

**Minutes of the Meeting of the
Board of University and School Lands
November 30, 2023**

The October 26, 2023, meeting of the Board of University and School Lands was called to order at 9:12 AM by Chairman Doug Burgum and roll call was taken.

Members Present:

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

Department of Trust Lands Personnel Present:

Joseph Heringer	Commissioner
Catelin Newell	Administrative Staff Officer
Kate Schirado	Executive Assistant
Frank Mihail	Chief Investment Officer
Teresa Hettinger	Investments Officer
Maria Garcia	Finance
Susan Dollinger	Unclaimed Property Director
Peggy Gudvangen	Finance Director
Adam Otteson	Revenue Compliance Division Director
Lynn Spencer	Minerals Title Specialist
Chris Suelzle	Minerals Division Director
James Wald	Legal Council
Matthew Reile	IT
Pam Reile	Revenue Compliance
Rick Owings	Administrative Staff Officer
Garret Hecker	Surface Range Soils Management Specialist
Anning Tang	Investments
Jacob Lardy	Land Management Specialist
Emily Bosch	Unclaimed Property
Kisha Mitchell	Unclaimed Property
Elvedina Papalichev	Paralegal
Jessica Sanchez	Minerals Management Officer
Vicki Siegel	Finance
Joseph Stegmiller	Surface Division Director

Guests in Attendance:

Ryan Norrell	Office of the Governor
John Reiten	Office of the Governor
Jared Mack	Eide Bailly
Jennifer Sandberg	RVK
Kirby Frances	RVK
Colin Vick	Blue Owl
Chris Crampton	Blue Owl
Geoff Simon	Western Dakota Energy Association
Joey	Bismarck Tribune
Kevin Balaod	WithIntelligence (Journalist)
Joseph Panther	
Eva Saad	
C. Rajala	

(11/30/23)

APPROVAL OF MINUTES

A motion to approve the minutes of the October 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.

OPERATIONS


Eide Bailly Department Financial Audit Report

Eide Bailly presented a summary of the Department financial audit to the Board. The full audit report is available at the Department upon request.


Financial Highlights

AUDITED FINANCIAL HIGHLIGHTS



Common Schools Trust Fund balance increased \$560 million (+10%) from FY22 \$5.66 billion to FY23 \$6.22 billion



Combined other permanent funds balance increased \$29 million (+9%) from FY22 \$316 million to FY23 \$345 million




Annual royalty revenues increased \$25 million (+5%) from FY22 \$483 million to a record breaking FY23 \$508 million




AUDITED FINANCIAL HIGHLIGHTS



Biennial investment income increased \$85 million (+31%) from \$272 million FY19-21 to \$357 million FY21-23



Biennial rental income increased \$2 million (+7%) from \$28 million FY19-21 to \$30 million FY21-23



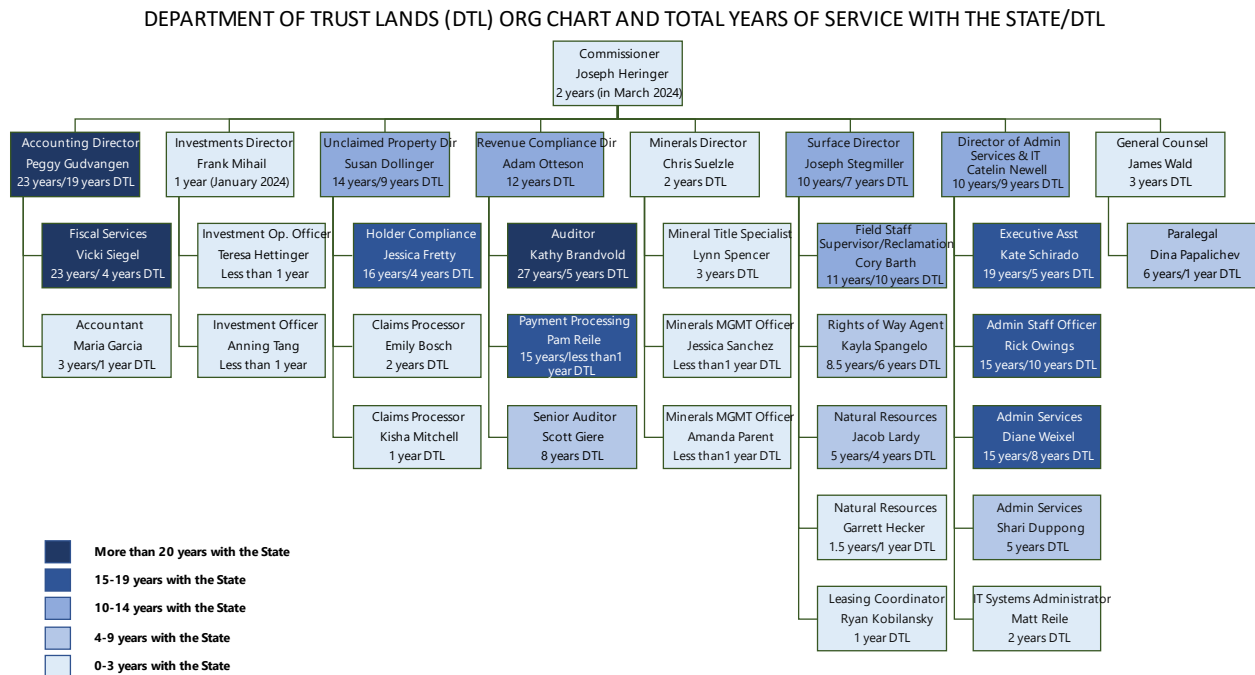
Common Schools Trust Fund K-12 distributions increased \$79 million (19%) from FY21-23 \$421 million to FY23-25 \$500 million



Commissioner Performance & Compensation Committee

Treasurer Beadle provided a verbal update on the Committee’s work and timeline.

Department of Trust Lands Organizational Chart and Years of Service



DIVISION REPORTS

SURFACE

SURFACE DIVISION – RIGHTS OF WAY

Encumbrances issued by Commissioner during October 2023:
12 Right of Way Agreements generating \$270,421 in income for the Trusts.

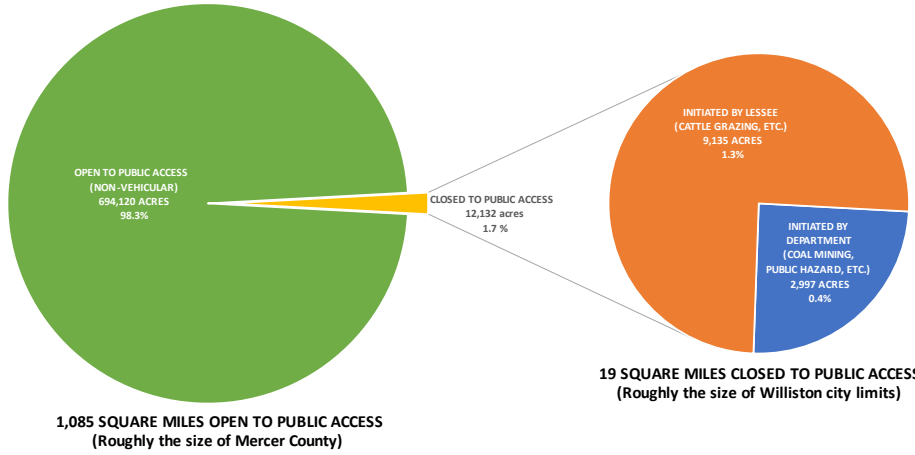
Beaver Dam on Trust Lands in McKenzie County 146-100-16 (October 2023) Photo Credit: Jacob Lardy



SURFACE DIVISION – PUBLIC ACCESS

NORTH Dakota Trust Lands
Be Legendary.™

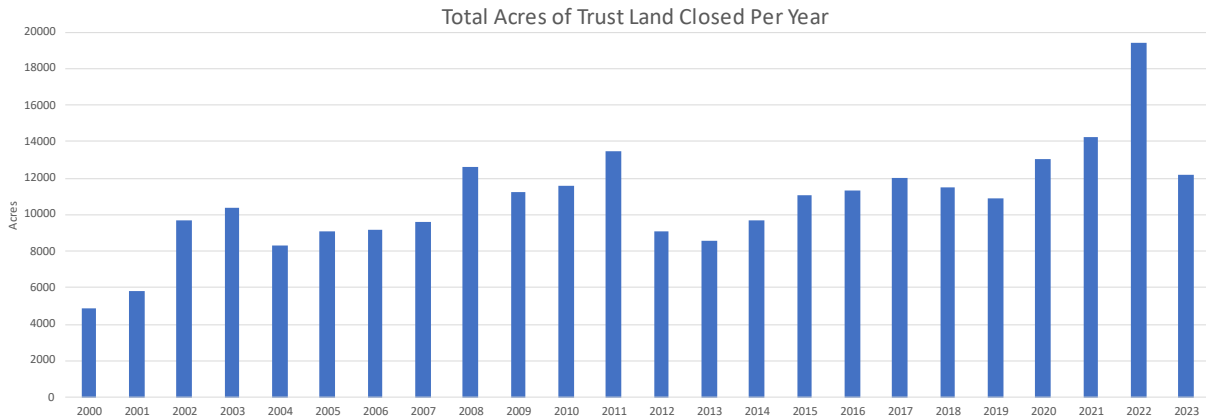
98% OF TRUST LANDS ARE OPEN TO PUBLIC ACCESS



SURFACE DIVISION – PUBLIC ACCESS

NORTH Dakota Trust Lands
Be Legendary.™

37% YOY DECREASE IN CLOSED ACRES!
FROM 19,372 ACRES TO 12,132 ACRES



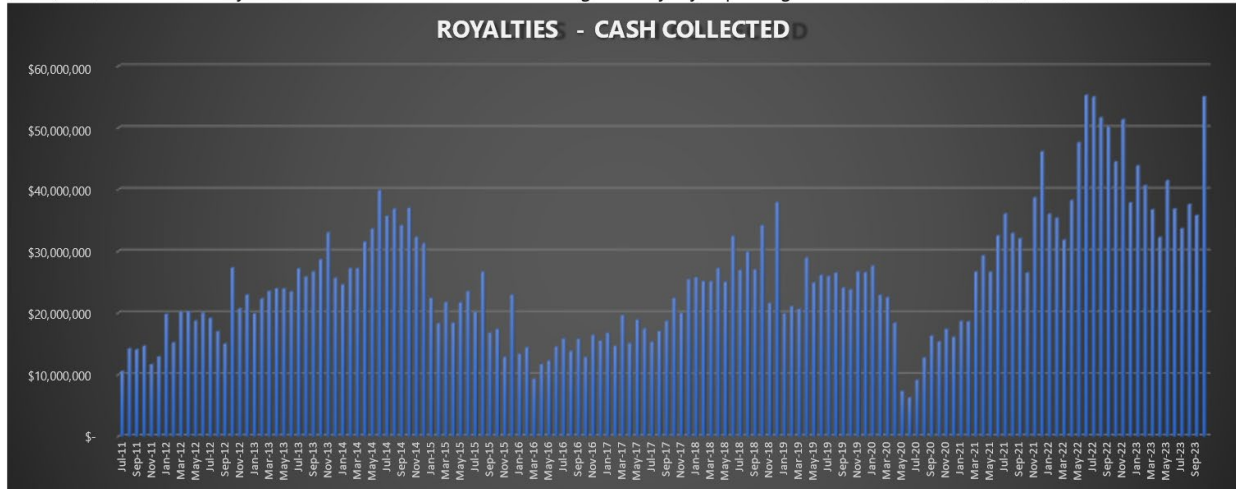
*DTL has been working with Outdoor Interest Groups to understand their concerns about public access on trust lands.

MINERALS

MINERALS DIVISION
FISCAL YTD O/G ROYALTIES

NORTH Dakota | Trust Lands
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As of October 31, 2023*, for fiscal year 2023-24 the Department has received **\$162,135,639** in royalties as compared to **\$201,371,096** last fiscal year at this time. This is the second highest royalty reporting month on record at **\$55,062,056!**

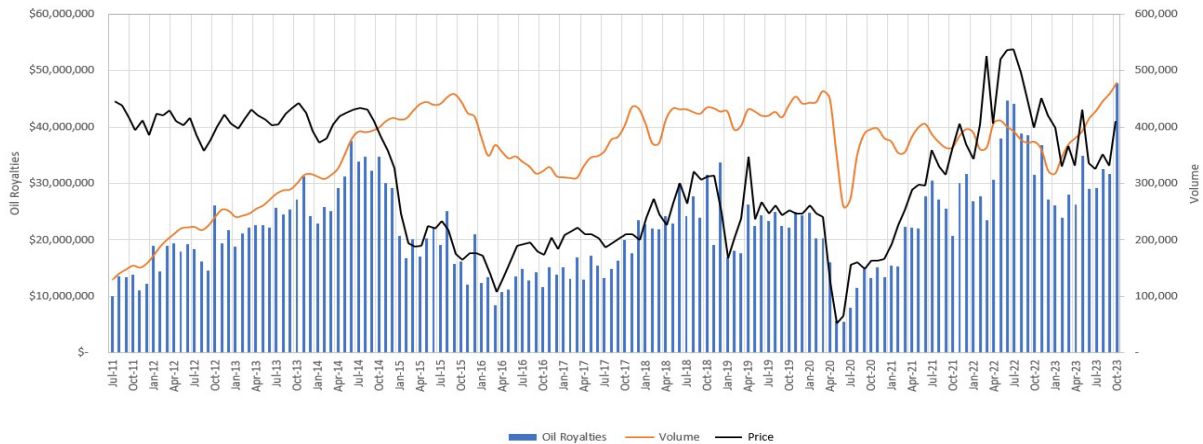


*October royalty revenue is from August gas production and September oil production

PRICE MAIN DRIVER OF O/G ROYALTIES

NORTH Dakota | Trust Lands
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In the early years production growth was the driver of the Department's royalty increases. Now that our net monthly production has been more stable, averaging around 450,000 barrels per month this biennium, the price of oil & gas is the main driver of monthly royalty variations.



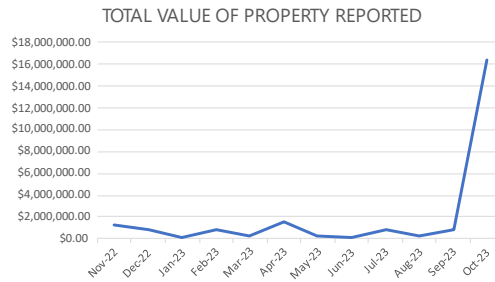
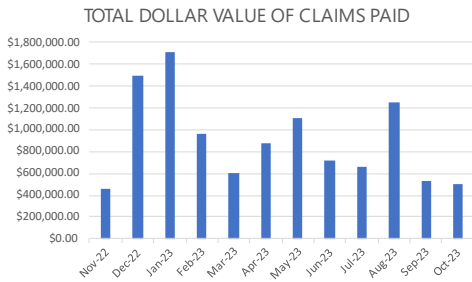
UNCLAIMED PROPERTY

UNCLAIMED PROPERTY DIVISION

<https://unclaimedproperty.nd.gov>

Be Legendary.™

For the month of October 2023, the Division paid 515 claims with \$495,259.69 returned to rightful owners/heirs. It also received 2051 holder reports with a dollar value of \$16,455,518.57*.



***October 2023 is a record year for amount received in one month. (Previous record was October 2022 with \$14,509,987 received)**

FINANCIALS

Financial Statements Position Report (Unaudited) for period ended September 30, 2023

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 September 30, 2023, was presented to the Board for review and is available at the Department upon request.

Executive Estimate of Board Assets

EXECUTIVE ESTIMATE OF ASSETS
NORTH DAKOTA DEPARTMENT OF TRUST LANDS
As of October 31, 2023

	10/31/2023 Value	MOM\$ 9/30/2023 Value	MOM% Change	YOY\$ 10/31/2022 Value	YOY% Change
Cash	205,468,214	315,029,685		479,100,283	
Investments ^[1]	7,219,172,566	7,469,299,644		6,382,912,473	
Tax Receivables ^[2]	-	-		-	
Loans ^[3]	37,814,668	37,852,402		40,486,644	
Receivables ^[4]	9,207,142	12,737,419		8,885,506	
Sub-Total Net Assets	\$7,471,662,591	7,834,919,151	-4.64%	\$6,911,384,906	8.11%
Mineral Rights ^[5]	2,568,614,367	2,568,614,367		2,813,480,347	
Surface Rights ^[6]	518,077,274	518,077,274		511,088,869	
Building Value ^[7]	1,015,196	1,015,196		1,015,196	
Total Net Assets	\$10,559,369,428	\$10,922,625,988	-3.33%	\$10,236,969,318	3.15%

[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.

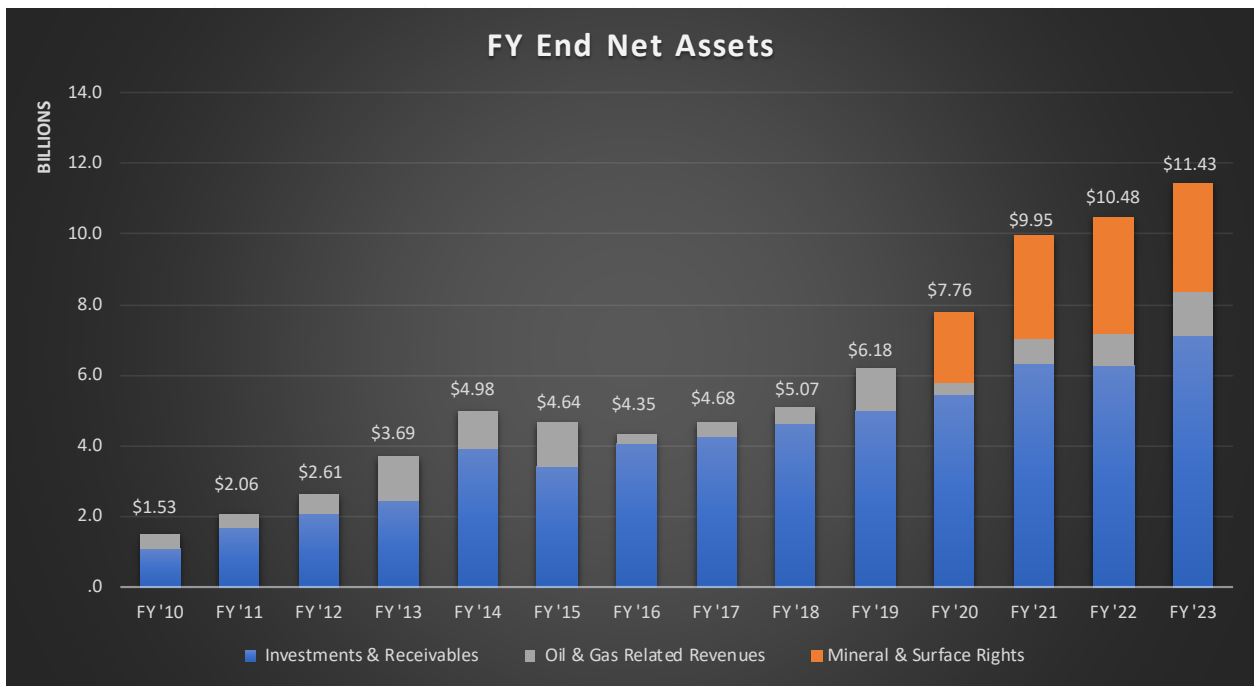
[3] Various loan programs funded with trust assets.

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

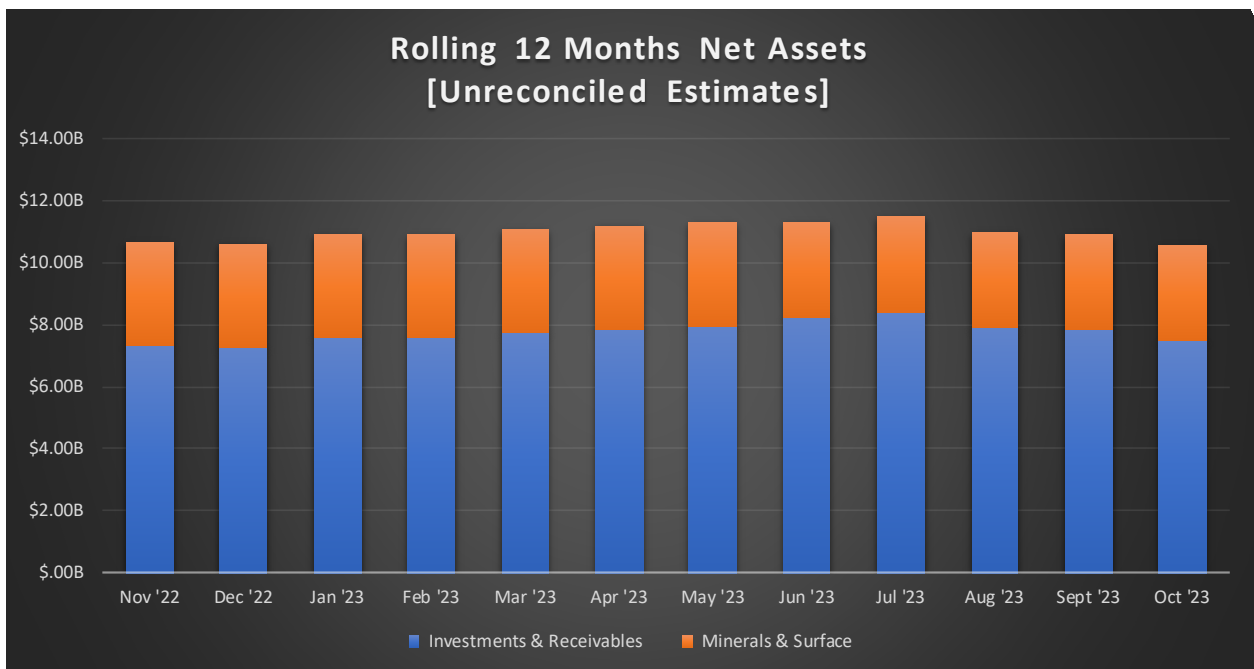
[5] Valued annually via contract with Mineral Tracker. Valuation as of June 30, 2023.

[6] Valued annually via Department fair market value policy. Valuation as of March 2023, based off agricultural values.

[7] Updated every other year via broker price opinion. Listed valuation is as of Sept. 15, 2022.



[1] FY 2023 includes mineral rights value of \$2,568,614,367, appraised building value of \$1,015,196 and surface rights value of \$518,077,274



- [1] Jun 2023 includes mineral rights value of \$2,568,614,367
- [2] Sep 2022 includes appraised building value of \$1,015,196
- [3] Mar 2023 includes surface rights value of \$518,077,274

INVESTMENTS

Investment Updates

Q4-Q1 Pipeline

Private Credit: diversified private credit recommendation

Public Credit: core fixed income recommendation

Private Equity: venture capital recommendation

Capital Calls Funded and Pending:

2023 Q1 \$15.9M

2023 Q2 \$19.1M

2023 Q3 \$24.0M

2023 Q4 \$9.6M

2023 YTD \$68.6M

Total Unfunded Commitments Remaining \$460.5M (as of October 31, 2023):

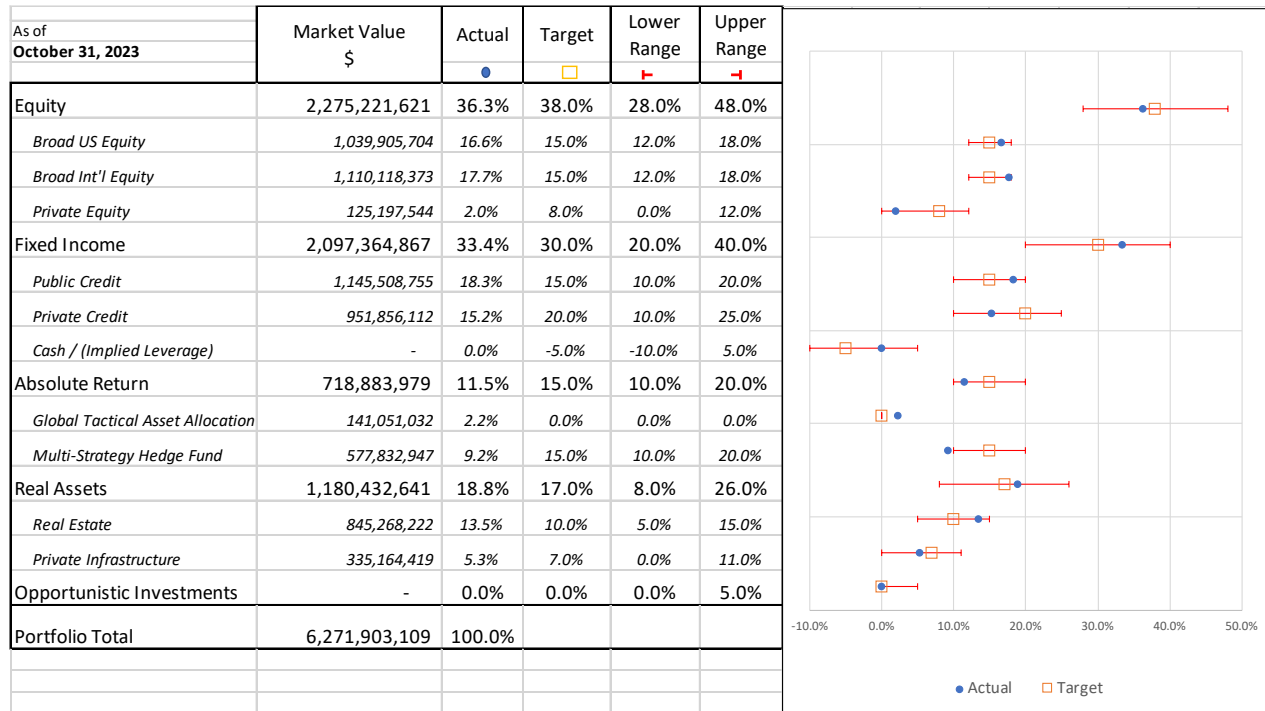
1. Private Credit, \$71.8M
 - i. Ares Pathfinder Fund, \$26.8M
 - ii. Owl Rock Diversified Lending, \$45M

2. Private Equity, \$232.7M
 - i. GCM Grosvenor Private Equity, \$90M
 - ii. GCM Grosvenor Secondary Opportunities Fund III, \$98M
 - iii. Morgan Stanley Ashbridge TS Fund II, \$11.5M
 - iv. Khosla Ventures, \$33.2M

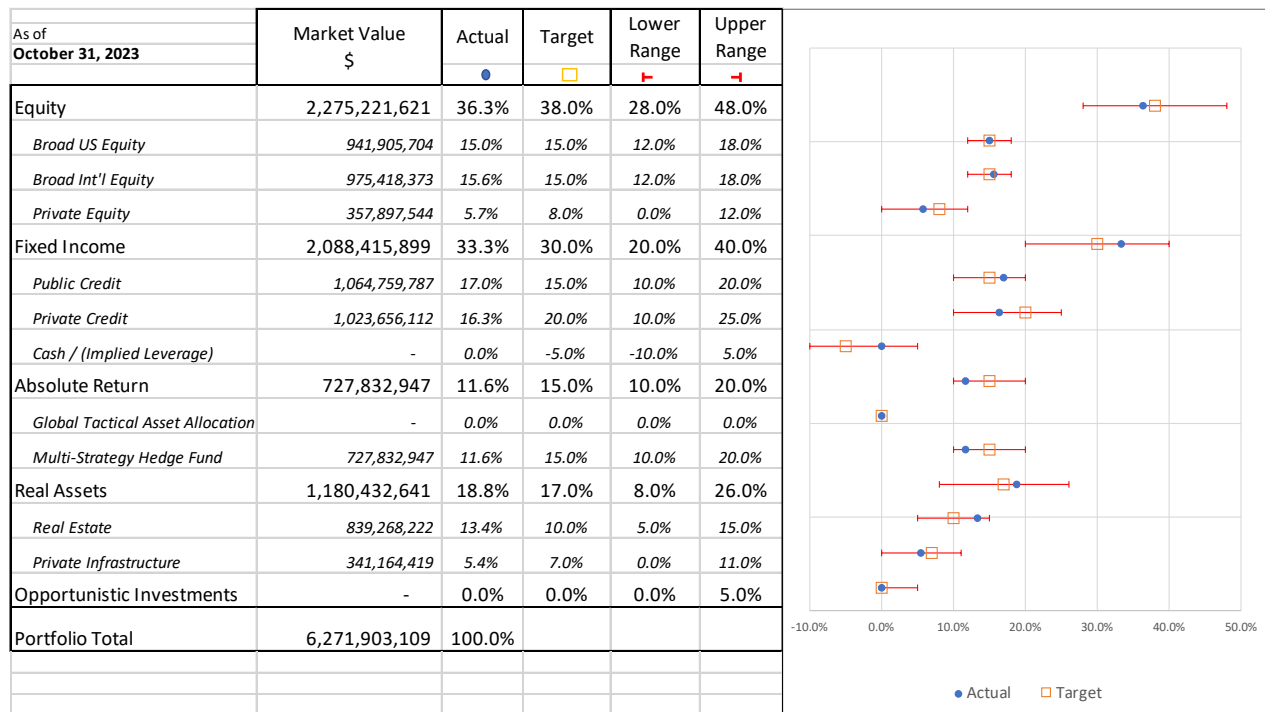
3. Real Assets, \$6M
 - i. Hamilton Lane Infrastructure Opportunities Fund, \$6M

4. Absolute Return, \$150M
 - i. Millennium USA, \$150M

Current Asset Allocation (unaudited)



Hypothetical Asset Allocation (after funding all commitments)



Assumptions: No other new cash is expected to fund calls. No redemption proceeds or distributions were received. All capital calls came in at the same time.

Private Equity – GP-led Secondaries

The current 5.7% private equity commitment represents a \$140M underweight to the 8% long term strategic asset allocation target. The goal of this proposal is to increase the private equity commitment, consistent with strategic asset allocation targets.

Staff recommends allocating to GP-led secondaries within the private equity portfolio. Single asset continuation vehicles are a relatively nascent and growing subcategory of private equity where funds have reached the wind down phase and sponsors seek to extend ownership of certain assets. Sponsors have worked with these businesses for years and believe a longer time horizon can benefit the value creation process through add-on acquisitions and potential tailwinds to effectuate a timely exit. To align incentives, sponsors will roll their earned compensation (carry) into the deals. Continuation fund managers can cherry-pick trophy assets – high-performing, de-risked businesses with shorter runways to liquidity – from sponsor portfolios and offer ownership extension in exchange for a discounted entry NAV. The industry is undercapitalized and therefore currently in a buyer's market. Exits are typically expected within 3-5 years. A shorter time horizon leads to higher expected IRRs but lower expected multiples than traditional primary fund investing.

Staff and RVK recommend a commitment to Blue Owl Strategic Equity (BOSE). Blue Owl is a publicly traded (NYSE: OWL) global alternative asset manager with over 650 employees and \$157B in assets across three divisions - \$79.5B in direct lending (Owl Rock), \$51.4 in GP capital solutions (Dyal Capital) and \$25.9B in real estate (Oak Street). The GP capital solutions (70+ partnerships) and direct lending (650+ relationships) businesses create synergies for BOSE deal sourcing and underwriting.

BOSE is offering a portion of the management company economics for early investors. The fund seeks to make 12-15 single asset, GP-led continuation fund transactions, diversified across sectors and sponsor relationships. The fund will invest in developed markets (North America and Western Europe) with a 5-year investment period and 8-year fund life.

Motion: The Board approve a \$25-50M commitment to Blue Owl Strategic Equity, subject to standard legal review/documentation.

Attachment 1: RVK Executive Summary

Attachment 2: Blue Owl Presentation

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

RVK Executive Summary and Blue Owl Presentation were presented to the Board and are available at the Department upon request.

LITIGATION

Litigation Update

- **EEE Minerals, LLC v. State of North Dakota, the Board of University and School Lands**

(11/30/23)

- **Case Summary:** (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 8th Circuit; on August 30, 2023, the 8th Circuit three judge panel issued its opinion in our favor affirming the trial court's dismissal on all counts; on September 12, 2023, Plaintiffs requested a rehearing in front of the full 8th Circuit Court which was denied on October 27, 2023; Plaintiffs have 90 days to petition the U.S. Supreme Court for certiorari.

Commencement: December 2020

ND Assigned Attorney(s): Philip Axt, ND Solicitor General

Counsel For EEE: Joshua Swanson (Vogel Law Firm, Fargo ND)

Court: United States District Court, District of North Dakota

Judge: Magistrate Judge Clare R. Hochhalter

Win = Takings claim dismissed resulting in no liability to state

Lose = Plaintiff's case can proceed resulting in trial to determine validity of claims

- **Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands**

- **Case Summary:** OHWM title dispute / takings claim – On August 22, 2023, Whitetail Wave appealed the trial court's rulings for the state (takings, Wenck Line, quiet title) and the award of attorney fees to co-defendant XTO Energy. Briefings and oral arguments before the North Dakota Supreme Court to follow.

Commencement: June 2015

ND Assigned Attorney(s): David Garner, Assistant Attorney General

Counsel for Whitetail Wave: Christopher Sweeney (Moulton Bellingham PC, Billings, MT)
Joshua Swanson (Vogel Law Firm, Fargo, ND)

Counsel for XTO: Lawrence Bender (Fredrikson & Byron P.A., Bismarck, ND)

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = Takings claim dismissed resulting in no liability to state

Lose = Plaintiff's case can proceed resulting in trial to determine validity of claims

- **Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands**

- **Case Summary:** Continental Oil Royalty Deductions – Now that the Newfield gas royalty deductions case has been resolved, this has come off stay and the parties

have filed a joint scheduling order laying out the discovery and preparation timeline for trial that is currently scheduled for August 4-8, 2025, in McKenzie County.

Commencement: December 2017

ND Assigned Attorney(s): David Garner, Assistant Attorney General

Counsel for
Continental Resources, Inc.: Jamie Bryan, (K&L Gates, Fort Worth, TX)
Mark Barron (Baker & Hostetler, LLP, Denver, CO)

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = Clarity that Land Board oil & gas lease does not allow for deductions from oil royalties resulting in tens of millions of dollars in deductions being repaid to the state.

Lose = Deductions from oil royalties are allowed under the lease, requiring additional administrative rules/case law to clarify extent

- **Mandan, Hidatsa, and Arikara Nation v. United States Department of the Interior**

- **Case Summary:** Missouri riverbed ownership – On July 7, 2023, the United States filed a motion to amend its pleading to add a quiet title crossclaim against North Dakota as a new Intervenor in the case. We filed a motion requesting a change of venue to North Dakota that the Court is now considering.

Commencement: July 2020

ND Assigned Attorneys: James Auslander, Kathryn Tipple, Peter Schaumberg, and Nessa Coppinger (Beveridge & Diamond, Washington, D.C.)
Charles Carvell, Special Assistant Attorney General (Pearce Durick PLLC, Bismarck ND)
Matthew Sagsveen, AG Dir. of Natural Resources and Native American Affairs

Counsel for MHA: Steven D. Gordon (Holland & Knight's Washington, D.C.)
Philip Merle Baker-Shenk (Holland & Knight's Washington, D.C.)
Timothy Purdon (Robins Kaplan, Bismarck, ND)

Timothy Billion (Robins Kaplan, Minneapolis, MN)

Counsel for United States Department of Interior: Reuben S. Schiffman (Washington, D.C.)

Court: United States District Court for the District of Columbia

Judge: Honorable Amy Berman Jackson

Win = North Dakota owns historical Missouri Riverbed (mineral rights) through Fort Berthold Indian Reservation resulting in release to state of tens of millions of dollars in withheld oil & gas royalties.

Lose = U.S. owns the riverbed in trust for MHA Nation so royalties are released to the tribe

- **Continental Resources, Inc. v. North Dakota Board of University and School Lands and the United States of America (Interpleader)**

- **Case Summary:** OHWM fed/state dispute – ND Federal District Court issued opinion March 21, 2023, granting Board’s motion for partial summary judgment on “Acquired Federal Lands” issue; this means the Wenck survey controls for establishing the historical ordinary high-water mark of the Missouri River in areas where the uplands were acquired by the federal government, and not original “public domain lands”; federal government appealed and we filed cross appeal; final brief is due January 12, 2024, with oral arguments to be scheduled thereafter.

Commencement:	December 2016
ND Assigned Attorneys: (Pearce)	Charles Carvell, Special Assistant Attorney General Durick PLLC, Bismarck ND) Philip Axt, ND Solicitor General
Counsel for XTO:	Lawrence Bender (Fredrikson & Byron P.A., Bismarck, ND) Spencer Ptacek (Fredrikson & Byron P.A., Bismarck, ND)
Counsel for USA:	Shaun Pettigrew (Environment and Natural Resources Division (ENRD) of the U.S. Department of Justice
Court:	United States District Court, District of North Dakota
Judge:	Magistrate Judge Clare R. Hochhalter

Win = State survey controls where U.S. lands about the Wenck line resulting in retention of 2,500 mineral acres

Lose = Federal surveys control resulting in loss of approximately 2,500 mineral acres

- **State of North Dakota, ex. rel. v Virginia Leland, et.al.**

- **Case Summary:** OHWM river island ownership, trial was held on September 12-16, 2022; post-trial briefing scheduled for completion in November 2023.

Commencement:	January 2016
ND Assigned Attorneys:	Matthew Sagsveen, AG Dir. of Natural Resources and Native American Affairs James Wald, DTL General Counsel
Counsel for Whiting Oil and Gas Corp:	Paul Forster (Crowley Fleck, PLLP, Bismarck, ND) Shane Hanson (Crowley Fleck, PLLP, Bismarck, ND)

Counsel for Defendant(s): Kevin Chapman (Chapman Law Firm, P.C., Williston, ND)
Ariston Johnson (Johnson & Sundeen, Watford City, ND)
and Others

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = State owns at issue Yellowstone River islands and related mineral interests

Lose = Plaintiffs owns at issue Yellowstone River islands and related mineral interests

A D J O U R N

There being no further business, the meeting was adjourned at 11:03 AM.

Doug Burgum, Chairman
Board of University and School Lands

Joseph Heringer, Secretary
Board of University and School Lands