

**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

(02/28/19)

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 Boards 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		

LITIGATION

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

(02/28/19)

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