

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

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

Members Present:

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

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

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

Guests in Attendance:

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

APPROVAL OF MINUTES

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

LITIGATION

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

EXECUTIVE SESSION

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

- **Sorum**

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

EXECUTIVE SESSION

Members Present:

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

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant

Guests in Attendance:

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

The executive session adjourned at 9:26 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Sorum litigation.

MINERALS MANAGEMENT DIVISION

Nomination of Coal Acres – Oliver County BNI Coal

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

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

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

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

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

OPERATIONS

Annual Performance Review

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

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

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

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

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

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

(07/17/19)

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

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

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

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

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

(2) Information Technology

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

(3) Culture

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

(4) Managing Litigation

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

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

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

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

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

Strategic Investment and Improvements Fund - Assigned Fund Balance

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

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

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

Basis for the Assigned Fund Balance

The adoption of Senate Bill 2134 (SB 2134) in 2017 by the Sixty-fifth Legislative Assembly, codified as N.D.C.C. ch. 61-33.1, provided for a determination of the OHWM for certain stretches of the Missouri River. The bill directed the North Dakota Industrial Commission (NDIC) to review a stretch (07/17/19)

of river to determine the location of the OHWM pursuant to specific criteria established by the Legislature.

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

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

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

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

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

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

SURFACE MANAGEMENT DIVISION

Aurora Wind Project LLC, Wind Energy Easement Agreement

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

As local approval was obtained and the Public Service Commission issued the Certificate of Site Compatibility for the Project, a Wind Energy Easement Agreement (Easement Agreement) (Attachment 2 – Easement Agreement) has been negotiated with Tradewind Energy, Inc., for the Project to place up to six (6) wind turbines on trust lands in Williams County northwest of Tioga, North Dakota (Attachment 3 – Aurora Wind Energy Project Maps). The wind turbines will be located as follows: two (2) potential turbines - one (1) primary and one (1) alternate - located on the E2 Section 16, T158N, R96W; one (1) primary wind turbine on the N2 Section 36, T158N, R96W; and three (3) potential turbines – one (1) primary and two (2) alternate - located on the S2 Section 16, T159N, R97W. The NE4 Section 16, T158N, R97W will also be included in the wind farm for set-back purposes, but there will be no turbines at this location. All proposed turbine locations on trust lands will be 4.8 megawatt machines and the primary turbine locations are suitable for the 4.8-megawatt machines. The alternate sites are being evaluated to determine site stability for the 4.8-megawatt machines.

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

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

Term:

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

Compensation:

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

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

(07/17/19)

The compensation rates negotiated for the Easement Agreement are consistent with what other landowners will be paid for agreements within the Project. Consequently, revenue to the Common Schools Trust Fund for the turbine and land payment when the Project becomes operational will yield a combined initial minimum annual payment for three (3) turbines of \$83,200.00 and a potential initial minimum annual payment of \$155,200 should six (6) turbines be located on trust land.

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

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

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

Surface Land Lease Revisions

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

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

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

All remaining changes involved grammatic and formatting changes.

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

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

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

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

LITIGATION

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

EXECUTIVE SESSION

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

- Continental Interpleader
- Newfield

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

EXECUTIVE SESSION

Members Present:

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

Members Absent:

Kelly Schmidt	State Treasurer
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Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal

(07/17/19)

Kate Schirado
Adam Otteson

Administrative Assistant
Revenue Compliance Division Manager

Guests in Attendance:

Brent Sanford
Leslie Bakken Oliver
Reice Haase
Dave Garner
Charles Carvel

Lt. Governor
Governor's Legal Counsel
Governor's Office
Attorney General's Office
Special Assistant AG

The executive session adjourned at 10:16 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Continental Interpleader and Newfield litigation.

A D J O U R N

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

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands