

BOARD OF UNIVERSITY AND SCHOOL LANDS

March 9, 2022 at **4:30 PM**

Via Microsoft Teams meeting only

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 701-328-0950,,871759374#

Phone Conference ID: 871 759 374#

SPECIAL MEETING AGENDA

➤ = **Board Action Requested**

1. **Approval of Meeting Minutes – Jodi Smith**

Consideration of Approval of Land Board Meeting Minutes by voice vote.

➤ A. February 24, 2022 – pg. 2

2. **Investments – Jodi Smith/Michael Shackelford**

A. Russian Investment Exposure – pg. 28

Next Meeting Date – March 31, 2022

**Minutes of the Meeting of the
Board of University and School Lands
February 24, 2022**

The February 24, 2022 special meeting of the Board of University and School Lands was called to order at 9:05 AM via Microsoft Teams by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kate Schirado	Administrative Assistant
Dennis Chua	Investments
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
James Wald	Legal Council
Catelin Newell	Administrative Staff Officer
Chris Suelzle	Minerals Division Director
Kayla Spangelo	Surface Range Soils Management Specialist
Peggy Gudvangen	Finance Division Director
Jessica Fretty	Unclaimed Property
Susan Dollinger	Unclaimed Property
Emily Bosch	Unclaimed Property
Scott Giere	Revenue Compliance
Matthew Reile	IT
Rob Dixon	IT
Michael Humann	Surface Division Director

Guests in Attendance:

Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Tammy Miller	Office of the Governor
Joe Heringer	In-coming Land Commissioner
Dave Garner	Office of the Attorney General
Mike Nowatzki	Office of the Governor
Oscar Sheehan	
Adam Willis	
C. Rajala	
Gary Hagen	

OTHER BUSINESS

Resolution for Attorney General Wayne Stenehjem

A Memorial Resolution extending the sympathy and condolences of the North Dakota Board of University and School Lands to the family of Wayne Stenehjem

- Whereas,** Wayne Stenehjem served the State of North Dakota for more than 45 years, serving the last 21 years as the State’s longest-serving Attorney General; and
- Whereas,** Wayne was a dedicated trustee of the permanent trust funds, ensuring that both current and future beneficiaries receive maximum economic returns from the school trusts through clarity, undivided loyalty, enforceability, perpetuity and accountability.
- Whereas,** Wayne was passionate about fulfilling his duty to uphold the law and to proudly carried on the pioneering commitment of our State’s early leaders to the constitutionally protected public education financing that originated with millions of acres of land granted by the federal government;
- Whereas,** Wayne had a consistent and vigorous drive for doing the right thing, even when it was the most difficult option;
- Whereas,** Wayne listened and ensured the Department of Trust Lands’ staff felt heard and empowered; and
- Whereas,** the North Dakota Board of University and School Lands and the Department of Trust Lands will miss Wayne’s tremendous insight and intellect, his sage legal advice and institutional knowledge, and his entertaining stories about his travel adventures with his wife, Beth, and son, Andrew, and his infectious laughter.

Now, therefore, the North Dakota Board of University and School Lands honors Wayne Stenehjem for his more than 45 years of outstanding service to the State of North Dakota and offers its sympathy and deepest condolences to Beth, Andrew, and the entire Stenehjem family.

Adopted this 24th day of February 2022.

The North Dakota Board of University and School Lands

Doug Burgum, Governor and Chairman
 Alvin A. Jaeger, Secretary of State
 Drew H. Wrigley, Attorney General
 Kirsten Baesler, Superintendent of Public Instruction
 Thomas Beadle, State Treasurer

Motion: The Board approve the Resolution for Attorney General Wayne Stenehjem.

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

APPROVAL OF MINUTES

A motion to approve the minutes of the January 27, 2022 regular meeting was made by Secretary Jaeger and seconded by Treasurer Beadle; Attorney General, Drew Wrigley abstained from the vote and the motion carried unanimously on a voice vote. A motion to approve the minutes of the February 17, 2022 special meeting was made by Secretary Jaeger and seconded by Treasurer Beadle and the motion carried unanimously on a voice vote.

REPORTS

Report of Encumbrances

Right of Way R-10002				
Granted To	True Oil LLC, Casper, Wyoming	Date Issued	1/18/2022	
For the Purpose Of	On-Lease Surface Damage Agreement Amendment - Saltwater Pipeline	Total Rods	1.65	
		Total Acres	0.01	
Tracts/Trusts				
Legal Description	Subdivision	Trust		
McKenzie-148-101-36	NE4	A		
Right of Way Terms	Minimum Amount	Measurement Rate	Measurement Type	Amount
Initial	Set Amount			\$250.00

Right of Way R-8917				
Granted To	Oneok Rockies Midstream LLC, Sidney, Montana	Date Issued	1/20/2022	
For the Purpose Of	Original Easement - Gas Gathering Pipeline	Total Rods	449.10	
		Total Acres	7.64	
Tracts/Trusts				
Legal Description	Subdivision	Trust		
Williams-156-100-16	NW4	A		
	SW4	A		
Right of Way Terms	Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee	Set Amount			\$250.00
Initial	Set Amount			\$210,125.00

Right of Way R-10021				
Granted To	Paragon Geophysical Services Inc, Wichita, Kansas	Date Issued	1/10/2022	
For the Purpose Of	Easement Amendment - Geophysical Operation	Total Rods	0.00	
		Total Acres	479.96	

Tracts/Trusts		Subdivision	Trust		
Legal Description					
Mercer-142-88-6		E2SW4, LOTS 6,7	A		
		SE4NW4, LOTS 3,4,5	A		
		SW4NE4, LOT 2	A		
		W2SE4	A		
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee		Set Amount			\$250.00
Initial		Set Amount			\$4,799.50

Right of Way R-8967			
Granted To	Continental Resources Inc, Oklahoma City, Oklahoma	Date Issued	1/20/2022
For the Purpose Of	Easement Amendment - Pipeline & Communication Cable	Total Rods	605.21
		Total Acres	7.73

Tracts/Trusts		Subdivision	Trust		
Legal Description					
Dunn-146-96-36		NW4	A		
		SE4	A		
		SW4	A		
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee		Set Amount			\$250.00
Initial		Set Amount			\$956.75

Right of Way R-10005			
Granted To	West Dakota Water LLC, Williston, North Dakota	Date Issued	1/8/2022
For the Purpose Of	Original Permit - Temporary Layflat Line	Total Rods	1,162.42
		Total Acres	8.53

Tracts/Trusts		Subdivision	Trust		
Legal Description					
Mountrail-155-94-28		SE4	C		
		SW4	C		
Mountrail-155-94-36		NE4	A		
		NW4	A		
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee		Set Amount			\$250.00
Initial		Set Amount			\$27,800.00

Right of Way R-10010				
Granted To	Avery Technical Resources DBA Avery Land Services, Sterling, Colorado		Date Issued	1/20/2022
For the Purpose Of	Original Permit - Planning & Preconstruction Survey Access		Total Rods	0.00
			Total Acres	0.00
Tracts/Trusts				
Legal Description	Subdivision			Trust
ALL	ALL			A
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type
Application Fee	Set Amount			\$250.00
One Time	Set Amount			\$500.00

Right of Way R-10012				
Granted To	Bartlett & West Inc, Bismarck, North Dakota		Date Issued	1/20/2022
For the Purpose Of	Original Permit - Planning & Preconstruction Survey Access		Total Rods	0.00
			Total Acres	0.00
Tracts/Trusts				
Legal Description	Subdivision			Trust
ALL	ALL			A
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type
Application Fee	Set Amount			\$250.00
One Time	Set Amount			\$500.00

Right of Way R-10013				
Granted To	Highlands Engineering & Surveying PLLC, Dickinson, North Dakota		Date Issued	1/22/2022
For the Purpose Of	Original Permit - Planning & Preconstruction Survey Access		Total Rods	0.00
			Total Acres	0.00
Tracts/Trusts				
Legal Description	Subdivision			Trust
ALL	ALL			A
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type
Application Fee	Set Amount			\$250.00
One Time	Set Amount			\$500.00

Right of Way R-10013

Granted To	Highlands Engineering & Surveying PLLC, Dickinson, North Dakota	Date Issued	1/22/2022
For the Purpose Of	Original Permit - Planning & Preconstruction Survey Access	Total Rods	0.00
		Total Acres	0.00

Tracts/Trusts					
Legal Description	Subdivision			Trust	
ALL	ALL			A	
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee	Set Amount				\$250.00
One Time	Set Amount				\$500.00

Right of Way R-10016				
Granted To	ND Energy Services Inc, Dickinson, North Dakota	Date Issued	1/18/2022	
For the Purpose Of	Original Permit - Temporary Layflat Line	Total Rods	784.84	
		Total Acres	9.81	

Tracts/Trusts					
Legal Description	Subdivision			Trust	
Dunn-146-94-36	NW4			A	
	SE4			A	
	SW4			A	
Right of Way Terms		Minimum Amount	Measurement Rate	Measurement Type	Amount
Application Fee	Set Amount				\$250.00
Initial	Set Amount				\$12,950.00

Total Initial Payment Amount \$258,381.25

January 2022 Report of Shut-Ins Approved by Land Commissioner

Granted to:	Marathon Oil Company
For the Purpose of:	Operations
Date Issued:	01/21/2022
Application Fee:	\$100.00
Trust:	Common Schools
Leases:	OG-06-02154, OG-06-02155

Summary of Oil and Gas Lease Auction

On behalf of the Board of University and School Lands (Board), the Department of Trust Lands conducted an oil and gas lease auction on www.energynet.com which concluded on February 1, 2022.

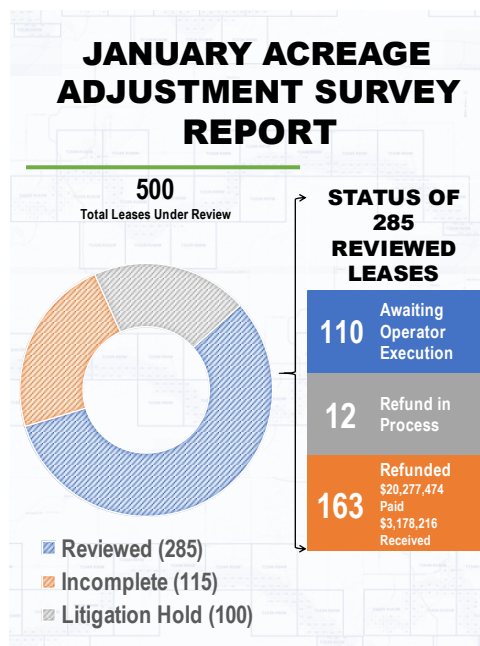
There were 57 tracts offered, and all tracts received competitive bids (if the Board does not receive a competitive bid, the lease is awarded to the nominator). The highest bid per acre was \$5,000.00 (\$10,100.00 for 2.02 net acres) in McKenzie County. 32 tracts benefit the Common Schools Trust Fund; two tracts benefit the State Hospital Fund; two tracts benefit the North Dakota School of Science Fund; and 21 tracts benefit the Strategic Investment and Improvements Fund (SIIF) (with two of these tracts also benefitting the Maintenance Fund).

County	Tracts/County	Net Mineral Acres	Total Bonus	Average Bonus/Acre
Billings	22	1288.63	\$315,654.32	\$244.95
Bottineau	5	348.41	\$8,556.61	\$24.56
Divide	16	1820.00	\$349,960.00	\$192.29
Dunn	4	480.00	\$57,120.00	\$119.00
McKenzie	5	299.20	\$173,971.33	\$581.45
Stark	5	360.00	\$10,880.00	\$30.22
GRAND TOTAL	57	4596.24	\$ 916,142.26	\$199.32

There was a total of 24 bidders who submitted 1416 bids on 57 tracts. The bidders were from 10 states and one Canadian province (AZ, CA, CO, MN, MT, ND, NJ, TX, WA, WY, and Alberta, Canada).

A total of \$916,142.26 of bonus was collected from the auction.

Acresage Adjustment Report



NDDTL River Tracts map and outstanding requests for acreage adjustment stipulation and lease correction were presented to the Board and are available upon request.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**

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

The Board entered into executive session at 9:35 AM.

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director

Guests in Attendance:

Charles Carvell	Office of the Attorney General-present for
Dave Garner	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor

The executive session adjourned at 10:06 AM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session meeting, the Board was provided information and no formal action was taken.

January Unclaimed Property Report

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder’s business that has remained unclaimed by the owner for more than the established time frame for the type of property. It can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc.

An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law. A holder can include a bank, insurance company, hospital, utility company, retailer, local government, etc.

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands (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. In January 2020, the Division enacted North Dakota Administrative Code ch. 85-03. During the 67th Legislative Assembly, the Revised Uniform Unclaimed Property Act (RUUPA) was passed under Senate Bill 2048, codified as N.D.C.C. ch. 47-30.2.

For the month of January 2022, the Division received 46 holder reports with a property value of \$254,692 and paid 439 claims with a total value of \$420,425.

The Division is implementing a Voluntary Disclosure Agreement (VDA), a program through which a holder can report on a voluntary basis is overdue unclaimed property. Many states offer VDA programs as an olive branch, providing businesses the opportunity to come into compliance with unclaimed property laws without the burden of interest and penalties. Through the VDA program, the Division will proactively identifying noncompliant holders, reach out to them in a constructive manner, educate them on their reporting obligations, and assist them in correctly reporting unclaimed property.

While an audit presence is an essential element to compel compliance with Unclaimed Property Laws, a VDA program is an important tool which allows a company to easily become compliant and provides several benefits:

1. Allows the company to perform a self-review vs. an audit
2. Avoid some or all interest and penalties that might apply to late reported property
3. Assists a company to solidify its internal policies/procedures to it can remain in compliance

The Financial Report (Unaudited) for period ending November 30, 2021 was presented to the Board for review and is available at the Department upon request.

Investment Updates

Portfolio Rebalancing Updates

Since the last Board meeting, only Owl Rock has made a capital call amounting to around \$21.5M reducing its unfunded commitment to \$35M.

Unfunded commitments are at \$714.15M. These are:

1. Apollo Accord Fund, \$96.75M
2. Varde Dislocation Fund, \$42.5M
3. GCM Private Equity, \$110M
4. ARES Pathfinder Fund, \$64.5M
5. Angelo Gordon DL IV, \$25M
6. Owl Rock Diversified Lending, \$35M
7. GCM Secondary Opportunities Fund, \$121M
8. Harrison Street Core Property Fund LP, \$69.4M
9. FSI GDIF (Infrastructure), \$150M

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of February 16, 2022. The figures provided are unaudited.

As of February 16, 2022	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,167,180,055.15	19.3%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,118,006,086.97	18.5%	19.0%	14.0%	24.0%
Fixed Income	1,422,139,960.54	23.5%	22.0%	17.0%	27.0%
Transition Account	350,038,875.52	5.8%	0.0%	-5.0%	5.0%
Absolute Return	860,601,207.06	14.2%	15.0%	10.0%	20.0%
DIS	-	0.0%	0.0%	-5.0%	5.0%
Real Estate	881,877,794.62	14.6%	15.0%	10.0%	20.0%
Private Equity (Grosvenor)	50,013,997.60	0.8%	5.0%	0.0%	10.0%
Private Infrastructure (JPM-Infra)	130,000,000.00	2.1%	5.0%	0.0%	10.0%
Opportunistic Investments (Varde & Apollo)	71,283,743.00	1.2%	0.0%	-5.0%	5.0%
Portfolio Total	6,051,141,720.46	100.0%			

INVESTMENTS

Investment Policy Statement – Second Reading

The Board of University and School Land’s (Board) Investment Policy Statement (IPS) is to be formally reviewed at least every four years or when a written investment policy must be established for new funds. In June 2020, the Board entered into an asset management agreement with the Theodore Roosevelt Presidential Library Foundation to manage the investment assets of the Theodore Roosevelt Presidential Library and Museum Endowment (Endowment), in accordance with NDCD ch. 54-07-12.

Department Staff recommends the Board adopt amended IPS (Attachment 1) to include a policy for the Endowment.

In addition, Staff recommends changing the definition of real estate assets under “Permitted Investments,” relating to item 3.A. on this month’s Board agenda, if approved.

The two substantive changes to the IPS are as follows:

1. Reflect the addition of the investment policy for the Endowment as reflected on page 29 (Attachment 1). Also, adding the Endowment where appropriate throughout the IPS.
2. Update the real estate asset class definition under “Permitted Investments” on page 20 as follows: “As well as, Real Estate Investment Trusts (REIT’s) and other real estate securities and related index strategies for rebalancing tools.”

Motion: **The Board approve the updates to the Investment Policy Statement as shown on the attached redline version.**

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

Redlined Investment Policy Statement was presented to the board and is available from the department upon request.

S U R F A C E

Surface Land Lease Revision

The Department of Trust Lands (Department) is recommending revisions to paragraph 17 of the Board of University and School Lands’ (Board) Surface Land Lease (Attachment 1) based on the following statutes:

N.D.C.C. § 4.1-47-26 – Publicly owned land -- Noxious weed control

Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds, within thirty days after the agency receives the bill.

N.D.C.C. § 63-05-03 – Failure to cut weeds and grasses – Expenses levied as taxes against land

If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads as provided in this chapter, the board of township supervisors or the board of county commissioners, as the case may be, may cause the weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

North Dakota Century Code allows the counties to enter land owned by the Board to control noxious weeds (see N.D.C.C § 4.1-47-26) and to cut road ditches (see N.D.C.C. § 63-05-03). Those statutes allow the county to charge the Board for such expenses.

The Department recommends the proposed revision to the lease term to clarify that the expense is the responsibility of the lessee:

17. COMPLIANCE WITH LAWS AND REGULATIONS. LESSEE shall comply with all rules and regulations of the Board of University and School Lands and all state and federal laws, including payment of any taxes and special assessments levied against the Land and costs associated with management of the Land or LESSEE'S interest thereon.

The Attorney General's Office provided guidance related to the proposed revision to the Board's Surface Land Lease.

Motion: The Commissioner recommends the Board approve the changes to the Surface Land Lease as referenced above and as shown in the attached redlined Surface Land Lease.

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

Surface Land Lease redlined lease document was presented to the board and is available from the department upon request.

OTHER BUSINESS

Incoming Land Commissioner Transition Plan Adjustment

To facilitate an orderly and efficient transition, the incoming Department of Trust Lands Commissioner will begin his orientation into the new position on February 28, 2022. The transition plan will include an initial meeting with acting Commissioner Jodi Smith, who will provide introductions to key agency staff and an overview of agency operations. During the transition period, Mr. Heringer will schedule and conduct one-on-one meetings with DTL division directors and additional meetings with Commissioner Smith, for briefings on division operations, budgeting, workforce/staffing and strategic plans.

Commissioner Heringer's term of appointment will be effective on March 14, 2022 and run through June 30, 2025, as defined in law. The term of acting Commissioner Smith will expire on March 13, 2022.

Motion: The transition plan and timeline for onboarding Commissioner Heringer, set forth above, be adopted.

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

Resolution For Hiring of Land Commissioner

Historically, when a new Commissioner is appointed, the investment advisors have required a board resolution and vote acknowledging the appointment of the Commissioner and other persons responsible for managing the Board's investment program.

The following resolution is proposed for adoption:

BE IT RESOLVED that the Board of University and School Lands authorized the appointment of Joseph Heringer as Land Commissioner at a special meeting, February 17, 2022. Mr. Heringer's term of appointment begins March 14, 2022.

On and after March 14, 2022, Commissioner Heringer shall have the authority to represent the Board of University and School Lands in all activities involving the financial assets under its control, as provided for in state law and in accordance with Board policy.

Copies of the resolution will be sent to the Board's custodial bank and investment advisors, along with a letter of direction authorizing Commissioner Joseph Heringer, Investment Director Michael Shackelford and Investment Advisor Dennis Chua are authorized to represent the Board in all activities involving the financial assets under the Board's control. The Department complies with the North Dakota State's Office of Management and Budget, Fiscal and Administrative Policy 216 – Internal Control and Fraudulent/Significant Dishonest Act, state law and Board policy.

Motion: Effective March 14, 2022, the Board adopt the resolution authorizing Joseph Heringer, Land Commissioner, Investment Director, Michael Shackelford and Investment Analyst, Dennis Chua, to represent the Board in all activities involving the financial assets under the Board's control as provided for in state law and in accordance of Board policy.

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

LITIGATION

Newfield Litigation

Case: **Newfield Exploration Company, Newfield Production Company, and Newfield RMI LLC v. State of North Dakota, ex rel. the North Dakota Board of University and School Lands and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands, Civ. No. 27-2018-CV-00143**

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

Counsel: Lawrence Bender - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP

Judge: Robin Schmidt

Issues: Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board's lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

History: A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision." The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019. Telephonic Status Conference scheduled for March 17, 2020 before the District Court. On May 14, 2020, the Court scheduled a five-day Court Trial to start on October 4, 2021, McKenzie County Courthouse. On July 28, 2020, a Stipulated Scheduling Order was entered, setting dates for various deadlines. On April 1, 2021, the State served Defendants State of North Dakota, ex re. 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' Interrogatories, Requests for Production of Documents, and Requests for Admissions to Plaintiff. On April 1, 2021, the Plaintiffs served the following on the State: Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of a Representative of the North Dakota Department of Trust Lands; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Lance Gaebe; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Taylor K. Lee; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Jodi Smith; and Plaintiffs' First Set of Interrogatories, Requests for Production, and Requests for Admission to all Defendants. On July 1, 2021, Defendants filed their Motion for Summary Judgment and Plaintiffs filed their Motion for Partial Summary Judgment. On August 2, 2021, Plaintiffs filed a Motion to Admit Garrett

S. Martin Pro Hac Vice and their Response Brief in Opposition to Motion for Summary Judgment. Also on August 2, 2021, Defendants filed their Brief in Response to Plaintiffs' Motion for Partial Summary Judgment. On August 4, 2021, the parties filed an Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to Motions for Summary Judgment and the Joint Motion to Exceed Volume Limitations. On August 5, 2021, the Court issued its Order Granting Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to motions for Summary Judgment and the Order Granting Joint Motion to Exceed Volume Limitations. The parties now have until August 30, 2021 to file their opposition/response briefs and the page limit was extended from 12 pages to 30 pages for both parties. On August 9, 2021, Plaintiffs requested a hearing on Plaintiff's Motion for Partial Summary Judgment and Defendants Motion for Summary Judgment and scheduled that hearing for September 16, 2021, at 10 a.m. Also on August 9, 2021, a Pretrial Conference was scheduled for 10 a.m. on October 1, 2021. Mediation was held September 2, 2021. The Deposition of Adam Otteson was held August 31, 2021; Jodi Smith's deposition was held September 14, 2021; the deposition of Kelly Vandamme was held September 22, 2021; and the deposition of John Kemmerer was held for September 23, 2021. On September 3, 2021, Plaintiffs filed a Motion to Compel which was later withdrawn on September 16, 2021. On September 8, 2021, Plaintiffs submitted a Motion to Admit Ryan Pitts Pro Hac Vice. The Order of Admission was signed September 9, 2021. On September 10, 2021, Plaintiffs filed a Motion to Exclude Evidence Attached to Defendants Summary Judgment Brief. They also filed an Emergency Motion for Expedited Briefing Schedule and a request for the hearing on both of these motions be held with the motions for summary judgment. Judge Schmidt sent an email to the parties on September 10, 2021 regarding the status. On September 14, 2021, the Order Extending Deadline to Submit Motions in Limine and Pretrial Statements to be due September 20, 2021 was signed. On September 15, 2021, Defendants filed a Motion to Exclude Evidence and Response to Plaintiffs' Motion to Exclude. The parties attending the oral argument on September 16, 2021 and an Order on Cross Motions for Summary Judgment was issued that date. On September 17, 2021, the parties filed a Stipulation regarding Trial Witnesses and the Order Adopting the Stipulation was signed on September 20, 2021. On September 20, 2021, the Defendants filed an Expedited Motion to Supplement Exhibits and Plaintiffs filed a Motion in Limine or to Exclude and Limit Anticipated Testimony. The parties also filed their Pretrial Statements and a Combined Exhibit list. On September 23, 2021, Plaintiffs filed their Response in Opposition to Defendants' Expedited Motion to Supplement Exhibits and the Court entered the Order Granting Expedited Motion to Supplement Exhibits filed by Defendants. On September 24, 2021, Plaintiffs filed their Response in Opposition to Defendants' Motion to Exclude Evidence, an Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means, and a Special Motion to Exclude and Motion in Limine. Defendants filed a Supplemented Exhibit List. On September 27, 2021, the Court entered its order Granting Plaintiffs' Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means. Defendants filed a Second Supplemented Exhibit List and their response to Plaintiff's Special Motion to Exclude and Motion in Limine. On September 28, 2021, Defendants filed their response to Plaintiff's Motion in Limine or to Exclude and Limit Anticipated Testimony. A pretrial conference was held on October 1, 2021. The trial was held on October 4, 5 & 6. The Court issued its Memorandum Opinion, Findings of Fact, Conclusions of Law and Order for Judgment on October 13, 2021. On October 22, 2021, Plaintiffs filed their Statement of Costs and Disbursements of Lawrence Bender, Statement of Costs and Disbursements of Michelle P. Scheffler, and proposed Judgment. On October 27, 2021, the State sent a letter to the Honorable Robin A. Schmidt advising that the State intended to submit a response to the proposed Judgment

filed by Plaintiffs. On November 5, 2021, the State filed its Objection to Plaintiff's Proposed Judgment. On November 12, 2021, Plaintiffs filed a Notice of Motion, Motion, and Brief in Support of Motion for Leave to File a Response to Defendants Objections to the Proposed Judgment. Order for Judgment was entered on November 16, 2021. The Notice of Entry of Judgment and Judgment were entered on November 17, 2021.

Current Status:

- **On January 18, 2022, a Notice of Appeal was filed by the Board.**
- **On January 28, 2022, an Order for Transcript was filed with the Supreme Court.**
- **On February 1, 2022, a Second Order for Transcript was filed with Supreme Court.**
- **On February 8, 2022, the Board filed an Unopposed Motion for Extension of Time to File Appellant Brief until 30 days after the final transcript has been filed of record.**
- **On February 10, 2022, the Supreme Court granted the motion for extension with Appellant's brief being due 30 days after the final transcript is filed.**
- **The Supreme Court advised that Appellant's brief is due March 16, 2022.**

Nelson Litigation

Case: **Marvin Nelson, Michael Coachman & Paul Sorum v. The Board of University and School Lands of the State of North Dakota and the State of North Dakota, – Civ. No. 27-2021-CV-00285**

Tribunal: **McLean County District Court**

Judge: **Daniel El-Dweek**

Attorney: **David Garner**

Opposing Counsel: **Plaintiffs Appearing Pro Se**

Issues: The Board was named as a defendant in the above reference case which was served on July 26, 2021. Plaintiffs have filed a Summons for Petition or Quiet Title, Petition for Quiet Title, and a Memorandum in Support of Petition for Quiet Title. Plaintiffs are seeking to quiet title to the property described as:

That area of the bed of Lake Sakakawea known as Lake Jesse (Jesse Lake) delineated by the US Army Corps of Engineers Shoreline Survey used in acquiring land for the creation of Lake Sakakawea in Section 30 of Township 153 North Range 98 West and in Sections 23,24,25,26 in Township 153 North Range 99 West (approximately 488.68 acres).

History: **On August 5, 2021, Paul Sorum emailed a Request for Setting for Petition for Quiet Title and Memorandum in Support of Quiet Title requesting the Court schedule a one-hour hearing on Petitioners' Petition for Quiet Title and Petitioners' Memorandum in Support of Petition for Quiet Title. On August 16, 2021, Defendants filed a Motion to Dismiss.**

Current

Status:

- On August 27, 2021, Petitioners filed an Opposition to Respondents Motion to Dismiss.
- On August 31, 2021, an Expedited Motion for Extension of Time to File Reply Brief and Petitioners filed their Opposition to Respondents Motion for an Extension of Time.
- On September 17, 2021, a Notice of Hearing was filed scheduling a hearing on the Motion to Dismiss for October 12, 2021.
- On September 23, 2021, Petitioners filed a Motion for Continuance and that Motion was granted on October 8, 2021 and the hearing was rescheduled to October 18, 2021.
- On October 12, 2021, Defendants filed a Motion to Appear by Telephone and that request was granted on October 15, 2021.
- On November 15, 2021, the Court filed the Certificate of Court Recorder.
- On February 3, 2022, Order on Motion to Dismiss and on Petition for Quiet Title was filed dismissing the action without prejudice due to lack of subject matter jurisdiction.

RE: MHA Litigation

Case: Mandan, Hidatsa, and Arikara Nation v. United States Department of the Interior; David L. Bernhardt, in his official capacity as Secretary of the United States Department of Interior; and Daniel H. Jorjani, in his official capacity as Solicitor of the United States Department of the Interior; Case No. 20-1918 (ABJ)

Date Filed: July 16, 2020**Court:** United States District Court for the District of Columbia**Judge:** Honorable Amy Berman Jackson**Attorney:** Matthew Sagsveen, Beveridge & Diamond**Opposing****Counsel:** Steven D. Gordon, Philip Merle Baker-Shenk, Timothy Purdon, and Timothy Billion for Plaintiffs; Reuben S. Schiffman for United States Department of Interior

Issues: In July, 2020, the Mandan, Hidatsa, and Arikara Nation (Tribe) filed a Complaint against the United States Department of the Interior (DOI); David Bernhardt, Secretary of DOI; and Daniel Jorjani, DOI Solicitor. The Complaint asserts four causes of action. Count One asserts that Solicitor Opinion M-37056 issued May 26, 2020, by Jorjani is flawed because it is inconsistent with past DOI opinions and decisions and contrary to the historical record. Count Two asserts the Opinion is flawed because it is the result of improper political influence. Counts Three and Four seek, essentially, an accounting and seem premised on the success of either Count One or Count Two.

In the Complaint's Prayer for Relief, the Tribe requests: (a) that the Jorjani Opinion, which concluded North Dakota owns the lands beneath the Missouri Riverbed within the Fort Berthold Reservation, be set aside; (b) that the Court grant injunctive relief preventing Defendants from taking any steps to implement the Opinion; (c) that the Court compel DOI to account to the Tribe regarding the Missouri Riverbed and underlying minerals, including the production of minerals and the value of royalties owed thereon; (d) the Court declare the 1979 IBLA *Impel Energy* decision (finding the state does not own the riverbed) is *res judicata* and binding on the DOI; (e) the Court compel DOI to take the requisite administrative steps to document that the Missouri Riverbed and underlying minerals are held in trust by the United States

for the benefit of the Tribe; (f) the Court compel DOI to take requisite steps to administer and account for the Tribe's mineral rights in lands underlying the Missouri Riverbed; (g) the Court compel DOI to collect, deposit and invest or pay funds owing to the Tribe for the extraction of minerals from the lands underlying the Missouri Riverbed; (h) that the Tribe be awarded reasonable fees, costs, and expenses, including attorney's fees; and (i) that the Court grant such further relief as the Court deems just and equitable.

Along with its Complaint, the Tribe filed a motion for preliminary injunction asking that the Court to immediately order DOI to refrain from doing anything to implement the Jorjani Opinion until the Court has decided the merits of the Tribe's claims regarding that Opinion.

History:

Summons and Complaint filed July 16, 2020. A scheduling conference was held by telephone on July 23, 2020, with a follow up on July 29. The parties agreed the pending motion for preliminary injunction can be considered to be Plaintiff's motion for partial summary judgment on count one and resolved with defendant's cross motion for partial summary judgment as to that count. The merits of count one will be consolidated with any hearing on the motion for preliminary injunction. An Order issued by the Court on July 31, 2020 provides:

- Administrative record - due August 26, 2020;
- Defendant's consolidated opposition to motion for preliminary injunction and cross-motion for partial summary judgment - due September 1, 2020.
- Plaintiff's consolidated reply and cross-opposition to Defendant's motion - due October 1, 2020.
- Defendant's cross-reply to opposition - due October 15, 2020.
- No lease or other official record affecting ownership of the Missouri Riverbed mineral estate within the Reservation may be modified or changed before 200 days from the date of this order – February 16, 2021, unless Defendant seeks the court's permission and amendment of the order, the Plaintiff has an opportunity to be heard, and the motion is granted.

That any revenues generated from riverbed mineral development under control of DOI not be disbursed until after the Court's resolution of the cross-motions for partial summary judgment on count one. The State of North Dakota filed an Expedited Motion to Intervene on August 10, 2020. The Court issued an Order on August 11, 2020, allowing Plaintiff to respond to the State's Motion by August 17, 2020, and the State to file a reply by August 21, 2020. The Tribe filed its Opposition to the State Motion to Intervene on August 17, 2020. On August 21, 2020, the State filed its reply to the Tribe's opposition to the motion to intervene. The Notice of Lodging of Administrative Record was filed on August 26, 2020. The Court entered its Opinion and Order granting North Dakota's Motion to Intervene and setting forth requirements for filings. On September 1, 2020, the United States filed the United States Department of Interior's Opposition to Plaintiff's Motion for Preliminary Injunction and Cross-Motion for Partial Summary Judgment. On September 8, 2020, Plaintiff filed a Motion to Complete Administrative Record and a proposed Order. Also on September 8, 2020, the State filed the Intervenor-Defendant State of North Dakota's Cross-Motion for Partial Summary Judgment and Opposition to Plaintiff's Motion for Preliminary Injunction. On April 2, 2021, Plaintiff's Supplemental Submission Regarding Mootness by Mandan, Hidatsa, and Arikara Nation, State of North Dakota's Response to Mootness, and U.S. Department of Interior's Response to Order of the Court were filed. By letter dated April 1, 2021, Associate Solicitor Eric Shepard invited the State of North Dakota to submit

materials relevant to the review of M-37056 issued by former Solicitor Daniel Jorjani. On April 12 & 27, Attorney General Stenehjem requested more time to participate due to the inability to access records to complete research. On May 7, 2021, Attorney General Stenehjem advised that we were unable to provide the requested information during the time allotted but are providing a report by Stevens Historical Research Associates that has been prepared to date and reiterated request for more time. On July 30, 2021, the parties filed the Joint Status Report. An Order was filed by the Court on August 2, 2021 dismissing Court I and II of the Complaint, the preliminary injunction motion was denied as moot, and Counts III and IV remain justiciable. The parties are ordered to meet and confer and submit a joint status report by August 13, 2021 that sets forth the parties' views on whether Counts III and IV should continue to be stayed pending issuance of a new M-Opinion and if not, proposing a scheduling for resolving those claims.

**Current
Status:**

- **On August 13, 2021, a Joint Status Report was filed.**
- **On August 16, 2021, a Minute Order was entered continuing the stay and that the parties shall file a joint status report within 14 days of the issuance of a new M-Opinion or the conclusion of the Solicitor's Office review without a new M-Opinion, or on November 16, 2021 if nothing has been filed by that date."**
- **On November 17, 2021, the Court entered a minute order advising the case remains stayed and provided the parties must file a joint status report by December 16, 2021 or within 14 days of either the issuance of a new M-Opinion or the conclusion of the governments review without a new M-Opinion.**
- **A Joint State Report was filed on December 16, 2021, in which the parties proposed the remaining counts in this litigation remain stayed for an additional 30 days to allow Interior to continue to work on the M-Opinion, with a status report submitted within 14 days of issuance of a new M-Opinion or the conclusion of the solicitor's office review without a new M-Opinion, or at the conclusion of this 30 day period. The parties agreed that during the duration of the 30 day stay, the status quo will be maintained concerning lease recordation n the disputed riverbed acreage and any revenues generated from mineral development.**
- **On January 24, 2022, the Court issued a Minute Order staying the case and providing that the Parties must file a joint status report by February 22, 2022 or within 14 days of either the issurance of a new M-Opinion or the conclusion of the government's review without a new M-Opinion.**
- **On February 4, 2022, the Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River Within the Boundaries of the Fort Berthold Reservation (North Dakota), M-37073, was issued by the Solicitor, Robert T. Anderson.**
- **On February 14, 2022, the parties filed a Joint Motion for Extension to File Status Report extending the date the status report would be due to March 4, 2022, and that Motion was granted on February 15, 2022.**

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, John Ward

Issues: The Wilkinson lawsuit was filed on January 10, 2012. The Plaintiffs assert that they own minerals in a 200 acre tract west of Williston. This suit was initially filed in state court as a quiet title action. The Attorney General's Office filed an Answer and Counterclaim on February 27, 2012.

On July 1, 2014, the Plaintiffs filed an amended complaint in the case and added claims of unconstitutional takings, conversion, constructive trust and unjust enrichment, civil conspiracy and deprivation of rights under 42 U.S.C. § 1983. Plaintiffs assert in their amended complaint that the Board should be issuing leases on the west side of the Highway 85 bridge pursuant to the Phase II Investigation – the estimated location of the ordinary high watermark (OHWM) prior to inundation of Lake Sakakawea – rather than the Phase I Delineation – current location of the OHWM. Plaintiffs argue that the subject property is located under Lake Sakakawea, which did not exist at statehood, and thus the state did not acquire title to it as sovereign lands. Therefore, the State's title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea as determined by the Phase II investigation.

In January of 2016, the State Engineer sought and was granted intervention. A joint motion for summary judgment was filed by the Board and the State Engineer on March 1, 2016. On May 18, 2016, the district court granted the motion for summary judgment finding that: (1) the subject property is located along the Missouri River, which is no doubt navigable; (2) The Phase I Delineation should be used to determine the OHWM for the subject property rather than the Phase II Investigation, and therefore the property is determined to be sovereign land of the state of North Dakota; (3) to the extent Plaintiffs are aggrieved by the Phase I Delineation, they must exhaust their administrative remedies through the State Engineer before making a claim in district court; and (4) there are no grounds to support Counts II through VII. Plaintiffs filed a notice of appeal on June 1, 2016. Both EOG Resources, Inc. and Statoil Oil and Gas LP filed cross-appeals.

On September 28, 2017, the North Dakota Supreme Court reversed the district court's decision and remanded the case back to the district court. The Supreme Court held that:

1. Surface ownership could not be determined without the United States as a party to the action;
2. N.D.C.C. ch. 61-33.1 has a retroactive clause and the district court did not have an opportunity to determine if it applies and governs ownership of the minerals at issue;
3. A "takings" analysis must be conducted if the district court determines the State owns the disputed minerals; and
4. The district court erroneously made findings of disputed fact.

History: Due to the passage of S.B. 2134, the District Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the North Dakota Industrial Commission (NDIC). Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. The telephonic status conference scheduled for November 2, 2018 was cancelled. A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 2018. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State's Motion for Proposed Scheduling Order and Plaintiffs' Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State's Motion for Proposed Scheduling Order and Plaintiff's Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn't rule on the scheduling motions but granted Plaintiffs' request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court

filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

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

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020. The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020. On September 18, 2020 a Notice of Hearing was filed in the District Court setting a status conference for October 13, 2020, at 3:30 p.m. The Court issued an Order After Status Conference dated October 13, 2020, stating that a two day bench trial will be scheduled. A telephonic scheduling conference was scheduled for October 29, 2020, at 10:00 a.m. On October 23, 2020, the Supreme Court Judgment/Opinion was filed with the District Court. On October 30, 2020, the Court issued its Order After Scheduling Conference. The matter was set for Court Trial on April 16, 2021, for one day and July 23, 2021, also for one day. Defense council expressed concerns with a conflict with other scheduled trials. Therefore, a status conference was set for February 4, 2021 to determine if any conflicts have been obviated. The Court indicated it would consult with the scheduling clerk to determine second priority dates for one day trials in 2021. The Court set backup Court Trial dates of May 27, 2021 and May 28, 2021. Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota were served on the Board on January 26, 2021. The Board has 30 days to respond. On February 25, 2021, the Board served its Answers to Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota, and the State Engineer served its answers to interrogatories. State Engineer's Interrogatories, Request for Admissions, and Request for Production of Documents Regarding Damages (Request II) was served March 12, 2021. On March 19, 2021, Defendant Statoil Oil and Gas, LP's Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. On March 22, 2021, Defendant Statoil Oil and Gas, LP's First Supplemental Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. Plaintiff's Responses to State Engineer's Interrogatories, Requests for Admissions, and Requests for Production of Documents regarding Damages (Request II) was served April 14, 2021. On April 20, 2021, Plaintiffs filed their Motion for Attorneys' Fees and Costs against the State of North Dakota. Plaintiffs scheduled a hearing on this motion for July 22, 2021. Plaintiffs scheduled a status conference for April 27, 2021. At that hearing, it was decided that the trial for May 2021 would be scheduled for July 22 & 23, 2021, in Williston. On May 18, 2021, the Board of University and School Lands and the State Engineer filed their Response Brief Opposing Plaintiffs' Motion for Attorneys Fees and Costs. On June 8, 2021, Plaintiffs filed their Reply to State's Response Brief Opposing Plaintiffs' Motion for Attorneys' Fees and costs. On June 22, 2021, Plaintiffs filed their Pretrial Statement and Defendants, Board and State Engineer, filed their Pre-Trial Brief. Brigham Oil & Statoil brought a Motion to Dismiss on July 7, 2021. On July 8, 2021, the parties exchanged their witness and exhibit lists. Motions in Limine were

filed on July 8, 2021 by Brigham Oil and Statoil and the Board and State Engineer. The parties shared various drafts of witness and exhibit lists prior to trial. On July 12, 2021, the State filed its Motion in Limine to Exclude Evidence Regarding Statutory Interest of 6.5% or 18% on Royalties and Motion in Limine to Exclude Evidence Regarding S&P Vanguard 500 Index Fund Investor Shares (VFINX) Damages. On July 14, 2021, Statoil and Brigham filed Brigham Oil & Gas, L.P. s and Statoil Oil & Gas, L.P. s nka Equinor Energy, O.P. s (Collectively Statoil) Unopposed Request for Leave to Allow Witness Amy Becker to Appear by Reliable Electronic Means and the request was granted the same day. On July 15, 2021, Plaintiffs Plaintiffs' Request for Witness to Participate by Telephone or Electronic Means and the requested was granted the same day. On July 19, 2021, Plaintiffs filed Supplemental Affidavit of Joshua A. Swanson in Support of Plaintiffs' Motion for Attorneys' Fees and Costs against the State of North Dakota. On July 21, 2021, Plaintiffs filed Plaintiff s Brief in Response to Defendant Brigham Oil & Gas LP s (Collectively Statoil) Motion to Dismiss, Plaintiffs Response Brief in Opposition to Brigham Oil & Gas, L.P. s nka Equinor Energy, LP s (Collectively Statoil) Motion in Limine, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding S&P 500 Vanguard 500 Index Fund Investor Shares (VFINX) Damages, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding Statutory Interest. The trial was held on July 22 and 23, 2021. On July 22, 2021, the parties filed a joint exhibit list. On July 28, 2021, Brigham Oil & Gas, L.P.'s and Statoil Oil & Gas L.P.'s nka Equinor Energy, L.P.'s (Collectively "Equinor") Reply Brief in Support of Motion to Dismiss was filed, as was the Stipulation/Agreement to Dismiss Plaintiffs' Claims Against Defendant EOG Resources, Inc. On July 30, 2021, the Order Dismissing Plaintiffs' Claims Against Defendant EOG Resources, Inc. was filed. On August 11, 2021 the parties stipulated and the court entered its Order Dismissing Crossclaims Between Defendant EOG Resources, Inc., and Defendant Statoil Oil & Gas LP. On October 4, 2021, an Order Granting Extension of Time for Brigham and Statoil to File Reply Filings was filed. On October 5, 2021 Plaintiffs filed their Post-Trial Reply Brief and the Board and the State Engineer filed their Post Trial Response Brief. On December 10, 2021, the Court entered the Order for Judgment, which ordered:

- Statoil's motion to dismiss (Index #594) is denied.
- Statoil's motion in limine (Index #600) is denied as moot.
- The State's motions in limine (Index #607 and #615) are denied as moot.
- Petrogulf's crossclaims against EOG (Index #84) are dismissed with prejudice for failure to prosecute.
- EOG's counterclaim against Plaintiffs and crossclaims against the Land Board, OXY USA, Inc., and Petrogulf (Index #65) are dismissed with prejudice for failure to prosecute.
- Statoil's counterclaims against the Plaintiffs are dismissed because it is a prevailing party.
- Based on the Supreme Court's ruling in *Wilkinson II* and the application of N.D.C.C. ch. 61-33.1 to the Disputed Property "the

State of North Dakota does not own title to the mineral interests in the [Disputed] Property.”

- The takings claims in Counts II and III against the State are dismissed with prejudice.
- The conversion claims in Count IV against Statoil and the State are dismissed with prejudice.
- The unjust enrichment and constructive trust claims in Count V against Statoil and the State are dismissed with prejudice.
- The civil conspiracy claims in Count VI against Statoil and the State are dismissed with prejudice.
- The 42 U.S.C. § 1983 claim in Count VII against the State is dismissed with prejudice.
- The Plaintiffs are not entitled to statutory damages under either N.D.C.C. § 47-16-39.1 or N.D.C.C. § 28-20-34, and are prohibited from claiming statutory damages until June 2022 under N.D.C.C. § 61-33.1-04(2)(b).
- The Plaintiffs are not entitled to special damages attributable to lost investment opportunities in the S&P 500 VFINX.
- The Plaintiffs request for \$1,441,086.73 in interest is denied.
- The Plaintiffs are not entitled to damages under N.D.C.C. § 32-03-23(3) for Jon Patch’s time. The request for \$180,000 in damages is denied.
- The Plaintiffs are not entitled to damages for unjust enrichment and the Plaintiffs’ request for bonus/rental payments and royalty payments through disgorgement under the State’s contracts in the amount of \$207,336.61 is denied.
- The Plaintiffs are not entitled to attorneys’ fees or costs. The Plaintiffs’ requests for attorneys’ fees and costs are denied.
- Let Judgment be entered accordingly.

Current Status:

- **On January 10, 2022, the Judgment was entered.**
- **On January 13, 2022, the clerk’s office sent a letter to Crowley Fleck regarding return of the surety bond.**
- **On January 25, 2022, Plaintiffs filed a Notice of Appeal with the Supreme Court.**

M I N E R A L S

Repayment of Unpaid Gas Royalties Update

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

The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance

with the Board's lease, rules, and policies. Royalty audits began in the late 1980's and a Revenue Compliance Division was created in 2011 to ensure that royalty and other collections made on behalf of the trusts and other funds are complete and accurate.

A letter regarding Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 (February 2020 Letter), was sent to all entities required to pay royalties to the Board pursuant to the Board's lease. The February 2020 Letter advised all entities who have been deducting post production costs from royalty payments made to the Department that they have been underpaying royalties, contrary to the terms of the Board's lease. Entities were advised that penalties and interest continue to accrue on any unpaid amounts in accordance with the February 2020 Letter until payment is received. On April 8, 2020, the Board extended the date to come into compliance with gas royalty payments, as outlined in the February 2020 Letter, to September 30, 2020. At the August 27, 2020, Board meeting, the Board extended the date to come into compliance with gas royalty payments, as outlined in the February 2020 Letter, to April 30, 2020.

Since the issuance of the February 2020 Letter, the Department has been working with payors who have been deducting post production costs from royalty payments made to the Department to ensure that they are in compliance with the terms of the Board's lease.

The Department has several royalty repayment offers prepared to present to the Board in executive session pursuant to N.D.C.C. §§ 44-04-19.1 and 44-04-19.2.

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:

- **MHA Civ. No 1:20-cv-01918-ABJ**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Royalty Offers**

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

The Board entered into executive session at 10:49 AM.

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer

Kristie McCusker
Adam Otteson
James Wald

Paralegal
Revenue Compliance Director
Legal Counsel

Guests in Attendance:

Charles Carvell Office of the Attorney General-present for MHA
Dave Garner Office of the Attorney General
Jen Verleger Office of the Attorney General
Reice Haase Office of the Governor
Leslie Bakken Oliver Office of the Governor

The executive session adjourned at 12:36 PM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session meeting, the Board was provided information and no formal action was taken.

Motion: **The Board continue its appeal of the Newfield case with the ND Supreme Court, with the exception of item 7 as listed in the preliminary statement of the issues, filed on January 8, 2022.**

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

A D J O U R N

There being no further business, the meeting was adjourned at 12:39 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS
March 9, 2022

RE: Russian Investment Exposure
(No Action Requested)

The Permanent Trust Funds (PTFs) have within their Strategic Asset Allocation (SAA) exposure to emerging markets through both international equities and absolute return strategies. Within emerging markets Russian securities represented a small fraction, about 2-3% pre-war, depending on the index referenced. Currently, Russian securities represent less than 1% and are being removed from many emerging market indices.

The PTFs exposure to Russian securities is small as a percent of the total portfolio market value at just 0.07% or approximately \$4.2 million (please see below). All of the PTFs' investments in Russian securities are in either commingled funds or mutual funds managed by external investment managers. Commingled funds, like mutual funds, have multiple investors. Consequently, the investors in commingled funds and mutual funds have no practical ability to direct the fund manager in their investment decisions. Nevertheless, from the early days of the invasion Department Staff made clear to the managers that action should be taken to divest from Russian securities and comply with government sanctions. Additionally, Department Staff required an explanation of their strategy to divest from Russian securities and comply with government sanctions.

After Department Staff discussions with the investment managers, we have concluded the following:

1. Trading in Russian securities have seized up and there is little if any trading in these securities anywhere in the world. Based on this, it will be more difficult for these fund managers to continue to divest Russian securities.
2. All our managers are closely watching sanctions and other government actions that would affect the Russian securities they currently hold. They all are determined to remain in compliance with sanctions and other relevant regulations.
3. No new investment in Russian securities is contemplated, only the orderly and prudent divestment of Russian securities is being considered.
4. Our managers are behaving prudently and responsibly and are acting in the best interests of the PTFs.

Estimated Russian Exposure

2/24/2022

3/4/2022

Account	Market Value	Russia Exposure	%	Market Value	Russia Exposure	%
SSGA MSCI World ex US Index	\$ 619,042,206	\$ -	0.00%	\$ 603,092,346	\$ -	0.00%
Arrowstreet Emerging Mkt Equity	\$ 215,915,350	\$ 10,838,951	5.02%	\$ 209,533,640	\$ 2,032,476	0.97%
NTAM Emerging Mkt Equity Index	\$ 23,918,670	\$ 428,144	1.79%	\$ 23,164,379	\$ 257,125	1.11%
Acadian Int'l Small Cap Equity	\$ 175,465,973	\$ -	0.00%	\$ 174,559,382	\$ -	0.00%
SSGA MSCI ex US SmallCap Index	\$ 22,996,501	\$ 3,449	0.02%	\$ 22,634,422	\$ 1,811	0.01%
Total Broad Int'l Equity	\$ 1,057,338,739	\$ 11,270,544	1.07%	\$ 1,032,984,169	\$ 2,291,412	0.22%
GMO Benchmark Free	\$ 86,142,918	n/a	n/a	\$ 86,143,484	n/a	n/a
PIMCO All Asset All Authority	\$ 462,081,705	\$ 16,172,860	3.50%	\$ 467,945,686	\$ 1,403,837	0.30%
PineBridge Dynamic Asset Allocation	\$ 263,183,623	\$ 1,315,918	0.50%	\$ 257,635,907	\$ 515,272	0.20%
Millennium	\$ 30,000,000	\$ 45,000	0.15%	\$ 30,000,000	\$ 30,000	0.10%
Total Absolute Return	\$ 841,408,246	\$ 17,533,778	2.08%	\$ 841,725,078	\$ 1,949,109	0.23%
Total Assets	\$ 6,048,505,088	\$ 28,804,322	0.48%	\$ 6,039,045,944	\$ 4,240,521	0.07%