

**Minutes of the Meeting of the  
Board of University and School Lands  
February 23, 2023**

The February 23, 2023, meeting of the Board of University and School Lands was called to order at 9:06 AM by Chairman Doug Burgum.

**Members Present:**

Doug Burgum	Governor
Michael Howe	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (Via Teams)

**Department of Trust Lands Personnel Present:**

Joseph Heringer	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer
James Wald	Legal Council
Frank Mihail	Chief Investment Officer
Chris Suelzle	Minerals Division Director
Elvedina Papalichev	Paralegal
Adam Otteson	Revenue Compliance Division Director
Peggy Gudvangen	Finance Division Director
Garret Hecker	Surface Range Soils Management Specialist
Emily Bosch	Unclaimed Property
Lynn Spencer	Minerals Title Specialist
Maria Garcia	Finance Division
Scott Giere	Revenue Compliance
Susan Dollinger	Unclaimed Property
Matthew Reile	IT
Kayla Spangelo	Right of Way Specialist

**Guests in Attendance:**

Ryan Norrell	Office of the Governor
Zach Greenberg	Office of the Governor
John Reiten	Office of the Governor
Dave Garner	Office of the Attorney General
Josh Kevan	RVK
Ron Ness	ND Petroleum Council
Macey Wallace	
C. Rajala	
Gary Hagen	

**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 January 26, 2023, meeting was made by Treasurer Beadle and the motion was seconded by Attorney General Wrigley and the motion carried unanimously on a voice vote.

## LITIGATION

### Litigation Update

- Wilkinson (OHWM title dispute / takings claim) – ND Supreme Court issued November 10<sup>th</sup> opinion in our favor affirming trial court’s dismissal of all Plaintiff’s claims (conversion, conspiracy, physical taking, regulatory taking, escrow taking, unjust enrichment, costs & attorney fees from violation of constitutional rights); received notice February 8th that Plaintiffs have petitioned United States Supreme Court for certiorari on 5th Amendment takings grounds
- Newfield (royalty deductions) – ND Supreme Court reversed and remanded in our favor for a second time in September 2022; remand briefs were filed by both parties in December 2022; trial court issued February 22, 2023, order awarding Land Board \$8.3 million in damages, interest, and penalties; Newfield/Ovintiv has 60 days to appeal
- MHA (Missouri riverbed ownership) – Appealed D.C. Federal District Court denial of our motion to intervene; D.C. Circuit Court of Appeals briefing is complete and oral arguments were held on February 1st; awaiting court decision
- EEE (OHWM title dispute / takings claim) – ND Federal District Court issued order May 31, 2022, granting Board’s motion to dismiss on all counts: federal preemption, sovereign immunity, takings; Plaintiffs appealed to 8<sup>th</sup> Circuit; briefing complete and oral arguments scheduled for March 16<sup>th</sup> in St. Paul
- Leland/Whiting (OHWM river island ownership) – Watford City trial September 12-16, 2022; currently in post-trial briefing stage
- Continental Interpleader (OHWM fed/state dispute) – briefing complete for “Acquired Federal Lands” issue; awaiting ND Federal District Court decision
- Whitetail Wave (OHWM title dispute / takings claim) – ND Supreme Court issued opinion on September 29<sup>th</sup> dismissing appeal and sending back to trial court for further quiet title actions on at issue parcels; district court signed stipulated order and judgment on remaining claims February 1st; appeal period expires April 3rd; if there is a renewed appeal, it is unclear whether the SC would require new briefing/arguments since issues would be exactly the same

### 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 consultations regarding:**

- **William S. Wilkinson, et. al v. Board of University & School Lands – Case No. 53-2012-CV-0038**

<b>Action Record</b>	<b>Motion</b>	<b>Second</b>	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>
Secretary Howe			X		
Superintendent Baesler			X		
Treasurer Beadle		X	X		
Attorney General Wrigley	X		X		
Governor Burgum			X		

**The Board entered into executive session at 9:10 AM.**

### **EXECUTIVE SESSION**

**Members Present:**

Doug Burgum	Governor
Michael Howe	Secretary of State
Drew Wrigley	Attorney General
Kirstin Baesler	Superintendent of Public Instruction (via Teams)
Thomas Beadle	Treasurer

**Department of Trust Lands Personnel present:**

Joseph Heringer	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer (via Teams)
James Wald	Legal Council
Chris Suelzle	Minerals Division Director
Elvedina Papalichev	Paralegal

**Guests in Attendance:**

Ryan Norrell	Office of the Governor
Zach Greenberg	Office of the Governor
John Reiten	Office of the Governor
Jen Verleger	Office of the Attorney General (via Teams)
Dave Garner	Office of the Attorney General

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The executive session adjourned at 9:20 AM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session, the Board discussed the William S. Wilkinson et. al v. Board of University & School Lands Case and litigation with its attorneys. No formal action was taken.

## OPERATIONS

### Commissioner's Report

- One more gas royalties settlements achieved; continuing negotiations with now only **two** remaining
- New minerals system phased roll out continues to progress well
- Continuing to spend much time managing legislative session
- Attended February 10<sup>th</sup> State Investment Board Investment Committee meeting as voting member
- Attended February 17<sup>th</sup> full State Investment Board meeting as voting member

### HR Update

- Investment Operations Officer – position posted and receiving applications; hope to have filled by April 1st

### Legislative Update

**HB 1013** – Department budget bill; Commissioner has testified at four hearings on this before House Appropriations Committee, Government Operations Division; the Division has been good to work with, passing the bill to the full Appropriations Committee with 1) additional minerals position; 2) additional unclaimed property claims processor; and 3) \$4.9 million to complete our IT update projects

**HB 1400** – amends NDCC § 15-01-02 to replace “full control of the investments” to “investment authority over” and specifies Land Board may contract investment management to State Investment Board; amends NDCC § 21-10-06 to specify State Investment Board may manage funds of Common Schools Trust Fund under a written contract with the Land Board; House Industry, Business, and Labor Committee recommended DO NOT PASS 14-0; **failed in House by a vote of 80-13 on February 1st**

**HB 1175** – would require all leased surface acres to be open to public access; Department prefers current statute that allows collaborative approach based on specific circumstances of each tract; Commissioner can close tracts at discretion or tenants can request CLOSED or NOTIFY signs from Department; historically only 1% - 3% of all acreage has been closed and even then, only for specific date ranges, usually when cattle are expected to be grazing; health and safety of the public is also a concern for tracts that have oil wells, pipelines, or other industrial operations on them;

[amended to “shall consider” legislative management study and passed House by a vote of 89-2 on February 14th](#)

**HB 1360** – Department filed bill to amend Unclaimed Property statutes: 1) increase holder record retention period to 10 years from date notified of an exam; 2) increase statute of limitations to enforce holder duties from five years after holder files report to seven; [passed House by a vote of 93-0 on January 31<sup>st</sup>](#)

**SB 2049** – Department filed bill to clarify/clean-up surface management statutes regarding notifying county treasurers of surface auctions, timber harvesting on trust lands, granting authority for organized events on trust lands, and the permitting of beehives on trust lands; [passed Senate by a vote of 45-1 on January 12<sup>th</sup>](#)

**HB 1185** – created grant program from the Coal Development Trust Fund for school construction projects affected by “unanticipated construction inflation”; Department testified against at January 17<sup>th</sup> House Education Committee hearing due to its unconstitutionality; the Coal Development Trust Fund is established in Sec. 21, Art. X of the North Dakota Constitution which only provides for loans from the fund, not grants; allowing grants would also alter the “permanent” nature of the fund as provided in Art. X; Committee amended to remove grant language and instead expanded the loan program for school construction projects with unanticipated inflation if bid after January 1, 2021 and before June 30, 2024; loans may be up to \$5 million per district at a rate not to exceed 1.50%; [passed House by a vote of 90-0 on February 10<sup>th</sup>](#)

## DIVISION REPORTS

## SURFACE

### SURFACE DIVISION



Encumbrances issued by Commissioner during January 2023: 10 Right of Way Agreements generating \$115,306 in income for the Trusts.

Photo Credit: Kayla Spangelo  
McKenzie County 149-98-16

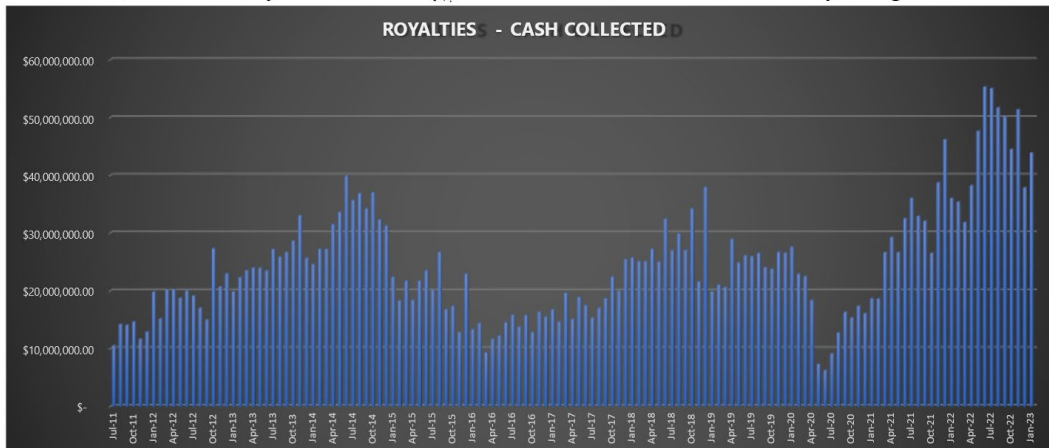


## MINERALS

### MINERALS DIVISION



As of January 2023, for fiscal year 2022-23 the Department has received **\$334,466,921** in royalties as compared to **\$248,496,594** last fiscal year at this time. 🌟 This calculates to a 35% increase in royalties generated.



## UNCLAIMED PROPERTY



For the month of January 2023, the Division paid 612 claims with \$1,711,890.36 returned to rightful owners/heirs. It received 28 holder reports with a dollar value of \$88,404.00.



## FINANCIALS

### Financial Statements Position Report (Unaudited) for period ended November 30, 2022

The following statements represent the unaudited financial position for the various trusts and funds managed by the Department of Trust Lands. The unaudited financial positions are two months delayed as a significant portion of the revenue for Commons Schools Trust, Strategic Investment and Improvements Fund, and Coal Development Trust includes gross production tax, oil extraction tax and coal severance tax distributions which are received two months after production date.

**The Financial Report (Unaudited) for period ending November 30, 2022, was presented to the Board for review and is available at the Department upon request.**

**Executive Estimate of Assets**

EXECUTIVE ESTIMATE OF ASSETS					
NORTH DAKOTA DEPARTMENT OF TRUST LANDS					
As of January 31, 2023					
	1/31/2023	MOM\$	MOM%	YOY\$	YOY%
	Value	12/31/2022	Change	1/31/2022	Change
	Value	Value		Value	
Cash	330,187,206	284,810,916		414,662,933	
Investments <sup>[1]</sup>	7,211,622,212	6,951,337,829		6,504,972,683	
Tax Receivables <sup>[2]</sup>	-	-		18,276,871	
Loans <sup>[3]</sup>	39,850,947	39,696,314		43,714,193	
Receivables <sup>[4]</sup>	6,403,458	7,168,417		7,447,083	
<b>Sub-Total Net Assets</b>	<b>\$7,588,063,823</b>	<b>\$7,283,013,475</b>	<b>4.19%</b>	<b>\$6,989,073,763</b>	<b>8.57%</b>
Mineral Rights <sup>[5]</sup>	2,813,480,347	2,813,480,347		2,813,480,347	
Surface Rights <sup>[6]</sup>	511,088,869	511,088,869		511,088,869	
Building Value <sup>[7]</sup>	1,015,196	1,015,196		278,609	
<b>Total Net Assets</b>	<b>\$10,913,648,235</b>	<b>\$10,608,597,887</b>	<b>2.88%</b>	<b>\$10,313,921,588</b>	<b>5.81%</b>

[1] Approximately 60% of the portfolio is publicly traded for which values are current to the as of date. The remaining 40% is private assets, the values of which are updated as the managers provide them, typically 30-60 days after the end of each quarter.

[2] Estimated value of production, extraction, and severance tax payments not yet received by the Department because they are not distributed until two months after production date.

[3] Various loan programs funded with trust assets.

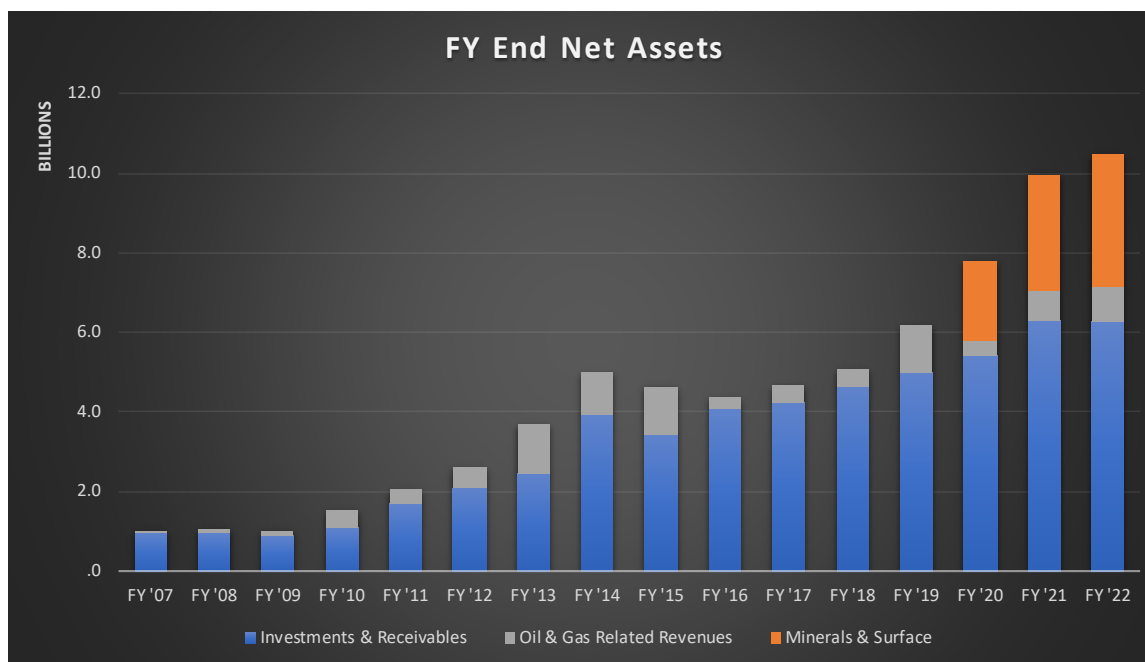
[4] Loans and investments interest accrued, but not yet paid.

[5] Valued annually via contract with Mineral Tracker. The last valuation is as of December 31, 2021.

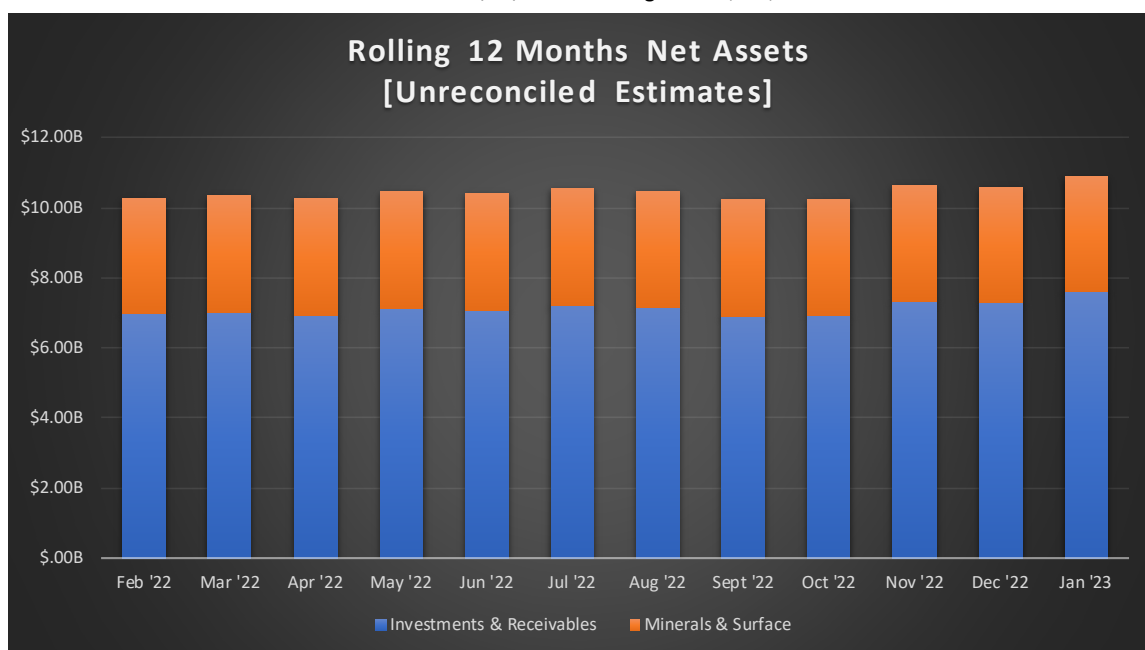
[6] Valued annually via the Department's fair market value policy/formulas. The last valuation is as of March 2022.

[7] Updated annually via broker price opinion. The last was completed as of Sept. 15, 2022.





- [1] FY End 2020 - included initial Mineral valuations as of 12/31/19 amounting to \$1,449,002,408 and surface fair market value as of 12/31/19 amounting to \$538,179,773.
- [2] FY End 2021 - included new Mineral valuations as of 12/31/20 amounting to \$2,391,439,503 and surface fair market value as of 12/31/20 amounting to \$523,938,730.
- [3] FY End 2022 - included most recent Mineral valuations as of 12/31/21 amounting to \$2,813,480,347 and surface fair market value as of 12/31/21 amounting to \$511,088,869.



- [1] Oct. 2021 to Nov. 2021 - included most recent Mineral valuations amounting to \$2,391,439,503 and surface fair market value of \$523,938,730.
- [2] Dec. 2021 to Jul. 2022 - included Mineral valuations amounting to \$2,813,480,347, surface fair market value of \$511,088,869.
- [3] Sep. 2022 - included \$1,015,149 building value appraised as of 9/15/22.

## INVESTMENTS

### Investment Updates

#### Pipeline

Balyasny Asset Management Atlas Enhanced Fund (multi-strat hedge fund) has been funded. Two Sigma Absolute Return Enhanced Fund (quant equity market neutral hedge fund) has been approved, pending legal review.

#### Portfolio Rebalancing Updates

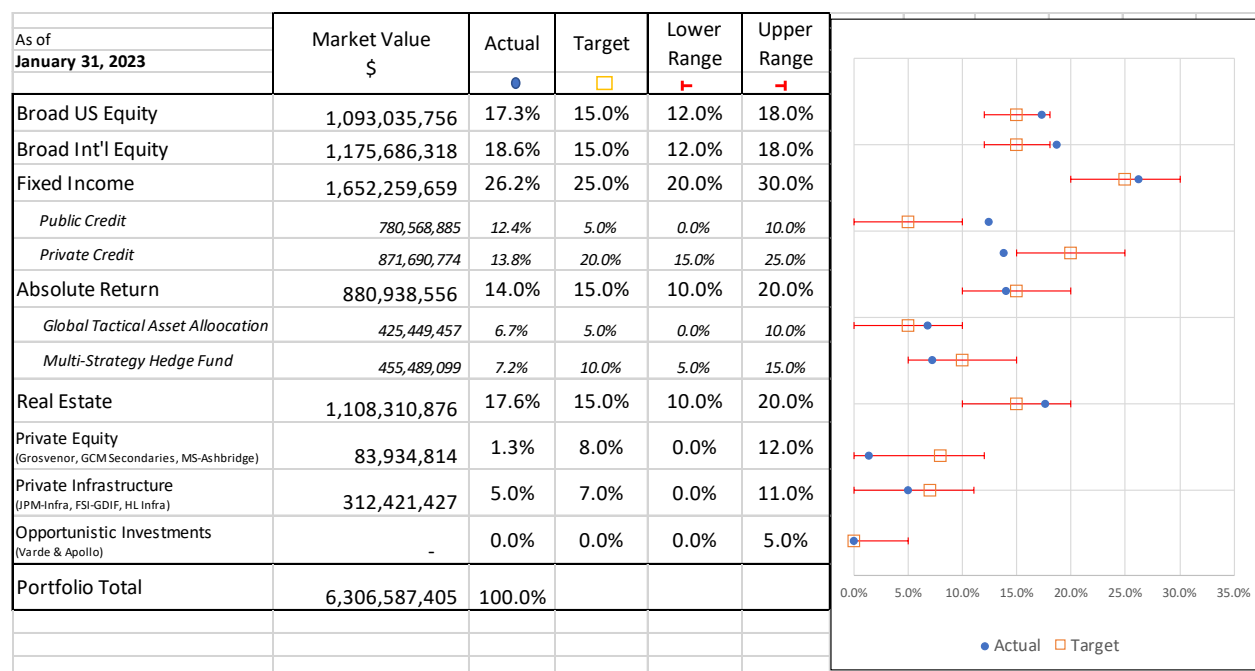
Funded commitments since the last Board meeting include: \$300M to Balyasny.

Unfunded commitments remaining total \$559.5M as follows:

1. Private Credit, \$172M
  - i. *ARES Pathfinder Fund, \$39M*
  - ii. *Owl Rock Diversified Lending, \$52.5M*
  - iii. *Angelo Gordon Direct Lending (AGDL) IV, \$10M*
  - iv. *AGDL-BUSL Fund, \$50M*
  - v. *Varde Dislocation Fund, \$20.5M*
  
2. Private Equity, \$226.8M
  - i. *Grosvenor Capital Management (GCM) Private Equity, \$100.9M*
  - ii. *GCM Secondary Opportunities Fund, \$114.4M*
  - iii. *Morgan Stanley Ashbridge TS Fund II, \$11.5M*
  
3. Private Infrastructure, \$10.7M
  - i. *Hamilton Lane Infrastructure Opportunities Fund, \$10.7M*
  
4. Absolute Return, \$150M
  - i. *Millennium USA LP (Hedge Fund), \$150M*

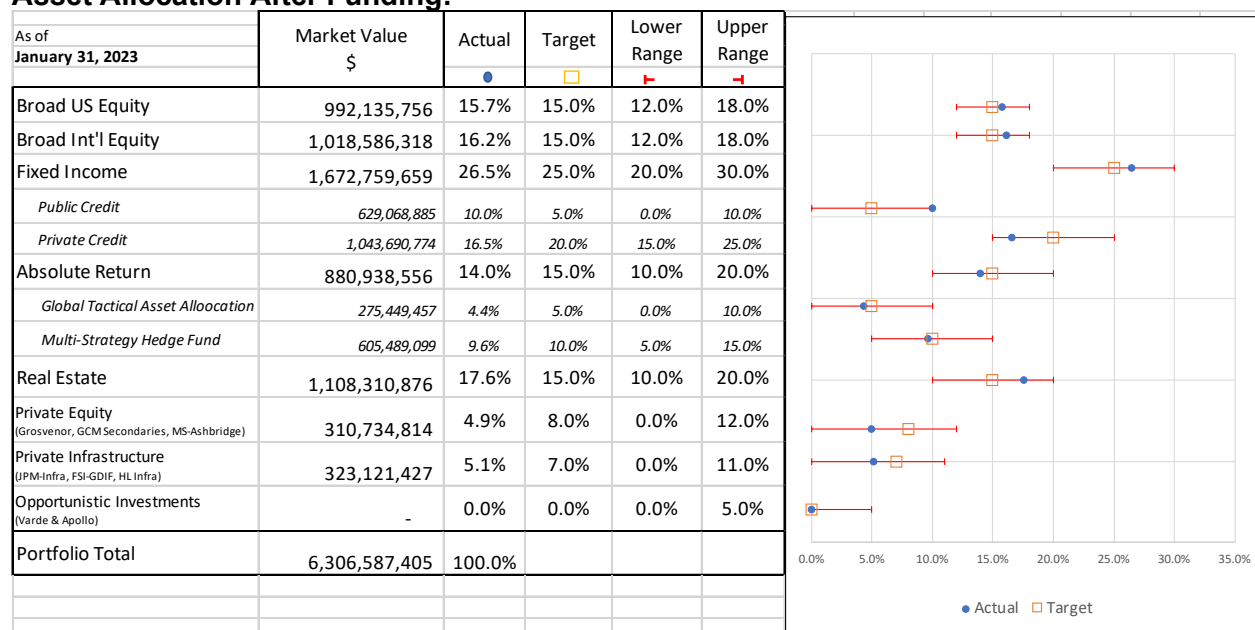
## Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of January 31, 2023 (unaudited).



## Hypothetical Funding of All Unfunded Commitments:

### Asset Allocation After Funding:



### Assumptions:

- i. **No other new cash is expected to fund calls.**
- ii. **No redemption proceeds or distributions were received.**
- iii. **All capital calls came in at the same time.**

**4th Quarter 2022 Performance Report**

**4th Quarter 2022 Performance Report was presented to the Board for review and is available at the Department upon request.**

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:01 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Joseph Heringer, Secretary  
Board of University and School Lands