

**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, Westlind
 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

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%	

(03/28/19)

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.**

LITIGATION

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**

(03/28/19)

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 tayed 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

(03/28/19)

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