

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

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

Members Present:

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

Department of Trust Lands Personnel present:

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

Guests in Attendance:

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

A P P R O V A L O F M I N U T E S

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

O P E R A T I O N S

Administrative Rules

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

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

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

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

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

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

R E P O R T S

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

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

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

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

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

Granted to: **BASIN ELECTRIC POWER COOP INC, BISMARCK-ND**
For the Purpose of: Easement: Electric Transmission Line
Right-of-Way Number: RW0008450
Trust: A - Common Schools
Legal Description: MER-145-88-16-NW4
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<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>TESORO HIGH PLAINS PIPELINE CO LLC, SAN ANTONIO-TX Easement: Drop Line-Oil Gathering Pipeline RW0008460 A - Common Schools DUN-146-95-36-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>MARATHON OIL COMPANY INC, DICKINSON-ND On-lease Act. Amend: Drop Line-Mult Pipe & Comm Cable RW0008467 A - Common Schools DUN-146-95-36-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>PRAIRIE SOIL CONSULTING LLC, BISMARCK-ND Permit: Planning & Preconstruction Survey RW0008469 A - Common Schools N/A</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND Easement: Drop Line-Buried Electric Distribution Line RW0008481 A - Common Schools MCK-151-96-36-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>MCKENZIE ENERGY PARTNERS LLC, WATFORD CITY-ND Easement: Salt Water Disposal Well - Extension RW0008485 A - Common Schools WIL-156-95-16-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT Easement: Drop Line-Gas Gathering Pipeline RW0008488 A - Common Schools DUN-146-94-36-SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>ROUGH RIDER ELECTRIC COOP, INC., DICKINSON-ND Easement: Electric Transmission Line RW0008504 A - Common Schools BIL-144-98-16-SE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>B O B ENTERPRISES LLC, KILLDEER-ND Letter of Permission: Temporary Water Layflat Line RW0008505 A - Common Schools DUN-146-95-16-NE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>BIRD WATCHERS DIGEST, MARIETTA-OH Letter of Permission: Access to School Land RW0008509 A - Common Schools STU-142-68-16-SW4</p>

Granted to: **BIRD CONSERVANCY OF THE ROCKIES, FORT COLLINS-CO**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008515
 Trust: A - Common Schools
 Legal Description: SIO-130-83-10-SW4
 SIO-130-83-9-SE4

Granted to: **CRESCENT POINT ENERGY US CORP, DENVER-CO**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008516
 Trust: A - Common Schools
 Legal Description: WIL-157-100-16-E2NE4,E2W2NE4

Granted to: **ND ENERGY SERVICES INC, DICKINSON-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008517
 Trust: A - Common Schools
 Legal Description: DUN-146-95-36-SE4

Granted to: **WEST DAKOTA WATER LLC, WILLISTON-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008521
 Trust: A - Common Schools
 Legal Description: WIL-156-100-16-NE4, NW4, SW4
 WIL-156-100-9-S2SE4

Granted to: **US FISH & WILDLIFE SERVICE, BISMARCK-ND**
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008522
 Trust: A - Common Schools
 Legal Description: GOL-139-103-36-SE4 SE OF RD
 MCK-147-101-16-NE4
 MCK-149-99-16-NE4, NW4
 SLO-136-102-16-SE4NW4, LOTS 1,2,3, SW4
 SLO-136-103-36-NE4, NW4

Granted to: **HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND**
 For the Purpose of: Letter of Permission: Temporary Water Layflat Line
 Right-of-Way Number: RW0008523
 Trust: A - Common Schools
 Legal Description: MOU-154-93-36-SE4, SW4

Granted to: **CENEX PIPELINE LLC, LAUREL-MT**
 For the Purpose of: Permit: Temporary Construction
 Right-of-Way Number: RW0008531
 Trust: A - Common Schools
 Legal Description: WIL-156-97-36-SE4

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

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I N V E S T M E N T S

Asset Allocation

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

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

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

Direct Lending Fund

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

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

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

Absolute Return

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

Upcoming Investment Manager Meetings

The following meetings with investment managers are planned to discuss strategy, compliance, and performance. They will be held in the Department's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

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

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 District Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the North Dakota Industrial Commission (NDIC). Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. The telephonic status conference scheduled for November 2, 2018 was cancelled. A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 2018. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. **On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed**

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in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. The hearing on the Motion for Summary Judgment is scheduled for 2 p.m. on July 30, 2019.

Case: **Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC v. State of North Dakota, ex rel. the North Dakota Board of University and School Lands and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143**

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

Counsel: Lawrence Bender and Spencer Ptacek/Fredrikson & Byron, P.A.

Judge: Robin Schmidt

Issues: Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board's lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

Current Status:

A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court. The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the North Dakota Supreme Court was filed April 29, 2019. **Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019.**

Case: Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266; Filed June 11, 2019
Court: McKenzie County District Court
Judge: Robin Schmidt
Attorney: David Garner
Opposing Counsel: Lawrence Bender, Spencer Ptacek

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

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

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

EXECUTIVE SESSION

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

- **Wilkinson**
- **Newfield**
- **Vitesse**
- **State of Washington Legislation**

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

EXECUTIVE SESSION**Members Present:**

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

Department of Trust Lands Personnel present:

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

Guests in Attendance:

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

The executive session adjourned at 9:45 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Wilkinson, Newfield, Vitesse and the State of Washington Legislation litigation.

A D J O U R N

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

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands