

**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. EIO 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. EIO 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

(01/31/19)

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.**

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

(01/31/19)

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

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