Minutes of the Meeting of the
Board of University and School Lands
January 28, 2021

The January 28, 2021 meeting of the Board of University and School Lands was called to order at 9:00 AM via Microsoft Teams by Chairman Doug Burgum. All meeting attendees were via Microsoft Teams.

Members Present:
Doug Burgum Governor
Alvin A. Jaeger Secretary of State
Wayne Stenehjem Attorney General
Thomas Beadle State Treasurer
Kirsten Baesler Superintendent of Public Instruction

Department of Trust Lands Personnel present:
Jodi Smith Commissioner
Dennis Chua Investment Analyst
Christopher Dingwall Mineral Title Specialist
Scott Giere Revenue Compliance Auditor
Peggy Gudvangen Accounting Division Director
Mike Humann Surface Division Director
Roman Knudsvig Department Intern
Jacob Lardy Trust Lands Specialist
Kristie McCusker Paralegal
Catelin Newell Administrative Staff Officer
Adam Otteson Revenue Compliance Director
Rick Owings EIIO Grants Administrator
Michael Shackleford Investments Director
David Shipman Minerals Division Director
Lynn Spencer Mineral Title Specialist
James Wald Legal Council

Guests in Attendance:
Dave Garner Office of the Attorney General
Leslie Bakken Oliver Governor’s Legal Counsel
Reice Haase Office of the Governor

Additional Guests in Attendance:
Andrew Lasky
Logan Caldwell
Craig C. Smith
Dennis Blank
Geoff Simon
Greg S.
Ron Ness
Ron Rauschenberger
Will

APPROVAL OF MINUTES

A motion to approve the minutes of the December 17, 2020 regular meeting and the January 12, 2021 special meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

(01/28/21)
REPORTS

December 2020 Report of Shut-Ins Approved by Land Commissioner

Granted to: Slawson Exploration Company, Inc.
For the Purpose of: COVID-19
Date Issued: 12/28/2020
Trust: A – Common Schools
Lease: OG-04-01299, OG-04-01300, OG-04-01301, OG-04-01302

December 2020 Report of Encumbrances Issued by Land Commissioner

Granted to: DUCKS UNLIMITED INC, BISMARCK-NDF
For the Purpose of: Easement: Flowage
Right-of-Way Number: RW0007508
Trust: A - Common Schools
Legal Description: MOU-157-88-36-SW4

Granted to: SARGENT COUNTY-WATER RESOURCE DIST., FORMAN-NDF
For the Purpose of: Easement: Flowage
Right-of-Way Number: RW0008620
Trust: A - Common Schools
Legal Description: SAR-130-57-16-NW4

Granted to: XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of: Permit: Road-Section Line Access Road
Right-of-Way Number: RW0008641
Trust: A - Common Schools
Legal Description: WIL-159-96-16-NW4

Granted to: CENTRAL POWER ELECTRIC COOP INC, MINOT-NDF
For the Purpose of: Easement: Pipeline-Potable Water Pipeline
Right-of-Way Number: RW0008661
Trust: A - Common Schools
Legal Description: BRL-139-80-36-SW4 LESS ACRES SOLD

Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-NDF
For the Purpose of: Easement: Electric-Buried Distribution Line
Right-of-Way Number: RW0008726
Trust: A - Common Schools
Legal Description: MOU-150-92-10, MOU-150-92-15-S2SW4, W2SW4

Granted to: EQUINOR PIPELINES LLC, WILLISTON-NDF
For the Purpose of: Easement-Amend: Pipeline-Multiple Pipelines
Right-of-Way Number: RW0008727
Trust: A - Common Schools
Legal Description: MCK-151-101-36-NW4, SE4, SW4

Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-NDF
For the Purpose of: Easement: Electric-Above Ground Distribution Line
Right-of-Way Number: RW0008753
Trust: A - Common Schools
Legal Description: MOU-155-91-12-NE4
Granted to: DIVIDE COUNTY HWY DEPT, CROSBY-ND
For the Purpose of: Easement: Road Right-of-Way
Right-of-Way Number: RW0008782
Trust: A - Common Schools
Legal Description: DIV-161-97-36-NE4

Granted to: MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND
For the Purpose of: Easement-Amend: Drop Line-Electric
Right-of-Way Number: RW0008787
Trust: A - Common Schools
Legal Description: MCK-147-104-36-SE4

Granted to: CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008804
Trust: A - Common Schools
Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

Granted to: STANTEC CONSULTING INC, FARGO-ND
For the Purpose of: Permit: Planning & Preconstruction Survey
Right-of-Way Number: RW0008805
Trust: A - Common Schools
Legal Description: All Trust Land in North Dakota

December Unclaimed Property Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder’s business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of December 2020, the Division received 75 holder reports with a property value of $413,563 and paid 371 claims with a total value of $1,333,531.

The Financial Report (Unaudited) for period ending October 31, 2020 was presented to the Board for review and is available at the Department upon request.

(01/28/21)
Investment Updates

Portfolio Rebalancing Updates
$25M was liquidated and withdrawn from Harvest MLP account on December 15, 2020. After the withdrawal, the Diversified Inflation Strategies (DIS) asset class has approximately remaining $96M. The Department staff and RVK will continue to monitor the trigger points set for the DIS.

On January 7, 2021, Varde Dislocation Fund IV LP, the other Opportunistic Investment, made a $10M capital call. The remaining unfunded commitment is $75M.

Apollo Accord Fund IV LP (Fund), another Opportunistic Investment, made capital calls totaling $5.5M. The remaining unfunded commitment is $94.5M. The fund so far had made two distributions equaling $18,734.59.

The Staff have executed the Agreements for GCM Grosvenor (Private Equity Manager), JPM Morgan (Private Infrastructure Manager), and ARES Pathfinder Fund LP (Asset-Focused Credit). Meanwhile the Agreements for Angelo Gordon, JPM Core Bond, and the Loomis & Sayles Multi-Sector are being reviewed by the Attorney General’s Office

Asset Allocation
The table below shows the status of the permanent trusts’ asset allocation as of January 19, 2021. The figures provided are unaudited.

<table>
<thead>
<tr>
<th>As of January 19, 2021</th>
<th>Market Value $</th>
<th>Actual</th>
<th>Target</th>
<th>Lower Range</th>
<th>Upper Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad US Equity</td>
<td>1,138,222,811.39</td>
<td>20.5%</td>
<td>19.0%</td>
<td>14.0%</td>
<td>24.0%</td>
</tr>
<tr>
<td>Broad Int'l Equity</td>
<td>1,136,949,258.32</td>
<td>20.5%</td>
<td>19.0%</td>
<td>14.0%</td>
<td>24.0%</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>1,130,883,141.65</td>
<td>20.3%</td>
<td>22.0%</td>
<td>17.0%</td>
<td>27.0%</td>
</tr>
<tr>
<td>Transition Account</td>
<td>457,446,226.37</td>
<td>8.2%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Absolute Return</td>
<td>835,736,482.11</td>
<td>15.0%</td>
<td>15.0%</td>
<td>10.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>DIS</td>
<td>96,004,661.45</td>
<td>1.7%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>731,764,330.00</td>
<td>13.2%</td>
<td>15.0%</td>
<td>10.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Private Equity (Grosvenor)</td>
<td>.</td>
<td>0.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Private Infrastructure (JPM-Infra)</td>
<td>.</td>
<td>0.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Opportunistic Investments (Varde &amp; Apollo)</td>
<td>31,833,305.00</td>
<td>0.6%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Portfolio Total</td>
<td>5,558,840,216.29</td>
<td>100.0%</td>
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</tbody>
</table>

Upcoming Investment Manager Meetings
There is no upcoming meeting scheduled.

Acreage Adjustment Survey Project

The Sixty-Fifth Legislative Assembly’s adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel subject to inundated by Pick-Sloan Missouri Basin project dams.
On behalf of the Board of University and School Lands, the Department of Trust Lands has set in motion the refunding of royalty proceeds that fall within the six-month time frame outlined in N.D.C.C § 61-33.1-04(1). Implementation and release of royalty proceeds is under way as acreage determinations have been calculated on “oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey . . . absent a showing of other defects affecting mineral title.” N.D.C.C § 61-33.1-04(1)(a)

Currently, 63 Lease Correction and Acreage Stipulation packages have been sent to various operators. Of these 63 packages, 10 have been refunded, 13 are being held by clouded title, 44 are waiting for operator execution, and 3 are in the process of being refunded.

The following provides the status of acreage determination refunds and the amount at issue for those refunds in each stage of the process:

<table>
<thead>
<tr>
<th>Status Description</th>
<th>Percentage</th>
<th>Amount at Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 out of 63 Leases = $1,382 Million Total Royalty Paid Out</td>
<td>10%</td>
<td>$1,382 Million</td>
</tr>
<tr>
<td>899,055 Refunded to Operator (escrow), $482,981 Refunded to Operator (non-escrow)</td>
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<tr>
<td>$132,017 Refunded to Land Board from Operator (escrow)</td>
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<tr>
<td>10 out of 63 Leases = $725,373 Total Bonus Refunded to Operator</td>
<td>10%</td>
<td>$725,373</td>
</tr>
<tr>
<td>63 out of 164 Leases Completed for Bonus Refund &amp; Royalty Refund</td>
<td>63%</td>
<td></td>
</tr>
<tr>
<td>101 out of 164 Leases Acreage Adjustments being Processed</td>
<td>101%</td>
<td></td>
</tr>
<tr>
<td>164 out of 531 Leases In Progress</td>
<td>164%</td>
<td></td>
</tr>
<tr>
<td>531 TOTAL LEASES</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Legislative Update

<table>
<thead>
<tr>
<th>BILL</th>
<th>TITLE</th>
<th>SPONSORS</th>
<th>COMMITTEE</th>
<th>House Date of Hearing</th>
<th>Senate Date of Hearing</th>
<th>Governor</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 1031</td>
<td>Relating to legislative management studies of state agency fees.</td>
<td>Legislative Management</td>
<td>Gov't &amp; Veterans Affairs</td>
<td>Passed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HB 1054</td>
<td>Relating to bond requirements for abandoned oil and gas wells.</td>
<td>Energy and Natural Resources</td>
<td>Energy &amp; Natural Resources</td>
<td>Defeated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HB 1080</td>
<td>Relating to the obligation to pay oil and gas royalties on leases owned and managed by the board of university and school lands.</td>
<td>Rep. Dockter</td>
<td>Finance &amp; Taxation</td>
<td></td>
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</tr>
<tr>
<td>HB 1081</td>
<td>Relating to authority of the game and fish department employees to enforce laws.</td>
<td>Rep. Zubke</td>
<td>Energy &amp; Natural Resources</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HB 1202</td>
<td>Relating to funds managed by the state investment board and the investments of the board of university and school lands</td>
<td>Rep. Kempenich, Brandenburg, Delzer, M. Ruby, Schatz, Tveit Sen. Klein, Patten</td>
<td>Gov't &amp; Veterans Affairs</td>
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</tr>
<tr>
<td>HB 1322</td>
<td>Relating to the attorney general's review of proposed administrative rules and the authority of the administrative rules committee to object to or void an administrative rule.</td>
<td>Rep. B. Koppelman, K. Koppelman, Pyle, D. Ruby, Steiner Sen. Burckhard, Clemens, Lemm, Meyer, J. Roers</td>
<td>Judiciary</td>
<td></td>
<td>1-26-2021</td>
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(01/28/21)
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<thead>
<tr>
<th>BILL</th>
<th>TITLE</th>
<th>SPONSORS</th>
<th>COMMITTEE</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 1349</td>
<td>Relating to open record and meeting laws</td>
<td>Rep. Devlin, Karls</td>
<td>Political Subdivisions</td>
<td>Introduced 2-05-2021</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sen. Dwyer, Lee, Oban</td>
<td></td>
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<tr>
<td>HB 1358</td>
<td>Relating to oil and gas tax revenue hedging</td>
<td>Rep. Kempenich, Christensen, Mock, Steiner, Trottier</td>
<td>Finance &amp; Taxation</td>
<td>Introduced 1-26-2021</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sen. Bekkedahl, Dwyer, Schaible</td>
<td></td>
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</tr>
<tr>
<td>HB 1385</td>
<td>Relating to the attorney general review of the proposed administrative rules</td>
<td>Rep. Becker, Kasper, Louser, Schauer, Tveit</td>
<td>Finance &amp; Taxation Committee</td>
<td>Introduced 02-02-2021</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sen. Meyer, Vedaa, Wobbema</td>
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<td>Sen. Anderson, Elkin, Erbele</td>
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<tr>
<td>SB 2013</td>
<td>A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.</td>
<td>Appropriations</td>
<td>Appropriations</td>
<td>Introduced</td>
</tr>
<tr>
<td>SB 2036</td>
<td>A BILL for an Act to provide for a legislative management study regarding access to lands and electronic posting.</td>
<td>Legislative Management</td>
<td>Energy &amp; Natural Resources</td>
<td>Passed</td>
</tr>
<tr>
<td>SB 2048</td>
<td>Revised Uniform Unclaimed Property Act</td>
<td>Industry, Business and Labor</td>
<td>Industry, Business &amp; Labor</td>
<td>Introduced</td>
</tr>
<tr>
<td>BILL</td>
<td>TITLE</td>
<td>SPONSORS</td>
<td>COMMITTEE</td>
<td>House Date of Hearing</td>
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<tr>
<td>SB 2065</td>
<td>Relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.</td>
<td>Energy &amp; Natural Resources</td>
<td>Energy &amp; Natural Resources</td>
<td></td>
</tr>
<tr>
<td>SB 2070</td>
<td>Relating to the regulated substance response; to amend and reenact sections 11-33-01, 40-47-01, and 58-03-11 of the North Dakota Century Code, relating to the regulated substance response; and to repeal sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code, relating to contaminated properties.</td>
<td>Energy &amp; Natural Resources</td>
<td>Energy &amp; Natural Resources</td>
<td></td>
</tr>
<tr>
<td>SB 2144</td>
<td>Relating to criminal trespass and electronic posting; and to provide a penalty.</td>
<td>Sen. Erbele, Patten, Bell Rep. Damschen, Dobervich, Tveit</td>
<td>Finance &amp; Taxation</td>
<td></td>
</tr>
<tr>
<td>SB 2191</td>
<td>Relating to the disposal of abandoned personal property</td>
<td>Sen. Holmberg</td>
<td>Political Subdivisions</td>
<td></td>
</tr>
<tr>
<td>SB 2217</td>
<td>Relating to oil and gas royalty leases, negative royalties, and arm’s length transactions; and to provide a penalty</td>
<td>Sen. Bekkedahl, Dwyer, Kannianen Rep. Brandenburg, Kempenich, Zubke</td>
<td>Finance &amp; Taxation</td>
<td></td>
</tr>
<tr>
<td>BILL</td>
<td>TITLE</td>
<td>SPONSORS</td>
<td>COMMITTEE</td>
<td>Status</td>
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<td>-----------------------------------------------------------------------</td>
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<tr>
<td>SB 2282</td>
<td>Relating to membership of the board of university and school lands</td>
<td>Sen. Schaible, Klein, Luick,</td>
<td>Government &amp; Veterans Affairs</td>
<td>Introduced 02-04-2021</td>
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<tr>
<td></td>
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<td>Rep. D. Johnson, Schmidt</td>
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<tr>
<td>SB 2291</td>
<td>Relating to social investments made by the state investment board and the boycott of energy or commodities companies</td>
<td>Sen. Bell</td>
<td>Energy &amp; Natural Resources</td>
<td>Introduced 02-04-2021</td>
</tr>
<tr>
<td>SB 2307</td>
<td>Relating to the abandoned oil and gas well plugging and site reclamation fund; and to provide an effective date</td>
<td>Sen. Heckaman</td>
<td>Finance &amp; Taxation</td>
<td>Introduced 02-01-2021</td>
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<tr>
<td></td>
<td></td>
<td>Rep. Boschee</td>
<td></td>
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<tr>
<td>SB 2319</td>
<td>Relating to oil and gas agreements; and to provide an effective date</td>
<td>Sen. Kannianen</td>
<td>Finance &amp; Taxation</td>
<td>Introduced</td>
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<tr>
<td>SB 2327</td>
<td>Relating to school district bonded indebtedness grants</td>
<td>Sen. Heitkamp, O. Larsen</td>
<td>Education</td>
<td>Introduced 02-03-2021</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rep. Louser, Magrum, D. Ruby</td>
<td></td>
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<tr>
<td>SB 2342</td>
<td>Relating to healthy soil grant and healthy soil assessment and education programs</td>
<td>Sen. Piepkorn, Elkin, Hogan, Mathern</td>
<td>Agriculture</td>
<td>Introduced 02-04-2021</td>
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<td></td>
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<td>Rep. Dobervich, Simons</td>
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<td>Sen. Klein, Luick, Myrdal, Vedaa</td>
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<tr>
<td>SCR 4007</td>
<td>Relating to the membership of the board of university and school lands</td>
<td>Sen. Schaible, Klein, Luick,</td>
<td>Government &amp; Veterans Affairs</td>
<td>Introduced 02-04-2021</td>
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<tr>
<td></td>
<td></td>
<td>Rep. D. Johnson, Schmidt</td>
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(01/28/21)
Reallocation of Funding Request – G200004

In April 2020, the Board of University and School Lands (Board) awarded nine contingency grants totaling $1.2M from the Oil and Gas Impact Grant Fund as appropriated by the Sixty-Sixth Legislative Assembly. The Tolley Fire Department was awarded $355,172 for a 50 x 50 building addition, to be primarily used for vehicle storage, monthly meetings, and trainings. Additionally, the Tolley Fire Department intends to use the building as an emergency shelter for area residents, to host community events, to provide informational meetings, and to provide temporary shelter for those who have been involved in an emergency situation but do not require medical attention at a hospital.

The grant application included a construction and site preparation bid in the amount of $555,000. In June 2020, the Tolley Fire Department re-bid the project to modify the project to a 50 x 62 building. The bids were significantly less at $330,000.

To date EIIO has awarded the Tolley Fire Department funds in the amount of $294,701, with $60,471 remaining. If 100% of the invoices are submitted to the EIIO Oil and Gas Impact Fund, then 100% of the cost of the construction would have been paid, which was not a part of the original grant application.

The Tolley Fire Department is requesting the remaining funding be reallocated to stock the new building with pots, pans, utensils, small kitchen appliances, washer and dryer, bedroom furniture, tables and chairs, generator and hook up, television for emergency medical services and fire training, etc. (Attachment 1 and 2)

Motion: The Board approves the reallocation of funds for G200004 for the Tolley Fire Department to use the grant funds as awarded with the remaining funds to be used to stock the new building addition.

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Superintendent Baesler</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
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<tr>
<td>Treasurer Beadle</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
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<tr>
<td>Attorney General Stenehjem</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Governor Burgum</td>
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</tbody>
</table>

A copy of the Tolley Fire Department Reallocation Request and Tolley Fire Department Budget Analysis were provided to the Board for review and are available at the Department upon request.

MINERALS MANAGEMENT DIVISION

Acreage Adjustment Survey - T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36

Under North Dakota law, the Board of University and School Lands (Board) is vested with the authority to manage state-owned minerals including the oil, gas, and related hydrocarbons within the beds of the State’s navigable waters. On behalf of the State, the Board oversees the Strategic Investment and Improvements Fund (SIIF) which collects the revenues from these sovereign minerals.
Timeline of State Activity Related to Sovereign Lands

- From 1977 to 1989, the Board had authority over both the surface and subsurface of sovereign lands, including the power to convey interests.
- In 1989, the Legislature again defined state title as “those beds, islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams.” 1989 N.D. Sess. Laws, ch. 552, § 3, codified as N.D.C.C. § 61-33-01.
- The 1989 Legislature gave the State Engineer’s Office authority to manage the surface and the Board authority over the oil, gas, and related hydrocarbons within the subsurface, with each agency having the power to convey interests.
- In 2007, the Office of the State Engineer issued the North Dakota Sovereign Land Management Plan and Ordinary High Water (OHWM) Mark Delineation Guidelines.
- In 2009, the Board and the State Engineer engaged Bartlett & West, a private engineering company, to undertake a comprehensive study of the OHWM along the Yellowstone River and the Missouri River from the Montana border to river mile marker 1549 near Williston (Phase I Delineation).
- In 2010, the Board again contracted with Bartlett & West to approximate the location of the OHWM for the historic Missouri River under Lake Sakakawea from river mile marker 1574 near the Furlong Loop to river mile marker 1482, the border of the Fort Berthold Reservation (Phase II). This study was completed using historical aerial photography, elevation data, and topographic maps.
- In 2010, the Board authorized Phase III to investigate specific and isolated sections of the Missouri and Yellowstone Rivers between Williston to the Montana border that could not be fully completed under Phase I due to location and complexity (this includes the Trenton Lake area.)
- In 2012, the Board initiated the review of the estimated historic OHWM between the Four Bears Bridge and the Garrison Dam (Phase IV) using the same techniques as Phase II.
- In 2013, the North Dakota Supreme Court issued decisions in Reep v. State and Brigham v. State holding that the State owns the mineral interests up to the ordinary high water mark of navigable rivers and water bodies.
- In 2017, the Sixty-Fifth Legislative Assembly’s adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel (Historical OHWM) inundated by Pick-Sloan Missouri basin project dams.
- In 2019, the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Board contracted with Kadmas, Lee & Jackson, Inc. (KLJ) “to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the [Historical OHWM] as delineated by the final review findings of the industrial commission.”

On June 25, 2020, the Board formally requested the North Dakota Industrial Commission complete further review of T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36. The North Dakota Industrial Commission entered Order No. 31104 providing the Department of Trust Lands (Department) with necessary information to complete the acreage adjustment survey in T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36.

The Department has consulted with the State Engineer as to the State’s sovereign land ownership in Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36 of Township 153 North, Range...
102 West, Williams/McKenzie Counties, North Dakota (more commonly referred to as the Trenton Lake area.)

**LITIGATION**

**Continental Resources, Inc. - Interpleader**

**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 Daniel Hovland

**Attorney:** Charles Carvell, David Garner, and Jen Verleger

**Opposing Counsel:** Lawrence Bender, David Ogden, Paul Wolfson, Shaun Pettigrew

**Issues:** In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain public domain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic Missouri River. Continental is requesting the Court determine title to 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.

**History:** 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 that the interpleader action is moot under S.B. 2134.

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 reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until [federal] appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” 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. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memorandum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal. On November 8, 2019, the Board received an email from the US DOJ in response to the Board’s request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: “Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law.” Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: “we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible.” Status conference was held January 13, 2020 and another status conference was set for April 7, 2020.

**Current Status:**

- On April 7, 2020, an Order RE: Briefing Scheduled was issued by the court setting the following deadlines: Motions for Summary Judgment due simultaneously on May 7, 2020; Responses are due June 5, 2020; and Replies are due June 12, 2020.
- On December 8, 2020, the Court issued its Order Granting the United States’ Motion for Partial Summary Judgment.

(01/28/21)
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 Resources Case No. 1:17-cv-00014
- Legislative Update
- Acreage Adjustment Survey – T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34 and 36

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EXECUTIVE SESSION

Members Present:

Doug Burgum Governor
Alvin A. Jaeger Secretary of State
Wayne Stenehjem Attorney General
Kirsten Baesler Superintendent of Public Instruction via Teams
Thomas Beadle State Treasurer

Department of Trust Lands Personnel present:

Jodi Smith Commissioner
Catelin Newell Administrative Staff Officer
Kristie McCusker Paralegal
Adam Otteson Revenue Compliance
David Shipman Minerals Division Director via Teams
Christopher Dingwall Mineral Title Specialist

Guests in Attendance:

Leslie Bakken Oliver Governor’s Legal Counsel
Dave Garner Office of the Attorney General
Charles Carvell Office of the Attorney General (Continental Interpleader only)
Reice Haase Governor’s Policy Advisor

The executive session adjourned at 11:10 AM and the Board returned to the open session Teams meeting to rejoin the public. During the executive session Teams meeting, the Board was provided information and no formal action was taken.

ADJOURN

There being no further business, the meeting was adjourned at 11:12 AM.

_________________________________
Doug Burgum, Chairman
Board of University and School Lands

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Jodi Smith, Secretary
Board of University and School Lands

(01/28/21)