

BOARD OF UNIVERSITY AND SCHOOL LANDS

**Governor's Conference Room
Ground Floor, State Capitol**

July 12, 2018

2:00 PM

AGENDA

*** = Board Action Requested**

1. Minerals – *Drew Combs*

* A. Paul Sorum et. al. v. The State of North Dakota, et al

***Executive session under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2 for attorney consultation with the Board's attorneys to discuss:**

- Paul Sorum, et. al. v. The State of North Dakota, et al

Next Meeting Date – July 25, 2018 at 9:00 AM

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

July 12, 2018

RE: **Paul Sorum, et al. v. The State of North Dakota, et al., Cass County District Court, Civil No. 09-2018-CV-00089**

Date Filed: January 10, 2018
Date Served: January 10, 2018
Tribunal: Cass County District Court
Judge: John C. Irby
Attorney: Mark R. Hanson, Special Assistant Attorney General
Opposing Counsel: Terrance W. Moore, Fintan L. Dooley

Plaintiffs brought this action against the State of North Dakota, the Board of University and School Lands, the North Dakota Industrial Commission, Governor Burgum and Attorney General Stenehjem (Defendants) seeking to declare N.D.C.C. ch. 61-33.1 unconstitutional, and to enjoin Defendants from implementation or enforcement of N.D.C.C. ch. 61-33.1.

Plaintiffs argue that the Legislature, by passing Senate Bill 2134, codified at N.D.C.C. ch. 61-33.1, has violated the public trust doctrine and the anti-gift (see N.D. Const. art. X, § 18), “equal protection” (see N.D. Const. art. I, § 21), and special laws (see N.D. Const. art. IV, § 13) clauses of the North Dakota Constitution. Plaintiffs are claiming that the legislation results in the unlawful transfer of “approximately \$1.96 billion in cash and State-owned sovereign lands from the citizens of the State . . . to a small group of private parties in western North Dakota.” Plaintiffs allege N.D.C.C. ch. 61-33.1 “disclaims [the State’s] perpetual rights to all minerals under Lake Sakakawea, a total of about 108,000 mineral acres.”

- February 28, 2018** Defendants moved to dismiss Plaintiffs’ Complaint as Plaintiffs failed to join indispensable parties.
- March 5, 2018** Plaintiffs brought a Motion for Preliminary Injunction. A hearing was previously scheduled for March 27, 2018.
- March 7, 2018** Defendants brought an Expedited Motion to Stay or Extend Time to Respond to Plaintiffs’ Motion for Preliminary Injunction and to Postpone the March 27, 2018 Hearing on Such Motion (Motion to Stay).
- March 8, 2018** The Court granted Defendants’ Motion to Stay pending a decision on Defendants’ Motion to Dismiss currently pending before the court, and cancelled the March 27, 2018 hearing.
- March 9, 2018** Plaintiffs opposed the Motion to Stay and requested reconsideration of the Order.
- March 14, 2018** Plaintiffs’ request for reconsideration was denied.
- March 19, 2018** Rule 16 Conference held.
- March 21, 2018** Defendants filed a joint Reply Brief in Support of Motion to Dismiss.
- March 27, 2018** North Dakota Petroleum Council filed a Motion for Leave to File an Amicus Curiae Brief in Opposition of Plaintiff’s Motion for Preliminary Injunction (Motion to File Amicus Brief).
- April 2, 2018** Defendants filed a Response of No Objection to North Dakota Petroleum Council’s Motion to File Amicus Brief.
- April 4, 2018** Plaintiffs’ filed a Brief in Opposition to North Dakota Petroleum Council’s Motion to File Amicus Brief.

April 5, 2018	North Dakota Petroleum Council filed a Reply Brief in Support of Motion to File Amicus Brief.
April 9, 2018	Defendant North Dakota Industrial Commission filed a Second Amended Notice of Hearing on Defendants' Motion to Dismiss changing the time of the hearing on April 11 from 1:30 p.m. to 2:30 p.m.
April 11, 2018	Request by Media to Attend Hearing Via Telephone Conference Call, proposed Order, Certificate of Service (RE: April 1, 2018 hearing)
April 11, 2018	Hearing on Defendants' Motion to Dismiss. Motion to Dismiss was denied.
April 11, 2018	Order Allowing Media Coverage Via Telephone Conference Call denied as untimely.
April 18, 2018	State Defendants filed a Response to Plaintiffs Motion for Preliminary Injunction, with supporting documents.
April 25, 2018	Defendants filed a Petition for Supervisory Writ and Exercise of Original Jurisdiction with the North Dakota Supreme Court.
April 30, 2018	Scheduled hearing on the Plaintiffs' Motion for Preliminary Injunction.
May 2, 2018	Third Amended Notice of Hearing on Motion for Preliminary Injunction – scheduling hearing for May 21, 2018
May 9, 2018	Order of Denial issued by the North Dakota Supreme Court – denying Defendants' request for supervisory writ.
May 14, 2018	Order Denying Motion to Stay Pending Order on Petition for Supervisory Writ and Exercise of Original Jurisdiction
May 18, 2018	Defendants filed Supplemental Affidavit of Lynn D. Helms in Support of the State Defendants['] Response to Plaintiffs' Motion for Preliminary Injunction
May 21, 2018	Hearing on Motion for Preliminary Injunction – Judge Irby ordered from the Bench – Judge ordered royalties totaling more than \$200 million be kept by the State, prohibiting the State from forfeiting oil royalties, rents and bonus payments
May 23, 2018	Notice of Hearing on Motion for Summary Judgment
May 29, 2018	Plaintiffs' Request for Production of Documents to Defendant (Set 1), Plaintiffs' Requests for Admissions to Defendants, Affidavit of Electronic Service (Discovery not filed)
May 30, 2018	Motion, Affidavit and proposed Order for Pro Hac Vice of Anne T. Regan,
May 30, 2018	Motion, Affidavit and proposed Order for Pro Hac Vice Gregory S. Otsuka
May 31, 2018	Proposed Findings of Fact, Conclusions of Law and Order for Preliminary Injunction, Ex. 1 – Fiscal Note to Findings of Fact, Conclusions of Law and Order for Preliminary Injunction
June 1, 2018	Letter to Judge Irby re: Plaintiff's proposed Findings
June 1, 2018	Letter to Judge Irby re: undisputed facts, discovery, etc.; Ex. A – Plaintiffs' Requests for Admissions to Defendants; Ex. B – Plaintiffs' Request for Production of Documents to Defendants (Set No. 1); Ex. C – Email Exchange between attorneys May 30, 2018;
June 5, 2018	Letter to Judge Irby responding to Gaustad's letter

June 8, 2018	Notice of Appearance of Mark R. Hanson, Special Assistant Attorney General Representing the Board of University and School Lands of the State of North Dakota
June 8, 2018	Notice of Hearing (Telephonic Conference) (RE: Discovery Issues)
June 11, 2018	Transcript (of Hearing on Motion for Preliminary Injunction)
June 12, 2018	Substitution of Counsel Representing the Board of University and School Lands of the State of North Dakota
June 12, 2018	State Defendants' Objection to Plaintiffs' Proposed Order for Preliminary Injunction; Exhibit A – Proposed Order for Preliminary Injunction
June 12, 2018	Notice of Demand for Production or Inspection of Documents to ND Petroleum Council; Subpoena Duces Tecum
June 14, 2018	Proposed Scheduling Order (RE: Stipulated Facts)
June 14, 2018	Notice of Expedited Motion for a Discovery Protection Order by Defendants; Expedited Motion for a Discovery Protection Order by Defendants; Memo in Support of Expedited Motion for a Discovery Protection Order by Defendants; Exhibit A – Notice of Demand for Production or Inspection of Documents to ND Petroleum Council with Subpoena
June 14, 2018	Defendant Board of University and School Lands of the State of North Dakota Joinder in the State Defendants' Objection to Plaintiffs' Proposed Preliminary Injunction
June 20, 2018	Memorandum in Opposition to Expedited Motion for Protective Order, Exhibit 1 -Plaintiff's Request for Production of Documents to Defendants; Exhibit 2 -Plaintiffs Request for Production of Documents to Defendants; Exhibit 3 – May 30, 2018 email
June 22, 2018	Plaintiffs' Objections to Defendants' Proposed Order and Memorandum in Opposition to Defendants' Objections; Exhibit 1 – Transcript Excerpt
June 25, 2018	Reply Memorandum in Support of Expedited Motion for a Discovery Protection Order by Defendants
June 25, 2018	Hearing on Expedited Motion for Discovery Protection Order to be held during telephonic scheduling conference
August 27, 2018	Hearing Scheduled by Plaintiffs on Motion for Summary Judgment

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending or potential litigation.

Recommendation: Under the authority of N.D.C.C. §§ 44-04-19.1 and 44-04-19.2, the Board enter into executive session for attorney consultation related to:

- **Paul Sorum, et al. v. The State of North Dakota, et al.**

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