium, 2015-2017 biennium and 2017-2019 biennium these funds were specifically designated to the airports impacted by oil and gas development; thus, the Board does not have the authority to allocate these funds to any other sector. As a means to streamline the changes in the scope of work for airport grants awarded during the 2013-2015, 2015-2017 and 2017-2019 biennium the Department of Trust is requesting the Board of University and School Lands authorize the Commissioner to approve the Scope of Work changes. The process for the Scope of Work changes will require documentation of the scope change and funds that will be spent on the new project. Additionally, it will require the Executive Director of the Aeronautics Commission to authorize the change in scope.

Motion: The Board authorizes the Commissioner to approve changes in the Scope of Work for grants awarded to airports impacted by oil and gas development.

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

MINERALS MANAGEMENT

Marathon Oil Company Request for an Additional 360 Day Lease Extension in Dunn County T148-R95W-16: All

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

Marathon experienced some challenges in developing these mineral tracts, including complex stakeholders, environmental concerns, and rough terrain, which have impeded timely development of the area. The North Dakota Department of Trust Lands (Department) has been working with Marathon since late 2015 in search of a viable solution to develop the section.

On November 20, 2017, a formal request was directed to former Commissioner Lance Gaebe requesting a 365-day extension. Due to the appointment of a new Commissioner, on January 23, 2018, Commissioner Jodi Smith received another formal request for a 365-day extension.

On February 22, 2018, Marathon's request for two 180-day extensions for all four leases, for a total extension of 360 days was presented to the Board.

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

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

All parties recognized the initial request to the Board on February 22, 2018, for an extension did not constitute the activation of paragraph 8; however, given the circumstances, it was beneficial to all parties to come to a mutually acceptable solution in granting Marathon a 360-day amendment to the leases.

(05/30/19)

At the February 2018 Board meeting, a Board member specifically asked Department staff and the Commissioner if an extension could be granted in lieu of paragraph 8 but Marathon could ask for another extension if they met the criteria of paragraph 8. Department staff and the Commissioner advised there would not be the opportunity for an additional extension. The Board agreed not to offer an additional extension beyond the 360-days.

The Board voted unanimously at the February 2018 Board meeting to direct the Commissioner to negotiate a one-time 360-day extension for leases OG13-00342, OG13-00343, OG13-00344, and OG13-00345 and to bring those negotiated terms to the Board's regularly scheduled meeting in March 2018.

The Commissioner and Department staff worked with Marathon to reach mutually acceptable terms.

The Board's initial terms of the leases set for a royalty rate of 3/16 (18.75%). Marathon agreed to increase the royalty to 20%. Marathon also agreed to pay \$100 per net mineral acre, for a total of \$46,952.

At the March 2018 Board meeting, the Board granted Marathon a 360-day extension of the four leases (OG13-00342, OG13-00343, OG13-00344, and OG13-00345) in exchange for \$100 per net mineral acre and an increased the royalty rate to 20%.

The Amendment of Oil and Gas leases were executed on May 4, 2018. The agreed to terms of the leases are as follows:

Lessor hereby amends the Lease by extending the leases(s) for a period of three hundred and sixty (360) days after May 6, 2018. The amended term shall commence on May 7, 2018, and terminate on May 1, 2019, but shall continue beyond the termination date of the Amended Term for as long thereafter as oil and/or gas may be produced in commercial quantities from the Leases Premises. Notwithstanding anything to the contrary in the Lease, including, but not limited to, the terms and conditions in Paragraphs 6, 8, and 11 of the Lease, the Amended Term will expire and the Lease will terminate if the Lessee has not obtained oil and/or gas production in commercial quantities from the Leased Premises as of the Termination Date.

Pursuant to paragraph 4(A) of the Lease, the royalty rate is increased from "three sixteenth" to "20%" during the Amended Term and the Secondary Term.

Section 8 is hereby deleted from the Lease during the Amended Term and the Secondary Term.

In all other respects, except as expressly provided herein, the Lease shall continue in full force and effect as originally written.

The Commissioner and Department staff met with Marathon on January 22, 2019, and were made aware of concerns regarding obtaining commercial production before expiration of the amended terms. The Commissioner and Department staff met with Marathon again on January 25, 2019, and Marathon requested permission to explore the opportunity of placing an off unit pad north of Enerplus's well pad located on State surface. Department staff contacted Enerplus and requested a formal response to Marathon's request to locate an off unit pad north of Enerplus's well pad. In a letter dated February 12, 2019, Enerplus denied the request stating that it would hamper its

ability to safely develop the unit to the north and, therefore, opposed Marathon's proposed pad location.

On March 26, 2019, the Commissioner and Department staff met with Marathon to discuss concerns whether commercial production would be obtained prior to expiration of the amended terms. On April 4, 2019, the Commissioner received a formal request for extension from Marathon. On April 16, 2019, the Commissioner responded to Marathon's request for an extension advising it was determined that the circumstances do not warrant extension of the leases per the May 4, 2018 Amendment of the Oil and Gas Lease.

Additionally, N.D.C.C. § 38-09-18 provides in part as follows:

Terms of lease – Unit operation. All leases for the purposes as hereinbefore provided shall be made by the state of North Dakota and all agencies and departments and political subdivisions thereof for not less than twenty-five cents per acre [.40 hectare] per year for deferred drilling and shall be made with a royalty reservation of not less than one-eighth of all oil and gas produced from said land as long as oil and gas may be produced from said land. The term one-eighth as used herein must be construed to mean one-eighth of such interest as may be owned by the lessor. All leases hereunder must be made for a period of not less than five years and must continue in effect under the terms thereof as long as oil or gas may be produced thereon in commercial quantities.

N.D.C.C. § 38-09-14.

No lands, owned in whole or in part, or on which a reservation of oil and gas rights has been made in a conveyance thereof, by the State of North Dakota or by any department or agency thereof or by any county or other political subdivision of this state, may be leased for oil and gas exploration or production except as provided for in sections 38-09-14 through 38-09-20.

Under N.D.C.C. § 15-07-20 the Board is only authorized to lease non-grant lands without advertisement or competitive bidding; however, the four leases for which Marathon is requesting a third and fourth extension are grant lands and extensions and amendments cannot be allowed under statute.

The board of university and school lands may lease non-grant lands under reasonable rules as it may establish. The rules may provide for leasing with or without advertisement or competitive bidding. . . . A lease of non-grant lands may not extend for a period of more than five years Leases may be renewed at the discretion of the board. When non-grant lands are leased without advertisement or competitive bidding, the board shall determine the rental by taking into consideration the nature and adaptability of the lands and the improvements there on.

Id.

There are several century code sections that address mineral leasing. N.D.C.C. ch. 38-09 outlines procedures for leasing oil and gas rights for exploration and production on publicly owned lands, which applies to all departments and agencies of state government, as well as any county or political subdivision. Public notice of the time and place for leasing is required and written or oral bidding may allowed. N.D.C.C. §§ 38-09-15, 38-09-17. N.D.C.C. ch. 15-05 addresses mineral leasing specifically for lands under the control of the Board. This chapter allows these lands to be (05/30/19)

leased for oil and gas development. N.D.C.C. § 15-05-09. This section allows the Board to establish rules and regulations for development and drilling operations. Id. N.D.C.C. ch. 15-07 addresses sale and lease of non-grant lands. The legislature specified that leasing can be with or without advertisement and competitive bidding and directs the Board to establish reasonable rules and regulations for the leasing of non-grant lands. N.D.C.C. § 15-07-20. Leases for grant lands cannot be negotiated pursuant to the above statutes.

Marathon's latest request was presented to the Board on April 25, 2019. At that meeting, the Department recommended the Board not honor Marathon's request to amend the lease for an additional year. This recommendation was made due to Marathon not satisfying the terms of the amendment. The Commissioner, Department staff and the assistant attorney general took all necessary factors into consideration when making the determination to not authorize a third and fourth extension to Marathon, and concluded there was no basis to extend these leases, as it was in the best interest of the Common Schools Trust Fund to allow these leases to expire and place them on the next available lease auction.

Since the April 25, 2019 Board meeting, several companies have approached the Department with concerns of not having the opportunity to lease these tract(s). As an example, on April 30, 2019 Enerplus, the operator to the north of this unit, sent a formal "Expression of Interest" to the Commissioner for consideration. As discussed previously, Enerplus's current location is ideally suited, with a slight expansion, to develop this unit and spare the local environment an additional well pad.

In conclusion, Marathon was unable to satisfy the terms of the amendment therefore the lease(s) will expire per the terms of the amendment on May 31, 2019. The Commissioner, Department staff and the assistant attorney general took all necessary factors into consideration when making the determination to not authorize a third and forth extension to Marathon, which is not allowed under the terms of the Board lease or the amended terms of the lease.

Recommendation: The Board authorizes the Commissioner to deny Marathon's request for an additional 360 day extension for leases OG13-00342, OG13-00343, OG13-00344, and OG13-00345.

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 following were provided at the board meeting and are available upon request:

- Attachment 1: April 25, 2019 Board of University and School Lands Memo Re: Marathon Oil Company Request for Lease Extension in Dunn County T148-R95W-16: All
- Attachment 2: February 22, 2018 Board of University and School Lands Memo Re: Marathon Oil Company Request for Lease Extension in Dunn County T148-R95W-16: All
- Attachment 3: March 29, 2018 Board of University and School Lands Memo Re: Marathon Oil Company Request for Lease Extension in Dunn County T148-R95W-16: All
- Attachment 4: Amendment of Oil and Gas Lease #OG-13-00342
- Attachment 5: Amendment of Oil and Gas Lease #OG-13-00343
- Attachment 6: Amendment of Oil and Gas Lease #OG-13-00345
- Attachment 7: Amendment of Oil and Gas Lease #OG-13-00344
- Attachment 8: Oil and Gas Lease #OG-13-00342
- Attachment 9: Oil and Gas Lease #OG-13-00343

Attachment 10: Oil and Gas Lease #OG-13-00344
 Attachment 11: Oil and Gas Lease #OG-13-00345
 Attachment 12: Marathon Oil Request for Extension Letter
 Attachment 13: Department of Trust Lands Response to Marathon Oil Request for Extension Letter

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

Ecosystem Services and the Potential for Mitigation Banks on North Dakota State Trust Lands

OVERVIEW

Ecosystems are biological communities of interacting organisms and their physical environment. Ecosystem improvement programs have been developed which focus on monetizing the value of specific improved natural functions provided by water, living species and carbon. Ecosystem service projects can be lucrative. Depending on their size, location and characteristics, it may be possible to generate considerable revenue for the trusts from ecosystem service projects. The most attractive ecosystem service markets have well-defined systems for evaluating impacts and a clear regulatory process for approving proposed mitigation banks. These markets include wetlands, and increasingly, streams and rivers as well as endangered species.

MITIGATION

Mitigation refers to actions completed to restore, enhance, establish, or preserve natural resources in order to offset unavoidable impacts to those resources that occur from land development projects. Through a coordinated partnership, mitigation providers provide state and county highway departments, county water resource boards, other agencies, developers, and landowners with reliable procedures to plan and efficiently develop future land development projects while ensuring that environment impacts are adequately addressed. The three mitigation mechanisms used to offset natural resource impacts from land development projects include:

1. Permittee/landowner responsible mitigation
2. In-lieu fee (ILF) mitigation programs
3. Mitigation banks

Permittee/landowner responsible mitigation is the most traditional form of mitigation and, as the name implies, the permittee/landowner retains responsibility for the successful completion of the required mitigation measures. **In-lieu fee** is a form of “compensatory mitigation” for impacts to the environment. With in-lieu fee, mitigation occurs when a permittee provides funds to an in-lieu fee sponsor which is usually a public agency or non-profit organization. Ducks Unlimited, Inc. is an in-lieu fee program provider for aquatic resources in North Dakota, like mitigation banking, in-lieu fee mitigation is often “off-site”. Mitigation for in-lieu fee programs typically occurs after the impacts are permitted. In lieu-fee programs rely on fees collected from permittees or landowners to initiate compensatory mitigation and are forbidden by law from making a profit on their projects.

Mitigation banks are another type of compensatory mitigation and operate as a system of credits and debits devised to ensure that ecological loss is compensated for by the preservation and restoration of wetlands, natural habitats, streams, endangered species, archeological site, paleontological site or historic structure in other areas so that there is no net loss to the environment. The person or entity undertaking such restoration work is referred to as a mitigation banker. Just as a commercial bank has cash as an asset that it can loan to customers, a mitigation bank has mitigation credits as its assets that it can eventually sell to those who are trying to offset unavoidable impacts. Mitigation banks are generally planned and operated by a construction agency, such as the North Dakota Department of Transportation (NDDOT), or a private entity that

plans to sell mitigation credits. Generally, the purchasers of mitigation credits are individuals or entities undertaking land development projects.

Mitigation banking is an efficient and effective method focused on monetizing the ecological value of improvements to specific natural functions provided by water, living species and carbon to meet mitigation requirements by establishing a bank of mitigation credits in advance of project impacts. Wetland mitigation banking for example, is particularly beneficial for agencies and organizations developing projects that commonly result in wetland losses such as highway projects, airport improvements, and agricultural activities. For agencies and organizations with construction programs that frequently impact wetlands or streams, mitigation banking has proven to be a more reliable, cost-effective means of compensating for unavoidable wetland losses than locating and developing an individual mitigation site for each land development project. The most common types of mitigation banks are as follows:

- **Aquatic resource banks**, which offer credits to offset ecological losses that occur in wetlands and streams. These are regulated and approved by the USACE (U.S. Army Corps of Engineers) and the USEPA (U.S. Environmental Protection Agency).
- **Conservation banks**, which offer credits to offset losses of endangered species and/or their habitats. These are regulated and approved by USFWS (U. S. Fish and Wildlife Service) and NMFS (National Marine Fisheries Service).

In-lieu fee programs and mitigation banks may be used when a government agency, corporation, nonprofit organization, or other entity undertakes these activities under a formal agreement with a regulatory agency and have four distinct components as defined by the USEPA:

- **The site:** the physical acreage that is restored, established, enhanced, or preserved;
- **The instrument:** the formal agreement between the sponsor and regulators establishing liability, performance standards, management and monitoring requirements, and the terms of credit approval;
- **The Interagency Review Team (IRT):** the interagency team that provides regulatory review, approval, and oversight; and
- **The service area:** the geographic area within which permitted impacts can be compensated for at a given bank.

The mitigation banker, after purchasing an environmentally damaged site that they wish to regenerate, works with the IRT that approves plans for building, maintaining and monitoring the bank. The primary role of the IRT is to facilitate the establishment of mitigation banks by ensuring reliable information is available to assist bank sponsors in making informed decisions. The IRT will provide guidance to interested agencies, organizations, and individuals, to plan and develop mitigation banks. The IRT also approves the number of mitigation credits that the bank may earn and sell with a particular restoration project. The role of the bank sponsor is the responsibility for the overall operation, management, monitoring, and success of the bank in accordance with the terms of the banking agreements. The sponsor either purchases the land or works with a landowner(s) to restore and protect a parcel of land containing a degraded natural resource in need restoration, enhancement or protection. These mitigation credits may then be bought by anyone who plans to undertake land development projects on or near a degraded natural resource that will in the process negatively impact the ecosystem of that region. The mitigation banker is responsible for not just the development, but also the future upkeep and maintenance of the mitigation bank.

BENEFITS OF MITIGATION BANKING

Mitigation banking has a number of advantages over traditional permittee-responsible compensatory mitigation because of the ability of mitigation banking programs to:

1. Protect and conserve the environment

Mitigation banking aids in protecting nature and its diversity. The impact of increasing industrialization and urbanization on natural habitats, streams, and wetlands is inevitable. Mitigation banks provide an opportunity to partially offset this impact. Mitigation has the potential to save and restore the most valuable environmental resources at the least cost, assuming that regulation 1) protects health and welfare as defined by the National Environmental Policy Act (NEPA) and 2) assures that a credit accurately represents measurable ecological value. Buyers are typically looking for mitigation credits that are both cheap and the most likely to meet regulatory requirements for compensatory mitigation. Regulators must therefore find a balance between protecting the long term public interest and ensuring that buyers have the proper incentives to participate in the environmental marketplace.

2. Improve efficiency

A mitigation bank is more efficient in that it ensures that a vast consolidated piece of land is recovered or conserved to offset the adverse impact of developers for many small sites. The economies of scale and technological expertise of a mitigation bank make it more efficient not just in terms of cost, but also in terms of the quality of restored acreage. Allows mitigation bankers to assemble and apply extensive financial resources, planning, and scientific expertise not always available to many permittee-responsible compensatory mitigation proposals. Mitigation banks enable the efficient use of limited agency resources in the review and compliance monitoring of compensatory mitigation projects because of consolidation. On site mitigation often becomes a burden on development sites, causing a development to be planned around the mitigation. Buying credits from a mitigation bank allows the developer to maximize his usable land and put that space to its highest and best use.

3. Decrease time lag and increase regulatory ease

It is easier for developers to buy credits from an approved bank than to get regulatory approvals that might otherwise take months to procure. As mitigation banks have already restored units of affected acreage in the process of earning credits, there is little to no time lag between the environmental impact at a service area and its restoration at a bank site. Land previously unused or impractical for development is given greater monetary value under a mitigation system. For instance, land in floodplains may be impractical for commercial or residential development but conducive for mitigation activities. Land in rural areas with very little potential for growth are more valuable when given the opportunity to be used for mitigation credits. These factors reduce permit processing time and provide more cost-effective compensatory mitigation opportunities.

4. Transfer liability

The system of mitigation banking effectively transfers the liability of ecological loss from the developer (permittee) to the mitigation banker. Once the permittee buys the required credits as per regulations, it becomes the responsibility of the mitigation banker to develop, maintain and monitor the site on a long-term basis. This also reduces uncertainty over whether the compensatory mitigation will be successful in offsetting project impacts. Mitigation systems place the environmental costs of development mostly on the individuals or entities that are impacting the environment. Without environmental mitigation, costs of alleviating environmental damage caused by development could be placed in the hands of the government which would in turn pass costs on to taxpayers not responsible for environmental impacts.

CHALLENGES OF MITIGATION

The following are the challenges of environmental mitigation and crediting systems:

1. Correctly assessing ecological loss.

One challenge of compensatory mitigation is the difficulty encountered by regulatory agencies in correctly assessing ecological loss and improvement. The credits offered to mitigation banks have to be appropriately evaluated by regulators. Although these agencies make use of a number of

environmental assessment techniques, it is not an easy task to fully capture the ecological impact of damage caused to natural resources. To address these uncertainties regulators often assign 'coverage ratios' to compensatory mitigation agreements. Coverage ratios of, for example, 3:1 require 3 compensatory mitigation credits for every 1 unit of ecological disturbance.

It is also questionable whether the natural habitats and wetlands that took centuries to evolve can be artificially engineered in a span of just a few years. In some cases, the quality of such artificially developed wetlands in terms of floral and faunal diversity has been found to be sub-standard, compared to their natural counterparts.

It is also believed that mitigation banks, as opposed to individual mitigation where developers create their own mitigation sites in the vicinity of acreage destroyed, tend to be located far from the sites of impact, and hence cannot fully replicate the site impacted.

2. Effects on land cost and availability

Mitigation could be seen as contributing to the increasing cost of land because in some cases mitigation banks requires that large tracts (100 to 500 acres on average) of land be purchased or put into conservation easements. Mitigation can therefore compete with other rural land uses such as agriculture and residential development. This suggests that land owners must be alert to find the highest and best use for their properties given the potential market value that mitigation credits represent.

3. Permanent commitments of land

Commitment of lands to compensatory mitigation must be done permanently into the future. In North Dakota, this means for a maximum period of ninety-nine years. Otherwise, the long-term public interest could not be served via compensatory mitigation programs. This means that properties must continue to be managed with ecosystem values in mind, sometimes preventing landowners from transforming the landscape to meet changing needs. For example, future large scale development projects would not likely be permitted on previously dedicated mitigation property.

All three mitigation mechanisms utilize a permanent instrument (such as a conservation easement or deed restriction or other agreement as approved by the USACE) on the land, with a trust fund specifically dedicated to long term management of natural resources inherent to the bank. By securing mitigation credits from neighboring ecosystems many large landowners, including the government, are able to maintain a property in its current management state while retaining ecological functionality (ecosystem services), important to the public interest. This commitment must comply with North Dakota law, as easement terms are limited by N.D.C.C §47-05-02.1 to 99 years. The Corps has approved 99 year conservation easements for North Dakota mitigation banks. If conservation easements are used as the permanent protection instrument, it is important to note that they can receive public opposition because they place limitations on certain surface disturbance as well as reduce leasable land acres for certain uses.

APPLICABLE ENVIRONMENTAL REGULATIONS AND POLICY

Projects impacting aquatic and natural resources must be in compliance with existing federal, tribal, and state statutes and regulations and consistent with applicable policies, including:

- Clean Water Act {33 U.S.C. 1251 et seq.}, Section 404 and Section 401.
- Food Security Act of 1985, as amended (7 CFR Part 12).
- Compensatory Mitigation for Losses of Aquatic Resources – Final Rule (Federal Register Vol. 73, No. 70, April 10, 2008)
- National Environmental Policy Act {42 U.S.C. 4321 et seq.} and implementing regulations.
- Fish and Wildlife Coordination Act {16 U.S.C. 4321 et seq.} and implementing regulations.
- Fish and Wildlife Coordination Act {16 U.S.C. 661-666 ©}.

- U.S. Fish and Wildlife Service Mitigation Policy.
- Rivers and Harbors Act of 1899 {33 U.S.C. 403}.
- Section 404(b)(1) Guidelines {40 CFR, Part 230}; including interpretations of the Guideline in the Memorandum of Agreement between EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines.
- Federal Permit Regulations {33 CFR, Part 320-330} including interpretive guidance provided by the Corps.
- Endangered Species Act, as amended {16 U.S.C. 1531 – 1543}.
- Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to fulfill mitigation requirements under Section 404 of the Clean Water Act.
- Executive Order 11990, concerning the Protection of Wetlands.
- Executive Order 11988, concerning Floodplain Management.
- 1990 Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency on the Determination of Mitigation under the Clean Water Act 404(b)(1) Guidelines.
- FAA Advisory Circular 150/5200-33, Hazardous Wildlife Attractants On or Near Airports.'

The most significant of the above policies is the Clean Water Act (CWA) section 404 and other provisions of this act and the April 10, 2008 Compensatory Mitigation Rule that was jointly issued by the USACE and the EPA which made it compulsory to avoid and minimize the impact on designated water bodies and provide compensatory mitigation for unavoidable impacts. The 2008 rule also established standards for the implementation of mitigation banks, in-lieu fee programs and permittee-responsible mitigation (individual). The standards in this rule are consistent with those in the CWA Section 404.

SUMMARY

Mitigation refers to actions completed to restore, enhance, establish, or preserve natural resources in order to offset unavoidable impacts to those resources that occur from land development projects. Mitigation actions are typically completed through permittee/landowner responsible efforts, in-lieu fee (ILF) efforts, and mitigation banking efforts. Mitigation banking is a system by means of which the liability of ecological damage is transferred from the permittee to the mitigation banker through a system of credits and debits under regulatory guidelines. A mitigation banker develops, restores, preserves and manages the acreage at a bank site and earns mitigation credits, which are then sold to a permittee or developer for a fee. This system, despite some of its limitations such as the possible lack of robust environmental assessment techniques and poor quality of natural diversity in some cases, still has many advantages that could provide additional revenues to the trusts. With increasing private investment in the development of mitigation banks and research on ecosystems as well as easing regulatory controls, the future for mitigation banking is indeed bright both for investors and for the environment. Compensatory mitigation allows for the opportunity to generate revenue from ecosystem service markets and there is potential to generate revenue from these markets on trust lands.

Recommendation: The Board grant approval for the Commissioner to develop the necessary permits and easements which will allow for ecosystem improvements to be implemented on trust lands. The Department will work with other western states land offices, the Attorney General's office, the mitigation industry and Federal agencies to develop permits and easements that will allow an ecosystem services program to be implemented on school trust lands. The easements and permits developed for the ecosystems services program will be brought to the Board for approval prior to ecosystem service program implementation.

Action Record	Motion	Second	Aye	Nay	Absent
(05/30/19)					

Secretary Jaeger		X	X		
Superintendent Baesler			X		
Treasurer Schmidt			X		
Attorney General Stenehjem	X		X		
Governor Burgum			X		

LITIGATION

XTO Energy, Inc., and XTO Holdings, LLC v. North Dakota Board of University and School Lands and the United States of America

Case: **XTO Energy, Inc., and XTO Holdings, LLC v. North Dakota Board of University and School Lands and the United States of America, Case No. 1:19-cv-00076**

Date Filed: **April 29, 2019**

Court: **Federal District Court, District of North Dakota**

Judge: **(Unassigned)**

Attorney: **Charles Carvell, David Garner, Jen Verleger**

Opposing Counsel: **XTO: Lawrence Bender, Spencer Ptacek**
USA: John Most

Issues: In April 2019, XTO Energy, Inc. and XTO Holdings, LLC (XTO), brought an interpleader action against the Board of University and School Lands and the United States regarding certain lands underlying XTO operated wells located in McKenzie and Williams Counties. This case addresses overlapping ownership claims by the State and the United States of minerals underlying the Missouri River. XTO, which has leases from both the state and the United States, is requesting the Court determine the property interests for the disputed lands so that XTO can correctly distribute the proceeds from the affected wells. XTO has claimed that there is “great doubt as to which of the Defendants is entitled to be paid royalties related to the Disputed Lands.” Currently, there are twelve wells at issue in four spacing units, though XTO could drill more wells in the disputed lands and expand the lawsuit. Based on the allegations in XTO’s complaint, XTO appears to be depositing at least a portion of the state royalty in escrow in the Bank of North Dakota, but it is also paying the United States its royalty for production from two of the wells.

Current Status: **The Summons and Complaint were served on the Board and the Attorney General’s Office on April 30, 2019, with the Answer being due May 21, 2019. To the best of our knowledge, the United States was served on April 30, 2019, and its Answer is due on June 29, 2019. A request for an extension to file the Board’s Answer was made and the Answer is now due on June 29, 2019.**

Whiting Oil and Gas Corporation v. Arlen A. Dean, et. al.

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/Charles Carvell
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 held and a trial was scheduled for April 20-24, 2020.**

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

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 District 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 North Dakota Industrial Commission (NDIC). 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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and

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Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. **The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019.**

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

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

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October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court. The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. **Defendants/Appellants' Brief to the North Dakota Supreme Court was filed April 29, 2019. Plaintiffs/Appellee' will file a brief and Defendants/Appellants will file a reply brief. Oral Argument is scheduled for June 20, 2019.**

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

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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary

(05/30/19)

Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. **On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed.**

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:08 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- XTO
- Whiting
- Wilkinson
- Newfield
- Paul Sorum, et. al. v. The State of North Dakota, et al

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

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General Via Telephone
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Allie Nagel	Land Professional

Guests in Attendance:

Dave Garner	Attorney General's Office
Matt Sagsveen	Attorney General's Office
Troy Seibel	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Nilles Law Office
Charles Carvell	Special Assistant Attorney General

The executive session adjourned at 10:50 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 XTO, Whiting, Wilkinson, Newfield and Paul Sorum litigation.

OPERATIONS

Legislative Bill Review

(No Action Requested)

HB 1013 Legislative appropriation and budget for the Commissioner of University and School Lands

The Department is preparing a Request for Proposal for the Minerals Assessment. The Energy Infrastructure and Impact Office will accept grant requests throughout the next biennium to award the \$4 million appropriated. The Department posted the Administrative Assistant position, with a goal to fill the position in July 2019. The Commissioner will begin working with the Attorney General to fill the Assistant Attorney General position provided in HB 1013.

SB 2081 Continuing authority for building repairs and investment due diligence

The Department is revising Department Accounting and Investment Policies to clearly define which expenses qualify for continuing authority.

SB 2082 Repeal of N.D.C.C. §§ 15-04-02 Lease of Cultivated Lands for Summer Fallow, and 15-04-04, Failure to Summer-Fallow Cultivated Lands, Use for Cancellation of Lease

The Department is working with the Attorney General's Office to modify the Board's Surface Land Lease to reflect the repealing of N.D.C.C. §§ 15-04-02 and 15-04-04.

HB 1392 Confidentiality of records received by the Board of University and School Lands

The Department will send a letter to all operators subject to Department audits notifying them of the statutory change.

SB 2211 Amend N.D.C.C. §§ 61-33.1-04 and 61-33.1-05 relating to the ownership of mineral rights of land inundated by Pick-Sloan Missouri basin project

The Department a contract with Kadrmas, Lee & Jackson, Inc. to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the Industrial Commission is being finalized. The contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

SB 2212 Relating to authorization for the Board of University and School Lands to impose a civil penalty for failure to produce records; and to provide penalty

The Department will send a letter to all operators subject to Department audits notifying them of the statutory change. Additionally, the Department is establishing Department policies that will clearly define when the Department will submit the request to the District Court. Additionally, the Commissioner is developing a Board policy concerning allocation of the penalties collected.

SB 2264 Relating to meetings and policy approval process of the Board of University and School Lands exempt administrative agencies

The Department is preparing Administrative Rules based upon recently adopted Board policies. The Board can expect to review the proposed Administrative Rules at the June 2019 Board meeting.

R E P O R T S

Report of Easements Issued by Land Commissioner (04/17/2019 to 05/20/2019)

No Action Requested

Granted to:	EMMONS-LOGAN WIND LLC, JUNO BEACH-FL
For the Purpose of:	Easement: Wind electric transmission line
Right-of-Way Number:	RW0008246
Trust:	A - Common Schools
Legal Description:	EMM-133-76-36-SE4

Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	On-lease Act. Amend: Horizontal Oil Well
Right-of-Way Number:	RW0008347
Trust:	A - Common Schools
Legal Description:	MOU-157-93-36-SE4
(12/17/18)	

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

PETRO-HUNT LLC, DALLAS-TX

Easement: Salt Water Disposal Well - Extension
 RW0008420
 A - Common Schools
 WIL-154-99-16-SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

KRAKEN OPERATING, LLC, HOUSTON-TX

Permit: Section Line Access Road
 RW0008475
 A - Common Schools
 WIL-157-99-36-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ND GEOLOGICAL SURVEY, BISMARCK-ND

Letter of Permission: Access to School Land - Frac Proppant Sampling
 RW0008498
 A - Common Schools
 Numerous tracts in 13 Central ND Counties

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

KOHLER COMMUNICATIONS INC, DICKINSON-ND

Easement: Tower Site
 RW0008499
 A - Common Schools
 MOU-153-91-18-SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ND GEOLOGICAL SURVEY, BISMARCK-ND

Letter of Permission: Access to School Land - Critical Element Sampling
 RW0008500
 A - Common Schools
 Numerous tracts in 7 Western ND Counties

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ND ENERGY SERVICES INC, DICKINSON-ND

Letter of Permission: Temporary Water Layflat Line
 RW0008501
 A - Common Schools
 DUN-146-93-16-NE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

SELECT ENERGY SERVICES LLC, WILLISTON-ND

Letter of Permission: Temporary Water Layflat Line
 RW0008502
 A - Common Schools
 MCK-150-95-16-NW4, SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

SELECT ENERGY SERVICES LLC, WILLISTON-ND

Letter of Permission: Temporary Water Layflat Line
 RW0008502
 A - Common Schools
 MCK-150-95-16-NW4, SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

RRC POWER & ENERGY LLC, ROUND ROCK-TX

Permit-Amend: Soil Testing
 RW0008507
 A - Common Schools
 WIL-158-96-16-SE4
 WIL-158-96-36-NW4
 WIL-159-97-16-SE4

Granted to:

For the Purpose of:

HOUSTON ENGINEERING INC, FARGO-ND

Permit: Planning & Preconstruction Survey

Right-of-Way Number: RW0008508
 Trust: A - Common Schools
 Legal Description: NA

Granted to: **NDSU SCHOOL OF NAT RES SCIENCE, FARGO-ND**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008514
 Trust: A - Common Schools
 Legal Description: BOW-132-102-36-NE4

Summary of Oil & Gas Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction on www.energynet.com which concluded on May 7, 2019.

There were 258 tracts offered and 241 tracts listed received competitive bids. The highest bid per acre was \$300.00 for 80 net acres in Dunn County.

May-19			
County	Mineral Acres	Total Bonus	Bonus/Acres
Billings	3,895.23	\$58,474.46	\$15.01
Burke	1,081.22	\$107,244.60	\$99.19
Divide	188.09	\$14,103.02	\$74.98
Dunn	160.00	\$47,280.00	\$295.50
Golden Valley	1,280.00	\$1,280.00	\$1.00
McKenzie	732.00	\$51,228.00	\$69.98
McLean	320.00	\$1,440.00	\$4.50
Mountrail	5,532.98	\$486,063.78	\$87.85
Slope	640.00	\$1,280.00	\$2.00
Stark	160.00	\$4,560.00	\$28.50
Ward	6,315.16	\$261,154.37	\$41.35
Williams	640.00	\$66,560.00	\$104.00
GRAND TOTAL	20,944.68	\$1,100,668.23	\$52.55

There were 54 bidders registered, 32 of which submitted bids in the seven-day auction. Bidders were from 12 states (CA, CO, CT, IN, LA, MI, MT, ND, NE, TX, WA, and WY).

A total of \$1,100,668.23 of bonus was collected from the auction.

The Financial Position Report for the period ending March 31, 2019 was distributed to the Board and is available upon request.

INVESTMENTS

RE: Terminate Westwood and Reallocate Assets

During the April Board meeting, Department staff, the Commissioner and RVK reported concerns with changes occurring with Westwood Holdings Group (Westwood) that will have a major impact on how this product is managed going forward. Those changes include:

(12/17/18)

- The two seasoned individuals that were expected to be co-lead portfolio managers for the strategy have both left that role, with one leaving the firm entirely.
- The individual that was brought in from the outside in early 2019 to manage the multi-asset strategies team is now a co-lead portfolio manager. The other new co-lead portfolio manager is the firm's convertible bond expert, who previously worked some with the multi-asset team. Neither of these portfolio managers has worked together before, nor do they have direct experience with this strategy.
- RVK now believes that there was a lack of transparency during the extensive discussions they had with Westwood last fall related to the transition, given the new portfolio manager team for the strategy.
- During RVK's recent on-site visit with Westwood, RVK was informed that the firm now believes the capacity for this product is \$10 billion, not the \$5 billion amount former CIO Freeman has always maintained was the capacity for this product.

In April the Board placed Westwood on formal watch status and asked the Commissioner and RVK to come back to the May meeting with a formal recommendation on the disposition of the Westwood managed portfolio.

RVK has recommended to all clients that Westwood be terminated; the Commissioner agrees with RVK's recommendation.

Westwood currently manages 1/3 of the 20% allocation the permanent trust funds have to absolute return strategies. As of April 30, 2019, the permanent trusts had a total of \$957.1 million allocated to absolute return strategies and Westwood's portfolio was valued at \$322.3 million. In initial discussions with RVK, both RVK and the Commissioner had concerns with splitting the 20% absolute return allocation between the Board's two other absolute return managers, PIMCO and GMO, as it would reduce the diversification of the overall absolute return portfolio and increase manager risk.

Over the past two months the Commissioner and staff have worked closely with RVK to determine the best way to reallocate the assets currently managed by Westwood. The initial focus of that work was to determine if there was another liquid absolute return manager that might be an obvious replacement for Westwood. Information compiled by RVK and reviewed by staff shows that there does not appear to be a long list of compelling replacement options that have provided the risk/return profile and the diversification benefits that Westwood has historically provided. Another option would be to explore illiquid absolute return strategies. However, to date the Board has been hesitant to look at illiquid strategies and doing so would require more in-depth asset allocation work and an advanced manager search.

After determining that the options described above were not viable solutions at this time, RVK and the Commissioner began exploring the idea of redeploying the assets to existing managers/strategies. The Commissioner asked RVK to determine if the current risk/return profile of the portfolio could be mirrored or replicated using existing managers in different proportions. After running various asset allocation options through their optimizers, RVK determined that the Board could essentially mirror the current risk/return profile of the existing portfolio using existing managers in different proportions. Further discussions between RVK and the Commissioner resulted in today's recommendation; that the Board adopt one of the following two revised asset allocations for the permanent trusts.

Asset Class	Current Target	Recommended Portfolio 1	Recommended Portfolio 2
Broad US Equity	17.0%	17.0%	18.5%
Broad International Equity	17.0%	17.0%	18.5%
Fixed Income	21.0%	26.0%	23.0%
Absolute Return	20.0%	15.0%	15.0%
DIS	10.0%	10.0%	10.0%
Real Estate	15.0%	15.0%	15.0%
Expected Arithmetic Return	6.28%	6.15%	6.28%
Expected Risk (Standard Deviation)	10.27%	9.83%	10.32%
Expected Compounded Return	5.79%	5.70%	5.78%
Expected Return/Risk Ratio	0.61	0.63	0.61

Josh Kevan is here today to go over the attached RVK report, which details the work done by RVK and the Commissioner to arrive at the recommended portfolios. Josh will also go over the small, but measurable differences between the two recommended portfolios. The primary difference between the portfolios is that Portfolio 2 reallocates some of the Westwood assets to equities, while Portfolio 1 reallocates those assets only to fixed income. As a result, Portfolio 1 has a slightly more conservative risk/reward profile than our current portfolio, while Portfolio 2 has a risk/reward profile essentially matching the current portfolio. The good news is that both options:

- Will not require additional manager searches/changes
- Will reduce total manager fees
- Avoid increasing manager concentration risk

Generally, the Commissioner and RVK would make a recommendation to the Board to adopt either one or the other of these portfolios. The two options above are being presented to the Board today because some concerns were expressed at the May Land Board meeting about adding to equities when stocks are at/near all-time highs. The Commissioner acknowledges that concern but wants to remind the Board that it is not a market timer. Both portfolios presented are optimal portfolios that fall on the efficient frontier; one is just slightly more risk adverse than the other. The Commissioner and RVK are fully supportive of either portfolio.

If the Board approves reallocating the funds to one of the two recommended portfolios, the Commissioner believes a transition can be completed by the end of June 2019. Funds would be allocated proportionately to current managers within each broad asset class that receives additional assets. Manager's receiving funds will be given the opportunity to take securities currently in the Westwood portfolio in lieu of cash. Those securities that cannot be transferred will be liquidated in an efficient and effective manner, with a goal of completing the transition by the end of June 2019. The Board's IPS will be revised this fall to reflect the new asset allocation adopted by the Board.

Motion: The Board directs the Commissioner to terminate Westwood as a money manager effective immediately, adopt revised Portfolio 2 as the new asset allocation for the permanent trusts, and reallocate funds to existing managers in an efficient and effective way.

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		

Quarterly Investment Reports – 1st Quarter 2019

(No Action Requested)

Josh Kevan from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending March 31, 2019.

The first report to be 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 will review 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 were provided at the board meeting and are available upon request:

Attachment 1: RVK Permanent Trust Fund Performance Analysis Report

Attachment 2: Other Funds Managed by the Board Report – Distributed at Board Meeting

Attachment 3: RVK Ultra-short Performance Report

Investment Updates

(No Action Requested)

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of April 30, 2019.

Account/Asset Class	Long-Term Asset Allocation	4/30/19 Actual Allocation \$	4/30/19 Actual Allocation %	4/30/19 %Diff.
Large Cap US Equity	13.3%	\$ 649,226,375	13.6%	0.3%
Mid/Small Cap US Equity	3.7%	\$ 178,999,346	3.7%	0.0%
International Equity	13.3%	\$ 623,621,156	13.0%	-0.3%
Emerging Market Equity	3.7%	\$ 186,276,893	3.9%	0.2%
Total Equities	34.0%	\$ 1,638,123,771	34.2%	0.2%
Core Fixed Income	12.6%	\$ 693,714,897	14.5%	1.9%
Non-Core Fixed Income	8.4%	\$ 309,344,240	6.5%	-1.9%
Total Fixed Income	21.0%	\$ 1,003,059,137	21.0%	0.0%
Total Absolute Return	20.0%	\$ 957,078,003	20.0%	0.0%
Commodities	3.0%	\$ 142,740,342	3.0%	0.0%
MLPs	3.0%	\$ 141,216,143	3.0%	0.0%
TIPS	2.0%	\$ 91,519,970	1.9%	-0.1%
Natural Resource Equities	2.0%	\$ 95,248,598	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 470,725,053	9.8%	-0.2%
Core Real Estate	8.0%	\$ 391,544,331	8.2%	0.2%
Core Plus Real Estate	7.0%	\$ 322,315,608	6.7%	-0.3%
Total Real Estate	15.0%	\$ 713,859,938	14.9%	-0.1%
Total Asset	100.0%	\$ 4,782,845,902	100.0%	

Angelo Gordon (\$57.16 million, 1.2% of PTF assets)
Direct Lending Fund

(05/30/19)

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. To date, a total of \$54.75 million dollars has been transferred to the fund. The Commissioner recently received a capital call for \$3.75 million that will be funded on May 29, 2019.

It is important to note that May's capital call notice of \$3.75 million was offset by a \$930,622 distribution of income from the fund. This is the first distribution of income from the fund since inception; it is expected that this fund will continue to make regular distributions going forward.

\$58.5 million, out of the total commitment of \$150 million, will have been transferred to the fund by the end of May 2019. This represents 39% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

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. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

May 30, 2019, 3:00 PM

JP Morgan

Core Fixed Income (\$304.5 million, 6.4% of PTF assets)
Jim Sakelaris and Joe Hisdorf

June 12, 2019, 8:00 AM

Payden and Rygel

Core Fixed Income (\$306.5 million, 6.4% of PTF assets)
Short-term Fixed Income (\$65.3 million, 1.4% of PTF assets)
Dave Ballantine and Mirjam Weber

June 18, 2019, 10:30 AM

Northern Trust Asset Management

Small Cap US Equities (\$96.7 million, 2.0% of PTF assets)
TIPS (\$91.5 million, 1.9% of PTF assets)
Ultra-Short Fixed Inc (\$891.2 million, Coal, Capitol & SIIF)
Tamara Doi Beck, Robert Gyorgy, Patrick Quinn

A D J O U R N

There being no further business, the meeting was adjourned at 11:13 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
June 27, 2019**

The June 27, 2019 meeting of the Board of University and School Lands was called to order at 9:02 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Jeff Engleson	Director Investments

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Brady Pelton	ND Petroleum Council
Geoff Simon	Western Dakota Energy Association

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 May 30, 2019 meetings was made by Secretary Al Jaeger and seconded by Superintendent Baesler and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Administrative Rules

In House Bill 1300, the 65th Legislative Assembly directed the Board of University and School Lands no longer be exempt from the Administrative Agencies Practice Act ("the Act"). In Senate Bill 2264, the 66th Legislative Assembly directed the Board of University and School Lands be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

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

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management will be posted to the Department's website, publications of a notice of intent will be completed, and copies of these rules will be sent to sponsoring legislators. A public hearing on these rules will be conducted and all comments will be considered.

(06/27/19)

Motion: The Board approves the Commissioner to proceed with preparation of the rules for filing with Legislative Council, including holding a public hearing regarding the revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management, proceeding with the necessary publications, providing the documents to sponsoring legislators, and forwarding for legal review.

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 following were provided at the board meeting and are available upon request:
Attachment 1: Administrative Rules General Administration, Surface Land Management, Investments, and Minerals Management.

R E P O R T S

Report of Easements Issued by Land Commissioner (05/21/2019 to 6/19/2019)

Granted to: **ELKAN INC, WATFORD CITY-ND**
For the Purpose of: Easement: Raw Water Pipeline
Right-of-Way Number: RW0008348
Trust: A - Common Schools
Legal Description: MCK-150-97-36-SE4, SW4

Granted to: **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**
For the Purpose of: Easement: Salt Water Pipeline
Right-of-Way Number: RW0008378
Trust: A - Common Schools
Legal Description: DUN-147-95-16-NE4 SOUTH OF HWY, SE4,
SW4 SOUTH OF HWY

Granted to: **VERENDRYE ELECTRIC COOP INC, VELVA-ND**
For the Purpose of: Easement: Electric Distribution Line - Buried
Right-of-Way Number: RW0008427
Trust: U, D
Legal Description: MCH-157-76-31-E2SW4, LOTS 1,2,3,4

Granted to: **MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Buried Electric Distribution Line
Right-of-Way Number: RW0008439
Trust: A - Common Schools
Legal Description: MOU-154-93-36-SE4

Granted to: **BASIN ELECTRIC POWER COOP INC, BISMARCK-ND**
For the Purpose of: Easement: Electric Transmission Line
Right-of-Way Number: RW0008450
Trust: A - Common Schools
Legal Description: MER-145-88-16-NW4
(06/27/19)

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

TESORO HIGH PLAINS PIPELINE CO LLC, SAN ANTONIO-TX

Easement: Drop Line-Oil Gathering Pipeline
 RW0008460
 A - Common Schools
 DUN-146-95-36-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

MARATHON OIL COMPANY INC, DICKINSON-ND

On-lease Act. Amend: Drop Line-Mult Pipe & Comm Cable
 RW0008467
 A - Common Schools
 DUN-146-95-36-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

PRAIRIE SOIL CONSULTING LLC, BISMARCK-ND

Permit: Planning & Preconstruction Survey
 RW0008469
 A - Common Schools
 N/A

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND

Easement: Drop Line-Buried Electric Distribution Line
 RW0008481
 A - Common Schools
 MCK-151-96-36-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

MCKENZIE ENERGY PARTNERS LLC, WATFORD CITY-ND

Easement: Salt Water Disposal Well - Extension
 RW0008485
 A - Common Schools
 WIL-156-95-16-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT

Easement: Drop Line-Gas Gathering Pipeline
 RW0008488
 A - Common Schools
 DUN-146-94-36-SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ROUGH RIDER ELECTRIC COOP, INC., DICKINSON-ND

Easement: Electric Transmission Line
 RW0008504
 A - Common Schools
 BIL-144-98-16-SE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

B O B ENTERPRISES LLC, KILLDEER-ND

Letter of Permission: Temporary Water Layflat Line
 RW0008505
 A - Common Schools
 DUN-146-95-16-NE4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

BIRD WATCHERS DIGEST, MARIETTA-OH

Letter of Permission: Access to School Land
 RW0008509
 A - Common Schools
 STU-142-68-16-SW4

Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	BIRD CONSERVANCY OF THE ROCKIES, FORT COLLINS-CO Letter of Permission: Access to School Land RW0008515 A - Common Schools SIO-130-83-10-SW4 SIO-130-83-9-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	CRESCENT POINT ENERGY US CORP, DENVER-CO Letter of Permission: Temporary Water Layflat Line RW0008516 A - Common Schools WIL-157-100-16-E2NE4,E2W2NE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	ND ENERGY SERVICES INC, DICKINSON-ND Letter of Permission: Temporary Water Layflat Line RW0008517 A - Common Schools DUN-146-95-36-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	WEST DAKOTA WATER LLC, WILLISTON-ND Letter of Permission: Temporary Water Layflat Line RW0008521 A - Common Schools WIL-156-100-16-NE4, NW4, SW4 WIL-156-100-9-S2SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	US FISH & WILDLIFE SERVICE, BISMARCK-ND Letter of Permission: Access to School Land RW0008522 A - Common Schools GOL-139-103-36-SE4 SE OF RD MCK-147-101-16-NE4 MCK-149-99-16-NE4, NW4 SLO-136-102-16-SE4NW4, LOTS 1,2,3, SW4 SLO-136-103-36-NE4, NW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND Letter of Permission: Temporary Water Layflat Line RW0008523 A - Common Schools MOU-154-93-36-SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	CENEX PIPELINE LLC, LAUREL-MT Permit: Temporary Construction RW0008531 A - Common Schools WIL-156-97-36-SE4

The Financial Position report for the period ended April 30, 2019 was distributed at the meeting and is available at the Department upon request.

(06/27/19)

I N V E S T M E N T S

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of May 31, 2019.

Account/Asset Class	Long-Term Asset Allocation	5/31/19 Actual Allocation \$	5/31/19 Actual Allocation %	5/31/19 %Diff.
Large Cap US Equity	13.3%	\$ 607,774,134	13.0%	-0.3%
Mid/Small Cap US Equity	3.7%	\$ 168,010,415	3.6%	-0.1%
International Equity	13.3%	\$ 607,667,529	13.0%	-0.3%
Emerging Market Equity	3.7%	\$ 173,032,056	3.7%	0.0%
Total Equities	34.0%	\$ 1,556,484,135	33.2%	-0.8%
Core Fixed Income	12.6%	\$ 703,556,271	15.0%	2.4%
Non-Core Fixed Income	8.4%	\$ 313,650,285	6.7%	-1.7%
Total Fixed Income	21.0%	\$ 1,017,206,557	21.7%	0.7%
Total Absolute Return	20.0%	\$ 942,681,731	20.1%	0.1%
Commodities	3.0%	\$ 135,709,027	2.9%	-0.1%
MLPs	3.0%	\$ 137,801,091	2.9%	-0.1%
TIPS	2.0%	\$ 93,096,011	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 91,037,532	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 457,643,660	9.8%	-0.2%
Core Real Estate	8.0%	\$ 391,544,331	8.4%	0.4%
Core Plus Real Estate	7.0%	\$ 323,541,463	6.9%	-0.1%
Total Real Estate	15.0%	\$ 715,085,793	15.2%	0.2%
Total Asset	100.0%	\$ 4,689,101,876	100.0%	

Angelo Gordon (\$59.98 million, 1.3% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. To date, a total of \$58.5 million dollars has been transferred to the fund. The last capital call funded was on May 29, 2019.

To date \$58.5 million has been transferred to the fund out of a total commitment of \$150 million; this represents 39% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Westwood Holdings Group (\$317.75 million, 6.8% of PTF assets)

Absolute Return

In May 2019, the Board voted to terminate Westwood Holdings Group and reallocate those funds to other existing managers. The Commissioner recently contracted with State Street Bank to transition the assets of the existing portfolio. The Commissioner expects the bulk of the transition to be complete before the end of June 2019.

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. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

June 27, 2019, 1:00 PM	Brandywine Global Opportunistic FI Non-Core Fixed Income (\$152.4 million, 3.3% of PTF assets) <i>Lisa Welch and Richard Lawrence</i>
July 10, 2019, 9:30 AM	Morgan Stanley Prime Property Fund Core Real Estate (\$206.2 million, 4.4% of PTF assets) <i>Clairborne Johnston</i>
July 24, 2019, 1:00 PM	GMO Benchmark Free Absolute Return (\$309.1 million, 6.6% of PTF assets) <i>Lydia Cottrell & Catherine LeGraw</i>

L I T I G A T I O N

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 District 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 North Dakota Industrial Commission (NDIC). 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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. **On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed**

(06/27/19)

in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. The hearing on the Motion for Summary Judgment is scheduled for 2 p.m. on July 30, 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 was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court. The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the North Dakota Supreme Court was filed April 29, 2019. **Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019.**

Case: Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266; Filed June 11, 2019

Court: McKenzie County District Court

Judge: Robin Schmidt

Attorney: David Garner

Opposing Counsel: Lawrence Bender, Spencer Ptacek

Issues: On June 7, 2019, the Attorney General's Office was served with a complaint in the above referenced case. This case is requesting a judgment be entered under Chapter 32-12 of the North Dakota Century Code quieting title in Leases in favor of Plaintiffs; a judgment be entered under Chapter 32-12 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands based on the force majeure provision of the Board's lease; that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction, prohibiting Defendants from selling or attempting to sell new leases covering the oil and gas in and under the Subject Lands or otherwise interfering with Plaintiffs exclusive right to explore for and produce the same; and that Plaintiffs be awarded their costs and reasonable attorney fees.

Current Status: The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General's Office on June 7, 2019. The action was filed with the Court on June 11, 2019. The State's Answer is due June 28, 2019.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:25 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Wilkinson
- Newfield
- Vitesse
- State of Washington Legislation

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		

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	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office

The executive session adjourned at 9:45 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 Wilkinson, Newfield, Vitesse and the State of Washington Legislation litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 9:45 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
July 17, 2019**

The July 17, 2019 meeting of the Board of University and School Lands was called to order at 9:02 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Mike Humann	Surface Division Manager
Drew Combs	Minerals Division Manager
Adam Otteson	Revenue Compliance Division Manager
Allie Nagel	Minerals Division Land Professional

Guests in Attendance:

Brent Sanford	Lt. Governor
Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Geoff Simon	Western Dakota Energy Association
Thadd Barker	Aurora Wind Project
Haileigh Shull	Aurora Wind Project
Charles Tuttle	
Annie Kane	

APPROVAL OF MINUTES

A motion to approve the minutes of the June 27, 2019 meetings was made by Secretary Al Jaeger and seconded by Superintendent Baesler and the motion carried unanimously on a voice vote.

LITIGATION

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:04 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Sorum

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant

Guests in Attendance:

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Mark Hanson	Niles Law Firm

The executive session adjourned at 9:26 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 Sorum litigation.

MINERALS MANAGEMENT DIVISION

Nomination of Coal Acres – Oliver County BNI Coal

In accordance with the Board's Minerals Policies Chapter 1. Coal, the Board received a nomination from BNI Coal for the right to lease 320 surface acres and 320 net coal acres within: T141N – R84W – Sec. 16: E½; Oliver County (Attachment 1 – BNI Proposed State Coal Leases Map) (Attachment 2 – BNI Proposed Lease)

(07/17/19)

The nomination is the first step in making the tract available for leasing. The Board's coal leasing policies (Policies) outline a process whereby the records of the mining company's lease with other owners are reviewed to arrive at a fair market rate of terms. This market rate serves as the basis for the lease auction opening bid. The Policies set forth that the Board must approve the initiation of the process to lease lands for coal development. Upon approval of offering these surface and mineral acres for coal production, examination of the terms from adjacent mineral leases will commence.

Motion: The Board approves the application received from BNI Coal for surface and coal leases of the East ½ of Section 16 T141N R84W and direct the Commissioner to begin term discovery and lease negotiations on its behalf.

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		

BNI Proposed State Coal Lease attachments were provided at the board meeting and are available upon request.

O P E R A T I O N S

Annual Performance Review

As Commissioner, I am fully committed to the Department of Trust Lands vision to be known nationally for superior management of its land and mineral assets, unclaimed property, energy grant distributions and investment portfolio. This will be met through shared values:

Communication: We develop and maintain positive relationships, facilitating the open exchange of ideas, opinions and information.

Leadership & Teamwork: We encourage and motivate each other to accomplish goals through collaboration and cooperation across the Department.

Customer Service: We listen and respond effectively to our customers to provide professional and efficient service.

Transparency: We strive to be open, honest, upfront and visible in our actions.

Trust: We foster a high-trust culture that supports a rewarding, healthy, and meaningful work environment for employees.

Last year, a strategic plan was developed to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders are working toward common goals, establish agreement around intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment. With our focus on the future, it has been a disciplined effort resulting in fundamental decisions and actions that have shaped and guided the Department: who it serves, what it does, and why it does it. The Department has worked to align ongoing activities and processes to systematically coordinate and align resources and actions with the mission, vision and strategy throughout the Department. These activities have transformed the static plan into a system that provides strategic performance feedback to decision making and enables the plan to evolve and grow as requirements and other circumstances change.

(07/17/19)

I want to thank the staff for their generous support, willingness to collaborate, and flexibility in promoting value and growth within the Department. Their skills and dedication are recognized as fundamental to all successes.

As the Commissioner, I am taking a direct role in working with the divisions within the Department to capitalize on our capabilities and resources; thus, improving the effectiveness of the Department. Specifically, I am committed to cultivating talent management, leadership and performance culture within the Department. While continuing to deliver our core services, the Department has made significant progress in fulfilling a wide-range of responsibilities:

(1) Department & Board Policy Review and Implementation of Administrative Rules

- Successfully completed the review and implementation of Department policies:
 - Energy Infrastructure and Impact Office
 - Unclaimed Property Division
 - Minerals Division
 - Surface Division
 - Investments Division
 - Information Technology
 - Fiscal
 - Human Resources
- Reviewed and updated all Board policies:
 - Minerals Policy Manual
 - Surface Policy Manual
 - Loan Pool Account Policy
- Implemented Administrative Rules
 - General Administration
 - Energy Infrastructure and Impact Grants
 - Unclaimed Property

(2) Information Technology

- Successfully implemented Unclaimed Property software.
- In procurement process of Land Management and Accounting Software.

(3) Culture

- Continued participation in employee survey which demonstrated a positive shift in the agency's culture.
- Realignment of job responsibilities to create efficiencies throughout the Department.
- Devoted resources to leadership programs for supervisors and other team members.

(4) Managing Litigation

- Working with attorneys on new and previously existing lawsuits that have significant impact on the Department.

I will continue to provide insight about the Department and identify systemic issues. Over time, I hope these findings generate a broader awareness of significant trends and inspire targeted and innovative approaches to address prevalent areas of growth in the Department. The role of leadership remains key to responding to current and emerging challenges. I have a long-term commitment to providing relevant strategic and practical support. I will continue to focus on building and strengthening relationships with community assets to ensure the continued prosperity of the Department.

Over the course of the next year I will need a continued desire for results and goal achievement while maintaining a high-standard in the quality of work that is completed. As the pacesetter for the agency, I need to continue to discover creative solutions, evaluate possibilities and provide deep mindshare on decisions I make. It is important that I continue to cultivate the resources and tools the team needs to assist them in prioritizing tasks, making decisions, and practicing good quality control.

Motion: The Board approves a salary increase of 2% with a maximum increase of \$200 per month as recommended by the 66th Legislative Assembly.

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

Strategic Investment and Improvements Fund - Assigned Fund Balance

Mineral revenues from sovereign lands are deposited into the Strategic Investment and Improvements Fund (SIIF). In August 2018, the Board of University and School Land's (Board) classified \$229,325,049 of this fund as an "Assigned Fund Balance," a potential liability that should not be transferred out of the fund until title claims to riverbed leases are resolved. The amount was based upon the bonus and royalties anticipated to be collected through June 2019 from the leasing and production of sovereign lands oil and gas interests and in consideration of associated litigation in these areas.

Since the Supreme Court affirmed State ownership of land and minerals to the ordinary highwater mark (OHWM) of navigable waters in *Reep v. State*, 2013 ND 253, 841 N.W.2d 664, the Department of Trust Lands (Department) has worked to collect royalties on Board issued leases covering sovereign lands. Some operators have paid royalties based upon the State's delineation; others have paid royalties into escrow.

The Board's oil and gas lease does not warrant title to the leased premises but states that "all bonuses and rentals will be returned to the lessee in the event lessor does not have a lawful right to lease the leased premises for oil and/or gas exploration and production." At its May 28, 2015 meeting, the Board adopted a "Statement of Principle" providing that: "In the event that it is determined the Board does not have a lawful right to claim ownership on behalf of the State of North Dakota, or its trusts, or right to lease the leased premises for oil and/or gas exploration and production, royalties received prior to such determination will be returned to the current well operator for distribution to the rightful owner(s)."

Basis for the Assigned Fund Balance

The adoption of Senate Bill 2134 (SB 2134) in 2017 by the Sixty-fifth Legislative Assembly, codified as N.D.C.C. ch. 61-33.1, provided for a determination of the OHWM for certain stretches of the Missouri River. The bill directed the North Dakota Industrial Commission (NDIC) to review a stretch of river to determine the location of the OHWM pursuant to specific criteria established by the Legislature.

On August 30, 2018 the Department recommended and the Board affirmed the existing Assigned Fund Balance of \$229,325,049. It was anticipated that after the NDIC adopted the final review findings, the Department would be able to calculate with more certainty the amounts necessary for mineral title disputes.

(07/17/19)

The survey SB 2134 directed the NDIC conduct did not provide the level of detail needed by the Department or oil and gas operators to make the necessary adjustments needed to refund royalties and lease bonuses. In recognition of this, in the Sixty-sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 by adopting Senate Bill 2211 (SB 2211). SB 2211 authorized the Board to “contract with a qualified engineering and surveying firm to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission.” The results of the surveying work are scheduled to be ready to present to the Board in June 2020.

In addition to the ongoing survey work, the legality of SB 2134 is currently on appeal to the North Dakota Supreme Court.

In summary, since the exact acreage of each tract impacted by SB 2134 has yet to be determined and legality of SB 2134 is currently on appeal to the North Dakota Supreme Court, the Department recommends that the Board reaffirm the existing Assigned Fund Balance. This should be done to accurately reflect known potential obligations on the financial statement and to stipulate that these funds should not be transferred from the SIIF but instead should be reserved until adjustments related to sovereign lands are resolved.

Motion: For purposes of its financial reporting, the Board affirms the “Assigned Fund Balance” of the Strategic Investment and Improvements Fund remain at \$229,325,049. These funds are reserved to make adjustments related to sovereign lands mineral ownership.

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		

S U R F A C E M A N A G E M E N T D I V I S I O N

Aurora Wind Project LLC, Wind Energy Easement Agreement

At the March 29, 2018 meeting of the Board of University and School Lands (Board), the Board approved a recommendation authorizing the Commissioner of University and School Lands to confirm by letter that the Board would consider a Wind Energy Easement Agreement with Tradewind Energy, Inc. for the Aurora Wind Project LLC (Project) involving the location and potential use of trust land located in Williams County within the Project (Attachment 1 – Aurora Wind Energy Location Map). Further, if the Project was approved by the Township, Williams County, and the Public Service Commission, the Commissioner would be authorized to negotiate and submit a recommended easement and terms for Board consideration. The Project will have a 300-megawatt nameplate capacity and consist of seventy-one (71) turbine locations having a mixture of fifty-six (56) – 4.8 megawatt and fifteen (15) – 2.0 megawatt turbines.

As local approval was obtained and the Public Service Commission issued the Certificate of Site Compatibility for the Project, a Wind Energy Easement Agreement (Easement Agreement) (Attachment 2 – Easement Agreement) has been negotiated with Tradewind Energy, Inc., for the Project to place up to six (6) wind turbines on trust lands in Williams County northwest of Tioga, North Dakota (Attachment 3 – Aurora Wind Energy Project Maps). The wind turbines will be

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located as follows: two (2) potential turbines - one (1) primary and one (1) alternate - located on the E2 Section 16, T158N, R96W; one (1) primary wind turbine on the N2 Section 36, T158N, R96W; and three (3) potential turbines – one (1) primary and two (2) alternate - located on the S2 Section 16, T158N, R96W. The NE4 Section 16, T158N, R97W will also be included in the wind farm for set-back purposes, but there will be no turbines at this location. All proposed turbine locations on trust lands will be 4.8 megawatt machines and the primary turbine locations are suitable for the 4.8-megawatt machines. The alternate sites are being evaluated to determine site stability for the 4.8-megawatt machines.

The Project will also be constructing a 345-kV electric transmission line from the proposed Project to Basin Electric's Tande Substation in Mountrail County. The proposed electric transmission line will cross the following trust land in Williams County: N2 Section 16, T157N, R95W. Transmission line rights-of-way are completed by using a separate easement agreement. The transmission line easement for the trust land in this Project is currently being negotiated and will appear in the report of easements issued by the Commissioner when completed.

The following is a brief review of the Easement Agreement, including its contract term, and compensation package:

Term:

An initial term of five (5) years to develop the wind farm with a twenty (20) year operating term and the option for two (2) additional ten (10) year renewal terms.

Compensation:

- **Easement Consideration** – a one-time payment of \$4.00 per acre to be paid within thirty (30) days of execution of the Easement Agreement.
- **Initial Period Payment** - \$4.00 per acre of the total acreage of 1,120 acres to be paid annually in advance of the anniversary date of the execution of the Easement Agreement for years two (2) and three (3) of the initial period and \$6.00 per acre of the total acreage for years four (4) and five (5) of the initial period.
- **Installation Payment** – a one-time payment of \$3,000 per turbine installed on trust land.
- **Turbine Payment** - \$5,000.00 per nameplate megawatt rating, per turbine installed for years one (1) through ten (10) of the operating term and \$6,000 per turbine for years eleven (11) through twenty (20) of the operating term, paid in monthly installments.
- **Annual Land Payment** - \$11,200.00 per year paid on an annual basis on or before February 15th of each calendar year.
- **Increase in Certain Payments** – During the initial period, the per-acre amount and per-megawatt amount set forth in the Annual Land Payment, Turbine Payment, and Installation Payment sections shall automatically (without notice or demand) escalate to reflect any increases in the CPI Index (as hereinafter defined) commencing as of January 1, 2015 and ending on December 31 for the year immediately preceding the commencement date of the operating term, on which date all such payment amount shall become fixed and shall no longer escalate with further increases in the CPI Index.

The Easement Agreement is based upon previously issued easements and guidance was provided by the Attorney General's Office and Office of Risk Management.

The compensation rates negotiated for the Easement Agreement are consistent with what other landowners will be paid for agreements within the Project. Consequently, revenue to the Common Schools Trust Fund for the turbine and land payment when the Project becomes operational will yield a combined initial minimum annual payment for three (3) turbines of \$83,200.00 and a

potential initial minimum annual payment of \$155,200 should six (6) turbines be located on trust land.

Motion: The Commissioner recommends the Board approve the Wind Energy Easement Agreement with Tradewind Energy, Inc., for the Aurora Wind Project LLC.

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

Aurora Wind Energy Location Map, Aurora Wind Energy Easement Agreement and Aurora Wind Energy Project Maps attachments were provided at the board meeting and are available upon request.

Surface Land Lease Revisions

As a result of passage of Senate Bill 2082 during the 66th Legislative Assembly and anticipated changes due to implementation of administrative rules, revisions to the Surface Land Lease are being submitted for Board approval.

The following summarizes the revisions, which can be found in the attached red-line version of the Surface Land Lease:

- Reference to summer-fallow was deleted due to repeal of N.D.C.C. §§ 15-04-02 and 15-04-04 which removed summer-fallow as a land use practice.
- Rangeland land use and conservation were split into separate paragraphs to make terms and conditions regarding these important land uses and land use practices easier to identify within the Surface Land Lease.
- The paragraph regarding easements and permits was changed to encumbrances to reflect language in the proposed administrative rules.
- A paragraph was added to clarify the lease term and a paragraph was added to address application of how additional lease provisions are applied at lease auctions.
- A paragraph regarding amendments was added to provide for lease amendment requirements.

All remaining changes involved grammatic and formatting changes.

The Attorney General's Office provided guidance related to the changes to the Surface Land Lease Document.

Motion: The Commissioner recommends the Board approve the changes to the Surface Land Lease as referenced above and shown in the attached redlined Surface Land Lease.

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

Redlined Surface Land Lease attachment was provided at the board meeting and is available upon request.

L I T I G A T I O N

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:48 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- **Continental Interpleader**
- **Newfield**

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance Division Manager

Guests in Attendance:

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Dave Garner	Attorney General's Office
Charles Carvel	Special Assistant AG

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The executive session adjourned at 10:16 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 Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 10:16 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
August 29, 2019**

The August 29, 2019 meeting of the Board of University and School Lands was called to order at 8:04 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Division Manager
Dennis Chua	Investments Analyst
Allie Nagel	Minerals Division Land Professional
Rick Owings	Grants Administrator
Jeff Engleson	Investments

Guests in Attendance:

Dave Garner	Attorney General's Office
Reice Haase	Governor's Office
Geoff Simon	Western Dakota Energy Association
Brady Pelton	North Dakota Petroleum Council
Rob Forward	DW Slate
Marcia Beard	RVK
Charles Tuttle	

APPROVAL OF MINUTES

A motion to approve the minutes of the July 17, 2019 meeting was made by Secretary Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Surface Land Management, Investments, and Minerals Management Administrative Rules

In House Bill 1300, the 65th Legislative Assembly directed the Board of University and School Lands no longer be exempt from the Administrative Agencies Practice Act ("the Act"). In Senate Bill 2264, the 66th Legislative Assembly directed the Board of University and School Lands be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-32-51 of the Act.

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

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management are posted on the Department's website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was scheduled for August 28, 2019. The Department will continue to receive comments until September 9, 2019.

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission." The contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Acreage Adjustment Township Survey Status attachments were provided at the board meeting and are available upon request.

Adoption of Investments Director, Jeff Engleson Retirement Congratulations Resolution

After more than 33 years of employment with the Department of Trust Lands, Jeff Engleson is retiring as the Director of Investments.

E N E R G Y I N F R A S T R U C T U R E A N D I M P A C T O F F I C E

Retirement of Grants

Of the grants awarded during Fiscal Years 2017 through 2019, one is complete, and one has a remaining balance available for retirement as the grant holder is non-responsive. The list of recommended retirement of grants for the Board's consideration is as follows:

Political Sub	Grant	Awarded	Paid	Balance	Project
CITY OF KENMARE	G170056	\$15,000.00	\$10,304.00	\$4,696.00	TRAINING
WHITE SHIELD PSD #85	G180062	\$29,510.00		\$29,510.00	RENOVATION & IMPROVEMENT PROJECTS
				\$34,206.00	

White Shield PSD is a non-responsive grant holder per N.D. Admin. Code § 85-02-04-02, which states:

A grantee that does not respond to the director's notice is deemed to concur with the cancellation of the grant. The board may cancel the grant immediately and retire the remaining balance to the originating grant fund. If an extension of an aged grant is not granted, the board may cancel the grant immediately and retire the remaining balance to the originating grant fund.

Final notifications were sent to White Shield PSD on December 27, 2018, stating their grant was considered delinquent and to avoid retirement of funding, EIIO needed a written grant status response no later than January 21, 2019. Additionally, the grantee's legislators were included in the notification process.

White Shield Public School District PSD has failed to submit progress reports and to respond to repeated communications via emails, phone calls, and letters with the Energy Infrastructure and Impact Office (EIIO).

The City of Kenmare was awarded a grant in 2017 for training and equipment for their ambulance service in the amount of \$15,000. The City of Kenmare completed its projects and has a remaining balance that the grantee has authorized for retirement.

Motion: The Board retires the two grants identified in the preceding list for a total of \$34,206.00. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.

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

INVESTMENTS

Authority over Financial Assets – Board Resolution

Historically when new investment personnel are hired, Northern Trust Company and other investment advisors have requested a Board of University and School Lands' (Board) resolution, or other formal documentation, identifying the individuals responsible for managing the Board's investment program. Recently the Department of Trust Lands (Department) hired Michael Shackelford as the Investment Director and Dennis Chua as an Investment Analyst.

The following resolution is proposed for adoption:

(08/29/19)

BE IT RESOLVED, that Michael Shackelford and Dennis Chua shall have authority to represent the Board in all activities involving the financial assets under the Board's control, as provided for in state law and in accordance with Board policy.

The individuals that will be authorized to give direction to advisors and custodians include Commissioner Jodi Smith, Investment Director Michael Shackelford, and Investment Analyst Dennis Chua. The Department complies with the North Dakota State's Office of Management and Budget, Fiscal and Administrative Policy 216 – Internal Control and Fraudulent/Significant Dishonest Act.

Motion: The Board adopts the resolution that Michael Shackelford and Dennis Chua, the Investment Director and Investment Analyst, respectively, shall have authority to represent the Board in all activities involving the financial assets under the Board's control, as provided for in state law and in accordance with Board policy.

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		

Investment Policy Statement Review and Update – First Reading

COMMENT: Do you want this bulleted section in the minutes since this is the first reading and there will be others and page number changes, etc...?

Per the Board of University and School Land's (Board) Investment Policy Statement (IPS), the Board's 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 it remains relevant with continued asset growth.

At the October 25, 2018, Board meeting a first reading of proposed IPS changes occurred; however, the Board did not have an opportunity for a second reading. Therefore, the Board will have the opportunity to review the 2018 recommended changes in addition to the 2019 recommended changes. The majority of the proposed changes to the IPS are to address outdated language and modify the IPS based upon changes the Board has made over the last year.

The substantive changes from 2018 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.

The substantive changes for 2019 include the following:

- **Strategic Asset Allocation Target (page 14):** The IPS was updated to include the revised asset allocation targets that were adopted by the Board on May 30, 2019, as a result of the termination of Westwood Holdings Group.
- **Policy Benchmark for the Permanent Trust Funds (page 16):** The policy benchmark for the permanent trusts funds was updated to reflect the new target allocation adopted by the Board on May 30, 2019. In addition, the benchmark used to measure fixed income performance was changed to the Barclays US Universal Index, from the previously blended benchmark. This change more closely aligns the target benchmark for fixed income portion of the portfolio with the current generally US focus of the fixed income portfolio.
- **National Statistical Ratings Organization (NSRO) (page 17):** The definition of a national ratings agency eligible to rate collateralized obligations was expanded to include any NSROs registered with the SEC, not just Moody's and Standard and Poor's.

Investment Policy Statement (redline version) attachment was provided at the board meeting and is available upon request.

Quarterly Investment Reports – 2nd Quarter 2019

Marcia Beard from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending June 30, 2019. While here Marcia will also provide the Board some insight as to the performance of the UBS Trumbull Property Fund and also provide some perspective on the current inverted yield curve.

The first report to be 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 (Attachment 1). A more comprehensive, detailed report is also available.

Next RVK will provide an update on the real estate market as a whole, as well as insight into the downward revaluation of retail assets in the UBS Trumbull Property Fund, which resulted in a negative return for the quarter (-3.69%).

Recently, the news had been dominated by the yield curve inversion and how it has been a strong predictor of recessions in the past. Following the discussion on real estate, Marcia will share with the Board recent research undertaken by RVK specifically regarding the yield curve inversion

The second performance related document RVK will touch on outlines the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested (Attachment 2). The normal report prepared by staff for these funds could not be prepared in a timely manner due to a delay in fiscal yearend report processing.

RVK Permanent Trust Fund Performance Analysis Report, UBS Trumbull Property Fund Performance Update, Investment Perspectives – What to Know About Yield Curve Inversion, (08/29/19)

RVK Ultra-short Performance Report, Attachments were provided at the board meeting and are available upon request.

R E P O R T S

Report of Easements Issued by Land Commissioner 06/20/2019 to 08/20/2019

Granted to:	PEARL TOWNSHIP, BEACH-ND
For the Purpose of:	Easement-Amend: Road Right-of-Way
Right-of-Way Number:	RW0008351
Trust:	A - Common Schools
Legal Description:	GOL-143-104-16-NE4, SE4
Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Easement: Well-Directional Wellsite Location
Right-of-Way Number:	RW0008375
Trust:	A - Common Schools
Legal Description:	DUN-148-96-36-SW4
Granted to:	NORTHEAST REGIONAL WATER DISTRICT, CAVALIER-ND
For the Purpose of:	Easement: Pipeline-Potable Water Pipeline
Right-of-Way Number:	RW0008425
Trust:	U – University Of ND I – ND Industrial School M – School of Mines
Legal Description:	TOW-163-65-6-SE4 TOW-163-65-7- NE4, LOT 4
Granted to:	WHITING OIL AND GAS CORPORATION, DENVER-CO
For the Purpose of:	Easement-Amend: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008434
Trust:	A - Common Schools
Legal Description:	MOU-155-92-36-SW4
Granted to:	WHITING OIL AND GAS CORPORATION, DENVER-CO
For the Purpose of:	Easement-Amend: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008435
Trust:	A - Common Schools
Legal Description:	MOU-155-92-36-SW4
Granted to:	HESS NORTH DAKOTA IPELINES, LLC, HOUSTON-TX
For the Purpose of:	Easement: Pipeline-Multiple Pipelines & Communication Cable
Right-of-Way Number:	RW0008441
Trust:	A - Common Schools
Legal Description:	MOU-156-92-36-SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

BRIDGER PIPELINE LLC, CASPER-WY

Easement: Pipeline-Oil Gathering Pipeline
 RW0008478
 A - Common Schools
 MCK-153-94-36-SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

RESOURCE ENERGY CAN-AM LLC, HIGHLANDS RANCH-CO

Permit: Road-Access Road
 RW0008524
 A - Common Schools
 DIV-164-101-36-SE4, SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

HIGHLINE WATER LLC, WILLISTON-ND

Permit: Temporary Water Layflat Line
 RW0008528
 A - Common Schools
 DIV-160-96-36-SE4, SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX

Easement-Amend: Pipeline-Oil Gathering Pipeline
 RW0008529
 A - Common Schools
 MCK-150-97-36-SE4, SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND

Permit: Temporary Water Layflat Line
 RW0008530
 C – Capital Building
 A – Common Schools
 MOU-155-94-28-SE4
 MOU-155-94-32-NE4
 MOU-155-94-36-NW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

MINNESOTA ZOO, APPLE VALLEY-MN

Letter of Permission: Access to School Land
 RW0008534
 A - Common Schools
 MCK-153-94-16-ALL

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND

Permit: Temporary Water Layflat Line
 RW0008539
 A - Common Schools
 MOU-153-92-16-NE4, NW4

Granted to:

For the Purpose of:
 (08/29/19)

TRAVIS MEIER, TUTTLE-ND

Letter of Permission: Access to School Land

Right-of-Way Number: RW0008540
 Trust: Y - Mayville
 Legal Description: SHE-145-76-21-NE4

Granted to: **CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK- ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008543
 Trust: A - Common Schools
 Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

Granted to: **ND ENERGY SERVICES INC, DICKINSON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008553
 Trust: A - Common Schools
 Legal Description: DUN-144-96-16-SE4

Granted to: **AMERICAN ENGINEERING TESTING INC, DICKINSON-ND**
 For the Purpose of: Permit: Soil Testing
 Right-of-Way Number: RW0008557
 Trust: A - Common Schools
 Legal Description: WIL-153-99-22-SW4 LESS ACRES CONDEMNED,
 W2SE4 LESS ACRES CONDEMNED

Granted to: **SELECT ENERGY SERVICES LLC, WILLISTON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008560
 Trust: A - Common Schools
 Legal Description: MCK-153-98-36-SW4

Granted to: **SHASTA PATTERSON, DUNN CENTER-ND**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008567
 Trust: A - Common Schools
 Legal Description: DUN-147-94-36-SW4

Granted to: **ENVIRONMENTAL RESOURCES MANAGEMENT, PORTLAND-OR**
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008568
 Trust: A - Common Schools
 Legal Description: N/A

Granted to: **ENCOMPASS ENERGY SERVICES, LLC, BROOMFIELD-CO**
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008569
 Trust: A - Common Schools
 Legal Description: N/A

Granted to: WILDFIRE HYPERHEATERS LLC, DICKINSON-ND
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008570
Trust: A - Common Schools
Legal Description: MCK-150-98-36-SW4

Summary of Oil & Gas Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction on www.energynet.com which concluded on August 7, 2019.

There were 694 tracts offered and 135 tracts listed received competitive bids (if the Board does not receive a competitive bid the lease is awarded to the nominator.) The highest bid per acre was \$15,776.00 for 160 net acres in Dunn County.

August 2019			
County	Mineral Acres	Total Bonus	Bonus/Acres
Billings	352.00	\$88,040.00	\$250.11
Bowman	38,485.55	\$43,756.31	\$1.14
Dunn	469.52	\$7,407,147.52	\$15,776.00
Golden Valley	13,546.10	\$14,872.55	\$1.10
McKenzie	481.46	\$701,838.85	\$1,457.73
Mountrail	80.00	\$123,280.00	\$1,541.00
Ward	5,033.09	\$15,236.09	\$3.03
GRAND TOTAL	58,447.72	\$8,394,171.32	\$143.62

There were 51 bidders registered, 27 of which submitted bids in the eight-day auction. Bidders were from 11 states (CO, GA, MN, MO, MT, ND, NV, OK, TX, WA, and WY).

A total of \$8,394,171.32 of bonus was collected from the auction.

Attachments were provided at the board meeting and are available upon request.

The Financial Position was provided to the Board and is available at the Department upon request.

INVESTMENTS

Investment Updates

Asset allocation

The table below shows the status of the permanent trusts' asset allocation as of July 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	7/31/19 Actual Allocation \$	7/31/19 Actual Allocation %	7/31/19 % Diff.
Large Cap US Equity	14.5%	\$ 712,701,536	14.7%	0.2%
Mid/Small Cap US Equity	4.0%	\$ 196,734,940	4.1%	0.1%
International Equity	14.5%	\$ 699,780,741	14.4%	-0.1%
Emerging Market Equity	4.0%	\$ 194,093,799	4.0%	0.0%
Total Equities	37.0%	\$ 1,803,311,016	37.2%	0.2%
Core Fixed Income	13.8%	\$ 759,760,569	15.7%	1.9%
Non-Core Fixed Income	9.2%	\$ 359,859,024	7.4%	-1.8%
Total Fixed Income	23.0%	\$ 1,119,619,593	23.1%	0.1%
Total Absolute Return	15.0%	\$ 721,741,494	14.9%	-0.1%
Commodities	3.0%	\$ 151,063,864	3.1%	0.1%
MLPs	3.0%	\$ 144,121,928	3.0%	0.0%
TIPS	2.0%	\$ 96,580,025	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 96,480,753	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 488,246,570	10.1%	0.1%
Core Real Estate	8.0%	\$ 387,779,390	8.0%	0.0%
Core Plus Real Estate	7.0%	\$ 330,698,622	6.8%	-0.2%
Total Real Estate	15.0%	\$ 718,478,012	14.8%	-0.2%
Total Asset	100.0%	\$ 4,851,396,685	100.0%	

Angelo Gordon (\$70.24 million, 1.5% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. To date, a total of \$69.75 million dollars has been transferred to the fund. An \$11.25 million capital call was funded on July 29, 2019.

To date \$69.75 million has been transferred to the fund out of a total commitment of \$150 million; this represents 46.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Westwood Holdings Group (\$175,964, 0% of PTF assets)

Absolute Return

In May 2019, the Board voted to terminate Westwood Holdings Group and reallocate those funds to other existing managers. The Commissioner contracted with State Street Bank to transition the assets of the existing portfolio. The transition went smoothly with the reallocation completely effected as of July 1, 2019. The residual cash and accruals in the account will be cleaned up over the next few months.

The long-term target allocations shown above now reflect the new asset allocation as approved by the Board last May 2019.

Upcoming Investment Manager Meetings

There are no upcoming meetings scheduled with Investment Managers.

LITIGATION

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:38 AM.

EXECUTIVE SESSION

(08/29/19)

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Whiting Oil and Gas Corporation Civ. No. 27-2016-CV-00040 – pg. 92
- Newfield Exploration Company et al Civ. No. 27-2018-CV-00143 - pg. 94
- DW Slate - pg. 96
- Northwest Landowners Association Civ. No. 05-2019-CV-00085 - pg. 97
- Paul Sorum et al. Civ. No. 09-2018-CV-00089 - pg. 98

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction
Kelly Schmidt	State Treasurer

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Allie Nagel	Land Professional

Guests in Attendance:

Reice Haase	Governor's Office
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office

The executive session adjourned at 11:00 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 Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:00 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
September 26, 2019**

The September 26, 2019 meeting of the Board of University and School Lands was called to order at 9:05 AM in the Governor's Conference Room 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

Members Absent:

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

Jodi Smith	Commissioner
Catelin Newell	Office Manager
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Division Manager
Allie Nagel	Minerals Division Land Professional
Rick Owings	Grants Administrator
Michael Humann	Surface Division Manager
Joseph Stegmiller	Natural Resources Professional
Susan Dollinger	Unclaimed Property Administrator

Guests in Attendance:

Dave Garner	Attorney General's Office
Matt Sagsveen	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Geoff Simon	Western Dakota Energy Association
Greg Petrick	BNI Coal

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 August 29, 2019 meeting was made by Attorney General Wayne Stenehjem and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmass, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the

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final review findings of the industrial commission.” The contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Acreage Adjustment Township Survey Status attachments were provided to the Board and are available upon request.

Oil and Gas Mineral Estate Assessment

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets’ sheer size, variance in geological aspects, and topography.

The Request for Proposal for the Assessment was released September 20, 2019. The Department will sign an executed contract after January 1, 2020. Once the data is compiled and completed, the findings will be presented to the Board.

General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code. North Dakota Century Code § 28-32-07 states: “Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change.”

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were posted on the Department’s website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was held August 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department’s discussion and proposed revisions to the rules, has been completed and is attached.

The next step in the process is for the Board to approve the amended rules which will then be submitted for review by the Attorney General’s Office. Pending review by the Attorney General’s Office, the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2019, to become effective January 1, 2021.

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Motion: The Board approved the adoption of the attached redline version as amended of the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules and authorize the Commissioner to proceed with finalizing and submitting the proposed rules and required information to the Attorney General for an opinion as to their legality.

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		

Attachments were provided to the Board and are available upon request.

S U R F A C E

County Rents and Prices Survey

In order to provide a uniform and equitable leasing system for trust lands, the Fair Market Value Minimum Rent policy of the Board of University and School Lands was developed and uses a market value approach to establish a minimum opening bid at public auction. A similar method is used to determine the estimated land use asset values of trust lands.

The basis for these methods is a survey of cash rental rates and land prices in North Dakota. A County Rents and Prices survey is conducted annually under a contract funded by the North Dakota Department of Trust Lands (Department) to survey private pastureland, cropland, and hay land cash rents and pasture, crop, and hay prices on a county by county basis in North Dakota. Data is collected during the months of November through February from a survey pool of samples obtained from a list of all North Dakota agricultural owners/producers provided by the United States Department of Agriculture Farm Service Agency. A statistical sample of agricultural producers and owners in each county is contacted and asked to provide opinions as to cash rents and land prices in the county (Attachment 1 - County Rents and Prices Survey Questionnaire).

From 1989, when the Department began conducting this survey, through 2017 the survey was conducted by the United States Department of Agriculture's National Agricultural Statistics Service (NASS) North Dakota Field Office. In the spring of 2017, NASS informed the Department that due to reorganization at the federal level, it would no longer be able to complete the cash rent survey as it had in past years and it would no longer be collecting land price data. County rent data would be collected every other year and if the Department wanted data collected in the off-year, there would be at a substantial cost increase to complete the survey. The Department decided to secure the survey through a Request For Proposal (RFP) using the same data collection and analysis format as in previous years. A vendor, DISC Information Services Corporation (DISC), was secured through the RFP process and DISC completed the survey the past two years (Attachment 2 - 2019 County Rents and Prices Survey). The contract with DISC has been renewed for two more years.

While providing valuable information to the Department, the survey is also used by North Dakota private landowners to establish cash rental rates on their lands. The survey is also used by North

Dakota State University's Agricultural Economics Department in developing annual crop budgets. The survey allows the Department to obtain county rent and price data at a reasonable cost, versus hiring full time appraisers, which is a common practice in some western states. Attached for your information is a copy of the most recent County Rents and Prices survey, the Fact Sheet – How Are Minimum Bids Calculated (Attachment 3 - Fact Sheet), and a land asset value chart (Attachment 4 – Total Value of Land Asset Value Per Acre Growth Chart). Note that Fact Sheet and the land asset value were developed over time from the County Rent and Price Survey.

Attachments were provided to the Board and are available upon request.

Surface Division Overview

The Surface Management Division manages surface acres owned by the various trust funds under the control of the Board of University and School Lands. The major source of income from these lands, that provide revenue to the various trusts comes from grazing and agricultural leases, with significant revenue generated from rights-of-way, surface damage agreements and construction aggregate mining. The objective of surface management is to obtain a "fair market" return from the lands while maintaining or improving their condition and value. The Surface Management Division currently manages approximately 706,600 surface acres, 15,200 acres are leased as cropland and 5,193 acres are leased as improved hay land.

Surface Acres by County					
As of June 30, 2019					
County	Acres	County	Acres	County	Acres
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,517.76	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,892.50	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,421.53	Sheridan	25,826.44
Burleigh	27,891.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,586.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	10,798.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,380.84
Grand Forks	1,274.77	Pierce	13,664.93	Total	706,607.30

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on school trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting, and reclamation.
- Construction Aggregate Mining and Royalties.
- Wind Energy Projects.
- Developing water wells, pipelines, dams and dugouts for livestock water and wildlife enhancement.
- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.
- Seismic permitting.
- Lessee and right-of-way contracts and public inquiries.

The Department reimburses lessees for control of noxious and invasive weeds through a cost-share program. County weed boards and weed officers are involved in the reporting and verification of lessees work on school trust lands.

Total active surface land leases managed by the department is nearly 4,790. Leasing interest continues to be high with over 99 percent of the tracts offered successfully leased. The surface acres managed by the department are inspected at least once during the five-year lease period by trained field inspectors to help with early detection of noxious and invasive weed species and to monitor land integrity. Reclamation inspections on rights-of-ways are also part of the inspections program are conducted by trained field inspectors and company inspectors. Reclamation inspections assist in determining whether a right-of-way having surface disturbance is meeting agreement vegetation standards, erosion and noxious and invasive weed control.

The surface inspection program generates approximately 1,500 tract inspections on an annual basis. These inspections are generally fall integrity inspections, reclamation inspections, livestock grazing, noxious weed, unleased tract and posting inspections. To aid in the inspection of surface acres, the Department has implemented field tablets (Panasonic Toughpads) to collect data remotely and has purchased a small Unmanned Aircraft Vehicle (sUAV). Assistance was provided for a surface division employee (Joseph Stegmiller) to become a FAA Certified Unmanned Aircraft Pilot. Joseph recently received a Geographical Information System (GIS) Certificate from the University of North Dakota Geography Graduate School, which will help the Department utilize the sUAV to provide the following services:

- On demand aerial imagery
- Near-Infrared imagery for pasture health
- 3-D Analysis for aggregate stockpile measurements
- Photos and Videos

Through Joseph's work with the ITD GIS Technical Committee, he has been asked to be part of a discussion panel regarding State Government use of sUAV's at the upcoming Geospatial Summit Conference in Bismarck.

M I N E R A L S

Approval of Surface and Coal Acres – Oliver County, BNI Coal

In accordance with Chapter 1 of the Board of University and School Lands (Board) Minerals Policy Manual relating to coal (Policies), the Board received a nomination from BNI Coal (BNI) for the right to lease 320 surface acres and 320 net coal acres located in: T141N, R84W, Section 16: E½, Oliver County, North Dakota (Attachment 1 - BNI Proposed State Coal Lease Map and Attachment 2 – BNI Coal Nomination of State Tracts Map).

On July 17, 2019, the Board indicated its willingness to lease the tracts and approved BNI's application for surface and coal leases of the E½ of Section 16, T141N, R84W, and directed the Commissioner to begin term discovery and lease negotiations on its behalf.

The Department of Trust Lands (Department) completed due diligence on the title to verify ownership, lease status, legal, etc., to prepare the tracts to be leased. Notice of Application of Coal Lease was posted to the Department's website on July 29, 2019, for fourteen days for public comment. No public comments were received.

The Policies provide that the Department may negotiate the lease terms with the applicant and the application may propose modifications. The Department and BNI negotiated \$100.00 bonus/net surface acre or a total of \$32,000.00 and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease. BNI also offered annual rental payments of \$5.00 per net acre of surface and \$5.00 per net acre of coal. Further, BNI offered \$0.20 per ton of coal mined and removed and a surface royalty of \$0.15 surface royalty per ton of coal mined.

The proposed leases are now presented to the Board for approval (Attachment 3 - Coal Lease-CO-19-00001 and Attachment 4 - Coal Lease-CO-19-00002).

Motion: The Board authorizes the Commissioner to issue two leases covering 320 surface acres and 320 net coal acres, with the negotiated terms including a royalty rate at \$0.20 per ton of coal mined and removed, \$0.15 surface royalty per ton of coal mined, \$100.00 bonus/net surface acre or a total of \$32,000.00, and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease.

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		

Attachments were provided to the Board and are available upon request.

I N V E S T M E N T S

Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement

The proposed Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (Agreement) by and between the Office of the North Dakota Governor and the Board of University and School Lands (Board) to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund was provided at the meeting.

The Agreement provides for the establishment of an investment account maintained by the Board. It provides for the investment of assets as a permanent trust fund and managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04. It further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12.

Motion: That the Board enter into the Asset Management Agreement with the Office of the North Dakota Governor to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund for the prudent investment of the fund assets as a permanent trust fund.

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		

Proposed agreement was provided to the Board and is available upon request.

Investment Policy Statement Review and Update – Second Reading

Per the Board of University and School Land's (Board) Investment Policy Statement (IPS), the Board's 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 it remains relevant with continued asset growth.

At the August 29, 2019, Board meeting a first reading of proposed IPS changes occurred. The majority of the proposed changes to the IPS are to address outdated language and modify the IPS based upon changes the Board has made over the last year.

The substantive changes from 2019 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.
- **Strategic Asset Allocation Target (page 14):** The IPS was updated to include the revised asset allocation targets that were adopted by the Board on May 30, 2019, as a result of the termination of Westwood Holdings Group.
- **Policy Benchmark for the Permanent Trust Funds (page 16):** The policy benchmark for the permanent trusts funds was updated to reflect the new target allocation adopted by the Board on May 30, 2019. In addition, the benchmark used to measure fixed income performance was changed to the Barclays US Universal Index, from the previously blended benchmark. This change more closely aligns the target benchmark for fixed income portion of the portfolio with the current generally US focus of the fixed income portfolio.
- **National Statistical Ratings Organization (NSRO) (page 17):** The definition of a national ratings agency eligible to rate collateralized obligations was expanded to include any NSROs registered with the SEC, not just Moody's and Standard and Poor's.

Motion: The Board approves the amended Investment Policy Statement as presented with additional instruction to further review proxy representation.

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		

Attachment was provided to the Board and is available upon request.

Summary of Investment Fees Paid in Fiscal Year 2019

Report of investment related fees and expenses paid during the fiscal year ended June 30, 2019 was provided to the Board. During fiscal year 2019, the pooled investments of the permanent trusts paid \$22,711,405 of investment fees; the average market value of assets invested was \$4.63 billion for fiscal year 2019. The average fee rate paid for the fiscal year was 0.49% of average assets, or 49.0 basis points. Net of fees, the permanent trust pool realized a total return of 3.87% in fiscal year 2019.

The pooled investments of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, and the Capitol Building Fund paid investment fees of \$247,497 during fiscal year 2019 on an average market value of \$609.8 million. This portfolio paid a graduated fee

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of 6.0 basis points on the first \$500 million and 3.0 basis points thereafter; the portfolio does not pay a custody fee. This investment pool posted a total return of 3.66% net of fees for the fiscal year.

On March 28, 2019, the Board of University and Schools Lands directed the Commissioner to enter into an agreement with Novarca to review the current investment expenses and work with the investment managers to reduce trust fees, subject to final review and approval of all legal documents by the Office of the Attorney General. The Department of Trust Lands (Department) entered into a contract with Novarca in June 2019. Novarca anticipates completing their work in October 2019 and will make recommendations to the Department at that time.

Attachment was provided to the Board and is available upon request.

Other Funds Managed by the Board – 2nd Quarter 2019

Due to delays in getting all necessary and relevant data for the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund, the Other Funds report was not presented to the Board in August.

This report provides the activities of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund during the quarter, as well as the performance of Northern Trust separate investment pool that holds the assets of these three funds.

Attachments were provided to the Board and are available upon request.

R E P O R T S

Report of Easements Issued by Land Commissioner 08/21/2019 to 09/17/2019

Granted to:	AURORA WIND PROJECT, LLC, LENEXA-KS
For the Purpose of:	Easement: Electric-Wind Transmission line
Right-of-Way Number:	RW0008236
Trust:	A- Common Schools
Legal Description:	WIL-157-95-16-NE4, NW4

Granted to:	EMMONS-LOGAN WIND LLC, JUNO BEACH-FL
For the Purpose of:	Easement: Electric-Wind Transmission line
Right-of-Way Number:	RW0008246
Trust:	A – Common Schools
Legal Description:	EMM-133-76-36-SE4

Granted to:	RIVER WATER LLC, WILLISTON-ND
For the Purpose of:	Easement: Drop Line-Raw Water Pipeline
Right-of-Way Number:	RW0008297
Trust:	A – Common Schools
Legal Description:	WIL-155-99-16-NE4, NW4

Granted to:	BATTELLE MEMORIAL INSTITUTE, COLUMBUS-OH
For the Purpose of:	Easement-Amend: Site-Tower Site
Right-of-Way Number:	RW0008362
Trust:	A- Common Schools
Legal Description:	STU-143-67-36-ALL

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Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of:	Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008370
Trust:	A – Common Schools
Legal Description:	MCK-150-97-36-NW4
Granted to:	LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO
For the Purpose of:	Easement: Pipeline-Multiple Pipelines
Right-of-Way Number:	RW0008468
Trust:	A – Common Schools
Legal Description:	BRK-159-93-16-NW4, SW4
Granted to:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX
For the Purpose of:	Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008487
Trust:	A – Common Schools
Legal Description:	MCK-152-97-36-NE4, SE4
Granted to:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX
For the Purpose of:	Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008506
Trust:	A – Common Schools
Legal Description:	MOU-154-93-36-SE4
Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of:	Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008510
Trust:	A – Common Schools
Legal Description:	WIL-155-102-16-NE4
Granted to:	ND GAME & FISH DEPT, BISMARCK-ND
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008520
Trust:	A – Common Schools
Legal Description:	MOR-135-83-36-NE4, SE4, SW4
Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of:	Easement: Drop Line-Gas Gathering Pipeline
Right-of-Way Number:	RW0008525
Trust:	A – Common Schools
Legal Description:	DUN-146-95-36-SE4
Granted to:	LEGACY RESERVES OPERATING LP, CODY-WY
For the Purpose of:	Easement: Well-Salt Water Disposal Well Extension
Right-of-Way Number:	RW0008526
Trust:	A – Common Schools
Legal Description:	GOL-143-103-36-NE4, NW4, SE4
Granted to:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX
For the Purpose of:	Easement: Drop Line-Saltwater Pipeline
Right-of-Way Number:	RW0008537
Trust:	A – Common Schools
Legal Description:	MCK-151-96-36-SE4, SW4

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Granted to:	ELKAN INC, WATFORD CITY-ND
For the Purpose of:	Easement-Amend: Pipeline-Raw Water Pipeline
Right-of-Way Number:	RW0008562
Trust:	A – Common Schools
Legal Description:	MCK-150-98-36-NW4, SW4
Granted to:	ENVIRONMENTAL RESOURCES MANAGEMENT, PORTLAND-OR
For the Purpose of:	Permit: Planning & Preconstruction Survey
Right-of-Way Number:	RW0008568
Trust:	A – Common Schools
Legal Description:	N/A
Granted to:	RIVER WATER LLC, WILLISTON-ND
For the Purpose of:	Easement: Drop Line-Raw Water Pipeline
Right-of-Way Number:	RW0008573
Trust:	A – Common Schools
Legal Description:	WIL-155-99-16-NE4
Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008576
Trust:	A – Common Schools
Legal Description:	MCK-153-94-36-SW4
Granted to:	TRILOGY, LLC, MINOT-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008581
Trust:	A – Common Schools
Legal Description:	MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

E N E R G Y I N F R A S T R U C T U R E A N D I M P A C T O F F I C E

Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 51 grants with a balance of \$19,963,193.67 as of September 13, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
5/31/2019	70	\$28,202,091.20
6/30/2019	63	\$23,780,767.68
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67

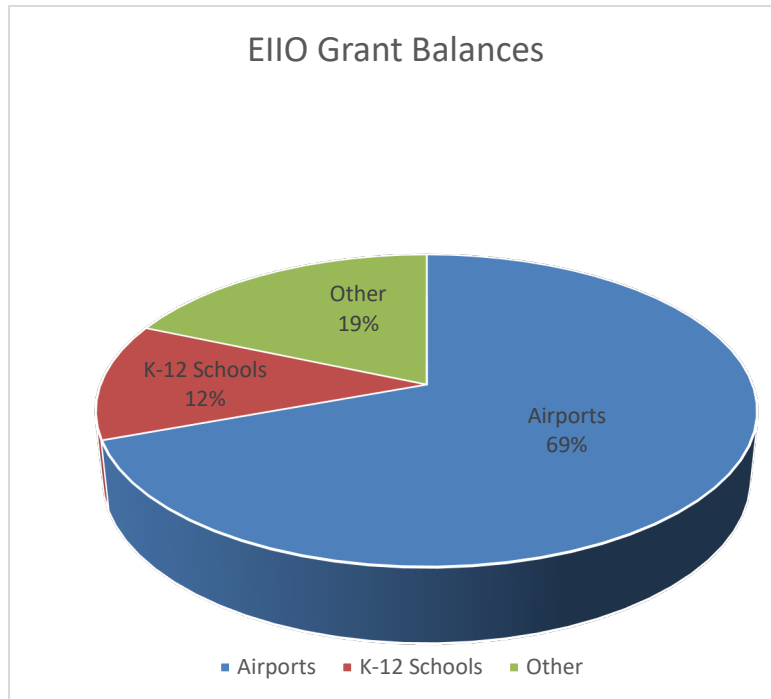
The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,971,638.80 as of September 13, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
5/31/2019	5	\$4,997,365.24
6/30/2019	5	\$4,997,365.24
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80

The Energy Infrastructure and Impact Office is currently managing 55 grants for a total of \$24,934,832.47. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
5/31/2019	70	\$28,202,091.20	5/31/2019	5	\$4,997,365.24	\$33,199,456.44
6/30/2019	63	\$23,780,767.68	6/30/2019	5	\$4,997,365.24	\$28,778,132.92
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



2019-2021 Biennium Funding

N.D.C.C. § 15-01-02(6) provides the Board of University and School Lands has:

Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

The total of appropriated funding for grants to political subdivisions impacted by oil and gas development activities in House Bill 1013 for the 2019-2021 biennium is \$2 million, thus total grants in either fiscal year cannot exceed \$1.2 million.

EIO plans to open a contingency grant round in December 2019, using funds from the \$2 million allocation appropriated by the Sixty-sixth Legislative Assembly. It is anticipated that applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting held in February. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

Unclaimed Property Program Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder's business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

The Department's 2017-2019 biennial budget appropriation included \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly. This included funding to replace the Division's information technology system. On April 29, 2019, the new system was successfully launched. The number of monthly claims issued over the past four months has increased as a result of the more efficient information technology system and increased community education.

For the month of August 2019, the Division received 48 holder reports with a property value of \$119,724.60 and paid 610 claims with a total value of \$374,654.52.

Investment Updates

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of August 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	8/31/19 Actual Allocation \$	8/31/19 Actual Allocation %	8/31/19 % Diff.
Large Cap US Equity	14.5%	\$ 699,647,094	14.6%	0.1%
Mid/Small Cap US Equity	4.0%	\$ 188,529,381	3.9%	-0.1%
International Equity	14.5%	\$ 695,039,186	14.5%	0.0%
Emerging Market Equity	4.0%	\$ 194,060,740	4.0%	0.0%
Total Equities	37.0%	\$ 1,777,276,401	37.1%	0.1%
Core Fixed Income	13.8%	\$ 746,344,972	15.6%	1.8%
Non-Core Fixed Income	9.2%	\$ 360,927,766	7.5%	-1.7%
Total Fixed Income	23.0%	\$ 1,107,272,738	23.1%	0.1%
Total Absolute Return	15.0%	\$ 713,484,855	14.9%	-0.1%
Commodities	3.0%	\$ 145,705,658	3.0%	0.0%
MLPs	3.0%	\$ 143,100,673	3.0%	0.0%
TIPS	2.0%	\$ 98,949,577	2.1%	0.1%
Natural Resource Equities	2.0%	\$ 92,212,978	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 479,968,886	10.0%	0.0%
Core Real Estate	8.0%	\$ 386,152,565	8.1%	0.1%
Core Plus Real Estate	7.0%	\$ 330,698,621	6.9%	-0.1%
Total Real Estate	15.0%	\$ 716,851,186	15.0%	0.0%
Total Asset	100.0%	\$ 4,794,854,066	100.0%	

Angelo Gordon (\$71.61 million, 1.5% of PTF assets as of 8/31/19)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. As of August 31, 2019, the funded capital amounted to \$69.75 million out of the \$150 million commitment.

(09/26/19)

Another \$15 million capital call was recently received and was funded on September 12, 2019, this would bring the amount funded to \$84.75 million out of a total commitment of \$150 million. This represents 56.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Upcoming Investment Manager Meetings

The following meetings with investment managers were planned to discuss updates on strategy, compliance, and performance. It will be held in the Department's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

Oct. 17, 2019, 10:00AM	Gresham Commodities Diversified Inflation Strategies (\$145.7M, 3% of PTF assets)
Oct. 24, 2019, 3:00PM	JP Morgan Non-Core Real Estate (\$133.5M, 2.8% of PTF assets) Nancy Brown, Melissa Anezinis and Jim Sakelaris

Board of University and School Lands Meeting Dates For 2020

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last two hours each month. The quarterly meetings including Investment reporting will begin at 8:00 AM and are expected to last three hours.

The following dates will be shared with Board members' offices for scheduling purposes.

- January 30, 2020 - 9:00 AM
- February 27, 2020 – 8:00 AM
- March 26, 2020 – 9:00 AM
- April 30, 2020 – 9:00 AM
- May 28, 2020 – 8:00 AM
- June 25, 2020 – 8:00 AM
- July 30, 2020 – 9:00 AM
- August 27, 2020 – 8:00 AM
- September 24, 2020 – 9:00 AM
- October 29, 2020 – 9:00 AM
- November 26, 2020 – 8:00 AM Tuesday before Thanksgiving
- December 22, 2020 – 9:00 AM Tuesday before Christmas Eve

LITIGATION

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 10:50 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Newfield Exploration Company et al Civ. No. 27-2018-CV-00143
- Northwest Landowners Association Civ. No. 05-2019-CV-00085
- William S. Wilkinson et al. Case No. 53-2012-CV-00038
- Paul Sorum et al. Civ. No. 09-2018-CV-00089

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer

Members Absent:

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

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Allie Nagel	Land Professional

(09/26/19)

Guests in Attendance:

Reice Haase	Governor's Office
Matt Sagsveen	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

The executive session adjourned at 11:50 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 Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:50 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
October 28, 2019**

The October 28, 2019 meeting of the Board of University and School Lands was called to order at 10:01 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction (Via phone)

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Susan Dollinger	Unclaimed Property Administrator
Peggy Gudvangen	Accounting
Adam Otteson	Revenue Compliance
Tiffany Grossman	Attorney

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Brent Sanford	Lt. Governor
Reice Haase	Governor's Office
Mike Nowatzki	Governor's Office
Rachel Kmetz	Office of Management and Business
Joe Morrisette	Office of Management and Business
Renae Bloms	Office of Management and Business
Ron Tolstad	State Auditor's Office
Mindy Piatz	Brady Martz and Associates
Mark Hanson	Nilles Law Office (Via teleconference for Sorum case only)

APPROVAL OF MINUTES

A motion to approve the minutes of the September 26, 2019 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

R E P O R T S

Report of Encumbrances Issued by Land Commissioner 9/18/2019 to 10/22/2019

Granted to:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	Permit: Road-Access Road
Right-of-Way Number:	RW0007018
Trust:	A-Common Schools
Legal Description:	WIL-153-99-21-SE4 WIL-153-99-22-S2

Granted to:	AURORA WIND PROJECT, LLC, LENEXA-KS
For the Purpose of:	Easement: Electric-Wind Transmission line
Right-of-Way Number:	RW0008236
Trust:	A-Common Schools
Legal Description:	WIL-157-95-16-N2

Granted to:	BATTELLE MEMORIAL INSTITUTE, COLUMBUS-OH
For the Purpose of:	Easement-Amend: Site-Tower Site
Right-of-Way Number:	RW0008362
Trust:	A-Common Schools
Legal Description:	STU-143-67-36-ALL

Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Easement: Well-Subsurface Well Bore
Right-of-Way Number:	RW0008489
Trust:	A-Common Schools
Legal Description:	MCK-150-98-36-SE4

Granted to:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX
For the Purpose of:	Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008506
Trust:	A-Common Schools
Legal Description:	MOU-154-93-36-SE4

Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of:	Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008510
Trust:	A-Common Schools
Legal Description:	WIL-155-102-16-NE4

Granted to:	GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX
For the Purpose of:	Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008512
Trust:	A-Common Schools
Legal Description:	MCK-150-95-16-NE4

Granted to:	LEGACY RESERVES OPERATING LP, CODY-WY
For the Purpose of:	Easement: Well-Salt Water Disposal Well Extension
Right-of-Way Number:	RW0008526
Trust:	A-Common Schools
Legal Description:	GOL-143-103-36-N2, SE4

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK

Permit: Road-Access Road

RW0008536

A-Common Schools

WIL-153-99-22-W2SE4 Less acres condemned

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

CENEX PIPELINE LLC, LAUREL-MT

Permit: Temporary Construction

RW0008547

A-Common Schools

MOU-155-91-36-NW4

MOU-155-92-36-N2

MOU-155-94-36-N2

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

HESS BAKKEN INVESTMENTS II LLC, HOUSTON-TX

Easement: Pipeline-Multiple Pipelines & Communication Cable

RW0008554

A-Common Schools

WIL-158-95-36-E2

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

HESS WATER SERVICES LLC, HOUSTON-TX

Easement: Pipeline-Pipeline & Communication Cable

RW0008564

A-Common Schools

WIL-158-95-36-S2

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

PRIMA EXPLORATION INC, DENVER-CO

Assignment: Well-Directional Wellsite

RW0008566

A-Common Schools

DIV-161-100-36-S2

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

NORTH RANGE RESOURCES LLC, DICKINSON-ND

On-lease Act. Amend: Well-Vertical Oil Well

RW0008582

A-Common Schools

MCK-146-100-36-S2

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

NORTH RANGE RESOURCES LLC, DICKINSON-ND

On-lease Act. Amend: Well-Horizontal Oil Well

RW0008583

A-Common Schools

MCK-146-100-36-SW4

Granted to:

For the Purpose of:

Right-of-Way Number:

Trust:

Legal Description:

XTO HOLDINGS, LLC, SPRING-TX

Easement: Well-Subsurface Well Bore

RW0008585

A-Common Schools

MOU-154-94-16-SW4

Granted to:	HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008590
Trust:	A-Common Schools
Legal Description:	MCK-148-99-16-NE4
Granted to:	PURITY OILFIELD SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008591
Trust:	A-Common Schools
Legal Description:	MOU-155-92-16-S2
Granted to:	ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND
For the Purpose of:	Easement: Maintenance Yards
Right-of-Way Number:	RW0008593
Trust:	A-Common Schools
Legal Description:	BIL-142-101-36-SW4
Granted to:	FALKIRK MINING COMPANY, BISMARCK-ND
For the Purpose of:	Permit: Coal Exploration
Right-of-Way Number:	RW0008597
Trust:	A-Common Schools
Legal Description:	N/A
Granted to:	CENEX PIPELINE LLC, LAUREL-MT
For the Purpose of:	Easement-Amend: Pipeline-Oil Transmission Pipeline
Right-of-Way Number:	RW0008601
Trust:	A-Common Schools
Legal Description:	MOU-155-94-36-NE4
Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008602
Trust:	A-Common Schools
Legal Description:	MCK-149-96-16-E2, SW4
Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008607
Trust:	A-Common Schools
Legal Description:	WIL-156-101-16-N2 WIL-156-102-16-N2
Granted to:	ROLETTE COUNTY, SAINT JOHNS-ND
For the Purpose of:	Letter of Permission: Access to School Land
Right-of-Way Number:	RW0008608
Trust:	A-Common Schools
Legal Description:	ROL-161-70-16-NW4

Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008609
Trust:	A-Common Schools
Legal Description:	MCK-153-94-16-W2

Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 41 grants with a balance of \$17,695,025.25 as of October 11, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
6/30/2019	63	\$23,780,767.68
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67
10/11/2019	41	\$17,695,025.25

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,940,103.06 as of October 11, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

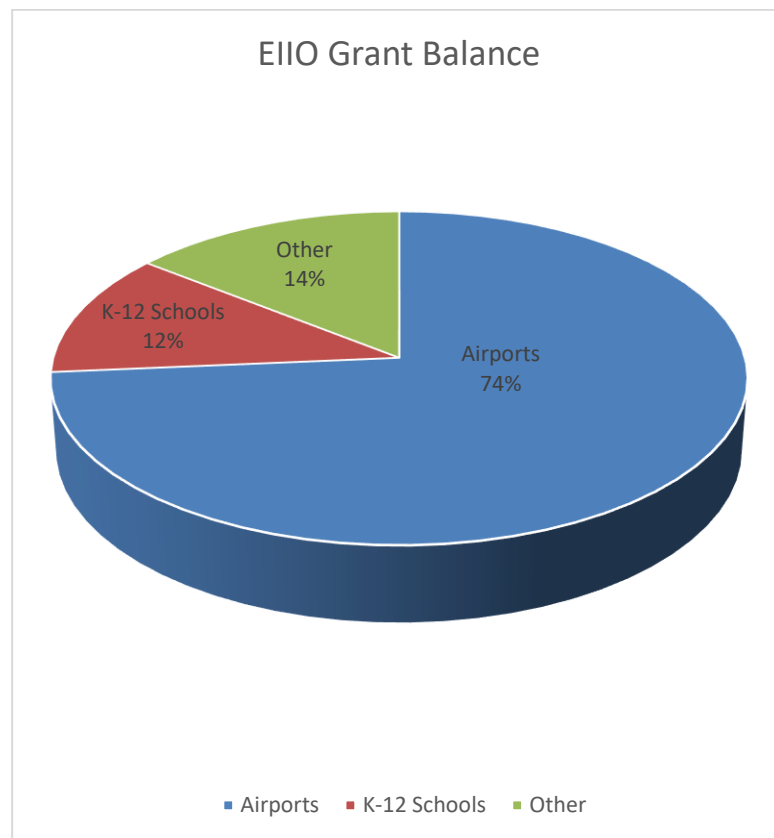
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6/30/2019	5	\$4,997,365.24
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06

The Energy Infrastructure and Impact Office is currently managing 45 grants for a total of \$22,635,128.31. The following shows grant activity for the last four months:

(10/28/19)

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
6/30/2019	63	\$23,780,767.68	6/30/2019	5	\$4,997,365.24	\$28,778,132.92
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47
10/11/2019	41	\$17,695,025.25	10/11/2019	4	\$4,940,103.06	\$22,635,128.31

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



Unclaimed Property Program Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder's business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State

and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

On October 2-3, 2019, Kelmar, the unclaimed property software vendor, visited the Division to ensure the software was being used to its utmost capability. Kelmar identified various opportunities for improvement that the Division immediately implemented. Of significance is Kelmar's observation of the Department's office support staff. Kelmar noted this team set the "gold standard" with its procedures and is recommending unclaimed property agencies across the nation adopt the procedures North Dakota has implemented to meet the standard.

For the month of September 2019, the Division received 69 holder reports with a property value of \$537,854 and paid 423 claims with a total value of \$380,628 (this is an increase from 227 claims with a total value of \$183,884 in in September 2018.)

Investment Update

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of September 30, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	9/30/19 Actual Allocation \$	9/30/19 Actual Allocation %	9/30/19 %Diff.
Large Cap US Equity	14.5%	\$ 711,760,196	14.6%	0.1%
Mid/Small Cap US Equity	4.0%	\$ 192,492,891	3.9%	-0.1%
International Equity	14.5%	\$ 714,366,214	14.7%	0.2%
Emerging Market Equity	4.0%	\$ 197,940,985	4.1%	0.1%
Total Equities	37.0%	\$ 1,816,560,286	37.3%	0.3%
Core Fixed Income	13.8%	\$ 758,597,599	15.6%	1.8%
Non-Core Fixed Income	9.2%	\$ 376,200,604	7.7%	-1.5%
Total Fixed Income	23.0%	\$ 1,134,798,203	23.3%	0.3%
Total Absolute Return	15.0%	\$ 723,514,285	14.8%	-0.2%
Commodities	3.0%	\$ 149,434,113	3.1%	0.1%
MLPs	3.0%	\$ 144,565,467	3.0%	0.0%
TIPS	2.0%	\$ 97,523,827	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 92,162,624	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 483,686,031	9.9%	-0.1%
Core Real Estate	8.0%	\$ 386,152,565	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 330,698,621	6.8%	-0.2%
Total Real Estate	15.0%	\$ 716,851,186	14.7%	-0.3%
Total Asset	100.0%	\$ 4,875,409,991	100.0%	

Angelo Gordon (\$86.61 million, 1.5% of PTF assets as of 9/30/19)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. A \$15 million capital call was funded on September 12, 2019, which brought the amount funded to \$84.75 million out of a total commitment of \$150 million. This represents 56.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Theodore Roosevelt Presidential Library and Museum Endowment Fund

On September 30, 2019, \$15M of the Theodore Roosevelt Presidential Library Endowment Fund was invested into the permanent trust pool.

Upcoming Investment Manager Meetings

The following meetings with investment managers were planned to discuss updates on strategy, compliance, and performance. Meetings will be held at DTL's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

November 4, 2019, 2:00PM	Van Eck Natural Resources Equities Diversified Inflation Strategies (\$92.1M, 1.9% of PTF assets)
November 5, 2019, 8:00AM	Schroders Securitized Credit Non-Core Fixed Income (\$116.5M, 2.4% of PTF assets)
November 5, 2019, 10:30AM	PIMCO All Asset All Authority Fund (PAUIX) Absolute Return Strategies (\$358.5M, 7.4% of PTF assets)

O P E R A T I O N S

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission." The contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Survey graph and map were provided to the Board and are available upon request.

General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

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

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Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were posted on the Department's website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was held August 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, has been completed and is attached.

The Board approved the amended rules on September 29, 2019, which was then be submitted for review by the Attorney General's Office. Pending review by the Attorney General's Office, the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2019, to become effective January 1, 2021.

Financial Management and Accounting System Information Technology Project Status Update

The Departments' 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

The Department's financial management and accounting (FMA) system is designed to meet the comprehensive needs for financial accounting and financial management. The intention is to implement a new system that will completely replace the current FMA application and tools, largely developed in-house. Currently, the Department has multiple customized systems and manual processes to support its financial responsibilities.

On October 11, 2019, the Department's Executive Steering Committee approved the Department moving forward with Microsoft Dynamics as the solution for the FMA System. The Department will purchase licenses from the North Dakota IT Department. Additionally, the Department will work with an implementation vendor who is already under contract with the State of North Dakota. The FMA system will require integration with the future land management system as this will be the source of all trust land assets' revenue and customer payment calculations.

Once the Department has identified a vendor to implement Microsoft Dynamics, a project implementation plan will be created and a go-live date determined.

Government Accounting Standards Board Statement

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department has been tasked with evaluating the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board.

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography.

The Request for Proposal for the Assessment was released September 20, 2019. The Department will sign an executed contract after January 1, 2020. Once the data is compiled and completed, the findings will be presented to the Board.

The Department looks forward to the opportunity to lead the nation in this effort, as no other state agency or federal entity has embarked on such an endeavor to accurately summarize the estimated value of their assets.

Under the direction of the Board, the Department will coordinate efforts with the Office of Management and Budget (OMB), the State Auditor's Office, and external audit groups to review modifying the Department's accounting principles relating to the treatment of subsurface assets as an investment. This change requires implementation of the Governmental Accounting Standards Board (GASB) Statement 72 – Fair Value Measurement and Application, as it relates to all subsurface assets to be recognized, and determination of the impact on the State's Comprehensive Annual Financial Report (CAFR). It is reasonable to assume there will be a significant cost increase in the annual auditing fees paid by the Department for the annual financial statement audit required by OMB in preparation for the CAFR.

Disaster Response Action Items

Governor Doug Burgum signed an executive order declaring a statewide flood emergency on Monday, October 21, 2019, paving the way for requests for federal assistance to help North Dakotans deal with significant flooding impacts caused by heavy fall rains and a historic October blizzard.

There are several opportunities for the Board to partner with the Governor to aid those impacted by the flooding.

Energy Infrastructure and Impact Office

The Energy Infrastructure and Impact Office (EIIO), formerly known as the Energy Development and Impact Office was legislatively organized in 1975 as the Coal Development Impact Office. The Oil and Gas Impact Grant Program, established to address oil and gas developments, began in 1981. In 1989 the EIIO was combined with the Department and the EIIO is currently under the Board's direction.

The purpose of the Energy Impact Grant Program is to provide financial assistance to local units of government experiencing adverse impacts as a direct result of oil and gas activity.

N.D.C.C. § 15-01-02(6) provides the Board:

Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

In House Bill 1013, the Sixty-sixth Legislative Assembly appropriated \$2 million for grants to political subdivisions impacted by oil and gas development activities for the 2019-2021 biennium; thus total grants in either fiscal year cannot exceed \$1.2 million. The EIIO plans to open a

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contingency grant round in December 2019, using funds from appropriated under House Bill 1013. It is anticipated that applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting in February. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

In 2011, the Sixty-second Legislative Assembly appropriated \$30 million during the November 2011 Special Session to address needs resulting from the 2011 flood events. The EIIO was designated to implement a grant program to address impacts not funded by other state or federal response programs or insurance coverage. Should the current Legislative Assembly allocate additional funding to the EIIO, the Department is prepared to distribute that funding.

Farm Loan Pool

The Farm Loan Pool (FLP) was created in 1977 with the passage of Senate Bill 2106 (SB 2106). SB 2106 was one of two bills passed during the legislative session that restructured responsibilities of the Bank of North Dakota (BND) and the Board to better fit each agency's core competencies. Senate Bill 2110 gave control of the state's sovereign minerals to the Board, while SB 2106 turned farm lending functions previously performed by the Board over to BND, to administer on behalf of the Board. Currently, BND is administering 46 loans at a current value of \$9,906,553 on the Board's behalf.

The Board's Loan Pool Account Policy provides:

Renegotiation. [BND] is authorized to renegotiate the terms of mortgages in the loan pool account as follows:

1. Only prospective restructuring is allowed;
2. No principal or accrued interest may be forgiven; and
3. [BND] must follow sound banking practices in all debt restructuring and renegotiations.

[BND] is also authorized to renegotiate loans which are current when the borrower has asked for an interest rate concession due to competition in the marketplace. Any such renegotiation must be consistent with sound banking practices and the renegotiated rate must be within the guidelines for new borrowers.

The Department is currently working to identify specific borrowers who may need assistance due to flooding from BND.

Surface Leases

The Department's Surface Division leases and manages surface acres held in trust for various schools and institutions.

The major source of income on these lands comes from agricultural leases, with grazing being the predominant land use. The Surface Division manages close to 5,000 agricultural leases with most of these leases for grassland with over 98% of the 706,609 acres leased. Acres that consistently flood are monitored by the Department's Field Inspectors and rents are adjusted accordingly. If excessive flooding occurs Lessees need to contact the Department for a formal review and rents can be adjusted accordingly.

Additionally, during extreme weather conditions Lessees can contact the Department and receive and emergency waiver to feed livestock on land leased by the Board.

LITIGATION

Vitesse

Case: Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266;

Date Filed: June 11, 2019

Court: McKenzie County District Court

Judge: Robin Schmidt

Attorney: David Garner

Opposing Counsel: Lawrence Bender, Spencer Ptacek

Issues: On June 7, 2019, the Attorney General's Office was served with a complaint in the above referenced case. This case is requesting a judgment be entered under Chapter 32-12 of the North Dakota Century Code quieting title in Leases in favor of Plaintiffs; a judgment be entered under Chapter 32-12 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands based on the force majeure provision of the Board's lease; that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction, prohibiting Defendants from selling or attempting to sell new leases covering the oil and gas in and under the Subject Lands or otherwise interfering with Plaintiffs exclusive right to explore for and produce the same; and that Plaintiffs be awarded their costs and reasonable attorney fees.

History: The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General's Office on June 7, 2019. The action was filed on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019.

Current Status:

- A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order.
- Lessee's Motion for Leave to Amend complaint filed October 14, 2019.

Continental

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.

History: 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. Continental served discovery and Defendants' answers to the discovery were served on February 8, 2019. The parties filed a Joint Status Report on March 15, 2019. Defendants' Supplemental Answers to Plaintiffs' Interrogatories were served on Plaintiff on April 12, 2019. Motions for Summary Judgment were scheduled to be due on August 16, 2019. On July 29, 2019, Defendants filed an Expedited Motion for Extension of Time to File Motion for Summary Judgment, Brief and proposed Order. On July 31, 2019, the Court entered its Order Granting Extension of Time to File Motion for Summary Judgment until August 30, 2019. Plaintiff and Defendants filed a Joint Motion for Stay on August 21, 2019, requesting the Court stay all proceedings pending the North Dakota Supreme Court's resolution of the petition for rehearing in the Newfield lawsuit.

Current Status:

- On August 22, 2019, the Court entered its Order Granting Joint Motion for Stay staying the matter pending the North Dakota Supreme Court's resolution of the Newfield case. Within 14 days of resolution, the parties are to submit a joint status report proposing a plan for proceeding in this matter.
- On October 4, 2019, Continental filed an Unopposed Motion for Extension of Time to Provide Joint Status Report until October 18, 2019.
- The parties filed a Joint Motion to Extend Stay and a proposed Order Granting Joint Motion to Extend Stay on October 18, 2019.
- The Court signed the Order Granting Joint Motion to Extend Stay on October 21, 2019.

Continental Interpleader

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, John S. Most

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 involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic 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.

History: 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 that the interpleader action is moot under S.B. 2134.

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 reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” A January 10, 2019 docket entry provides “Deadlines and Hearings Terminated.” The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019, due to appointment of Magistrate Judge Clare Hochalter, replacing Magistrate Judge Charles Miller, and the recusal of Shaun Pettigrew of the Environment and Natural Resources Division of the Department of Justice, with John S. Most as his replacement. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019.

**Current
Status:**

- On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim.
- By August 13, 2019, the United States shall assert its claims, if any, to the disputed stake.
- After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court.
- During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved.
- By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case.
- A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter.
- On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter.
- On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file.
- The United States filed their Answer to Amended Complaint on August 27, 2019.
- On October 3, 2019, Defendants filed a joint motion and memorandum for postponement of the October 11, 2019 status conference by 90 days.
- On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter.
- United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal.

Wilkinson

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.

History:

Due to the passage of S.B. 2134, the District 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 North Dakota Industrial Commission (NDIC). 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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State’s Motion for Proposed

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Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019.

**Current
Status:**

Newfield

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.

History:

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 was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On

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September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court.

**Current
Status:**

- **A Telephonic Status Conference was held October 8, 2019.**
- **On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered “the parties to file a brief regarding how they suggest the case proceed after the Supreme Court’s decision.”**

Sorum

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, 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.

History: 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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed

Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs.

**Current
Status:**

- The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019.
- In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 10:41 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- William S. Wilkinson et al. Case No. 53-2012-CV-00038
- Newfield Exploration Company et al Civ. No. 27-2018-CV-00143
- Paul Sorum et al. Civ. No. 09-2018-CV-00089

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
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(10/28/19)

Kristie McCusker
Kate Schirado
Adam Otteson

Paralegal
Administrative Assistant
Revenue Compliance

Guests in Attendance:

Brent Sanford
Leslie Bakken Oliver
Reice Haase
Dave Garner
Mark Hanson

Lieutenant Governor
Governor's Legal Counsel
Governor's Office
Attorney General's Office (Wilkinson and Newfield only)
Nilles Law Office (Via teleconference for Sorum only)

The executive session adjourned at 11:32 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 Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:32 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
November 26, 2019**

The November 26, 2019 meeting of the Board of University and School Lands was called to order at 9:01 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction
Kelly Schmidt	State Treasurer (Via phone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Peggy Gudvangen	Accounting
Adam Otteson	Revenue Compliance
Tiffany Grossman	Attorney
Michael Shackelford	Investments
Vicki Siegel	Accounting

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Brent Sanford	Lt. Governor
Reice Haase	Governor's Office
Ryan Monson	Brady Martz and Associates
Charles Carvell	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum case only)
Geoff Simon	Western Dakota Energy Association
Amy Sisk	Bismarck Tribune
Chris Friez	North American Coal
David Straley	North American Coal

APPROVAL OF MINUTES

A motion to approve the minutes of the October 28, 2019 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

R E P O R T S**Report of Encumbrances Issued by Land Commissioner 10/23/19 to 11/15/19**

Granted to:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	Easement: Well-Directional Wellsite Location – Off Lease
Right-of-Way Number:	RW0007656
Trust:	A – Common Schools
Legal Description:	MCK-153-94-16-NE4,NW4,SW4
Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	On-lease Act. Amend: Well-Horizontal Oil Well
Right-of-Way Number:	RW0008195
Trust:	A – Common Schools
Legal Description:	DUN-148-97-36-SW4
Granted to:	ELKAN INC, WATFORD CITY-ND
For the Purpose of:	Easement: Pipeline-Raw Water Pipeline
Right-of-Way Number:	RW0008480
Trust:	A – Common Schools
Legal Description:	MCK-148-98-16-NE4
Granted to:	RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND
For the Purpose of:	Easement: Communication-Buried Cable
Right-of-Way Number:	RW0008527
Trust:	A – Common Schools
Legal Description:	MCK-149-104-36-ALL
Granted to:	HESS NORTH DAKOTA PIPELINES, LLC, HOUSTON-TX
For the Purpose of:	Easement: Pipeline-Multiple Pipelines & Communication Cable
Right-of-Way Number:	RW0008542
Trust:	A – Common Schools
Legal Description:	WIL-156-95-16-ALL
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number:	RW0008548
Trust:	A – Common Schools
Legal Description:	MCK-149-95-16-NW4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement: Electric-Above Ground Distribution Line
Right-of-Way Number:	RW0008587
Trust:	A – Common Schools
Legal Description:	MCK-149-95-16-NW4

Granted to: **SHORELINE CONSULTING, SOUTH HEART-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008595
Trust: A – Common Schools
Legal Description: MOU-152-92-14-SE4

Summary of Oil & Gas Lease Auction

On behalf of the Board of University and School Lands, the Department of Trust Lands conducted an oil and gas mineral lease auction on www.energynet.com which concluded on November 5, 2019.

There were 95 tracts offered, all received competitive bids. The highest bid per acre was \$663.00 for 160 net acres in Williams County.

Chart of County – Acres Auctioned – Bonus Received

November 2018					
	Total Acres		Total Bonus		Bonus/Acres
BILLINGS	4149.33	\$	365,822.58	\$	88.16
BURKE	1447.95	\$	34,602.97	\$	23.90
DIVIDE	240.00	\$	7,040.00	\$	29.33
MCKENZIE	2652.96	\$	109,695.13	\$	41.35
WILLIAMS	957.13	\$	356,231.73	\$	372.19
GRAND TOTAL	9447.37	\$	873,392.41	\$	92.45

Chart of Trust – Acres Auctioned

Tracts Offered	Trust	Acres
61	Common Schools	7235.63
1	School for the Deaf	21.75
1	State Hospital	80
30	Bank of ND	1989.99
2	NDSU	120
95		9447.37

There were 32 bidders registered, 23 of which submitted bids in the seven-day auction. Bidders were from 10 states (CA, CO, IN, MN, MT, ND, NV, TX, WA, and WY).

A total of \$873,393.41 of bonus was collected from the auction.

North Dakota Board of University and School Lands Financial Position Report for period ended September 30, 2019 and were provided to the Board and are available from the Department.

Unclaimed Property Program Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder's business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

(11/26/19)

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of October 2019, the Division received 1,058 holder reports with a property value of \$5,069,798 (the marked increase in holder reports is due to the November 1st reporting deadline) and paid 2,440 claims with a total value of \$1,130,154.

Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 40 grants with a balance of \$17,164,734.70 as of November 15, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67
10/11/2019	41	\$17,695,025.25
11/15/2019	40	\$17,164,734.70

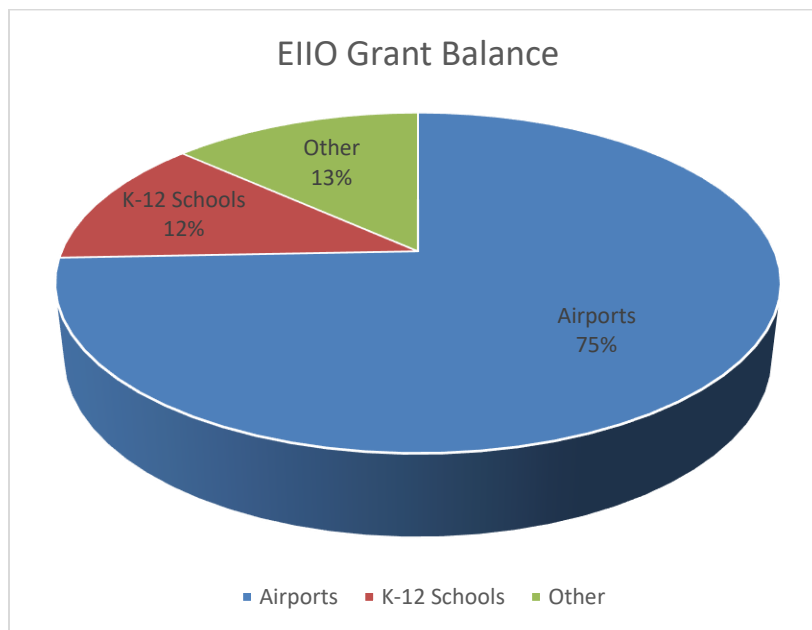
The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,793,191.14 as of November 15, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06
11/15/2019	4	\$4,793,191.14

The Energy Infrastructure and Impact Office is currently managing 44 grants for a total of \$21,957,925.84. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47
10/11/2019	41	\$17,695,025.25	10/11/2019	4	\$4,940,103.06	\$22,635,128.31
11/15/2019	40	\$17,164,734.70	11/15/2019	4	\$4,793,191.14	\$21,957,925.84

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



Investment Update

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of October 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	10/31/19 Actual Allocation \$	10/31/19 Actual Allocation %	9/30/19 % Diff.
Large Cap US Equity	14.5%	\$ 726,857,170	14.7%	0.2%
Mid/Small Cap US Equity	4.0%	\$ 194,864,057	3.9%	-0.1%
International Equity	14.5%	\$ 737,484,432	14.9%	0.4%
Emerging Market Equity	4.0%	\$ 205,906,331	4.2%	0.2%
Total Equities	37.0%	\$ 1,865,111,990	37.7%	0.7%
Core Fixed Income	13.8%	\$ 744,257,916	15.0%	1.2%
Non-Core Fixed Income	9.2%	\$ 398,220,201	8.0%	-1.2%
Total Fixed Income	23.0%	\$ 1,142,478,117	23.1%	0.1%
Total Absolute Return	15.0%	\$ 734,606,174	14.8%	-0.2%
Commodities	3.0%	\$ 152,157,076	3.1%	0.1%
MLPs	3.0%	\$ 137,367,359	2.8%	-0.2%
TIPS	2.0%	\$ 97,805,272	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 91,427,051	1.8%	-0.2%
Total Inflation Strategies	10.0%	\$ 478,756,758	9.7%	-0.3%
Core Real Estate	8.0%	\$ 392,016,685	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 335,468,622	6.8%	-0.2%
Total Real Estate	15.0%	\$ 727,485,307	14.7%	-0.3%
Total Asset	100.0%	\$ 4,948,438,346	100.0%	

Angelo Gordon (\$103.6 million, 2.1% of PTF assets as of 10/31/19)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. Two \$18.75 million capital call was called with one funded last October 24, 2019 and another to be funded on November 21, 2019. After both funding, this would bring the total funded to Angelo Gordon at 81.50% of total capital commitment or \$122.25 million out of \$150 million.

According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Upcoming Investment Manager Meetings

There are no upcoming meetings with investment managers scheduled as of this time.

OPERATIONS

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter

basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission.” The contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Survey graph and map were provided to the Board and are available upon request.

Audited Financial Statements for the Year Ended June 30, 2019

Brady Martz Certified Public Accountants and Consultants has completed its review of the financial statements of the Department of Trust Lands for the year ended June 30, 2019 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: www.nd.gov/auditor/trust-lands-nddepartment and on the Department of Trust Lands website at: www.land.nd.gov.

Attachment – Department of Trust Lands Audited Financial Statement Fiscal Year 2019 were provided to the Board and are available upon request.

Board of University and School Lands Policy Manual

The Board of University and School Lands currently has a Policy Manual (Board Policy Manual) which includes the following sections:

1. Governance
 - Policy
2. Surface Land Management
 - Surface Land Management Policy Manual
 - Fair Market Value (FMV) Policy
3. Investments
 - Loan Pool Policy
4. Minerals
 - Minerals Policy Manual
 - Chapter 1 - Coal
 - Chapter 2 – Oil and Gas

The Board also has an Investment Policy Statement that has not been officially included in the Board Policy Manual.

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

Many of the current Board policies have been revised for inclusion in the proposed Administrative Rules, including the majority of both the Surface Land Management Policy Manual and the Minerals Policy Manual. Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were reviewed by the Attorney General’s Office and are currently scheduled to be presented to the Administrative Rules

Committee on December 3, 2019, to become effective January 1, 2020. If those rules become effective January 1, 2020, it will be necessary to simultaneously repeal the current Board Policy Manual and adopt the proposed revised Board Policy Manual, which would include Governance, Definitions, Fair Market Value Policy, Farm Loan Policy, and the Investment Policy Statement.

In addition to the repeal of those policies that will become part of the Administrative Rules, other non-substantive changes have been made as to removal of definitions no longer part of the Board Policy Manual, formatting, and abbreviations. Changes are noted in the red-lined version of the prior policies. The revised Board Policy Manual will incorporate those changes and will be provided at the December Board meeting.

If the Administrative Rules become effective January 1, 2020, the revised Board Policy Manual will simultaneously become effective. Should the Administrative Rules not become effective January 1, 2020, there will be no repeal of the current Board Policy Manual and the proposed revised Board Policy Manual will not be effective. Therefore, the repeal of the Board Policies is contingent on the Administrative Rules being adopted and the revised Board Policy Manual would take effect the date the Administrative Rules are implemented.

The Commissioner is requesting the Board provide input on the proposed revised North Dakota Board of University and School Lands Policies. This is the “first reading” of the proposed policies, with suggestions being taken into consideration and a “second reading” to occur on December 18, 2019.

Attachments were provided to the Board and are available upon request.

I N V E S T M E N T S

Investment Policy Statement – Securities Litigation Update – First Reading

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019, Board meeting the current IPS was adopted. During the following weeks the Commissioner and staff continued to review the Securities Litigation and Shareholder Legal Action section of the IPS that requires a change.

The Commissioner’s discussions with the State Investment Board (SIB) and Retirement Investment Office (RIO) regarding a recent class action lawsuit revealed an opportunity to combine resources and assets on future class action lawsuits. Particularly, when taking on “lead plaintiff” status is determined to be advantageous to the trusts. This along with the onboarding of the securities litigation monitoring and claims filing service, Financial Recovery Technologies (FRT), as approved by the Board in August 2018, touched off a broader review of the securities litigation section.

FRT has reviewed and provided guidance on our policy as provided in our agreement.

As such, we are asking to revise the IPS’s Securities Litigation and Shareholder Legal Action section, specifically to:

1. Replace “custodian” with “designated agent” when referring to the monitoring of class action lawsuits.

(11/26/19)

2. Provide for more detailed expectations of the designated agent and for the department to monitor the designated agent's performance.
3. Expand the criteria for "active participation" in class action lawsuits and harmonizes the IPS securities litigation policy with SIB's to:
 - a. Clarify the Commissioner will only initiate active participation with the consent of the Board.
 - b. Set a dollar threshold of \$5,000,000 of estimated loss for active participation and allows for the combining of assets with SIB.
 - c. Review of the merits of the claim and the factual basis for the action.
 - d. Review of the defendant's or its insurer's ability to pay claims.
 - e. Consider of the potential costs of taking such action.
4. Engage specialized legal counsel in accordance with relevant statute.
5. Note the hiring of a securities litigation monitoring and claims filing firm (designated agent).
6. List the criteria for the Board to consider joining litigation in Non-US/Canada jurisdictions (language provided by FRT).

Attachment – Investment Policy Statement – Securities Litigation Section (redline version) were provided to the Board and are available upon request.

Investment Policy Statement – Proxy Voting Update – First Reading

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019 Board meeting the current IPS was adopted. During the following weeks the State Treasurer, Commissioner and staff have discussed modifying the proxy voting section of the IPS to ensure investment managers continue to vote shares in a manner that is to the best interest of the trusts as it relates to environmental, social and governance (ESG) issues. ESG has become a tool for some large investors who are pushing managers to use proxy votes to virtue signal, particularly on environmental issues related to oil and gas exploration and production.

As such, it is recommended the IPS's Proxy Voting section be revised. The revision makes clear that the Board expects proxy votes on behalf of the trusts to be:

1. "...in a manner consistent with the long-term interests and objectives of the investment program."
2. "...based solely on enhancing or protecting long-term value to the assets under its control and not on establishing or endorsing social policy."
3. "...only those factors that relate to the economic value of the Board's investments and shall not subordinate the interests of the Funds to unrelated objectives."

The revision also requires that:

1. "Managers shall submit written reports to the Commissioner by December 31 of each year advising of the manner in which each proxy was voted during the preceding calendar year and notify the Commissioner of controversial matters which may be subject to proxy voting."
2. "...the Commissioner [specifically the investment staff] shall regularly review related proxy votes by the Managers. Any proxy votes deemed by the Commissioner to be contrary to the interests of the Funds under the Board's responsibility, shall be fully explained by the Manager in writing and brought to the Board for its review."

If approved after a second reading, the Commissioner will transmit the new policy to all of the investment managers currently managing funds on the Board's behalf.

Attachment – Investment Policy Statement – Proxy Voting Section (redline version) were provided to the Board and are available upon request.

Capitol Building Fund Asset Management Agreement

The Capitol Building Fund Asset Management Agreement (Agreement) is between the Capitol Grounds Planning Commission (Commission) and the Board of University and School Lands (Board) to manage the assets of the Capitol Building Fund (Fund).

In accordance with its duties under N.D.C.C. § 48-10-02 the Commission is formally entering into an asset management agreement with the Board. The Agreement acknowledges the establishment of an investment account maintained by the Board. It provides for the investment of assets in a manner similar to the Strategic Investment and Improvement Fund (SIIF) and other funds subject to regular legislative appropriations. The Fund is to be managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04.

Motion: **That the Board enter into the Asset Management Agreement with the Capitol Grounds Planning Commission to manage the assets of the Capitol Building Fund for the prudent investment of the fund assets in a manner similar to the SIIF.**

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		

Attachment – Capitol Building Fund Asset Management Agreement provided to the Board and is available upon request.

MINERALS

Federal Coal Exchange

The Department of Trust Lands (Department) has been evaluating the potential of exchanging federal coal for coal owned and managed by the Board of University and School Lands (Board). This opportunity would provide mutual economic benefits for both the Federal Government and the Board by allowing both to control larger contiguous tracts and by potentially protecting more sensitive areas or points of historic significance. It would also allow for more efficient mining operations by the coal industry. The Department is currently working to determine appropriate acreage for the potential exchange. Once adequate acreage is identified, the Department will determine title on the tracts to ensure the Board has 100% ownership.

The Department's next step will be to bring fully vetted tracts to the Board for review and approval. Once the Board has approved the potential coal exchange tracts, the Department will engage in a federal exchange process that will require federal approval.

Motion: The Board grant approval for the Commissioner to identify potential tracts for a coal acreage exchange with the Federal Government. The identified tracts will be brought to the Board for approval prior to submission to the Federal Government.

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		

Performance Audit - Correction of Mineral Tracts Update

One of the critical findings identified during the 2016 Performance Audit Report Number 3036c was the mistaken trust assignment for multiple mineral tracts.

A trust is assigned to every surface tract and mineral tract managed by the Board of University and School Lands (Board). Except in rare circumstances, when the state owns both the surface and mineral rights to a tract the same trust is assigned. The Department of Trust Lands (Department) land management information technology system contains information related to the tracts under the Board's management and a trust is assigned to each tract. The Department relies on these trust assignments in the databases to credit revenues generated by the tracts to the respective trusts.

When the Department began developing and transitioning to electronic databases in the 1980's, information related to tracts and the assigned trusts was manually entered. The Department has relied on the information in the databases as being correct. However, it appears there was confusion related to the trust names. When the trusts were originally established at statehood, one trust was designated as the "Industrial" trust and one was designated as the "Reform" trust. Thereafter, legislative changes renamed those trusts as follows: the "Industrial" trust was designated as the "Ellendale" trust and the "Reform" trust was designated as the "Industrial" trust. When the data was manually entered into the databases, the information was mistakenly entered based on the original designation, causing misallocation.

As a result of the audit finding, the Department commenced a detailed review of the historical records of all mineral tracts. The Department manages approximately 33,801 tracts; however, a full audit of the tracts identified as Bank of North Dakota or sovereign lands was not completed. Therefore, approximately 20,129 tracts were reviewed to determine accurate trust allocation.

The Department reviewed historical records to determine the investment income and operating expenses associated with the misapplied financial assets and reimbursed the appropriate trusts.

The Department worked with the Attorney General's Office to ensure that the mechanism of correcting net assets and past distributions when trusts were incorrectly assigned to tracts was being done consistently and appropriately.

To date, the agency has spent 3.5 years on this project, tracking 2,411 hours (or the equivalent of 1.2 full-time FTEs.) After historical records were reviewed it was found that 218 tracts were misallocated (0.01%), and 134 tracts need title curative. As a result of the title curative that has been completed to date, 13 new tracts have been added to the assets management by the Department and 53 tracts still need title examination. Additionally, these corrections resulted in \$2.6 million being reallocated to the proper trust.

(11/26/19)

While all the tracts have been reviewed and all necessary trust adjustments have been completed, this project will be complete upon conclusion of the title curative and the index cards have been scanned.

LITIGATION

Vitesse Litigation

Case: Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266;

Date Filed: June 11, 2019

Court: McKenzie County District Court

Judge: Robin Schmidt

Attorney: David Garner

Opposing Counsel: Lawrence Bender, Spencer Ptacek

Issues: On June 7, 2019, the Attorney General's Office was served with a complaint in the above referenced case. This case is requesting a judgment be entered under Chapter 32-12 of the North Dakota Century Code quieting title in Leases in favor of Plaintiffs; a judgment be entered under Chapter 32-12 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands based on the force majeure provision of the Board's lease; that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction, prohibiting Defendants from selling or attempting to sell new leases covering the oil and gas in and under the Subject Lands or otherwise interfering with Plaintiffs exclusive right to explore for and produce the same; and that Plaintiffs be awarded their costs and reasonable attorney fees.

History: The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General's Office on June 7, 2019. The action was filed on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019.

Current Status:

- Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019.

Continental Interpleader Litigation

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 Daniel Hovland**
Attorney: **Charles Carvell, David Garner, and Jen Verleger**
Opposing Counsel: **Lawrence Bender, David Ogden, Paul Wolfson, John S. Most**

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 involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic 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.

History: 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 that the interpleader action is moot under S.B. 2134.

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 reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” A January 10, 2019 docket entry provides “Deadlines and Hearings Terminated.” The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint

Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019, due to appointment of Magistrate Judge Clare Hochhalter, replacing Magistrate Judge Charles Miller, and the recusal of Shaun Pettigrew of the Environment and Natural Resources Division of the Department of Justice, with John S. Most as his replacement. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memorandum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal.

**Current
Status:**

- On November 8, 2019, the Board received an email from the US DOJ in response to the Board's request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: "Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law." Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: "we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible."

Wilkinson Litigation

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.

History:

Due to the passage of S.B. 2134, the District 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 North Dakota Industrial Commission (NDIC). 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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State’s Motion for Proposed Scheduling Order and Plaintiffs’ Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State’s Motion for Proposed Scheduling Order and Plaintiff’s Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn’t rule on the scheduling motions but granted Plaintiffs’ request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs’ filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court’s calendar), and proposed Order Granting Plaintiffs’ Motion for Summary Judgment. On April 17, 2019, Plaintiffs’ filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs’ Motion for Summary Judgment and Plaintiffs’ Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants’ time to respond to June 14, 2019, and extending Plaintiffs’ deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs’ Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs’ Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer’s Response to Brief in Opposition to Plaintiffs’ Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs’ Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff’s filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs’ Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on

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September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019.

**Current
Status:**

- **Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019.**

Newfield Litigation

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 - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP**

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.

History: 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 was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of

Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision."

**Current
Status:**

- **The parties filed briefs with the District Court on November 6, 2019.**
- **Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019.**

M I N E R A L S

Repayment of Unpaid Gas Royalties

For over a decade, the Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board of University and School Land's lease, rules, and policies.

In 2012, the Department sent letters to operators and lessees who reported deductions for royalties paid. In July 2017, letters were sent to all operators and lessees regarding the proper method to calculate gas royalties. Companies who were audited and found to be non-complaint with the proper calculation of gas royalties, as outlined in the July 2017 letter, received audit finding letters. All companies who have continued to be non-compliant have received additional communication regarding the proper calculation of gas royalties.

The Department's 2016 performance audit found the Department was not consistently issuing penalties and interest and recommended a policy be established. The Department adopted an internal policy regarding penalties and interest. Additionally, the Board of University and School Lands (Board) adopted a policy regarding penalties and interest, which is included in our proposed Administrative Rules.

Current Department and Board policy requires all late royalty payments be assessed the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed. The Department's revenue compliance procedures are configured to calculate and generate interest and penalty notices in accordance with these policies.

Under the Board's rules and policies once penalties and interest over \$25,000 are assessed for late payment of royalties, only the Board can modify the amount.

N.D.C.C. § 47-16-39.1 provides interest may not be applied on royalties that were escrowed since this statute permits the suspension of interest payments “in the event of a dispute of title existing that would affect distribution of royalty payments”

Recommendation: The Board delegates the Commissioner to determine gas royalty repayments as discussed.

No formal action was taken at this time.

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

L I T I G A T I O N

Sorum Litigation

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, 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.

History: 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

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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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs' proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs' Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and

service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019.

**Current
Status:**

- **Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019.**
- **A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019.**
- **The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019.**

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 10:14 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- Continental Resources, Inc. et al. Case No. 1:17-cv-00014
- William S. Wilkinson et al. Case No. 53-2012-CV-00038
- Newfield Exploration Company et al Civ. No. 27-2018-CV-00143
- Gas Royalty Repayment Penalty and Interest
- Paul Sorum et al. Civ. No. 09-2018-CV-00089

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		

EXECUTIVE SESSION**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction
Kelly Schmidt	State Treasurer (Via Phone)

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance

Guests in Attendance:

Brent Sanford	Lieutenant Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Office
Dave Garner	Attorney General's Office
Charles Carvell	Attorney General's Office (Continental Interpleader only)
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

The executive session adjourned at 11:03 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:04 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
December 18, 2019**

The December 18, 2019 meeting of the Board of University and School Lands was called to order at 8:00 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel Present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance
Tiffany Grossman	Attorney
Michael Shackelford	Investments
David Shipman	Minerals
Rick Owings	EIIO
Mike Humann	Surface

Guests in Attendance:

Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Brent Sanford	Lt. Governor
Josh Kevan	RVK
Ron Ness	ND Petroleum Council
Mark Hanson	Nilles Law Office (Via teleconference for Sorum case only)
Amy Sisk	Bismarck Tribune

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 November 26, 2019 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

R E P O R T S

Report of Encumbrances Issued by Land Commissioner 11/16/2019 to 12/10/2019

Granted to:	WEST DAKOTA WATER LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008589
Trust:	A – Common Schools
Legal Description:	MCK-149-98-16-NE4, NW4, SE4
(12/18/19)	

Granted to: **HILAND CRUDE LLC, HOUSTON-TX**
 For the Purpose of: Easement: Drop Line-Oil Gathering Pipeline
 Right-of-Way Number: RW0008603
 Trust: A – Common Schools
 Legal Description: WIL-157-99-36-SE4

Granted to: **AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008621
 Trust: A – Common Schools
 Legal Description: WIL-158-95-36-NW4, SW4

Granted to: **WEST DAKOTA WATER LLC, WILLISTON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008623
 Trust: A – Common Schools
 Legal Description: WIL-156-97-16-S2SW4 LESS THE N 248 FT

Granted to: **ND GEOLOGICAL SURVEY, BISMARCK-ND**
 For the Purpose of: Permit: Rare Earth Elements Exploration
 Right-of-Way Number: RW0008630
 Trust: A – Common Schools
 Legal Description: SLO-136-102-16-NE4

Summary of Fall Surface Lease Auctions

The 2019 fall lease auctions were completed at the beginning of November. The following table is a summary of the fall lease results as compared to the last fall we leased which was 2017; every 5 years we have an “off” year that we do not hold fall auctions.

	2017	2019
Number of counties	40	34
Total tracts offered	891	1146
Number of tracts bid unleased	37	78
Number of tracts bid-up	115	146
Total amount of minimum advertised bids	\$1,689,266	\$2,546,925
Total amount received	\$1,875,340	\$2,418,748
Total amount collected over minimum bid	\$238,381	\$128,177

All payments from the fall auctions have cleared and no issues remain. Commissioner Smith has approved the leases on behalf of the Board of University and School Lands.

The 78 unleased tracts will be offered again in March of 2020 at the regional spring auctions.

**North Dakota Game and Fish Department Request to Purchase Trust Land Under NDCC
Ch 15-09**

The North Dakota Game and Fish Department has submitted an application to the Board and University School Lands (Board) to purchase 114 acres in the E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ section 16, T130N, R50W, Richland County for a shooting range and wildlife management area under authority of N.D.C.C. Chapter 15-09 which allows for the purchase of Trust land by public entities for public purposes. An appraisal has been requested from Richland County as required under N.D.C.C. Chapter 15-09 and a second appraisal will be completed by a qualified commercial real estate appraiser to determine the value of the property at its highest and best use.

Map was provided to the Board and is available upon request.

Unclaimed Property Program Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder's business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of November 2019, the Division received 647 holder reports with a property value of \$3,330,950.99 and paid 444 claims with a total value of \$201,550.86.

Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 36 grants with a balance of \$15,477,345.77 as of December 9, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
8/31/2019	51	\$19,963,193.67
10/11/2019	41	\$17,695,025.25
11/15/2019	40	\$17,164,734.70
12/9/2019	36	\$15,477,345.77

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,793,191.14 as of December 9, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06
11/15/2019	4	\$4,793,191.14
12/9/2019	4	\$4,793,191.14

The Energy Infrastructure and Impact Office is currently managing 40 grants for a total of \$20,270,536.91. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47
10/11/2019	41	\$17,695,025.25	10/11/2019	4	\$4,940,103.06	\$22,635,128.31
11/15/2019	40	\$17,164,734.70	11/15/2019	4	\$4,793,191.14	\$21,957,925.84
12/9/2019	36	\$15,477,345.77	12/9/2019	4	\$4,793,191.14	\$20,270,536.91

Investment Update

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of November 30, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	11/30/19 Actual Allocation \$	11/30/19 Actual Allocation %	11/30/19 % Diff.
Large Cap US Equity	14.5%	\$ 754,315,903	15.1%	0.6%
Mid/Small Cap US Equity	4.0%	\$ 202,207,970	4.1%	0.1%
International Equity	14.5%	\$ 749,251,190	15.0%	0.5%
Emerging Market Equity	4.0%	\$ 205,491,510	4.1%	0.1%
Total Equities	37.0%	\$ 1,911,266,573	38.3%	1.3%
Core Fixed Income	13.8%	\$ 731,839,196	14.7%	0.9%
Non-Core Fixed Income	9.2%	\$ 413,438,734	8.3%	-0.9%
Total Fixed Income	23.0%	\$ 1,145,277,930	22.9%	-0.1%
Total Absolute Return	15.0%	\$ 734,158,733	14.7%	-0.3%
Commodities	3.0%	\$ 152,034,281	3.0%	0.0%
MLPs	3.0%	\$ 132,922,285	2.7%	-0.3%
TIPS	2.0%	\$ 97,945,550	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 91,541,188	1.8%	-0.2%
Total Inflation Strategies	10.0%	\$ 474,443,304	9.5%	-0.5%
Core Real Estate	8.0%	\$ 392,016,685	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 335,468,622	6.7%	-0.3%
Total Real Estate	15.0%	\$ 727,485,307	14.6%	-0.4%
Total Asset	100.0%	\$ 4,992,631,847	100.0%	

Upcoming Investment Manager Meetings

The following meeting with investment manager were planned to discuss updates on strategy, compliance, and performance. Meetings will be held at DTL's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

December 20, 2019, 9:00AM

Northern Trust Asset Management

SIIF/Capitol/Coal (\$727.4M, 100% of assets)

Diversified Inflation Strategies (\$97.9M, 2% of PTF Assets)

January 28, 2019, 9:00AM

DFA EM All Cap Core Fund (DFCEX)

Emerging Market Equity (\$102.8M, 2.1% of PTF assets)

O P E R A T I O N S

General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

(12/18/19)

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code.

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were posted on the Department's website, publication of a notice of intent was completed, and copies of the rules were sent to sponsoring legislators. A public hearing on the rules was held August 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, was completed.

The Board approved the amended rules on September 26, 2019, which were then submitted for review by the Attorney General's Office. The Attorney General's Office reviewed the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules. Those rules were presented to the Administrative Rules Committee on December 3, 2019 and will become effective January 1, 2020. A final version of the Administrative Rules will be posted on the Department's website.

Board of University and School Lands Policy Manual

The Board of University and School Lands (Board) currently has a Policy Manual (Board Policy Manual). The Board also has an Investment Policy Statement that has not been officially included in the Board Policy Manual.

Many of the current Board policies have been revised for inclusion in the Administrative Rules, including the majority of both the Surface Land Management Policy Manual and the Minerals Policy Manual. Those rules were presented to the Administrative Rules Committee on December 3, 2019, and those rules are scheduled to become effective January 1, 2020. Thus, it is necessary to simultaneously repeal the current Board Policy Manual and adopt the proposed revised Board Policy Manual, which would include Governance and revisions to the following sections: General (Definitions), Surface Land Management (to remove those policies that were incorporated into Administrative Rules), Investments (revisions to the Farm Loan Policy and the Investment Policy Statement), and Minerals (to remove those policies that were incorporated into Administrative Rules). Changes were noted in the red-lined version of the prior policies which was presented to the Board on November 26, 2019. Those revised portions are attached and are before the Board for a second reading.

Motion: The Board adopt the proposed revisions to the North Dakota Board of University and School Lands Policy Manual to become effective January 1, 2020.

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		

North Dakota Board of University and School Lands revised policies for placement in the revised Board Policy Manual were provided to the Board and are available upon request.

Energy Infrastructure and Impact Office (EIIO) Contingency Grant

On September 26, 2019, the Board was presented that EIIO plans to open a contingency grant round in December 2019, using funds from the \$2 million allocation appropriated by the Sixty-sixth Legislative Assembly. The grant round was opened on December 2, 2019, applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting held in February 2020. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

The Energy Infrastructure and Impact Office recommends the following members be re-appointed to serve on the Contingency Grant Advisory Committee:

Dan Kalil, Williston Township Supervisor- Williams County
 Jay Elkin, Stark County Commissioner- Stark County
 Gary Weisenberger, Mayor of Stanley- Mountrail County
 Philip Riely, Mayor of Watford City- McKenzie County
 Reinhard Hauck, Dunn County Commissioner- Dunn County
 Mark Spooner, Border Township Supervisor- Divide County
 Dave Wegner, Beach PSD #3 Superintendent- Golden Valley County
 Marcia Lamb, Billing County Auditor- Billings County

New appointment to the committee:

Kari Enget, Powers Lake Ambulance- Burke County

EIIO Director Jodi Smith recommends re-appointment and appointment of these community leaders to the Contingency Grant Advisory Committee.

Motion: The Board approves the Contingency Grant Advisory Committee members, listed above, to make recommendations to the Land Board on contingency Energy Infrastructure and Impact grants.

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

INVESTMENTS

Investment Policy Statement – Securities Litigation Update

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019, Board meeting the current IPS was adopted. During the following weeks the Commissioner and staff continued to review the Securities Litigation and Shareholder Legal Action section of the IPS that requires a change.

The Commissioner's discussions with the State Investment Board (SIB) and Retirement Investment Office (RIO) regarding a recent class action lawsuit revealed an opportunity to combine resources and assets on future class action lawsuits. Particularly, when taking on "lead plaintiff" status is determined to be advantageous to the trusts. This along with the onboarding of the securities litigation monitoring and claims filing service, Financial Recovery Technologies (FRT), as approved by the Board in August 2018, touched off a broader review of the securities litigation section.

FRT has reviewed and provided guidance on our policy as provided in our agreement.

As such, we are asking to revise the IPS's Securities Litigation and Shareholder Legal Action section, specifically to:

1. Replace "custodian" with "designated agent" when referring to the monitoring of class action lawsuits.
2. Provide for more detailed expectations of the designated agent and for the department to monitor the designated agent's performance.
3. Expand the criteria for "active participation" in class action lawsuits and harmonizes the IPS securities litigation policy with SIB's to:
 - a. Clarify the Commissioner will only initiate active participation with the consent of the Board.
 - b. Set a dollar threshold of \$5,000,000 of estimated loss for active participation and allows for the combining of assets with SIB.
 - c. Review of the merits of the claim and the factual basis for the action.
 - d. Review of the defendant's or its insurer's ability to pay claims.
 - e. Consider of the potential costs of taking such action.
4. Engage specialized legal counsel in accordance with relevant statute.
5. Note the hiring of a securities litigation monitoring and claims filing firm (designated agent).
6. List the criteria for the Board to consider joining litigation in Non-US/Canada jurisdictions (language provided by FRT).

Motion: The Board adopt the proposed North Dakota Board of University and School Lands Securities Litigation Policy.

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

Redline version was provided to the Board and is available upon request.

M I N E R A L S

Determination of Cottonwood Lake Navigability, Williams County

The Department of Trust Lands (Department) received a written request addressed to the North Dakota State Water Commission and the Commissioner of the Board of University and School Lands (Board) from Kraken Oil & Gas II, LLC, dated November 15, 2019, requesting the State "either disclaim ownership based on non-navigability, or, if your initial determination is that the lake

may be navigable, to commence proceedings pursuant to the newly adopted provisions in NDCC ch. 61-33.”

The Sixty-Sixth Legislative Assembly passed House Bill 1202, an act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Under N.D.C.C. § 61-33-02, “[a]ll sovereign lands of the state must be administered by the state engineer and the [Board] subject to the provisions of this chapter.” Under N.D.C.C. § 61-33-06, the Board “shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.” Under N.D.C.C. § 61-33-05, the State Engineer is tasked with making navigability determinations.

The State Engineer is currently soliciting proposals for the search, collection, and presentation of evidence necessary for the State Engineer to make and support a determination of navigability or non-navigability of certain lakes and streams in the state.

Motion: The Board formally request the State Water Commission determine the navigability of Cottonwood Lake in Williams County.

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		

LITIGATION

Sorum Litigation

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, 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.

History:

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 were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff’s filed a letter on March 7, 2019, advising the Court that they felt Defendants’ proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff’s proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs’ proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs’ Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants’ Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs’ intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants’ Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs’ Proposed Order and Judgment (Plaintiffs’ Amended Proposed) and Reply to Plaintiffs’ Response to Defendants’ Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants’ Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs’ filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs’ Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to

(12/18/19)

Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019.

**Current
Status:**

- **Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019.**
- **A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019.**
- **The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019.**

Wilkinson Litigation

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

(12/18/19)

**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.

History:

Due to the passage of S.B. 2134, the District 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 North Dakota Industrial Commission (NDIC). 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

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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. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019.

**Current
Status:**

- **Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019.**

M I N E R A L S

Repayment of Unpaid Gas Royalties

For over a decade, the Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board of University and School Land's lease, rules, and policies.

In 2012, the Department sent letters to operators and lessees who reported deductions for royalties paid. In July 2017, letters were sent to all operators and lessees regarding the proper method to calculate gas royalties. Companies who were audited and found to be non-complaint with the proper calculation of gas royalties, as outlined in the July 2017 letter, received audit finding letters. All companies who have continued to be non-compliant have received additional communication regarding the proper calculation of gas royalties.

The Department's 2016 performance audit found the Department was not consistently issuing penalties and interest and recommended a policy be established. The Department adopted an internal policy regarding penalties and interest. Additionally, the Board of University and School Lands (Board) adopted a policy regarding penalties and interest, which is included in our proposed Administrative Rules.

Current Department and Board policy assesses the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed on all late royalty payments unless a request is made to the Commissioner to negotiate the interest rate. The Department's revenue compliance procedures are configured to calculate and generate interest and penalty notices in accordance with these policies.

Under the Board's rules and policies once penalties and interest over \$25,000 are assessed for late payment of royalties, only the Board can modify the amount.

N.D.C.C. § 47-16-39.1 provides interest may not be applied on royalties that were escrowed since this statute permits the suspension of interest payments "in the event of a dispute of title existing that would affect distribution of royalty payments"

Recommendation: The Board delegates the Commissioner to determine gas royalty repayments as discussed.

No formal action was taken at this time.

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

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 8:41 AM.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- **Gas Royalty Repayment Penalty and Interest**

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		

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
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance
Kristie McCusker	Paralegal

Guests in Attendance:

Brent Sanford	Lieutenant Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

The executive session adjourned at 10:00 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 Gas Royalty Repayment Penalty and Interest.

I N V E S T M E N T S

October Investment Reports – 3rd Quarter 2019

Josh Kevan from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending October 31, 2019.

The first report to be 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.

Next, Josh will touch on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK provided report copies to the Board and are available upon request.

Survey of Sovereign Wealth Funds

Josh Kevan from RVK will provide the Board some insight and perspectives from RVK's Survey of US Sovereign Wealth Funds.

RVK conducted a survey of US Sovereign Wealth Funds in order to gain additional understanding of the unique structures of the US based funds. The Survey covers the domestic peer group to the permanent trusts.

The presentation includes information gathered by RVK via the survey and interviews with senior investment staff across the various funds, RVK consulting teams that serve those funds, and publicly available data covering: fund objectives, assets allocation, performance, constraints, spending models, and governance and decision making structures.

RVK provided report copies to the Board and are available upon request.

A D J O U R N

There being no further business, the meeting was adjourned at 11:00 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

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