

# **BOARD OF UNIVERSITY AND SCHOOL LANDS**

**Governor's Conference Room  
Ground Floor, State Capitol  
October 28, 2019 at 10:00 AM**

## **AGENDA**

➤ = Board Action Requested

1. **Approval of Meeting Minutes – Jodi Smith**  
Consideration of Approval of Land Board Meeting Minutes by voice vote.  
➤ A. September 26, 2019 – pg. 1
  
2. **Reports – Jodi Smith**  
A. Report of Encumbrances Issued by the Commissioner- pg. 17  
B. Energy Infrastructure and Impact Office Report- pg. 24  
C. Unclaimed Property Report- pg. 26  
D. Investment Update- pg. 27
  
3. **Operations – Jodi Smith**  
A. Acreage Adjustment Survey- pg. 29  
B. Surface Land Management, Investments and Minerals Management Administrative Rules- pg. 31  
C. Financial Management and Accounting System Information Technology Project Status Update- pg. 32  
D. Government Accounting Standards Board Statement- pg. 33  
E. Disaster Reponse Action Items - To Be Distributed at Board Meeting
  
4. **Litigation – Jodi Smith**  
A. Vitesse et al Case No. 27-2019-CV-00266- pg. 37  
B. Continental Resources, Inc. Civ No. 27-2017-CV-00661- pg. 38  
C. Continental Resources, Inc. Case No. 1:17-CV-00014- pg. 40  
5. D. William S. Wilkinson et al. Case No. 53-2012-CV-00038- pg. 42  
6. E. Newfield Exploration Company et al Civ. No. 27-2018-CV-00143- pg. 45  
7. F. Paul Sorum et al. Civ. No. 09-2018-CV-00089- pg. 47
  
8. **Executive session under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2 for attorney consultation with the Board's attorneys to discuss current and pending litigation:**

**Next Meeting Date – November 26, 2019**

**Minutes of the Meeting of the  
Board of University and School Lands  
September 26, 2019**

The September 26, 2019 meeting of the Board of University and School Lands was called to order at 9:05 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
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**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Catelin Newell	Office Manager
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Division Manager
Allie Nagel	Minerals Division Land Professional
Rick Owings	Grants Administrator
Michael Humann	Surface Division Manager
Joseph Stegmiller	Natural Resources Professional
Susan Dollinger	Unclaimed Property Administrator

**Guests in Attendance:**

Dave Garner	Attorney General’s Office
Matt Sagsveen	Attorney General’s Office
Leslie Bakken Oliver	Governor’s Legal Counsel
Reice Haase	Governor’s Office
Geoff Simon	Western Dakota Energy Association
Greg Petrick	BNI Coal

**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 August 29, 2019 meeting was made by Attorney General Wayne Stenehjem and seconded by Treasurer Kelly Schmidt and the motion carried unanimously on a voice vote.

**O P E R A T I O N 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 of Trust Lands (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.

Acreage Adjustment Township Survey Status attachments were provided to the Board and are available upon request.

### **Oil and Gas Mineral Estate Assessment**

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

The Department has been tasked with 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. The Department will sign an executed contract after January 1, 2020. Once the data is compiled and completed, the findings will be presented to the Board.

### **General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules**

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the 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 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 General Administration and rules for Surface Land Management, Investments, 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 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department’s discussion and proposed revisions to the rules, has been completed and is attached.

The next step in the process is for the Board to approve the amended rules which will then be submitted for review by the Attorney General’s Office. Pending review by the Attorney General’s Office, the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2019, to become effective January 1, 2021.

**Motion: The Board approved the adoption of the attached redline version as amended of the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules and authorize the Commissioner to proceed with (09/26/19)**

**finalizing and submitting the proposed rules and required information to the Attorney General for an opinion as to their legality.**

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.

## S U R F A C E

### County Rents and Prices Survey

In order to provide a uniform and equitable leasing system for trust lands, the Fair Market Value Minimum Rent policy of the Board of University and School Lands was developed and uses a market value approach to establish a minimum opening bid at public auction. A similar method is used to determine the estimated land use asset values of trust lands.

The basis for these methods is a survey of cash rental rates and land prices in North Dakota. A County Rents and Prices survey is conducted annually under a contract funded by the Department to survey private pastureland, cropland, and hay land cash rents and pasture, crop, and hay prices on a county by county basis in North Dakota. Data is collected during the months of November through February from a survey pool of samples obtained from a list of all North Dakota agricultural owners/producers provided by the United States Department of Agriculture Farm Service Agency. A statistical sample of agricultural producers and owners in each county is contacted and asked to provide opinions as to cash rents and land prices in the county (Attachment 1 - County Rents and Prices Survey Questionnaire).

From 1989, when the Department began conducting this survey, through 2017 the survey was conducted by the United States Department of Agriculture’s National Agricultural Statistics Service (NASS) North Dakota Field Office. In the spring of 2017, NASS informed the Department that due to reorganization at the federal level, it would no longer be able to complete the cash rent survey as it had in past years and it would no longer be collecting land price data. County rent data would be collected every other year and if the Department wanted data collected in the off-year, there would be at a substantial cost increase to complete the survey. The Department decided to secure the survey through a Request For Proposal (RFP) using the same data collection and analysis format as in previous years. A vendor, DISC Information Services Corporation (DISC), was secured through the RFP process and DISC completed the survey the past two years (Attachment 2 - 2019 County Rents and Prices Survey). The contract with DISC has been renewed for two more years.

While providing valuable information to the Department, the survey is also used by North Dakota private landowners to establish cash rental rates on their lands. The survey is also used by North Dakota State University’s Agricultural Economics Department in developing annual crop budgets. The survey allows the Department to obtain county rent and price data at a reasonable cost, versus hiring full time appraisers, which is a common practice in some western states. Attached for your information is a copy of the most recent County Rents and Prices survey, the Fact Sheet – How

Are Minimum Bids Calculated (Attachment 3 - Fact Sheet), and a land asset value chart (Attachment 4 – Total Value of Land Asset Value Per Acre Growth Chart). Note that Fact Sheet and the land asset value were developed over time from the County Rent and Price Survey.

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

### Surface Division Overview

The Surface Management Division manages surface acres owned by the various trust funds under the control of the Board of University and School Lands. The major source of income from these lands, that provide revenue to the various trusts comes from grazing and agricultural leases, with significant revenue generated from rights-of-way, surface damage agreements and construction aggregate mining. The objective of surface management is to obtain a “fair market” return from the lands while maintaining or improving their condition and value. The Surface Management Division currently manages approximately 706,600 surface acres, 15,200 acres are leased as cropland and 5,193 acres are leased as improved hay land.

<b>Surface Acres by County</b>					
<b>As of June 30, 2019</b>					
<b>County</b>	<b>Acres</b>	<b>County</b>	<b>Acres</b>	<b>County</b>	<b>Acres</b>
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,517.76	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,892.50	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,421.53	Sheridan	25,826.44
Burleigh	27,891.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,586.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	10,798.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,380.84
Grand Forks	1,274.77	Pierce	13,664.93	<b>Total</b>	<b>706,607.30</b>

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on school trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting, and reclamation.
- Construction Aggregate Mining and Royalties.
- Wind Energy Projects.

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- Developing water wells, pipelines, dams and dugouts for livestock water and wildlife enhancement.
- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.
- Seismic permitting.
- Lessee and right-of-way contracts and public inquiries.

The Department reimburses lessees for control of noxious and invasive weeds through a cost-share program. County weed boards and weed officers are involved in the reporting and verification of lessees work on school trust lands.

Total active surface land leases managed by the department is nearly 4,790. Leasing interest continues to be high with over 99 percent of the tracts offered successfully leased. The surface acres managed by the department are inspected at least once during the five-year lease period by trained field inspectors to help with early detection of noxious and invasive weed species and to monitor land integrity. Reclamation inspections on rights-of-ways are also part of the inspections program are conducted by trained field inspectors and company inspectors. Reclamation inspections assist in determining whether a right-of-way having surface disturbance is meeting agreement vegetation standards, erosion and noxious and invasive weed control.

The surface inspection program generates approximately 1,500 tract inspections on an annual basis. These inspections are generally fall integrity inspections, reclamation inspections, livestock grazing, noxious weed, unleased tract and posting inspections. To aid in the inspection of surface acres, the Department has implemented field tablets (Panasonic Toughpads) to collect data remotely and has purchased a small Unmanned Aircraft Vehicle (sUAV). Assistance was provided for a surface division employee (Joseph Stegmiller) to become a FAA Certified Unmanned Aircraft Pilot. Joseph recently received a Geographical Information System (GIS) Certificate from the University of North Dakota Geography Graduate School, which will help the Department utilize the sUAV to provide the following services:

- On demand aerial imagery
- Near-Infrared imagery for pasture health
- 3-D Analysis for aggregate stockpile measurements
- Photos and Videos

Through Joseph's work with the ITD GIS Technical Committee, he has been asked to be part of a discussion panel regarding State Government use of sUAV's at the upcoming Geospatial Summit Conference in Bismarck.

## **MINERALS**

### **Approval of Surface and Coal Acres – Oliver County, BNI Coal**

In accordance with Chapter 1 of the Board Minerals Policy Manual relating to coal (Policies), the Board received a nomination from BNI Coal (BNI) for the right to lease 320 surface acres and 320 net coal acres located in: T141N, R84W, Section 16: E½, Oliver County, North Dakota (Attachment

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1 - BNI Proposed State Coal Lease Map and Attachment 2 – BNI Coal Nomination of State Tracts Map).

On July 17, 2019, the Board indicated its willingness to lease the tracts and approved BNI's application for surface and coal leases of the E½ of Section 16, T141N, R84W, and directed the Commissioner to begin term discovery and lease negotiations on its behalf.

The Department of Trust Lands (Department) completed due diligence on the title to verify ownership, lease status, legal, etc., to prepare the tracts to be leased. Notice of Application of Coal Lease was posted to the Department's website on July 29, 2019, for fourteen days for public comment. No public comments were received.

The Policies provide that the Department may negotiate the lease terms with the applicant and the application may propose modifications. The Department and BNI negotiated \$100.00 bonus/net surface acre or a total of \$32,000.00 and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease. BNI also offered annual rental payments of \$5.00 per net acre of surface and \$5.00 per net acre of coal. Further, BNI offered \$0.20 per ton of coal mined and removed and a surface royalty of \$0.15 surface royalty per ton of coal mined.

The proposed leases are now presented to the Board for approval (Attachment 3 - Coal Lease-CO-19-00001 and Attachment 4 - Coal Lease-CO-19-00002).

**Motion: The Board authorizes the Commissioner to issue two leases covering 320 surface acres and 320 net coal acres, with the negotiated terms including a royalty rate at \$0.20 per ton of coal mined and removed, \$0.15 surface royalty per ton of coal mined, \$100.00 bonus/net surface acre or a total of \$32,000.00, and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease.**

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		

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

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

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

The proposed Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (Agreement) by and between the Office of the North Dakota Governor and the Board to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund was provided at the meeting.

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 and managed under

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the prudent investor rule, pursuant to N.D.C.C. §15-03-04. It further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12.

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

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		

Proposed agreement was provided to the Board and is available upon request.

**Investment Policy Statement Review and Update – Second Reading**

Per the Board Investment Policy Statement (IPS), the Board’s IPS is to be formally reviewed at least every four years. However, the Commissioner has chosen to review the IPS on an annual basis to ensure it remains relevant with continued asset growth.

At the August 29, 2019, Board meeting a first reading of proposed IPS changes occurred. The majority of the proposed changes to the IPS are to address outdated language and modify the IPS based upon changes the Board has made over the last year.

The substantive changes from 2019 include the following:

- **Securities Litigation (page 10):** In August of 2018, the Board directed the Commissioner to contract with Financial Recovery Technologies (FRT), a securities litigation monitoring and claims filing services firm. The Commissioner and staff are in the process of finalizing a contract with FRT. Over the next year FRT will work with the Commissioner and staff to update the Board’s current securities litigation program and policies to more actively engage in securities litigation monitoring.
- **Distribution Policy (page 12-13):** By law, distributions from the Common Schools Trust Fund occur from August through April of each school year. In the past lower amounts were paid out early in the year and higher amounts were paid out later in the year; this was an attempt to match distributions with income as it was earned. Starting in fiscal year 2018, at OMB’s request, distributions are being made in approximately equal amounts each month.
- **Capitol Building Fund Strategic Asset Allocation (page 22):** When the first IPS was adopted, in August 2015, the Board adopted investment guidelines for the Capitol Building Fund. At that time, the Commissioner was of the belief that the Capitol Grounds Planning Commission (CGPC) had also adopted those guidelines, when in fact, the guidelines had been presented to the Commission, but were never formally adopted. This change corrects the policy to state that the Board, not the Commission, has adopted the guidelines.
- **Strategic Asset Allocation Target (page 14):** The IPS was updated to include the revised asset allocation targets that were adopted by the Board on May 30, 2019, as a result of the termination of Westwood Holdings Group.



- **Policy Benchmark for the Permanent Trust Funds (page 16):** The policy benchmark for the permanent trusts funds was updated to reflect the new target allocation adopted by the Board on May 30, 2019. In addition, the benchmark used to measure fixed income performance was changed to the Barclays US Universal Index, from the previously blended benchmark. This change more closely aligns the target benchmark for fixed income portion of the portfolio with the current generally US focus of the fixed income portfolio.
- **National Statistical Ratings Organization (NSRO) (page 17):** The definition of a national ratings agency eligible to rate collateralized obligations was expanded to include any NSROs registered with the SEC, not just Moody's and Standard and Poor's.

**Motion: The Board approves the amended Investment Policy Statement as presented with additional instruction to further review proxy representation.**

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		

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

### Summary of Investment Fees Paid in Fiscal Year 2019

Report of investment related fees and expenses paid during the fiscal year ended June 30, 2019 was provided to the Board. During fiscal year 2019, the pooled investments of the permanent trusts paid \$22,711,405 of investment fees; the average market value of assets invested was \$4.63 billion for fiscal year 2019. The average fee rate paid for the fiscal year was 0.49% of average assets, or 49.0 basis points. Net of fees, the permanent trust pool realized a total return of 3.87% in fiscal year 2019.

The pooled investments of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, and the Capitol Building Fund paid investment fees of \$247,497 during fiscal year 2019 on an average market value of \$609.8 million. This portfolio paid a graduated fee of 6.0 basis points on the first \$500 million and 3.0 basis points thereafter; the portfolio does not pay a custody fee. This investment pool posted a total return of 3.66% net of fees for the fiscal year.

On March 28, 2019, the Board of University and Schools Lands directed the Commissioner to enter into an agreement with Novarca to review the current investment expenses and work with the investment managers to reduce trust fees, subject to final review and approval of all legal documents by the Office of the Attorney General. The Department of Trust Lands (Department) entered into a contract with Novarca in June 2019. Novarca anticipates completing their work in October 2019 and will make recommendations to the Department at that time.

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

**Other Funds Managed by the Board – 2nd Quarter 2019**

Due to delays in getting all necessary and relevant data for the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund, the Other Funds report was not presented to the Board in August.

This report provides the activities of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund during the quarter, as well as the performance of Northern Trust separate investment pool that holds the assets of these three funds.

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

**R E P O R T S**

**Report of Easements Issued by Land Commissioner 08/21/2019 to 09/17/2019**

<b>Granted to:</b>	<b>AURORA WIND PROJECT, LLC, LENEXA-KS</b>
For the Purpose of:	Easement: Electric-Wind Transmission line
Right-of-Way Number:	RW0008236
Trust:	A- Common Schools
Legal Description:	WIL-157-95-16-NE4, NW4

<b>Granted to:</b>	<b>EMMONS-LOGAN WIND LLC, JUNO BEACH-FL</b>
For the Purpose of:	Easement: Electric-Wind Transmission line
Right-of-Way Number:	RW0008246
Trust:	A – Common Schools
Legal Description:	EMM-133-76-36-SE4

<b>Granted to:</b>	<b>RIVER WATER LLC, WILLISTON-ND</b>
For the Purpose of:	Easement: Drop Line-Raw Water Pipeline
Right-of-Way Number:	RW0008297
Trust:	A – Common Schools
Legal Description:	WIL-155-99-16-NE4, NW4

<b>Granted to:</b>	<b>BATTELLE MEMORIAL INSTITUTE, COLUMBUS-OH</b>
For the Purpose of:	Easement-Amend: Site-Tower Site
Right-of-Way Number:	RW0008362
Trust:	A- Common Schools
Legal Description:	STU-143-67-36-ALL

<b>Granted to:</b>	<b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>
For the Purpose of:	Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008370
Trust:	A – Common Schools
Legal Description:	MCK-150-97-36-NW4

<b>Granted to:</b>	<b>LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO</b>
For the Purpose of:	Easement: Pipeline-Multiple Pipelines
Right-of-Way Number:	RW0008468
Trust:	A – Common Schools
Legal Description:	BRK-159-93-16-NW4, SW4

<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX</b>  Easement: Pipeline-Salt Water Pipeline  RW0008487  A – Common Schools  MCK-152-97-36-NE4, SE4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX</b>  Easement: Pipeline-Salt Water Pipeline  RW0008506  A – Common Schools  MOU-154-93-36-SE4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>  Easement: Pipeline-Gas Gathering Pipeline  RW0008510  A – Common Schools  WIL-155-102-16-NE4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>ND GAME &amp; FISH DEPT, BISMARCK-ND</b>  Letter of Permission: Access to School Land  RW0008520  A – Common Schools  MOR-135-83-36-NE4, SE4, SW4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT</b>  Easement: Drop Line-Gas Gathering Pipeline  RW0008525  A – Common Schools  DUN-146-95-36-SE4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>LEGACY RESERVES OPERATING LP, CODY-WY</b>  Easement: Well-Salt Water Disposal Well Extension  RW0008526  A – Common Schools  GOL-143-103-36-NE4, NW4, SE4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX</b>  Easement: Drop Line-Saltwater Pipeline  RW0008537  A – Common Schools  MCK-151-96-36-SE4, SW4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  Legal Description:</p>	<p><b>ELKAN INC, WATFORD CITY-ND</b>  Easement-Amend: Pipeline-Raw Water Pipeline  RW0008562  A – Common Schools  MCK-150-98-36-NW4, SW4</p>
<p><b>Granted to:</b>  For the Purpose of:  Right-of-Way Number:  Trust:  (09/26/19)</p>	<p><b>ENVIRONMENTAL RESOURCES MANAGEMENT, PORTLAND-OR</b>  Permit: Planning &amp; Preconstruction Survey  RW0008568  A – Common Schools</p>

Legal Description: N/A

**Granted to:** RIVER WATER LLC, WILLISTON-ND  
 For the Purpose of: Easement: Drop Line-Raw Water Pipeline  
 Right-of-Way Number: RW0008573  
 Trust: A – Common Schools  
 Legal Description: WIL-155-99-16-NE4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008576  
 Trust: A – Common Schools  
 Legal Description: MCK-153-94-36-SW4

**Granted to:** TRILOGY, LLC, MINOT-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008581  
 Trust: A – Common Schools  
 Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

**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. 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 51 grants with a balance of \$19,963,193.67 as of September 13, 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
5/31/2019	70	\$28,202,091.20
6/30/2019	63	\$23,780,767.68
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67

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 \$4,971,638.80 as of

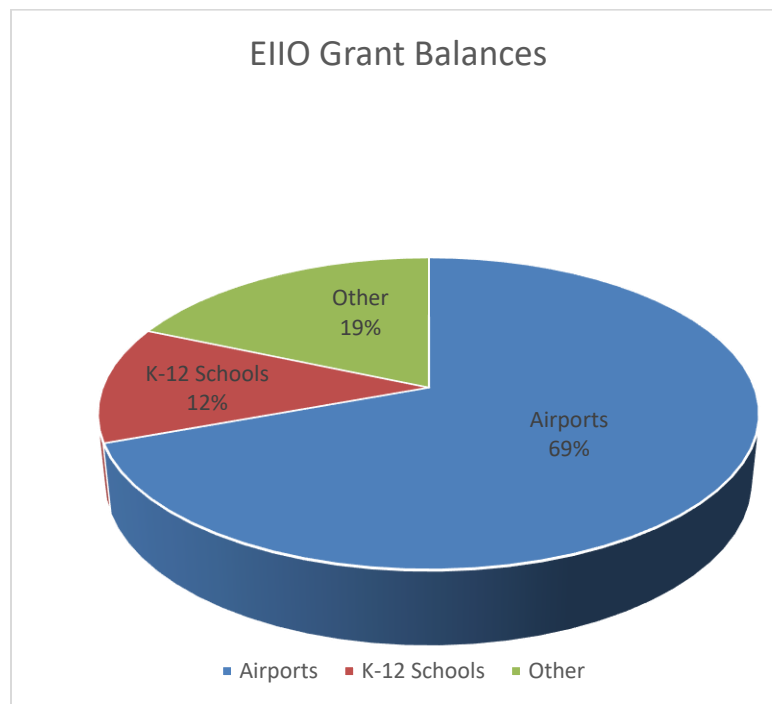
September 13, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
5/31/2019	5	\$4,997,365.24
6/30/2019	5	\$4,997,365.24
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80

The Energy Infrastructure and Impact Office is currently managing 55 grants for a total of \$24,934,832.47. 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
5/31/2019	70	\$28,202,091.20	5/31/2019	5	\$4,997,365.24	\$33,199,456.44
6/30/2019	63	\$23,780,767.68	6/30/2019	5	\$4,997,365.24	\$28,778,132.92
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



### **2019-2021 Biennium Funding**

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

The total of appropriated funding for grants to political subdivisions impacted by oil and gas development activities in House Bill 1013 for the 2019-2021 biennium is \$2 million, thus total grants in either fiscal year cannot exceed \$1.2 million.

EIO plans to open a contingency grant round in December 2019, using funds from the \$2 million allocation appropriated by the Sixty-sixth Legislative Assembly. It is anticipated that applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting held in February. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

### **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 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.

The Department's 2017-2019 biennial budget appropriation included \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly. This included funding to replace the Division's information technology system. On April 29, 2019, the new system was successfully launched. The number of monthly claims issued over the past four months has increased as a result of the more efficient information technology system and increased community education.

For the month of August 2019, the Division received 48 holder reports with a property value of \$119,724.60 and paid 610 claims with a total value of \$374,654.52.

### **Investment Updates**

#### **Asset Allocation**

The table below shows the status of the permanent trusts' asset allocation as of August 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	8/31/19 Actual Allocation \$	8/31/19 Actual Allocation %	8/31/19 % Diff.
Large Cap US Equity	14.5%	\$ 699,647,094	14.6%	0.1%
Mid/Small Cap US Equity	4.0%	\$ 188,529,381	3.9%	-0.1%
International Equity	14.5%	\$ 695,039,186	14.5%	0.0%
Emerging Market Equity	4.0%	\$ 194,060,740	4.0%	0.0%
<b>Total Equities</b>	<b>37.0%</b>	<b>\$ 1,777,276,401</b>	<b>37.1%</b>	<b>0.1%</b>
Core Fixed Income	13.8%	\$ 746,344,972	15.6%	1.8%
Non-Core Fixed Income	9.2%	\$ 360,927,766	7.5%	-1.7%
<b>Total Fixed Income</b>	<b>23.0%</b>	<b>\$ 1,107,272,738</b>	<b>23.1%</b>	<b>0.1%</b>
<b>Total Absolute Return</b>	<b>15.0%</b>	<b>\$ 713,484,855</b>	<b>14.9%</b>	<b>-0.1%</b>
Commodities	3.0%	\$ 145,705,658	3.0%	0.0%
MLPs	3.0%	\$ 143,100,673	3.0%	0.0%
TIPS	2.0%	\$ 98,949,577	2.1%	0.1%
Natural Resource Equities	2.0%	\$ 92,212,978	1.9%	-0.1%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 479,968,886</b>	<b>10.0%</b>	<b>0.0%</b>
Core Real Estate	8.0%	\$ 386,152,565	8.1%	0.1%
Core Plus Real Estate	7.0%	\$ 330,698,621	6.9%	-0.1%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 716,851,186</b>	<b>15.0%</b>	<b>0.0%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,794,854,066</b>	<b>100.0%</b>	

### Angelo Gordon (\$71.61 million, 1.5% of PTF assets as of 8/31/19)

#### Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. As of August 31, 2019, the funded capital amounted to \$69.75 million out of the \$150 million commitment.

Another \$15 million capital call was recently received and was funded on September 12, 2019, this would bring the amount funded to \$84.75 million out of a total commitment of \$150 million. This represents 56.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

#### Upcoming Investment Manager Meetings

The following meetings with investment managers were planned to discuss updates on strategy, compliance, and performance. It will be held in the Department's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

**Oct. 17, 2019, 10:00AM**      **Gresham Commodities**  
Diversified Inflation Strategies (\$145.7M, 3% of PTF assets)

**Oct. 24, 2019, 3:00PM**      **JP Morgan**  
Non-Core Real Estate (\$133.5M, 2.8% of PTF assets)  
Nancy Brown, Melissa Anezinis and Jim Sakelaris

#### Board of University and School Lands Meeting Dates For 2020

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 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.

(09/26/19)

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. The quarterly meetings including Investment reporting will begin at 8:00 AM and are expected to last three hours.

The following dates will be shared with Board members’ offices for scheduling purposes.

- January 30, 2020 - 9:00 AM
- February 27, 2020 – 8:00 AM
- March 26, 2020 – 9:00 AM
- April 30, 2020 – 9:00 AM
- May 28, 2020 – 8:00 AM
- June 25, 2020 – 8:00 AM
- July 30, 2020 – 9:00 AM
- August 27, 2020 – 8:00 AM
- September 24, 2020 – 9:00 AM
- October 29, 2020 – 9:00 AM
- November 26, 2020 – 8:00 AM Tuesday before Thanksgiving
- December 22, 2020 – 9:00 AM Tuesday before Christmas Eve

**LITIGATION**

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 10:50 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:**

- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **Northwest Landowners Association Civ. No. 05-2019-CV-00085**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Paul Sorum et al. Civ. No. 09-2018-CV-00089**

<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>		



**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
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**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Allie Nagel	Land Professional

**Guests in Attendance:**

Reice Haase	Governor's Office
Matt Sagsveen	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office (Via teleconference for Sorum only)

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The executive session adjourned at 11:50 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 Continental Interpleader and Newfield litigation.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:50 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

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2019

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**RE: Report of Encumbrances Issued by Land Commissioner**

(9/18/2019 to 10/22/2019) No Action Requested

**Granted to:** CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK  
For the Purpose of: Permit: Road-Access Road  
Right-of-Way Number: RW0007018  
Date Issued: 10/22/2019  
Application Fee: \$150.00  
Right-of-way Income: \$1,866.00  
Damage Payment to Lessee: \$18.66  
Trust: A-Common Schools  
Length (Rods): 485.89  
Area (Acres): 9.03  
Legal Description: WIL-153-99-21-SE4  
WIL-153-99-22-S2

**Granted to:** AURORA WIND PROJECT, LLC, LENEXA-KS  
For the Purpose of: Easement: Electric-Wind Transmission line  
Right-of-Way Number: RW0008236  
Date Issued: 9/17/2019  
Application Fee: \$100.00  
Right-of-way Income: \$7,925.50  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 320.18  
Area (Acres): 18.19  
Legal Description: WIL-157-95-16-N2

**Granted to:** BATTELLE MEMORIAL INSTITUTE, COLUMBUS-OH  
For the Purpose of: Easement-Amend: Site-Tower Site  
Right-of-Way Number: RW0008362  
Date Issued: 9/17/2019  
Application Fee: \$200.00  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: STU-143-67-36-ALL

**Granted to:** XTO HOLDINGS, LLC, SPRING-TX  
For the Purpose of: Easement: Well-Subsurface Well Bore  
Right-of-Way Number: RW0008489  
Date Issued: 10/1/2019  
Application Fee: \$100.00  
Right-of-way Income: \$5,000.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A

ITEM 2A

Legal Description: MCK-150-98-36-SE4  
**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
Right-of-Way Number: RW0008506  
Date Issued: 9/17/2019  
Application Fee: \$100.00  
Right-of-way Income: \$5,782.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 16.52  
Area (Acres): 0.21  
Legal Description: MOU-154-93-36-SE4

**Granted to:** **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**  
For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline  
Right-of-Way Number: RW0008510  
Date Issued: 9/17/2019  
Application Fee: \$100.00  
Right-of-way Income: \$10,852.00  
Damage Payment to Lessee: \$24.41  
Trust: A-Common Schools  
Length (Rods): 27.13  
Area (Acres): 0.34  
Legal Description: WIL-155-102-16-NE4

**Granted to:** **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**  
For the Purpose of: Easement: Pipeline-Salt Water Pipeline  
Right-of-Way Number: RW0008512  
Date Issued: 9/18/2019  
Application Fee: \$100.00  
Right-of-way Income: \$20,961.50  
Damage Payment to Lessee: \$29.94  
Trust: A-Common Schools  
Length (Rods): 59.89  
Area (Acres): 0.75  
Legal Description: MCK-150-95-16-NE4

**Granted to:** **LEGACY RESERVES OPERATING LP, CODY-WY**  
For the Purpose of: Easement: Well-Salt Water Disposal Well Extension  
Right-of-Way Number: RW0008526  
Date Issued: 9/17/2019  
Application Fee: \$100.00  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: GOL-143-103-36-N2, SE4

**Granted to:** CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK  
For the Purpose of: Permit: Road-Access Road  
Right-of-Way Number: RW0008536  
Date Issued: 9/20/2019  
Application Fee: \$100.00  
Right-of-way Income: \$592.00  
Damage Payment to Lessee: \$11.84  
Trust: A-Common Schools  
Length (Rods): 37.04  
Area (Acres): 0.93  
Legal Description: WIL-153-99-22-W2SE4 Less acres condemned

**Granted to:** CENEX PIPELINE LLC, LAUREL-MT  
For the Purpose of: Permit: Temporary Construction  
Right-of-Way Number: RW0008547  
Date Issued: 9/20/2019  
Application Fee: \$250.00  
Right-of-way Income: \$22,280.70  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 366.79  
Area (Acres): 325.61  
Legal Description: MOU-155-91-36-NW4  
MOU-155-92-36-N2  
MOU-155-94-36-N2

**Granted to:** HESS BAKKEN INVESTMENTS II LLC, HOUSTON-TX  
For the Purpose of: Easement: Pipeline-Multiple Pipelines & Communication Cable  
Right-of-Way Number: RW0008554  
Date Issued: 9/30/2019  
Application Fee: \$100.00  
Right-of-way Income: \$65,399.00  
Damage Payment to Lessee: \$209.11  
Trust: A-Common Schools  
Length (Rods): 232.36  
Area (Acres): 2.90  
Legal Description: WIL-158-95-36-E2

**Granted to:** HESS WATER SERVICES LLC, HOUSTON-TX  
For the Purpose of: Easement: Pipeline-Pipeline & Communication Cable  
Right-of-Way Number: RW0008564  
Date Issued: 10/4/2019  
Application Fee: \$100.00  
Right-of-way Income: \$79,571.25  
Damage Payment to Lessee: \$260.41  
Trust: A-Common Schools  
Length (Rods): 289.35  
Area (Acres): 3.62  
Legal Description: WIL-158-95-36-S2

**Granted to:** **PRIMA EXPLORATION INC, DENVER-CO**  
For the Purpose of: Assignment: Well-Directional Wellsite  
Right-of-Way Number: RW0008566  
Date Issued: 9/24/2019  
Application Fee: \$100.00  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 2.00  
Area (Acres): 2.00  
Legal Description: DIV-161-100-36-S2

**Granted to:** **NORTH RANGE RESOURCES LLC, DICKINSON-ND**  
For the Purpose of: On-lease Act. Amend: Well-Vertical Oil Well  
Right-of-Way Number: RW0008582  
Date Issued: 10/4/2019  
Application Fee: N/A  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: MCK-146-100-36-S2

**Granted to:** **NORTH RANGE RESOURCES LLC, DICKINSON-ND**  
For the Purpose of: On-lease Act. Amend: Well-Horizontal Oil Well  
Right-of-Way Number: RW0008583  
Date Issued: 10/4/2019  
Application Fee: N/A  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: MCK-146-100-36-SW4

**Granted to:** **XTO HOLDINGS, LLC, SPRING-TX**  
For the Purpose of: Easement: Well-Subsurface Well Bore  
Right-of-Way Number: RW0008585  
Date Issued: 10/4/2019  
Application Fee: \$100.00  
Right-of-way Income: \$10,000.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: MOU-154-94-16-SW4

**Granted to:** HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008590  
Date Issued: 9/27/2019  
Application Fee: \$100.00  
Right-of-way Income: \$2,020.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 122.42  
Area (Acres): 3.00  
Legal Description: MCK-148-99-16-NE4

**Granted to:** PURITY OILFIELD SERVICES LLC, WILLISTON-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008591  
Date Issued: 10/4/2019  
Application Fee: \$100.00  
Right-of-way Income: \$3,897.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 236.00  
Area (Acres): N/A  
Legal Description: MOU-155-92-16-S2

**Granted to:** ROUGHRIDER ELECTRIC COOPERATIVE, INC.,  
DICKINSON-ND  
For the Purpose of: Easement: Maintenance Yards  
Right-of-Way Number: RW0008593  
Date Issued: 9/27/2019  
Application Fee: N/A  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 1.00  
Area (Acres): 1.00  
Legal Description: BIL-142-101-36-SW4

**Granted to:** FALKIRK MINING COMPANY, BISMARCK-ND  
For the Purpose of: Permit: Coal Exploration  
Right-of-Way Number: RW0008597  
Date Issued: 10/22/2019  
Application Fee: \$100.00  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 1.00  
Area (Acres): 1.00  
Legal Description: N/A

**Granted to:** CENEX PIPELINE LLC, LAUREL-MT  
For the Purpose of: Easement-Amend: Pipeline-Oil Transmission Pipeline  
Right-of-Way Number: RW0008601  
Date Issued: 10/22/2019  
Application Fee: \$100.00  
Right-of-way Income: \$1,000.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 1.00  
Area (Acres): 3.00  
Legal Description: MOU-155-94-36-NE4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008602  
Date Issued: 10/22/2019  
Application Fee: \$150.00  
Right-of-way Income: \$10,250.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 621.05  
Area (Acres): N/A  
Legal Description: MCK-149-96-16-E2, SW4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008607  
Date Issued: 10/22/2019  
Application Fee: \$200.00  
Right-of-way Income: \$12,765.00  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): 773.00  
Area (Acres): N/A  
Legal Description: WIL-156-101-16-N2  
WIL-156-102-16-N2

**Granted to:** ROLETTE COUNTY, SAINT JOHNS-ND  
For the Purpose of: Letter of Permission: Access to School Land  
Right-of-Way Number: RW0008608  
Date Issued: 10/14/2019  
Application Fee: N/A  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A-Common Schools  
Length (Rods): N/A  
Area (Acres): N/A  
Legal Description: ROL-161-70-16-NW4

<b>Granted to:</b>	<b>SELECT ENERGY SERVICES LLC, WILLISTON-ND</b>
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008609
Date Issued:	10/22/2019
Application Fee:	\$100.00
Right-of-way Income:	\$4,015.00
Damage Payment to Lessee:	N/A
Trust:	A-Common Schools
Length (Rods):	243.00
Area (Acres):	N/A
Legal Description:	MCK-153-94-16-W2



**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**

October 28, 2019

**RE: Energy Infrastructure and Impact Office  
Program Report**  
(No Action Requested)

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 41 grants with a balance of \$17,695,025.25 as of October 11, 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
6/30/2019	63	\$23,780,767.68
7/31/2019	55	\$21,669,388.00
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10/11/2019	41	\$17,695,025.25

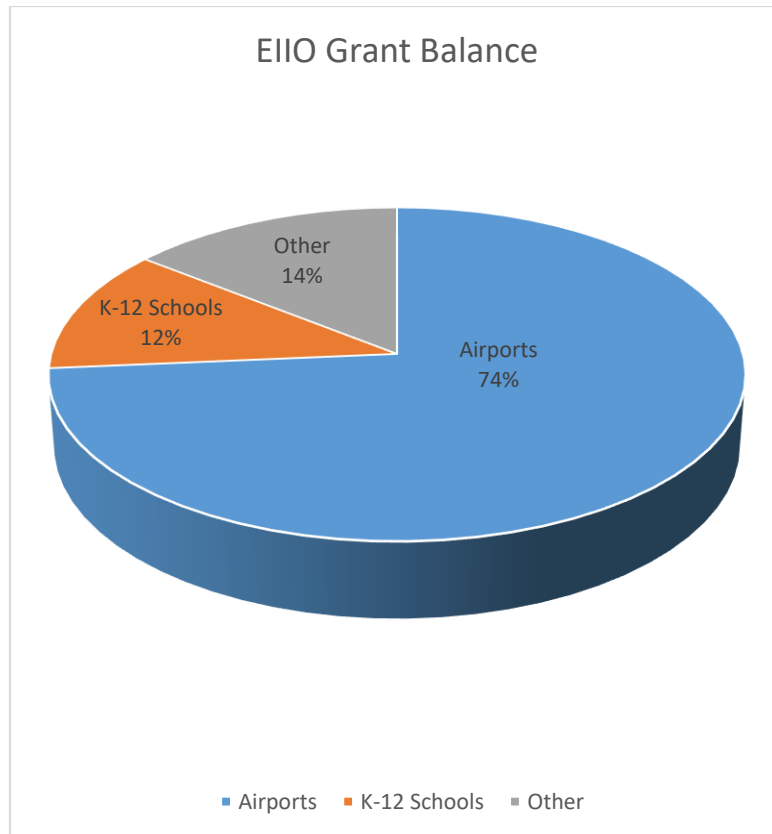
The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,940,103.06 as of October 11, 2019. House Bill 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:

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7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80
10/11/2019	4	\$4,940,103.06

The Energy Infrastructure and Impact Office is currently managing 45 grants for a total of \$22,635,128.31. 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
6/30/2019	63	\$23,780,767.68	6/30/2019	5	\$4,997,365.24	\$28,778,132.92
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47
10/11/2019	41	\$17,695,025.25	10/11/2019	4	\$4,940,103.06	\$22,635,128.31

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

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**RE: Unclaimed Property  
Program Report**  
(No Action Requested)

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.

On October 2-3, 2019, Kelmar, the unclaimed property software vendor, visited the Division to ensure the software was being used to its utmost capability. Kelmar identified various opportunities for improvement that the Division immediately implemented. Of significance is Kelmar's observation of the Department's office support staff. Kelmar noted this team set the "gold standard" with its procedures and is recommending unclaimed property agencies across the nation adopt the procedures North Dakota has implemented to meet the standard.

For the month of September 2019, the Division received 69 holder reports with a property value of \$537,854 and paid 423 claims with a total value of \$380,628 (this is an increase from 227 claims with a total value of \$183,884 in in September 2018.)

**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**

October 28, 2019

**RE: Investment Updates**

(No Action Requested)

**Asset Allocation**

The table below shows the status of the permanent trusts' asset allocation as of September 30, 2019. The figures provided are unaudited.

<b>Account/Asset Class</b>	<b>Long-Term Asset Allocation</b>	<b>9/30/19 Actual Allocation \$</b>	<b>9/30/19 Actual Allocation %</b>	<b>9/30/19 % Diff.</b>
Large Cap US Equity	14.5%	\$ 711,760,196	14.6%	0.1%
Mid/Small Cap US Equity	4.0%	\$ 192,492,891	3.9%	-0.1%
International Equity	14.5%	\$ 714,366,214	14.7%	0.2%
Emerging Market Equity	4.0%	\$ 197,940,985	4.1%	0.1%
<b>Total Equities</b>	<b>37.0%</b>	<b>\$ 1,816,560,286</b>	<b>37.3%</b>	<b>0.3%</b>
Core Fixed Income	13.8%	\$ 758,597,599	15.6%	1.8%
Non-Core Fixed Income	9.2%	\$ 376,200,604	7.7%	-1.5%
<b>Total Fixed Income</b>	<b>23.0%</b>	<b>\$ 1,134,798,203</b>	<b>23.3%</b>	<b>0.3%</b>
<b>Total Absolute Return</b>	<b>15.0%</b>	<b>\$ 723,514,285</b>	<b>14.8%</b>	<b>-0.2%</b>
Commodities	3.0%	\$ 149,434,113	3.1%	0.1%
MLPs	3.0%	\$ 144,565,467	3.0%	0.0%
TIPS	2.0%	\$ 97,523,827	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 92,162,624	1.9%	-0.1%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 483,686,031</b>	<b>9.9%</b>	<b>-0.1%</b>
Core Real Estate	8.0%	\$ 386,152,565	7.9%	-0.1%
Core Plus Real Estate	7.0%	\$ 330,698,621	6.8%	-0.2%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 716,851,186</b>	<b>14.7%</b>	<b>-0.3%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,875,409,991</b>	<b>100.0%</b>	

**Angelo Gordon (\$86.61 million, 1.5% of PTF assets as of 9/30/19)**

**Direct Lending Fund**

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. A \$15 million capital call was funded on September 12, 2019, which brought the amount funded to \$84.75 million out of a total commitment of \$150 million. This represents 56.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

**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**

The following meetings with investment managers were planned to discuss updates on strategy, compliance, and performance. Meetings will be held at DTL's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

**November 4, 2019, 2:00PM**

**Van Eck Natural Resources Equities**

Diversified Inflation Strategies (\$92.1M, 1.9% of PTF assets)

**November 5, 2019, 8:00AM**

**Schroders Securitized Credit**

Non-Core Fixed Income (\$116.5M, 2.4% of PTF assets)

**November 5, 2019, 10:30AM**

**PIMCO All Asset All Authority Fund (PAUIX)**

Absolute Return Strategies (\$358.5M, 7.4% of PTF assets)

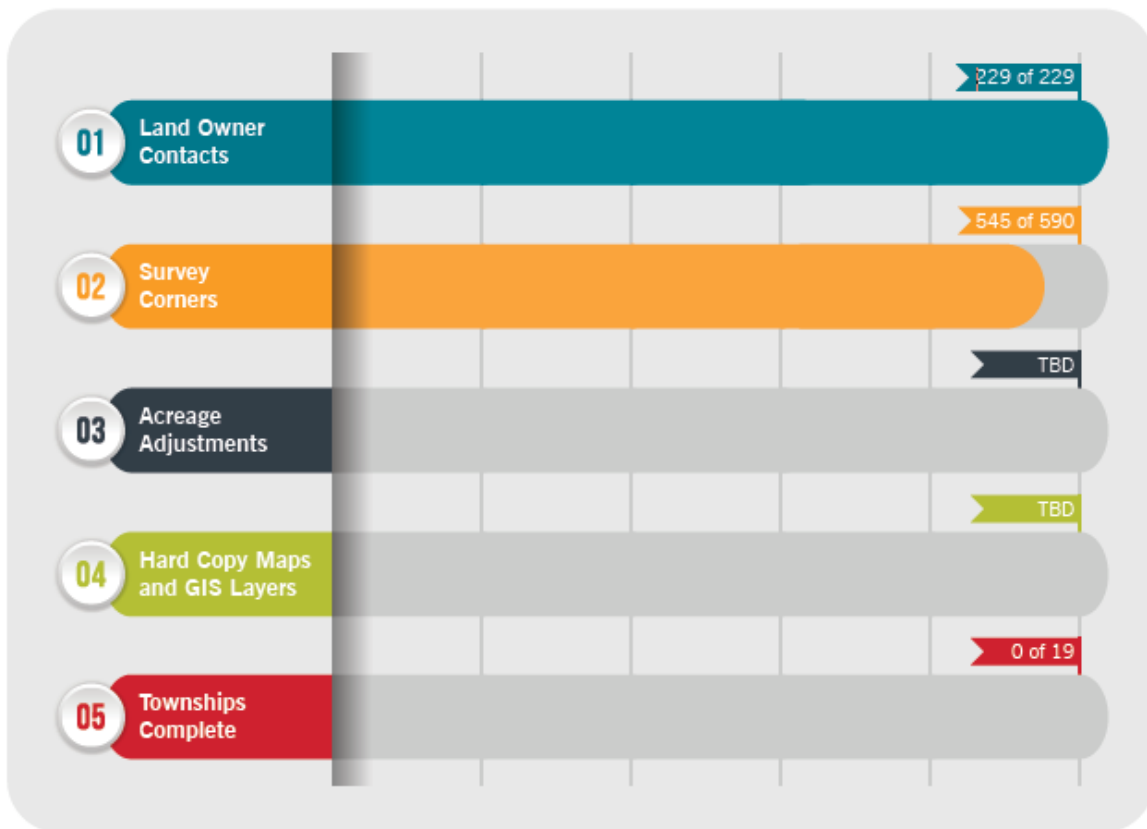
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

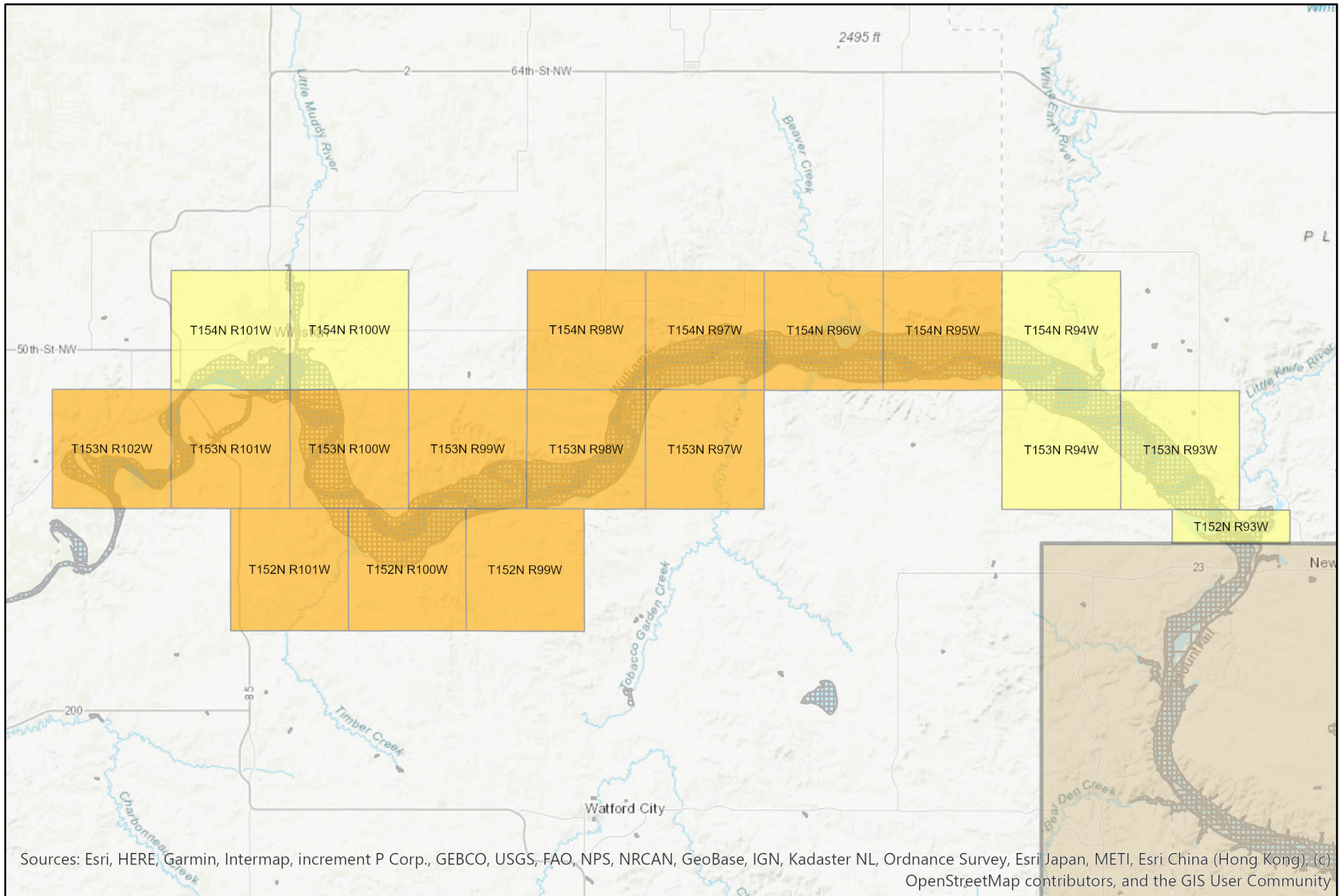
October 28, 2019

**RE: Acreage Adjustment Survey**

(No Action Requested)

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.





**North Dakota Department of Trust Lands  
Township Survey Status  
October 22, 2019**



**Project Area Townships**

	Township Survey Complete
	Acerage Adjustments Complete
	Hard Copy Maps Complete
	Township Deliverable Complete

**STATUS**

	Township Work To Begin
	Township Survey Started



**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**

October 28, 2019

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**RE: General Administration, Surface Land Management, Investments 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 General Administration and rules for Surface Land Management, Investments, 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 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, has been completed and is attached.

The Board approved the amended rules on September 29, 2019, which was then be submitted for review by the Attorney General's Office. Pending review by the Attorney General's Office, the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2019, to become effective January 1, 2021.



## MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

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**RE: Financial Management and Accounting System Information Technology Project  
Status Update**  
(No Action Requested)

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

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.

The Department's financial management and accounting (FMA) system is designed to meet the comprehensive needs for financial accounting and financial management. The intention is to implement a new system that will completely replace the current FMA application and tools, largely developed in-house. Currently, the Department has multiple customized systems and manual processes to support its financial responsibilities.

On October 11, 2019, the Department's Executive Steering Committee approved the Department moving forward with Microsoft Dynamics as the solution for the FMA System. The Department will purchase licenses from the North Dakota IT Department. Additionally, the Department will work with an implementation vendor who is already under contract with the State of North Dakota. The FMA system will require integration with the future land management system as this will be the source of all trust land assets' revenue and customer payment calculations.

Once the Department has identified a vendor to implement Microsoft Dynamics, a project implementation plan will be created and a go-live date determined.

## MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

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### **RE: Government Accounting Standards Board Statement**

(No Action Requested)

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 evaluating 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. The Department will sign an executed contract after January 1, 2020. Once the data is compiled and completed, the 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 accurately summarize the estimated value of their assets.

Under the direction of the Board, the Department will coordinate efforts with the Office of Management and Budget (OMB), the State Auditor's Office, and external audit groups to review modifying the Department's accounting principles relating to the treatment of subsurface assets as an investment. This change requires implementation of the Governmental Accounting Standards Board (GASB) Statement 72 – Fair Value Measurement and Application, as it relates to all subsurface assets to be recognized, and determination of the impact on the State's Comprehensive Annual Financial Report (CAFR). It is reasonable to assume there will be a significant cost increase in the annual auditing fees paid by the Department for the annual financial statement audit required by OMB in preparation for the CAFR.

## **Procedures for Executive Session regarding Attorney Consultation and Consideration of Closed Records**

### Overview

- 1) The governing body must first meet in open session.
- 2) During the meeting's open session the governing body must announce the topics to be discussed in executive session and the legal authority to hold it.
- 3) If the executive session's purpose is attorney consultation, the governing body must pass a motion to hold an executive session. If executive session's purpose is to review confidential records a motion is not needed, though one could be entertained and acted on. The difference is that attorney consultation is not necessarily confidential but rather has "exempt" status, giving the governing body the option to consult with its attorney either in open session or in executive session. Confidential records, on the other hand, cannot be opened to the public and so the governing body is obligated to review them in executive session.
- 4) The executive session must be recorded (electronically, audio, or video) and the recording maintained for 6 months.
- 5) Only topics announced in open session may be discussed in executive session.
- 6) When the governing body returns to open session, it is not obligated to discuss or even summarize what occurred in executive session. But if "final action" is to be taken, the motion on the decision must be made and voted on in open session. If, however, the motion would reveal "too much," then the motion can be abbreviated. A motion can be made and voted on in executive session so long as it is repeated and voted on in open session. "Final actions" DO NOT include guidance given by the governing body to its attorney or other negotiator regarding strategy, litigation, negotiation, etc. (See NDCC §44-04-19.2(2)(e) for further details.)

Recommended Motion to be made in open 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**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **Paul Sorum et al. Civ. No. 09-2018-CV-00089**

<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					

**Statement:**

“This executive session will be recorded and all Board members are reminded that the discussion during executive session must be limited to the announced purpose for entering into executive session, which is anticipated to last approximately one hour.

The Board is meeting in executive session to provide guidance or instructions to its attorneys regarding the identified litigation. Any formal action by the Board will occur after it reconvenes in open session.

Board members, their staff, employees of the Department of Trust Lands and counsel with the Attorney General staff will remain, but the public is asked to leave the room.

The executive session will begin at: \_\_\_\_\_AM, and will commence with a new audio recording device. When the executive session ends the Board will reconvene in open session.”

Statements upon return to open session:

State the time at which the executive session adjourned and that the public has been invited to return to the meeting room.

State that the Board is back in open session.

State that during its executive session, the Board provided its attorney with guidance regarding litigation relating to the sovereign lands' minerals claims.

[The guidance or instructions to attorney does not have to be announced or voted upon.]

State that no final action will be taken at this time as a result of the executive session discussion

**-or-** .

Ask for a formal motion and a vote on it.

**Move to the next agenda item.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

RE: Vitesse Litigation  
(No Action Requested)

**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.

**Current Status:**

- 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.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

RE: **Continental Litigation**  
(No Action Requested)

Case: **Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661**  
Date Filed: **December 20, 2017**  
Court: **District Court/McKenzie County**  
Attorneys: **David Garner**  
Opposing Counsel: **Mark S. Barron/Baker & Hostetler LLP**  
Judge: **Robin Schmidt**

Issues: Continental is seeking a Declaratory Judgment that it is currently paying royalties properly under the Board's lease. Specifically, Continental is asking the Court to order that Continental is allowed to deduct certain costs from royalty payments and that it does not owe the Defendants any additional royalty payments based on previous deductions.

History: A Complaint and Answer with Counterclaims have been filed. Continental filed an Answer to Counterclaims. Continental served discovery and responses were due July 30, 2018. Defendant served discovery and Continental replied on September 17, 2018. On November 27, 2018, the parties filed a Joint Motion to Vacate Trial Date and Joint Status Report, agreeing that no later than February 1, 2019, the parties would submit to the Court a proposed case management statement incorporating a schedule for dispositive motions. Trial scheduled for February 1, 2019 was cancelled to allow for additional discovery. Continental served discovery and Defendants' answers to the discovery were served on February 8, 2019. The parties filed a Joint Status Report on March 15, 2019. Defendants' Supplemental Answers to Plaintiffs' Interrogatories were served on Plaintiff on April 12, 2019. Motions for Summary Judgment were scheduled to be due on August 16, 2019. On July 29, 2019, Defendants filed an Expedited Motion for Extension of Time to File Motion for Summary Judgment, Brief and proposed Order. On July 31, 2019, the Court entered its Order Granting Extension of Time to File Motion for Summary Judgment until August 30, 2019. Plaintiff and Defendants filed a Joint Motion for Stay on August 21, 2019, requesting the Court stay all proceedings pending the North Dakota Supreme Court's resolution of the petition for rehearing in the Newfield lawsuit.

Current Status:

- **On August 22, 2019, the Court entered its Order Granting Joint Motion for Stay staying the matter pending the North Dakota Supreme Court's resolution of the Newfield case. Within 14 days of resolution, the parties are to submit a joint status report proposing a plan for proceeding in this matter.**
- **On October 4, 2019, Continental filed an Unopposed Motion for Extension of Time to Provide Joint Status Report until October 18, 2019.**
- **The parties filed a Joint Motion to Extend Stay and a proposed Order Granting Joint Motion to Extend Stay on October 18, 2019.**

ITEM 4B

- **The Court signed the Order Granting Joint Motion to Extend Stay on October 21, 2019.**



MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

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**RE: Continental Litigation**  
(No Action Requested)

**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 David 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 Hochhalter, 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.

**Current  
Status:**

- **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 memornadum 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.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

RE: 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.

**Current  
Status:**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

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RE: **Newfield Litigation**  
(No Action Requested)

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 and Spencer Ptacek/Fredrikson & Byron, P.A.**

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.

**Current  
Status:**

- **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."**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 28, 2019

RE: **Sorum Litigation**  
(No Action Requested)

**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 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 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.

**Current  
Status:**

- **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.**