

**Minutes of the Meeting of the  
Board of University and School Lands  
January 21, 2020**

The January 21, 2020 meeting of the Board of University and School Lands was called to order at 9:00 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    |

**Members Absent:**

|                 |                                      |
|-----------------|--------------------------------------|
| 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 |
| Adam Otteson        | Revenue Compliance       |
| Michael Shackelford | Investments              |

**Guests in Attendance:**

|                      |                           |
|----------------------|---------------------------|
| Dave Garner          | Attorney General's Office |
| Leslie Bakken Oliver | Governor's Legal Counsel  |
| Reice Haase          | Governor's Office         |
| Craig Smith          | Crowley Fleck             |
| Brady Pelton         | ND Petroleum Council      |
| Ron Ness             | ND Petroleum Council      |
| Tyler Gludt          | Fredrikson & Byron, P.A.  |

**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 December 18, 2019 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

**R E P O R T S**

**Report of Encumbrances Issued by Land Commissioner 12/11/2019 to 1/14/2020**

|                      |  |
|----------------------|--|
| <b>Granted to:</b>   | <b>TRUE OIL LLC, CASPER-WY</b>                           |
| For the Purpose of:  | Surface Damage Agreement Amend: Well-Horizontal Oil Well |
| Right-of-Way Number: | RW0008273  |
| Trust:               | A-Common Schools   |
| Legal Description:   | MCK-148-101-36-NE4                                       |

**Granted to: CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND**

For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008629  
 Trust: A-Common Schools  
 Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

**Granted to: SELECT ENERGY SERVICES LLC, WILLISTON-ND**

For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008634  
 Trust: A-Common Schools  
 Legal Description: WIL-158-95-36-SE4, SW4

**Granted to: EAST VALLEY INDUSTRIAL PARK LLC, DENVER-CO**

For the Purpose of: Easement Amend: Railroad Right-of-Way  
 Right-of-Way Number: RW0008638  
 Trust: A-Common Schools  
 Legal Description: WIL-154-100-16-NE4, NW4

**Granted to: TABLEROCK SURVEY, LLC, THE WOODLANDS-TX**

For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008644  
 Trust: A-Common Schools  
 Legal Description: N/A

**Granted to: WEST DAKOTA WATER LLC, WILLISTON-ND**

For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008645  
 Trust: A-Common Schools  
 Legal Description: WIL-156-95-16-SE4, SW4

**Granted to: ND GEOLOGICAL SURVEY, BISMARCK-ND**

For the Purpose of: Permit Amend: Rare Earth Elements Exploration  
 Right-of-Way Number: RW0008646  
 Trust: A-Common Schools  
 Legal Description: SLO-136-102-16-NE4

**The Financial Position was provided to the Board and is available at the Department upon request.**

**Unclaimed Property Program 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 2019, the Division received 49 holder reports with a property value of \$779,445 and paid 569 claims with a total value of \$296,952.

### Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 30 grants with a balance of \$14,388,087.28 as of December 31, 2019. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 10/11/2019                    | 41                   | \$17,695,025.25                     |
| 11/15/2019                    | 40                   | \$17,164,734.70                     |
| 12/9/2019                     | 36                   | \$15,477,345.77                     |
| 12/31/2019                    | 30                   | \$14,388,087.28                     |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,108,325.39 as of December 31, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 10/11/2019         | 4                    | \$4,940,103.06                      |
| 11/15/2019         | 4                    | \$4,793,191.14                      |
| 12/9/2019          | 4                    | \$4,793,191.14                      |
| 12/31/2019         | 4                    | \$4,108,325.39                      |

The Energy Infrastructure and Impact Office is currently managing 34 grants for a total of \$20,270,536.91. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 10/11/2019                    | 41                   | \$17,695,025.25                     | 10/11/2019         | 4                    | \$4,940,103.06                      | \$22,635,128.31          |
| 11/15/2019                    | 40                   | \$17,164,734.70                     | 11/15/2019         | 4                    | \$4,793,191.14                      | \$21,957,925.84          |
| 12/9/2019                     | 36                   | \$15,477,345.77                     | 12/9/2019          | 4                    | \$4,793,191.14                      | \$20,270,536.91          |
| 12/31/2019                    | 30                   | \$14,388,087.28                     | 12/31/2019         | 4                    | \$4,108,325.39                      | \$18,496,412.67          |

### Acreage Adjustment Survey

Senate Bill 2211 of 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 Department executed a contract with Kadrmass, Lee & Jackson, Inc. “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 contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Attachments were provided to the Board and are available upon request.

### Information Technology Project Status Update

The Department of Trust Land’s (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department’s core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

There are several key IT systems related themes throughout the Department. They include:

#### Systems Limitations

- Accounting and financial systems do not have internal controls and standard reporting
- Paper-centric processes
- Document creation tools require manual editing
- Systems are not integrated with each other (e.g., Accounting and Minerals)
- Lack of up-to-date GIS capabilities

#### Automation and Efficiency

- Lack of computer systems to support and enforce process consistency
- Manual tasks require keying and re-keying inputs
- Lack of automated workflows and workflow tracking

(01/21/20)

## Reporting

- Lack of automated reports and dashboards
- Inability to provide timely financial reports and analysis
- Limited visibility into performance information

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

In 2017, Department created a Request for Proposals (RFP) for the Land Management and Accounting functions; however, the number of responses were limited and those proposals did not meet the Department's requirements. Subsequently, the Department issued an RFP for the Financial Management and Accounting (FMA) system in October 2018. In December 2019, the Department awarded a contract to Ernst and Young to implement the Microsoft Dynamics 365 for Finance and Operations system with an estimated go-live date of June 2020. On December 16, 2019, the Department issued the RFP for the Land Management system with responses due February 2020.

## Energy Infrastructure and Impact Office Retirement of Grant

In August 2014, the Board of University and School Lands (Board) awarded a \$1 million grant, Grant G150012, to the City of Ross to repair its sewage lagoon system and to begin expanding the capacity on the interior and exterior walls of the current lagoon. The City of Ross did not begin the project in 2016 due to mis-communication resulting in the city believing the grant was one of the 59 suspended in February of 2016 as a result of declining tax revenue.

The City of Ross requested, and the Board approved in June 2017, an extension until December 31, 2019 to overcome obstacles including to purchase easements, design the repair, seek bids, and complete the lagoon repairs. Another extension was requested and approved by the Director of EIIO, to June 15, 2019.

In the spring of 2019, it was determined that unanticipated erosion occurred on the berms of the cells of the lagoon due to a lack of protection from wind. The original plan was to reconstruct the berms but not add riprap due to cost. With funds remaining in Grant G150012, the City of Ross added riprap, a permanent layer of large, angular stone used to protect the soil surface against erosion, so the ponds could continue to operate for many years to come with minimal if any repairs anticipated. The final project completion date was October 2019.

The City of Ross completed the project and had grant funds left in the amount of \$394,109.24.

The following recommended retirement of Grant G150012 is provided for the Board's consideration:

| Political Sub | Grant   | Awarded     | Paid         | Balance      | Project                                 |
|---------------|---------|-------------|--------------|--------------|---|
| CITY OF ROSS  | G150012 | \$1,000,000 | \$605,890.76 | \$394,109.24 | WASTEWATER TREATMENT FACILITY EXPANSION |

**Motion: The Board retire Grant G150012 in the amount of \$394,109.24 and that the Board declare these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.**

| 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   |     |        |

City of Ross Memo Attachment was provided to the Board and is available upon request.

(01/21/20)

## I N V E S T M E N T S

### Investment Policy Statement Proxy Voting Second Reading

Although it is the policy of the Board of University and School Lands (Board) to review the Investment Policy Statement (IPS) at least every four years, it is the practice of the Commissioner to review the IPS annually and more frequently, as needed.

At the September 26, 2019 Board meeting the current IPS was adopted. During the following weeks the State Treasurer, Commissioner and staff have discussed modifying the proxy voting section of the IPS to ensure investment managers continue to vote shares in a manner that is to the best interest of the trusts as it relates to environmental, social and governance (ESG) issues. ESG has become a tool for some large investors who are pushing managers to use proxy votes to virtue signal, particularly on environmental issues related to oil and gas exploration and production.

As such, it is recommended the IPS's Proxy Voting section be revised. The revision makes clear that the Board expects proxy votes on behalf of the trusts to be:

1. "...in a manner consistent with the long-term interests and objectives of the investment program."
2. "...based solely on enhancing or protecting long-term value to the assets under its control and not on establishing or endorsing social policy."
3. "...only those factors that relate to the economic value of the Board's investments and shall not subordinate the interests of the Funds to unrelated objectives."

The revision also requires that:

1. "Managers shall submit written reports to the Commissioner by December 31 of each year advising of the manner in which each proxy was voted during the preceding calendar year and notify the Commissioner of controversial matters which may be subject to proxy voting."
2. "...the Commissioner [specifically the investment staff] shall regularly review related proxy votes by the Managers. Any proxy votes deemed by the Commissioner to be contrary to the interests of the Funds under the Board's responsibility, shall be fully explained by the Manager in writing and brought to the Board for its review."

If approved after this second reading, the Commissioner will transmit the new policy to all of the investment managers currently managing funds on the Board's behalf.

**Motion: That the Board approve the update to the Investment Policy Statement's Proxy Voting section.**

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

Attachments were provided to the Board and are available upon request.

## **M I N E R A L S**

### **Mineral Valuation**

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with conducting a study to determine the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography.

The Request for Proposal for the Assessment was released September 20, 2019. A Notice of Intent to Award was issued to MineralTracker LLC on January 2, 2020. The Department expects to execute a contract in January 2020 with MineralTracker, LLC. MineralTracker is based in Watford City, North Dakota, and is owned and operated by petroleum engineers with extensive experience in the valuation of non-operated oil and gas properties, including mineral and royalty interests in the Williston Basin of North Dakota. To execute on the mineral valuation, MineralTracker shall consider all Proved Developed Producing wells currently under the Board's management and perform decline curve analysis to project future oil, gas, and water production for each well. For any undeveloped mineral acreage in which oil and gas reserves are prospective but unproven, market rate conversions related to the recent leasing bonus payments shall be employed. Once the data is compiled and the findings completed, those findings will be presented to the Board.

The Department looks forward to the opportunity to lead the nation in this effort, as no other state agency or federal entity has embarked on such an endeavor to summarize the estimated value of their assets.

### **Repayment of Unpaid Gas Royalties**

For over a decade, the Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board of University and School Land's lease, rules, and policies.

In 2012, the Department sent letters to operators and lessees who reported deductions for royalties paid. In July 2017, letters were sent to all operators and lessees regarding the proper method to calculate gas royalties. Companies who were audited and found to be non-compliant with the proper calculation of gas royalties, as outlined in the July 2017 letter, received audit finding letters. All companies who have continued to be non-compliant have received additional communication regarding the proper calculation of gas royalties.

The Department's 2016 performance audit found the Department was not consistently issuing penalties and interest and recommended a policy be established. The Department adopted an internal policy regarding penalties and interest. Additionally, the Board of University and School Lands (Board) adopted a policy regarding penalties and interest, which is included in our proposed Administrative Rules.

Current Department and Board policy assesses the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed on all late royalty payments unless a request is made to the Commissioner to negotiate the interest rate. The Department's revenue compliance procedures

are configured to calculate and generate interest and penalty notices in accordance with these policies.

Under the Board's rules and policies once penalties and interest over \$25,000 are assessed for late payment of royalties, only the Board can modify the amount.

N.D.C.C. § 47-16-39.1 provides interest may not be applied on royalties that were escrowed since this statute permits the suspension of interest payments "in the event of a dispute of title existing that would affect distribution of royalty payments . . . ."

**Recommendation: The Board delegates the Commissioner to determine gas royalty repayments as discussed.**

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

**No formal action taken at this time.**

### **Oil and Gas Lease Amendment**

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act. Those rules became effective January 1, 2020. A final version of the Administrative Rules has been posted on the Department's website.

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 "rules" instead of "policies".

**Motion: The Board amended the Board Oil and Gas Lease to reflect the Administrative Rules.**

| 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   |     |        |

Attachment was provided to the Board and is available upon request.



## LITIGATION

**Vitesse**

**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;**

**Date 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.

**History:** 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 on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019. Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019.

**Current Status:**

- **On December 17, 2019, a Notice of Telephonic Scheduling Conference was filed by the court, setting a telephonic scheduling conference for January 22, 2020 at 11:15 a.m.**

**Continental**

**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, 8<sup>th</sup> Circuit**

**Judge:** **Honorable Daniel 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 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 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.

**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 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. 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 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 memorandandum 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.”

**Current Status:**

- Status conference was held January 13, 2020 and another status conference was set for April 7, 2020.

**Wilkinson**

**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.

**History:**

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 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. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File

Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

**Current Status:**

- On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020.

**North Range Resources**

**Case:** North Range Resources, LLC v. State of North Dakota, North Dakota Board of University and School Lands, Jodi Smith, Commissioner of University and School Lands, Case No. 27-2020-CV-00028

**Date Filed:** January 16, 2020

**Court:** McKenzie County District Court

**Judge:** Honorable Daniel El-Dweek

**Attorney:** David Garner

**Opposing**

**Counsel:** Lawrence Bender, Spencer D. Ptacek

**Issues:** On January 15, 2020, North Range Resources served a Summons and Complaint on State of North Dakota, the North Dakota Board of University and School Lands, and the Commissioner. 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 32-23 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands; and that Plaintiffs be awarded their costs and reasonable attorney fees.

**History:****Current Status:**

- Summons and Complaint was served on January 15, 2020, with the Answer being due in 21 days.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:29 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:**

- William S. Wilkinson, et. al. Case No. 53-2012-CV-00038
- North Range et al. Case No. 27-2020-CV-00028
- Repayment of Unpaid Gas Royalty

| 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    |

**Members Absent:**

|                 |                                      |
|-----------------|--------------------------------------|
| Kirsten Baesler | Superintendent of Public Instruction |
|-----------------|--------------------------------------|

**Department of Trust Lands Personnel present:**

|                  |                          |
|------------------|--------------------------|
| Jodi Smith       | Commissioner             |
| Catelin Newell   | Office Manager           |
| Kate Schirado    | Administrative Assistant |
| Adam Otteson     | Revenue Compliance       |
| Kristie McCusker | Paralegal                |

**Guests in Attendance:**

|                      |                           |
|----------------------|---------------------------|
| Brent Sanford        | Lieutenant Governor       |
| Leslie Bakken Oliver | Governor's Legal Counsel  |
| Reice Haase          | Governor's Office         |
| Dave Garner          | Attorney General's Office |

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The executive session adjourned at 11:14 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 litigation of William S. Wilkinson, et. al.; North Range et al.; and Repayment of Unpaid Gas Royalty.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:15 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
January 27, 2020**

The January 27, 2020 special meeting of the Board of University and School Lands was called to order at 10:00 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 (via Telephone)      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present:**

|                  |                             |
|------------------|-----------------------------|
| Jodi Smith       | Commissioner                |
| Kristie McCusker | Paralegal                   |
| Catelin Newell   | Office Manager              |
| Adam Otteson     | Revenue Compliance Director |
| 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         |
| Craig Smith          | Crowley Fleck             |
| Brady Pelton         | ND Petroleum Council      |
| Ron Rauschenberg     | Rauschenberg Minerals     |
| Tyler Gludt          | Fredrikson & Byron, P.A.  |

**OPERATIONS**

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:**

- **Repayment of Unpaid Gas Royalty**

| 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   |     |        |



At 10:05 AM the Board entered executive session for the purposes outlined in its adopted motion.

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**EXECUTIVE SESSION**

**Members Present:**

|                 |                                      |
|-----------------|--------------------------------------|
| Doug Burgum     | Governor                             |
| Alvin A. Jaeger | Secretary of State                   |
| Wayne Stenehjem | Attorney General                     |
| Kelly Schmidt   | State Treasurer (via Telephone)      |
| Kirsten Baesler | Superintendent of Public Instruction |

**Department of Trust Lands Personnel present:**

|                  |                             |
|------------------|-----------------------------|
| Jodi Smith       | Commissioner                |
| Kristie McCusker | Paralegal                   |
| Catelin Newell   | Office Manager              |
| Adam Otteson     | Revenue Compliance Director |
| 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         |

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The executive session adjourned at 11:15 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 repayment of unpaid gas royalties.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:15 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
February 11, 2020**

The February 11, 2020 special meeting of the Board of University and School Lands was called to order at 10:00 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 (via Telephone) |

**Department of Trust Lands Personnel present:**

|                  |                             |
|------------------|-----------------------------|
| Jodi Smith       | Commissioner                |
| Kristie McCusker | Paralegal                   |
| Catelin Newell   | Office Manager              |
| Adam Otteson     | Revenue Compliance Director |

**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         |
| Craig Smith          | Crowley Fleck             |
| Brady Pelton         | ND Petroleum Council      |
| Ron Rauschenberg     | Rauschenberg Minerals     |
| Tyler Gludt          | Fredrikson & Byron, P.A.  |
| Lynn Helms           | NDIC-DMR                  |
| Ron Ness             | ND Petroleum Council      |

**OPERATIONS**

Governor Burgum invites Lynn Helms, Director of Department of Mineral Resources, to speak to the Board.

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:**

- **Repayment of Unpaid Gas Royalty**

| 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   |     |        |

At 10:28 AM the Board entered executive session for the purposes outlined in its adopted motion.

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### 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 (via Telephone) |

#### Department of Trust Lands Personnel present:

|                  |                             |
|------------------|-----------------------------|
| Jodi Smith       | Commissioner                |
| Kristie McCusker | Paralegal                   |
| Catelin Newell   | Office Manager              |
| Adam Otteson     | Revenue Compliance Director |

#### 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         |

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The executive session adjourned at 11:08 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 repayment of unpaid gas royalties.

### A D J O U R N

There being no further business, the meeting was adjourned at 11:08 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
February 27, 2020**

The February 27, 2020 meeting of the Board of University and School Lands was called to order at 9:00 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                         |
| Kathy Brandvold  | Auditor                              |
| Rob Dixon        | Computer Network Specialist          |
| Brad Fettig      | Mineral Title Specialist             |
| Peggy Gudvangen  | Accounting Division Director         |
| Mike Humann      | Surface Division Director            |
| Bev Jacobson     | Administrative Assistant             |
| Kristie McCusker | Paralegal                            |
| Catelin Newell   | Administrative Staff Officer         |
| Adam Otteson     | Revenue Compliance Division Director |
| Rick Owings      | Administrative Officer               |
| Dave Shipman     | Minerals Division Director           |
| Mike Shackelford | Investment Division Director         |

**Guests in Attendance:**

|                  |                                |
|------------------|--------------------------------|
| Bethany Kurz     | EERC, Grand Forks              |
| Ron Rauschenberg | Self                           |
| Jeff Engleson    | Self                           |
| Eric Sundberg    | Slawson Exploration Co.        |
| Todd Slawson     | Slawson Exploration Co.        |
| Ron Ness         | North Dakota Petroleum Council |
| Rudie Martinson  | Primary Strategy Group         |
| Kate Black       | Inland Oil & Gas               |
| Pete Wolla       | Self                           |
| Arlin Link       | Self                           |
| Brian Anderson   | WBROA                          |
| Sara Bilden      | Midkota Public School          |
| Lawrence Bender  | Fredrikson & Byron, P.A.       |
| Tyler Gludt      | Fredrikson & Byron, P.A.       |
| Charles Tuttle   | Self                           |
| Steven Poeckes   | Self                           |
| Peter Masset     | Altair Corp                    |
| Nick Archuleta   | ND United                      |
| Dale Patten      | District 39 Senator            |
| Danielle Yourk   | Altair Corp                    |
| Aimee Copas      | NDCEL                          |
| Brandt Dick      | Underwood School/NDSOS         |
| Fintan Dooley    | Salted Lands Council           |

|                      |                                |
|----------------------|--------------------------------|
| Brady Pelton         | North Dakota Petroleum Council |
| Paul Clarys          | Armstrong OP, Inc              |
| Geoff Simon          | WDEA                           |
| Blue Hulsey          | Continental Land Resources     |
| Roger Kelley         | Continental Land Resources     |
| James McPherson      | AP                             |
| Brent Sanford        | Lt. Governor                   |
| Dave Garner          | Attorney General's Office      |
| Leslie Bakken Oliver | Governor's Legal Counsel       |
| Reice Haase          | Governor's Office              |
| Lynn Helms           | NDIC-DMR                       |

## LITIGATION

### 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, 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.

**History:** 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 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

(02/27/20)

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. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also

(02/27/20)

on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2020 to file his brief.

**Current Status:**

- On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that was filed in the separate briefs and appendixes.
- On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants' request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply briefs are due February 14, 2020.
- On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense.
- Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020.
- Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020.

**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:

- **Paul Sorum et al. Civ. No. 09-2018-CV-00089**

| 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   |     |        |

(02/27/20)

At 9:03 AM the Board entered executive session for the purposes outlined in its adopted motion.

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### 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   | Administrative Staff Officer |

#### Guests in Attendance:

|                      |                          |
|----------------------|--------------------------|
| Brent Sanford        | Lt. Governor             |
| Leslie Bakken Oliver | Governor's Legal Counsel |
| Reice Haase          | Governor's Office        |
| Mark Hanson          | Nilles Law Firm          |

The executive session adjourned at 9:27 AM. During the executive session, the Board was provided information from its attorney and no formal action was taken.

To accommodate the number of public in attendance the Board reconvened in open session in the Roughrider Room in the State capitol.

### APPROVAL OF MINUTES

A motion to approve the minutes of the January 21, 2020 regular meeting, January 27, 2020 special meeting and February 11, 2020 special meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

### LITIGATION

#### North Range Litigation

**Case:** North Range Resources, LLC v. State of North Dakota, North Dakota Board of University and School Lands, Jodi Smith, Commissioner of University and School Lands, Case No. 27-2020-CV-00028

**Date Filed:** January 16, 2020

**Court:** McKenzie County District Court

**Judge:** Honorable Daniel El-Dweek

**Attorney:** David Garner

**Opposing**

**Counsel:** Lawrence Bender, Spencer D. Ptacek

**Issues:** On January 15, 2020, North Range Resources served a Summons and Complaint on State of North Dakota, the North Dakota Board of University and School Lands, and the Commissioner. 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;

(02/27/20)



a judgment be entered under Chapter 32-23 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands; and that Plaintiffs be awarded their costs and reasonable attorney fees.

**History:** Summons and Complaint was served on January 15, 2020, with the Answer being due in 21 days.

**Current Status:**

- Notice of Lis Pendens was filed on January 23, 2020.
- Answer filed on February 4, 2020.

## S U R F A C E   M A N A G E M E N T

### Construction Aggregate Lease Applications

Aggregate Construction, Inc., of Minot, North Dakota, submitted three applications for Construction Aggregate Mining Leases on the following tracts of land in Mountrail and Williams Counties:

#### Application 1:

Mountrail County Township 158 North, Range 92 West, Section 16: N½ North of Road (see attached map for location)

#### Application 2:

Mountrail County Township 158 North, Range 92 West, Section 16: NW¼ South of Road (see attached map for location)

#### Application 3:

Williams County Township 156 North, Range 100 West, Section 16: NW¼

The applications for Construction Aggregate Leases were submitted under authority of North Dakota Administrative Code chapter 85-04-02 which requires posting a Notice of Construction Aggregate Leasing on the Department of Trust Land's (Department) website and allowing for a 14-day period comment. The applications located in Mountrail County Township have been posted for the 14-day comment period and no comments were received. The application located in Williams County Township is currently posted.

The applications will be prepared for public auction by publishing a notice of the auction at least 10 days prior to the auction in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune. The Commissioner is authorized to approve and issue a construction aggregate lease on the board's behalf N.D.A.C. § 85-04-02-03. Any Construction Aggregate Leases approved by the Commissioner would appear on the Encumbrance Report at a future Board meeting.

Application location maps were provided to the Board and are available upon request at the Department.

(02/27/20)

**XTO Holdings Request for Temporary Gas Storage – Pilot Program**

Extraction of oil and gas from the Bakken petroleum system has dramatically increased over the past decade without commensurate augmentation of gas capture infrastructure, which has resulted in continued flaring of produced gas. The North Dakota Industrial Commission (NDIC) has worked with industry to establish gas capture requirements to reduce the volume of flared gas.

To evaluate potential options to alleviate flaring, conserve natural resources and optimize oil production from the Bakken, the Sixty-Sixth Legislative Assembly of North Dakota allocated funding to the EERC under Section 25 of House Bill 1014 “for pilot projects relating to the underground storage of produced natural gas.” The intent of the funding is to enable the assessment of produced gas injection into geologic targets in the Williston Basin as a mechanism to reduce flaring and achieve gas capture goals in Bakken oilfield locations with limited gas capture and transportation infrastructure.

XTO Holdings, LLC (XTO) in collaboration with the EERC is evaluating a pilot demonstration project relating to temporary underground storage of produced natural gas on Trust Land involving the injection, storage and withdrawal of natural gas and other associated gaseous substances (“Natural Gas”) into the pore space of the Broom Creek Formation Reservoir (Minnelusa Group). Temporary gas storage may enable XTO to bring drilled well bores into production and provide additional revenue to the Trust in areas where there is not adequate infrastructure.

XTO requests the Department to obtain authority to issue an easement allowing for the injection, temporary storage and withdrawal of Natural Gas. Through the site granted by the easement, EERC would be able to study and collect monitoring information regarding gas storage. The general terms and conditions of an easement would be developed in consultation with the Attorney General office and approval to negotiate and grant such easement. Any easements issued to XTO would also include reclamation responsibility.

**Motion: The Board approves the Commissioner to develop an easement for the purpose of injecting, storing and withdrawing natural gas subject to review of the easement document by the Attorney’s General Office and final approval of the Board.**

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

**R E P O R T S**

**Report of Encumbrances Issued by Land Commissioner 1/15/2020 to 2/14/2020**

**Granted to:** SLAWSON EXPLORATION COMPANY INC, DENVER-CO  
 For the Purpose of: Easement-Amend: Well-Directional Wellsite Location  
 Right-of-Way Number: RW0006937  
 Trust: A – Common Schools  
 Legal Description: MOU-152-92-14-SE4

|  |   |
|--|---|
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>WHITING OIL &amp; GAS CORPORATION, DENVER-CO</b><br/> Easement-Amend: Drop Line-Pipeline<br/> RW0008431<br/> A – Common Schools<br/> MOU-153-92-16-NW4</p>                          |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>MOUNTRAIL COUNTY, STANLEY-ND</b><br/> Easement: Road Right-of-Way<br/> RW0008477<br/> A – Common Schools<br/> MOU-155-94-36-NE4, SE4</p>  |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>BRIDGER PIPELINE LLC, CASPER-WY</b><br/> Easement: Pipeline-Oil Gathering Pipeline<br/> RW0008535<br/> A – Common Schools<br/> MCK-149-96-16-NW4, SW4</p>                           |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>ONEOK BAKKEN PIPELINE LLC, TULSA-OK</b><br/> Easement: Pipeline-Gas Transmission Pipeline<br/> RW0008575<br/> A – Common Schools<br/> WIL-155-99-16-SW4<br/> WIL-155-102-16-NE4</p> |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>WHITING OIL &amp; GAS CORPORATION, DENVER-CO</b><br/> Permit: Road-Access Road<br/> RW0008594<br/> A – Common Schools<br/> MOU-153-92-16-NW4</p>                                    |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b><br/> Easement-Amend: Pipeline-Gas Gathering Pipeline<br/> RW0008598<br/> A – Common Schools<br/> MCK-149-96-16-NE4,NW4,SW4</p>           |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK</b><br/> Permit-Amend: Road-Access Road<br/> RW0008604<br/> A – Common Schools<br/> MCK-153-94-16-NE4, NW4, SW4</p>                     |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:</p>                 | <p><b>CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK</b><br/> On-lease Act. Amend: Well-Horizontal Oil Well<br/> RW0008605<br/> A – Common Schools<br/> MCK-153-94-16-NW4, SW4</p>           |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Right-of-Way Number:<br/> Trust:<br/> Legal Description:<br/> (02/27/20)</p> | <p><b>PURITY OILFIELD SERVICES LLC, WILLISTON-ND</b><br/> Permit: Temporary Water Layflat Line<br/> RW0008649<br/> A – Common Schools<br/> BRK-159-94-16-NW4</p>                          |

**Granted to:** AMES SAVAGE WATER SOLUTIONS, WILLISTON-ND  
**For the Purpose of:** Permit: Temporary Water Layflat Line  
**Right-of-Way Number:** RW0008654  
**Trust:** A – Common Schools  
**Legal Description:** WIL-156-97-16-S2SW4 LESS THE N 248 FT

**The Financial Position was provided to the Board and is available at the Department upon request.**

## Investment Updates

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of January 31, 2020. The figures provided are unaudited.

| Account/Asset Class               | Long-Term Asset Allocation | 1/31/20 Actual Allocation \$ | 1/31/20 Actual Allocation % | 1/31/20 % Diff. |
|-----------------------------------|----------------------------|------------------------------|-----------------------------|-----------------|
| Large Cap US Equity               | 14.5%                      | \$ 776,890,321               | 15.3%                       | 0.8%            |
| Mid/Small Cap US Equity           | 4.0%                       | \$ 203,875,104               | 4.0%                        | 0.0%            |
| International Equity              | 14.5%                      | \$ 758,683,083               | 15.0%                       | 0.5%            |
| Emerging Market Equity            | 4.0%                       | \$ 209,220,005               | 4.1%                        | 0.1%            |
| <b>Total Equities</b>             | <b>37.0%</b>               | <b>\$ 1,948,668,513</b>      | <b>38.5%</b>                | <b>1.5%</b>     |
| Core Fixed Income                 | 13.8%                      | \$ 748,589,704               | 14.8%                       | 1.0%            |
| Non-Core Fixed Income             | 9.2%                       | \$ 424,436,755               | 8.4%                        | -0.8%           |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>\$ 1,173,026,459</b>      | <b>23.2%</b>                | <b>0.2%</b>     |
| <b>Total Absolute Return</b>      | <b>15.0%</b>               | <b>\$ 738,004,376</b>        | <b>14.6%</b>                | <b>-0.4%</b>    |
| Commodities                       | 3.0%                       | \$ 146,113,218               | 2.9%                        | -0.1%           |
| MLPs                              | 3.0%                       | \$ 137,115,513               | 2.7%                        | -0.3%           |
| TIPS                              | 2.0%                       | \$ 100,457,409               | 2.0%                        | 0.0%            |
| Natural Resource Equities         | 2.0%                       | \$ 91,421,252                | 1.8%                        | -0.2%           |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>\$ 475,107,392</b>        | <b>9.4%</b>                 | <b>-0.6%</b>    |
| Core Real Estate                  | 8.0%                       | \$ 392,016,685               | 7.7%                        | -0.3%           |
| Core Plus Real Estate             | 7.0%                       | \$ 335,468,622               | 6.6%                        | -0.4%           |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 727,485,307</b>        | <b>14.4%</b>                | <b>-0.6%</b>    |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 5,062,292,047</b>      | <b>100.0%</b>               |                 |

### Angelo Gordon (\$121.9 million, 2.4% of PTF assets as of 1/31/20) Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. At present, total funded to Angelo Gordon stands at 81.50% of total capital commitment or \$122.25 million out of \$150 million. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

At the end of January, we have received a \$2,329,264 distribution from the Fund. Including this distribution, the Fund will have distributed approximately 4.9% of total paid-in capital total.

### Theodore Roosevelt Presidential Library and Museum Endowment Fund

On September 30, 2019, \$15M of the Theodore Roosevelt Presidential Library Endowment Fund was invested into the permanent trust pool.

### Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

## Unclaimed Property Program 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 January 2020, the Division received 38 holder reports with a property value of \$64,250 and paid 693 claims with a total value of \$787,210.

## Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 21 grants with a balance of \$7,207,988.75 as of February 13, 2020. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 11/15/2019                    | 40                   | \$17,164,734.70                     |
| 12/9/2019                     | 36                   | \$15,477,345.77                     |
| 12/31/2019                    | 30                   | \$14,388,087.28                     |
| 2/13/2020                     | 21                   | \$7,207,988.75                      |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$3,447,448.60 as of February 13, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund.

The following shows grant activity for the last four months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 11/15/2019         | 4                    | 4,793,191.14                        |
| 12/9/2019          | 4                    | \$4,793,191.14                      |
| 12/31/2019         | 4                    | \$4,108,325.39                      |
| 2/13/2020          | 3                    | \$3,447,448.60                      |

(02/27/20)

The Energy Infrastructure and Impact Office is currently managing 24 grants for a total of \$10,655,437.35. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 11/15/2019                    | 40                   | \$17,164,734.70                     | 11/15/2019         | 4                    | \$4,793,191.14                      | \$21,957,925.84          |
| 12/9/2019                     | 36                   | \$15,477,345.77                     | 12/9/2019          | 4                    | \$4,793,191.14                      | \$20,270,536.91          |
| 12/31/2019                    | 30                   | \$14,388,087.28                     | 12/31/2019         | 4                    | \$4,108,325.39                      | \$18,496,412.67          |
| 2/13/2020                     | 21                   | \$7,207,988.75                      | 2/13/2020          | 3                    | \$3,447,448.60                      | \$10,655,437.35          |

**Acreage Adjustment Survey**

Senate Bill 2211 of 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 Department executed a contract with Kadrmas, Lee & Jackson, Inc. “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 contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.



## Summary of Oil and Gas Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction on [www.energynet.com](http://www.energynet.com) which concluded on February 4, 2020.

There were 36 tracts offered and all received competitive bids (If the Board does not receive a competitive bid the lease is awarded to the nominator). The highest bid per acre was \$251.00 for 80 acres in Divide County.

| February 2020      |                 |                     |                |
|--------------------|-----------------|---------------------|----------------|
| County             | Mineral Acres   | Total Bonus         | Bonus/Acres    |
| Billings           | 160             | \$2,560.00          | \$16.00        |
| Burke              | 153.17          | \$2,683.89          | \$17.52        |
| Divide             | 480             | \$87,840.00         | \$183.00       |
| Dunn               | 16.19           | \$1,230.44          | \$76.00        |
| Hettinger          | 80              | \$1,280.00          | \$16.00        |
| McKenzie           | 3200            | \$213,280.00        | \$66.65        |
| <b>GRAND TOTAL</b> | <b>4,089.36</b> | <b>\$308,874.33</b> | <b>\$75.53</b> |

There were 28 registered bidders, 13 of which placed a bid in the 8-day auction. There were bidders from 3 states (ND, MT and LA).

A total of \$308,874.33 of bonus was collected from the auction.

## Information Technology Project Status Update

The Department of Trust Land's (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

The Department has a tentative go-live date of June 16, 2020 with a lag time go-live of October 15, 2020 for the new Financial Management & Accounting (FMA) system that will utilize the Microsoft Dynamics 365 Finance and Operations module. The FMA implementation plan has been strategically developed into four iterations: (1) Planning and Analysis Cycle; (2) Design and Build Cycle 1; (3) Design and Build Cycle 2; (4) Production Cycle. At the end of each iteration, the implementation team will review progress to-date with the Commissioner. Appropriate adjustments to the go-live date will be made if necessary. The Planning and Analysis Cycle Iteration is now complete and the FMA project is on schedule.

On December 16, 2019, the Department issued the RFP for the Land Management system. In February 2020, five responses were received. An evaluation team is currently reviewing and scoring these proposals.

(02/27/20)

## O P E R A T I O N S

### **Reconsideration of Gas Royalty Repayment Notification – no memo provided.**

#### **Repayment of Unpaid Gas Royalties Update**

The North Dakota Board of University and School Lands (Board) manages land, minerals and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income funding North Dakota schools and institutions. The Board also manages sovereign minerals for the State of North Dakota.

The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board's lease, rules, and policies.

In 2012, the Department sent letters to operators and lessees who reported deductions for royalties paid. In July 2017, letters were sent to all operators and lessees regarding the proper method to calculate gas royalties. Companies who were audited and found to be non-compliant with the proper calculation of gas royalties, as outlined in the July 2017 letter, received audit findings letters. All companies who have continued to be non-compliant have received additional communication regarding the proper calculation of gas royalties.

The Board's administrative rules, N.D.A.C. Title 85, provide guidelines for assessment of penalties and interest. Current Department and Board policy assesses the maximum interest (18%) under N.D.C.C. § 47-16-39.1, and penalty (12%) allowed on all late royalty payments unless a request is made to the Commissioner to negotiate the interest rate. The Department's revenue compliance procedures are configured to calculate and generate interest and penalty notices in accordance with these policies.

The letter regarding Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 with enclosed Gas Deduction Compliance Notification (Letter) was sent to all entities required to pay royalties to the Board pursuant to the Board's lease.

The Letter advised all entities who have been deducting post production costs from royalty payments made to the Department that they have been underpaying royalties contrary to the terms of the Board's lease. Penalties and interest continue to accrue in accordance with the Gas Deduction Compliance Notification until payment is received.

As of noon on February 21, 2020, twenty-five gas royalty payors had contacted the Department. Two gas royalty payors made a formal offer of repayment and the Department is actively working with the other gas royalty payors.

## A D J O U R N

There being no further business, the meeting was adjourned at 10:48 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

(02/27/20)



**Minutes of the Meeting of the  
Board of University and School Lands  
April 8, 2020**

The April 8, 2020 meeting of the Board of University and School Lands was called to order at 11:34 AM in the Coteau Meeting 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 – via telephone              |
| Catelin Newell   | Administrative Staff Officer           |
| Rick Owings      | Administrative Officer – via telephone |
| Mike Shackelford | Investment Division Director           |

**Guests in Attendance:**

|                      |                           |
|----------------------|---------------------------|
| Charles Carvell      | Attorney General's Office |
| Dave Garner          | Attorney General's Office |
| Leslie Bakken Oliver | Governor's Legal Counsel  |
| Reice Haase          | Governor's Office         |

**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 27, 2020 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

**R E P O R T S**

**COVID-19 Update**

The Department of Trust Lands (Department) understands the serious issue of COVID-19 confronting the nation. As a result, the Department has transitioned all non-essential staff to telecommuting. All services and programs are operational and we are informing our constituents they may experience delays in services.

Additionally, the Commissioner has cancelled the nomination and auctioning of oil and gas leases. The Department's next oil and gas lease nomination deadline is scheduled for June 19, 2020 for our August 4, 2020 Minerals Auction.

The Commissioner cancelled all surface lease auctions scheduled for March 23, 2020 thru March 27, 2020. There were 141 tracts in 30 counties available for auction. A formal request for an Executive Order allowing the Department to host surface auctions outside of the county seat was submitted to the Governor's Office. This executive order was issued the same day as the Board meeting.

(04/08/20)

The Commissioner has also formally requested an Executive Order to extend the deadline for any life insurance company to report and provide property to Unclaimed Property.

The Commissioner issued notification of a 60-day extension for all gas royalty payors currently working to come into compliance with the Board of University and School Lands.

The Board was provided with the Formal Notification of Gas Royalty Repayment Obligations Extension letter. This letter is available at the Department upon request.

### **Report of Encumbrances Issued by Land Commissioner 2-15-202 to 3-16-2020**

**Granted to:** SLAWSON EXPLORATION COMPANY INC, DENVER-CO  
 For the Purpose of: On-lease Activity: Well-Horizontal Oil Well  
 Right-of-Way Number: RW0007600  
 Trust: A – Common Schools  
 Legal Description: MOU-152-92-23-NE4NW4, W2W2NE4NE4, NW4NE4

**Granted to:** SLAWSON EXPLORATION COMPANY INC, DENVER-CO  
 For the Purpose of: Easement: Well-Directional Wellsite Location  
 Right-of-Way Number: RW0008202  
 Trust: A – Common Schools  
 Legal Description: MOU-152-92-23-NE4NW4, W2W2NE4NE4, NW4NE4

**Granted to:** MCKENZIE ELECTRIC COOP INC, WATFORD CITY- ND  
 For the Purpose of: Easement-Amend: Drop Line-Electric  
 Right-of-Way Number: RW0008652  
 Trust: A – Common Schools  
 Legal Description: DUN-148-96-36-SW4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008679  
 Trust: A – Common Schools  
 Legal Description: MOU-154-91-16-SE4, SW4

**The Financial Position unaudited ending January 31, 2020 report was provided to the Board for review and is available at the Department upon request.**

### **Unclaimed Property Program 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 February 2020, the Division received 34 holder reports with a property value of \$69,446 and paid 507 claims with a total value of \$460,546.

## ENERGY INFRASTRUCTURE AND IMPACT OFFICE

### Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 21 grants with a balance of \$7,090,723.31 as of March 16, 2020. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 12/9/2019                     | 36                   | \$15,477,345.77                     |
| 12/31/2019                    | 30                   | \$14,388,087.28                     |
| 2/13/2020                     | 21                   | \$7,207,988.75                      |
| 3/16/2020                     | 21                   | \$7,090,723.31                      |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$3,447,448.60 as of March 16, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 12/9/2019          | 4                    | \$4,793,191.14                      |
| 12/31/2019         | 4                    | \$4,108,325.39                      |
| 2/13/2020          | 3                    | \$3,447,448.60                      |
| 3/16/2020          | 3                    | \$3,447,448.60                      |

The Energy Infrastructure and Impact Office is currently managing 24 grants for a total of \$10,538,171.91. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 12/9/2019                     | 36                   | \$15,477,345.77                     | 12/9/2019          | 4                    | \$4,793,191.14                      | \$20,270,536.91          |
| 12/31/2019                    | 30                   | \$14,388,087.28                     | 12/31/2019         | 4                    | \$4,108,325.39                      | \$18,496,412.67          |
| 2/13/2020                     | 21                   | \$7,207,988.75                      | 2/13/2020          | 3                    | \$3,447,448.60                      | \$10,655,437.35          |
| 3/16/2020                     | 21                   | \$7,090,723.31                      | 3/16/2020          | 3                    | \$3,447,448.60                      | \$10,538,171.91          |

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## Contingency Grant Round Award Recommendations

### 2019-2021 Biennium Funding

The Sixty-Sixth Legislative Assembly appropriated \$2 million through House Bill 1013 for grants to political subdivisions impacted by oil and gas development activities.

N.D.C.C. § 15-01-02(6) provides the Board of University and School Lands (Board) has:

Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

EIIO opened a contingency grant round in December 2019 and applications were accepted through January 31, 2020. EIIO received 60 applications requesting a total of \$15,506,192.

The summary of all applications received is available at the Department upon request.

The EIIO Director and the EIIO Administrator scored all 60 applications. The Board created the Contingency Grant Advisory Committee (Committee) on December 18, 2019. The Committee met on March 4, 2020 to complete the scoring process. The Committee includes the following:

- Williston Township Supervisor Dan Kalil
- Stark County Commissioner Jay Elkin
- Mayor of Stanley Gary Weisenberger
- Mayor of Watford City Philip Riely
- Dunn County Commissioner Reinhard Hauck
- Border Township Supervisor Mark Spooner
- Beach PSD #3 Superintendent Dave Wegner
- Billings County Auditor Marcia Lamb
- Powers Lake Ambulance Kari Enget
- Commissioner of University and School Lands Jodi Smith

Applications were scored by EIIO staff and the Committee, using the following established criteria:

- **Objective** – Does the project meets the legislative intent outlined in state law and is directly related to local infrastructure caused by damage or impact by current oil and gas development activities since January 2019?
- **Financial Need** – Demonstration of financial need, indicated by the political subdivision's commitment of local resources, coupled with a financial shortfall due to increased energy activity. The cost benefit (value for the investment) of this project compared to the other applicants was considered. Cash, outstanding grant balances, levy, revenue streams available, debt, and additional financial details are considered.
- **Result of Energy Activity** – The application clearly lays out how current oil and gas development is impacting the political subdivision.
- **Improves public health, or welfare** – Assessment of the project's contributions to economic vitality and development by removing growth restraints and obstacles from the community by enhancing the infrastructure of the political subdivision and supporting long term sustainable economic activity.
- **Public Safety** – Does the project relate to improving the safety of those receiving the award, the general public, the emergency services responders, and emergency services?
- **Project Readiness/Achievability** – Is project design, planning, cost estimates, and any

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additional preparation in place allowing the project to move forward once funding is available?

- **Complete Application Received** – Did the applicant submit a complete application with financial reports outlining the revenue, levy with calculation, liabilities detailed and budget, details of the project plans, projected cost, maps, and any additional documentation required to support the project defined in the application?

EIIO contacted the Department of Transportation (DOT), Department of Commerce, Bureau of Criminal Investigation (BCI), and Department of Public Instruction (DPI) for additional funding avenues that may be available to those applicants who are not awarded funding.

The DOT reviewed road project applications and determined DOT would need additional information in order to provide additional funding opportunities to applicants. However, DOT was able to identify some projects as possible FEMA eligible.

The Department of Commerce noted only **non-oil-producing counties** are eligible for the Municipal Infrastructure Funds (see N.D.C.C. § 57-51.1-07-7) and County and Township Infrastructure Funds (see N.D.C.C. § 57-51.1-07-8); therefore, any counties identified as oil-producing will not be eligible for those funds.

Applications from Bottineau, Renville, and Hettinger Counties are eligible for funds through the municipal infrastructure funds.

BCI will have grants available in the summer 2020 for law enforcement and applicants may apply for this funding.

All K-12 school districts that do not receive funding will be encouraged to contact DPI for other avenues of funding.

The Committee gave careful consideration when categorizing which applications should receive funding in March and which applications could wait until July 2020.

The Committee input, as well as information gathered from other state agencies, was utilized in formulating recommendations to the Board. Infrastructure needs, with impacts as a direct result of oil and gas development, were considered. The grants recommended by the Committee are dominated by suggestions to address safety issues. The Committee and EIIO staff emphasize that all the applying political subdivisions have legitimate needs and have submitted justifiable requests.

N.D.C.C. § 15-01-02(6) provides that no more than 60% of the biennial appropriation be awarded in any one fiscal year. Of the \$2,000,000 appropriated, 60% would be \$1,200,000.

The following are the Committee's recommendations for awards for the Board's consideration:

| Political Sub Name                   | City      | County | Short Description                            | Project Total | Amount Requested | Recommended Award |
|--------------------------------------|-----------|--------|--|---------------|------------------|-------------------|
| Noonan Fire Department               | Noonan    | Divide | Purchase A Used 1000 Gallon Pumper Apparatus | \$35,000.00   | \$28,000.00      | \$28,000.00       |
| Zap Rural Fire Protection District   | Zap       | Mercer | Extrication Equipment                        | \$36,900.00   | \$36,900.00      | \$33,210.00       |
| Gladstone Consolidated Fire District | Dickinson | Stark  | New Pumper Fire Truck                        | \$375,000.00  | \$375,000.00     | \$187,500.00      |

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|   |          |          |  |              |              |                |
|---|----------|----------|--|--------------|--------------|----------------|
| <b>Tolley Fire Department</b>                   | Tolley   | Renville | 50 X 50 Building Addition  | \$555,000.00 | \$555,000.00 | \$355,172.00   |
| <b>Billings Co. Rural Fire Protection Dist.</b> | Belfield | Billings | Fairfield Rescue Truck   | \$244,529.00 | \$184,529.00 | \$184,529.00   |
| <b>Billings County</b>                          | Medora   | Billings | Ambulance Replacement  | \$573,761.00 | \$264,943.00 | \$120,000.00   |
| <b>City Of Belfield</b>                         | Belfield | Stark    | Ambulance Replacement  | \$255,000.00 | \$100,000.00 | \$100,000.00   |
| <b>Bowman County Rural Ambulance District</b>   | Bowman   | Bowman   | 4- Wheel Drive Ambulance   | \$210,000.00 | \$50,000.00  | \$50,000.00    |
| <b>Columbus Rural Fire District</b>             | Columbus | Burke    | Acquisition Of Vehicle Chassis/Installation Of 4000-Tank And Equipment | \$162,489.00 | \$141,589.00 | \$141,589.00   |
|   |          |          |  |              | Total:       | \$1,200,000.00 |

Motion #1: For fiscal year 2020, it is recommended the Board award nine grants, totaling \$1,200,000 from the Oil and Gas Impact Grant Fund to:

- NOONAN FIRE DEPARTMENT
- ZAP RURAL FIRE PROTECTION DISTRICT
- GLADSTONE CONSOLIDATED FIRE DISTRICT
- TOLLEY FIRE DEPARTMENT
- BILLINGS CO. RURAL FIRE PROTECTION DISTRICT
- BILLINGS COUNTY
- CITY OF BELFIELD
- BOWMAN COUNTY RURAL AMBULANCE DISTRICT
- COLUMBUS RURAL FIRE DISTRICT

| <u>Action Record</u>       | <u>Motion</u> | <u>Second</u> | <u>Aye</u> | <u>Nay</u> | <u>Absent</u> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           | X             |               | X          |            |               |
| Superintendent Baesler     |               |               | X          |            |               |
| Treasurer Schmidt          |               | X             | X          |            |               |
| Attorney General Stenehjem |               |               | X          |            |               |
| Governor Burgum            |               |               | X          |            |               |

If the Board approves the above recommendations, \$800,000 will remain for the Board to award in the following fiscal year as N.D.C.C. § 15-01-02(6) provides that no more than 60% of the biennial appropriation be awarded in any one fiscal year.

The Board may pledge awards for the 2021 fiscal year to allow political subdivisions to better plan for future development. The amount available for pledged awards is \$800,000 (remaining amount available from the \$2,000,000 appropriated from the Legislature) and the \$400,000 available from cancelled grants. The total amount the Board can pledge is \$1,200,000, which will not be awarded until the 2021 fiscal year.

The following is a list of the Committee's recommendations for pledged awards for the Board's consideration:

| Political Sub Name  | City        | County    | Short Description  | Project Total   | Amount Requested | Recommended Pledged Grant Award |
|---------------------|-------------|-----------|--|-----------------|------------------|---------------------------------|
| City Of New England | New England | Hettinger | 2020 North Side Growth Area Street & Sewer Improvements                              | \$1,442,000.00  | \$1,000,000.00   | \$348,650.00                    |
| Williston Township  | Williston   | Williams  | 52nd Street Landslide  | \$1,450,000.00  | \$350,000.00     | \$350,000.00                    |
| Mountrail County    | Stanley     | Mountrail | 36th St Nw- Cement Stabilization And Graveling                                       | \$82,700.00     | \$82,700.00      | \$41,350.00                     |
| Williston Psd #1    | Williston   | Williams  | Asb Innovation Academy   | \$14,092,183.00 | \$500,000.00     | \$250,000.00                    |
| City Of Stanley     | Stanley     | Mountrail | Wastewater Treatment Facility Improvements And Upgrade To Pumps At Main Lift Station | \$1,675,000.00  | \$837,500.00     | \$210,000.00                    |
|                     |             |           |  |                 | Total:           | \$1,200,000.00                  |

Motion #2: The Board pledge grant awards, with the intent to award in fiscal year 2021, the five grants totaling \$1,200,000 from the Oil and Gas Impact Grant fund to:

- CITY OF NEW ENGLAND
- WILLISTON TOWNSHIP
- MOUNTRAIL COUNTY
- WILLISTON PSD #1
- CITY OF STANLEY

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

## I N V E S T M E N T S

### Investment Updates

#### Asset Allocation

The following table shows the status of the permanent trusts' asset allocation as of March 31, 2020. The figures provided are unaudited.

| Account/Asset Class               | Long-Term Asset Allocation | 3/31/20 Actual Allocation \$ | 3/31/20 Actual Allocation % | 3/31/20 % Diff. |
|-----------------------------------|----------------------------|------------------------------|-----------------------------|-----------------|
| Large Cap US Equity               | 14.5%                      | \$ 619,082,532               | 14.2%                       | -0.3%           |
| Mid/Small Cap US Equity           | 4.0%                       | \$ 147,766,026               | 3.4%                        | -0.6%           |
| International Equity              | 14.5%                      | \$ 585,817,249               | 13.4%                       | -1.1%           |
| Emerging Market Equity            | 4.0%                       | \$ 158,840,208               | 3.6%                        | -0.4%           |
| <b>Total Equities</b>             | <b>37.0%</b>               | <b>\$ 1,511,506,015</b>      | <b>34.6%</b>                | <b>-2.4%</b>    |
| Core Fixed Income                 | 13.8%                      | \$ 712,638,119               | 16.3%                       | 2.5%            |
| Non-Core Fixed Income             | 9.2%                       | \$ 429,018,394               | 9.8%                        | 0.6%            |
| <b>Total Fixed Income</b>         | <b>23.0%</b>               | <b>\$ 1,141,656,513</b>      | <b>26.2%</b>                | <b>3.2%</b>     |
| <b>Total Absolute Return</b>      | <b>15.0%</b>               | <b>\$ 622,518,925</b>        | <b>14.3%</b>                | <b>-0.7%</b>    |
| Commodities                       | 3.0%                       | \$ 114,864,987               | 2.6%                        | -0.4%           |
| MLPs                              | 3.0%                       | \$ 73,217,317                | 1.7%                        | -1.3%           |
| TIPS                              | 2.0%                       | \$ 100,004,606               | 2.3%                        | 0.3%            |
| Natural Resource Equities         | 2.0%                       | \$ 62,115,146                | 1.4%                        | -0.6%           |
| <b>Total Inflation Strategies</b> | <b>10.0%</b>               | <b>\$ 350,202,056</b>        | <b>8.0%</b>                 | <b>-2.0%</b>    |
| Core Real Estate                  | 8.0%                       | \$ 395,014,688               | 9.1%                        | 1.1%            |
| Core Plus Real Estate             | 7.0%                       | \$ 341,840,608               | 7.8%                        | 0.8%            |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 736,855,296</b>        | <b>16.9%</b>                | <b>1.9%</b>     |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 4,362,738,805</b>      | <b>100.0%</b>               |                 |

#### Angelo Gordon (\$154.99 million, 3.6% of PTF assets as of 3/31/20) Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. On March 23, 2020 the remaining \$27,750,000 or 18.50% was called. After the said capital call, this would complete the total \$150 million capital commitment made to Angelo Gordon.

We have received a \$2,329,264 distribution from the Fund at the end of January 31, 2020. Including this distribution, the Fund will have distributed approximately 4.9% of total paid-in capital total.

#### Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

#### March Investment Reports – 4th Quarter 2020

Josh Kevan from RVK reviewed the performance of the Board of University and School Land's (Board) investment program for the period ending December 31, 2019 and discuss current market conditions.

The first report to be reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report. A more comprehensive, detailed report is also available.

Josh touched on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.



Finally, Josh will discussed RVK's view of the possible economic implications of COVID-19, and its likely effects on the PTF portfolios.

The following reports were provided to the Board for review and are available at the Department upon request: RVK Permanent Trust Fund Performance Analysis Report, RVK Ultra-short Performance Report and RVK Economic Implications of COVID-19.

### **Strategic Asset Allocation Study and Recommended Changes**

The Board of University and School Lands' (Board) Investment Policy Statement (IPS) requires a formal asset allocation review at least once every four years, with the last study completed in 2017. At the request of the Commissioner and the Department of Trust Lands' investment staff (DTL staff), RVK conducted a formal asset allocation study for the Permanent Trust Funds (PTFs).

As part of the study, RVK used their 2020 capital market assumptions which updated their long-term expectations for investment returns and risk for major asset classes, including public equities, fixed income, real estate, inflation strategies, absolute return strategies, infrastructure, and private equities. The new assumptions deemphasized treasury inflation protected securities (TIPS) and commodities across optimal portfolios on the efficient frontier. In addition, the assumptions slightly reduced public equities. Conversely, the new assumptions favor the introduction of infrastructure and private equities in the optimal portfolios on the efficient frontier (see Attachment 1).

Further, RVK and DTL staff had several discussions regarding the advantages and disadvantages of TIPS, commodities, infrastructure, and private equities. RVK and DTL staff reached the following consensus:

- TIPS are a hedge against inflation; however, TIPS have consistently underperformed aggregate bonds over twenty years. A scenario where TIPS would outperform aggregate bonds would not persist beyond one year, due to the rapid repricing of aggregate bonds if actual inflation rises above expectations. Therefore, the model is correct to hold a zero allocation of TIPS in the optimal portfolios, and the PTFs should likewise be allocated away from TIPS. (PTFs current allocation target is 2% in TIPS.)
- Commodities are another hedge against inflation; however, like TIPS, commodities have underperformed over several cycles and have high volatility. In the three years the PTFs have held commodities, they have underperformed all other asset classes, except master limited partnerships (MLPs) and natural resource equities. Therefore, the model is correct to hold a zero allocation of commodities in the optimal portfolios, and the PTFs should likewise be allocated away from commodities. Additionally, the PTFs already have a large exposure on the revenue side, from both surface and mineral leases. (The PTFs current allocation target is 3% in commodities.)
- Public equities have had a strong runup over the past decade, despite the recent market correction. Most market observers and RVK professionals believe future return expectations for public equities should be muted. Further, if public equities show a stronger return potential, the Absolute Return strategies can add public equities quickly. Therefore, reducing the PTFs' target holdings by 6 percentage points would be prudent. (The PTFs current allocation target is 38% in public equities.)
- Infrastructure would be a replacement strategy for the reduction in the above-mentioned asset classes. Infrastructure has steady return potential with moderate risk, similar to commercial real estate. Therefore, the model is correct to add a 5% allocation to infrastructure in the optimal portfolios, and the PTFs should likewise be allocated to infrastructure.

- Private equities would be another replacement strategy for the reduction in the above-mentioned asset classes. While private equities have a higher risk profile than most other asset classes, they also have a higher return profile. Further, more firms are staying private longer and market participants and RVK professionals see private equities as an enhancement to a long-term portfolio. Therefore, the model is correct to add a 5% allocation to private equities in the optimal portfolios, and the PTFs should likewise be allocated to private equities.

Finally, the staff and RVK would like the Board to consider a zero allocation or reduced allocation to MLPs and natural resource equities. The rationale is based on viewing the assets of the PTFs in a holistic approach, as opposed to a siloed approach. Holistically, the PTFs hold surface land, mineral rights, and investment securities, and these should be viewed together. Therefore, the PTFs should not “double-down” on assets in the investment portfolio that it holds in surface and mineral rights. Specifically, the exposures to commodities, MLPs and natural resource equities which mirror the risk assets already held in the surface and minerals portfolios. Please note, RVK’s optimal portfolios would continue to hold the PTFs’ current target allocation in MLPs and natural resource equities; however, the RVK model is unaware of the exposure the PTFs hold in their non-investment portfolios.

RVK Asset Allocation Overview was provided to the Board and is available at the Department upon request.

**Motion: The Board approve the changes to the PTFs’ Strategic Asset Allocation to the Proposed Portfolio 2, as indicated on page 13 of the attached RVK Asset Allocation Overview (March 26, 2020); to authorize DTL Staff and RVK to begin investment manager searches for both infrastructure and private Equities for future Board approval; and to authorize DTL Staff to liquidate the TIPS, Commodities, MLPs, and Natural Resource Equities’ holdings in the PTFs in a manner that is consistent with the best interests of the PTFs and as market conditions allow. DTL Staff recommends this Option.**

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

### **RVK Contract Renewal**

The Board of University and School Land’s (Board) relationship with RVK began in 2013 when, through a competitive hiring process, the Board chose the firm to submit a written report addressing various investment issues, such as, investment policies and procedures, asset allocation policy, transitioning from the old asset allocation plan to the new asset allocation plan, and analysis of the cash-like funds.

In January 2014, the Board entered into another agreement with RVK to implement the recommendations that resulted from RVK’s 2013 investment study and to provide performance monitoring services to the Board. This agreement was extended six months to provide for the completion of all fund manager searches and the adoption of the Board’s Investment Policy Statement.

In July 2015, the Board directed the Commissioner to enter into an agreement with RVK for traditional investment consultant services. The fee for the initial two-year contract with RVK was \$145,000 per year and that contract concluded in August 2017. During the August 2017 Board meeting, the RVK contract was extended for one year, with a fee increase of 3%, for a total of \$149,350. This fee included four personal visits, during which RVK representatives reviewed quarterly investment performance with the Board, advised on asset allocation and asset class structure issues, reviewed investment policies, provided information and guidance for three manager searches, and provided the Board with educational presentations and summaries.

In June 2018, the Board directed the Commissioner to enter into another contract with RVK for investment consultant services. The fee for the two-year contract increased by approximately 3% per annually for a total of \$153,800 in year one and \$158,400 in year two. This contract will expire in August 2020. The contract was substantially similar to the previous one, which included four personal visits per year, a review of quarterly investment performance, advice on asset allocation and asset class structure issues, review of investment policies, information and guidance for manager searches, guidance with the dismissal of one manager, and providing the Board with educational presentations and information.

Department of Trust Lands' staff previously conducted an internal assessment of similar sized permanent trust investment consulting practices throughout the western United States. That assessment involved discussions with permanent trust investment officers in New Mexico and Oklahoma, as well as gathering data regarding other permanent trust investment programs. During that assessment, it was found that many investment programs maintain consultant relationships for extended periods of time and for as long as the consultant continues to provide the desired services in an efficient and effective manner at a reasonable price. Consultants are trusted partners and help shape programs over time. This philosophy is followed by the Oklahoma and New Mexico permanent trusts investment offices and is also followed by North Dakota's State Investment Board.

Research into other state permanent trust investment programs indicates that RVK is the consultant of choice for five of the seven largest permanent trust investment programs. In addition to North Dakota, the states that currently work with RVK are Montana, New Mexico, Oklahoma and Wyoming. The fees paid by each of those states, approximately \$325,000, is measurably more than what North Dakota has paid historically; if fees are dollar weighted to consider the amount of the assets under consultation, the fee being proposed by RVK for the Board is less than half what other states pay.

RVK has \$67.4 billion in permanent trust assets under consultation from the five states noted above. Additionally, RVK has been a Greenwich Quality Leader among large US investment consultants for the last two consecutive years. Greenwich Associates, a trusted independent investment research firm, conducted interviews with over 1,000 senior professionals of 924 large plan sponsors and ranked opinions of their investment consulting relationships on a series of key metrics, including but not limited to:

- Understanding Clients' Goals and Objectives
- Advice on Long-term Asset Allocation
- Proactive Advice and Innovative Ideas
- Credibility with the Board and/or Investment Committee
- Knowledge of Investment Managers
- Advice on DC Plan Structure and Design
- Satisfaction with Manager Recommendations
- Responsiveness to Client Requests and Needs
- Competitive Fees

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Based upon staff's assessment of other state programs and satisfaction with the services provided by RVK over the past five years, the Commissioner and staff recommend the Board continue contracting with RVK for investment consulting services.

The staff would propose a contract substantially similar to the previous contract with the following changes:

1. A three-year contract with an optional two-year extension by mutual consent of the Board and RVK, instead of a two-year contract with no optional extensions. The contract term would be from September 2020 to August 2023, with the option of extending the contract from September 2023 to August 2025.
2. A fee for each year that increases as follows: \$163,000 in FY 2020, \$168,000 in FY 2021, \$173,000 in FY 2022, and if the contract is extended, fees of: \$178,000 in FY 2024 and \$183,000 in FY 2025. Each year's fee increase is approximately 3% over the prior year.
3. RVK would make six personal visits each year, instead of four, to better communicate with the Board and Department staff.
4. The contract would provide more detail as to the services expected and provided in the annual fee and would provide more detail on the additional cost of services not provided in the annual fee. The previous contract did not list all the services included in the annual fee and was silent on the exact fee for most additional services.

**Recommendation: The Board authorizes the Commissioner to enter into a contract with RVK for comprehensive investment advisory services, including investment performance monitoring, assistance with investment manager searches, investment advice and educational efforts, with the contract subject to final approval by the Attorney General.**

A draft of the potential agreement was given to the Board for review. This agenda item will be addressed at a subsequent Board meeting. No formal action was taken.

## MINERALS MANAGEMENT

### Shut-In Administrative Rule

Due to the downturn in oil prices, the Department of Trust Lands (Department) has been advised that the petroleum industry is considering whether to abandon production, either temporarily or by permanently plugging wells, on certain state land subject to leases that cover substantial stripper wells or marginal wells. In an attempt to maintain production potential on these wells, an option is to consider allowing wells to be moved to shut-in status until such time as this downturn begins to correct itself.

The Board of University and School Lands (Board) has always recognized its fiduciary responsibility to maximize revenues from state lands. Of critical importance to the state is ensuring that currently producing wells are not permanently abandoned due to the current downturn in prices for crude oil and natural gas which could render production from these wells uneconomic. If this happens, those reservoirs have the potential to no longer produce, eliminating state revenues. It also may not be economically feasible to re-drill these minerals. Permanent abandonment of production would be of no benefit to the state or industry.

Therefore, it is reasonable for the Board to permit the temporary shut-in of petroleum and natural gas production on certain lands under its jurisdiction.

Section N.D.C.C. § 38-09-18, provides as follows:

All leases for the purposes as hereinbefore provided shall be made by the state of North Dakota and all agencies and departments and political subdivisions thereof for not less than twenty-five cents per acre [.40 hectare] per year for deferred drilling and shall be made with a royalty reservation of not less than one-eighth of all oil and gas produced from said land as long as oil and gas may be produced from said land. The term one-eighth as used herein must be construed to mean one-eighth of such interest as may be owned by the lessor. All leases hereunder must be made for a period of not less than five years and must continue in effect under the terms thereof as long as oil or gas may be produced thereon in commercial quantities...

In May 1986, the Board adopted a shut-in well policy. This policy allowed marginal wells to be shut in without lease termination. This policy was adopted in response to the sharp decline in oil prices in early 1986. The rationale behind the policy was to avoid plugging wells because of difficult economic conditions facing the oil industry. The policy was extended each year for a one-year period until December 31, 2004. In 2004, the Board unanimously affirmed this policy without expiration and required a report be made to the Board annually.

In January 2020, the North Dakota Administrative Code § 85-06-01-14 was enacted. It provides as follows:

**85-06-01-14. Request for shut-in status for oil.**

1. A lessee requesting shut-in status of an oil well, without canceling the oil and gas lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
  - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
  - b. The township, range, and section of the surface location of the well;
  - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
  - d. The name and address of the operator of the well;
  - e. The cumulative oil production and the number of days of production for the three months immediately preceding the request;
  - f. The written approval of the request from the operator;
  - g. The grounds for the request and the anticipated length of time the well will be shut-in; and
  - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, and the shut-in royalty payment must be submitted with the application. If the application is denied, the shut-in royalty payment will be refunded by the department.

3. An application is deemed filed when the department receives the application form, application fee, shut-in royalty payment, and any additional information requested by the department.
4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
  - a. The application is approved and the terms of the shut-in approval;
  - b. The application is denied;
  - c. An additional fifteen day period is necessary to consider the application; or
  - d. The application requires board approval.
5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

The Department anticipates an increase in shut-in requests. Operators are required to formally request a shut-in by submitting a written request to the Department, as required by North Dakota Administrative Code § 85-06-01-14.

### **Extension Administrative Rule**

Companies bid on Board of University and School Land (Board) leases at a public auction for the right to explore for oil and gas within the five-year lease term. Pursuant to the Board's lease, lessees are required to produce oil and/or gas in commercial quantities or risk lease termination. Due to travel and other restrictions resulting from by the COVID-19 crisis and depressed prices of oil and gas, however, production of oil and/or gas may not be prudent at this time.

Section 8 of the Board's Oil and Gas lease states:

If, at the expiration of the primary term, production of oil and/or gas has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, lessee may, on or before the expiration of the primary term, file a written application with the Commissioner of University and School Lands for a one hundred eighty (180) day extension of this lease, such application to be accompanied by a payment of ten dollars (\$10.00) per acre, and the Commissioner shall, in writing, extend this lease for a period of one hundred eighty (180) days beyond the expiration of the primary term and as long as oil and/or gas is produced in commercial quantities; lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the Commissioner, on or before the expiration of the initial extended period of one hundred eighty (180) days for an additional extension of one

hundred eighty (180) days, such application to be accompanied by a payment of twenty dollars (\$20.00) per acre, and the Commissioner shall, in writing, extend this lease for an additional one hundred eighty (180) day period from and after the expiration of the initial extended period of one hundred eighty (180) days, and as long as oil and/or gas is produced in commercial quantities; this lease shall not be extended for more than a total of three hundred sixty (360) days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.

Per North Dakota Administrative Code § 85-06-01-06:

A lessee shall submit a written request to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. A request must include any documents requested by the department. The lessee shall submit a fee, in an amount set by the board, to the department with the request.

...

2. Extensions. If, at the expiration of the primary term, production of oil or gas or both has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, the lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of this oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil or gas or both is produced in commercial quantities; the lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil or gas or both is produced in commercial quantities; this oil and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.

The Department anticipates an increase in extension requests. Operators are required to formally request an extension by submitting a written request to the Department, as required by North Dakota Administrative Code § 85-06-01-06.

## 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:**

- BLM - Case No. IBLA 2016-170
- Continental Resources, Inc. (Interpleader) Case No. 1:17-cv-00014
- XTO Energy, Inc. et al. (Interpleader) Case No. 1:19-cv-00076
- William S. Wilkinson et al. Case No. 53-2012-CV-00038
- Newfield Exploration Company et al Civ. No. 27-2018-CV-00143

| 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   |     |        |

At 1:06 PM the Board entered executive session for the purposes outlined in its adopted motion.

### 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                 |
| Catelin Newell | Administrative Staff Officer |

**Guests in Attendance:**

|                      |                           |
|----------------------|---------------------------|
| Charles Carvell      | Attorney General's Office |
| Dave Garner          | Attorney General's Office |
| Leslie Bakken Oliver | Governor's Legal Counsel  |
| Reice Haase          | Governor's Office         |

### **BLM Litigation**

**Case:** ND Office of State Engineer, Board of University and School Lands v. BLM - Case No. IBLA 2016-170

**Tribunal:** US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals

**Attorney:** Charles Carvell and Jennifer Verleger

**Opposing Counsel:** Karan Dunnigan

(04/08/20)



**Issues:** In 2014, the Bureau of Land Management (BLM) resurveyed land along the Missouri River to locate the boundary, ordinary high water mark (OHWM), between the public domain land owned by the United States and the riverbed owned by the state of North Dakota. In identifying the OHWM, the BLM applied federal law rather than state law. Specifically, the BLM adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. In certain areas, the survey overlaps with the state’s claim to sovereign lands.

After the survey work was complete, the BLM published a “Notice of Filing Plats of Survey; North Dakota” in which BLM intends to formally file the survey plats as Official Plats. After the Federal Register Notice appeared, the State Engineer and the Board jointly filed a protest challenging the filing of the survey plats. The BLM rejected the State’s protest and the State appealed the BLM’s decision to the Interior Board of Land Appeals.

**History:**

**Current Status:**

**On June 24, 2019, the BLM submitted its Request to Take Judicial Notice of North Dakota Law.**

**On March 25, 2020, the Opinion by Administrative Judge Haugrud was issued by the United States Department of Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Interior Board). The Interior Board held that while it is in general proper for federal agencies and federal courts to adopt state law to decide water boundaries along federally owned land, it is inappropriate to do so in matters involving the location of an OHWM. Were the rule otherwise, the Interior Board stated, states could acquire federal land “simply by adopting an expansive OHWM definition ... whenever a State chose to [do so].” The Interior Board then stated that because it was proper for the BLM, in preparing its OHWM surveys, to apply the *BLM Survey Manual* and other federal sources, the state’s appeal is denied.**

**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, 8<sup>th</sup> 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 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 memorandandum for

(04/08/20)

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:**

**XTO Interpleader Litigation**

**Case:** **XTO Energy, Inc., and XTO Holdings, LLC v. North Dakota Board of University and School Lands and the United States of America, Case No. 1:19-cv-00076**

**Date Filed:** **April 29, 2019**

**Court:** **Federal District Court**

**Judge:** **Magistrate Judge Clare R. Hochhalter**

**Attorney:** **Charles Carvell, David Garner, Jennifer Verleger**

**Opposing**

**Counsel:** **Lawrence Bender, Spencer Ptacek for XTO  
Shaun Pettigrew for United States**

**Issues:** In April 2019, XTO Energy, Inc. and XTO Holdings, LLC (XTO), brought an interpleader action against the Board of University and School Lands and the United States regarding certain public domain lands underlying XTO operated wells located in McKenzie and Williams Counties. This case addresses overlapping ownership claims by the State and the United States of minerals underlying Lake Sakakawea. XTO is requesting the Court determine the property interests for the disputed lands so that XTO can correctly distribute the proceeds from the affected wells. XTO has claimed that there is “great doubt as to which of the Defendants is entitled to be paid royalties related to the Disputed Lands.” Currently, XTO is paying the United States its full royalty based on the acreage it claims under two of the wells at issue and not paying the State its royalty on the acreage claimed by the State under these two wells. The State’s royalty on the remaining ten wells at issue is being escrowed with the Bank of North Dakota pursuant to the policies and rules of the Board.

**History:** The Summons and Complaint were served on the Board and the Attorney General's Office on April 30, 2019, with the Answer being due May 21, 2019. The United States was served on April 30, 2019, and its Answer is due on June 29, 2019. A request for an extension to file the Board's Answer was made and the parties entered into a Stipulation for Extension of Time to Answer Pleadings.

**Current Status:**

- The Answers of both the Board and the United States were filed on August 1, 2019.
- Order for Rule 26(f) Planning Meeting and Rule 16(b) Scheduling Conference, and Order RE Resolution of Discovery Disputes
- A scheduling conference was scheduled for December 30, 2019 but was rescheduled to January 28, 2020 as attorney John Most is leaving the employment of the Department of Justice and it is necessary to get his replacement up to speed on the case.
- On January 13, 2020, XTO filed a Motion for Leave to Deposit Funds with the Court, Memorandum of Law in Support of Plaintiffs XTO Energy Inc. and XTO Holdings, LLC Motion for Leave to Deposit Funds with the Court, and Declaration of Mary Holman.
- Status conference held January 28, 2020. A second status conference was scheduled for April 7, 2020 at 9:30 a.m. before Magistrate Clare R. Hochhalter.
- Extension of time to respond to Motion for Lease to Deposit funds. Responses due March 2, 2020.
- Court granted the Motion for Extension of Time to File Response regarding Motion to Deposit Funds. Responses are due by March 23, 2020.
- On March 23, 2020, the Court granted the Motion for Extension of Time to File Response regarding Motion to Deposit Funds (filed March 20, 2020). Responses are due by May 20, 2020.

**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.

**History:** 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 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. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020.

**Current  
Status:**

(04/08/20)

- Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020.
- Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020.
- Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

### 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 - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP

**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.

**History:** 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 (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the 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. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the

two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield’s Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered “the parties to file a brief regarding how they suggest the case proceed after the Supreme Court’s decision.” The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019.

**Current Status:**

- **Telephonic Status Conference scheduled for March 17, 2020 before the District Court.**

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 1:40 PM and the Board reconvened in open session.

Upon reconvening in open session the following action was taken:

**Motion: The Board authorizes legal council to pursue an appeal to the Federal District Court in ND Office of State Engineer, Board of University and School Lands v. BLM - Case No. IBLA 2016.**

| <u>Action Record</u>       | <u>Motion</u> | <u>Second</u> | <u>Aye</u> | <u>Nay</u> | <u>Absent</u> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           |               | X             | X          |            |               |
| Superintendent Baesler     |               |               | X          |            |               |
| Treasurer Schmidt          |               |               | X          |            |               |
| Attorney General Stenehjem | X             |               | X          |            |               |
| Governor Burgum            |               |               | X          |            |               |

**Motion: The Board authorizes the Commissioner to extend the repayment of gas deduction royalties to September 30<sup>th</sup>, 2020, in light of the current Covid-19 pandemic resulting in a national public health declared emergency and economic turmoil. This extension to September 30, 2020, may be reviewed by the Board at any time during this state of emergency and may be amended at a subsequent Land Board meeting. Oil and Gas industry members are encouraged to communicate with the Department of Trust Lands on the status of their repayment of gas deduction royalties.**

| <u>Action Record</u>       | <u>Motion</u> | <u>Second</u> | <u>Aye</u> | <u>Nay</u> | <u>Absent</u> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           |               |               | X          |            |               |
| Superintendent Baesler     |               | X             | X          |            |               |
| Treasurer Schmidt          |               |               | X          |            |               |
| Attorney General Stenehjem | X             |               | X          |            |               |
| Governor Burgum            |               |               | X          |            |               |



**A D J O U R N**

There being no further business, the meeting was adjourned at 10:48 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
April 30, 2020**

The April 30, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Coteau Meeting 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 – via telephone    |
| Catelin Newell   | Administrative Staff Officer |
| Mike Shackelford | Investment Division Director |

**Guests in Attendance:**

|                      |                          |
|----------------------|--------------------------|
| Leslie Bakken Oliver | Governor's Legal Counsel |
|----------------------|--------------------------|

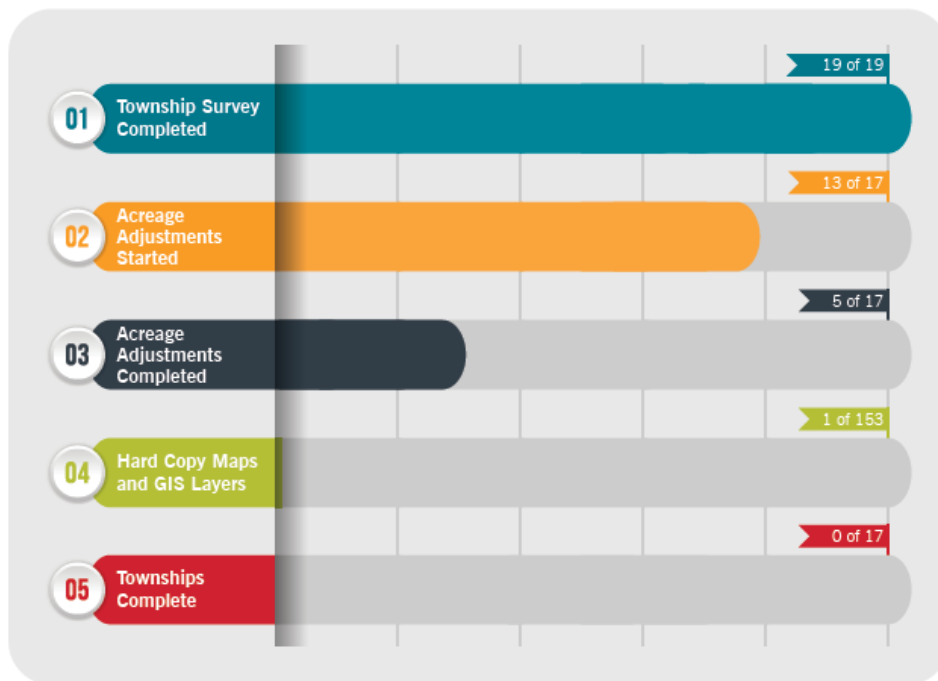
**A P P R O V A L   O F   M I N U T E S**

A motion to approve the minutes of the April 8, 2020 meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary Alvin Jaeger and the motion carried unanimously on a voice vote.

**R E P O R T S**

**Acreage Adjustment Survey**

Senate Bill 2211 of 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 Department executed a contract with Kadrmas, Lee & Jackson, Inc. "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 contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.



### Extension Report

In January 2020, North Dakota Administrative Code § 85-06-01-06 was enacted. It provides the petroleum industry the option to request an extension of their lease.

Since March 2020, one operator filed for an extension. Sinclair Oil and Gas of Salt Lake City, Utah, received a second six-month extension on four leases in Section 16-147N-98W, McKenzie County. They have a permit to drill the Renae 16-21-H Well.

## INVESTMENTS

### RVK Contract Renewal

The Board's relationship with RVK began in 2013 when the firm was chosen through a competitive hiring process by the Board to submit a written report addressing various investment issues, such as, investment policies and procedures, asset allocation policy, transitioning from the old asset allocation plan to the new asset allocation plan, and analysis of the cash-like funds.

In January 2014, the Board entered into another agreement with RVK to implement the recommendations that resulted from of RVK's 2013 investment study and to provide performance monitoring services to the Board. This agreement was extended six months to provide for the completion of all searches and the adoption of an Investment Policy Statement by the Board

(04/30/20)

In July 2015 the Board directed the Commissioner to enter into an agreement with RVK for traditional investment consultant services. The initial two-year contract with RVK was for a fee of \$145,000 per year and concluded in August 2017. During the August 2017 Board meeting, a one-year extension of the contract was awarded to RVK with a fee increase of 3% for a total of \$149,350. This fee included four personal visits per year during which representatives of RVK have reviewed quarterly investment performance with the Board, advised on asset allocation and asset class structure issues, reviewed investment policy, information and guidance in three manager searches, and provided the Board with educational presentations and summaries.

In June 2018 the Board directed the Commissioner to enter into another agreement with RVK for investment consultant services. The two-year contract with RVK increased the fee by approximately 3% for a total of \$153,800 in year one and \$158,400 in year two; the current agreement will expire in August 2020. The agreement was substantially similar to the previous contract, which included four personal visits per year, a review quarterly investment performance, advice on asset allocation and asset class structure issues, review of investment policy, information and guidance in manager searches, guidance with the dismissal of one manager, and providing the Board with educational presentations and information.

Department staff previously conducted an internal assessment of similar sized permanent trust investment consulting practices throughout the western U.S. That review involved discussions with permanent trust investment officers in New Mexico and Oklahoma, as well as gathering data about other permanent trust investment programs. During that research it was found that many investment programs maintain consultant relationships for extended periods of time, for as long as the consultant continues to provide the desired services in an efficient and effective manner at a reasonable price. Consultants are trusted partners and they help shape programs over time. This philosophy is followed by the Oklahoma and New Mexico permanent trusts investment offices, and it is also followed by North Dakota's State Investment Board.

Research into other state permanent trust investment programs indicates that RVK is the consultant of choice for five of the seven largest permanent trust investment programs. The states that currently work with RVK are Montana, New Mexico, North Dakota, Oklahoma and Wyoming. The fees paid by each of those states is measurably more than North Dakota has paid historically; if fees are dollar weighted to consider the amount of asset under consultation, the fee being proposed by RVK is less than half what other states pay. The average fee paid to RVK by other permanent trusts is approximately \$325,000 per year.

RVK has \$67.4 billion in permanent trust assets under consultation from the five states noted above. Additionally, RVK is a Greenwich Quality Leader among large US investment consultants for the last two consecutive years. Greenwich Associates, a trusted independent investment research firm, conducted interviews with over 1,000 senior professionals of 924 large plan sponsors and ranked opinions of their investment consulting relationships on a series of key metrics, including, but not limited to:

- Understanding Clients' Goals and Objectives
- Advice on Long-term Asset Allocation
- Proactive Advice and Innovative Ideas
- Credibility with the Board and/or Investment Committee
- Knowledge of Investment Managers
- Advice on DC Plan Structure and Design
- Satisfaction with Manager Recommendations
- Responsiveness to Client Requests and Needs
- Competitive Fees

Based upon staff's review of other state programs and satisfaction with the services provided by RVK over the past five years, the Commissioner and staff recommend the Board continue contracting with RVK for investment consulting services.

The proposed contract is substantially similar to the previous contract with the following changes:

1. A contract that extends for three years with an optional two-year extension by mutual consent of the Board and RVK instead of a two-year contract with no optional extensions. Extending from September 2020 to August 2023, and optionally, from September 2023 to August 2025.
2. The fee for each year that increases as follows: \$163,000 in FY 2020, \$168,000 in FY 2021, \$173,000 in FY 2022, and optionally: \$178,000 in FY 2024 and \$183,000 in FY 2025. Each year's fee increase is approximately 3% over each prior year.
3. RVK would make six personal visits each year instead of four to better communicate with the Board and department staff.
4. The new agreement would list in more detail the services expected and provided in the annual fee and provide more detail on the additional cost of services not provided in the annual fee. The previous contract did not list all the services included in the annual fee and was silent on the exact fee for most additional services.

Due Diligence: The Department contacted three other investment consultants to request written proposals for general consulting services. Two of the three consultants responded with written proposals (see attached proposals from Cambridge Associates and Aon); the third consultant did not respond. After careful consideration of each proposal and the proposed contract with RVK the Department staff determined that it was in the best interests of the trusts that RVK continue as the general investment consultant under the terms of the proposed contract.

**Motion: The Board authorizes the Commissioner to enter into an agreement with RVK for comprehensive investment advisory services, including investment performance monitoring, assistance with investment manager searches, ongoing due diligence, investment advice and educational efforts, such agreement to be subject to final approval by the Attorney General.**

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

The following documents were presented to the Board for review and are available at the Department up on request: Draft RVK Contract, Cambridge Associates Proposal, Aon Proposal.

### Investment Policy Statement Update

On April 8, 2020 the Board approved a new Strategic Asset Allocation (SAA) for the permanent trust funds. As a result of the new SAA the Investment Policy Statement (IPS) must be approved.

The substantive changes as a result of the new SAA to the IPS are reflected in the new asset class targets including the elimination of the Diversified Inflation Strategies asset classes, addition of Private Equity and Private Infrastructure asset classes, the addition of an Opportunistic Investments asset class, and language added to allow for temporary deviations from policy targets

and ranges during the transitional period to the new portfolio structure. The changes are reflected in the chart below:

| Asset Class                           | OLD Strategic Asset Allocation Target | NEW Strategic Asset Allocation Target | CHANGE |
|---------------------------------------|---------------------------------------|---------------------------------------|--------|
| <b>Broad US Equity</b>                | 18.5%                                 | 19%                                   | +0.5%  |
| <b>Broad International Equity</b>     | 18.5%                                 | 19%                                   | +0.5%  |
| <b>Fixed Income</b>                   | 23%                                   | 22%                                   | -1%    |
| <b>Absolute Return</b>                | 15%                                   | 15%                                   | -      |
| <b>Real Estate</b>                    | 15%                                   | 15%                                   | -      |
| <b>Diversified Inflation Strategy</b> | 10%                                   | N/A                                   | -10%   |
| <b>Private Equity</b>                 | N/A                                   | 5%                                    | +5%    |
| <b>Private Infrastructure</b>         | N/A                                   | 5%                                    | +5%    |
| <b>Opportunistic Investments</b>      | N/A                                   | 0%                                    | +0-5%  |

Additionally, RVK and the staff recommend the Board review Opportunistic Investments. although there is no strategic asset allocation target to opportunistic investments, we believe that the current economic crisis is likely to provide a robust opportunity set for skilled asset managers in distressed credit. We would like to discuss with the Board the potential of allowing in policy “up to 5%” in Opportunistic Investments. Opportunistic Investments, being episodic in nature, will be evaluated as opportunities are identified. A number of potential opportunities have appeared in recent weeks related to recent dislocations in credit markets, and potential for distressed debt situations. This is reflected on page 17-18 of the IPS.

The substantive changes for 2020 include the following:

1. Strategic Asset Allocation (IPS pages 17-18) – IPS is updated to reflect the new SAA percentages approved on April 8, 2020. It also adds language granting the commissioner authority to implement the transition to the new SAA. Finally, it adds Opportunistic Investments to the SAA and language regarding its implementation (as discussed above).
2. Benchmarks (IPS page 19) – Benchmarks for the new asset classes are added:
  - a. Private Equity benchmark will be the Cambridge US Private Equity Index
  - b. Private Infrastructure it adds the MSCI World Infrastructure Index
3. Permitted Investments (IPS pages 19-21) – IPS is updated to add the newly approved assets to the list of permitted investments.

Per the Board’s Policy Introduction/Amendment/Passage the Board may take emergency measures:

The Board may, upon determination that an emergency or other circumstance requiring expeditious action exists, waive the requirement of a second reading and immediately approve the Measure following the introduction and first reading.

The Department staff believe it is in the best interest of the trusts to adopt the proposed Investment Policy Statement utilizing the emergency measure as state in the Board policy.

**Motion: The Board authorizes the Commissioner to update the Investment Policy Statement as attached, use the benchmarks recommended by RVK, and add Opportunistic Investments to the Permitted Investments list as described in the updated Investment Policy Statement. Per Board Policy, the Board waives the requirement of a second reading and immediately approves the updated Investment Policy Statement.**

| 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   |     |        |

The Investment Policy Statement (redline version) and Opportunistic Investments were provided to the Board for review and are available at the Department upon request.

### **Strategic Asset Allocation Transition Plan**

On April 8, 2020 the Board approved a new Strategic Asset Allocation (SAA) for the permanent trust funds. The Board requested a transition plan for the implementation of the new SAA. In accordance with the approval, RVK has completed a transition plan summary and is reflected in the weekly schedule of transition-related items (Attachment).

Following are the items that have been identified as necessary to address in order to implement the transition from the current targets to the newly approved targets:

1. Investment Policy – the Investment Policy Statement is to be updated to reflect the newly-approved targets, including the elimination of the Diversified Inflation Strategies asset classes, addition of Private Equity and Private Infrastructure asset classes, the addition of an Opportunistic Investments asset class, and language added to allow for temporary deviations from policy targets and ranges during the transitional period to the new portfolio structure.
2. New Asset Class: Private Equity – the Board approved a 5% target—approximately \$225M based on current asset values—to Private Equity in the Permanent Trust Funds portfolio. The inclusion of the Private Equity asset class necessitates that a number of key items are addressed, including a pacing study, the establishment of criteria for and issuance of a Request for Proposal (RFP), a review of RFP responses, interviews with potential candidates, and a recommendation to the Board.
3. New Asset Class: Private Infrastructure – the Board approved a 5% target—approximately \$225M based on current asset values—to Private Infrastructure in the Permanent Trust Funds portfolio. The inclusion of the Private Infrastructure asset class necessitates that a number of key items are addressed, including the establishment of criteria for and issuance of an RFP, a review of RFP responses, interviews with potential candidates, and a recommendation to the Board.
4. New Asset Class: Opportunistic Investments – although there is no strategic asset allocation target to opportunistic investments, we believe that the current economic crisis is likely to provide a robust opportunity set for skilled asset managers in distressed credit. We would like to discuss with the Board the potential of allowing

- in policy “up to 5%” in Opportunistic Investments. Opportunistic Investments, being episodic in nature, will be evaluated as opportunities are identified. A number of potential opportunities have appeared in recent weeks related to the re-establishment of the Term Asset-Backed Security Loan Facility (“TALF”) by the Fed, recent dislocations in credit markets, and potential for distressed debt situations.
5. Existing Asset Class: Fixed Income – the Board approved a 1% reduction in the target to Fixed Income in the Permanent Trust Funds portfolio. In addition, given the extreme adjustment in valuation and yield levels we recommend formally reviewing the structure of the fixed income portfolio.
  6. Existing Asset Class: Public Equity – the Board approved a 1% increase to public equity—0.5% each to Broad US Equity and Broad International Equity—in the Permanent Trust Funds portfolio. Given current volatility in public equity markets, a framework for systematically rebalancing to the new targets will be developed.
  7. Removed Asset Class: Commodities – the Board approved the removal of Commodities from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$145M liquidation. Commodities will be liquidated gradually over a period of time to allow for best execution by the manager. We believe this liquidation can happen in the relative near-term as commodities are not income producing by their nature and predicting their long-term price behavior is difficult at best. The proceeds will be a source of funds for systematic rebalancing to new equity targets, and it is also expected that the Northern Trust (NT) Short Term Investment Fund (STIF) will also be used as short-term holding vehicle.
  8. Removed Asset Class: Treasury Inflation-Protected Security (TIPS) - the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$100M liquidation. The TIPS portfolio will be fully liquidated as expediently as is feasible. The proceeds will be a source of funds for systematic rebalancing to new equity targets, and it is also expected that the NT STIF will also be used as short-term holding vehicle.
  9. Removed Asset Class: Natural Resource Equities – the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$70M liquidation. Given the current depressed valuations of natural resource equities, a framework will be developed in order to systematically liquidate the portfolio based on prices and/or market conditions.
  10. Removed Asset Class: Master Limited Partnerships (MLP) – the Board approved the removal of TIPS from the Permanent Trust Funds portfolio. At current asset levels, this represents an approximately \$85M liquidation. Given the current depressed valuations of MLPs, a framework will be developed in order to systematically liquidate the portfolio based on prices and/or market conditions.

The Weekly Schedule of Transition Related Items was provided to the Board for review and is available at the Department upon request.



## LITIGATION

## 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;

(04/30/20)

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.

**History:**

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 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. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff’s filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs’ Motion for Summary Judgment was entered on September 6, 2019. The proposed

(04/30/20)

Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

**Current  
Status:**

- **Supreme Court Argument held April 13, 2020.**

**A D J O U R N**

There being no further business, the meeting was adjourned at 9:40 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
May 28, 2020**

The May 28, 2020 meeting of the Board of University and School Lands was called to order at 8:03 AM in the Coteau Meeting 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   |
| Dennis Chua      | Investment Analyst – via Microsoft Teams               |
| Susan Dollinger  | Unclaimed Property Administrator – via Microsoft Teams |
| Michael Humann   | Surface Division Director                              |
| Kristie McCusker | Paralegal – via Microsoft Teams                        |
| Catelin Newell   | Administrative Staff Officer                           |
| Adam Otteson     | Revenue Compliance Division Director                   |
| Rick Owings      | Administrative Officer – via Microsoft Teams           |
| Mike Shackelford | Investment Division Director                           |
| David Shipman    | Minerals Division Director – via Microsoft Teams       |
| Kayla Spangelo   | Range Management Specialist                            |

**Guests in Attendance:**

|                      |   |
|----------------------|---|
| Leslie Bakken Oliver | Governor's Legal Counsel                        |
| Reice Haase          | Governor's Policy Advisor – via Microsoft Teams |
| Amy Hsiang           | RVK – via Microsoft Teams                       |
| Josh Kevan           | RVK – via Microsoft Teams                       |
| George Hicks         | Varde Investment Group – via Microsoft Teams    |
| Brad Bauer           | Varde Investment Group – via Microsoft Teams    |
| Mona Girotra         | Varde Investment Group – via Microsoft Teams    |
| Casey Anderson       | ND Game & Fish Department – via Microsoft Teams |
| Marty Egeland        | ND Game & Fish Department – via Microsoft Teams |
| Brady Pelton         | ND Petroleum Council                            |
| Joel Brown           | Mineral Tracker                                 |
| Greg Kernohan        | Ducks Unlimited                                 |
| Trenton Hieb         | Ducks Unlimited                                 |
| Geoff Simon          | Western Dakota Energy Association               |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the April 30, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## R E P O R T S

### COVID-19 Update

North Dakota received \$1.25 billion from the Coronavirus Relief Fund as part of the \$2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. The North Dakota Budget Section voted last week to utilize more than half a billion dollars in federal funding for North Dakota's COVID-19 response and recovery efforts, with the majority of the money directed to support economic recovery.

The Commissioner cancelled all surface lease auctions scheduled for March 23, 2020 thru March 27, 2020. There were 141 tracts in 30 counties available for auction. Executive Order 2020-25 allowed the Department of Trust Lands (Department) to host surface auctions outside of the county seat. The Department of Trust Lands was able to secure \$100,000 in funding to pay the 3% convenience fee associated with the online surface lease auctions hosted by EnergyNet. The Department has issued refund checks to lessee's who participated in the online spring auction.

Additionally, the Department received \$20,000 to complete an analysis of shut-in and deferred producing wells analysis based upon various economic scenarios to anticipate production and the resulting direct impact on cash flow for the Department. The analysis will allow the Department to better manage cash flows and disbursement obligations through cash deposits versus being required to sell investments. A copy of the analysis has been attached for Board review.

The North Dakota Department of Trust Lands Deferred Production Analysis report was provided to the Board for review and is available at the Department upon request.

### Summary of EnergyNet Surface Spring Auction

From April 28<sup>th</sup> to May 4<sup>th</sup> the Department held their very first online surface lease auction with EnergyNet. The auction had 70 registered bidders with 56 placing bids.

The table below is a snapshot comparing prior years' spring auctions to EnergyNet's online auction.

|   | 2018                      | 2019                      | 2020                      |
|---|---------------------------|---------------------------|---------------------------|
| Number of counties                      | 26                        | 27                        | 24                        |
| Total tracts offered                    | 82                        | 99                        | 144                       |
| Number of tracts bid                    | 66 (80.5%)                | 79 (79.8%)                | 108 (75%)                 |
| Number of bid tracts bid-up             | 14<br>(21% of bid tracts) | 27<br>(34% of bid tracts) | 27<br>(25% of bid tracts) |
| Total amount of minimum advertised bids | \$151,276.00              | \$220,960.00              | \$283,859.00              |
| Total amount received                   | \$156,286.00              | \$273,177.00              | \$255,173.00              |

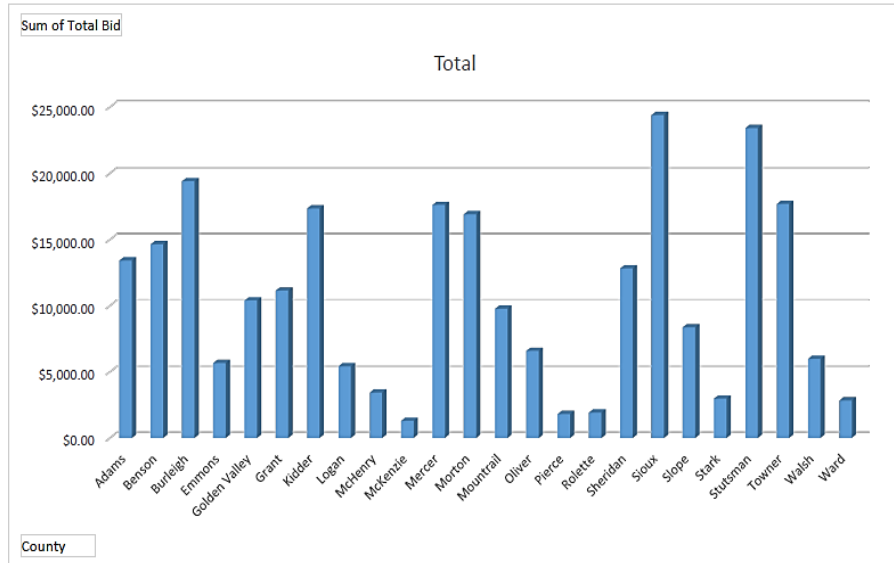
Unleased tracts offered at the spring auction are available on a first come first serve basis for minimum opening bid until August 31, 2020.

As of May 28<sup>th</sup> an additional 7 tracts had been leased.

(05/28/20)

ND-AG-2020-Q2 Surface Lease Sale  
Bid Totals by County

| County             | Sum of Total Bid    |
|--------------------|---------------------|
| Adams              | \$13,423.00         |
| Benson             | \$14,633.00         |
| Burleigh           | \$19,402.00         |
| Emmons             | \$5,659.00          |
| Golden Valley      | \$10,400.00         |
| Grant              | \$11,138.00         |
| Kidder             | \$17,333.00         |
| Logan              | \$5,412.00          |
| McHenry            | \$3,434.00          |
| McKenzie           | \$1,295.00          |
| Mercer             | \$17,605.00         |
| Morton             | \$16,915.00         |
| Mountrail          | \$9,774.00          |
| Oliver             | \$6,586.00          |
| Pierce             | \$1,806.00          |
| Rolette            | \$1,914.00          |
| Sheridan           | \$12,814.00         |
| Sioux              | \$24,389.00         |
| Slope              | \$8,363.00          |
| Stark              | \$2,970.00          |
| Stutsman           | \$23,407.00         |
| Towner             | \$17,679.00         |
| Walsh              | \$5,986.00          |
| Ward               | \$2,826.00          |
| <b>Grand Total</b> | <b>\$255,163.00</b> |



### Report of Shut-Ins Approved by Land Commissioner

All shut-in requests in this report are Covid-19 related.

**Granted to:** WINDRIDGE OIL  
**Date Issued:** 04/30/2020  
**Trust:** L- Bank of North Dakota  
**Lease:** OG-13-00025

**Granted to:** WINDRIDGE OIL  
**Date Issued:** 04/30/2020  
**Trust:** A - Common Schools  
**Lease:** OG-13-00027  
**Lease:** OG-05-00110  
**Lease:** OG-05-00108

**Granted to:** PetroHunt  
**Date Issued:** 5/13/2020  
**Trust:** A - Common Schools  
**Lease:** OG-84-00954  
**Lease:** OG-84-00023  
**Lease:** OG-10-03568  
**Lease:** OG-10-02437

**Granted to:** PetroHunt  
**Date Issued:** 05/14/2020  
**Trust:** A - Common Schools  
**Lease:** OG-08-00533  
**Lease:** OG-08-00534  
**Lease:** OG-08-00535  
**Lease:** OG-08-00536

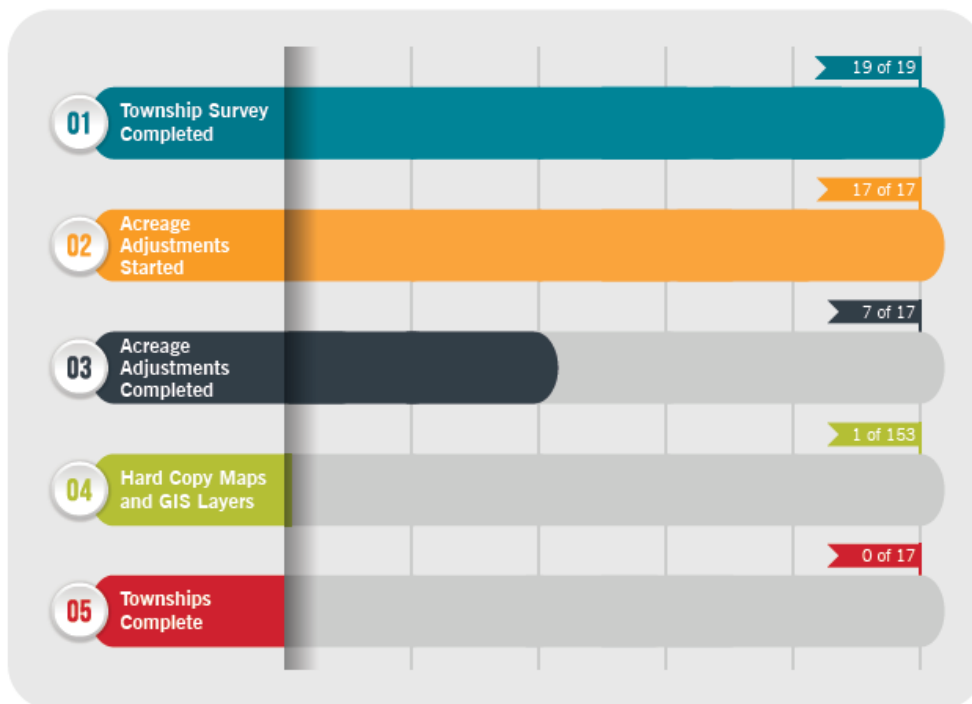
**Report of Extensions Approved by Land Commissioner**

**Granted to:** Oasis Petroleum  
 Date Issued: 05/20/2020  
 Trust: A– Common Schools  
 Lease: OG-15-00406  
 Lease: OG-15-00407  
 Lease: OG-15-00408  
 Lease: OG-15-00409

**Granted to:** Oasis Petroleum  
 Date Issued: 05/20/2020  
 Trust: D– School for the Deaf  
 Lease: OG-15-00410

**Acreage Adjustment Survey**

Senate Bill 2211 of 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 Department executed a contract with Kadmas, Lee & Jackson, Inc. “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 contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.



(05/28/20)

**Report of Encumbrances Issued by Land Commissioner 3-17-2020 to 5-12-2020**

**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
 For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
 Right-of-Way Number: RW0008250  
 Trust: A – Common Schools  
 Legal Description: MCK-150-97-36-S2

**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
 For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
 Right-of-Way Number: RW0008253  
 Trust: A – Common Schools  
 Legal Description: MCK-149-96-16-NE4, S2

**Granted to:** **VAN HOOK GATHERING SERVICES LLC, IRVING-TX**  
 For the Purpose of: Easement: Pipeline-Multiple Pipelines  
 Right-of-Way Number: RW0008389  
 Trust: A – Common Schools  
 Legal Description: MOU-150-92-15-W2SW4

**Granted to:** **EQUINOR PIPELINES LLC, WILLISTON-ND**  
 For the Purpose of: Easement: Pipeline-Multiple Pipelines  
 Right-of-Way Number: RW0008421  
 Trust: A – Common Schools  
 Legal Description: MOU-155-92-16-NW4

**Granted to:** **BILLINGS COUNTY, MEDORA-ND**  
 For the Purpose of: Easement-Amend: Road Right-of-Way  
 Right-of-Way Number: RW0008452  
 Trust: A – Common Schools  
 Legal Description: BIL-141-101-21-NE4

**Granted to:** **EQUINOR ENERGY LP, WILLISTON-ND**  
 For the Purpose of: Permit: Road-Access Road  
 Right-of-Way Number: RW0008479  
 Trust: A – Common Schools  
 Legal Description: WIL-155-100-36-W2

**Granted to:** **HILAND PARTNERS HOLDINGS LLC, HOUSTON-TX**  
 For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline  
 Right-of-Way Number: RW0008606  
 Trust: A – Common Schools  
 Legal Description: MCK-148-98-16-NE4, SW4

**Granted to:** **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**  
 For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline  
 Right-of-Way Number: RW0008618  
 Trust: A – Common Schools  
 Legal Description: MCK-150-98-36-E2, SW4

**Granted to:** **XTO HOLDINGS, LLC, SPRING-TX**  
 For the Purpose of: Permit: Road-Access Road  
 Right-of-Way Number: RW0008631  
 Trust: A – Common Schools  
 Legal Description: GOL-143-103-36-E2



**Granted to:** **MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND**  
For the Purpose of: Easement: Drop Line-Above Ground Electric Distribution Line  
Right-of-Way Number: RW0008635  
Trust: A – Common Schools  
Legal Description: WIL-158-95-36-SE4

**Granted to:** **MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND**  
For the Purpose of: Easement: Release of Easement  
Right-of-Way Number: RW0008636  
Trust: A – Common Schools  
Legal Description: WIL-158-95-36-S2

**Granted to:** **MOUNTRAIL-WILLIAMS ELECTRIC COOP.,WILLISTON-ND**  
For the Purpose of: Easement-Amend: Electric-Above Ground Distribution Line  
Right-of-Way Number: RW0008659  
Trust: A – Common Schools  
Legal Description: WIL-158-95-36-E2

**Granted to:** **USDA-NRCS, JAMESTOWN-ND**  
For the Purpose of: Letter of Permission: Access (National Resource Inventory)  
Right-of-Way Number: RW0008671  
Trust: A – Common Schools  
Legal Description: MOU-155-92-25-SW4  
SLO-134-106-36-NE4  
SLO-134-98-36-NE4  
WIL-153-104-36-NE4 W OF HWY

**Granted to:** **B O B ENTERPRISES LLC, KILLDEER-ND**  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008675  
Trust: A – Common Schools  
Legal Description: DUN-146-95-16-NE4

**Granted to:** **B O B ENTERPRISES LLC, KILLDEER-ND**  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008677  
Trust: A – Common Schools  
Legal Description: DUN-148-96-36-LOTS 1,2,6,7  
DUN-148-96-36-NW4SE4, S2SE4, LOT 8  
DUN-148-96-36-S2NW4, LOTS 3,4,5  
DUN-148-96-36-SW4

**Granted to:** **USDA-NRCS MLRA 53B SOIL SURVEY OFFICE, BISMARCK**  
For the Purpose of: Letter of Permission: Access (Soil Survey Update)  
Right-of-Way Number: RW0008680  
Trust: A – Common Schools  
Legal Description: Numerous tracts in 9 ND Counties

**Granted to:** **EQUINOR ENERGY LP, WILLISTON-ND**  
For the Purpose of: On-lease Act. Amend: Site-Tank Battery Site  
Right-of-Way Number: RW0008682  
Trust: A – Common Schools  
Legal Description: MOU-155-92-16-NW4

(05/28/20)

|                      |  |
|----------------------|--|
| <b>Granted to:</b>   | <b>NTB ASSOCIATES INC, SHREVEPORT-LA</b>                       |
| For the Purpose of:  | Permit: Planning & Preconstruction Survey                      |
| Right-of-Way Number: | RW0008688  |
| Trust:               | A – Common Schools   |
| Legal Description:   | N/A  |
| <b>Granted to:</b>   | <b>NORTH RANGE RESOURCES LLC, DICKINSON-ND</b>                 |
| For the Purpose of:  | On-lease Activity: Well-Vertical Oil Well                      |
| Right-of-Way Number: | RW0008690  |
| Trust:               | A – Common Schools   |
| Legal Description:   | MCK-146-100-36-SE4   |
| <b>Granted to:</b>   | <b>NORTH RANGE RESOURCES LLC, DICKINSON-ND</b>                 |
| For the Purpose of:  | On-lease Activity: Well-Horizontal Oil Well                    |
| Right-of-Way Number: | RW0008691  |
| Trust:               | A – Common Schools   |
| Legal Description:   | MCK-146-100-36-SW4   |
| <b>Granted to:</b>   | <b>WEST DAKOTA WATER LLC, WILLISTON-ND</b>                     |
| For the Purpose of:  | Permit: Temporary Water Layflat Line                           |
| Right-of-Way Number: | RW0008697  |
| Trust:               | A – Common Schools   |
| Legal Description:   | WIL-158-95-16-N2   |
| <b>Granted to:</b>   | <b>NDSU (School of Natural Resource Science), FARGO-ND</b>     |
| For the Purpose of:  | Letter of Permission: Access to School Land (Native Pollinator |
| Right-of-Way Number: | RW0008699  |
| Trust:               | N - NDSU   |
| Legal Description:   | Numerous tracts in 6 ND Counties                               |
| <b>Granted to:</b>   | <b>CALIBER MIDSTREAM NORTH DAKOTA LLC, DENVER</b>              |
| For the Purpose of:  | Permit: Temporary Construction                                 |
| Right-of-Way Number: | RW0008706  |
| Trust:               | A – Common Schools   |
| Legal Description:   | MCK-152-102-36-SE4   |

### Unclaimed Property Program 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 April 2020, the Division received 98 holder reports with a property value of \$808,690 and paid 600 claims with a total value of \$610,019.

### Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIO) is a division within the Department of Trust Lands (Department). EIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 28 grants with a balance of \$7,049,556.08 as of May 13, 2020. The following shows grant activity for the last five months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 12/9/2019                     | 36                   | \$15,477,345.77                     |
| 12/31/2019                    | 30                   | \$14,388,087.28                     |
| 2/13/2020                     | 21                   | \$7,207,988.75                      |
| 5/13/2020                     | 28                   | \$7,049,556.08                      |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$2,394,929.22 as of May 13, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last five months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 12/9/2019          | 4                    | \$4,793,191.14                      |
| 12/31/2019         | 4                    | \$4,108,325.39                      |
| 2/13/2020          | 3                    | \$3,447,448.60                      |
| 5/13/2020          | 3                    | \$2,394,929.22                      |

The Energy Infrastructure and Impact Office is currently managing 31 grants for a total of \$9,444,485.30. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 12/9/2019                     | 36                   | \$15,477,345.77                     | 12/9/2019          | 4                    | \$4,793,191.14                      | \$20,270,536.91          |
| 12/31/2019                    | 30                   | \$14,388,087.28                     | 12/31/2019         | 4                    | \$4,108,325.39                      | \$18,496,412.67          |
| 2/13/2020                     | 21                   | \$7,207,988.75                      | 2/13/2020          | 3                    | \$3,447,448.60                      | \$10,655,437.35          |
| 5/13/2020                     | 31                   | \$7,049,556.08                      | 5/13/2020          | 3                    | \$2,394,929.22                      | \$9,444,485.30           |

(05/28/20)

The Financial Position (Unaudited) for Period Ending February 29, 2020 was provided to the Board and is available at the Department upon request.

## Investment Updates

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of May 11, 2020. The figures provided are unaudited.

| Account/Asset Class               | Long-Term Asset Allocation | 5/11/20 Actual Allocation \$ | 5/11/20 Actual Allocation % | 5/11/20 % Diff. |
|-----------------------------------|----------------------------|------------------------------|-----------------------------|-----------------|
| Large Cap US Equity               | 15.0%                      | \$ 707,657,371               | 15.3%                       | 0.27%           |
| Mid/Small Cap US Equity           | 4.0%                       | \$ 171,677,041               | 3.7%                        | -0.30%          |
| <b>Total Broad US Equities</b>    | <b>19.0%</b>               | <b>\$ 879,334,412</b>        | <b>19.0%</b>                | <b>-0.03%</b>   |
| International Equity              | 12.0%                      | \$ 628,251,275               | 13.6%                       | 1.55%           |
| Emerging Market Equity            | 7.0%                       | \$ 173,048,140               | 3.7%                        | -3.27%          |
| <b>Total Broad Int'l Equities</b> | <b>19.0%</b>               | <b>\$ 801,299,415</b>        | <b>17.3%</b>                | <b>-1.71%</b>   |
| Core Fixed Income                 | 13.0%                      | \$ 724,519,861               | 15.6%                       | 2.63%           |
| Non-Core Fixed Income             | 9.0%                       | \$ 434,848,464               | 9.4%                        | 0.38%           |
| <b>Total Fixed Income</b>         | <b>22.0%</b>               | <b>\$ 1,159,368,325</b>      | <b>25.0%</b>                | <b>3.01%</b>    |
| <b>Transition Account</b>         | <b>0.0%</b>                | <b>\$ 102,577,794</b>        | <b>2.2%</b>                 | <b>2.21%</b>    |
| <b>Total Absolute Return</b>      | <b>15.0%</b>               | <b>\$ 658,518,394</b>        | <b>14.2%</b>                | <b>-0.79%</b>   |
| Commodities                       | 0.0%                       | \$ 114,684,273               | 2.5%                        | 2.47%           |
| MLPs                              | 0.0%                       | \$ 96,695,041                | 2.1%                        | 2.09%           |
| Natural Resource Equities         | 0.0%                       | \$ 77,774,895                | 1.7%                        | 1.68%           |
| <b>Total Inflation Strategies</b> | <b>0.0%</b>                | <b>\$ 289,154,209</b>        | <b>6.2%</b>                 | <b>6.24%</b>    |
| Core Real Estate                  | 8.0%                       | \$ 397,114,752               | 8.6%                        | 0.57%           |
| Core Plus Real Estate             | 7.0%                       | \$ 347,475,975               | 7.5%                        | 0.50%           |
| <b>Total Real Estate</b>          | <b>15.0%</b>               | <b>\$ 744,590,727</b>        | <b>16.1%</b>                | <b>1.07%</b>    |
| <b>Private Equity</b>             | <b>5.0%</b>                | <b>\$ -</b>                  | <b>0.0%</b>                 | <b>-5.00%</b>   |
| <b>Private Infrastructure</b>     | <b>5.0%</b>                | <b>\$ -</b>                  | <b>0.0%</b>                 | <b>-5.00%</b>   |
| <b>Opportunistic Investments</b>  | <b>0.0%</b>                | <b>\$ -</b>                  | <b>0.0%</b>                 |                 |
| <b>Total Asset</b>                | <b>100.0%</b>              | <b>\$ 4,634,843,276</b>      | <b>100.0%</b>               | <b>0.0%</b>     |

### Portfolio Rebalancing

On May 8, 2020, the Treasury Inflation-Protected Security (TIPS) Fund was liquidated with the proceeds transferred to an actively managed "transition account" that will hold all cash proceeds through the transition to the new asset allocation. The transition account is managed similar to the Strategic Investment Improvement Fund Ultra-Short Bonds account.

Gresham was informed of the Board of University and School Land's decision to liquidate the Gresham Commodities investments on May 14, 2020 and an exit strategy has been determined.

### Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

## **Gross Production Tax Backed School Construction Loans**

In 2013, the Legislature amended N.D.C.C. ch. 15.1-36 to provide for a mechanism for schools to use a portion of the gross production tax (GPT) revenues received under N.D.C.C. § 57-51-15 to repay school construction loans that have been approved by the Department of Public Instruction (DPI). The first GPT backed school construction loan was funded in March 2015.

DPI is responsible for the school construction loan program; the Board University and School Lands (Board) is only responsible for funding the loans and collecting loan payments. The Board does not have any formal policies related to school construction loans.

Department (Department) of Trust Lands' staff worked with DPI, the Bank of North Dakota (BND), the State Treasurer's Office, and bond counsel to develop a GPT backed loan program that works for schools, while also seeking to ensure that the money gets repaid in a timely manner.

In March 2020, the Department received notification that DPI had approved a school construction loan application from the Bottineau School District for a loan principal amount of \$650,000 at an interest rate of 2% for a loan term of 20 years.

The following is a brief overview of the processes and procedures used to manage GPT backed school construction loans:

- BND will review all paperwork, provide amortization schedules, coordinate the closing, and hold the actual bond in safe keeping. For these services BND will charge school districts a one-time fee of \$200.
- The maximum amount of a GPT backed loan will be determined based on the school district's previous fiscal year's GPT revenues. With voter approval of the debt, school districts can get a loan with an annual payment that totals up to 80% of the previous year's GPT revenues. If there is no voter approval of the debt (as it is not classified as a debt by law), the annual loan payment may equal up to 50% of the previous year's GPT revenues.
- Loans will be set up with annual payments for up to 20 years with an annual payment due date of December 1.
- Starting in September of each year (this is when GPT distributions "reset" and are thus at their highest rate), the State Treasurer will withhold GPT payments to the school district until 100% of the annual loan payment in the amortization schedule is withheld. Once the authorized amount is withheld and paid over to the Department, the State Treasurer will continue distributing all the GPT revenues to the school district as provided by law.
- Payments will be applied each month, first to interest and then to principal. Because there is a yearly amortization schedule but monthly payments, at any given point in time a school district could be slightly over- or underpaid versus what is state on the annual loan amortization schedule. Any difference will be made up in the final year of the loan.
- If by April 1st of each year it appears that GPT revenues owed to the school district by law are not enough to cover the loan payment due, the Department will contact the district and make arrangements to collect the additional amount due either from the DPI distribution or from other sources the district may have.

## **Information Technology Project Status Update**

The Department of Trust Land's (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly.

(05/28/20)

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

In 2017, Department created a Request for Proposals (RFP) for the Land Management and Accounting functions; however, the number of responses were limited and those proposals did not meet the Department's requirements.

Subsequently, the Department issued an RFP for the Financial Management and Accounting (FMA) system in October 2018. In December 2019, the Department awarded a contract to Ernst and Young to implement the Microsoft Dynamics 365 for Finance and Operations system with a go-live date of July 1, 2020.

During April 2020 the Investment Division participated in three demonstrations by vendors to implement the Microsoft Dynamics 365 product. On April 27, 2020 the RFP was issued to all three vendors. The Department received responses from all three vendors and is in the process of awarding the contract. The Investments Division, Commissioner and Project Manager are working to determine a go-live for software.

Additionally, the Revenue Compliance Division, Commissioner and Project Manager will be working with Wolters Kluwer on upgrading the auditing software used by the Department. The team is working on a go-live for the upgraded software and completion of data migration.

On December 16, 2019, the Department issued the RFP for the Land Management system with responses due February 2020. The Department reviewed responses from five vendors. A Best and Final Offer was requested from vendors that are reasonably susceptible for award on May 4, 2020 and responses were due May 22, 2020.

## **OPERATIONS**

### **Fee Policy – First Reading**

The Board of University and School Land's (Board) last comprehensive fee schedule was established on July 25, 1985 and was last reviewed by the Board on June 26, 2014. The recommended action will revise 2014 fee schedule. In 2019, the Department of Trust Lands (Department) participated in the North Dakota State Auditors Office's comprehensive study of North Dakota state agency fees overseen by the North Dakota Government Finance Committee. In this study, the Department provided information regarding:

- Review of the dates state agency fee provisions were created and modified.
- Revenue generated by the fee as compared to the expenditures related to the purposes for which the fee is imposed.
- The fund or funds in which fee revenue is deposited and from which fee revenue is expended.
- Consideration of whether the fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services.

“Fees” in the context of this request are those payments which are not specific to any trust fund or tract of land but are deposited in the maintenance fund, which serves as the Department’s operating fund.

Attached is a red-lined and clean version of the proposed Fee Policy. Fees were revised based upon the Department’s expenditures related to the purposes for which the fee is imposed and if the fee is determined by the Board or the Commissioner.

The substantive changes include the following:

- A unified fee for certified copies has been established.
- Application and certain assignment, extension and amendment fees have been established for leasing based upon the internal expenses associated with processing the application.
- Fees that are determined by the Commissioner have been removed from the Board Fee Policy and placed in a Department Fee Policy.
  - Coal Amendment, renewal request fee
  - Coal Extension request fee
  - Oil and Gas Application and Nomination fee
  - Oil and Gas Application Shut-In Application Fee per Unit
  - Subsurface Mineral Lease Assignment Filing Fee
  - Salt-Water Disposal Site Application, Extension and Renewal Fee

The following attachments were provided to the Board and are available at the Department upon request: Attachment 1 – Board of University and School Lands Fee Policy (redline version) and Attachment 2 – Board of University and School Lands Fee Policy (clean version).

### **Continuing Appropriation Authority Policy – First Reading**

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

#### **Board of University and School Lands Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

##### **A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

(05/28/20)

## **B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.
2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.
4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

The Commissioner has reviewed, in conjunction with the Attorney General's Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The following attachments were provided to the Board and are available at the Department upon request: Attachment 1 - Continuing Appropriation Authority Policy (red-line version) and Attachment 2 – Continuing Appropriation Authority Policy (clean version).

### **Mineral Valuation Policy – First Reading**

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with conducting a study to determine the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography. MineralTracker, LLC was awarded the project and is working with the Department to complete the Assessment.

As a part of the Assessment, MineralTracker needs three variables to be approved by the Board: (1) the commodity effective date, (2) Commodity Price Schedule, and (3) the discount rate.

The commodity effective date is the date set by the Board by which the asset shall be appraised. An effective date is a date that is used for determining the present value of a product or security that fluctuates in price. It is the date at which funds, assets or money's value becomes effective. Typically, value dates are used in determining the payment of financial products and accounts where there is a possibility for discrepancies due to differences in the timing of valuations.



**Commodity Effective Date:** the date as of which the State’s asset shall be appraised.

- Only production and cash flow forecasts from the effective date forward shall be considered subject to the appraisal.
- The effective date is not the same as the “report date”. The report date is the date on which the valuation report is submitted.
- Commonly, the effective date corresponds to a transaction date, inheritance date, or gifting date. The effective date in this instance is left to the discretion of the State.

**Commodity Price Schedule:** the oil and gas prices that shall be applied to forecasted cash flows.

- Appraisals performed for special purposes may employ a specified commodity pricing schedule to achieve the intended purpose. For fair market appraisals, the New York Mercantile Exchange pricing schedule is often employed. NYMEX pricing is based on the closing price of commodity futures contracts executed on a specified date. An example of a recent NYMEX price schedule is included below.

| NYMEX as of March 31, 2020 |                              |  |
|----------------------------|------------------------------|--|
| Year                       | WTI<br>Oil Price<br>(\$/BBL) | Henry Hub<br>Natural Gas Price<br>(\$/MMBtu) |
| 2020                       | 28.03                        | 1.991  |
| 2021                       | 36.22                        | 2.484  |
| 2022                       | 39.19                        | 2.405  |
| 2023                       | 41.19                        | 2.419  |
| 2024                       | 42.98                        | 2.440  |
| 2025                       | 44.61                        | 2.464  |
| 2026                       | 46.00                        | 2.499  |
| 2027                       | 47.17                        | 2.557  |
| 2028                       | 47.82                        | 2.592  |
| 2029                       | 48.09                        | 2.615  |
| 2030                       | 48.18                        | 2.674  |
| 2031                       | 49.65                        | 2.849  |

- Often, commodity pricing is tied to the effective date (i.e. – an appraisal with an effective date of 1/1/2020 would use a NYMEX Strip price as of 1/1/2020), however a combination of historical and forward looking data could be employed. For example, if the State were to specify an effective date of 1/1/2020, the State could dictate that MineralTracker use available historical data from the effective date to the reporting date and NYMEX pricing from the reporting date forward (see example below).

| Historical - NYMEX as of March 31, 2020 |                              |  |
|---|------------------------------|--|
| Year                                    | WTI<br>Oil Price<br>(\$/BBL) | Henry Hub<br>Natural Gas Price<br>(\$/MMBtu) |
| Jan 2020                                | 57.52                        | 2.020  |
| Feb 2020                                | 51.23                        | 1.930  |
| Mar 2020                                | 33.15                        | 1.850  |
| Apr-Dec 2020                            | 28.03                        | 1.991  |
| 2021                                    | 36.22                        | 2.484  |
| 2022                                    | 39.19                        | 2.405  |
| 2023                                    | 41.19                        | 2.419  |
| 2024                                    | 42.98                        | 2.440  |
| 2025                                    | 44.61                        | 2.464  |
| 2026                                    | 46.00                        | 2.499  |
| 2027                                    | 47.17                        | 2.557  |
| 2028                                    | 47.82                        | 2.592  |
| 2029                                    | 48.09                        | 2.615  |
| 2030                                    | 48.18                        | 2.674  |
| 2031                                    | 49.65                        | 2.849  |

- Alternatively, a “flat” pricing schedule may be employed using a single price for oil and a single price for natural gas for all forward-looking cash flow projections.
- The projected commodity pricing will have a significant impact on the overall valuation of the State’s mineral assets.

In the oil and gas industry, standardized reporting and industry analysis typically use a 10% discount rate on projects’ future cash flows. This standardized discount rate also appears in other calculations where a quick, rough estimate of the present value of a project’s cash flow is needed.

**Net Present Value Discounting Rates:** the various discounting rates employed in the net present value calculations applied to the forecasted cash flows.

- Variable discounting rates are applied to account for increasing risk factors associated with various reserve categories.
- Mineral Tracker had indicated typical fair market valuation discounting rates as follows:
  - a) Proved Developed Producing (PDP) – 15.0%
  - b) Proved Developed Shut-In (PDSI) – 17.5%
  - c) Proved Developed Non-Producing (PDNP) – 20.0%
  - d) Proved Undeveloped (PUD) – 25.0%
  - e) Probable Undeveloped (PROB) – 30.0%
  - f) Possible Undeveloped (POSS) – 35.0%

Lands managed by the Board are different than privately held minerals in that they are held generationally and for the public good. Additionally, the minerals managed spread across the state, thus its overall risk profile is different than a typical mineral owner. These factors argue for a lower discount rate to be applied when valuing minerals managed by the Board.

The Department consulted with Mineral Tracker and the US Department of the Interior’s Division of Minerals Evaluation during the process of drafting a proposed the proposed policies. The Board will need to adopt an Effective Date and Discount Rate Policy. Attached is a recommended policy.

The Commissioner is seeking Board feedback prior to the June 25, 2020, Board meeting.

The Mineral Valuation Policy was provided to the Board and is available at the Department upon request.

## S U R F A C E

### **Wetland Restoration Project, also known as the Leeson In-Lieu Fee Mitigation Site (Mountrail County: SW¼-36-157-88)**

#### **Project Objectives and Location**

Ducks Unlimited, Inc. (DU) is proposing to include a tract of state owned School Trust Land (Trust Land) in their proposed wetland restoration project known as the Leeson In-lieu Fee Mitigation Project (LMP) which will establish wetland mitigation credits in the Missouri River Basin Northern Zone Service Area (see Figure 1 Project Location and Service Area). Objectives to achieve high quality wetland mitigation credits consist of restoring and enhancing wetland hydrology, re-establishing native wetland and upland vegetation communities, and providing long-term management and site protection to ensure the wetlands and adjacent uplands function individually and collectively as healthy, sustainable resources. In addition to restoring wetland hydrology and water quality within the watershed, the proposed LMP also presents the opportunity to reestablish

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a portion of the adjacent upland grass community which will provide additional habitat and connectivity to adjacent areas that consist of several permanently protected state and federally owned properties. This will create an ecologically valuable patch of habitat and connectivity (see Figure 2 Additive Conservation Value).

The proposed LMP area is located approximately 4 miles north and 12 miles west of Berthold, North Dakota, within the Missouri River Basin Northern Zone Service Area. The proposed LMP area consists of approximately 40 acres of private land and approximately 50 acres of Trust Land that together will consist of approximately 90 acres located within the W $\frac{1}{2}$ , Section 36, T157N, R88W, Mountrail County (see figure 3 Land Ownership). The private land is located in the S $\frac{1}{2}$ NW $\frac{1}{4}$  of the section and is characterized by mostly grassland with two drained wetlands in an area of a field that is unsuitable for farming. The grassland portion of the private property is currently not being utilized for grazing or haying. The remainder of the private property consists of a minimal amount of property which drains a wetland basin running west to east into a larger co-owned basin. This basin also contains a drain on the neighboring Trust Land which effectively drains the entire wetland. The 50 acres of Trust Land is located directly south of the private property in the N $\frac{1}{2}$ SW $\frac{1}{4}$  of the section. The Trust Land is characterized by native grasslands and wetlands used for cattle grazing. The three drained wetland basins are in the NW corner of the SW $\frac{1}{4}$  (see Figure 4 Project Boundary). It is believed these wetlands were drained prior to 1950.

#### **Restoration Design & Credit Determination**

The primary source of water for the wetlands will be surface water runoff, which is typical of the Prairie Pothole Region. Construction of the project will be completed by a contractor and a DU construction manager. It is likely the project will be constructed in phases, with the private land portion considered Phase 1 and the Trust Land portion being Phase 2. Constructed ditch plugs, embankments, excavations, and fill areas will be used to raise the outlet elevations to historical wetland and overflow elevations and will have gradual slopes to minimize erosion due to moving water and will be protected with erosion control materials. Fill material would be sourced locally (see Figure 5 Design Concept). The cultivated upland areas on the private land will be seeded to native grasses and forbs representative of the local grassland community. Shallow wetland plant communities and deeper areas of the wetlands will rely on revegetation by the existing wetland seed bank. Credits are determined using the mitigation ratios from the Wetland Mitigation Banking In North Dakota Interagency Guidance for Mitigation Bank Sponsors Document. It is anticipated that the project should produce approximately 29 wetland credits. Credits would be released based on project milestones and monitoring results.

#### **Monitoring & Management**

DU will monitor the site for a period of five years starting with the first growing season after construction completion. Monitoring will consist of delineating wetland boundaries based on hydrology and vegetation criteria in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0). DU will implement maintenance activities to maintain the success and viability of the wetland mitigation site which may include haying, grazing, weed control, planting/seeding, prescribed fire, hydrological modifications, or other management activities as needed. Monitoring and management activities will be reported in an annual report given to the United States Army Corps of Engineers (USACE) to determine the status of achieving performance standards.

Long-term management and maintenance would be provided by DU, its heirs, assigns or successors, unless the easement lands are transferred to a state or federal resource management agency or this responsibility is contractually conveyed to another entity, subject to approval by USACE. DU will be responsible for a long-term management endowment fund to include a minimum of \$100,000 to be held by DU in an interest-bearing account dedicated for long term management of the LMP as required by USACE. Long-term management fund amount (05/28/20)

are determined by estimating the average annual cost for long term management activities. Yearly control of noxious weeds and other minor items was estimated at \$1,000. Periodic erosion control or various repairs due to flood events was estimated at \$60,000 every 20 years, at a rate of \$3,000 per year. A capitalization rate of 4% and average annual cost of \$4,000 equates to the \$100,000 endowment amount.

### Project Site Agreements

DU and the private landowner have signed a Site-Specific Agreement (SSA) for the approximate 40-acre private land mitigation parcel. As part of the SSA, the private landowner agreed to sign a conservation easement. The easement is a combination wetland and grassland conservation easement with the United States Fish and Wildlife Service (USFWS). In the event the USFWS declines to accept an easement, the private landowner agreed to a 99 year DU easement to protect the private land site.

The approximate 50-acre Trust Land portion of the LMP would be protected by a 99 year Mitigation Easement Agreement (Easement Agreement (see Attachment 1 – Mitigation Easement Agreement)), having an Initial Period of five (5) years to study project feasibility. The compensation rate for the proposed Easement Agreement is based on a per-acre payment of \$1,300 for approximately 15 restored wetland acres (based on the Mountrail County cropland rental value from the 2020 County Rents and Prices Survey - \$1,282), which is a payment of \$19,500.00 for the restored wetland acres. The remaining amount of \$75,000.00 is equivalent to 10% of the estimated potential revenues from the wetland credits developed on Trust Land. The compensation rate negotiated for the Easement Agreement is consistent with what the private landowner will be paid for the Project.

DU has been investigating the feasibility of this proposed project and working with the private landowner and the Department of Trust Lands since 2014. This proposed project has been developed under the DU North Dakota In-Lieu Fee Mitigation Instrument. The Easement Agreement is based on easement templates used by the Department with guidance provided by the Attorney General's Office and the Office of Risk Management. It allows for the restoration, maintenance, and protection of wetlands, while allowing for potential future mineral development and agricultural use of Trust Lands.

**Motion: The Board approves the Mitigation Easement Agreement with Ducks Unlimited, Inc., for the Leeson In-lieu Fee Mitigation site.**

| 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 items were presented to the Board and are available at the Department upon request: Figure 1. Project Location and Service Area, Figure 2. Additive Conservation Value, Figure 3. Land Ownership, Figure 4. Project Boundary, Figure 5. Design Concept , Attachment 1 – Mitigation Easement Agreement.

**North Dakota Game and Fish Department, N.D.C.C. ch. 15-09 Purchase Request (114 acres in the E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub> Section 16, Township 130 North, Range 50 West, Richland County)**

At the December 18, 2019 Board of University and School Lands' (Board) meeting, information was provided regarding the North Dakota Game and Fish Department's (NDGFD) application to

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purchase 114 acres for a shooting range and wildlife management area. The application was brought pursuant to N.D.C.C. ch. 15-09 which allows for the purchase of trust lands by public entities for public purposes. The application covers trust land in the E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 16, T130N, R50W, Richland County (map attached), along North Dakota State Highway 11, 2.25 miles west of Hankinson, North Dakota. Much of the trust land tract is herbaceous wetland with open water. There are approximately 40 acres of upland, much of which has saline soils not conducive to agricultural production.

Two appraisals were completed as follows:

|   |                 | <b>Total</b> |
|---|-----------------|--------------|
| Richland County Appraisal                     | \$2,500.00/acre | \$285,000.00 |
| RM Hoefs & Associates, Inc. (Hoefs Appraisal) | \$720.00/acre   | \$82,000.00  |

The Richland County Appraisal was completed by the Richland County Tax Equalization Director and is comprised of four sales. All four sales were agricultural cropland sales which are not comparable to the trust land. The Richland County appraisal is an agricultural value appraisal which over-estimates the value of the trust land; the trust land's overall utility for agricultural production is poor due to a high-water table, open water, and saline upland soils. The Richland County Appraisal did not consider the tract's highest and best use.

The Hoefs Appraisal considers the trust lands' highest and best use, which was determined to be recreation, wetland, and wildlife conservation land. The Hoefs Appraisal was completed by Rose M. Hoefs, a certified general appraiser, and is comprised of six sales. The Hoefs Appraisal discounts the sales because of the trust lands' high percentage of herbaceous wetlands, reasoning the overall sales price would be discounted since it cannot be cropped and has limited use for livestock forage production. Overall, the water table and salinity of the soils create limitations on the use of the trust lands so it was also reasoned that the sales price would be discounted comparable to land encumbered with wetland easements. The Hoefs Appraisal is well-documented, complete, and is a more accurate reflection of the trust lands' value.

N.D.C.C. § 15-09-04 states, in part:

The board of university and school lands may sell the property described in the application to the applicant at a price not less than the appraised value if the board concludes that the land described in the application is required for the purposes stated in such application and that a conveyance of the property is consistent with this title and the fiduciary responsibilities of the board.

**Motion: The Board 1) approves the appraised value of E $\frac{1}{2}$ SW $\frac{1}{4}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$  Section 16, Township 130 North, Range 50 West, Richland County, for public purpose and at a total sales price of \$82,000, plus appraisal (\$3,800) and sales costs, including a Land Sale Fee for conveyance preparation and recording costs (\$100 total), and advertising costs (amount to be determined); and 2) authorizes the Commissioner to advertise the proposed sale, conduct a public hearing, and refer the matter to the Board if needed, or complete the sale to NDGFD on the Board's behalf.**

| Action Record              | Motion   | Second | Aye | Nay | Absent |
|----------------------------|----------|--------|-----|-----|--------|
| Secretary Jaeger           | <b>X</b> |        | X   |     |        |
| Superintendent Baesler     |          | X      | X   |     |        |
| Treasurer Schmidt          |          |        | X   |     |        |
| Attorney General Stenehjem |          |        | X   |     |        |
| Governor Burgum            |          |        | X   |     |        |

The Richland County Proposed 15-09 Sale Map was provided to the Board for reference and is available at the Department up on request.

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## INVESTMENTS

### April Performance Report

Josh Kevan from RVK reviewed the performance of the Board of University and School Land's (Board) investment program for the period ending April 30, 2020 and discuss current market conditions. The report to be reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report with a more comprehensive report available upon request.

The following items were provided to the Board for their review and are available at the Department upon request: Attachment 1: RVK April 2020 Board Report, Attachment 2: RVK 1<sup>st</sup> Quarter 2020 Permanent Trust Fund Performance Analysis Report, Attachment 3: RVK 1<sup>st</sup> Quarter 2020 Ultra-short Performance Report.

### Opportunistic Investments

On April 30, 2020 the Board of University and School Lands' approved an asset allocation to Opportunistic Investments within the broader Strategic Asset Allocation for the Permanent Trusts.

**Dislocation and Distressed Fund Strategy:** Due to the current COVID-19 pandemic and the related economic crisis there are currently opportunities in the credit (non-Treasury) bond market for liquid asset purchases at favorable market values (i.e., "dislocated" prices). As the economic recession unfolds there will be further opportunities in the "distressed" credit market as well – where managers that focus on credit and asset-based underwriting can find value in rescue lending, corporate restructuring and special situation lending. These strategies have limited terms from 4 to 7 years and may or may not employ leverage (borrowing to invest and thereby increase returns).

RVK began the manager search by compiling a list of all managers that are currently raising dislocated credit funds and distressed credit funds or both. After reviewing product details and holding discussions with RVK, the list of managers was reduced down to three based upon strategy, leverage, track record, etc. During early-May, RVK and Department of Trust Lands (Department) staff interviewed the three managers (Apollo, KKR and Varde) with the team recommending Varde to the Board.

Varde is an investment manager founded in 1993 and headquartered in Minneapolis and New York, with offices throughout Europe and Asia. They have over \$12 Billion in assets under management and over 26 years of credit investment experience, including distressed and dislocated credit. Varde has over 90 investment professionals with expertise in various areas of the credit market. Varde plans to invest the Fund methodically throughout multiple stages of the recession during the Fund's 18-month investment period and will not move into opportunities that do not yet present an attractive risk-adjusted return.

Varde's experience suggests that major credit cycles play out in several stages. Varde believes this will present opportunities that offer private equity-like returns for credit risk. Therefore, Varde's has chosen a dual strategy of investing in both dislocated credit and distressed credit. Varde views the current stage of the recession as favorable to dislocated high-quality credits. Varde's belief is that distressed credit will not become attractive until the economy enters the later stages of the recession when there is more visibility as to the depths of the economic damage and thereby to corporate revenues and underlying asset values.

Motion: **The Board approves a \$100 Million investment in The Varde Dislocation Fund L.P. as part of the Opportunistic Investment allocation, 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   |     |        |

The following items were provided to the Board are available at the Department upon request: Attachment 1: RVK Recommendation Memo and Attachment 2: The Varde Dislocation Fund Presentation.

### A D J O U R N

There being no further business, the meeting was adjourned at 10:15 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
June 25, 2020**

The June 25, 2020 meeting of the Board of University and School Lands was called to order at 8:05 AM in the Coteau Meeting 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   |
| Dennis Chua      | Investment Analyst – via Microsoft Teams               |
| Susan Dollinger  | Unclaimed Property Administrator – via Microsoft Teams |
| Bradley Fettig   | Mineral Title Specialist – via Microsoft Teams         |
| Michael Humann   | Surface Division Director                              |
| Beverly Jacobson | Revenue Compliance Division                            |
| Kristie McCusker | Paralegal  |
| Catelin Newell   | Administrative Staff Officer                           |
| Adam Otteson     | Revenue Compliance Division Director                   |
| Rick Owings      | Administrative Officer – via Microsoft Teams           |
| Mike Shackelford | Investment Division Director                           |
| David Shipman    | Minerals Division Director – via Microsoft Teams       |
| Kayla Spangelo   | Range Management Specialist – via Microsoft Teams      |

**Guests in Attendance:**

|                      |   |
|----------------------|---|
| Brady Pelton         | ND Petroleum Council                                    |
| Emily Johnson        | Kadrmass, Lee & Jackson (KLJ)                           |
| Quentin Obrigewitsch | Kadrmass, Lee & Jackson (KLJ)                           |
| Gary Hagen           | Constituent   |
| Dave Garner          | Office of the Attorney General                          |
| Charles Carvell      | Office of the Attorney General                          |
| Leslie Bakken Oliver | Governor's Legal Counsel – via Microsoft Teams          |
| Reice Haase          | Governor's Policy Advisor – via Microsoft Teams         |
| Steve Mahanay        | Novarca - via Microsoft Teams                           |
| Thomas Welsh         | Novarca - via Microsoft Teams                           |
| Lynn D. Helms        | Department of Mineral Resources – via Microsoft Teams   |
| Geoff Simon          | Western Dakota Energy Association - via Microsoft Teams |
| Jack Dura            | Bismarck Tribune – via Microsoft Teams                  |
| Joel Brown           | Mineral Tracker – via Microsoft Teams                   |
| Craig C. Smith       | Guest via Microsoft Teams                               |
| Dave Thompson        | Guest via Microsoft Teams                               |
| Dee Alexander        | Guest via Microsoft Teams                               |
| Josh J Demorrett     | Guest via Microsoft Teams                               |
| Dennis Blank         | Guest via Microsoft Teams                               |
| Eric Ocwieja         | Guest via Microsoft Teams                               |
| Ernst                | Guest via Microsoft Teams                               |
| Kari S Gibson        | Guest via Microsoft Teams                               |

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|                   |                           |
|-------------------|---------------------------|
| Gloria Cash       | Guest via Microsoft Teams |
| Jacob Notermann   | Guest via Microsoft Teams |
| James Alexander   | Guest via Microsoft Teams |
| Jeremy Turley     | Guest via Microsoft Teams |
| Kevin Thies       | Guest via Microsoft Teams |
| Marcel Staub      | Guest via Microsoft Teams |
| Mary              | Guest via Microsoft Teams |
| Mike Lee          | Guest via Microsoft Teams |
| Peter             | Guest via Microsoft Teams |
| Andrea H. Pfennig | Guest via Microsoft Teams |

## APPROVAL OF MINUTES

A motion to approve the minutes of the May 28, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## REPORTS

### May Shut-In Report

|                     |                                     |
|---------------------|-------------------------------------|
| <b>Granted to:</b>  | <b>Luff Exploration Company</b>     |
| For the Purpose of: | COVID-19                            |
| Date Issued:        | 05/14/2020                          |
| Trust:              | L– Bank of North Dakota             |
| Lease:              | OG-12-01019;OG-12-01020;OG-12-01021 |

|                     |                                 |
|---------------------|---------------------------------|
| <b>Granted to:</b>  | <b>Luff Exploration Company</b> |
| For the Purpose of: | COVID-19                        |
| Date Issued:        | 05/14/2020                      |
| Trust:              | A – Common Schools              |
| Lease:              | OG-13-00008                     |

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>Marathon Oil Company</b>                                    |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 05/14/2020   |
| Trust:              | R – Sovereign Lands  |
| Lease:              | OG-09-00949; OG-05-00905;OG-00906; OG-10-00747;<br>OG-10-00748 |

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>Prima Exploration</b>                 |
| For the Purpose of: | COVID-19                                 |
| Date Issued:        | 05/14/2020                               |
| Trust:              | A – Common Schools                       |
| Lease:              | OG -12-00866; OG- 12-00867; OG- 12-00868 |

|                     |                          |
|---------------------|--------------------------|
| <b>Granted to:</b>  | <b>Prima Exploration</b> |
| For the Purpose of: | COVID-19                 |
| Date Issued:        | 05/14/2020               |
| Application Fee:    | \$10.00                  |
| Trust:              | A – Common Schools       |
| Lease:              | OG- 12-00869             |
|                     | (06/25/2020)             |

### May Encumbrances Report

|                      |  |
|----------------------|--|
| <b>Granted to:</b>   | <b>EQUINOR PIPELINES LLC, WILLISTON-ND</b>               |
| For the Purpose of:  | Pipeline-Multiple Pipelines                              |
| Right-of-Way Number: | RW0008466  |
| Trust:               | A – Common Schools                                       |
| Legal Description:   | WIL-155-100-36-NW4                                       |
| <b>Granted to:</b>   | <b>LOWER YELLOWSTONE RURAL ELECTRIC INC, SIDNEY-MT</b>   |
| For the Purpose of:  | Electric-Transmission Line                               |
| Right-of-Way Number: | RW0008633  |
| Trust:               | A – Common Schools                                       |
| Legal Description:   | WIL-154-104-36-SE4, SW4                                  |
| <b>Granted to:</b>   | <b>OE2 NORTH LLC, DENVER-CO</b>                          |
| For the Purpose of:  | Pipeline-Gas Gathering Pipeline                          |
| Right-of-Way Number: | RW0008664  |
| Trust:               | A – Common Schools                                       |
| Legal Description:   | WIL-156-97-36-SE4  |
| <b>Granted to:</b>   | <b>CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND</b> |
| For the Purpose of:  | Temporary Water Layflat Line                             |
| Right-of-Way Number: | RW0008700  |
| Trust:               | A – Common Schools                                       |
| Legal Description:   | MOU-150-92-10-S2SW4                                      |
| Legal Description:   | MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4                    |

### May 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 May 2020, the Division received 55 holder reports with a property value of \$527,441 and paid 501 claims with a total value of \$364,778.

### Energy Infrastructure and Impact Office Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$624 million in funding.

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The Oil and Gas Impact Grant Fund currently has 28 grants with a balance of \$6,846,538.19 as of June 5, 2020. The following shows grant activity for the last five months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 12/31/2019                    | 30                   | \$14,388,087.28                     |
| 2/13/2020                     | 21                   | \$7,207,988.75                      |
| 5/13/2020                     | 28                   | \$7,049,556.08                      |
| 6/5/2020                      | 28                   | \$6,846,538.19                      |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$2,394,929.22 as of June 5, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last five months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 12/31/2019         | 4                    | \$4,108,325.39                      |
| 2/13/2020          | 3                    | \$3,447,448.60                      |
| 5/13/2020          | 3                    | \$2,394,929.22                      |
| 6/5/2020           | 3                    | \$2,394,929.22                      |

The Energy Infrastructure and Impact Office is currently managing 31 grants for a total of \$9,241,467.41. The following shows grant activity for the last four months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 12/31/2019                    | 30                   | \$14,388,087.28                     | 12/31/2019         | 4                    | \$4,108,325.39                      | \$18,496,412.67          |
| 2/13/2020                     | 21                   | \$7,207,988.75                      | 2/13/2020          | 3                    | \$3,447,448.60                      | \$10,655,437.35          |
| 5/13/2020                     | 31                   | \$7,049,556.08                      | 5/13/2020          | 3                    | \$2,394,929.22                      | \$9,444,485.30           |
| 6/5/2020                      | 31                   | \$6,846,538.19                      | 6/5/2020           | 3                    | \$2,394,929.22                      | \$9,241,467.41           |

EIIO emailed grantees with a current balance reminding them to submit their biannual progress report due on June 20, 2020 per N.D.C.C. § 85-02-03-06.

**Progress report.**

1. The grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.
2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status

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visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.

3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

History: Effective January 1, 2019.  
 General Authority: NDCC 28-32-02  
 Law Implemented: NDCC 57-62-05

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

**Investment Updates**

**Portfolio Rebalancing Updates**

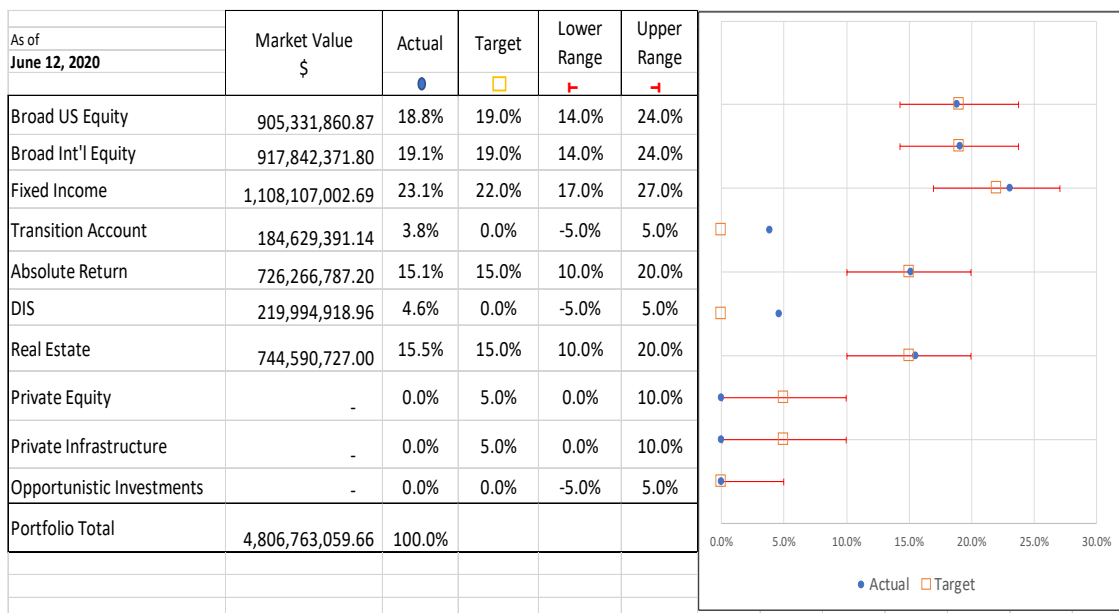
On May 8, 2020, the Treasury Inflation-Protected Securities (TIPS) Fund was liquidated and the proceeds were transferred to an actively managed “Transition Account”. This new account is similar to the SIIF-UltraShort Bonds account and is designed to hold all cash proceeds as we continue to do a disciplined liquidation of all the Diversified Inflation Strategy (DIS) investments.

As of June 12, 2020, \$30M has been withdrawn from Gresham. Additionally, Van Eck liquidations have reached a total of \$52M. Thus far, \$184.5M has been withdrawn from DIS and transferred to the Transition Account. Future liquidations will depend on the market situation with the end of June as the target of full redemption.

All legal documents had been reviewed and submitted for the \$100M commitment to the Varde Dislocation Fund LP and the Department of Trust Lands staff is waiting for the initial capital call.

**Asset Allocation**

The table below shows the status of the permanent trusts’ asset allocation as of June 12, 2020. The figures provided are unaudited.



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**Upcoming Investment Manager Meetings**

There are no upcoming meetings scheduled.

**I N V E S T M E N T S****Novarca - Investment Fees and Costs Analysis Services Consultant Update**

On March 28, 2019, the Board directed the Commissioner to engage Novarca to review the investment fees of the assets under the Board's authority. Novarca's general approach involved 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 reviewed expenses and identified options that serve as a basis to renegotiate fee arrangements with investment managers.

The Commissioner entered into an agreement with Novarca on June 13, 2019, under which Novarca would conduct a study of the fees of the Board's various investment mandates and negotiate with investment managers to reduce fees paid by the Board's trust funds. Novarca is compensated solely through a contingency fee in which they are only paid a portion of realized savings in the amount of 27.5% of any fee savings the Board's trust funds realized by Novarca's efforts.

Novarca began a study of the investment fees of the Board's various investment mandates in June 2019 and completed the study in December 2019. Generally, Novarca found that the fees paid by the Board's trust funds were competitive with the industry. Nevertheless, Novarca believed there was opportunity for further fee savings with certain managers. In January 2020, Novarca began negotiating with several investment managers to reduce management fees paid by the Board's trust funds.

Result: Novarca was able to successfully negotiate a lower fee with Payden & Rygel on the Long-Term Bond mandate. The new fee terms are in line with the fees paid on the JP Morgan Intermediate Bond mandate, which had been lowered just prior to engaging Novarca. The net fee savings are approximately \$83,400 for the first year and may be higher if the mandate grows over time. This represents 0.024% savings on the mandate and 0.002% for the permanent trust funds.

Novarca has not been successful on any other mandates, which would indicate the Board's trust funds' fees remain industry competitive.

**Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement**

Senate Bill 2001 of the Sixty-Sixth Legislative Assembly created a \$50 million endowment for the proposed Theodore Roosevelt Presidential Library and Museum. The state-funded endowment will be created if \$100 million in private donations is first raised for construction of the library and museum. The fund's earnings will be used for operations and maintenance of the library and museum once the Theodore Roosevelt Presidential Library Foundation has raised or secured binding pledges for \$100 million.

Attached is the proposed Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (Agreement) by and between the Office of the North Dakota Governor, the Board of University and School Lands (Board), and the Theodore Roosevelt Presidential Library Foundation to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund.

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The Agreement provides for the establishment of an investment account maintained by the Board. It provides for the investment of assets as a permanent trust fund to be managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04.

The Agreement further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12:

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section.

The Agreement will replace the Agreement executed in September 2019 and provides additional guidance regarding the distribution of funds and a mechanism for the Department of Trust Lands to cover expenses associated with the management of the endowment. This final version is available at the Department upon request.

**Motion: The Board enter into the Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement with the Office of the North Dakota Governor and the Theodore Roosevelt Presidential Library Foundation to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund with the prudent investment of the fund assets as a permanent trust fund.**

| 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   |     |        |

## M I N E R A L S   M A N A G E M E N T

### **Acreege Adjustment Survey**

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.

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) subject to inundation by Pick-Sloan Missouri basin project dams." The bill directed the North Dakota Department of Mineral Resources (DMR) to procure a qualified engineering and surveying firm to conduct a review of the US Army Corp of Engineers (USACE) survey segments limited only to the corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west  
(06/25/2020)

The Historical OHWM review as prepared by Wenck Associates, Inc. (Review) was presented to the North Dakota Industrial Commission (NDIC) on April 17, 2018. Thereafter, the NDIC issued its September 27, 2018 Order of the Commission, Order No. 29129, approving the Review. Information concerning the Review can be found on DMR's website.

In response to comments, NDIC Order No. 29129 found, among other things, that:

1. "[T]he Wenck Study was not intended to provide accurate acreage allocations for property transfer which is outside the scope of the legislation; the data sets provided to Wenck for use in calculating acreages represent the most efficient method for determination of areas necessary for decisions by the [NDIC]; no land surveying was done nor contracted to be done in the course of [the Wenck] study." Order at 4.
2. "[T]he cost to complete the necessary research and surveys to apportion property significantly exceeds the appropriated funds." Id.
3. "[A]dequate documentation and data for parties to determine how interests might be impacted were provided in the Wenck Study and subsequent communications." Id.

Senate Bill 2211 of 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." The contract's scope of work concluded twelve months from the date of execution, May 30, 2019, at a total cost of \$1,088,635. KLJ dedicated 35 team members and over 7,000 hours to completing the project.

The project utilized all available data, records, and resources including the Review, the PLSS, Bureau of Land Management (BLM) General Land Office (GLO) updated Master Title Plats (available at the BLM), original GLO Survey Plats (available at the North Dakota State Water Commission), BLM field notes, and any other relevant data, records and resources. Where previous survey data was not available, lacking, or otherwise unusable, the KLJ project was required to conduct the field work necessary to supply the necessary data to complete and/or verify accurate boundaries within the Project Area.

KLJ is available to review the methodology they used to calculate the acreage adjustments and answer any questions the Board may have regarding the acreage adjustment results. KLJ has provided the Department of Trust Lands (Department) with a Final Report for Acreage Determination along the Ordinary High Water Mark as adopted by the North Dakota Industrial Commission Order No. 29129 which will be available on the Department's website.

The Department will not be recommending approval of the south half of T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36. will be necessary (Attachment 1). Additionally, the Department will not be recommending approval of T152N R93W Section 11 Lot 2 and Section 10 Lot 6 (Attachment 2).

Upon the Board's adoption of the Acreage Adjustment Survey as prepared by KLJ, the Department will promptly begin updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process will be extensive and will require a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be (06/25/2020)

allocated to the correct trust, the Department’s shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck, the Department has approximately 600 active leases covering 44,700 acres.

Prior to any issuance of refunds, appropriate documentation for each parcel requiring adjustment must be reviewed by the Department’s Director of Minerals Management and the Director of Revenue Compliance Division. Following final review by the Commissioner, a refund authorization will be submitted to the Accounting Division. Once refunds are issued, Correction of Oil and Gas Lease documentation will be mailed to the operator and current lessee of record based on the records of the Department. If the lessee fails to return an executed copy or cash the check, the Department will need to take additional steps.

Due to the failure of lessees to submit assignments to the Department for approval as required by Department policies and the Board’s lease, the Department’s records do not always accurately reflect the current lessee of any given lease. This could impact the timeliness of refunds. Refunds of bonus will be issued to the current lessee, based on the records of the Department, and royalty payments will be returned to the current operator of each applicable spacing unit.

Barring delays due to legal challenges or unresponsive lessees, it is anticipated the Department could complete approximately 25 lease corrections each month, resulting in completion of 600 lease corrections within two years of the Board’s adoption of KLJ’s acreage adjustment calculations.

Motion:

- (1) The Board adopts the acreage adjustment survey 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 North Dakota Industrial Commission except T152N R93W Section 10 Lot 6 ,Section 11 Lot 2 and T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36.**
- (2) The Board formally requests the North Dakota Industrial Commission complete further review of T152N R93W Section 11 Lot 2 and Section 10 Lot 6.**
- (3) The Board formally requests the North Dakota Industrial Commission complete further review of T153N, R102W Sections 33 and 34 until a zero accretion point can be determined.**

| 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   |     |        |

KLJ presented maps of T153N R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, 36 and T152N R93W Section 10 and Section 11. All presented materials are available at the Department upon request.

## O P E R A T I O N S

### Commissioner Annual Review

Motion: **(1) The Board approves a salary increase of 2.5% as recommended by the 66<sup>th</sup> Legislative Assembly. (2) The Board authorizes a subcommittee comprised of State Treasurer (06/25/2020)**



**Kelly Schmidt, Governor's Office staff, Office of the Attorney General's staff and Commissioner. The subcommittee is formed with the intent to implement at formal review process for the Commissioner by the December, 2020 regular Land Board Meeting.**

| 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   |     |        |

The Commissioner's Phased Strategic Plan for the Department was provided to the Board and is available at the Department upon request.

### **Fee Policy – Second Reading**

The Board of University and School Land's (Board) current fee schedule was established on July 25, 1985 and was last reviewed by the Board on June 26, 2014. The recommended action will revise the 2014 fee schedule.

"Fees" in the context of the Study are those payments which are not specific to any trust fund or tract of land but are deposited in the maintenance fund, which serves as the Department of Trust Land's (Department) operating fund.

Attached is the proposed Fee Policy. Fees were revised based upon the Department's expenditures related to the purposes for which the fee is imposed and if the fee is determined by the Board or the Commissioner.

The substantive changes include the following:

- A unified fee for certified copies has been established.
- Application and certain assignment, extension, and amendment fees have been established for leasing based upon the internal expenses associated with processing the application.
- Fees that are determined by the Commissioner have been removed from the Board's Fee Policy and placed in a Department's Fee Policy.
  - Coal Amendment, renewal request fee
  - Coal Extension request fee
  - Oil and Gas Application and Nomination fee
  - Oil and Gas Application Shut-In Application Fee per Unit
  - Subsurface Mineral Lease Assignment Filing Fee
  - Salt-Water Disposal Site Application, Extension and Renewal Fee

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

**Motion: The Board adopt the proposed North Dakota Board of University and School Lands Fee Policy – Chapter 2, General.**

| Action Record          | Motion | Second | Aye | Nay | Absent |
|------------------------|--------|--------|-----|-----|--------|
| Secretary Jaeger       |        |        | X   |     |        |
| Superintendent Baesler |        |        | X   |     |        |

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|                            |   |   |   |  |  |
|----------------------------|---|---|---|--|--|
| Treasurer Schmidt          | X |   | X |  |  |
| Attorney General Stenehjem |   | X | X |  |  |
| Governor Burgum            |   |   | X |  |  |

Board of University and School Lands Fee Policy is available at the Department upon request.

### Continuing Appropriation Authority Policy – Second Reading

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 15-68-06
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

#### **Board of University and School Lands Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

#### **A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

#### **B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.
2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.

4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

The Commissioner has reviewed, in conjunction with the Attorney General's Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

**Recommendation: The Board adopt the proposed North Dakota Board of University and School Lands Continuing Appropriation Authority Policy – Chapter 2, General.**

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

With changes made to the Continuing Appropriation Authority Policy the Board considers June 25, 2020 the first reading and no formal action was taken.

The Continuing Appropriation Authority Policy is available at the Department upon request.

#### **Mineral Valuation Policy – Second Reading**

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with conducting a study to determine the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography. MineralTracker, LLC was awarded the project and is working with the Department to complete the Assessment.

As a part of the Assessment, MineralTracker needs three variables to be approved by the Board: (1) the commodity effective date, (2) commodity price schedule, and (3) the discount rate.

The Department consulted with MineralTracker and the US Department of the Interior's Division of Minerals Evaluation during the process of drafting the proposed policy.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

(06/25/2020)

**Motion: The Board adopts the proposed North Dakota Board of University and School Lands Minerals Valuation Policy – Chapter 5 - Minerals.**

| 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 Minerals Valuation Policy is available at the Department upon request.

**Surface Land Management and Minerals Management Administrative Rules**

In House Bill 1300, the Sixty-fifth 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 Sixty-sixth 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 28-32-51 of the Act.

The Department of Trust Lands (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. The Board’s rules are included in Title 85 of the North Dakota Administrative Code. As the Department determines additional rules are needed, those are drafted and presented to the Board for review.

Land Sale and Land Exchange Administrative Rules

By the 1970s, approximately 80% of the original 3.2 million acres of the land granted to trusts had been sold, and the Board began an informal policy of not selling surface lands. While often encouraged to sell trust lands to private citizens to put it on the tax rolls, the Board has historically experienced opposition to land sales from the Game and Fish Department, Wildlife Federation, Medora Grazing Association, ND Farmers Union, sportsmen, and other outside entities. The Board formalized its policy of not selling land in 1981 when it limited land sales to smaller and isolated tracts, and to parcels that caused management problems. The Board has had a limited land sale policy ever since. The history of the land sale policy is attached as Attachment 1.

In the 1990s, the Department evaluated the historic return on investment of land in North Dakota and the impact on the value of trust lands to the permanent trust funds. The initial study encompassed land rents and values from 1960 through the 1990s; it was later updated through 2001. The results of this study indicated that land is similar to and should be treated like other asset classes in which the Board invests. In October 1998, the Board formally designated surface lands as an asset class to be managed within the Board’s overall investment portfolio.

Considering land as an investment is central to its management for the long-term best interests of the trusts. Land as an asset class means that it is recognized for its characteristics of value, income, stability and liquidity that are inherent in investments. It also means that investment principles, such as risk versus reward, should be applied to land just as to any other investment asset class.

The study led to a proposal that certain lands with an income return of less than 0% be considered for sale. However, due in large part to public opposition to the sale of trust lands, these tracts were not sold to private owners. Nonetheless, the work done in this area helped demonstrate that the

consistent cash flows generated by trust land and its inherent nature as a store of value, make it a stabilizer in the Board's overall asset portfolio.

On March 26, 2015 the Board revised its land sale policy to:

1. Clarify the general policy to sell land only if certain conditions are met;
2. Add language requiring that sales of larger tracts be coupled with a "no net loss" of acres provision;
3. Remove language specifically related to rates of return and low potential for development as reasons for consideration of a sale of trust lands; and
4. Add a provision to consider selling land in higher value urban locations.

The provision of no net loss of "leasable trust land" was adopted to provide an option to consider tracts that are larger than 80 grassland acres and 40 crop acres being offered for sale without reducing the trust's leasable real estate holdings. It allows for a sale of trust land and a donation of land to the trust from which the original land was sold. To date, the no net loss policy has not been used and no procedures have been developed to implement the policy. See Attachment 1.

On September 28, 2017, the Board directed the Commissioner to investigate and explore procedural options to implement the Board's no net loss of "leasable trust land" policy through land exchanges of like or equal acres and value. Attachment 2 are the proposed Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, which take into consideration the requirements of the North Dakota Century Code and the North Dakota Constitution. It provides the Board the ability to sell under-utilized or difficult to manage acquired tracts of land.

The following is a brief review of the Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, compared to the Board's Land Retention and Sales Policy:

Grant Land Sales (N.D.C.C. ch. 15-06):

- Unchanged from the Board's Land Retention and Sales Policy with the exception that any letter of application received will be subject to public comment prior to Board review of the application.
- Maintains the provision of no net loss of leasable original grant land through public sale and subsequent land donation to the trust from which the original grant land was sold.
- Maintains the small acreage requirement (land tracts totaling less than 80 acres in size, more or less, for grassland and less than 40 acres in size, more or less, for cropland) as a sales requirement, with such sales not subject to the no net loss of leasable grant land provision.

Acquired Land Sales (N.D.C.C. ch. 15-07):

- Requires any letter of application received for the purchase of acquired lands to be subject to public comment prior to Board review.
- Removes the no net loss of leasable land requirement from land acquired prior to 1980 (these lands were private lands acquired through foreclosure or deed in-lieu of foreclosure and were at one time on the County tax rolls).
- Acquired land sales would not be subject to any acreage restrictions.

Sales of Lands for Public or Quasi-Public Purpose (N.D.C.C. ch. 15-09):

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- Sales for this chapter were not subject to the Land Retention and Sales Policy.
- Requires any application received for a public purpose or quasi-public purpose be subject to public comment prior to Board review.

#### Land Exchange:

- No previous policy.
- Establishes an evaluation process for land exchanges.
- Currently the Constitution and Statutes only allow for exchanges of Federal and State Land and does not allow for exchanges of private and tribal lands.

#### Offset Well Administrative Rule

The current Policy of the Board and University and School Lands for the Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells has been administered since 1987. It provides a procedure to administer the provisions in the Board's oil and gas lease which requires our lessee to exercise an option in order to protect the state-owned interest from drainage due to wells drilled on adjacent acreage. The proposed Administrative Rule moves the policy into the rule format with minimal substantial changes. See Attachment 2.

**Motion: The Board authorizes the Commissioner to proceed with the next steps in the review of the initial draft of the proposed Administrative Rules for Land Sale, Land Exchange and Offset Wells, including formal review by the Office of Attorney General, preparation for public hearings and collection of comments, and submittal to Legislative Council.**

| 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 items were provided to the Board and are available at the Department upon request: The Board of University and School Lands History of Land Sale Policy and Administrative Rules General Administration (red-lined) Surface Land Management, and Minerals Management.

#### **Repayment of Unpaid Gas Royalties Update**

The North Dakota Board of University and School Lands (Board) manages land, minerals and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income funding North Dakota schools and institutions. The Board also manages oil, gas and other hydrocarbons underlying sovereign lands for the State of North Dakota.

The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board's lease, rules, and policies. Royalty audits began in the late 1980's and a Revenue Compliance Division was created in 2011 to ensure that royalty and other collections made on behalf of the trusts and other funds are complete and accurate.

The Board recently received comments asserting that the Department's website provides guidance that deductions can be taken from gas royalties. At the February 27, 2020 Board meeting the Board requested additional information regarding the Department's website, specifically the instructions provided to payors on how to calculate deductions and payments.

In 2014, the Department began the process of developing a required royalty reporting form. The Department consulted with other states, industry partners, and software developers when developing its royalty reporting form. During this process several questions were consistently raised. To address these questions, frequently asked questions (FAQ's) were posted on the Departments website in conjunction with the new royalty reporting form and instructions. Two of the FAQ's address deductions and what is allowed. On June 25<sup>th</sup>, 2015 an email and letter were sent to royalty payors notifying them of the new royalty reporting form to be used starting October 2015.

The North Dakota Supreme Court has recently stated, however, that deductions are not allowed to be taken from royalty payments thereby addressing the questions the Department received following publication of its website. The Court stated “[t]he Department of Land Trust’s website contains guidance regarding the payment of royalties from oil and gas leases. The Department’s guidance is consistent with our decision in *West* and provides as follows: ‘gross proceeds of sale means income before deduction of expenses. Basically, it means the price you sell the oil for, regardless of what expenses go into arriving at that price.’” *Newfield Expl. Co. vs. State ex rel. N.D. Bd. of Univ. & Sch. Lands*, 2019 ND 193, ¶ 8, 931 N.W.2d 478.

Below are the FAQ's that related to deductions that are currently on the Departments website. This guidance has been on the Departments website since 2015. Although the format and location of the website have changed, the guidance has remained the same. Consistent with the Supreme Court's interpretation of the Board's lease and the website instructions, the guidance contained in the FAQ's is consistent with the Boards position on deductions.

#### [What deductions are allowed on oil?](#)

Royalty on oil is calculated based on the greater of 1) the highest posted price for the field where produced and when run, 2) the highest market price paid for the area where produced and when run, or 3) the gross proceeds of sale.

Gross proceeds of sale means income before deduction of expenses. Basically it means the price you sell the oil for, regardless of what expenses go into arriving at that price. For example, if you transport the oil to an off-lease location for sale and delivery, the royalty is calculated based on the gross price you receive at the ultimate point of sale and delivery. In this example you may NOT deduct or “net out” the expenses incurred in transporting the oil to the ultimate point of sale and delivery.

#### [What deductions are allowed on gas?](#)

Royalty on gas is calculated based on the gross proceeds of sale, where the sale constitutes an arm's length transaction. For a description of what gross proceeds of sale means see “What deductions are allowed on oil.” If a sale of gas does not constitute an arm's length transaction, Board of University and School Lands Oil & Gas Rule 85-06-06-08 governs calculation of royalties.

## 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:**

- United States Department of Interior M - 37056

| 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   |     |        |

At 10:35 PM the Board entered executive session for the purposes outlined in its adopted motion.

**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   | Administrative Staff Officer |

**Guests in Attendance:**

|                      |  |
|----------------------|--|
| Charles Carvell      | Attorney General's Office                      |
| Dave Garner          | Attorney General's Office                      |
| Leslie Bakken Oliver | Governor's Legal Counsel – via Microsoft Teams |
| Reice Haase          | Governor's Office – via Microsoft Teams        |

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 11:10 AM and the Board reconvened in open session.

No formal action was taken.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:10 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands



**Minutes of the Meeting of the  
Board of University and School Lands  
July 29, 2020**

The July 29, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Pioneer Meeting 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   | Administrative Staff Officer                           |
| Kate Schirado    | Administrative Assistant                               |
| Adam Otteson     | Revenue Compliance Division Director                   |
| Mike Shackelford | Investment Division Director                           |
| Dennis Chua      | Investment Analyst – via Microsoft Teams               |
| Susan Dollinger  | Unclaimed Property Administrator – via Microsoft Teams |
| David Shipman    | Minerals Division Director – via Microsoft Teams       |

**Guests in Attendance:**

|                      |   |
|----------------------|---|
| Dave Garner          | Office of the Attorney General                    |
| Charles Carvell      | Office of the Attorney General                    |
| Jennifer Stevens     | Historian, Stevens Historical Research Associates |
| Leslie Bakken Oliver | Governor's Legal Counsel                          |
| Reice Haase          | Governor's Policy Advisor                         |
| Brady Pelton         | ND Petroleum Council (Guest)                      |
| Jacob Notermann      | Guest via Microsoft Teams                         |
| Will Miller          | Guest via Microsoft Teams                         |
| Akila Grewal         | Guest via Microsoft Teams                         |
| Janet Quarberg       | Guest via Microsoft Teams                         |
| Amy Hsiang           | Guest via Microsoft Teams                         |
| Justin               | Guest via Microsoft Teams                         |
| Azhar Mahmood        | Guest via Microsoft Teams                         |
| John Zito            | Guest via Microsoft Teams                         |
| Josh Kevan           | Guest via Microsoft Teams                         |
| Andrea H. Pfennig    | Guest via Microsoft Teams                         |
| Josh J Demorrett     | Guest via Microsoft Teams                         |
| Kari Gibson          | Guest via Microsoft Teams                         |
| Karleen Fine         | Guest via Microsoft Teams                         |

## APPROVAL OF MINUTES

A motion to approve the minutes of the June 26, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## REPORTS

### June Shut-In Report

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-12-00133, OG-12-00134, OG-12-00136                              |
| <br>                |  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | A- School for the Deaf   |
| Lease:              | OG-12-00137, OG-10-02231   |
| <br>                |  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | G – Common Schools   |
| Lease:              | OG-10-00710, OG-10-00711, OG-10-00712, OG-10-00713                 |
| <br>                |  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | G – Common Schools   |
| Lease:              | OG-12-00138, OG-12-00139, OG-12-00140, OG-12-00141,<br>OG-12-00143 |
| <br>                |  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-12-01073, OG-12-01074   |
| <br>                |  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-10-00709, OG-12-00178   |

(07/29/2020)

|                     |   |
|---------------------|---|
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | L– Bank of North Dakota   |
| Lease:              | OG-12-00135   |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | A– Common Schools   |
| Lease:              | OG-07-00101, OG-09-00745, OG-78-00043, OG-01-00420,<br>OG-01-00421, OG-01-00422, OG-01-00423, OG-04-01894,<br>OG-04-01895 |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | A- Common Schools   |
| Lease:              | OG-04-01887, OG-04-01888, OG-09-00750, OG-09-00751  |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | A- Common Schools   |
| Lease:              | OG-09-00740, OG-09-00744, OG-06-01929, OG-06-01930  |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | A- Ellendale  |
| Lease:              | OG-09-00739   |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | A- Common Schools   |
| Lease:              | OG-06-01850   |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | L– Bank of North Dakota   |
| Lease:              | OG-12-00892, OG-12-00893, OG-12-00894   |
| <br>                |   |
| <b>Granted to:</b>  | <b>Resource Energy</b>  |
| For the Purpose of: | COVID-19  |
| Date Issued:        | 6/25/2020   |
| Trust:              | L– Bank of North Dakota   |
| Lease:              | OG-12-00172, OG-12-00173, OG-12-00174, OG-12-00175,<br>OG-12-00176, OG-12-00177   |

(07/29/2020)

|                     |  |
|---------------------|--|
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-12-00170, OG-12-00171, OG-12-00891  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | A– Common Schools  |
| Lease:              | OG-06-01851  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | A– Common Schools  |
| Lease:              | OG-06-01864, OG-06-01865, OG-06-01870, OG-06-01871, OG-06-01872, OG-06-01873 |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-06-01798, OG-12-00130   |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-09-00660, OG-09-00661   |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | L– Bank of North Dakota  |
| Lease:              | OG-09-00666, OG-09-00667, OG-09-00668  |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | A– Common Schools  |
| Lease:              | OG-08-00724, OG-08-00725, OG-08-00726, OG-08-00727                           |
| <b>Granted to:</b>  | <b>Resource Energy</b>   |
| For the Purpose of: | COVID-19   |
| Date Issued:        | 6/25/2020  |
| Trust:              | G– Common Schools  |
| Lease:              | OG-06-01884, OG-06-01889, OG-06-01890  |

(07/29/2020)

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-12-01070, OG-12-01071,OG-12-01072

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-12-00142

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-12-01099

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-09-00742

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: A– Common Schools  
 Lease: OG-09-00743

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: A– Common Schools  
 Lease: OG-10-03351

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: A– North Dakota State University  
 Lease: OG-06-01867

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-09-00728, OG-09-00727

(07/29/2020)

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- Common Schools  
Lease: OG-09-00734, OG-09-00735, OG-09-00738

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- ND Industrial School  
Lease: OG-04-01877, OG-04-01876

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- Common Schools  
Lease: OG-09-00741

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: L- Bank of North Dakota  
Lease: OG-09-00729

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: G- Common Schools  
Lease: OG-06-01846, OG-06-01847, OG-06-01848, OG-06-01849  
OG-09-00729

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- Common Schools  
Lease: OG-09-00736

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- Common Schools  
Lease: OG-09-00659

**Granted to:** Resource Energy  
For the Purpose of: COVID-19  
Date Issued: 6/25/2020  
Trust: A- Common Schools  
Lease: OG-09-01245

(07/29/2020)

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-06-01823, OG-06-01824

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 6/25/2020  
 Trust: A– Common Schools  
 Lease: OG-09-00721, OG-09-00732, OG-09-00733

### **June Extension Report**

**Granted to:** **Ninepoint Energy**  
 Date Issued: 6/4/2020  
 Trust: A– North Dakota State University  
 Lease: OG-15-00684

**Granted to:** **Ninepoint Energy**  
 Date Issued: 6/4/2020  
 Trust: A– North Dakota State University  
 Lease: OG-15-00685

### **June Encumbrances Report**

**Granted to:** **EQUINOR PIPELINES LLC, WILLISTON-ND**  
 For the Purpose of: Pipeline-Multiple Pipelines  
 Right-of-Way Number: RW0008466  
 Trust: A – Common Schools  
 Legal Description: WIL-155-100-36-NW4

**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
 For the Purpose of: Easement: Drop Line-Pipeline  
 Right-of-Way Number: RW0008242  
 Trust: A – Common Schools  
 Legal Description: MCK-153-97-16-NE4

**Granted to:** **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**  
 For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline  
 Right-of-Way Number: RW0008617  
 Trust: A – Common Schools  
 Legal Description: MCK-153-94-16-W2

(07/29/2020)

**Granted to:** **BRIDGER PIPELINE LLC, CASPER-WY**  
For the Purpose of: Easement: Pipeline-Oil Gathering Pipeline  
Right-of-Way Number: RW0008624  
Trust: A – Common Schools  
Legal Description: MCK-153-94-16-W2

**Granted to:** **WHITE ROCK OIL & GAS LLC, PLANO-TX**  
For the Purpose of: Easement: Well-Salt Water Disposal Well Extension  
Right-of-Way Number: RW0008657  
Trust: A – Common Schools  
Legal Description: BIL-141-100-16-NE4

**Granted to:** **COBRA OIL & GAS CORPORATION, WICHITA FALLS-TX**  
For the Purpose of: Easement: Well-Salt Water Disposal Well Extension  
Right-of-Way Number: RW0008658  
Trust: A – Common Schools  
Legal Description: DIV-161-98-36-NE4

**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
Right-of-Way Number: RW0008662  
Trust: A – Common Schools  
Legal Description: MCK-153-94-16-W2

**Granted to:** **HESS BAKKEN INVESTMENTS II LLC, HOUSTON-TX**  
For the Purpose of: Easement: Pipeline-Multiple Pipelines & Communication Cable  
Right-of-Way Number: RW0008672  
Trust: A – Common Schools  
Legal Description: MOU-154-94-16-SW4

**Granted to:** **RESERVATION TELEPHONE COOPERATIVE, PARSHALL-ND**  
For the Purpose of: Easement: Communication-Buried Cable  
Right-of-Way Number: RW0008714  
Trust: A – Common Schools  
Legal Description: MCK-149-103-36-E2

**Granted to:** **MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND**  
For the Purpose of: Easement: Electric-Above Ground Distribution Line  
Right-of-Way Number: RW0008715  
Trust: A – Common Schools  
Legal Description: MCK-147-104-36-NW4



**Granted to:** **MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND**  
 For the Purpose of: Easement: Drop Line-Above Ground Electric Distribution Line  
 Right-of-Way Number: RW0008716  
 Trust: A – Common Schools  
 Legal Description: MCK-147-104-36-W2, SE4

**Granted to:** **VAN HOOK GATHERING SERVICES LLC, IRVING-TX**  
 For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
 Right-of-Way Number: RW0008728  
 Trust: A – Common Schools  
 Legal Description: MOU-150-92-10-S2SW4

**Granted to:** **KEITU ENGINEERS & CONSULTANTS, MANDAN-ND**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008729  
 Trust: A – Common Schools  
 Legal Description: N/A

**Granted to:** **SELECT ENERGY SERVICES LLC, WILLISTON-ND**  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008734  
 Trust: A – Common Schools  
 Legal Description: MCK-153-95-16-W2

**Granted to:** **METCALF ARCHAEOLOGICAL CONSULTANTS INC,  
BISMARCK-ND**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008737  
 Trust: A  
 Legal Description: N/A

**Granted to:** **SELECT ENERGY SERVICES LLC, WILLISTON-ND**  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008740  
 Trust: A – Common Schools  
 Legal Description: BRK-159-94-34-NW4

**Granted to:** **QUANTA ENVIRONMENTAL SOLUTIONS,  
THE WOODLANDS-TX**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008741  
 Trust: A – Common Schools  
 Legal Description: N/A

## June 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 June 2020, the Division received 37 holder reports with a property value of \$111,185 and paid 530 claims with a total value of \$470,049.

**The Financial Report (Unaudited) for period ending April 30, 2020 was presented to the Board for review and is available at the Department upon request.**

## Investment Updates

### Portfolio Rebalancing Updates

On May 8, 2020 the TIPS Fund was fully liquidated, and the proceeds were transferred to an actively managed "Transition Account". This new account is similar to the SIIF-UltraShort Bonds account and is designed to hold all cash proceeds as we continue to do a disciplined liquidation of all the DIS investments.

On June 30, Gresham's remaining approximately \$31M was fully liquidated and have transferred majority of the proceeds to the transition account. A very minimal amount is left and as soon as it settles, we will proceed to transfer the remaining cash and close the Gresham account. As of July 21, Van Eck has around \$35M remaining while Harvest has approximately \$99M. We are closely monitoring the trigger points we have set for us to complete the redemption of both investments.

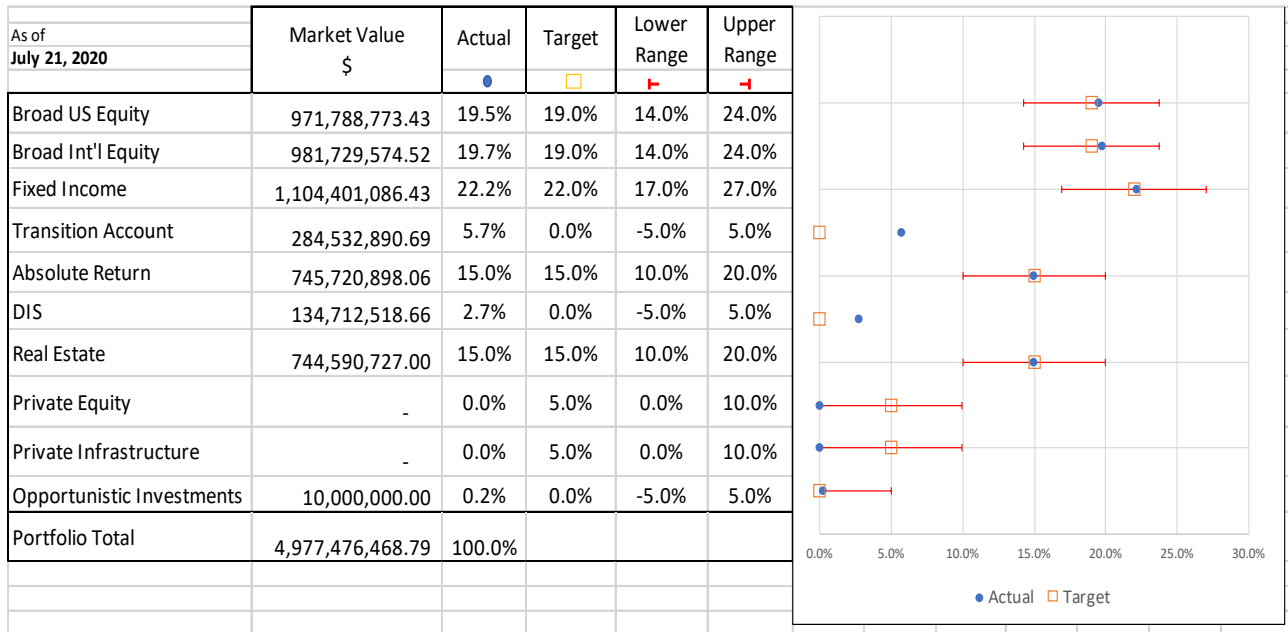
On July 1, we had wired \$10M to Varde Dislocation Fund LP (Varde) in connection with its capital call. Varde was approved by the Board during the May 28 Board meeting and the capital call served as our initial investment into the Fund. This leaves as with \$90M left in our commitment to the Fund.

On July 21, Angelo Gordon made a capital distribution of \$12M. This brings our capital commitment back down to 92% or \$138M. As the economy recovers, they are hoping to call back said capital.

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of July 21, 2020. The figures provided are unaudited.

(07/29/2020)



**Upcoming Investment Manager Meetings**

There is no upcoming meeting scheduled.

**ENERGY INFRASTRUCTURE AND IMPACT OFFICE  
PROGRAM REPORT**

**2019-2021 Biennium Funding**

The Sixty-Sixth Legislative Assembly appropriated \$2 million through House Bill 1013 for grants to political subdivisions impacted by oil and gas development activities.

N.D.C.C. § 15-01-02(6) provides the Board of University and School Lands (Board) has:

Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

EIIO opened a contingency grant round in December 2019 and applications were accepted through January 31, 2020. EIIO received 60 applications requesting a total of \$15,506,192.

To assist some applicants with planning and project efforts, during the 2020 fiscal year, the Board provided commitments to future awards on these projects.

At the April 8, 2020 meeting, the Land Board made commitments to the following applications for awards in Fiscal Year 2021 as follows:

(07/29/2020)

| POLITICAL SUB NAME  | CITY        | COUNTY    | SHORT DESCRIPTION  | PROJECT TOTAL   | AMOUNT REQUESTED | PLEGGED GRANT AMOUNT |
|---------------------|-------------|-----------|--|-----------------|------------------|----------------------|
| CITY OF NEW ENGLAND | NEW ENGLAND | HETTINGER | 2020 NORTH SIDE GROWTH AREA STREET & SEWER IMPROVEMENTS                              | \$1,442,000.00  | \$1,000,000.00   | \$348,650.00         |
| WILLISTON TOWNSHIP  | WILLISTON   | WILLIAMS  | 52ND STREET LANDSLIDE  | \$1,450,000.00  | \$350,000.00     | \$350,000.00         |
| MOUNTRAIL COUNTY    | STANLEY     | MOUNTRAIL | 36TH ST NW- CEMENT STABILIZATION AND GRAVELING                                       | \$82,700.00     | \$82,700.00      | \$41,350.00          |
| WILLISTON PSD #1    | WILLISTON   | WILLIAMS  | ASB INNOVATION ACADEMY   | \$14,092,183.00 | \$500,000.00     | \$250,000.00         |
| CITY OF STANLEY     | STANLEY     | MOUNTRAIL | WASTEWATER TREATMENT FACILITY IMPROVEMENTS AND UPGRADE TO PUMPS AT MAIN LIFT STATION | \$1,675,000.00  | \$837,500.00     | \$210,000.00         |

Total: \$1,200,000.00

Motion: That the Land Board award a total of five grants totaling \$1,200,000 from the Oil and Gas Impact Grant Fund to:

- CITY OF NEW ENGLAND
- WILLISTON TOWNSHIP
- MOUNTRAIL COUNTY
- WILLISTON PSD #1
- CITY OF STANLEY

| 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   |     |        |

## INVESTMENTS

### Opportunistic Investments

On April 30, 2020 the Board of University and School Lands' approved an asset allocation to Opportunistic Investments within the broader Strategic Asset Allocation for the Permanent Trusts.

(07/29/2020)

Dislocation and Distressed Fund Strategy: Due to the current COVID-19 pandemic and the related economic crisis there are currently opportunities in the credit (non-Treasury) bond market for liquid asset purchases at favorable market values (i.e., “dislocated” prices). As the economic recession unfolds there will be further opportunities in the “distressed” credit market as well – where managers that focus on credit and asset-based underwriting can find value in rescue lending, corporate restructuring and special situation lending. These strategies have limited terms from 4 to 7 years and may or may not employ leverage (borrowing to invest and thereby increase returns).

RVK began the manager search by compiling a list of all managers that are currently raising dislocated credit funds and distressed credit funds or both. After reviewing product details and holding discussions with RVK, the list of managers was reduced down to three based upon strategy, leverage, track record, etc. During early-May, RVK and Department of Trust Lands (Department) staff interviewed the three managers (Apollo, KKR and Varde) with the team recommending Varde to the Board in May, and now recommending Apollo to fill out the Opportunistic Investments allocation.

Apollo is an investment manager founded in 1990 and headquartered in New York, with offices throughout the U.S., Europe and Asia. They have over \$300 billion in assets under management and over \$200 Billion in credit assets, including \$9.5 billion in opportunistic credit. Apollo has 235 investment professionals in their global credit division.

Apollo has raised four similar funds and has prudently called investor capital. Apollo expects to pursue liquidity-driven opportunities during the current market dislocation. They will look to invest in both primary (new origination) and secondary markets. Apollo focuses on high quality credits at the top of the capital structure. Primarily looking at broadly syndicated primaries, liquid secondaries, revolver refinancing, structured finance, and distressed secondaries.

**Motion: The Board approve a \$100 Million investment in the Apollo Accord Fund IV, L.P. as part of the Opportunistic Investment allocation, 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      |        | X   |     |        |
| Attorney General Stenehjem |        |        | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Recommendation Memo and Apollo Accord Fund IV Presentation were provided to the Board and is available at the Department upon request.

## O P E R A T I O N S

### Continuing Appropriation Authority Policy – Second Reading

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 15-68-06
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

#### **Board of University and School Lands Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

#### **A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

#### **B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.
2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.
4. Costs of hiring independent contract firms to perform accounting, audit,

compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

The Commissioner has reviewed, in conjunction with the Attorney General's Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The first reading of the policy was held at the May 28, 2020 meeting. At the June 25, 2020 meeting the Board was presented with a revised Continuing Appropriation Authority Policy requiring an additional review and comment period. No comments were received.

**Motion: The Board adopt the proposed North Dakota Board of University and School Lands Continuing Appropriation Authority Policy – Chapter 2, 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   |     |        |

Continuing Appropriation Authority Policy was provided to the Board and is available at the Department upon request.

### **Repeal of Board Payment Schedule – Surface Management Division – First Reading**

The Board of University and School Lands currently has a Policy Manual (Board Policy Manual) which includes the following sections:

1. Governance
  - Policy Introduction/Amendment/Passage
2. General
  - Definitions
  - Code of Ethics
  - Fees
  - Payment Schedule – Surface Management Division
3. Surface Land Management
  - Fair Market Value Minimum Rent Policy
  - Chapter 15-09 Sales Policy
  - Sale of State Land for Landfills
  - Land Retention and Sales Policy
  - Criteria for Retaining Foreclosed Property
  - Acquired Properties Management

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4. Investments
  - Farm Loan Policy
  - Investment Policy Statement
  
5. Minerals
  - Coal
  - Oil and Gas
  - Minerals Valuation
  - Potash

Over the course of the last two years, many Board policies were revised and included in Administrative Rules. Other policies were reviewed, and it was determined were better suited to become Department of Trust Lands (Department) policies. Upon further review, it was determined that as the Surface Management Division's Payment Schedule Board Policy addresses negotiation of compensation for surface management issues, it would be better tailored to be a Department policy rather than a Board policy.

The Commissioner is recommending repeal of the current Payment Schedule – Surface Management Division policy. The Department will adopt a policy addressing these issues at the Department level.

Payment Schedule was provided to the Board and is available at the Department upon request.

### **Strategic Investment and Improvements Fund - Assigned Fund Balance**

Mineral revenues from sovereign lands are deposited into the Strategic Investment and Improvements Fund (SIIF). In July of 2016 the Board of University and School Lands (Board) classified \$142,325,049 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 derived from the amount of bonus and royalties collected from the leasing and production of sovereign lands' oil and gas interests and in consideration of associated litigation in these areas.

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 Ordinary High Water Mark (OHWM) for certain stretches of the Missouri River. The bill directed the North Dakota Industrial Commission (NDIC) to review a stretch of river to determine the location of the OHWM pursuant to specific criteria established by the Legislature.

On August 30, 2018 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 of Trust Lands (Department) would be able to calculate with more certainty the amounts necessary for mineral title disputes.

The survey NDIC was directed to conduct under SB 2134, and completed by Wenck Associates, Inc., did not provide the level of detail needed by the Department or oil and gas operators to make the necessary adjustments required to refund royalties and lease bonuses. In recognition of this, 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

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firm to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the [OHWM] as delineated by the final review findings of the [NDIC].”

The SB 2134 further directed the adjustment of State leased mineral interests and authorized refunds of mineral proceeds accordingly. SB 2134, Section 3, states:

1. There is appropriated out of any moneys held in reserve in the [SIIF] for mineral title disputes, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of mineral revenue repayments, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.
2. The funding provided in this section is available for the following:
  - a. Repayment of any lease, bonus, rents, and royalty collections attributable to 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, as required in subsection 1 of section 61-33.1-04.
  - b. Repayment of any lease, bonus, rents, and royalty collections attributable to the remaining oil and gas mineral tracts, as required in subsection 2 of section 61-33.1-04.
  - c. Other mineral revenue repayments or other reimbursements that are attributable to oil and gas mineral tracts requiring repayments under this Act.
3. Upon adoption of the final review findings by the industrial commission, the commissioner of university and school lands shall calculate the amount necessary for mineral revenue repayments based on the final review findings.
4. As soon as a repayment amount for a known recipient is calculated but after the expenditure of the \$100,000,000 in subsection 1:
  - a. The commissioner of university and school lands shall request from the sixty-sixth legislative assembly additional funding sufficient for any remaining mineral revenue or other repayments.
  - b. If the \$100,000,000 is expended before the repayment of all amounts calculated for known recipients and before additional funds are made available by the sixty-sixth legislative assembly, the Bank of North Dakota shall extend a line of credit, not to exceed \$87,000,000, to the commissioner of university and school lands. The commissioner of university and school lands shall access the line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of mineral revenue and other repayments under this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The commissioner of university and school lands shall repay the line of credit from funds available in the strategic investment and improvements fund as appropriated by the legislative assembly.

Mineral revenues from sovereign lands are deposited into the SIIF. Current revenue projections indicate there will be sufficient funds within the SIIF to meet obligations and transfers implemented by the 2017 Legislative Assembly, including the total amount estimated for refunds under SB 2134.

On July 17, 2019 the Board approved the existing Assigned Fund Balance of \$229,325,049. The amount was based upon the bonus and royalties anticipated to be collected through the end of Fiscal Year 2019.

#### Basis for Assigned Fund Balance

|                   | <b>Total Bonuses &amp;<br/>Rents Collected</b> | <b>% Impact<br/>Bill 2134</b> | <b>Total</b>          |
|-------------------|--|-------------------------------|-----------------------|
| <b>Phase I*</b>   | \$ 26,083,522                                  | 77.53%                        | \$ 20,223,613         |
| <b>Phase II**</b> | 119,993,395                                    | 56.20%                        | 67,439,601            |
| <b>Phase IV</b>   | 41,826,605                                     |                               | 41,826,605            |
|                   | <b>\$ 187,903,522</b>                          |                               | <b>\$ 129,489,819</b> |

#### Royalties Collected

|                    | <b>Revenues</b>       | <b>% Impact<br/>Bill 2134</b> | <b>Total</b>         |
|--------------------|-----------------------|-------------------------------|----------------------|
| <b>Phase I*</b>    | \$ 9,290,365          | 77.53%                        | \$ 7,203,197         |
| <b>Phase II**</b>  | 110,515,856           | 56.20%                        | 62,112,963           |
| <b>Phase IV***</b> | 852,316               |                               | 852,316              |
|                    | <b>\$ 120,658,537</b> |                               | <b>\$ 70,168,476</b> |

#### Projected 17-19 Biennium

|                    | <b>Total Estimated<br/>Revenue</b> | <b>% Impact<br/>Bill 2134</b> | <b>Total</b>         |
|--------------------|------------------------------------|-------------------------------|----------------------|
| <b>Phase I*</b>    | \$ 3,066,652                       | 77.53%                        | \$ 2,377,700         |
| <b>Phase II**</b>  | 48,090,711                         | 56.20%                        | 27,028,308           |
| <b>Phase IV***</b> | 260,747                            |                               | 260,747              |
|                    | <b>\$ 51,418,110</b>               |                               | <b>\$ 29,666,754</b> |

|                          | <b>Assigned Fund<br/>Balance</b> |
|--------------------------|----------------------------------|
| Bonus                    | \$ 129,489,819                   |
| Royalties                | 29,666,754                       |
| Projected 17-19 Biennium | 70,168,476                       |
|                          | <b>\$ 229,325,049</b>            |

\* Phase I leased (between township 153-102 and Hwy 85)

\*\* Phase II leased (between Hwy 85 and Hwy 23)

\*\*\* Majority of Phase 4 royalties are either held in escrow or suspense by operators.

On June 25, 2020 the results of the acreage adjustment survey as prepared by Kadrmass, Lee & Jackson, Inc. (KLJ) were presented and approved by the Board, with the exception of certain sections and lots that required further review. The Department has started the process of updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process will be extensive and will require a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be allocated to the correct trust, the Department's shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck Associates, Inc., the Department has approximately 600 active leases covering 44,700 acres.

Based upon the Board approved acreage adjustment survey, the Department has completed a high-level review of the changes in acreage. As a result of this review, it is anticipated that potential refunds of bonus payments will be less than previously estimated. This reduction in estimated bonus repayments will offset the increase in royalties received since the Board approved the Assigned Fund Balance in 2019. The Department is unable to fully determine the impact the acreage adjustment survey will have on the Assigned Fund Balance until the Board is able to adopt the pending sections and lots as some of the highest bonus per acre tracts within the surveyed area are still under review. Until the Department receives acreage allocations within the full acreage adjustment survey area and can analyze each tract and well impacted by these adjustments, no changes will be recommended to the current Assigned Fund Balance.

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

| 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   |     |        |

## 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:**

- United States Department of Interior M – 37056
- Mandan, Hidatsa, and Arikara Nation vs. United States of America, 1:20-cv-00859-MCW
- Mandan, Hidatsa, and Arikara Nation vs. United States Department of Interior, et al., 1:20-cv-01918

(07/29/2020)

| 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   |     |        |

At 10:00 AM the Board entered executive session for the purposes outlined in its adopted motion.

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**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   | Administrative Staff Officer |
| Kate Schirado    | Administrative Assistant     |

**Guests in Attendance:**

|                      |   |
|----------------------|---|
| Jennifer Stevens     | Historian, Stevens Historical Research Associates |
| Charles Carvell      | Attorney General’s Office                         |
| Dave Garner          | Attorney General’s Office                         |
| Leslie Bakken Oliver | Governor’s Legal Counsel – via Microsoft Teams    |
| Reice Haase          | Governor’s Office – via Microsoft Teams           |

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During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 11:00 AM and the Board reconvened in open session.

No formal action was taken.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:00 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

(07/29/2020)

**Minutes of the Meeting of the  
Board of University and School Lands  
August 5, 2020**

The August 5, 2020 special meeting of the Board of University and School Lands was called to order at 11:00 AM Via Microsoft Teams meeting by Chairman Doug Burgum. Roll call of members.

**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             |
| Catelin Newell   | Office Manager           |
| Kate Schirado    | Administrative Assistant |
| Kristie McCusker | Paralegal                |

**Guests in Attendance:**

|               |                           |
|---------------|---------------------------|
| Brent Sanford | Lt. Governor              |
| Mark Hanson   | Nilles Law Office         |
| Dave Garner   | Attorney General's Office |
| Brady Pelton  | ND Petroleum Council      |

**LITIGATION**

The Board was provided information regarding Paul Sorum et al. Civ. No. 09-2018-CV-00089

**No formal action taken.**

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:30 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

(08/05/20)

**Minutes of the Meeting of the  
Board of University and School Lands  
August 27, 2020**

The August 27, 2020 meeting of the Board of University and School Lands was called to order at 8:00 AM in the Pioneer Meeting 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 via Microsoft Teams                      |
| Kirsten Baesler | Superintendent of Public Instruction via Microsoft Teams |

**Department of Trust Lands Personnel present:**

|                  |  |
|------------------|--|
| Jodi Smith       | Commissioner   |
| Kristie McCusker | Paralegal  |
| Catelin Newell   | Administrative Staff Officer                           |
| Kate Schirado    | Administrative Assistant                               |
| Adam Otteson     | Revenue Compliance Division Director                   |
| Mike Shackelford | Investment Division Director                           |
| Dennis Chua      | Investment Analyst – via Microsoft Teams               |
| Susan Dollinger  | Unclaimed Property Administrator – via Microsoft Teams |
| David Shipman    | Minerals Division Director – via Microsoft Teams       |

**Guests in Attendance:**

|                      |   |
|----------------------|---|
| Dave Garner          | Office of the Attorney General                    |
| Charles Carvell      | Office of the Attorney General                    |
| Jennifer Stevens     | Historian, Stevens Historical Research Associates |
| Leslie Bakken Oliver | Governor's Legal Counsel                          |
| Reice Haase          | Governor's Policy Advisor                         |
| Brady Pelton         | ND Petroleum Council (Guest)                      |
| Jacob Notermann      | Guest via Microsoft Teams                         |
| Will Miller          | Guest via Microsoft Teams                         |
| Akila Grewal         | Guest via Microsoft Teams                         |
| Janet Quarberg       | Guest via Microsoft Teams                         |
| Amy Hsiang           | Guest via Microsoft Teams                         |
| Justin               | Guest via Microsoft Teams                         |
| Azhar Mahmood        | Guest via Microsoft Teams                         |
| John Zito            | Guest via Microsoft Teams                         |
| Josh Kevan           | Guest via Microsoft Teams                         |
| Andrea H. Pfennig    | Guest via Microsoft Teams                         |
| Josh J Demorrett     | Guest via Microsoft Teams                         |
| Kari Gibson          | Guest via Microsoft Teams                         |
| Karleen Fine         | Guest via Microsoft Teams                         |

## APPROVAL OF MINUTES

A motion to approve the minutes of the July 29, 2020 regular meeting and August 5<sup>th</sup>, 2020 special meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## REPORTS

### July Shut-In Report

**Granted to:** **Burlington Resources Oil & Gas Company LP**  
 For the Purpose of: COVID-19  
 Date Issued: 7/30/2020  
 Trust: G – Common Schools  
 Lease: OG-04-00196, OG-04-00197, OG-04-00198, OG-04-00199

**Granted to:** **Bruin E&P Operating**  
 For the Purpose of: COVID-19  
 Date Issued: 7/14/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-11-01098; OG-11-01099; OG-11-01100; OG-11-01101

**Granted to:** **Resource Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 7/14/2020  
 Trust: E – Ellendale  
 Lease: OG-04-01879

**Granted to:** **NP Resources, LLC**  
 For the Purpose of: COVID-19  
 Date Issued: 7/10/2020  
 Trust: A – Common Schools  
 Lease: OG-07-00006; OG-07-00007; OG-07-00008

**Granted to:** **NP Resources, LLC**  
 For the Purpose of: COVID-19  
 Date Issued: 7/10/2020  
 Trust: A- Common Schools  
 Lease: OG-09-01083; OG-09-01084

**Granted to:** **Vitesse Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 7/21/2020  
 Trust: U- University of ND  
 Lease: OG-10-03223; OG-10-03224

**Granted to:** **Vitesse Energy**  
 For the Purpose of: COVID-19  
 Date Issued: 7/14/2020  
 Trust: E- Ellendale  
 Lease: OG-11-00542  
 (08/27/2020)

|   |   |
|---|---|
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Bruin E &amp; P Operating, LLC</b><br>COVID-19<br>7/24/2020<br>L – Bank of North Dakota<br>OG-06-02862                                     |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/24/2020<br>A- Common Schools<br>OG-06-02805, OG-06-02806, OG-06-02807, & OG-06-02808 |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/27/2020<br>L – Bank of North Dakota<br>OG-06-02859                                   |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/27/2020<br>L – Bank of North Dakota<br>OG-06-02846; OG-06-02847                      |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Ritter, Laber and Associates, Inc.</b><br>COVID-19<br>7/21/2020<br>L– Bank of North Dakota<br>OG-80-00016                                  |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/27/2020<br>L– Bank of North Dakota<br>OG-06-02860                                    |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/28/2020<br>A– Common Schools<br>OG-10-02620, OG-10-02621, OG-10-02622, & OG-10-02623 |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:                 | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/28/2020<br>L– Bank of North Dakota<br>OG-10-02569; OG-09-01783                       |
| <b>Granted to:</b><br>For the Purpose of:<br>Date Issued:<br>Trust:<br>Lease:<br>(08/27/2020) | <b>Crescent Point Energy U.S. Corp.</b><br>COVID-19<br>7/28/2020<br>A – Common Schools<br>OG-09-01784; OG-09-01785; OG-09-01786; OG-09-01787  |



|  |   |
|--|---|
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-12-005791</p>   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-09-01784; OG-09-01785; OG-09-01786; OG-09-01787</p>   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-15-00543; OG-15-00544; OG-15-00545; OG-15-00546</p>   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> L – Bank of North Dakota<br/> OG-09-01782;</p>                                   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> L – Bank of North Dakota<br/> OG-09-01772;</p>                                   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-05-00980; OG-05-00981; OG-05-00982; OG-05-00983</p>   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Cornerstone Natural Resources, LLC</b><br/> COVID-19<br/> 7/28/2020<br/> L – Bank of North Dakota<br/> OG-05-00191</p>                                  |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:</p>                   | <p><b>Crescent Point Energy U.S. Corp.</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-10-02620; OG-10-02621; OG-10-02622; OG-10-02623</p>   |
| <p><b>Granted to:</b><br/> For the Purpose of:<br/> Date Issued:<br/> Trust:<br/> Lease:<br/> (08/27/2020)</p> | <p><b>Cornerstone Natural Resources, LLC</b><br/> COVID-19<br/> 7/28/2020<br/> A – Common Schools<br/> OG-05-00980; OG-05-00981; OG-05-00982; OG-05-00983</p> |

**Granted to:** Crescent Point Energy U.S. Corp.  
 For the Purpose of: COVID-19  
 Date Issued: 7/27/2020  
 Trust: A – Common Schools  
 Lease: OG-05-01340; OG-05-01341;

**Granted to:** NP Resources, LLC  
 For the Purpose of: COVID-19  
 Date Issued: 7/10/2020  
 Trust: A – Common Schools  
 Lease: OG-12-00072; OG-12-00074; OG-12-00075

**Summary of Oil and Gas Lease Auction**

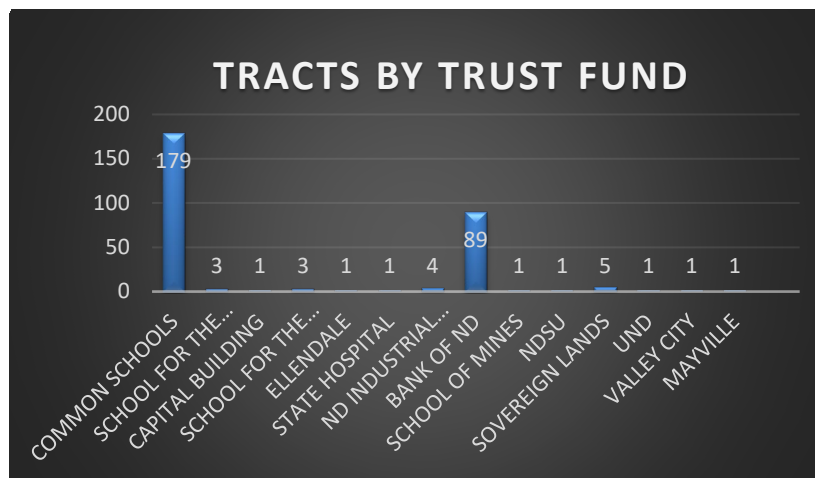
On behalf of the Board, the Department conducted an oil and gas mineral lease auction on [www.energynet.com](http://www.energynet.com) which concluded on August 4, 2020.

There were 288 tracts offered and all received competitive bids (If the Board does not receive a competitive bid the lease is awarded to the nominator). The highest bid per acre was \$334.00 for 40 acres in Mountrail County.

| County             | Tracts/County | Mineral Acres    | Total Bonus           | Average Bonus/Acres |
|--------------------|---------------|------------------|-----------------------|---------------------|
| Billings           | 29            | 3,572.43         | \$45,159.94           | \$12.64             |
| Burke              | 56            | 4,485.45         | \$65,661.38           | \$14.64             |
| Divide             | 85            | 6,837.72         | \$191,127.84          | \$27.95             |
| Dunn               | 28            | 2,147.67         | \$56,140.38           | \$26.14             |
| McKenzie           | 51            | 6,952.02         | \$409,571.80          | \$58.91             |
| Mountrail          | 33            | 2,776.86         | \$364,868.56          | \$131.40            |
| Williams           | 6             | 800              | \$98,240.00           | \$122.80            |
| <b>GRAND TOTAL</b> | <b>288</b>    | <b>27,572.15</b> | <b>\$1,230,769.90</b> | <b>\$44.64</b>      |

There were 50 registered bidders, 31 of which placed a bid in the 8-day auction. There were bidders from 10 states (CA, CO, MN, MT, NC, ND, TX, UT, VA, and WY).

A total of \$1,230,769.90 of bonus was collected from the auction.



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**July Report of Encumbrances**

|                      |   |
|----------------------|---|
| <b>Granted to:</b>   | <b>NORTHERN DIVIDE WIND LLC, JUNO BEACH-FL</b>      |
| For the Purpose of:  | Easement: Electric-Wind Transmission line           |
| Right-of-Way Number: | RW0008132   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | BRK-161-93-16-SW4                                   |
| <br>                 |   |
| <b>Granted to:</b>   | <b>HESS NORTH DAKOTA PIPELINES, LLC, HOUSTON-TX</b> |
| For the Purpose of:  | Permit: Road-Access Road                            |
| Right-of-Way Number: | RW0008615   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | WIL-155-96-36-NE4                                   |
| <br>                 |   |
| <b>Granted to:</b>   | <b>XTO HOLDINGS, LLC, SPRING-TX</b>                 |
| For the Purpose of:  | Permit: Road-Access Road                            |
| Right-of-Way Number: | RW0008627   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | MCK-150-98-36-SW4                                   |
| <br>                 |   |
| <b>Granted to:</b>   | <b>XTO HOLDINGS, LLC, SPRING-TX</b>                 |
| For the Purpose of:  | Permit: Road-Access Road                            |
| Right-of-Way Number: | RW0008632   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | BIL-142-102-16-NE4, NW4                             |
| <br>                 |   |
| <b>Granted to:</b>   | <b>XTO HOLDINGS, LLC, SPRING-TX</b>                 |
| For the Purpose of:  | Permit: Road-Access Road                            |
| Right-of-Way Number: | RW0008639   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | WIL-154-95-16-NE4                                   |
| <br>                 |   |
| <b>Granted to:</b>   | <b>DIVIDE COUNTY HWY DEPT, CROSBY-ND</b>            |
| For the Purpose of:  | Permit: Temporary Construction                      |
| Right-of-Way Number: | RW0008673   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | DIV-161-97-36-NE4, SE4                              |
| <br>                 |   |
| <b>Granted to:</b>   | <b>WHITING OIL &amp; GAS CORPORATION, DENVER-CO</b> |
| For the Purpose of:  | Easement: Site-Tower Site                           |
| Right-of-Way Number: | RW0008676   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | MOU-153-91-18-SW4                                   |
| <br>                 |   |
| <b>Granted to:</b>   | <b>ND GAME &amp; FISH DEPT, BISMARCK-ND</b>         |
| For the Purpose of:  | Permit: Access to School Land                       |
| Right-of-Way Number: | RW0008735   |
| Trust:               | A – Common Schools                                  |
| Legal Description:   | MOR-135-83-36-NE4, SE4, SW4                         |

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**Granted to:** **QEP ENERGY COMPANY, DENVER-CO**  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008739  
 Trust: A – Common Schools  
 Legal Description: MOU-150-92-15-W2SW4

**Granted to:** **WESTERN ECOSYSTEMS TECHNOLOGY INC BISMARCK-ND**  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008751  
 Trust: A – Common Schools  
 Legal Description: N/A

**Granted to:** **EARTHWORM EXCAVATING, TOLNA-ND**  
 For the Purpose of: Permit: Access to School Land  
 Right-of-Way Number: RW0008752  
 Trust: A – Common Schools  
 Legal Description: ADA-129-94-16-NE4

### **July 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 July 2020, the Division received 123 holder reports with a property value of \$210,494 and paid 228 claims with a total value of \$456,445.

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

### **Investment Updates**

#### **Portfolio Rebalancing Updates**

On May 8, 2020 the Treasury Inflation Protected Securities Fund was fully liquidated and the proceeds were transferred to an actively managed "Transition Account". This new account is similar to the Strategic Investment and Improvement Fund Ultra-Short Bonds account and is designed to

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hold all cash proceeds as we continue to do a disciplined liquidation of all the Diversified Inflation Strategy investments.

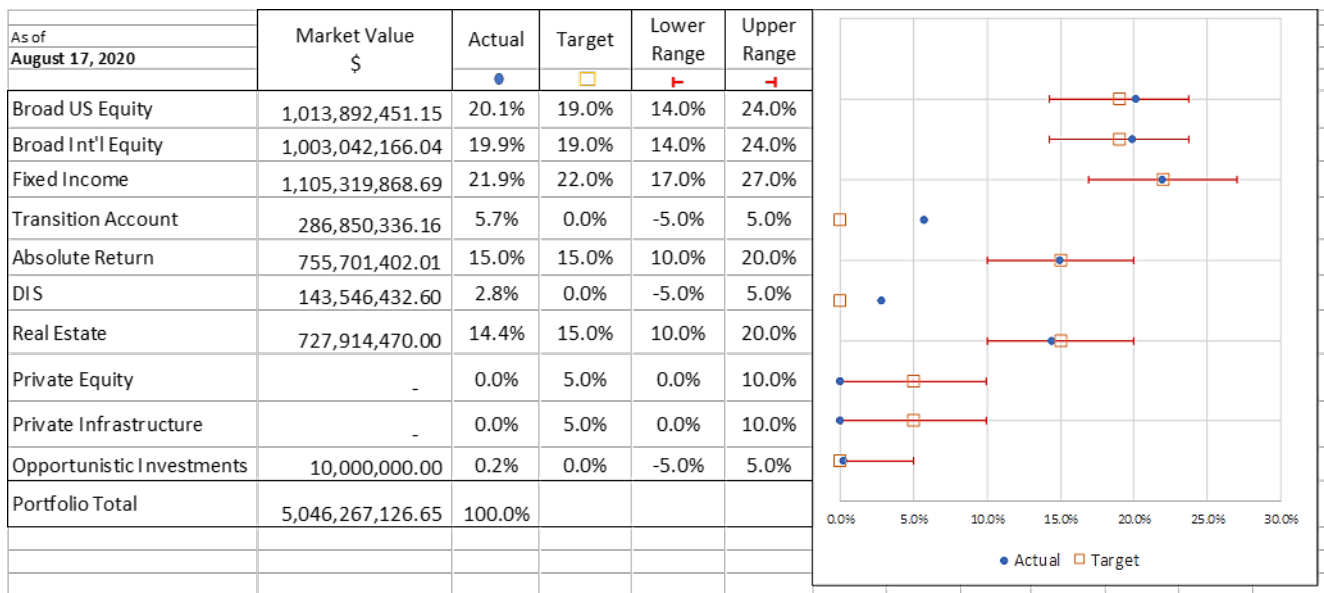
As of August 17, 2020 Gresham, has approximately \$251,000 waiting to be settled in September which will result in the closing of their account. In addition, Van Eck has approximately \$38M remaining while Harvest has approximately \$105M. The Department of Trust Lands (Department) is closely monitoring the trigger points that have been set to complete the redemption of both investments.

On July 1, 2020 the Varde Dislocation Fund LP (Varde) completed a capital call of \$10M leaving \$90M left to fully commit to the Fund.

On July 21, 2020 Angelo Gordon made a capital distribution of \$12M. This brings the capital commitment back down to 92% or \$142M.

**Asset Allocation**

The table below shows the status of the permanent trusts' asset allocation as of Aug. 17, 2020. The figures provided are unaudited.



**Upcoming Investment Manager Meetings**

There is no upcoming meeting scheduled.

**OPERATIONS**

**Repeal of Board Payment Schedule – Surface Management Division – Second Reading**

Over the course of the last two years, many Board policies were revised and included in Administrative Rules. Other policies were reviewed, and it was determined were better suited to become Department of Trust Lands (Department) policies. Upon further review, it was determined that as the Surface Management Division's Payment Schedule Board Policy addresses negotiation (08/27/2020)

of compensation for surface management issues, it would be better tailored to be a Department policy rather than a Board policy.

The first reading of the policy was held at the July 30, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

**Motion: The Board repeal the North Dakota Board of University and School Lands Payment Schedule Policy – Chapter 3, Surface.**

| 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   |     |        |

Board of University and School Lands Surface Management Payment Schedule Policy was presented to the Board and is available at the Department upon request.

**Support for Additional FTE**

The Department of Trust Lands (Department) is responsible for managing 706,000 surface and 2.6 million mineral acres for the benefit of North Dakota schools and educational and other public institution trusts. The revenues generated by these assets are invested by the Department, and distributions are made to trust beneficiaries in accordance with Article IX of North Dakota's Constitution.

The Division is responsible for leasing and managing 2.6 million mineral acres including oil, gas, coal, and other subsurface minerals. The Division is responsible for all aspects of leasing of mineral acres, including maintenance of all records and responding to requests pertaining to mineral ownership and leasing activity. The Division tracks and interprets: business transactions by lessees; assignments by depth, formation, wellbore or value; requests for pooling agreements; lease and title disputes interpretation; royalty issues; authorizations for participation in production; overrides; and the analysis of drilling and production data necessary to hold a producing lease. This Division currently employs two FTEs which include the Division Director and one staff member who reviews historical records as well as assesses the unique leasing arrangements requested by lessees, and processes leases, division orders, and assignments.

As of July 30, 2020, the Department managed an interest in over 65 percent of the 17,339 producing wells in North Dakota. Production from 8,110 producing properties, including both unitized fields and wells, was up from 6,342 producing properties in FY 2018.

During the 2017-2019 biennium, the Division offered 764 leases, generating \$6.3 million in bonuses. As of the end of the biennium, 718,991 acres are under 8,713 leases.

The Board also manages state-owned minerals and the oil, gas, and related hydrocarbons within the beds of the State's navigable waters (sovereign minerals). On behalf of the State, the Board oversees the Strategic Investment and Improvements Fund (SIIF) which receives the revenues from sovereign minerals. During the 65th Legislative Assembly, SB 2134 was passed directing the (08/27/2020)

Department of Mineral Resources to conduct a study which would determine the Ordinary High-Water Mark along the Missouri River, for approximately 83 river miles, from New Town to several miles upstream of Williston.

Senate Bill 2211 of 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.” The contract’s scope of work concluded twelve months from the date of execution, May 30, 2019, at a total cost of \$1,088,635. Upon the Board’s adoption of the Acreage Adjustment Survey as prepared by KLJ, the Department promptly began updating records to satisfy the Board’s duty under N.D.C.C. § 61-33.1-04(2)(a).

Working with operators and lessees to complete the acreage adjustments will require a significant amount of resources from the Division which compounds the strain on current resources. As fiduciary trust managers, it is imperative the Department has the resources in place to effectively and efficiently manage those assets.

In addition to the day-to-day responsibilities, the Division will begin working with a Land Management Information Technology vendor to implement a new software system. While these systems will create significant efficiencies for the office, the data conversion, training, and implementation of new software will require substantial resources.

The Division has been trying to “keep up,” with the assistance of other Divisions within the Department lending their help. The Surface Land Management and Revenue Compliance Divisions, and all of the administrative support staff, have worked to assist the Division with the increased workload.

The Department currently has available funding in the salary and wages line item to support the addition of a Mineral Title Specialist FTE.

**Motion: The Board support the Commissioner in requesting an additional FTE from the Emergency Commission and the Budget Section.**

| 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   |     |        |

### Repayment of Unpaid Gas Royalties Update

The North Dakota Board of University and School Lands (Board) manages land, minerals, and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income going towards funding North Dakota schools and institutions. The Board also manages oil, gas and other hydrocarbons underlying sovereign lands for the State of North Dakota.

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The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board's lease, rules, and policies. Royalty audits began in the late 1980's and a Revenue Compliance Division was created in 2011 to ensure that royalty and other collections made on behalf of the trusts and other funds are complete and accurate.

A letter regarding Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 (February 2020 Letter), was sent to all entities required to pay royalties to the Board pursuant to the Board's lease. The February 2020 Letter advised all entities who have been deducting post production costs from royalty payments made to the Department that they have been underpaying royalties, contrary to the terms of the Board's lease. Entities were advised that penalties and interest continue to accrue on any unpaid amounts in accordance with the Gas Deduction Compliance Notification until payment is received. On April 8, 2020, the Board extended the date to come into compliance with gas royalty payments, as outlined in the February 2020 Letter, to September 30, 2020.

Over the course of the past several months, the Department has been working with payors who have been deducting post production costs from royalty payments made to the Department to ensure that they are in compliance with the terms of the Board's lease. Nineteen payors have requested royalty data to assist in repayment calculations. Eight gas payors have successfully repaid the Department. One payor repaid deductions going back to October 2013 and requested an extension to November 30, 2020 to repay royalties pre-dating October 2013. As this payor has been working with the Department, the extension request was approved pursuant to the guidance the Board provided the Department on April 8<sup>th</sup>. Additionally, seven payors have indicated they are working towards coming into compliance by September 30, 2020.

The repayment schedule provided to payors with the April 16, 2020 letter was presented to the Board and is available at the Department upon request.

## **M I N E R A L S**

### **Mineral Valuation**

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with conducting a study to determine the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The Request for Proposal for the Assessment was released September 20, 2019. A Notice of Intent to Award was issued to MineralTracker on January 2, 2020. MineralTracker is based in Watford City, North Dakota, and was founded by petroleum engineers with extensive experience in the valuation of non-operated oil and gas properties, including mineral and royalty interests, in the Williston Basin of North Dakota. On June 30, 2020, MineralTracker was acquired by First International Bank & Trust and continues to provide mineral valuations and mineral management software subscriptions as part of First International's Mineral and Land Services Department.

Joel Brown, a petroleum engineer and appraiser for MineralTracker, will present the opinion of the value using fair market determination in conjunction with directives provided by the Board of University and School Lands Mineral Valuation Policy that was adopted on June 25, 2020.

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The analysis employed to form the opinion of value was conducted in compliance with the Society for Mining, Metallurgy, and Exploration (SME) Standards and Guidelines for the Valuation of Mineral Properties and the Society of Petroleum Engineers (SPE) Petroleum Resource Management System. The valuation techniques that were performed utilized both an Income Approach and a Market Approach to provide a deterministic value of all Subject Minerals, which have been more fully described herein. The data—such as oil and gas production, well information, mapping information, etc.—that was assembled for the purposes of the Mineral Estate Valuation, was obtained from reputable public sources, including the North Dakota Department of Mineral Resources. Additional information related to the ownership of the Subject Minerals was provided by the State.

In consideration of all relevant information, and the interpretation thereof, as thoroughly described in this report, it is the opinion of this qualified appraiser that the value of all Subject Minerals as of December 31, 2019 is \$1,449,002,408.00.

Mineral Estate Valuation document as of December 31, 2019 was provided to the Board and is available at the Department upon request.

## **I N V E S T M E N T S**

### **Private Equity Investments**

On April 8, 2020 the Board of University and School Lands' approved an asset allocation to Private Equity within the broader Strategic Asset Allocation for the Permanent Trust Funds (PTFs).

Fund-of-One Structure: Department staff and RVK agreed upon a customized fund-of-one structure for the initial private equity mandate. In this structure the manager selects private equity funds for a single investor client. The advantages of this structure are: 1. The investor is not subject to the manager's pacing schedule; 2. It still allows for diversification; and 3. The investor can participate in the investment process.

Department staff and RVK began the manager search by requesting RVK compile a list of the highest rated managers on their private equity research list. The top 8 managers on the list were sent a request for proposal (RFP). Seven of the eight managers responded to the RFP (the eighth manager declined to offer a fund-of-one option). After reviewing the RFP responses and holding discussions with RVK, the list of managers was reduced down to four based upon their experience through multiple cycles, performance track record, investment process, experience with fund-of-one structures, willingness to work closely with department staff, etc. Department staff and RVK conducted initial interviews of the four managers. After additional discussions department staff and RVK subsequently re-interviewed its top 2 managers. This due diligence process has resulted in the team recommending GCM Grosvenor to the Board.

GCM Grosvenor is an investment manager founded in 1971 and headquartered in Chicago, with offices throughout the U.S., Europe and Asia. They have over \$56 billion in assets under management and over \$20 Billion in private equity funds, including \$18 billion in customized portfolios. GCM Grosvenor has 162 investment professionals worldwide.

A key component of GCM Grosvenor's business is building customized portfolios for clients, including fund-of-one structures as discussed above. They have extensive experience working with

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first time mandates. They are committed to working closely with department staff and RVK to carefully select underlying managers and assets that fit the risk profile of the PTFs.

**Motion: The Board approve up to a \$130 Million investment with GCM Grosvenor in a “fund-of-one” limited partnership as part of the PTF’s Private Equity allocation, 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      |        | X   |     |        |
| Attorney General Stenehjem |        |        | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

Supporting documents were provided to the Board and are available at the Department upon request.

### **RVK Investment Performance Report – 2nd Quarter 2020**

Josh Kevan from RVK will review the performance of the Board of University and School Land’s (Board) investment program for the period ending June 30, 2020 and discuss current market conditions.

The first report to be reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the Permanent Trust Funds’ (PTFs) investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report. A more comprehensive, detailed report is also available.

Next, Josh will touch on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

Supporting documents were provided to the Board and are available at the Department upon request.

### **Revised Benchmark**

On April 8, 2020 the Board of University and School Lands (Board) approved a new Strategic Asset Allocation (SAA) for the Permanent Trust Funds (PTFs). With the new SAA the Board also approved new benchmarks for each new asset class and a new Total Fund Benchmark. The new Total Fund Benchmark is set in the revised Investment Policy Statement (IPS) as follows:

| Asset Class                       | Policy Index                | Strategic Asset Allocation Target |
|-----------------------------------|-----------------------------|-----------------------------------|
| <b>Broad US Equity</b>            | Russell 3000 Index          | 19%                               |
| <b>Broad International Equity</b> | MSCI ACWI Ex USA IMI        | 19%                               |
| <b>Fixed Income</b>               | Barclays US Universal Index | 22%                               |

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|                               |   |     |
|-------------------------------|---|-----|
| <b>Absolute Return</b>        | Absolute Return Custom Index <sup>1</sup> | 15% |
| <b>Real Estate</b>            | NCREIF ODCE Index                         | 15% |
| <b>Private Equity</b>         | Cambridge US Private Equity Index         | 5%  |
| <b>Private Infrastructure</b> | MSCI World Infrastructure Index           | 5%  |

The newly added asset classes (Private Equity and Private Infrastructure) require time to become fully invested. The revised IPS anticipates a timing issue and allows for the Board to approve an Interim Policy benchmark:

“Recognizing that a long-term target allocation to alternative asset classes can often take a matter of years to implement prudently, the Board will also review an Interim Policy benchmark which will be adjusted as the Commissioner makes progress towards its long-term strategic asset allocation target.” (revised IPS)

Instead of setting a single interim benchmark, Department staff and RVK believe the benchmark should adjust each period based on the percentage of assets in each asset class for Private Equity, Private Infrastructure, Diversified Inflation Strategies (DIS) and the transition account. Similarly, DIS should have its benchmark adjusted to reflect its per period holdings (i.e., adjusting and removing Treasury Inflation-Protected Securities, IPS, Commodities, Natural Resource Equities and Master Limited Partnerships as needed). In addition, since the transition account is invested in an ultra-short bond fund, similar to the Strategic Investment and Improvement Fund, it should be benchmarked to cash.

**Recommendation: The Board approve modifying the Total Fund benchmark during the transition period by adjusting the percentage of each benchmark related to private equities, private infrastructure, the transition account and diversified inflation strategies (DIS) to coincide with their changing percentage in the fund. The transition account be benchmarked to cash and the DIS benchmark be adjusted to reflect its per period holdings.**

No formal action was taken.

## 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:**

- Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV-00089
- Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC, LLC v. North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143
- Mandan, Hidatsa, and Arikara Nation vs. United States of America, 1:20-cv-00859-MCW
- Mandan, Hidatsa, and Arikara Nation vs. United States Department of Interior, et al., 1:20-cv-01918

| Action Record    | Motion | Second | Aye | Nay | Absent |
|------------------|--------|--------|-----|-----|--------|
| Secretary Jaeger |        | X      | X   |     |        |

(08/27/2020)

|                            |   |  |   |  |  |
|----------------------------|---|--|---|--|--|
| Superintendent Baesler     |   |  | X |  |  |
| Treasurer Schmidt          |   |  | X |  |  |
| Attorney General Stenehjem | X |  | X |  |  |
| Governor Burgum            |   |  | X |  |  |

At 10:16 AM the Board entered executive session for the purposes outlined in its adopted motion.

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### EXECUTIVE SESSION

#### Members Present:

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

#### Department of Trust Lands Personnel present:

|                  |                              |
|------------------|------------------------------|
| Jodi Smith       | Commissioner                 |
| Kristie McCusker | Paralegal                    |
| Catelin Newell   | Administrative Staff Officer |

#### Guests in Attendance:

|                      |                                     |
|----------------------|-------------------------------------|
| Mark Hanson          | Nilles Law Firm via Microsoft Teams |
| Charles Carvell      | Attorney General's Office           |
| Dave Garner          | Attorney General's Office           |
| Leslie Bakken Oliver | Governor's Legal Counsel            |
| Reice Haase          | Governor's Office                   |

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#### 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, 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.”

(08/27/2020)

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.

**History:**

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 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. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for

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Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2020 to file his brief. On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that was filed in the separate briefs and appendixes. On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants' request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply briefs are due February 14, 2020. On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense. Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020. Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020.

**Current  
Status:**

- **Terry Moore filed letter with the District Court on July 28, 2020, concerning issue of injunction and release of funds.**

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- On July 29, 2020, the District Court issued a Notice of Hearing scheduling a hearing on Terry Moore's July 28, 2020 letter for August 17 at 1:30 p.m.
- On July 30, 2020, the North Dakota Supreme Court issued its Opinion.
- On July 31, 2020, Mark Hanson filed a letter with the District Court advising of the issuance of the North Dakota Supreme Court Opinion and requesting cancellation of the August 17 hearing. That hearing was cancelled.
- The Supreme Court's Opinion was amended on August 4, 2020, and on August 18, 2020. Neither amendment was substantive.
- Terrance Moore filed with the Supreme Court the Plaintiffs, Appellees, and Cross-Appellants Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Omlid's Petition for Rehearing on August 12, 2020.

### 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 - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP

**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.

**History:** 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 (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the 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. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision." The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019. Telephonic Status Conference scheduled for March 17, 2020 before the District Court.

**Current Status:**

- **On May 14, 2020, the Court scheduled a five-day Court Trial to start on October 4, 2021, McKenzie County Courthouse.**
- **On July 28, 2020, a Stipulated Scheduling Order was entered, setting dates for various deadlines.**

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 11:43 AM and the Board reconvened in open session.

No formal action was taken.

## O T H E R   B U S I N E S S

### **In Lieu Selection Process**

In November 2019, the Board of University and School Lands (Board) approved the Commissioner to identify potential tracts for coal acreage exchange with the Federal Government. The identified tracts are to be brought to the Board for approval prior to submission to the Federal Government.

Since this time, the Department of Trust Lands (Department) has been working to draft a Federal bill that would allow the Board to relinquish lands and minerals and select in lieu thereof equal value Federal lands and minerals within North Dakota.

(08/27/2020)



This opportunity would provide mutual economic benefits for both the Federal Government and the Board by allowing both to control larger contiguous tracts and by potentially protecting more sensitive areas or points of historic significance. It would also allow for more efficient energy development.

The proposed letter of support by the Board will be provided to Senator Hoeven, Senator Cramer and Representative Armstrong.

**Motion: The Board sign the letter of support for a Federal bill to allow the Board to relinquish lands and minerals and select in lieu thereof equal value federal lands and minerals within North Dakota.**

| <b>Action Record</b>       | <b>Motion</b> | <b>Second</b> | <b>Aye</b> | <b>Nay</b> | <b>Absent</b> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           |               | X             | X          |            |               |
| Superintendent Baesler     |               |               | X          |            |               |
| Treasurer Schmidt          |               |               | X          |            |               |
| Attorney General Stenehjem | X             |               | X          |            |               |
| Governor Burgum            |               |               | X          |            |               |

## A D J O U R N

There being no further business, the meeting was adjourned at 11:51 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
September 9, 2020**

The September 9, 2020 special meeting of the Board of University and School Lands was called to order at 10:00 AM in the Peace Garden Meeting 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 via Microsoft Teams                      |
| Kirsten Baesler | Superintendent of Public Instruction via Microsoft Teams |

**Department of Trust Lands Personnel present:**

|                  |  |
|------------------|--|
| Jodi Smith       | Commissioner                                     |
| Kristie McCusker | Paralegal  |
| Catelin Newell   | Administrative Staff Officer                     |
| Kate Schirado    | Administrative Assistant                         |
| Adam Otteson     | Revenue Compliance Division Director             |
| David Shipman    | Minerals Division Director – via Microsoft Teams |

**Guests in Attendance:**

|                      |                                |
|----------------------|--------------------------------|
| Dave Garner          | Office of the Attorney General |
| Leslie Bakken Oliver | Governor's Legal Counsel       |
| Reice Haase          | Governor's Policy Advisor      |
| Brady Pelton         | ND Petroleum Council           |
| Jeff Herman          | Guest via Microsoft Teams      |
| Craig C. Smith       | Guest via Microsoft Teams      |
| Eric Sundberg        | Guest via Microsoft Teams      |
| Kristen Lingley      | Guest via Microsoft Teams      |
| Brent Lohnes         | Guest via Microsoft Teams      |
| Amy Hsiang           | Guest via Microsoft Teams      |
| Michael Kukuk        | Guest via Microsoft Teams      |
| Joel Noyes           | Guest via Microsoft Teams      |
| Zachary Weis         | Guest via Microsoft Teams      |
| Will Miller          | Guest via Microsoft Teams      |

## LITIGATION

**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

(09/09/2020)

**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.

**History:** 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 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. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal

Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

**Current**

**Status:** The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020.

**OTHER BUSINESS**

The Commissioner Annual Review process update was discussed; no formal action was taken and no materials were provided.

**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 - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP

**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.

**History:** 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 (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019.

(09/09/2020)

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. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision." The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019. Telephonic Status Conference scheduled for March 17, 2020 before the District Court.

**Current Status:**

- **On May 14, 2020, the Court scheduled a five-day Court Trial to start on October 4, 2021, McKenzie County Courthouse.**
- **On July 28, 2020, a Stipulated Scheduling Order was entered, setting dates for various deadlines.**

**Repayment of Unpaid Gas Royalties Update**

The North Dakota Board of University and School Lands (Board) manages land, minerals, and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income going towards funding North Dakota schools and institutions. The Board also manages oil, gas and other hydrocarbons underlying sovereign lands for the State of North Dakota.

The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board's lease, rules, and policies. Royalty audits began in the late 1980's and a Revenue Compliance Division was created in 2011 to ensure that royalty and other collections made on behalf of the trusts and other funds are complete and accurate.

A letter regarding Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 (February 2020 Letter), was sent to all entities required to pay royalties to the Board pursuant to the Board's lease. The February 2020 Letter advised all entities who have been deducting post production costs from royalty payments made to the Department that they have been underpaying royalties, contrary to the terms of the Board's lease. Entities were advised that penalties and interest continue to accrue on any unpaid amounts in accordance with the Gas Deduction Compliance Notification until payment is received. On April 8, 2020, the Board extended the date to come into compliance with gas royalty payments, as outlined in the February 2020 Letter, to September 30, 2020.

(09/09/2020)

Over the course of the past several months, the Department has been working with payors who have been deducting post production costs from royalty payments made to the Department to ensure that they are in compliance with the terms of the Board's lease.

- Twenty-one payors have requested royalty data to assist in repayment calculations.
- Eight gas payors, who were originally identified as out of compliance, have successfully repaid the Department.
- One gas payor who was not audited but received the February 2020 Letter determined it was not paying the state per the terms of the Board's lease and came into compliance.
- One gas payor is in the final phase of confirming with the Department the principal amount owed to the Board.
- One payor has asked to enter into a payment agreement. The Department worked with the Attorney General's Office to draft the agreement. The payor is currently reviewing the terms of the agreement.
- One payor repaid deductions going back to October 2013 and requested an extension to November 30, 2020 to repay royalties pre-dating October 2013. As this payor has been working with the Department, the extension request was approved pursuant to the guidance the Board provided the Department on April 8<sup>th</sup>.
- Three payors have entered into bankruptcy; thus, court involvement is required.
- Ten payors have indicated they are working towards coming into compliance by September 30, 2020.

The memo attachment provided outlines the repayment schedule provided to payors with the April 16, 2020 letter. This memo attachment is available at the Department upon request.

#### 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 Exploration Company, Newfield Production Company, and Newfield RMI LLC\_LLCC v. North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143
- Royalty Repayment Schedule

| 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   |     |        |

At 10:23 AM the Board entered executive session for the purposes outlined in its adopted motion.

**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 via Microsoft Teams |

**Department of Trust Lands Personnel present:**

|                  |                                      |
|------------------|--------------------------------------|
| Jodi Smith       | Commissioner                         |
| Kristie McCusker | Paralegal                            |
| Catelin Newell   | Administrative Staff Officer         |
| Adam Otteson     | Revenue Compliance Division Director |

**Guests in Attendance:**

|                      |                                |
|----------------------|--------------------------------|
| Leslie Bakken Oliver | Governor’s Legal Counsel       |
| Reice Haase          | Governor’s Office              |
| Dave Garner          | Office of the Attorney General |

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 11:00 AM and the Board reconvened in open session.

**Motion: The Board authorizes the Commissioner to extend the deadline for full repayment of unpaid gas royalties; waving penalties and applying an annual interest prime rate plus 4% pursuant to N.D.C.C. Section 47-16-39-.1 from the original September 30, 2020 deadline to April 30, 2021.**

| 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   |     |        |

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:51 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands



**Minutes of the Meeting of the  
Board of University and School Lands  
September 24, 2020**

The September 24, 2020 meeting of the Board of University and School Lands was called to order at 9:02 AM in the Peace Garden Meeting 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   |
| Dennis Chua      | Investment Analyst – via Microsoft Teams                   |
| Robert Dixon     | Network Computer Specialist – via Microsoft Teams          |
| Michael Humann   | Surface Division Director                                  |
| Kristie McCusker | Paralegal  |
| Catelin Newell   | Administrative Staff Officer                               |
| Adam Otteson     | Revenue Compliance Division Director – via Microsoft Teams |
| Rick Owings      | Grants Administrator EIIO – via Microsoft Teams            |
| Mike Shackelford | Investment Division Director                               |
| David Shipman    | Minerals Division Director                                 |
| James Wald       | Assistant Attorney General                                 |

**Guests in Attendance:**

|                      |                                |
|----------------------|--------------------------------|
| Dave Garner          | Office of the Attorney General |
| Leslie Bakken Oliver | Governor's Legal Counsel       |
| Kirby Francis        | Guest via Microsoft Teams      |
| Jim Sakelaris        | Guest via Microsoft Teams      |
| Brady Pelton         | NDPC Guest via Microsoft Teams |
| Nicholas Moller      | Guest via Microsoft Teams      |
| Brent Bogar          | Guest via Microsoft Teams      |
| Josh Kevan           | RVK Guest via Microsoft Teams  |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the amended June 25, 2020 regular meeting, the August 27, 2020 regular meeting and the September 9, 2020 special meeting was made by Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

It should be noted for the record that the amended portion of the June 25, 2020 meeting was an update to correct the motion relating to the Commissioner's Performance Evaluation as stated: (1) The Board approves a salary increase of 2.5% as recommended by the 66th Legislative Assembly for the Commissioner. (2) The State Treasurer and Governor's Office will work collaboratively to create an annual review process for the Commissioner's position

(09/24/2020)

## R E P O R T S

**August Report of Encumbrances Issued by Land Commissioner**

|                      |   |
|----------------------|---|
| Granted to:          | XTO HOLDINGS, LLC, SPRING-TX                |
| For the Purpose of:  | Road-Section Line Access Road               |
| Right-of-Way Number: | RW0008640                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | WIL-154-96-16-NE4                           |
| Granted to:          | XTO HOLDINGS, LLC, SPRING-TX                |
| For the Purpose of:  | Road-Section Line Access Road               |
| Right-of-Way Number: | RW0008641                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | WIL-159-96-16-NW4                           |
| Granted to:          | CONTINENTAL RESOURCES INC                   |
| For the Purpose of:  | Road-Access Road                            |
| Right-of-Way Number: | RW0008648                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | MCK-152-97-36-NW4, SW4                      |
| Granted to:          | MCKENZIE ELECTRIC COOP INC                  |
| For the Purpose of:  | Release of Easement                         |
| Right-of-Way Number: | RW0008656                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | DUN-148-96-36-SW4                           |
| Granted to:          | MOUNTRAIL-WILLIAMS ELECTRIC COOP            |
| For the Purpose of:  | Drop Line-Buried Electric Distribution Line |
| Right-of-Way Number: | RW0008687                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | MOU-153-92-16-NW4                           |
| Granted to:          | ONEOK ROCKIES MIDSTREAM LLC, SIDNEY         |
| For the Purpose of:  | Release of Easement                         |
| Right-of-Way Number: | RW0008702                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | MCK-153-94-16-NW4, SW4                      |
| Granted to:          | MOUNTRAIL-WILLIAMS ELEC. COOP               |
| For the Purpose of:  | Drop Line-Buried Electric Distribution Line |
| Right-of-Way Number: | RW0008731                                   |
| Trust:               | A – Common Schools                          |
| Legal Description:   | MOU-152-92-23-NE4NW4                        |
| Granted to:          | VERENDRYE ELEC COOP INC, VELVA-ND           |
| For the Purpose of:  | Electric-Buried Distribution Line           |
| Right-of-Way Number: | RW0008755                                   |
| Trust:               | Z – Valley/Mayville                         |
| Legal Description:   | MCH-156-76-22-E2SW4                         |

|                      |  |
|----------------------|--|
| Granted to:          | OVINTIV USA INC, DENVER-CO                       |
| For the Purpose of:  | Road-Access Road                                 |
| Right-of-Way Number: | RW0008766  |
| Trust:               | A – Common Schools                               |
| Legal Description:   | MCK-153-96-16-SE4                                |
| Granted to:          | INTERSTATE ENGINEERING INC, MANDAN ND            |
| For the Purpose of:  | Planning & Preconstruction Survey                |
| Right-of-Way Number: | RW0008768  |
| Trust:               | A – Common Schools                               |
| Legal Description:   | N/A  |
| Granted to:          | MINNKOTA POWER COOPERATIVE INC                   |
| For the Purpose of:  | Seismic  |
| Right-of-Way Number: | RW0008769  |
| Trust:               | A – Common Schools                               |
| Legal Description:   | OLI-141-83-16-NE4, SE4<br>OLI-142-84-36-SE4, SW4 |

### **August 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 July 2020, the Division received 153 holder reports with a property value of \$306,487 and paid 332 claims with a total value of \$558,932.

### **Energy Infrastructure and Impact Office**

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$626 million in funding.

The Oil and Gas Impact Grant Fund currently has 22 grants with a balance of \$5,282,832.07 as of September 9, 2020. The following shows grant activity for the last seven months:

(09/24/2020)

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants |
|-------------------------------|----------------------|-------------------------------------|
| 2/13/2020                     | 21                   | \$7,207,988.75                      |
| 5/13/2020                     | 28                   | \$7,049,556.08                      |
| 9/9/2020                      | 22                   | \$5,282,832.07                      |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$2,394,929.22 as of September 9, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last seven months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 2/13/2020          | 3                    | \$3,447,448.60                      |
| 5/13/2020          | 3                    | \$2,394,929.22                      |
| 9/9/2020           | 3                    | \$2,394,929.22                      |

EIIO is currently managing 25 grants for a total of \$7,677,761.29. The following shows grant activity for the last seven months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 2/13/2020                     | 21                   | \$7,207,988.75                      | 2/13/2020          | 3                    | \$3,447,448.60                      | \$10,655,437.35          |
| 5/13/2020                     | 28                   | \$7,049,556.08                      | 5/13/2020          | 3                    | \$2,394,929.22                      | \$9,444,485.30           |
| 9/9/2020                      | 22                   | \$5,282,832.07                      | 9/9/2020           | 3                    | \$2,394,929.22                      | \$7,677,761.29           |

## Investment Updates

### Portfolio Rebalancing Updates

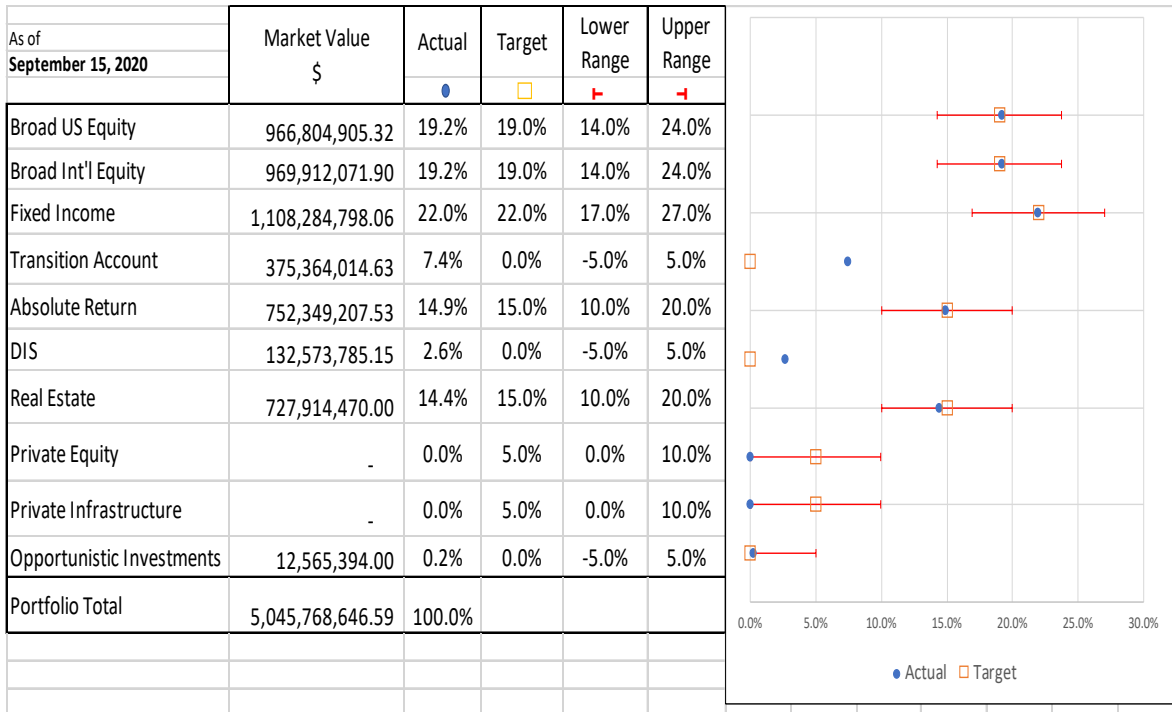
In April 2020, the Board of University and School Lands (Board) approved a new Strategic Asset Allocation. The Department of Trust Lands (Department) staff, along with RVK staff, developed a transition plan to liquidate the TIPS, Commodities, MLPs, and Natural Resource Equities' holdings in the Permanent Trust Funds (PTFs) in a manner that is consistent with the best interests of the PTFs and as market conditions allow. The Department staff and RVK continuously monitoring the trigger points set for these accounts and redemption of investments are completed when appropriate. As of September 15, 2020, Van Eck has approximately \$38M remaining while Harvest has approximately \$94M.

In July 2020, the Board approved \$100M new investment commitment to the Apollo Accord Fund IV, LP (Fund), for an Opportunistic Investment. The Fund has now called on an initial \$2,565,393.79 that was funded on September 15, 2020. The remaining unfunded commitment is now at \$97,434,606.21.

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 15, 2020. The figures provided are unaudited.

(09/24/2020)



**Upcoming Investment Manager Meetings**

There is no upcoming meeting scheduled.

**Repayment of Unpaid Gas Royalties Report**

| Gas Royalty Payors Out of Compliance* |                   |                            |
|---------------------------------------|-------------------|----------------------------|
| Abraxas Petroleum                     | Hess              | Resource Energy            |
| Armstrong Operating                   | Hunt Oil          | RIM Operating              |
| BTA                                   | Kraken Oil & Gas  | Ritter, Laber & Associates |
| Citation Oil and gas LLC              | Liberty Resources | Scout Energy Management    |
| Condor Petroleum                      | Luff Exploration  | Sinclair                   |
| Conoco Phillips                       | Marathon          | Slawson                    |
| Continental Resources                 | Murex             | Thunderbird Resources      |
| Denbury                               | Newfield          | Whiting                    |
| EOG                                   | Oasis             | Windridge Operating        |
| Fidelity                              | Petro Hunt        | XTO                        |
| Gadeco LLC                            | Rampart Energy    | Zavanna                    |

\*Based upon improper deductions taken as discovered in completed audits. As of the time of the report, deductions have not yet been repaid.

Since the September 9, 2020, Board of University and School Lands meeting, one payor has come into compliance:

- Crescent Point

Note, the majority of payors issue payment with their monthly royalty payment made the last week of every month.

(09/24/2020)

## **Information Technology Project Status Update**

The Department of Trust Land's (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

On July 1, 2020 the new system for Financial Management and Accounting was successfully launched.

On September 14, 2020 the Revenue Compliance Division successfully launched the migrated and updated software system.

During April, 2020 the Investment Division participated in three demonstrations by vendors to implement the Microsoft Dynamics 365 product. On April 27, 2020 the RFP was issued to all three vendors. The Department received responses from all three vendors and is in the process of awarding the contract. The Investments Division, Commissioner and Project Manager are working to determine a go-live for software estimated to be in December 2020.

On December 16, 2019, the Department issued the RFP for the Land Management system. The Executive Steering Committee approved the Department moving forward with a Microsoft Dynamics solution. The Project Sponsor, Commissioner and Project Manager are working on determining a kick-off date.

## **North Dakota Department of Trust Lands Deferred Production Analysis**

North Dakota received \$1.25 billion from the Coronavirus Relief Fund as part of the \$2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. The North Dakota Budget Section voted last week to utilize more than half a billion dollars in federal funding for North Dakota's COVID-19 response and recovery efforts, with the majority of the money directed to support economic recovery.

The Department of Trust Lands received \$20,000 to complete an analysis of shut-in and deferred producing wells analysis based upon various economic scenarios to anticipate production and the resulting direct impact on cash flow for the Department. The analysis will allow the Department to better manage cash flows and disbursement obligations through cash deposits versus being required to sell investments. An analysis was presented at the May 28, 2020, Board of University and School Lands meeting. Attached is an updated analysis for review.

North Dakota Department of Trust Lands Deferred Production Analysis document was presented to the Board and is available at the Department upon request.

## **Board of University and School Lands Meeting Dates For 2021**

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special

(09/24/2020)

meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last two hours each month except for meetings that include the Investment quarterly update which will last three hours as noted below.

The following dates will be shared with Board members' offices for scheduling purposes.

- January 28, 2021                      9:00 AM – 11:00 AM
- February 25, 2021                    9:00 AM – 12:00 PM
- March 25, 2021                        9:00 AM – 11:00 AM
- April 29, 2021                         9:00 AM – 11:00 AM
- May 27, 2021                          9:00 AM – 12:00 PM
- June 24, 2021                         9:00 AM – 11:00 AM
- July 29, 2021                         9:00 AM – 11:00 AM
- August 26, 2021                       9:00 AM – 12:00 PM
- September 30, 2021                 9:00 AM – 11:00 AM
- October 28, 2021                     9:00 AM – 11:00 AM
- November 23, 2021                 9:00 AM – 12:00 PM Tuesday before Thanksgiving
- December 21, 2021                 9:00 AM – 11:00 AM Tuesday before Christmas Eve

### **Approval of Additional FTE**

On August 27, 2020, the Board of University and School Lands supported the Commissioner in requesting an additional FTE from the Emergency Commission and the Budget Section.

On September 8, 2020, the Emergency Commission approved the Department of Trust Lands (Department) request for an additional FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

On September 17, 2020 the North Dakota Legislative Budget Section approved the Department's request for one FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

The approval did not require additional funding be appropriated as Department currently has available funding in the salary and wages line item to support the FTE.

## **O P E R A T I O N S**

### **Surface Land Management and Minerals Management Administrative Rules**

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (the Act). In Senate Bill 2264, the Sixty-sixth 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 28-32-51 of the Act.

(09/24/2020)

The Department of Trust Lands (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. The Board's rules are included in Title 85 of the North Dakota Administrative Code. As the Department determines additional rules are needed, those are drafted and presented to the Board for review.

#### Land Sale and Land Exchange Administrative Rules

By the 1970s, approximately 80% of the original 3.2 million acres of the land granted to trusts had been sold, and the Board began an informal policy of not selling surface lands. While often encouraged to sell trust lands to private citizens to put it on the tax rolls, the Board has historically experienced opposition to land sales from the Game and Fish Department, Wildlife Federation, Medora Grazing Association, ND Farmers Union, sportsmen, and other outside entities. The Board formalized its policy of not selling land in 1981 when it limited land sales to smaller and isolated tracts, and to parcels that caused management problems. The Board has had a limited land sale policy ever since. The history of the land sale policy is attached as Attachment 1.

In the 1990s, the Department evaluated the historic return on investment of land in North Dakota and the impact on the value of trust lands to the permanent trust funds. The initial study encompassed land rents and values from 1960 through the 1990s; it was later updated through 2001. The results of this study indicated that land is similar to and should be treated like other asset classes in which the Board invests. In October 1998, the Board formally designated surface lands as an asset class to be managed within the Board's overall investment portfolio.

Considering land as an investment is central to its management for the long-term best interests of the trusts. Land as an asset class means that it is recognized for its characteristics of value, income, stability and liquidity that are inherent in investments. It also means that investment principles, such as risk versus reward, should be applied to land just as to any other investment asset class.

The study led to a proposal that certain lands with an income return of less than 0% be considered for sale. However, due in large part to public opposition to the sale of trust lands, these tracts were not sold to private owners. Nonetheless, the work done in this area helped demonstrate that the consistent cash flows generated by trust land and its inherent nature as a store of value, make it a stabilizer in the Board's overall asset portfolio.

On March 26, 2015 the Board revised its land sale policy to:

1. Clarify the general policy to sell land only if certain conditions are met;
2. Add language requiring that sales of larger tracts be coupled with a "no net loss" of acres provision;
3. Remove language specifically related to rates of return and low potential for development as reasons for consideration of a sale of trust lands; and
4. Add a provision to consider selling land in higher value urban locations.

The provision of no net loss of "leasable trust land" was adopted to provide an option to consider tracts that are larger than 80 grassland acres and 40 crop acres being offered for sale without reducing the trust's leasable real estate holdings. It allows for a sale of trust land and a donation of land to the trust from which the original land was sold. To date, the no net loss policy has not been used and no procedures have been developed to implement the policy. See Attachment 1.

On September 28, 2017, the Board directed the Commissioner to investigate and explore procedural options to implement the Board's no net loss of "leasable trust land" policy through land exchanges of like or equal acres and value.



The proposed Administrative Rules presented to the Board in June 2020 provided changes from the Board's Land Retention and Sales Policy as follows:

Grant Land Sales (N.D.C.C. ch. 15-06):

- Unchanged from the Board's Land Retention and Sales Policy with the exception that any sale will be subject to public comment prior to Board review of the application.
- Maintains the provision of no net loss of leasable original grant land through public sale and subsequent land provided to the trust from which the original grant land was sold.

Acquired Land Sales (N.D.C.C. ch. 15-07):

- Requires any sale of acquired lands to be subject to public comment prior to Board review.
- Acquired land sales would not be subject to any acreage restrictions.

Sales of Lands for Public or Quasi-Public Purpose (N.D.C.C. ch. 15-09):

- Sales for this chapter were not subject to the Land Retention and Sales Policy.
- Requires any application received for a public purpose or quasi-public purpose be subject to public comment prior to Board review.

Land Exchange:

- No previous policy.
- Establishes an evaluation process for land exchanges.
- Currently the Constitution and Statutes only allow for exchanges of Federal and State Land and does not allow for exchanges of private and tribal lands.

In June 2020, the Board authorized the Commissioner to proceed with a public comment period and the collection of comments. Additionally, the Board authorized the Commissioner to submit to Legislative Council the Administrative Rules.

The Department received comments relating to the Definitions, a significant number of comments pertaining Land Exchange and Sales, and one comment regarding the proposed Offset Well rules. The Department is recommending revising the originally proposed Administrative Rules, as shown in the attached red-line version (Attachment 2), prior to submitting to the Attorney General's Office for review. Attachment 3 is a summary of the comments received, the discussion and review by the Department, and the action taken concerning the proposed rules and changes made based on the comments and discussions.

The following is a summary of the changes provided in Attachment 2, the proposed Administrative Rules as revised after the public comment period. These rules do not promote the sale of trust lands but provide the Board the ability to sell in certain circumstances. Changes after comments include:

Grant Land Sales (N.D.C.C. ch. 15-06):

- Removed the definition of high value land and revised rules to reference residential, commercial and industrial zoning.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

Acquired Land Sales (N.D.C.C. ch. 15-07):

- Added criteria for the sale of acquired lands.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

Sales of Lands for Public or Quasi-Public Purpose (N.D.C.C. ch. 15-09):

- Added formal challenge to the criteria considered by the Department and removed significant controversy from the criteria.

Land Exchange:

- Revised language to provide consistency through rules.
- Concerning the Department’s consideration of features not reflected by the market price, language was changed to require mandatory rather than permissive consideration.

Offset Well Administrative Rule

The current Policy of the Board and University and School Lands for the Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells has been administered since 1987. It provides a procedure to administer the provisions in the Board’s oil and gas lease which requires the lessee to exercise an option in order to protect the state-owned interest from drainage due to wells drilled on adjacent acreage. The proposed Administrative Rule moves the policy into the rule format with minimal substantial changes. Changes were made after comments to reference application of the rule to vertical oil and gas wells only. A definition of vertical oil and gas well was also added.

It is not the intention of the Board to actively sell land. The proposed Administrative Rule is a reflection on the Board’s need to comply with NDCC Section 28-32; requiring the Board to amend necessary Board policies into Administrative Rules.

**Motion: The Board approves the Commissioner to proceed in submitting the proposed revised Administrative Rules for Land Sales, Land Exchanges and Offset Wells with the amended language:**

- **85-04-07.1 subsection 1. If the tract has been rezoned or has the high potential to be rezoned.**
- **85-04-08.1 subsection 2. If the If the tract has been rezoned or has the high potential to be rezoned**

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

The Board of University and School Lands History of Land Sale Policy, Administrative Rules General Administration (red-lined) and Summary of Comments were presented to the Board and are available at the Department upon request.

## ENERGY INFRASTRUCTURE AND IMPACT OFFICE

### Retirement of Grants

Pherrin Township in Williams County was awarded a grant in the amount of \$300,000.00 in Fiscal Year 2015 to assist in upgrades to the 54<sup>th</sup> street road project. The project included road cuts, culverts, road fills, grading roads and ditches, erosion control, and adding guard rails for the crossings to address safety concerns.

| Political Sub       | Grant  | Awarded      | Paid         | Balance     | Project                              |
|---------------------|--------|--------------|--------------|-------------|--------------------------------------|
| PHERRIN<br>TOWNSHIP | G15230 | \$300,000.00 | \$288,520.80 | \$11,479.20 | 54 <sup>TH</sup> STREET ROAD PROJECT |
|                     |        |              |              | \$11,479.20 |                                      |

On February 29, 2016, this grant was put into suspension status due state revenue shortfalls. The Energy Infrastructure and Impact Office (EIIO) contacted all political subdivisions which had a grant balance. Those that had not started their projects were told to discontinue their projects as their grants were going to be temporarily suspended until funds became available. Political subdivisions that had begun working on their projects could continue, with the funds being retained for those entities that were already receiving invoices.

On February 1, 2017, the suspension of this grant was lifted as funds became available to honor the grants awarded during the revenue shortfall.

On August 24, 2020, Pherrin Township was paid their final disbursement and the project was completed under budget. The remaining amount of \$11,479.20 can be reverted to the Oil and Gas Impact Grant Fund.

**Motion: The Board retires the grant identified in the sum of \$11,479.20. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.**

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

## I N V E S T M E N T S

### Private Infrastructure Investments

On April 8, 2020 the Board of University and School Lands' approved an asset allocation to Private Infrastructure within the broader Strategic Asset Allocation for the Permanent Trust Funds (PTFs).

For the PTFs initial investment in infrastructure, Department staff and RVK determined:

- Open-end fund structure which allows for reinvestment potential without conducting a new RFP or waiting for a new fund to open. Ability to withdraw investment under partnership terms. Provides greater manager flexibility to hold and trade assets, and generally have greater diversity of assets (both sector and geography).

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- Core infrastructure strategy which has higher expected yields and lower risk versus non-core which has higher expected total return and a higher risk profile.
- Low exposure to fossil fuels to reduce correlation to PTF contributions.
- Geographically diverse, primarily in developed countries.

Department staff and RVK began the manager search by requesting RVK compile a list of the highest rated managers on their private infrastructure research list. The top six managers on the list were sent a request for proposal (RFP). After reviewing the six RFP responses and holding discussions with RVK, the list of managers was reduced to three managers based upon their experience, performance track record, investment process, etc. Department staff and RVK conducted interviews with the three managers. This due diligence process has resulted in the team recommending JP Morgan's Infrastructure Investments Fund (IIF) to the Board.

JP Morgan's IIF was founded in 2006 and headquartered in New York and London. They have over \$12.5 billion in assets under management with 16 portfolio companies and over 500 assets in 25 countries. JP Morgan has over 50 infrastructure investment professionals in addition to portfolio company board of director appointments.

**Motion: The Board approves up to a \$130 Million investment in J.P. Morgan Investment Management Inc.'s Infrastructure Investments Fund as a currency hedged limited partner (IIF Hedged LP) as part of the Permanent Trust Fund's Private Infrastructure allocation, 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   |     |        |
| Superintendent Baesler     |        |        | X   |     |        |
| Treasurer Schmidt          | X      |        | X   |     |        |
| Attorney General Stenehjem |        | X      | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Infrastructure Recommendation Memo and JP Morgan Infrastructure Presentation were presented to the Board and are available at the Department upon request.

#### **Investment Fee Report – FY 2020**

Attached is a report of the Board of University and School Land's (Board) investment fees paid for the twelve months ending June 31, 2020 (Fiscal Year 2020).

#### Summary:

- During fiscal year 2020 the Permanent Trust Funds (PTFs) paid \$22,335,336 in investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is a decrease of -1.7% from the \$22,711,405 in fees paid in FY 2019. The PTFs' average asset balance increased by 4.76% during the same period (including contributions and withdrawals), from \$4.63 billion in FY 2019 to \$4.85 billion in FY 2020. The primary driver of the decrease in fees is a result of lower incentive fees paid during the year.
- Incentive fees totaling \$898,695 were paid by the PTFs during FY 2020 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund and the Angelo Gordon Direct Lending Fund III; this equals 1.4 basis points on the average value of total trust assets during FY 2020, or 4.0% of the total fees of managing the PTF's investment program. Incentive fees totaled \$1,810,455 during FY 2019, the equivalent of 3.9 basis points and 8.0% of the total cost to manage the program.

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- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$437,862 in investment management expenses during FY 2020, up from \$274,497 in management fees paid in FY 2019. The increase in management fees is due to the increase in the average assets under management from \$609.8 million in FY 2019 to \$718.0 million in FY 2020.
- The fee consultant Novarca was able to negotiate a fee reduction for the Payden & Rygel Aggregate Bond fund in which fees were lowered from 20 basis points to 17.5 basis points on the first \$250 million and 15 basis points on every dollar above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years.
- The PTFs entered a fee reduction agreement with JP Morgan based on the total amount of fees paid to JP Morgan each year. The agreement will reduce fees from 10% to 25% depending on fees paid each year.

The Investment Fee Report was presented to the Board and are available at the Department upon request.

## LITIGATION

### 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, 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.

**History:** 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 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

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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 Plaintiff's proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiff's Proposed Judgment. Thereafter, Plaintiff's filed a letter asking the Court not to rule on Defendants' Objection until Plaintiff's have had the opportunity to be heard and further, that Plaintiff's intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiff's filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiff's Proposed Order and Judgment (Plaintiff's Amended Proposed) and Reply to Plaintiff's Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiff's filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiff's scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiff's filed their Motion for Attorney Fees, Costs and Service Award to Plaintiff's and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiff's filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiff's. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiff's Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiff's Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiff's on June 12, 2019. Plaintiff's filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiff's Motion for Attorney Fees, Costs and Service Award to Plaintiff's. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiff's Motion for Attorney Fees, awarding attorney fees to Plaintiff's attorneys and service awards to Plaintiff's. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August

1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2020 to file his brief. On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that was filed in the separate briefs and appendixes. On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants' request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply briefs are due February 14, 2020. On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense. Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020. Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020. Terry Moore filed letter with the District Court on July 28, 2020, concerning issue of injunction and release of funds. On July 29, 2020, the District Court issued a Notice of Hearing scheduling a hearing on Terry Moore's July 28, 2020 letter for August 17 at 1:30 p.m. On July 30, 2020, the North Dakota Supreme Court issued its Opinion. On July 31, 2020, Mark Hanson filed a letter with the District Court advising of the issuance of the North Dakota Supreme Court Opinion and requesting cancellation of the August 17 hearing. That hearing was cancelled. The Supreme Court's Opinion was amended on August 4, 2020, and on August 18, 2020. Neither amendment was substantive. Terrance Moore filed with the Supreme Court the Plaintiffs, Appellees, and Cross-Appellants Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Omlid's Petition for Rehearing on August 12, 2020.

**Current Status:**

- **On September 22, 2020, the North Dakota Supreme Court entered an order denying the petition for rehearing.**

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## S U R F A C E

### Fall Surface Lease Auctions

The Department of Trust Lands (Department) Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board of University and School Land's (Board) control. One of the major sources of income from these lands comes from agricultural leases (grassland, crop and hay land uses).

On Monday, September 28, 2020, 1,051 surface tracts are scheduled to become available to bid on at public auction using the online auction platform EnergyNet. The auctions will be open for bidding until 5:00 p.m. on Friday, October 9, 2020.

On April 8, 2020, Governor Burgum issued Executive Order 2020-25 (Executive Order) in response to the public health crisis resulting from COVID-19. The Executive Order suspended the requirement in N.D.C.C. § 15-04-10 that requires the Commissioner of University and School Lands to hold public auctions for public land leasing in the county seat. This provided the Commissioner with flexibility for holding public land auctions in a manner to facilitate social distancing and utilize best management practices to mitigate the spread of COVID-19.

In November of 2019, the Department contracted with EnergyNet to host and facilitate online auctions. EnergyNet is a provider of oil, gas, and other commodity auction and sealed bid transaction services. EnergyNet was the sole responder to the Department's Request for Proposal. At the time, it was not anticipated EnergyNet's services would need to be used for surface lease auctions.

After the issuance of the Executive Order, the Department worked with EnergyNet to modify their mineral auction platform to allow it to host surface lease auctions in the spring of 2020. In August of 2020, the Department announced that the fall surface lease auctions would also be hosted online by EnergyNet due to the continuing concerns associated with the public health crisis and hosting auctions that congregate large gatherings of people. Beginning in September of 2020, the Department received feedback from lessees as well as the North Dakota Stockman's Association, the Little Missouri Grazing Association, and the McKenzie Grazing Association. In response, the Department worked with the Governor's staff and the associations on modifications to the auction process, produced guidance for the public to become familiar with the online process, and published a Frequently Asked Questions (FAQ) document, available on the Department's website.

The Executive Order suspended the Department's requirement to hold public actions at a set date and time in the county seat, but it did not change other notice requirements in N.D.C.C. § 15-04-09 or requirements governing leasing by auction under N.D.C.C. § 15-04-10.

Under N.D.C.C. § 15-04-09:

All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.

The Department has published notice of its fall surface lease auction in the official county newspapers where all tracts are located; however, a list of lands offered for leasing in each county has not been submitted to the county treasurers. Historically, the Department considers an auction to be finalized when the Commissioner approves the lease. This typically occurs several days after an auction is complete and the payment has been received.

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Under N.D.C.C. § 15-04-10, when the land is offered for lease, the Department is required to give notice that all bids are subject to approval by the Board. This notice was not stated in the advertisement submitted for publication.

In 2005, former Land Commissioner Gary Preszler obtained an Attorney General's opinion concerning the validity of an Adams County lease after the fall auction. N.D.A.G. 2005-L-44. After the auction, the Board learned that notice of the auction was only run twice in the official county newspaper, rather than three times as required by statute. Commissioner Preszler inquired whether the Department could approve the lease even though the auction was not advertised in full compliance with the notice requirements set forth in the constitution and Century Code.

The Attorney General's opinion confirmed the statute must be followed. "The statute's plain meaning mandated publication of the notice. 'The word "shall" is unambiguous . . . it means "must."' It creates a mandatory duty, 'absent any legislative intent to the contrary. . . . This is particularly so when the statute is addressed to public officials.'" *Id.* at 3 (footnote omitted) (citations omitted).

Here, N.D.C.C. § 15-04-10 requires: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board."

The last paragraph of N.D.A.G. 2005-L-44 states: "Failure to comply with a mandatory duty has serious consequences: 'it invalidate[s] subsequent proceedings.' The Land Board must correct the non-compliance with the notice requirement before it can enter leases for its Adams County school lands." *Id.* at 4.

N.D.C.C. § 15-04-12 allows the Board to adjourn the auction for leasing if the interests of the state will be subserved.

The following is a summary of the comments received and the Department's response:

- Opposition to EnergyNet's anonymous bidding platform, in particular due to the grazing associations bylaws prohibiting members from bidding against each other
  - Although the anonymous bidding platform isn't able to be changed in time for the fall surface auctions beginning on September 28<sup>th</sup>, Department staff suggested that grazing association members could share their bidder numbers with each other prior to the auction so that members knew the grazing associations' bidder number and not bid against the association.
- Opposition to EnergyNet communications requesting financial information from the registered bidders
  - This resulted from bidders who erroneously registered under the business category
  - In response, the Department published a how-to guide directing registrants to the Government category
- Opposition to the online auction host procurement process
  - The Request for Proposal was issued in November 2019, and EnergyNet was the only bidder
  - A 5-year contract was issued and included all Department auctions
- Opposition to the ACH payment process
  - In response, the Department modified the payment process to allow bidders the option to pay by check
- Opposition to the length of time the auctions are open

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- Public notice has been sent out for the fall auctions
- The length of time auctions are open can be reduced if future online auctions are needed
- Opposition to the indemnity clause for bidding and concern with slow internet connections
  - EnergyNet cannot guarantee that bids placed too close to the auction closing time will be received prior to closing
  - EnergyNet recommends bidders place their bids in advance of the auction closing time
- Opposition to convenience fees for bidders
  - The Department has covered the convenience fees for the fall auctions using CARES Act appropriations
  - Continuing authority can cover costs if future online auctions are needed
- Concern that bidders may not have access to computers or internet
  - Similar concerns are occasionally expressed for unclaimed property claims and access to Department records
  - Public libraries may be a resource for bidders without internet access. In addition, Department staff and EnergyNet representatives will be available to answer any technical questions
- Concern for ease-of-access for out-of-state bidders
  - The Department does not discriminate, the only requirement is for bidders to be of 18 years-of-age or older
  - Out-of-state bidders have always had access to surface auctions and many hire local agents to bid on their behalf for in-person auctions
- Concerns that hunters will increase the bids on certain tracts
  - All Trust Lands are open to the public for hunting
  - Lessees cannot close leased lands for their exclusive hunting privileges

The Attorney General Stenehjem noted the 2020 spring Surface Lease Auctions were held online and the time has passed to raise any issue or concerns regarding the public notification and posting of these tracts.

The Board discussed the online surface lease auction process and concurred that it is appropriate to have the auctions held online at this time.

**Motion: The Board requests the fall surface lease auction be postponed allowing for 1) proper public notice pursuant to N.D.C.C. § 15-04-10 requiring: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board." And 2) N.D.C.C. § 15-04-09: All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.**

| <b>Action Record</b>       | <b>Motion</b> | <b>Second</b> | <b>Aye</b> | <b>Nay</b> | <b>Absent</b> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           |               |               | <b>X</b>   |            |               |
| Superintendent Baesler     |               |               | <b>X</b>   |            |               |
| Treasurer Schmidt          |               | <b>X</b>      | <b>X</b>   |            |               |
| Attorney General Stenehjem | <b>X</b>      |               | <b>X</b>   |            |               |
| Governor Burgum            |               |               | <b>X</b>   |            |               |

### A D J O U R N

There being no further business, the meeting was adjourned at 10:43 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
October 29, 2020**

The October 29, 2020 meeting of the Board of University and School Lands was called to order at 9:03 AM in the Peace Garden Meeting 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 – via Microsoft Teams |

**Department of Trust Lands Personnel present:**

|                  |  |
|------------------|--|
| Jodi Smith       | Commissioner   |
| Dennis Chua      | Investment Analyst – via Microsoft Teams                   |
| Scott Giere      | Revenue Compliance - via Microsoft Teams                   |
| Robert Dixon     | Network Computer Specialist – via Microsoft Teams          |
| Rick Owings      | Grants Administrator EIIO – via Microsoft Teams            |
| Michael Humann   | Surface Division Director - via Microsoft Teams            |
| Kristie McCusker | Paralegal  |
| Catelin Newell   | Administrative Staff Officer                               |
| Adam Otteson     | Revenue Compliance Division Director – via Microsoft Teams |
| Mike Shackelford | Investment Division Director - via Microsoft Teams         |
| David Shipman    | Minerals Division Director - via Microsoft Teams           |

**Guests in Attendance:**

|                      |  |
|----------------------|--|
| Dave Garner          | Office of the Attorney General                 |
| Leslie Bakken Oliver | Governor’s Legal Counsel - via Microsoft Teams |
| Morgan Benth         | KFYR TV - via Microsoft Teams                  |
| Beth Blandford       | Guest via Microsoft Teams                      |
| Colin Rajala         | Guest via Microsoft Teams                      |
| Brant Grimes         | Voya Guest via Microsoft Teams                 |
| Amy Sisk             | Bismarck Tribune via Microsoft Teams           |
| Geoff Simon          | Western Dakota Energy Association              |
| Brady Pelton         | NDPC Guest via Microsoft Teams                 |
| Dennis Blank         | Oil Patch Hotline via Microsoft Teams          |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the September 24, 2020 meeting, was made by Attorney General Wayne Stenehjem and seconded by Alvin A. Jaeger Secretary of State and the motion carried unanimously on a voice vote.

## LITIGATION

**Wilkinson**

**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, John Ward

**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.

**History:**

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 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. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff’s filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs’ Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16,

2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

- Appellants' (including Board of University and School Lands) Initial Briefs - January 13, 2020;
- Appellees' Response Briefs – March 2, 2020; and
- Appellants' (including Board of University and School Lands) Reply Briefs – March 16, 2020.

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

**Current Status:**

- **The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020.**
- **On September 18, 2020 a Notice of Hearing was filed in the District Court setting a status conference for October 13, 2020, at 3:30 p.m. The Court issued an Order After Status Conference dated October 13, 2020, stating that a two day bench trial will be scheduled.**
- **A telephonic scheduling conference was scheduled for October 29, 2020, at 10:00 a.m.**
- **On October 23, 2020, the Supreme Court Judgment/Opinion was filed with the District Court.**

**Starin/Weyrauch**

**Case:** Mary K. Starin, as Personal Representative of the Estate of Bruno Herman Weyrauch v. Kelly Schmidt, et. al., Civ. No. 53-2015-CV-00986

**Date Filed:** August 17, 2015

**Court:** Williams County District Court

**Judge:** David Nelson

**Attorney:** David Garner/Jennifer Verleger

**Opposing**

**Counsel:** Dennis Johnson

**Issues:** Plaintiff initiated this quiet title action to determine title to property located under Lake Sakakawea. In 1939, the State acquired the disputed property through a foreclosure of a Bank of North Dakota loan. In 1945, the State re-sold the property through a contract for deed to the Plaintiff's predecessors in interest. Pursuant to state law, the state reserved 50% of the minerals. The Special Warranty Deed issued after satisfaction of the contract for deed was not recorded and no one has a copy of the fully executed

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deed. The surface estate was later condemned as part of the Garrison Dam reservoir project. Plaintiffs have brought this action to clear title to the 50% of the minerals that they claim. The Board has leased the 50% mineral interest it reserved in this conveyance.

In January 2016, the State Engineer intervened in this case.

**History:** 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. When the review findings are issued, the parties must request 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 12, 2018. Plaintiffs filed a Response to Defendants' Motion to Stay Proceedings on October 23, 2018. A hearing on the Motion to Stay Proceedings was held scheduled November 16, 2018. Stay was granted. Trial previously scheduled for February of 2019 was continued until February 1, 2, and 3, 2020. Notice of Hearing scheduling status conference for January 21, 2020 at 9:30 was filed on January 14, 2020.

**Current Status:**

- On January 21, 2020 the Court entered an Order for Continued Stay of Proceedings which stays the matter until final disposition of the Sorum lawsuit. The court cancelled the trial scheduled for February 5-7, 2020, and rescheduled the trial to February 1-3, 2021.
- On September 28, 2020, the District Court scheduled a Telephonic Status Conference for October 14, 2020.
- On October 2, 2020, the parties filed a Stipulation for Order for Judgment Quieting Title, a proposed Order and proposed Judgment.
- On October 7, 2020, the Court entered the Stipulated Order for Judgment Quieting Title and the Judgment Quieting Title. The Notice of Entry of Judgment was also entered on October 7, 2020.
- October 14, 2020 Telephonic Status Conference and February 2021 Trial were cancelled.

**Whitetail Wave**

**Case:** Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota – 27-2015-CV-00164  
**Date Filed:** June 4, 2015  
**Court:** McKenzie County District Court  
**Judge:** Robin Schmidt  
**Attorney:** David Garner/Jennifer Verleger  
**Opposing Counsel:** Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

**Issues:** On August 1, 2015, the Attorney General's Office was served with a complaint in the above referenced case. This case is challenging the State's determination of the OHWM east of the Highway 85 Bridge, near the northern border of the Fort Berthold Indian Reservation. The Board has currently leased minerals pursuant to the Phase II



Investigation for this tract. The Plaintiff is requesting that title to the minerals be quieted and has alleged claims of Unconstitutional takings, trespass, slander of title, and constructive trust/unjust enrichment against the State. The complaint also makes a number of claims specific to XTO Energy Inc., the operator of the wells on the tracts in dispute. Specifically, the Plaintiff is requesting that the State's claim to sovereign lands' mineral interest be restricted to those minerals located below the OHWM of the Missouri River prior to inundation of the Lake Sakakawea.

An answer was filed on behalf of the Board on July 21, 2015. In January 2016, the State Engineer intervened in the case.

**History:** 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. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018.

**Current Status:**

- On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020.
- On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO.
- On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021.
- On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents.

**Northern Oil & Gas, Inc. v. Continental et al.**

**Case:** Northern Oil and Gas, Inc. v. Continental Resources, Inc.; Board of University and School Lands of the State of North Dakota; and North Dakota Industrial Commission; Case No. 31-2020-CV-00198

**Date Filed:** September 25, 2020

**Court:** Mountrail County District Court

**Judge:** Honorable Richard L. Hagar

**Attorney:** David Garner

**Opposing**

**Counsel:** Nick Andrew Swartzendruber

**Issues:** On September 25, 2020, Northern Oil and Gas, Inc. filed a Complaint against Continental Resources, Inc., Board of University and School Lands of the State of North Dakota (Board), and North Dakota Industrial Commission (NDIC) seeking review of the findings of the NDIC relating to the location of the historical riverbed channel of the Missouri River with respect to the N/2 of Section 27, Township 153 North, Range 93 West, 5<sup>th</sup> P.M. Northern requests an order determining that the high water mark of the northern edge of the riverbed extends further to the north and northwest versus what is depicted in the Wenck Survey.

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**History:****Current Status:**

- **Complaint served on the Board on September 25, 2020. Answer due October 16, 2020.**
- **NDIC filed its answer on October 16, 2020. The Board received an extension to file its Answer and filed on October 22, 2020.**
- **On October 23, 2020, Continental filed a Motion to Dismiss for Failure to Join Necessary and Indispensable Parties.**
- **Also on October 23, 2020, a Motion for Pro Hac Vice was filed by Jeffrey C. King to practice on behalf of Continental.**

**Northern Oil and Gas, Inc. v. Bruin et al.**

**Case:** Northern Oil and Gas, Inc. v. Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC; Board of University and School Lands of the State of North Dakota; and North Dakota Industrial Commission; Case No. 31-2020-CV-00199

**Date Filed:** September 25, 2020

**Court:** Mountrail County District Court

**Judge:** Honorable Stacy Louser

**Attorney:** David Garner

**Opposing**

**Counsel:** Nick Andrew Swartzendruber

**Issues:** On September 25, 2020, Northern Oil and Gas, Inc. (Northern) filed a Complaint against Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC, (collectively referred to as Bruin), Board of University and School Lands of the State of North Dakota (Board), and North Dakota Industrial Commission (NDIC) seeking review of the findings of the NDIC relating to the location of the historical riverbed channel of the Missouri River with respect to the N/2 of Section 10, Township 152 North, Range 93 West, 5<sup>th</sup> P.M. Northern requests an order determining that the high water mark of the northern edge of the riverbed is further south than what is depicted in the Wenck Survey.

**History:****Current Status:**

- **Complaint served on the Board on September 25, 2020. Board's Answer filed October 16, 2020.**
- **Defendant Bruin filed Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint on October 16, 2020, requesting an extension until November 20, 2020.**

**Vitesse Litigation Memo**

**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;

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**Date 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.

**History:** 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 on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019. Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019. On December 17, 2019, a Notice of Telephonic Scheduling Conference was filed by the court, setting a telephonic scheduling conference for January 22, 2020 at 11:15 a.m.

**Current Status:**

- **Notice of Court Trial was issued on January 23, 2020, setting a three day court trial for April 20, 2021.**
- **On February 20, 2020, the Court issued its scheduling order setting all case deadlines.**  
**On October 1, 2020, Defendant Oasis Petroleum North America LLC filed a Suggestion of Bankruptcy for Oasis Petroleum Inc. and Certain of its Affiliates and Notice of Automatic Stay of the Proceedings, stating a bankruptcy petition was filed on September 30, 2020.**

**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:**

- William S. Wilkinson et al. Case No. 53-2012-CV-00038
- Whitetail Wave LLC Case No. 27-2015-CV-0016
- Repayment of Royalties

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

At 9:11 AM the Board entered executive session for the purposes outlined in its adopted motion.

**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 – via Microsoft Teams |

**Department of Trust Lands Personnel present:**

|                  |                              |
|------------------|------------------------------|
| Jodi Smith       | Commissioner                 |
| Adam Otteson     | Revenue Compliance           |
| Kristie McCusker | Paralegal                    |
| Catelin Newell   | Administrative Staff Officer |

**Guests in Attendance:**

|                      |  |
|----------------------|--|
| Dave Garner          | Attorney General’s Office                      |
| Leslie Bakken Oliver | Governor’s Legal Counsel – via Microsoft Teams |
| Reice Haase          | Governor’s Office                              |

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 9:56 AM and the Board reconvened in open session.

No formal action was taken.

**MINERALS**

**Repayment of Royalties**

The North Dakota Board of University and School Lands (Board) manages land, minerals and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income funding North Dakota schools and institutions. The Board also manages oil, gas and other hydrocarbons underlying sovereign lands for the State of North Dakota.

A letter regarding Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 with enclosed Gas Deduction Compliance Notification (Letter) was sent to all entities required to pay royalties to the Board pursuant to the Board’s lease. At the February 27, 2020 Board meeting the Board requested additional information regarding the prior communication with royalty payors regarding gas deductions.

The Department reviewed its records and found that the topic of gas deductions had been communicated to royalty payers to the Department as early as 1979. In response to receiving a draft version of the current lease in early 1979, payers were concerned with the new royalty provisions, specifically, the deductibility of expenses. Many expressed the opinion that the new version of the lease did not allow for the deduction of expenses that they had historically taken.

Subsequent to the adoption of the new lease form in 1979, the Department conducted numerous audits during the late 1980's and early 1990's. In August 1990, the Board was provided a report that stated the following with respect to upcoming issues for Fiscal Year 1991: "Up to this time, most of the money collected by the Audit Division has related to relatively non-controversial issues. However, during FY 1991 we expect to address a number of controversial issues that could result in complaints to the Land Board and lawsuits against oil companies. Many of the audits conducted by the Department throughout the years covered production periods for many years prior to the date of audit notification. For example, one audit completed in 1998 covered production from 1984 through 1991. After working through numerous issues with the operator, the Department resolved these issues and received payment in 2001.

In 2011 the Department created the Revenue Compliance Division. Starting in 2012, the Department began issuing notices of improper deductions to companies that reported deductions on royalty statements submitted for both oil and gas.

In addition to the Departments communication with operators, the Board has either been party to or submitted amicus briefs in legal proceedings involving gas deductions. The Board's position in those cases has been consistent in that gross proceeds does not allow for the deduction of expenses.

## **O P E R A T I O N S**

### **Surface Land Management and Minerals Management Administrative Rules**

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board 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 of Trust Lands (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 Surface Land Management and Minerals Management were posted on the Department's website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was held August 2020, where the Department received oral and written comments. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, has been completed.

The Board approved the amended rules which were then submitted to the Attorney General's Office for review. We anticipate having a response from the Attorney General's office prior to the October 29, 2020 Board meeting. If approved, the Surface Land Management and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2020, to become effective January 1, 2021.

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## R E P O R T S

**September 2020 Report of Encumbrances Issued by Land Commissioner**

|                      |   |
|----------------------|---|
| Granted to:          | Billings County, Medora-ND  |
| For the Purpose of:  | Easement: Road Right-of-Way   |
| Right-of-Way Number: | RW0008453   |
| Trust:               | A – Common Schools  |
| Legal Description:   | BIL-141-102-16-NW4  |
| Granted to:          | Slawson Exploration Company Inc, Denver-CO  |
| For the Purpose of:  | Pipeline-Salt Water Pipeline  |
| Right-of-Way Number: | RW0008681   |
| Trust:               | A – Common Schools  |
| Legal Description:   | MOU-152-92-14-SE4<br>MOU-152-92-23-W2W2NE4NE4, NW4NE4NE4NW4<br>MOU-152-92-23-NE4NW4   |
| Granted to:          | Slawson Exploration Company Inc, Denver-CO  |
| For the Purpose of:  | Pipeline-Oil Gathering Pipeline   |
| Right-of-Way Number: | RW0008695   |
| Trust:               | A – Common Schools  |
| Legal Description:   | MOU-152-92-14-SE4<br>MOU-152-92-23-W2W2NE4NE4,<br>W2W2NE4NE4, NW4NE4NW4NE4<br>MOU-152-92-23-W2W2NE4NE4, NW4NE4  |
| Granted to:          | Continental Resources Inc, Oklahoma City-OK   |
| For the Purpose of:  | On-lease Act: Well-Horizontal Oil Well  |
| Right-of-Way Number: | RW0008701   |
| Trust:               | A – Common Schools  |
| Legal Description:   | DUN-147-96-36-NW4   |
| Granted to:          | Continental Resources Inc, Oklahoma City-OK   |
| For the Purpose of:  | On-lease Act. Amend: Well-Horizontal Oil Well   |
| Right-of-Way Number: | RW0008704   |
| Trust:               | A – Common Schools  |
| Legal Description:   | WIL-153-99-22-SW4 Less Acres Condemned,<br>W2SE4 Less Acres Condemned<br>WIL-153-99-22-W2SE4 Less Acres Condemned<br>WIL-153-99-22-W2SE4 Less Acres Condemned |
| Granted to:          | Mckenzie Electric Coop Inc, Watford City-ND   |
| For the Purpose of:  | Release of Easement   |
| Right-of-Way Number: | RW0008724   |
| Trust:               | A – Common Schools  |
| Legal Description:   | MCK-147-104-36-NW4, MCK-147-104-36-SE4<br>MCK-147-104-36-SW4, MCK-147-104-36-SE4<br>MCK-147-104-36-SW4  |
| Granted to:          | Mckenzie Electric Coop Inc, Watford City-ND   |
| For the Purpose of:  | Release of Easement   |
| Right-of-Way Number: | RW0008725   |
| Trust:               | A – Common Schools  |
| Legal Description:   | MCK-147-104-36-NE4, MCK-147-104-36-NW4<br>MCK-147-104-36-NW4  |

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|                      |  |
|----------------------|--|
| Granted to:          | Equinor Energy Lp, Williston-ND            |
| For the Purpose of:  | Assignment: Well-Directional Wellsite      |
| Right-of-Way Number: | RW0008765                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MCK-153-98-36-SW4                          |
| Granted to:          | Oneok Rockies Midstream Llc, Sidney-MT     |
| For the Purpose of:  | Release of Easement                        |
| Right-of-Way Number: | RW0008770                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MCK-145-101-16-SE4                         |
| Granted to:          | Van Hook Gathering Services Llc, Irving-TX |
| For the Purpose of:  | Easement: Pipeline-Multiple Pipelines      |
| Right-of-Way Number: | RW0008774                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MOU-150-92-10-S2SW4                        |
| Granted to:          | Williston Water Management, Llc, Denver-CO |
| For the Purpose of:  | Permit: Temporary Water Layflat Line       |
| Right-of-Way Number: | RW0008776                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4      |
| Granted to:          | Elkan Energy Services Llc, Watford City-ND |
| For the Purpose of:  | Permit: Temporary Water Layflat Line       |
| Right-of-Way Number: | RW0008777                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MCK-150-98-36-SW4                          |
| Granted to:          | Ames Savage Water Solutions, Williston-ND  |
| For the Purpose of:  | Permit: Temporary Water Layflat Line       |
| Right-of-Way Number: | RW0008778                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MOU-156-94-16-SW4                          |
| Granted to:          | Williston Water Management, Llc, Denver-CO |
| For the Purpose of:  | Permit: Temporary Water Layflat Line       |
| Right-of-Way Number: | RW0008779                                  |
| Trust:               | A – Common Schools                         |
| Legal Description:   | MOU-152-92-14-SE4                          |

### September 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  
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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 September 2020, the Division received 335 holder reports with a property value of \$376,066 and paid 222 claims with a total value of \$659,258.

### Investment Updates

#### Portfolio Rebalancing Updates

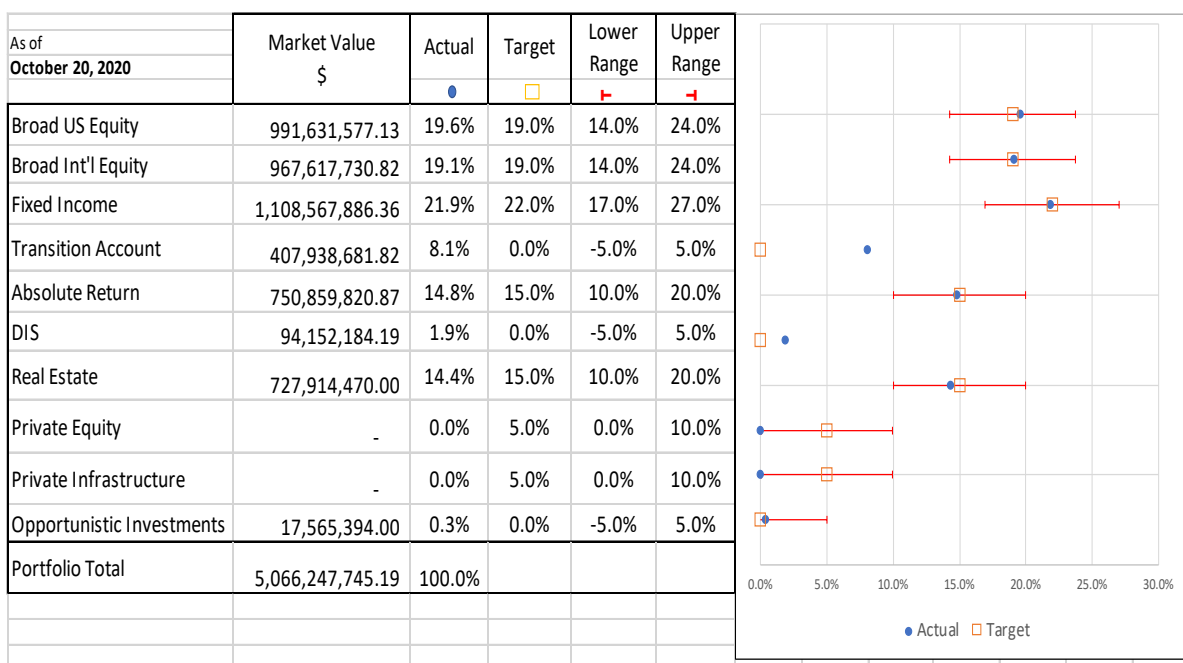
In April 2020, the Board of University and School Lands (Board) approved a new Strategic Asset Allocation. The Department of Trust Lands (Department) staff, along with RVK staff, developed a transition plan to liquidate the Treasury Inflation Protected Security, Commodities, Master Limited Partnership, and Natural Resource Equities' holdings in the Permanent Trust Funds (PTFs) in a manner that is consistent with the best interests of the PTFs and as market conditions allow. On Oct. 6, 2020, Van Eck was instructed to fully liquidated the portfolio amounting to \$38M transferred to the transition account. Harvest is therefore the only remaining investment left in the Diversified Inflation Strategy asset class with approximately \$94M. The Department staff and RVK will continuously monitor the trigger points set for the account and complete the liquidation when appropriate.

In July 2020, the Board approved \$100M new investment commitment to the Apollo Accord Fund IV, LP (Fund), for an Opportunistic Investment. The Fund has called on an initial \$2,565,393.79 that was funded September 15, 2020. Another \$2,934,606.21 has been called and will be funded on October 26, 2020. This brings the remaining unfunded commitment to \$94,500,000.

On October 1, 2020, Varde Dislocation Fund IV, LP called \$5M the Board's capital commitment which brings the total investment in the Fund to \$15,000,000. The remaining unfunded commitment is now down to \$85M.

#### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Oct. 20, 2020. The figures provided are unaudited.



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Upcoming Investment Manager Meetings: There is no upcoming meeting scheduled.

**Repayment of Unpaid Royalties Report**

Since the September 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for oil deductions:

- WPX

Since the September 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for gas deductions:

- Thunderbird Resources

Note, the majority of payors issue payment with their monthly royalty payment made the last week of every month.

**September Report of Shut-Ins Approved by Land Commissioner**

Granted to: Burlington Resources Oil and Gas Company, LP  
 For the Purpose of: OPERATIONS  
 Date Issued: 09/16/2020  
 Trust: L– Bank of North Dakota  
 Lease: OG-09-01476

**I N V E S T M E N T S**

**Permanent Trust Funds and Legacy Fund Performance Comparison**

At the February 2019 Board of University and School Lands (Board) meeting, RVK reviewed a benchmarking performance presentation. This presentation focused on an important aspect of monitoring performance which is the task of appropriately benchmarking performance, including: characteristics of good benchmarks, various options available to benchmark total fund performance and the strengths and limitations of each, and a review of the benchmarks currently used in measuring performance. The presentation also reviewed the merits and challenges of comparing funds that share similar investment objectives and characteristics (at total fund, asset class, and manager level.)

| Peer Groups  |   |
|--|---|
| Performance Comparison   |   |
| • How has the fund performed relative to comparable peer funds?  |   |
| Merits   | Challenges  |
| <ul style="list-style-type: none"> <li>• Can help provide a comparison to the performance of other investors that are deemed to have similar objectives</li> </ul> | <ul style="list-style-type: none"> <li>• Inconsequential to the purpose of the fund</li> <li>• Funds included in the peer group may have meaningfully different fund characteristics, objectives, and unique constraints, that can significantly drive performance differences in random and unintended ways</li> <li>• Details/characteristics of entities included in the peer group may be unknown and thus relevance of peer group may not be verifiable</li> <li>• Does not capture many of the characteristics of a good benchmark                             <ul style="list-style-type: none"> <li>-is not investable</li> <li>-is ambiguous</li> <li>-does not capture characteristics of the total fund, asset class, or managers</li> </ul> </li> </ul> |

The Board has requested an updated comparison of the investment performance between the Permanent Trust Funds and Legacy Fund for Fiscal Year 2020. Attached is a presentation prepared by the Department of Trust Lands Investment Staff.

Summary:

- For FY2020 the Permanent Trust Funds (PTFs) returned -1.87%, while the Legacy Fund returned 4.23%. The primary driver of the divergence of returns were the investments in commodities, natural resource equities and master limited partnerships (MLPs) held by the PTFs in the Diversified Inflation Strategies (DIS) allocation.
- The PTFs' DIS allocation was down -18.3% in FY2020. The Legacy Fund's Diversified Real Assets allocation (consisting of TIPS and Infrastructure) was up 7.6% (a -25.9% differential).
- Another area of negative performance for the PTFs' was the Absolute Return allocation. Both mutual funds in the Absolute Return allocation hold primarily international equities and debt, from developed and emerging markets. This had the effect of doubling down on the PTFs' international holdings. The Absolute Return allocation was down -6.5% in FY2020. The Legacy Fund holds no comparable allocation.
- The PTFs did out-perform the Legacy Fund in Domestic Equities 5.1% versus 2.6%. The PTFs also outperform the Legacy Fund in Real Estate 1.4% versus 0.9%, but the outperformance in Domestic Equities and Real Estate were not enough to overcome underperformance relative to Legacy Fund in other areas such as International Equities (-6.4% vs -2.1%) and Fixed Income (4.4% vs 7.7%), as well as the DIS and Absolute Return underperformance mentioned above.
- As the Board is aware the PTFs' new Strategic Asset Allocation will eliminate its concentration in commodities, natural resources equities and MLPs by liquidating the DIS allocation in favor of adding allocations to Private Equity and Private Infrastructure. The Staff will also be recommending a revision to the Fixed Income asset allocation as mentioned to the Board in prior meetings.
- The PTFs' new asset allocation will not necessarily perform better in a severe market correction like we saw earlier this year, but it should provide better long-term returns, lower volatility, and far less correlation to the PTFs' revenues.

Permanent Trust Funds and Legacy Fund Performance Presentation were presented to the Board and are available at the Department upon request.

### **Fixed Income Asset Allocation Recommended Changes**

Department staff and investment consultant RVK would like to recommend to the Board of University and School Lands (Board) changes to the Permanent Trust Funds' (PTFs) Fixed Income Asset Allocation.

The PTFs' Fixed Income Asset Allocation is currently skewed toward lower performing strategies and strategies that have negative risk/return profiles, particularly the JP Morgan (JPM) Intermediate Bond mandate and the Brandywine Global Opportunity mandate. Further, most market participants believe the current low interest rate environment will persist for quite some time, as such the current Fixed Income Asset Allocation will deliver lower returns in the future. To solve for these issues Staff and RVK recommend the following changes to the PTFs' Fixed Income Asset Allocation:

In order to increase portfolio yield and return, staff and RVK recommend terminating the JPM Intermediate Bond mandate and replacing it with a core bond mandate. The JPM intermediate bond fund has underperformed with core bond funds including their own core bond fund as well as the US aggregate bond index. The underperformance is primarily due to the limits on duration risk the manager is allowed to add to the fund. By moving to a core mandate, the Board selected manager will have more flexibility to extend duration prudently when the risk environment warrants.

(10/29/2020)

As a result of underperformance, staff and RVK recommend terminating the Brandywine Global Opportunity mandate (~\$185 Million) and replacing it with a new Multi-Sector fixed income mandate (\$100 Million). The Brandywine mandate has underperformed both the PTFs' core and intermediate bond mandates, the global aggregate bond index, as well as the multi-sector funds contemplated as replacements. In addition, RVK research shows the Brandywine strategy has a worse risk/return profile versus the multi-sector funds and the global aggregate bond index. Moving to a multi-sector mandate is expected to decrease portfolio risk while increasing returns.

Staff and RVK recommend a reduction in both core bond holdings to fund other fixed income strategies outlined below. The current low interest rate environment is expected to persist for quite some time, as such, staff and RVK believe it would be prudent to increase the PTFs' allocation to Private Credit. Certain Private Credit strategies, such as direct lending, have an attractive risk/return profile and a low default/loss track record. Private Credit would add higher yield to the portfolio at acceptable risk levels.

The recommended fixed income asset allocation would still maintain sufficient liquidity and stability during challenging economic environments, yet would incrementally add both yield and better performing managers to the portfolio.

If approved, The Fixed Income allocation would change accordingly:

| Fixed Income                   | 22.2% | Fixed Income                   | 22.2% | Change |
|--------------------------------|-------|--------------------------------|-------|--------|
| Payden & Rygel Long Term       | 6.6%  | Payden & Rygel Long Term       | 5.4%  | -1.2%  |
| JPM FI Intermediate Bond       | 6.5%  | *New* Core Bond Manager        | 5.3%  | -1.2%  |
| Brandywine Global Opp FI       | 3.7%  | *New* Multi-Sector Manager     | 2.0%  | -1.7%  |
| AG Direct Lending Fund III, LP | 2.8%  | AG Direct Lending Fund III, LP | 2.8%  | 0.0%   |
| Schroders Securitized Credit   | 2.4%  | Schroders Securitized Credit   | 2.4%  | 0.0%   |
| n/a                            | n/a   | *New* Private Credit Manager   | 2.0%  | 2.0%   |
| n/a                            | n/a   | *New* Private Credit Manager   | 2.0%  | 2.0%   |
| PTF Cash                       | 0.0%  | PTF Cash                       | 0.0%  | 0.0%   |
| FLP                            | 0.2%  | FLP                            | 0.2%  | 0.0%   |
| ECLP                           | 0.0%  | ECLP                           | 0.0%  | 0.0%   |

Motion: **The Board approve the changes to the PTFs' Fixed Income Asset Allocation as indicated below:**

- To authorize the staff to convert the JP Morgan Intermediate bond mandate into a core bond mandate with a manager to be approved by the Board November 2020.
- To authorize the staff to terminate the Brandywine Global Opportunity mandate in a manner that is consistent with the best interests of the PTFs and as market conditions allow.
- To authorize the staff to liquidate sufficient amounts in the Payden & Rygel and JP Morgan fixed income mandates, along with the cash from the Brandywine termination, to fund the addition to Private Credit and a new Multi-Sector fixed income.
- To authorize the staff to recommend investment managers for both Private Credit and Multi-Sector fixed income for future Board approval.

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

(10/29/2020)

JP Morgan Intermediate vs Core Bond Comparison and Brandywine Global Opportunity vs Multi-Sector Comparison documents were presented to the Board and is available at the Department upon request.

### **Permanent Trust Fund Foreign Investments**

The Board of University and School Lands (Board) first began investing the Permanent Trust Funds' (PTFs') in international equity markets in the late 1990's. The current international equity manager composition was implemented in 2014 with the hiring of State Street MSCI World ex US, Harding Loevner, DFA, GMO and PIMCO. QMA was subsequently approved in December 2017. In 2014, the Board determined that investing in emerging markets would provide rewarding returns despite the political and economic risks that come with this type of investment. The greatest advantage of emerging market investments is the potential for high growth in returns. Additionally, emerging markets provide a good diversifier for the portfolio because economic downturns in one country or region, including the United States, can be offset by growth in another.

The Board has historically determined that an enhanced risk/return profile for the PTF's will provide improved long-term performance.

Additionally, it is important to note the Board's Investment Policy Statement include the Prudent Investor Rule and a Social and Economically Targeted Investing provision:

#### The Prudent Investor Rule

North Dakota statute dictates that the Board apply the prudent investor rule in investing the Permanent Trust Funds under its control. The law states:

The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable investment returns.

It is the Board's intent to invest all of the Funds in accordance with the Prudent Investor Rule.

#### Social and Economically Targeted Investing

Social investing is defined as the practice of aligning one's investment policies with social responsibility. Some of the issues and topics addressed by social investing promoters include environmental causes, avoidance of tobacco producers, avoidance of politically sensitive parts of the world, and workers' rights. With different sets of values, what one investor may deem irresponsible, another may consider good policy.

The Board shall not use the Funds to participate in activist efforts to implement a social agenda regarding ownership of specific securities or efforts of shareholders to bring about social change. Economically targeted investing is defined as an investment designed to create economic benefits for a targeted geographic area, group of people, or sector of the economy. Economically targeted investing is barred when investing the Permanent Trust Funds, the Capitol Building Fund, and the Indian Cultural Education Trust, unless the investment meets the Exclusive Benefit Rule.

## S U R F A C E

### Fall Surface Lease Auctions

The Department of Trust Lands (Department) Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board of University and School Land's (Board) control. One of the major sources of income from these lands comes from agricultural leases (grassland, crop and hay land uses).

Generations of North Dakotans have leased trust lands for agricultural purposes. The land is leased through a series of auctions held each spring and fall. All auctions are open to the public. The lease is awarded to the highest bidder, with the minimum bid set by the Commissioner based upon the Board's Fair Market Value Minimum Rent Policy. Leasing interest is high and the Department manages nearly 4,800 active surface land leases which is consistent from a decade ago.

N.D.C.C. § 15-04-10 provides:

**Leasing to be by auction - Requirements governing.** The commissioner of university and school lands, or such other person appointed by the commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease that all bids are subject to approval by the board.”

Since statehood, the leasing practices of the Department have undergone minimal changes. The most significant shift occurred in 1993 when the Fifty-third Legislative Assembly approved a modification allowing for the auction to be held in the county seat instead of having to be held at the county courthouse or place where the terms of the district court were held. Then in 1995, the Fifty-fourth Legislative Assembly removed language requiring the County Auditor act as the leasing clerk.

The Department recognizes the historical significance of the surface lease auctions and takes any modification to the practices seriously. On April 8, 2020, Governor Burgum issued Executive Order 2020-25 (Executive Order) in response to the public health crisis resulting from COVID-19. The Executive Order suspended the requirement in N.D.C.C. § 15-04-10 that requires the Commissioner of University and School Lands to hold public auctions for public land leasing in the county seat. This provided the Commissioner with flexibility for holding public land auctions in a manner to facilitate social distancing and utilize best management practices to mitigate the spread of COVID-19. As a result of COVID, the Department has shifted the 2020 auctions to an online platform.

In August 2020, the Department sent all lessees from the past 15 years notification that the Fall surface lease auctions would occur online instead of the county seat. As a result of feedback provided to the Department from constituents, the Department modified our procedures. This resulted in an additional mailing being sent to all lessees from the past 15 years. Examples of modified process as a result of feedback are:

- Removed the requirement for bidders to verify bidder allowance from financial institution.
- Created competitive bidding policy to address concerns regarding potential ties.
- Allowed for the submission of checks instead of accepting ACH or wire transfers only.
- Created a “How-To” document and mailed it out to all lessees from the past 15 years.
- Published a Frequently Asked Questions (FAQ) document.

The Department collaborated with the North Dakota Stockman's Association, the Little Missouri Grazing Association, and the McKenzie Grazing Association to assist in disseminating information to constituents.

(10/29/2020)

The Department has published notice of its fall surface lease auction in the official county newspapers where all tracts are located; however, a list of lands offered for leasing in each county has not been submitted to the county treasurers. As a result of the Department's failure to properly post the auction by sending a list of the tracts in each county to appropriate county treasurers the auction was rescheduled to occur October 20, 2020 to October 23, 2020.

The 2020 Fall Surface Lease Auctions are not complete as the Department works with bidders who are considered to be "tied" or in competition with two or more bidders during the last 120 seconds of the bidding on a tract as demonstrated in the official EnergyNet record.

On Monday, October 26, 2020, the Department reviewed the final report provided by EnergyNet and is currently in the process of reviewing the final bids. Those bidders will be given the opportunity to continue bidding at a time to be scheduled by the Department, with the opening telephone bid being the final EnergyNet bid amount. If a bidder chose not to continue bidding, the bidder may secede to the winning bidder and no additional process is needed.

At this time, the Department is able to offer the following information as a summary of fall lease auctions (every five years the Department has an "off" year in which fall auctions are not held):

| <b>Year of Auction</b>                                | <b>2015</b> | <b>2016</b> | <b>2017</b> | <b>2019</b> | <b>2020</b> |
|---|-------------|-------------|-------------|-------------|-------------|
| <b>Number of Counties</b>                             | 34          | 34          | 40          | 34          | 36          |
| <b>Tracts Offered</b>                                 | 1044        | 1498        | 891         | 1146        | 1039        |
| <b>Percentage of Tracts Leased</b>                    | 96%         | 97%         | 95%         | 93%         | 96%         |
| <b>Percentage of Tracts Receiving Competitive Bid</b> | 12%         | 9%          | 13%         | 8%          | 21%         |

The Department is currently in the process of contacting bidders on 41 quarter sections as a result of the Last Minute Bid Competition policy:

Currently, the Department of Trust Lands', by and thru the Board of University and School Lands, is holding surface lease auctions through EnergyNet. In the event there is a "tie" or competition with two or more bidders during the last 120 seconds of the bidding on a tract, and if the official EnergyNet record demonstrates qualifying bid activity, the Department shall contact those bidders involved in the competitive bidding via email by October 30, 2020. Those bidders will be given the opportunity to continue bidding at a time to be scheduled by the Department, with the opening telephone bid being the final EnergyNet bid amount. If a bidder chose not to continue bidding, the bidder may secede to the winning bidder and no additional process is needed.

The Department has received a formal protest of the auction results on four quarter-sections of land that do not qualify for the Last Minute Bid Competition. Mr. Mark Ellis is protesting:

- T155N, R99W, SECTION 16: NW4, SE4, SW4

The Department has received a formal protest of the auction results on one quarter-section of land that do not qualify for the Last Minute Bid Competition. Mr. Trever Sorenson is protesting:

- T158N, R101W, SECTION 16: SE4

The Department has received a formal protest of the auction results on one quarter-section of land that do not qualify for the Last Minute Bid Competition. Mr. Jeff Ellison is protesting:

- T130N, R90W, SECTION 7: NE4

(10/29/2020)

Per N.D.A.C. 84-04-01-09. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

The Board will need to make the final determination if the Department is going allow for the bidding to continue on:

- T155N, R99W, SECTION 16: NW4
- T155N, R99W, SECTION 16: SE4
- T155N, R99W, SECTION 16: SW4
- T158N, R101W, SECTION 16: SE4
- T130N, R90W, SECTION 7: NE4

A final summary will be provided during an upcoming Board meeting.

**Motion: The Board moves to include those that have applied for the formal appeal process to be included in the tracts moving forward in the telephone auction. Those tracts to be included are as follows: T155N, R99W, Section 16: NW4, SE4, SW4, T155N R101 W Section 16: SE4 and T155N R90W Section 7: NE4.**

| 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   |     |        |

**Commissioner Annual Review**

Treasurer Schmidt provided the Board with an overview of the finalized Commissioner Annual Review. The Board requested the Commissioner provide goals for the upcoming year at the November Board meeting.

Documents were presented to the Board and are available at the Department upon request.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:51 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
November 24, 2020**

The November 24, 2020 meeting of the Board of University and School Lands was called to order at 8:00 AM via Microsoft Teams 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                               |
| Michael Humann   | Surface Division Director                  |
| Kristie McCusker | Paralegal                                  |
| Catelin Newell   | Administrative Staff Officer               |
| Scott Giere      | Revenue Compliance                         |
| Mike Shackelford | Investment Division Director               |
| David Shipman    | Minerals Division Director                 |
| Lynn Spencer     | Minerals Title Specialist                  |
| Peggy Gudvangen  | Accounting and Unclaimed Property Director |
| Adam Otteson     | Revenue Compliance Division Director       |
| Susan Dollinger  | Unclaimed Property                         |

**Guests in Attendance:**

|                      |                                |
|----------------------|--------------------------------|
| Dave Garner          | Office of the Attorney General |
| Jennifer Verleger    | Office of the Attorney General |
| Leslie Bakken Oliver | Governor’s Legal Counsel       |
| Reice Haase          | Governor’s Office              |
| Amy Hsiang           | Guest via Microsoft Teams      |
| Andrea diCenso       | Guest via Microsoft Teams      |
| Rena Bloms           | Guest via Microsoft Teams      |
| Aaron Carranza       | Guest via Microsoft Teams      |
| Ernst                | Guest via Microsoft Teams      |
| Jared Mack           | Guest via Microsoft Teams      |
| Jess Davies          | Guest via Microsoft Teams      |
| Jlm Sakelaris        | Guest via Microsoft Teams      |
| Joe Hisdorf          | Guest via Microsoft Teams      |
| John Trydahl         | Guest via Microsoft Teams      |
| Josh Kevan           | Guest via Microsoft Teams      |
| John Paczkowski      | Guest via Microsoft Teams      |
| Quentin Obrigewitsch | Guest via Microsoft Teams      |
| Raymond Fox          | Guest via Microsoft Teams      |

**APPROVAL OF MINUTES**

A motion to approve the minutes of the October 29, 2020 meeting, was made by Alvin A. Jaeger Secretary of State and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.



## R E P O R T S

### October Extension Report

In January 2020, North Dakota Administrative Code § 85-06-01-06 was enacted. It provides the petroleum industry the option to request an extension of their lease.

In October 2020, Continental Resources of Oklahoma City, Oklahoma, received a six-month extension on four leases in Section 30-154N-97W, McKenzie County and two leases in Section 31-154N-97W, McKenzie County. They have a permit to drill the Dallas 4-30 H Well.

### Summary of Oil and Gas Lease Auction

On behalf of the Board of University and School Lands (Board), the Department of Trust Lands conducted an oil and gas mineral lease auction on [www.energynet.com](http://www.energynet.com) which concluded on November 3, 2020

There were five tracts offered and all received competitive bids (If the Board does not receive a competitive bid the lease is awarded to the nominator.) The highest bid per acre was \$311.00 for 80 acres in McKenzie County. All five tracts offered benefit the Common Schools Trust Fund.

| County             | Tracts/County | Mineral Acres | Total Bonus         | Average Bonus/Acres |
|--------------------|---------------|---------------|---------------------|---------------------|
| McKenzie           | 1             | 80            | \$24,880.00         | \$311.00            |
| Williams           | 4             | 478.39        | \$12,038.14         | \$25.16             |
| <b>GRAND TOTAL</b> | <b>5</b>      | <b>558.39</b> | <b>\$ 36,918.14</b> | <b>\$66.12</b>      |

There was a total of 4 bidders who submitted 31 bids on the five tracts. The bidders were from Colorado and North Dakota.

A total of \$36,918.14 of bonus was collected from the auction.

### October Report of Encumbrances Issued by Land Commissioner

**Granted to:** PETRO-HUNT LLC, DALLAS-TX  
 For the Purpose of: On-lease Activity: Well-Horizontal Oil Well  
 Right-of-Way Number: RW0008596  
 Trust: A - Common Schools  
 Legal Description: MOU-158-91-16-SE4, SW4

**Granted to:** TESORO HIGH PLAINS PIPELINE COMPANY LLC, SAN ANTONIO-TX  
 For the Purpose of: Easement-Amend: Pipeline-Multiple Pipelines  
 Right-of-Way Number: RW0008775  
 Trust: A - Common Schools  
 Legal Description: MCK-147-104-36-NW4

**Granted to:** DENBURY ONSHORE LLC, PLANO-TX  
 For the Purpose of: Permit: Seismic  
 Right-of-Way Number: RW0008781  
 Trust: A - Common Schools  
 Legal Description: BOW-131-105-16-NE4, NW4, SW4  
 (11/24/20)

**Granted to:** CAPITAL ELECTRIC COOPERATIVE INC, BISMARCK-ND  
 For the Purpose of: Easement-Amend: Electric-Buried Distribution Line  
 Right-of-Way Number: RW0008783  
 Trust: A - Common Schools  
 Legal Description: BRL-139-80-36-SW4 LESS ACRES SOLD

**Granted to:** WHITING OIL & GAS CORPORATION, DENVER-CO  
 For the Purpose of: Assignment: Well-Salt Water Disposal Well  
 Right-of-Way Number: RW0008784  
 Trust: A - Common Schools  
 Legal Description: WIL-154-98-16-NE4

**Granted to:** MOUNTAIN PLAINS LLC, BISMARCK-ND  
 For the Purpose of: Permit: Planning & Preconstruction Survey  
 Right-of-Way Number: RW0008799  
 Trust: A - Common Schools  
 Legal Description: N/A

### **October 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 October 2020, the Division received 1,701 holder reports with a property value of \$8,524,433 and paid 175 claims with a total value of \$457,134.

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

### **Investment Updates**

#### Portfolio Rebalancing Updates

As Van Eck Natural Resources was fully liquidated October 16, 2020. Harvest is the only investment in the Diversified Inflation Strategies asset class with approximately \$102M. The Department Staff and RVK continuously monitor the trigger points set for the account and will complete the liquidation when appropriate.

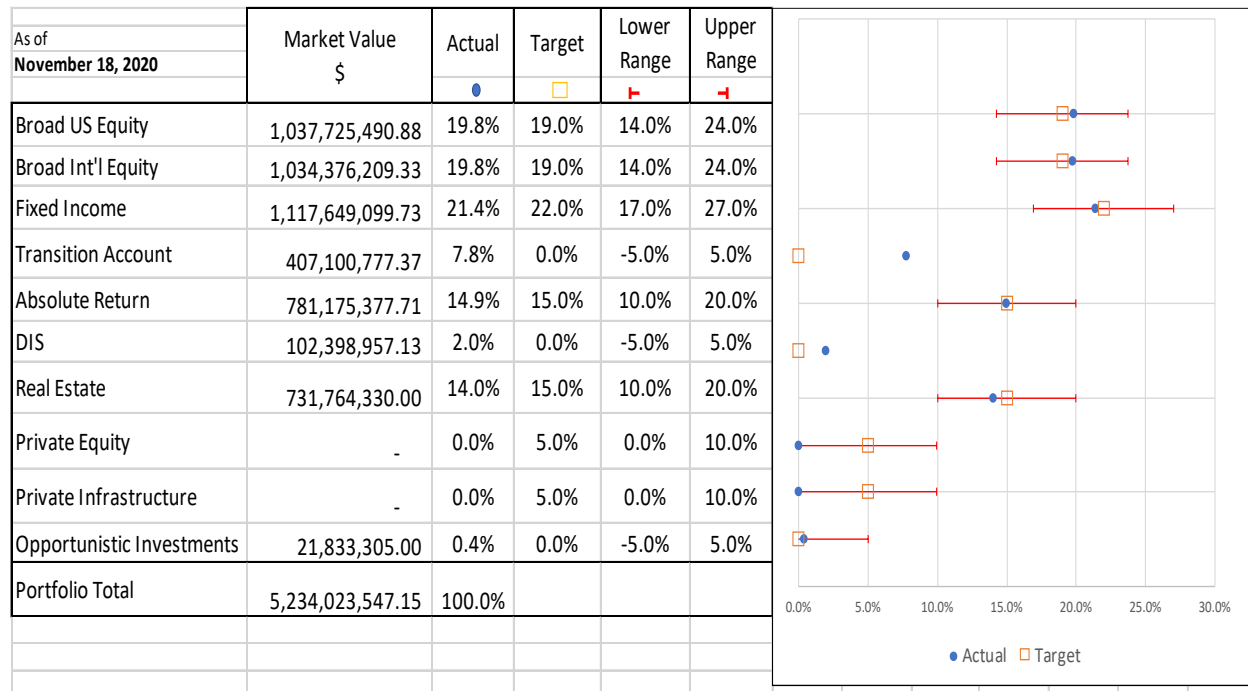
Since being approved for a \$100M investment commitment, Apollo Accord Fund IV LP (Fund), an Opportunistic Investment, has called on a total of \$5.5M bringing the remaining unfunded commitment to \$94,500,000.

Varde Dislocation Fund IV LP, an Opportunistic Investment, has called on another \$5M from our capital commitment bringing our total investment to \$15M. The remaining unfunded commitment is \$85M.

The Department Staff is actively working on both the Agreements for GCM Grosvenor (Private Equity Manager) and JP Morgan (Private Infrastructure Manager) that were approved at the August 27, 2020 and September 24, 2020 Board of University and School Lands meetings.

**Asset Allocation**

The table below shows the status of the permanent trusts’ asset allocation as of Nov. 18, 2020. The figures provided are unaudited.



**Upcoming Investment Manager Meetings**

There is no upcoming meeting scheduled.

**S U R F A C E**

**Fall Surface Lease Auctions**

The 2020 fall lease auctions were conducted online from October 12, 2020 to October 23, 2020. The majority of leases that qualified for Last Minute Bid Competition Policy have been completed. Additionally, those tracts that were approved to be re-opened at the October 29, 2020 Board of University and School Lands (Board) meeting were completed, see list of tracts below:

- T155N, R99W, SECTION 16: NW4
- T155N, R99W, SECTION 16: SE4
- T155N, R99W, SECTION 16: SW4
- T158N, R101W, SECTION 16: SE4
- T130N, R90W, SECTION 7: NE4

(11/24/20)

The Department of Trust Lands (Department) has received six protests to the online surface lease auction outcomes. Per N.D.A.C. 84-04-01-09. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

The Department has received a formal protest of the auction results on one quarter-section of land that does not qualify for the Last Minute Bid Competition. Mr. Trever Sorenson is protesting:

- T158N, R101W, SECTION 16: NE4

The Department has received a formal protest of the auction results on three quarter-sections of land that do not qualify for the Last Minute Bid Competition. Mr. Rick Thorlaksen is protesting:

- T159N, R93W, SECTION 16: NW4
- T159N, R93W, SECTION 16: SE4
- T159N, R93W, SECTION 16: SW4

The Department has received a formal protest of the auction results on two quarter-sections of land that do not qualify for the Last Minute Bid Competition. Mr. Raymond Fox is protesting:

- T157N, R90W, SECTION 16: SE4
- T157N, R90W, SECTION 16: SW4

The Department has received a formal protest of the auction results on one quarter-section of land that does not qualify for the Last Minute Bid Competition. Mr. Jason Folvag is protesting:

- T158N, R101W, SECTION 16: NW4

The Department has received a formal protest of the auction results on one quarter-section of land that does not qualify for the Last Minute Bid Competition. Mr. James Voigt is protesting:

- T146N, R92W, SECTION 16: S2S2

The Department has received a formal protest of the auction results on one quarter-section of land that does not qualify for the Last Minute Bid Competition. Mr. Brian Zingleman is protesting:

- T148N, R98W, Section 16: NE4

The Department has received a formal protest of the auction results on the auction results on three quarter-sections of land. These tracts qualify for the Last Minute Bid Competition Policy. The request from Mr. Stephen Kranz is to open the bidding at the fair-market value price instead of the last bid price. The tracts being protested are:

- T147N, R82W, SECTION 28: NE4
- T147N, R82W, SECTION 28: NW4
- T149N, R82W, SECTION 25: SE4

The Board will need to make the final determination if the Department is going allow for the bidding to continue on:

- T158N, R101W, SECTION 16: NE4
- T159N, R93W, SECTION 16: NW4
- T159N, R93W, SECTION 16: SE4
- T159N, R93W, SECTION 16: SW4
- T157N, R90W, SECTION 16: SE4
- T157N, R90W, SECTION 16: SW4
- T158N, R101W, SECTION 16: NW4
- T146N, R92W, SECTION 16: S2S2
- T147N, R82W, SECTION 28: NE4
- T147N, R82W, SECTION 28: NW4
- T149N, R82W, SECTION 25: SE4
- T148N, R98W, Section 16: NE4

A final summary will be provided during an upcoming Board meeting.

**Motion: The Board moves to include those that have applied for the formal appeal process to be included in the tracts moving forward in the telephone auction with the opening bid starting at the high bid from the EnergyNet online auction. Those tracts to be included are as follows: T158N, R101W, SECTION 16: NE4, T159N, R93W, SECTION 16: NW4, S2, T157N, R90W, SECTION 16: S2, T158N, R101W, SECTION 16: NW4, T146N, R92W, SECTION 16: S2S2, T147N, R82W, SECTION 28: N2, T149N, R82W, SECTION 25: SE4, T148N, R98W, Section 16: NE4 .**

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

### **Board of University and School Lands Policy Manual**

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board 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 Board's Administrative Rules are found in Title 85 of the North Dakota Administrative Code. Revisions to rules concerning General Administration and rules for Surface Land Management and Minerals Management are currently before the Legislative Administrative Rules Committee. Those rules were reviewed by the Attorney General's Office and are currently scheduled to be presented to the Administrative Rules Committee on December 1, 2020, to become effective January 1, 2021. If those rules become effective January 1, 2021, it will be necessary to simultaneously repeal certain Board policies and to implement new Board policies.

The Board currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. It is necessary to

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revise certain Board policies due to the proposed Administrative Rules. The Department recommends the following current policies be repealed and replaced with the revised policies upon enactment of the proposed Administrative Rules as follows:

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

Other policies have been incorporated into the proposed Administrative Rules and can be repealed upon enactment of the proposed Administrative Rules as follows:

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills
- Criteria for Retaining Foreclosed Property
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells

If the Administrative Rules become effective January 1, 2021, the Board Policy Manual will be revised to remove repealed policies and to include those proposed new policies. Should the Administrative Rules not become effective January 1, 2021, there will be no repeal of the current Board policies or implementation of the revised policies. Therefore, the repeal of the Board Policies and implementation of those new policies is contingent on the Administrative Rules being adopted, with the Board Policy Manual being revised to remove those repealed policies and add the revised policies effective the date the Administrative Rules are implemented.

In addition, the Board repealed a policy on August 30, 2018 titled Railroad Rights-of-Way Ownership. It was later determined that a Board policy would be helpful in memorializing the position of the Board concerning Abandoned Railroad Right of Way Ownership and the attached proposed policy was created. The policy on Abandoned Railroad Right of Way Ownership should be implemented on January 1, 2021, regardless of the enactment of the Administrative Rules as it is not addressed by the proposed Administrative Rules.

The Commissioner is requesting the Board provide input on the proposed revised North Dakota Board of University and School Lands policies. This is the “first reading” of the proposed policies, with suggestions being taken into consideration and a “second reading” to occur on December 17, 2020.

Board of University and School Lands Limited Land Sales Policy, Board of University and School Lands Non-Grant Land Policy, Board of University and School Lands Abandoned Railroad Right of Way Ownership documents were provided to the Board and are available at the Department upon request.

## **OPERATIONS**

### **Audited Financial Statements for the Year Ended June 30, 2020**

Eide Bailly CPAs and Business Advisors has completed its review of the financial statements of the Department of Trust Lands for the year ended June 30, 2020 and provided an opinion on the fair presentation of the financial statements.

The draft report identified no audit findings or recommendations.

The electronic version of the audited financial statement had not been posted, but when it finalized it will be available on the State Auditor's website at: [www.nd.gov/auditor/trust-lands-nddepartment](http://www.nd.gov/auditor/trust-lands-nddepartment) and on the Department of Trust Lands website at: [www.land.nd.gov](http://www.land.nd.gov).

The Department of Trust Lands Audited Financial Statement Fiscal Year 2020 is available upon request.

### **Proposed Legislation for 2021**

The Department of Trust Lands (Department) intends to propose legislation, including but not limited to the following:

#### **2016 Revised Uniform Unclaimed Property Act**

The Department is recommending the adoption of the 2016 Revised Uniform Unclaimed Property Act to provide necessary updates to the 1981 Act that was implemented in 1985.

#### **Grant North Dakota Game and Fish Authority to Enforce State Laws and Rules on Trust Lands**

The Department is seeking to modify N.D.C.C. § 20.1-02-15.1 to grant North Dakota Game and Fish authority to enforce state laws and rules on lands owned and managed by the Board of University and School Lands to allow the Department to better manage assets.

#### **Surface Leasing**

The Department is seeking authority for surface lease auctions held after January 1, 2022, to be held at a regional public auctions, with the regions to be provided in the Board's Administrative Rules, instead of being held in each county seat.

## **I N V E S T M E N T S**

### **Fixed Income – Core Bond Manager**

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs) "to convert the JP Morgan Intermediate bond mandate into a core bond mandate with a manager to be approved by the Board November 2020."

At that meeting, to increase portfolio yield and return, the Department of Trust Lands' (Department) and RVK recommended termination of the JP Morgan (JPM) Intermediate Bond mandate and replacing it with a core bond mandate. The JPM Intermediate Bond fund has underperformed with core bond funds including JPM's Core Bond Fund as well as the US aggregate bond index. The underperformance is primarily due to the limits on duration risk the manager can add to the fund. A core bond mandate will have more flexibility to extend duration prudently when the risk environment warrants and thus pick-up incremental yield.

The Department and RVK began the manager search by compiling a list of four of the top performing core bond managers within RVK's database, including JPM's Core Bond Fund. The performance and risk history of each manager was reviewed, along with fees, asset quality, asset characteristics, and investment structures. Each of the four managers were interviewed by the Department and RVK to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager, the Department and RVK recommend the Board continue its relationship with JPM in a core bond mandate. JPM's Core

Bond mandate has performed well on a risk/return basis and its fees, including the relationship discount, make it attractive for the PTFs.

JPM is headquartered in New York and has offices throughout the U.S. and the world. JPM has over \$658 Billion in fixed income assets under its management and over 265 fixed income investment professionals with expertise in various areas of the fixed income market.

JPM has agreed to maintain the separate account structure and related fees that were in effect for the intermediate bond mandate. If approved, the transition would occur over the next few months as market conditions allow.

**Motion: The Board approves a conversion of the JP Morgan Intermediate Bond mandate to a core bond mandate with JP Morgan, 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   |     |        |
| Superintendent Baesler     |        |        | X   |     |        |
| Treasurer Schmidt          | X      |        | X   |     |        |
| Attorney General Stenehjem |        | X      | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Recommendation Memo and JP Morgan Core Bond Presentation were presented to the Board for review and are available at the Department upon request.

### **Fixed Income – Multi-Sector Manager**

At its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs) "to liquidate sufficient amounts in the Payden & Rygel and JP Morgan fixed income mandates, along with the cash from the Brandywine termination, to fund the addition to Private Credit and a new Multi-Sector fixed income.

As a result of underperformance, Department of Trust Lands (Department) and RVK recommended terminating the Brandywine Global Opportunity mandate (~\$185 Million) and replacing it with a new Multi-Sector Bond mandate (\$100 Million). The Brandywine mandate has underperformed both the PTFs' core and intermediate bond mandates, the global aggregate bond index, and the multi-sector funds contemplated as replacements. In addition, RVK research shows the Brandywine mandate has a worse risk/return profile versus the multi-sector funds and the global aggregate bond index. Moving to a multi-sector mandate is expected to decrease portfolio risk while increasing returns.

The Department and RVK began the manager search by compiling a list of three of the top performing Multi-Sector bond managers within RVK's database. The Department and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics, and investment structures. Each of the three managers were interviewed by the Department and RVK to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager, the Department and RVK recommend the Board approve a Multi-Sector Bond mandate with Loomis Sayles. Loomis Sayles is an investment manager headquartered in Boston, with offices in the U.S., Europe and Asia. They have over \$240 Billion in fixed income assets under its management and over 180 fixed



income investment professionals with expertise in various areas of the fixed income market. Loomis Sayles has a strong and transparent investment process and portfolio characteristics that the Staff and RVK felt would best suit the PTFs.

**Motion: The Board approve a \$100 Million investment with Loomis Sayles in a Multi-Sector bond mandate, 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      | X   |     |        |
| Attorney General Stenehjem |        |        | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Recommendation Memo and Loomis Sayles Multi-Sector Bond Presentation were presented to the Board for review and are available at the Department upon request.

### **3rd Quarter Investment Update 2020**

Josh Kevan from RVK reviewed the performance of the Board of University and School Land's (Board) investment program for the period ending September 30, 202.

The first report to be reviewed was prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report. A more comprehensive, detailed report is also available.

Next, Josh will touch on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK Permanent Trust Fund Performance Report and RVK Ultra-short Performance Report were presented to the Board for review and is available at the Department upon request.

## **O T H E R**

### **Commissioner Annual Review**

Treasurer Schmidt proposed tabling the Commissioner Annual Review agenda item until the December regular meeting; the Board agreed to table the item.

## **M I N E R A L S**

### **Acreage Adjustment Survey Relating to T152N R93W Section 11 Lot 2 and Section 10 Lot 6**

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.

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.

Senate Bill 2211 of 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 Kadrmas, 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." KLJ has provided the Department of Trust Lands (Department) with a Final Report for Acreage Determination along the Ordinary High Water Mark as adopted by the North Dakota Industrial Commission Order No. 29129 which is available on the Department's website.

On June 25, 2020, the Board formally requested NDIC complete further review of T152N R93W Section 11 Lot 2 and Section 10 Lot 6. NDIC approved Order No. 31104 providing the Department with necessary information to complete the acreage adjustment survey in T152N R93W Section 11 Lot 2 and Section 10 Lot 6.

KLJ has completed the acreage adjustment calculations in T152N R93W Section 11 Lot 2 and Section 10 Lot 6. The project utilized all available data, records, and resources including the Review, the PLSS, Bureau of Land Management (BLM) General Land Office (GLO) updated Master Title Plats (available at the BLM), original GLO Survey Plats (available at the North Dakota State Water Commission), BLM field notes, and any other relevant data, records and resources. Where previous survey data was not available, lacking, or otherwise unusable, the KLJ project was required to conduct the field work necessary to supply the necessary data to complete and/or verify accurate boundaries within the Project Area. KLJ is available to review the methodology they used to calculate the acreage adjustments and answer any questions the Board may have regarding the acreage adjustment results.

Upon the Board's adoption of the Acreage Adjustment Survey for T152N R93W Section 11 Lot 2 and Section 10 Lot 6, as prepared by KLJ, the Department will promptly begin updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process will be extensive and will require a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be allocated to the correct trust, the Department's shapefiles will be updated, and the Department will need to track the documentation for each lease correction.

Prior to any issuance of refunds, appropriate documentation for each parcel requiring adjustment must be reviewed by the Department's Director of Minerals Management and the Director of the Revenue Compliance Division. Following final review by the Commissioner, a refund authorization will be submitted to the Accounting Division. Once refunds are issued, Correction of Oil and Gas Lease documentation will be mailed to the operator and current lessee of record

based on the records of the Department. If the lessee fails to return an executed copy or cash the check, the Department will need to take additional steps.

**Motion: The Board adopts the acreage adjustment survey 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 North Dakota Industrial Commission for T152N R93W Section 11 Lot 2 and Section 10 Lot 6.**

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

Map T152N R93W Section 11 and Section 10 was presented to the Board for review and is available at the Department upon request.

### **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

- The 1977 Legislature defined "sovereign lands" as "those beds, islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams." 1977 N.D. Sess. Laws, ch. 144, § 1, codified as N.D.C.C. § 15-08.2-02 (repealed 1989 N.D. Sess. Laws, ch. 552, § 4).
- 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.)

**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:**

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

| Action Record              | Motion   | Second | Aye | Nay | Absent |
|----------------------------|----------|--------|-----|-----|--------|
| Secretary Jaeger           |          |        |     |     |        |
| Superintendent Baesler     |          |        |     |     |        |
| Treasurer Schmidt          |          |        |     |     |        |
| Attorney General Stenehjem | <b>X</b> |        |     |     |        |
| Governor Burgum            |          |        |     |     |        |

At 9:56 AM the Board entered executive session via Microsoft Teams for the purposes outlined in its adopted motion.

**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                    |
| David Shipman    | Minerals Director            |
| Catelin Newell   | Administrative Staff Officer |

**Guests in Attendance:**

|                      |                              |
|----------------------|------------------------------|
| Dave Garner          | Attorney General's Office    |
| Jennifer Verleger    | Attorney General's Office    |
| Leslie Bakken Oliver | Governor's Legal Counsel     |
| Reice Haase          | Governor's Office            |
| Aaron Carranza       | Office of the State Engineer |
| John Paczkowski      | State Engineer               |

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During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 10:58 AM and the Board reconvened in open session.

The Board requested additional information be brought to a subsequent meeting and no formal action was taken.

**A D J O U R N**

There being no further business, the meeting was adjourned at 10:59 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands

**Minutes of the Meeting of the  
Board of University and School Lands  
December 17, 2020**

The December 17, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Pioneer 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 via Teams |

**Department of Trust Lands Personnel present:**

|                      |  |
|----------------------|--|
| Jodi Smith           | Commissioner                                     |
| Mike Humann          | Surface Division Director                        |
| Catelin Newell       | Administrative Staff Officer                     |
| Kristie McCusker     | Paralegal  |
| Adam Otteson         | Revenue Compliance Director                      |
| Michael Shackelford  | Investments Director                             |
| David Shipman        | Minerals Division Director - via Microsoft Teams |
| Lynn Spencer         | Mineral Title Specialist – via Microsoft Teams   |
| Dennis Chua          | Investments Analyst – via Microsoft Teams        |
| Christopher Dingwall | Mineral Title Specialist – via Microsoft Teams   |
| Scott Giere          | Revenue Compliance Auditor – via Microsoft Teams |
| Peggy Gudvangen      | Accounting Director – via Microsoft Teams        |
| Jacob Lardy          | Surface – via Microsoft Teams                    |
| Rick Owings          | EIIO – via Microsoft Teams                       |

**Guests in Attendance:**

|                      |                                |
|----------------------|--------------------------------|
| Dave Garner          | Office of the Attorney General |
| Leslie Bakken Oliver | Governor’s Legal Counsel       |
| Charles Carvell      | Office of the Attorney General |
| Jen Verleger         | Office of the Attorney General |
| Reice Haase          | Office of the Governor         |

**Additional Guests in Attendance:**

|                   |                          |
|-------------------|--------------------------|
| Andrew Lasky      | via Microsoft Teams      |
| Austin Head-Jones | via Microsoft Teams      |
| Avni Gandhi       | via Microsoft Teams      |
| Rena Bloms        | via Microsoft Teams      |
| Brady Pelton      | NDPC via Microsoft Teams |
| Chelsea Dodge     | via Microsoft Teams      |
| Craig D’Alessio   | via Microsoft Teams      |
| Dennis Blank      | via Microsoft Teams      |
| Drew Guyette      | via Microsoft Teams      |
| Gerald Heiser     | via Microsoft Teams      |
| Joel Holsinger    | via Microsoft Teams      |
| Josh Kevan        | RVK via Microsoft Teams  |
| Stephen Kranz     | via Microsoft Teams      |
| Richard W         | via Microsoft Teams      |
| Sonya Lee         | via Microsoft Teams      |
| Trevor Clark      | via Microsoft Teams      |
| William Cullinan  | via Microsoft Teams      |

## APPROVAL OF MINUTES

A motion to approve the minutes of the November 24, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## REPORTS

### Repayment of Unpaid Royalties Report

Since the November 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for oil deductions: Citation Oil and Gas LLC.

Since the November 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for gas deductions: Denbury Resources.

### November Report of Encumbrances Issued by Land Commissioner

Granted to: Tesoro High Plains Pipeline Company Llc, San Antonio-TX  
 For the Purpose of: Easement-Amend: Pump Station  
 Right-of-Way Number: RW0008693  
 Trust: A - Common Schools  
 Legal Description: MCK-147-104-36-SE4

Granted to: Bob Enterprises LLC, Killdeer-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008703  
 Trust: A - Common Schools  
 Legal Description: DUN-147-95-16-NE4, NW4, SW4 SOUTH OF HWY

Granted to: Carson Ranch, Grassy Butte-ND  
 For the Purpose of: Permit: Road-Access Road  
 Right-of-Way Number: RW0008788  
 Trust: A - Common Schools  
 Legal Description: MCK-146-101-36-NE4

Granted to: Select Energy Services LLC, Williston-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008790  
 Trust: A - Common Schools  
 Legal Description: MOU-154-94-16-SW4

Granted to: Goodnight Midstream Bakken LLC, Dallas-TX  
 For the Purpose of: Easement-Amend: Pipeline-Salt Water Pipeline  
 Right-of-Way Number: RW0008792  
 Trust: A - Common Schools  
 Legal Description: MCK-152-97-36-NE4, SE4

Granted to: Bob Enterprises LLC, Killdeer-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008794  
 Trust: A - Common Schools  
 Legal Description: DUN-146-95-16-NE4

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Granted to: Select Energy Services LLC, Williston-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008797  
Trust: A - Common Schools  
Legal Description: MCK-153-94-16-NW4, SW4

### **November 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 November 2020, the Division received 216 holder reports with a property value of \$1,234,962 and paid 324 claims with a total value of \$348,124.

**The Financial Report (Unaudited) for period ending September 30, 2020 was presented to the Board for review and is available at the Department upon request.**

### **Investment Updates**

#### **Portfolio Rebalancing Updates**

As Harvest (Master Limited Partnerships) hit the 25% sell trigger point, a \$25M liquidation was initiated with withdrawal and transfer to the transition account targeted to be on or before December 15, 2020. This will leave the Diversified Inflation Strategies (DIS) asset class with approximately \$89.6M after the withdrawal based on its December 8, 2020, ending value. The Department of Trust Lands (Department) staff and RVK will continue to monitor the trigger points set for the account and will complete the liquidation when appropriate.

Since being approved, Apollo Accord Fund IV LP (Fund), an Opportunistic Investment, has made capital calls totaling \$5.5M. The remaining unfunded commitment now stands at \$94.5M. On November 27, 2020, the fund made its first distribution amounting to \$14,581.06.

Varde Dislocation Fund IV LP, an Opportunistic Investment, has called on a total of \$15M. This brings the remaining unfunded commitment to \$85M.

The Department staff have started working on the Investment Management Agreement (IMA) for both the JPM Core Bond and the Loomis & Sayles Multi Sector that were recently approved. Additionally, the Agreements for GCM Grosvenor (Private Equity Manager) and JP Morgan (Private Infrastructure Manager) are also being reviewed and worked on.



## Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of December 8, 2020. The figures provided are unaudited.

| As of<br>December 8, 2020 | Market Value<br>\$ | Actual | Target | Lower<br>Range | Upper<br>Range |
|---------------------------|--------------------|--------|--------|----------------|----------------|
| Broad US Equity           | 1,089,173,741.57   | 20.3%  | 19.0%  | 14.0%          | 24.0%          |
| Broad Int'l Equity        | 1,069,667,543.32   | 19.9%  | 19.0%  | 14.0%          | 24.0%          |
| Fixed Income              | 1,128,666,763.41   | 21.0%  | 22.0%  | 17.0%          | 27.0%          |
| Transition Account        | 407,214,009.17     | 7.6%   | 0.0%   | -5.0%          | 5.0%           |
| Absolute Return           | 800,061,929.85     | 14.9%  | 15.0%  | 10.0%          | 20.0%          |
| DIS                       | 114,610,914.66     | 2.1%   | 0.0%   | -5.0%          | 5.0%           |
| Real Estate               | 731,764,330.00     | 13.6%  | 15.0%  | 10.0%          | 20.0%          |
| Private Equity            | -                  | 0.0%   | 5.0%   | 0.0%           | 10.0%          |
| Private Infrastructure    | -                  | 0.0%   | 5.0%   | 0.0%           | 10.0%          |
| Opportunistic Investments | 21,833,305.00      | 0.4%   | 0.0%   | -5.0%          | 5.0%           |
| Portfolio Total           | 5,362,992,536.98   | 100.0% |        |                |                |

Upcoming Investment Manager Meetings: There are no upcoming meetings scheduled.

## Energy Infrastructure and Impact Office Quarterly Program Report

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$626 million in funding.

The Oil and Gas Impact Grant Fund currently has 17 grants with a balance of \$2,833,286.75 as of December 1, 2020. The following shows grant activity for the last eight months:

| Oil and Gas<br>Impact Grant<br>Fund | Grants<br>with<br>balances | Current<br>Balance<br>Obligated to<br>Grants |
|-------------------------------------|----------------------------|--|
| 5/13/2020                           | 28                         | \$7,049,556.08                               |
| 9/9/2020                            | 22                         | \$5,282,832.07                               |
| 12/1/2020                           | 17                         | \$2,833,286.75                               |

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$1,752,239.48 as of December 1, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the

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Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last eight months:

| Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants |
|--------------------|----------------------|-------------------------------------|
| 5/13/2020          | 3                    | \$2,394,929.22                      |
| 9/9/2020           | 3                    | \$2,394,929.22                      |
| 12/1/2020          | 3                    | \$1,752,239.48                      |

EIO is currently managing 20 grants for a total of \$4,585,526.23. The following shows grant activity for the last eight months:

| Oil and Gas Impact Grant Fund | Grants with balances | Current Balance Obligated to Grants | Energy Impact Fund | Grants with balances | Current Balance Obligated to Grants | Total between both Funds |
|-------------------------------|----------------------|-------------------------------------|--------------------|----------------------|-------------------------------------|--------------------------|
| 5/13/2020                     | 28                   | \$7,049,556.08                      | 5/13/2020          | 3                    | \$2,394,929.22                      | \$9,444,485.30           |
| 9/9/2020                      | 22                   | \$5,282,832.07                      | 9/9/2020           | 3                    | \$2,394,929.22                      | \$7,677,761.29           |
| 12/1/2020                     | 17                   | \$2,833,286.75                      | 12/1/2020          | 3                    | \$1,752,239.48                      | \$4,585,526.23           |

### Information Technology Project Status Update

The Department of Trust Land's (Department) 2017-2019 biennial budget appropriation includes \$3.6 million to replace legacy information technology (IT) systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly.

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

On July 1, 2020, the new Financial Management and Accounting system was successfully launched.

On September 14, 2020, the Revenue Compliance Division successfully launched the migrated and updated software system.

The Investments Division, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

The Surface Division, Project Sponsor, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

Additional capital funding is being requested in the upcoming legislative session to support the implementation of software for the Minerals Division.

On December 14, 2020, an upgrade to the Department website is scheduled to occur. This upgrade will provide for transparency in the acreage adjustment and refund process and allow constituents to monitor the status of each lease.

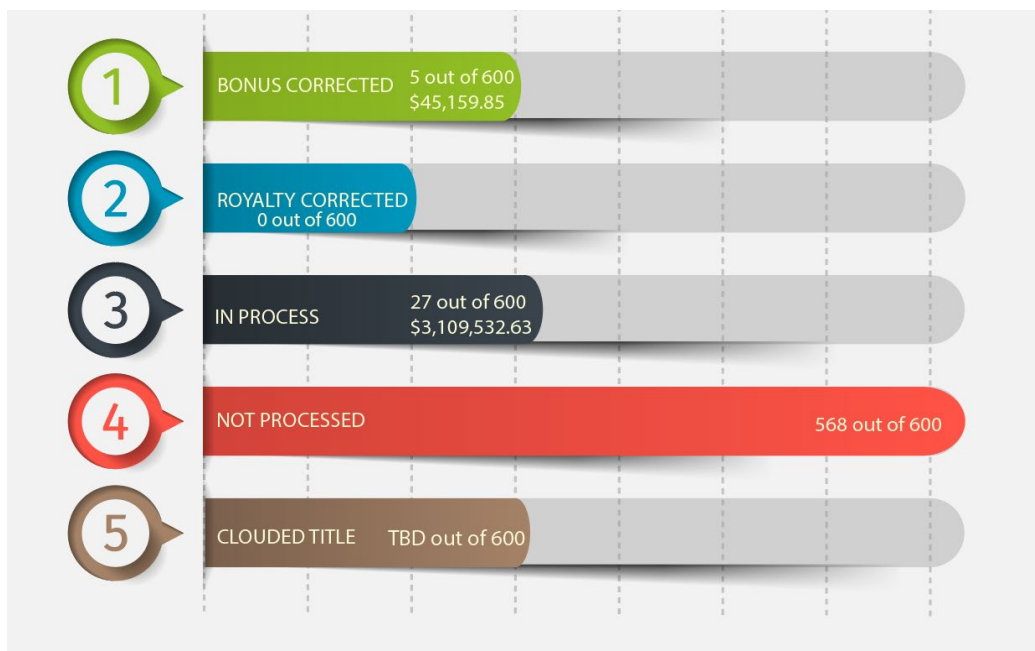
### Acreage Adjustment Survey Project

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, 39 Lease Correction and Acreage Stipulation packages have been sent to various operators. Of these 39 packages, five have been refunded, seven are held by litigation, 23 are waiting for operator execution, and four 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:



## O P E R A T I O N S

### **Surface Land Management and Minerals Management Administrative Rules**

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board 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 of Trust Lands (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.

Revisions to rules concerning Surface Land Management and Minerals Management were posted on the Department's website and publication of a notice of intent has been completed. A public hearing on these rules was held August 2020, where the Department received oral and written comments. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, has been completed.

The Board approved the amended rules which were then submitted to the Attorney General's Office for review. The Attorney General's Office reviewed the Surface Land Management and Minerals Management. Those Administrative Rules were presented to the Administrative Rules Committee on December 1, 2020 and will become effective January 1, 2021. A final version of the Administrative Rules will be posted on the Departments website.

### **Board of University and School Lands Policy Manual**

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board 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 Board's Administrative Rules are found in Title 85 of the North Dakota Administrative Code. Revisions to rules concerning General Administration and rules for Surface Land Management and Minerals Management are currently before the Legislative Administrative Rules Committee. Those rules were reviewed by the Attorney General's Office and were presented to the Administrative Rules Committee on December 1, 2020, to become effective January 1, 2021. With those rules becoming effective January 1, 2021, it will be necessary to simultaneously repeal certain Board policies and to implement new Board policies.

The Board currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. It is necessary to revise certain Board policies due to the new Administrative Rules. The Department recommends the following current policies be repealed and replaced with the revised policies upon enactment of the proposed Administrative Rules as follows:

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

Other policies have been incorporated into the proposed Administrative Rules and can be repealed upon enactment of the proposed Administrative Rules as follows:

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills
- Criteria for Retaining Foreclosed Property
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells

The Board repealed a policy on August 30, 2018 titled Railroad Rights-of-Way Ownership. It was later determined that a Board policy would be helpful in memorializing the position of the Board concerning Abandoned Railroad Right of Way Ownership and the attached proposed policy was created.

The first reading of the policies was held at the November 24, 2020 meeting. The Commissioner is requested the Board provide input on the proposed revised North Dakota Board of University and School Lands policies. Additionally, an open comment period was held, and no comments were received.

**Motion:**

**(1) Effective, January 1, 2021, the Board repeals the proposed North Dakota Board of University and School Lands:**

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills Policy
- Criteria for Retaining Foreclosed Property Policy
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells Policy

**(2) Effective January 1, 2021, the Board adopts the proposed North Dakota Board of University and School Land:**

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

| 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   |     |        |

Board of University and School Lands Limited Land Sales Policy, Board of University and School Lands Non-Grant Land Policy, and Board of University and School Lands Abandoned Railroad Right of Way Ownership documents were presented to the Board and are available from the Department upon request.

## S U R F A C E

### Approval of Fall Surface Auction Leases

The 2020 fall lease auctions were completed online with EnergyNet in October. Subsequent tracts qualifying for the Department of Trust Lands (Department) tie bidding policy and tracts appealed to the Board of University and School Lands (Board) were completed December 9, 2020. The following

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table is a summary of the fall lease results as compared to the two previous fall auction seasons of 2017 and 2019. 2018 was our “off” year occurring every 5<sup>th</sup> year of the lease cycle.

|   | 2017        | 2019        | 2020        |
|---|-------------|-------------|-------------|
| Number of counties                      | 40          | 34          | 36          |
| Total tracts offered                    | 891         | 1146        | 1039        |
| Number of tracts bid unleased           | 37          | 78          | 43          |
| Lease success rate                      | 95.8%       | 93.2%       | 95.9%       |
| Number of tracts bid-up                 | 115         | 146         | 208         |
| Competitive bidding rate                | 12.9%       | 12.7%       | 20%         |
| Total amount of minimum advertised bids | \$1,689,266 | \$2,546,925 | \$2,001,193 |
| Total amount received                   | \$1,875,340 | \$2,418,748 | \$2,330,000 |
| Total amount collected over minimum bid | \$238,381   | \$128,177   | \$328,807   |

With the Board’s approval of leases today the Department will process the lease documents for the lessees.

The bidders for the following tract in McLean County are requesting the Board not approve the lease as bid:

| <u>Description</u>      | <u>Bidders</u>                | <u>Acres</u> | <u>Minimum Bid</u> | <u>Amount Bid</u> |
|-------------------------|-------------------------------|--------------|--------------------|-------------------|
|                         |                               |              | <u>Per Tract</u>   | <u>Per Tract</u>  |
| T149N, R82W Sec 25: SE4 | Rick Bernier<br>Stephen Kranz | 160          | \$1,287            | \$5,787           |

N.D.C.C. Section 15-04-10 provides:

**15-04-10. Leasing to be by auction - Requirements governing.**

The commissioner of university and school lands, or such other person appointed by the commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease that all bids are subject to approval by the board.

If there are tracts for which no bids are received, tracts for which payment is not received by December 31, 2020, and tracts for which leases are not approved by the Board, those tracts will be offered for lease at the spring auction in 2021.

Motion:

- (1) **The Board approves the 993 surface leases resulting from the fall 2020 surface lease auctions.**
- (2) **The Board does not approve the bids for the following tracts for a total of \$11,975.00: T147N, R82W Section 28: NE4, NW4 and T149N, R82W Section 25: SE4.**

| 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   |     |        |

## I N V E S T M E N T S

### Fixed Income – Direct Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

Department of Trust Lands Staff (Staff) and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK's database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve an additional allocation to Angelo Gordon in their new AG Direct Lending Fund IV. Angelo Gordon has a strong track record in middle market lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Angelo Gordon is an investment manager headquartered in New York with offices globally. Founded in 1988, Angelo Gordon is employee owned with over \$35 Billion in assets under management and over 200 investment professionals.

**Motion: The Board approves a \$100 Million investment with Angelo Gordon in the AG Direct Lending Fund IV, LP, (onshore levered vehicle) 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      |        | X   |     |        |
| Attorney General Stenehjem |        |        | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Recommendation Memo and AG Direct Lending Fund IV Presentation were presented to the Board and are available from the Department upon request.

### Fixed Income – Asset-Based Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

The current low interest rate environment is expected to persist for quite some time, as such, Department of Trust Lands Staff (Staff) and RVK believe it is prudent to increase the PTFs' allocation to Private Credit. Certain Private Credit strategies, such as asset-based lending, have an attractive risk/return profile and a low default/loss track record. Asset-based lending involves

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investing in large, diversified portfolios of assets that generate contractual cash flows. These asset portfolios generally consist of; loans, leases and receivables.

Staff and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK’s database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a new allocation to Ares Management in their asset-based lending fund: Ares Pathfinder Fund. Ares Management has a strong track record in asset-based lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Ares Management is an investment manager headquartered in New York with over 25 offices around the world. Ares Management is an alternative investment manager with over \$165 Billion in assets under management and nearly 500 investment professionals.

**Motion: The Board approves a \$100 Million investment with Ares Management in the Ares Pathfinder Fund, 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      | X   |     |        |
| Treasurer Schmidt          |        |        | X   |     |        |
| Attorney General Stenehjem |        |        | X   |     |        |
| Governor Burgum            |        |        | X   |     |        |

RVK Recommendation and Ares Pathfinder Fund Presentation were presented to the Board and are available from the department upon request.

**Securities Litigation Update – Financial Recovery Technologies**

Craig D’Alessio and Andrew Lasky from Financial Recovery Technologies (FRT) will provide the Board of University and School Land’s (Board) an update on securities litigation and recoveries in the Permanent Trust Funds (PTFs).

On August 30, 2018 the Board directed the Commissioner to enter into an agreement with FRT to provide comprehensive securities litigation and antitrust monitoring, and claims filing services on behalf of the Board. FRT is a technology-based services firm that helps institutional investors identify litigation eligibility, file claims and collect funds made available in shareholder class action and antitrust settlements.

Since early 2019 FRT has been monitoring the PTFs’ securities litigation and filing claims on behalf of the Board. FRT has filed 53 claims and has so far recovered \$26,793.28 for the PTFs (\$30,446.91 gross received less \$3,653.63 in fees to FRT).

| GROSS AMOUNT RECEIVED | FRT FEES   | NET TO CLIENT |
|-----------------------|------------|---------------|
| \$30,446.91           | \$3,653.63 | \$26,793.28   |

FRT Securities Litigation Presentation was presented to the Board and is available at the department upon request.



## Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement

Senate Bill 2001 of the Sixty-Sixth Legislative Assembly created a \$50 million endowment, the Theodore Roosevelt Presidential Library and Museum Endowment Fund (Fund), for the proposed Theodore Roosevelt Presidential Library and Museum. The Governor may provide grants to a private entity if, among other things, \$100 million in private donations is first raised for construction of the library and museum. The Fund's earnings will be used for operations and maintenance of the library and museum once the Theodore Roosevelt Presidential Library Foundation has raised or secured binding pledges for \$100 million.

The Agreement provides in Section 1: "At such time as the Foundation has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of the Library and Museum in North Dakota and for grants to affected entities, the Foundation will issue a certification to the Governor, using the form of certification, substantially set forth in Exhibit A, as required under the Act. Upon receipt of this certification, the Governor shall notify the Land Board."

Attached is the notification provided to the Board of University and School Lands as required in the Agreement.

Governor Notification was presented to the Board and is available upon request.

## OTHER

### Commissioner Annual Review

As Commissioner and Secretary for the Board of University and School Lands (Board), I am fully committed to the Board and the Department of Trust Lands (Department) vision to be known nationally for superior management of its assets and programs. This will be met through the following 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.

As Commissioner, over the course of the past three years, there has been significant progress made at the Department. Just 10 days after my term began an employee survey was sent to all Department team members. This employee survey highlighted significant discord within the Department that was presented to the Board in March 2018 with a plan to address the issues. In May 2018, the Board was presented with the Commissioner's annual review which highlighted the course and goals for the upcoming six-months:

*Over the course of the next six months, my focus will be to reevaluate the organizational structure and outline strengths and weaknesses of the current organizational structure including the origin of current strengths or weaknesses that could influence capacity to achieve future innovation.*

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Additionally, the Board was presented with a Strategic Plan with five goals:

- 1) Customer Service
- 2) Mission Integration
- 3) Land & Mineral Management
- 4) Unclaimed Property
- 5) Investments

In December 2018, the Board was presented with the results of the 2018 Employee Survey which demonstrated a significant improvement over the 2017 Employee Survey results and highlighted the Commissioner's and Department Leadership's focus on: (1) Technology, Tools & Workflow; (2) Teamwork, and; (3) Leadership.

In June 2019, the Board was presented with the Commissioner's annual review highlighting the Department's success in implementing Department policies, reviewing and updating all Board policies, implementation of Administrative Rules, implementation of IT systems for Unclaimed Property and the procurement of additional systems, and improved departmental culture. I also made a commitment to the Board to continue to discover creative solutions, evaluate possibilities and provide a deep mindshare on collaborated and collegial decisions. The 2019, a strategic plan was developed to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders were 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, this strategic plan has been a disciplined and a collaborate effort resulting in fundamental decisions and actions that have shaped and guided the Department in 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 and processes have transformed the static plan. It is now a system that provides strategic performance feedback to decision making and enables the plan to evolve and grow as requirements and other circumstances change. This is illustrated in the attached document which outlines a multi-phase approach to implementing the Department's strategic plan.

In June 2020, the Board was presented with the Commissioner's annual review illustrating the multi-stage approach to implementing the Department's multi-year strategic plan:

**Phase 1:** Envision - Set the foundations of the Department to build upon and generate initial cost savings.

**Phase 2:** Foundation - Improve level of maturity and reach next level of efficiency and cost-savings.

**Phase 3:** Advance - Improve the level of maturity and address most complex components of the transformation.

**Phase 4:** Transform - Wrap up transformation and fine-tune last details.

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 and analyzing talent management leadership within the Department. While continuing to deliver our core services, the Department has made significant progress in fulfilling a wide range of responsibilities.

In August 2020, the Department's Strategic Plan for the 2021-23 biennium was presented to the Governor's Office, OMB, and Legislative Council during a budget planning session. This plan was developed by the Department's leadership team through an intensive two-day planning session lead by a facilitator. The resulting document will lead the Department's efforts for the next two years.

In the upcoming year, there will be a heightened focus on implementation of new information technology systems for the Accounting, Investments and Revenue Compliance Divisions. This will include the capability to accept online payments. These changes will require strong leadership to implement the necessary systematic changes to ensure efficiencies are created and the systems are built upon the future and not legacy systems of the past. Over the course of the next year, I will continue to focus on goal achievement while maintaining a consistent high standard in quality of work completed. As the agency pacesetter, I will continually strive to discover creative solutions, evaluate possibilities and provide deep mindshare on decisions made. It is important that I continue to cultivate the resources and tools the team requires to assist them in prioritizing tasks, making decisions, and practicing good quality control.

As the Commissioner I strive to effectively prioritize the most urgent tasks and decisions. When a difficult decision is required, I evaluate the positives and negatives against possible outcomes to make an informed decision. When analyzing a problem, I will continue to define the central issue, identify the constraints to the problem, research and identify all the relevant alternatives and develop an implementation plan with area expertise. Over the course of the upcoming year, I will work with each Board member to ensure their individualistic contributions are recognized and effectively communicated to ensure professional and personal growth. Finally, as the Commissioner, I will work responsively with each Board member's unique strengths and insights. Their integral contributions contribute to developing my leadership so collectively we accomplish our goals using the highest standards of ethics, professionalism transparency, fairness and responsiveness towards those we serve.

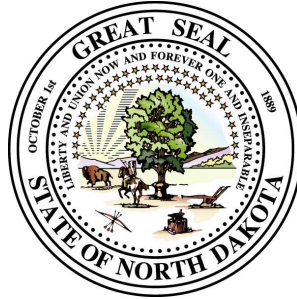
I want to thank the Department staff for their generous support, willingness to collaborate, and flexibility in promoting value and growth within the Department. Their skills and dedication are recognized as fundamental to all successes.

I also want to thank the Board members for their guidance and feedback. I commit to you to remain inquisitive with the aim of promoting discussion and adoption of best practices.

Commissioner annual review power point was presented to the Board and is available from the department upon request.

North Dakota Board of University and School Lands Resolution

**NORTH DAKOTA  
BOARD OF UNIVERSITY AND SCHOOL LANDS  
RESOLUTION**



ADOPTED  
December 17, 2020

**WHEREAS**, Treasurer Kelly Schmidt began serving on the Board of University and Trust Lands in 2005; and

**WHEREAS**, Treasurer Schmidt has faithfully served on the Board of University and School Lands' on countless issues related to prudent and professional management of the Board-managed trust assets; and

**WHEREAS**, through hard work and diligence, Treasurer Schmidt's many accomplishments and efforts have greatly benefited the citizens, most notably the school children, of North Dakota; and

**WHEREAS**, Treasurer Schmidt is recognized statewide, and beyond, for her contribution to the Board; and

**WHEREAS**, Treasurer Schmidt has been a staunch proponent of the permanence, autonomy and revenue producing potential of the trusts; and

**WHEREAS**, these many years of service deserve recognition and gratitude;

**NOW, THEREFORE, BE IT RESOLVED**, that the undersigned as members of the Board of University and School Lands, do hereby thank and commend Treasurer Kelly Schmidt for her dedication and service to the State of North Dakota, to the Board and most prominently to the "trusts", and wish her every success in future endeavors.

\_\_\_\_\_  
Kirsten Baesler  
Superintendent of Public Instruction

\_\_\_\_\_  
Alvin A. Jaeger, Secretary of State

\_\_\_\_\_  
Wayne Stenehjem, Attorney General

\_\_\_\_\_  
Chairman Doug Burgum, Governor

## M I N E R A L S

### **Determination of Cottonwood Lake Navigability, Williams County**

The Department of Trust Lands (Department) received a written request addressed to the North Dakota State Water Commission and the Commissioner of the Board of University and School Lands (Board) from Kraken Oil & Gas II, LLC, dated November 15, 2019, requesting the State “either disclaim ownership based on non-navigability, or, if your initial determination is that the lake may be navigable, to commence proceedings pursuant to the newly adopted provisions in NDCC Chapter 61-33.”

The Sixty-Sixth Legislative Assembly passed House Bill 1202, an act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; 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 sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Under N.D.C.C. § 61-33-02, “[a]ll sovereign lands of the state must be administered by the state engineer and the [Board] subject to the provisions of this chapter.” Under N.D.C.C. § 61-33-06, the Board “shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.” Under N.D.C.C. § 61-33-05, the State Engineer is tasked with making navigability determinations.

The State Engineer has determined:

The State Engineer has no evidence that this waterbody was navigable for the purpose of state title at the time of statehood. Based on current available records, the State Engineer does not presently assert that the land underlying this property constitutes sovereign land, and unless additional evidence of navigability becomes available, the State Engineer and the Board of University and School Lands disclaim title to any portion of the below described property inundated by Cottonwood Lake:

**Section 18 in Township 159 North, Range 98 West, Sections 13,  
14, 22, 23, and 24 in Township 159 North, Range 99 West,  
Williams County.**

**Motion: The Board authorizes the Commissioner to sign the Affidavit Disclaiming Title to Cottonwood Lake in Williams County with further review from the Attorney General’s Office.**

| <b>Action Record</b>       | <b>Motion</b> | <b>Second</b> | <b>Aye</b> | <b>Nay</b> | <b>Absent</b> |
|----------------------------|---------------|---------------|------------|------------|---------------|
| Secretary Jaeger           |               |               |            |            |               |
| Superintendent Baesler     |               |               |            |            |               |
| Treasurer Schmidt          |               |               |            |            |               |
| Attorney General Stenehjem |               |               |            |            |               |
| Governor Burgum            |               |               |            |            |               |

Affidavit Disclaiming Title for Cottonwood Lake was presented to the Board and is available from the department upon request.

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## Repayment of Royalties

The North Dakota Board of University and School Lands (Board) manages land, minerals and proceeds as trustee for the exclusive benefit of constitutionally identified beneficiaries, with much of the income funding North Dakota schools and institutions. The Board also manages oil, gas and other hydrocarbons underlying sovereign lands for the State of North Dakota.

A letter entitled Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 with enclosed Gas Deduction Compliance Notification (Letter) was sent to all entities required to pay royalties to the Board pursuant to the Board's lease. At the February 27, 2020 Board meeting the Board requested additional information regarding the prior communication with royalty payors regarding gas deductions.

A memo was provided to the Board at its October 29, 2020 meeting regarding prior royalty payor communications. The Board requested at that meeting the topics discussed be revisited during a future executive session meeting.

## LITIGATION

**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;

**Date 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.

**History:** 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 on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019. Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019. On December 17, 2019, a Notice of Telephonic Scheduling Conference was filed by the court, setting a telephonic

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scheduling conference for January 22, 2020 at 11:15 a.m. Notice of Court Trial was issued on January 23, 2020, setting a three day court trial for April 20, 2021. On February 20, 2020, the Court issued its scheduling order setting all case deadlines. On October 1, 2020, Defendant Oasis Petroleum North America LLC filed a Suggestion of Bankruptcy for Oasis Petroleum Inc. and Certain of its Affiliates and Notice of Automatic Stay of the Proceedings, stating a bankruptcy petition was filed on September 30, 2020.

**Current Status:**

- On November 20, 2020, Plaintiffs provided the parties with a proposed Stipulation for Dismissal with Prejudice for review.
- All parties stipulated to dismissal and on November 30, 2020, the Court entered its Order of Dismissal dismissing the action with prejudice

**Case:** **Northern Oil and Gas, Inc. v. Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC; Board of University and School Lands of the State of North Dakota; and North Dakota Industrial Commission; Case No. 31-2020-CV-00199**

**Date Filed:** September 25, 2020

**Court:** Mountrail County District Court

**Judge:** Honorable Stacy Louser

**Attorney:** David Garner

**Opposing**

**Counsel:** Nick Andrew Swartzendruber

**Issues:** On September 25, 2020, Northern Oil and Gas, Inc. (Northern) filed a Complaint against Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC, (collectively referred to as Bruin), Board of University and School Lands of the State of North Dakota (Board), and North Dakota Industrial Commission (NDIC) seeking review of the findings of the NDIC relating to the location of the historical riverbed channel of the Missouri River with respect to the N/2 of Section 10, Township 152 North, Range 93 West, 5<sup>th</sup> P.M. Northern requests an order determining that the high water mark of the northern edge of the riverbed is further south than what is depicted in the Wenck Survey.

**History:** Complaint served on the Board on September 25, 2020. Board's Answer filed October 16, 2020. Defendant Bruin filed Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint on October 16, 2020, requesting an extension until November 20, 2020.

**Current Status:**

- On November 5, 2020, the Court entered the Order Granting Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint.
- Stipulation of the parties for Dismissal under N.D.R.Civ.P. 41(a) and Order of Dismissal filed December 14, 2020.

**Case:** **Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota – 27-2015-CV-00164**

**Date Filed:** June 4, 2015

**Court:** McKenzie County District Court

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**Judge:** Robin Schmidt  
**Attorney:** David Garner/Jennifer Verleger  
**Opposing Counsel:** Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

**Issues:** On August 1, 2015, the Attorney General’s Office was served with a complaint in the above referenced case. This case is challenging the State’s determination of the OHWM east of the Highway 85 Bridge, near the northern border of the Fort Berthold Indian Reservation. The Board has currently leased minerals pursuant to the Phase II Investigation for this tract. The Plaintiff is requesting that title to the minerals be quieted and has alleged claims of Unconstitutional takings, trespass, slander of title, and constructive trust/unjust enrichment against the State. The complaint also makes a number of claims specific to XTO Energy Inc., the operator of the wells on the tracts in dispute. Specifically, the Plaintiff is requesting that the State’s claim to sovereign lands’ mineral interest be restricted to those minerals located below the OHWM of the Missouri River prior to inundation of the Lake Sakakawea.

An answer was filed on behalf of the Board on July 21, 2015. In January 2016, the State Engineer intervened in the case.

**History:** 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. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018. On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020. On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO. On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021. On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents.

**Current Status:**

- On November 5, 2020, Plaintiff filed a Notice of Hearing on the Board of University and School Lands and State Engineer’s Brief in Support of Motion to Dismiss for 9:00 a.m. on December 3, 2020, at the McKenzie County Courthouse, Watford City, ND. Also filed was Whitetail Wave LLC’s Response to State’s Motion to Dismiss.
- On November 12, 2020, the Board of University and School Lands and State Engineer’s Reply Brief in Support of Motion to Dismiss was filed.
- Also on November 12, 2020, the Response to the State Defendants’ Motion to Dismiss was filed by XTO.
- On November 30, 2020, Plaintiff filed a Request to Appear Telephonically at the December 3, 2020 hearing. The Court entered its order that date allowing all parties to appear telephonically without further motion.



**Case:** **EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust v. State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota; Case No. 1:20-cv-00219-CRH**

**Date Filed:** December 1, 2020

**Court:** United States District Court

**Judge:** Magistrate Judge Clare R. Hochhalter

**Attorney:** David Garner

**Opposing**

**Counsel:** Joshua Swanson

**Issues:** On December 1, 2020, EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust (Plaintiffs) filed a Complaint against State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota (Defendants). The Complaint seeks a declaratory judgment that the N.D.C.C. § § 61-33.1-01 to 61-33.1-05 is preempted by federal law and violates the Constitution and the laws of the United States; an order enjoining Defendants from claiming ownership of the property by virtue of North Dakota law in violation of the Vohs Trust and EEE Mineral's rights secured by the laws of the United States and the United States Constitution; damages to the Vohs Trust and EEE Minerals in the amount equal to damages proven at trial; reasonable attorneys fees and costs pursuant to 42 USC § 1988; and other relief the Court deems just and equitable.

**History:**

**Current Status:**

**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, 8<sup>th</sup> 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.

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**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

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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.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 11:03 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:**

- **Repayment of Royalties**
- **Whitetail Wave**
- **EEE Minerals Case No. 1:20-cv-00219**
- **Continental Resources Case No. 1:17-cv-00014**

| Action Record              | Motion   | Second   | Aye      | Nay | Absent |
|----------------------------|----------|----------|----------|-----|--------|
| Secretary Jaeger           | <b>X</b> |          | <b>X</b> |     |        |
| Superintendent Baesler     |          |          | <b>X</b> |     |        |
| Treasurer Schmidt          |          |          | <b>X</b> |     |        |
| Attorney General Stenehjem |          | <b>X</b> | <b>X</b> |     |        |
| Governor Burgum            |          |          | <b>X</b> |     |        |

**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 |
| Kelly Schmidt   | State Treasurer                                |

**Department of Trust Lands Personnel present:**

|                |                              |
|----------------|------------------------------|
| Jodi Smith     | Commissioner                 |
| Catelin Newell | Administrative Staff Officer |

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Kristie McCusker  
Adam Otteson  
David Shipman

Paralegal  
Revenue Compliance  
Minerals Division Director via Microsoft Teams

**Guests in Attendance:**

Leslie Bakken Oliver  
Dave Garner  
Charles Carvell  
Jen Verleger

Governor's Legal Counsel  
Office of the Attorney General  
Office of the Attorney General (Continental Interpleader only)  
Office of the Attorney General

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The executive session adjourned at 11:53 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 Repayment of Royalties, Whitetail Wave, EEE Minerals, and Continental Interpleader.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:55 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands