

**Governor's Conference Room and Microsoft Teams meeting**

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Or call in (audio only)

[+1 701-328-0950,,783826979#](tel:+17013280950783826979) United States, Fargo

Phone Conference ID: **783 826 979#**

Meeting Coordinators: Catelin Newell – Dir. Admin Services & IT, Kate Schirado – Exec. Assistant

➤ = **Board Action Requested**

1. **Approval of Meeting Minutes – Joseph Heringer**

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

➤ A. [March 28, 2024](#) – minutes available via link

2. **Operations – Joseph Heringer**

A. Commissioner's Report – pg. 2

B. Financial Dashboard – pg. 3

C. Commissioner Compensation and Performance – pg. 9

1. Committee Update – Treasurer Beadle

2. Key Performance Indicators Dashboard

3. **Division Reports – Joseph Heringer**

A. Surface – Joseph Stegmiller, Surface Director – pg. 14

B. Minerals – Chris Suelzle, Minerals Director – pg. 15

C. Unclaimed Property – Susan Dollinger, Unclaimed Property Director – pg. 17

D. [Financials](#) – Peggy Gudvangen, CFO - financial report available via link

4. **Investments – Frank Mihail, CIO**

A. Investment Update – pg. 18

B. Portfolio Review – pg. 21

5. **Special Projects – Joseph Heringer**

➤ A. Board Policy Updates – First Reading

➤ 1. Surface Fair Market Value – Joseph Stegmiller, Surface Division Director – pg. 35

➤ 2. Definitions / Fees – James Wald, General Counsel - pg. 53

6. **Litigation – Joseph Heringer – pg. 57**

➤ **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:**

○ Royalty Deductions Settlements

○ Continental Resources, Inc. v. North Dakota Board of University and School Lands (Royalty Deductions Case)

**Next Meeting Date – May 30, 2024**

**RE: Commissioner's Report**  
(No Action Requested)

- Oil Royalty Deductions Settlements – since last month we have achieved one more significant settlement; we have active discussions ongoing with two of the three remaining, with hopes of reaching settlements within the next two months
- Biennial Strategy Review – presented to executive branch leadership team on April 8, 2024; good response/feedback with several key take away action items
- Servant Leadership Workshop – all nine members of the DTL Leadership Team attended this impactful workshop in Bismarck on April 19, 2024
- Cash Management Study - attended April 8, 2024, Cash Management Study project update meeting as a member of the Study Steering Committee
- State Investment Board Investment Committee - attended April 12, 2024, meeting as a voting member
- Full State Investment Board -- will be attending April 26, 2024, meeting as a voting member
- Investments Strategic Planning Trip - Investment Team and I are traveling to Portland, Oregon April 29-30, 2024, for our annual strategy session with investment consultant RVK

**Human Resources Update**

- Investment Officer position filled with very strong candidate; start date will be in May/June time period

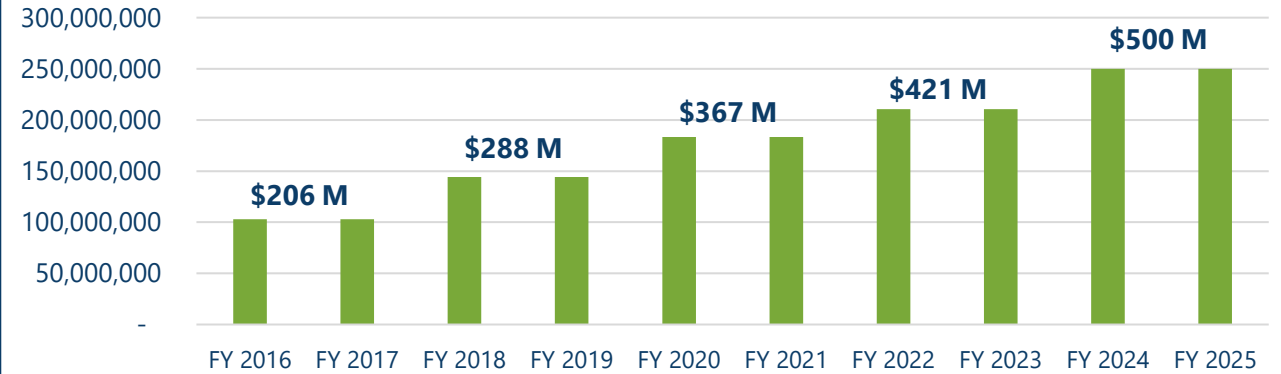
# COMMON SCHOOLS TRUST FUND (CSTF) OVERVIEW

## CSTF ASSET BALANCE as of 1/31/2024 (unaudited)

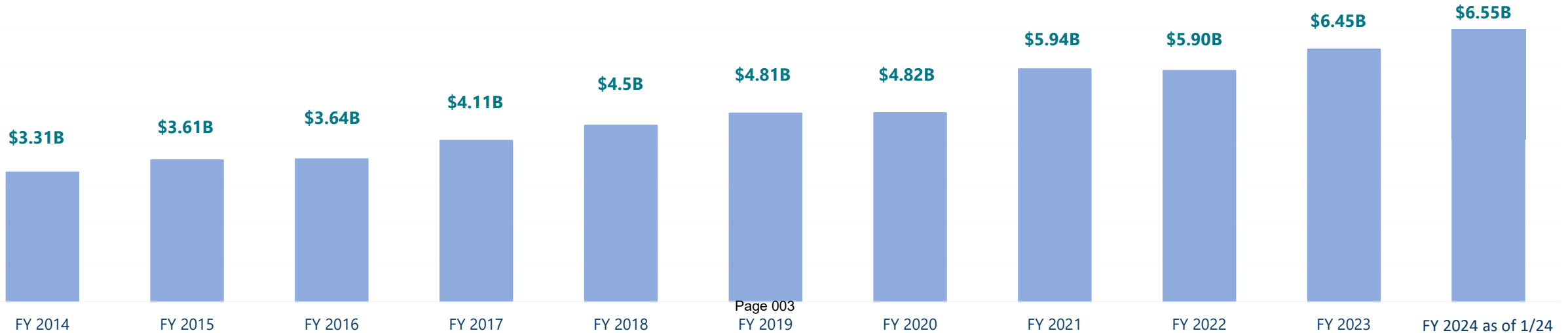
**\$6,548,767,363**

**+\$511 million year-over-year from 1/31/23  
balance of \$6.04 billion**

## CSTF DISTRIBUTION HISTORY PER BIENNIUM

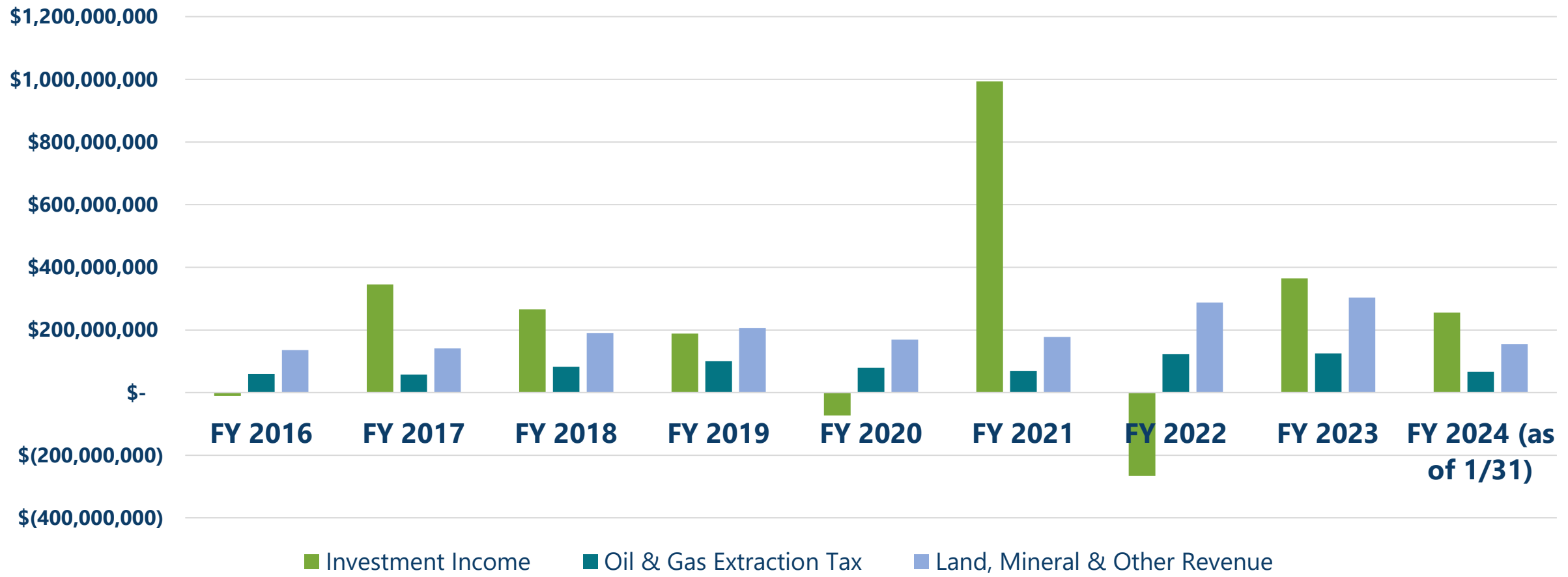


## CSTF ASSET BALANCE HISTORY



# COMMON SCHOOLS TRUST FUND (CSTF) OVERVIEW

## COMMON SCHOOLS REVENUES July 1 – June 30 Fiscal Year



# COMMON SCHOOLS TRUST FUND 2023-25 (CSTF) DISTRIBUTIONS

Monthly distribution to the State  
Tuition Fund for the  
2023-25 biennium

**\$27,770,000**

**=\$2,160/student per year**

Percentage of North Dakota's  
\$10,389\* total investment per  
student covered by CSTF

**21%**

\*North Dakota pays 76.5% of the \$13,589 total  
cost of education per student

FYTD distribution to the  
State Tuition Fund through  
1/31/2024

**\$250 million of  
\$500 million total**

**CSTF Distributions Since FY 2014**

**\$1.92 BILLION**

**Supporting property tax relief for North Dakota citizens**



# STRATEGIC INVESTMENT & IMPROVEMENT FUND (SIIF) OVERVIEW

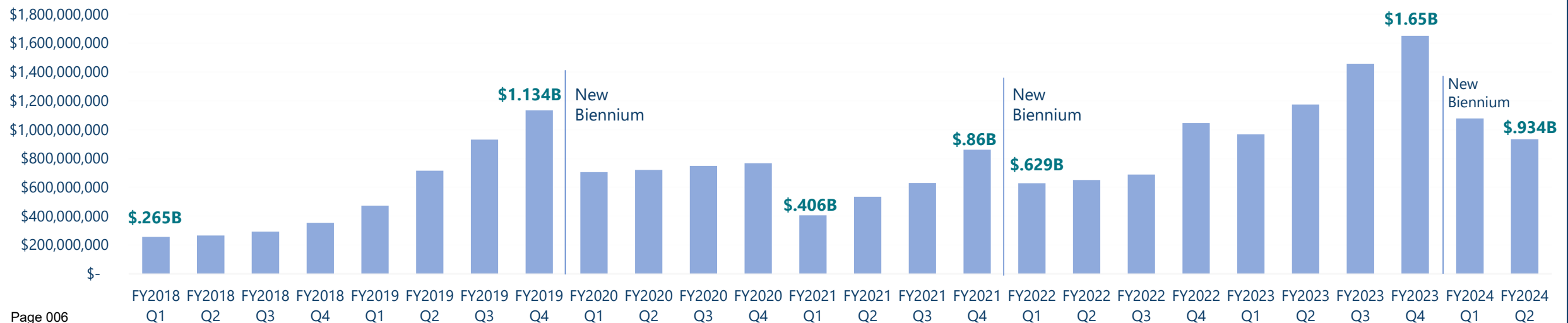
## SIIF BALANCE as of 12/31/2023 (unaudited)

- Total Balance - \$933,937,064
- Uncommitted Balance – \$461,671,031

## SIIF BALANCE as of 1/31/2024 (unaudited)

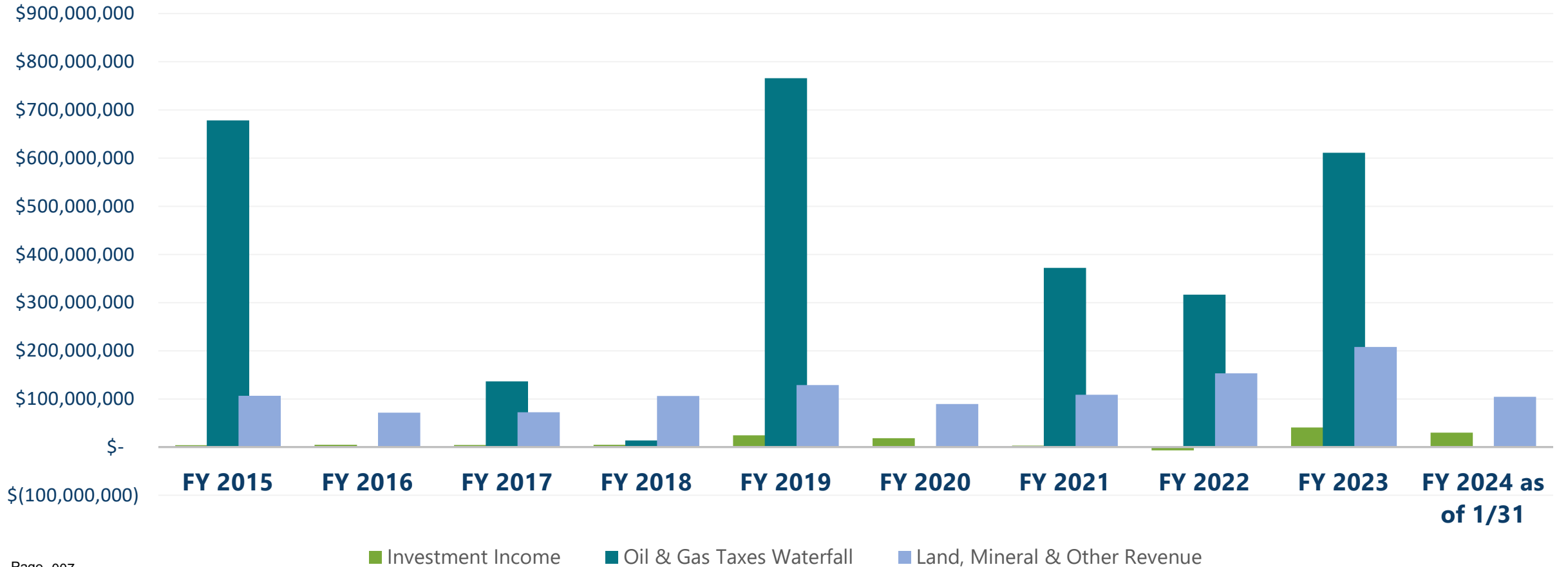
- Total Balance - \$886,460,338
- Uncommitted Balance – \$480,122,062

### SIIF QUARTERLY BALANCE HISTORY (UNAUDITED)



# STRATEGIC INVESTMENT & IMPROVEMENT FUND (SIIF) HIGHLIGHTS

## SIIF REVENUES July 1 – June 30 Fiscal Year



# ESTIMATED TOTAL NET ASSETS as of 11/30/2023

**Mineral Tracker Valuation  
as of June 30, 2023 on  
2.6 million Mineral Acres  
\$2,568,614,367**



**Surface Fair Market Value  
as of April 18, 2024 on  
706,000 Surface Acres  
\$671,978,325**



**Estimated Total Net Assets\*  
as of January 31, 2024**

**\$10,280,049,677**

\* Total excluding SIIF



**RE: Commissioner Annual Performance Review**

During the March 28, 2024, meeting the Board approved a first reading of the attached revised Commissioner Performance Review & Compensation Policy, which will be brought to the Board for final approval at is May 30, 2024.

During its March meeting the Board also directed the Committee to proceed with the Fiscal Year 2023-24 Commissioner Performance and Compensation Review. With no June 2024 Board meeting currently scheduled, and in order to complete the review process before the June 30, 2024, fiscal year-end, it is recommended that the Board either:

1. Conduct its final review and recommendations during the May 30, 2024, meeting; or
2. Hold a special meeting in June for that purpose

Also attached for initial review/comment is a draft Key Performance Indicators Dashboard to assist the Board in its Commissioner performance review process.

No formal action is necessary at this time, but guidance from the Board on how it would like to proceed would be appreciated so staff can schedule and plan accordingly.

Attachment 1 – Draft Board Policy

Attachment 2 – Draft Key Performance Indicators Dashboard

## **COMMISSIONER PERFORMANCE REVIEW**

The Board shall conduct a formal evaluation of the Trust Lands Commissioner and assess the Commissioner's performance during the first half of each calendar year through surveys and metrics. This evaluation will be used to determine whether any adjustments to the salary of the Commissioner should be made for the following fiscal year. The Board shall review and approve any recommended adjustments by June 30th each year. The Board shall consider the following categories of performance and may consider additional categories at its discretion:

### **HRMS 360 Surveys – Board Members**

- Board Meetings and Board Relations
- Land Department Operations and Inter-Agency Relations
- Stakeholder/Legislative Relations
- Professional Skills and Development
- General Feedback

### **HRMS 360 Surveys – Team Members**

- Leadership
- Communication
- Valuing Team Members
- General Feedback

The Board may also consider the following Key Performance Indicators, including any additional metrics as the Board sees fit. Any additions or changes to the utilized metrics must be communicated to the Commissioner in a timely manner.

### **Key Performance Indicators**

- CSTF Growth Since Start of Commissioner Tenure
- Prior Fiscal Year Investment Performance v. Index
- Prior Fiscal Year Unclaimed Property Return Rate
- Prior Fiscal Year Number of Holder Reports Filed
- Gallup Engagement Survey Score Trends Since Start of Commissioner Tenure

General Authority: N.D.C.C. § 15-02-03

Effective Date: May 30, 2024



# COMMISSIONER KEY PERFORMANCE INDICATORS (KPI) REPORT

The Board may consider the following Key Performance Indicators for the Commissioner's Performance Evaluation

- **CSTF Growth Since Start of Commissioner Tenure**
- **Prior Fiscal Year Investment Performance v. Index**
- **Prior Fiscal Year Unclaimed Property Return Rate**
- **Prior Fiscal Year Number of Holder Reports Filed**
- **Gallup Engagement Survey Score Trends Since Start of Commissioner Tenure**



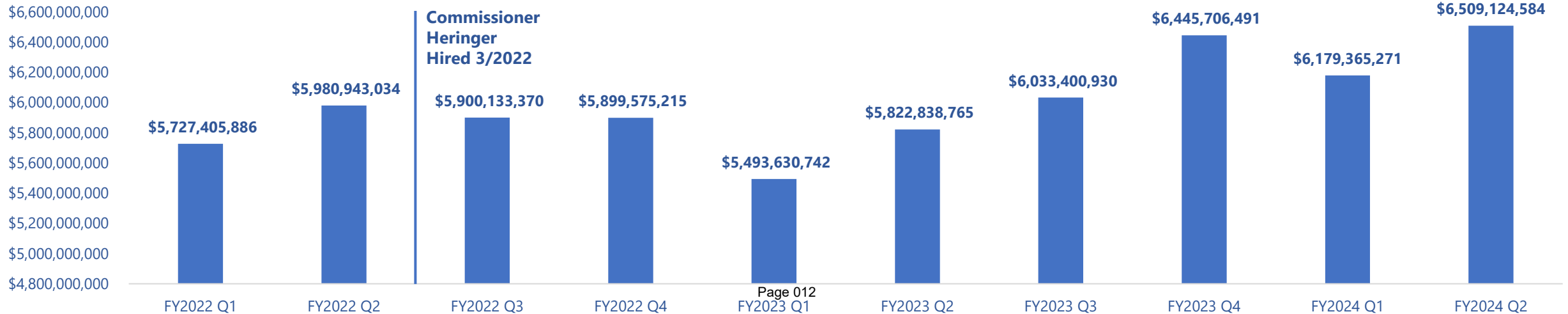
# COMMISSIONER KEY PERFORMANCE INDICATORS (KPI) REPORT

## CSTF ASSET BALANCE as of 1/31/2024 (unaudited)

**\$6,548,767,363**

**+\$649 million from 3/30/22 balance of \$5.9 billion  
at start of Commissioner Heringer tenure**

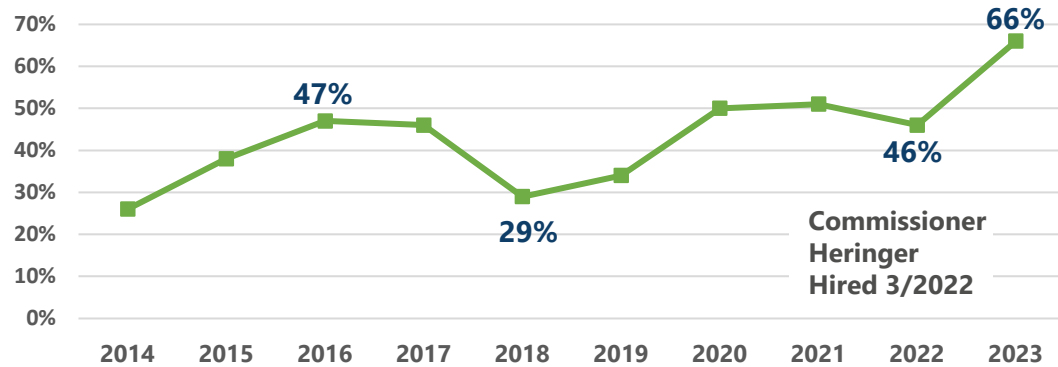
### CSTF GROWTH SINCE START OF COMMISSIONER TENURE



# COMMISSIONER KEY PERFORMANCE INDICATORS (KPI) REPORT

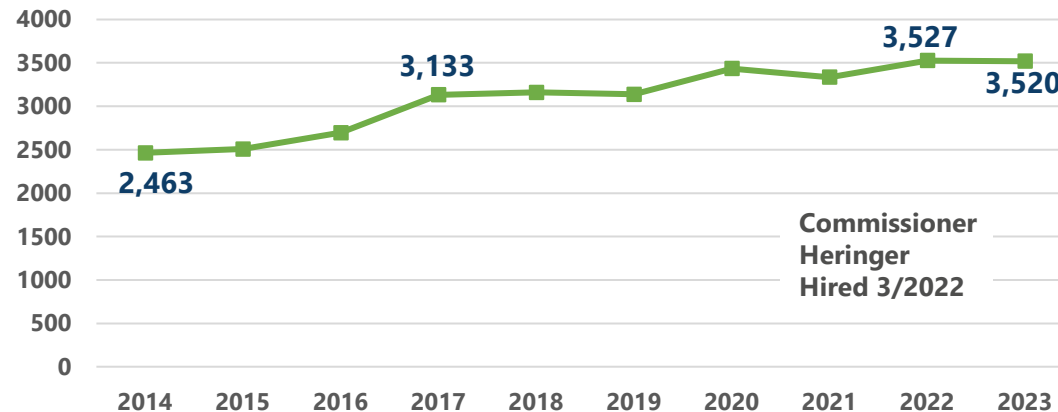
## Prior Fiscal Year Unclaimed Property Return Rate

UNCLAIMED PROPERTY FY RETURN RATE



## Prior Fiscal Year Number of Holder Reports Filed

NUMBER OF HOLDER REPORTS BY FY



## Prior Fiscal Year Investment Performance v. Index

North Dakota Board of University and School Lands  
Comparative Performance

As of June 30, 2023

	QTD	CYTD	FYTD	1 Year	3 Years
Total Fund	1.82	5.29	6.17	6.17	7.08
Target Allocation Index (Net)	2.22	5.61	6.82	6.82	6.92
Difference	-0.40	-0.32	-0.65	-0.65	0.16

As of September 30, 2023

	QTD	FYTD	CYTD	1 Year	3 Years
Total Fund	-1.06	-1.06	4.17	8.74	5.43
Target Allocation Index (Net)	-1.19	-1.19	4.36	8.85	4.87
Difference	0.13	0.13	-0.19	-0.11	0.56

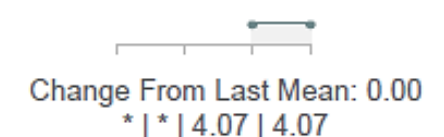
## Gallup Engagement Survey Score Trends Since Start of Commissioner Tenure

EMPLOYEE ENGAGEMENT REPORT | Q12+ ENGAGEMENT SURVEY - TRENDING - REGULAR STAFF - OCTOBER 2023  
ROLLUP | HERINGER, JOSEPH | ALL - ALL | OCT 16, 2023 - NOV 06, 2023

Engagement Mean



Trended Mean



State Overall **3.88**

DTL Overall **4.07**



# SURFACE DIVISION

Encumbrances issued by Commissioner during March 2024: 12 Right of Way Agreements generating \$27,560 in income for the Trusts.



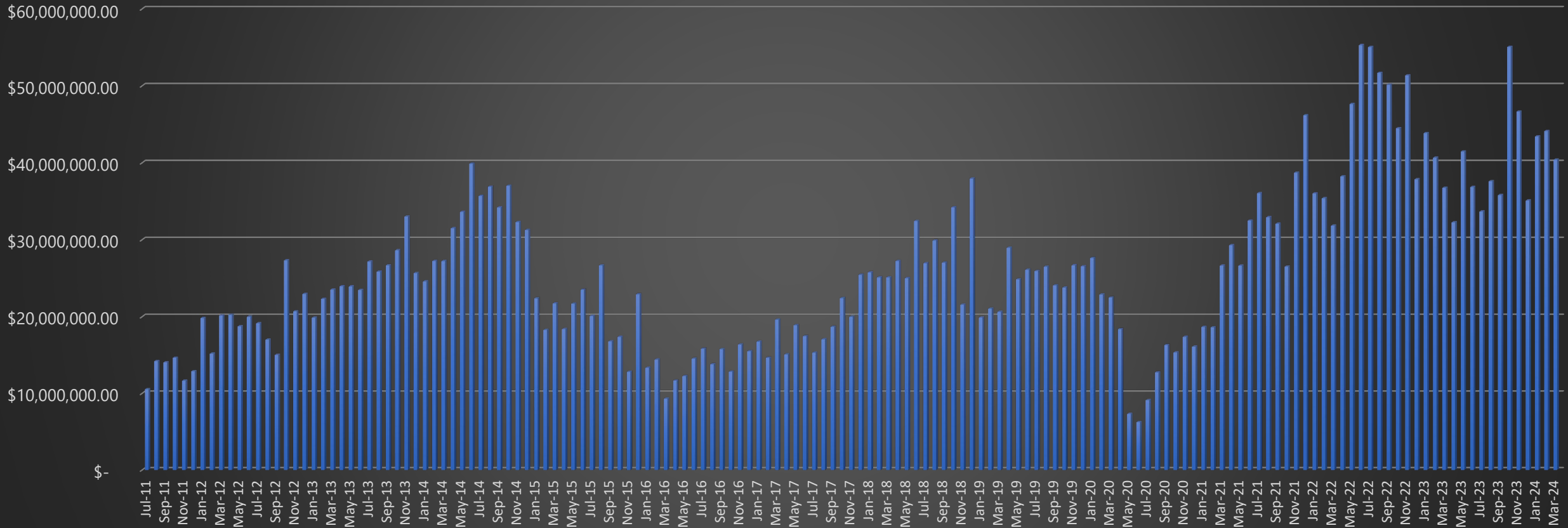
Prairie Crocus on Trust Lands  
Dunn County 147-96-36 on April 9<sup>th</sup>, 2024. Photo Credit: Garret Hecker



# MINERALS DIVISION FISCAL YTD O/G ROYALTIES

As of March 30, 2024\*, for fiscal year 2023-24 the Department has received **\$371,871,197** in royalties as compared to **\$411,881,474** last fiscal year at this time.

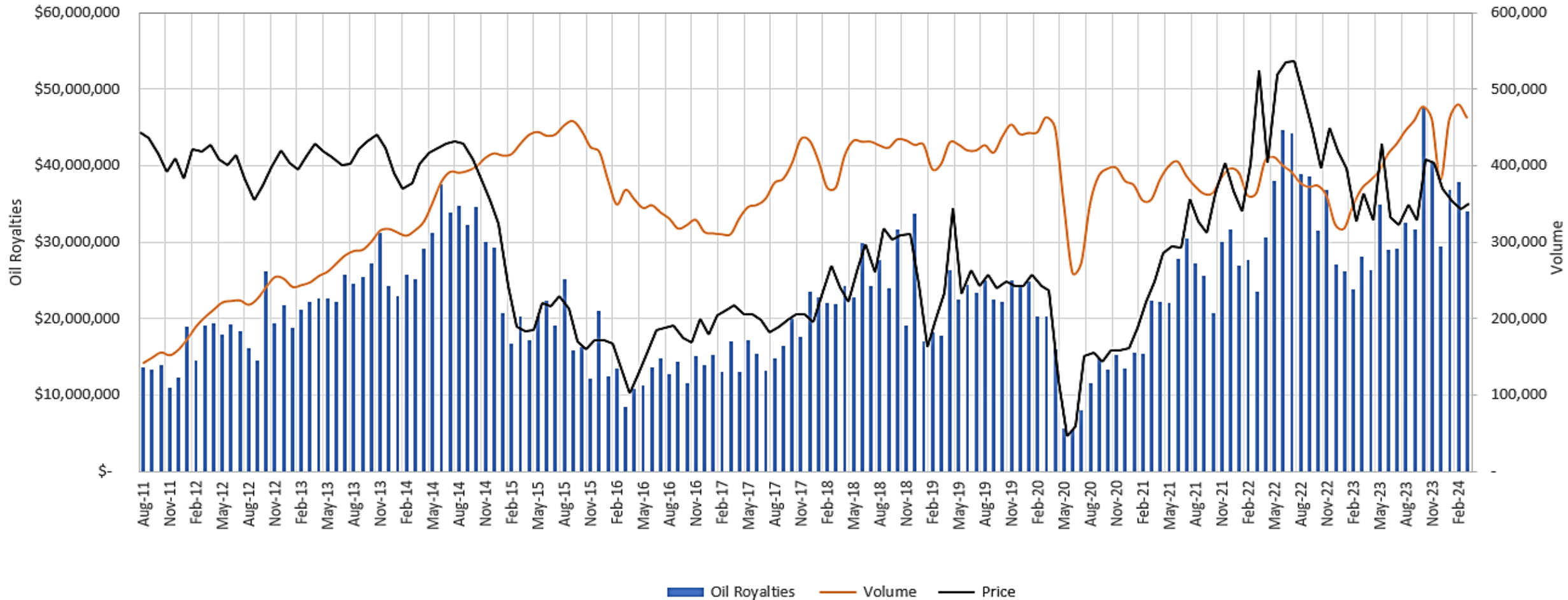
## ROYALTIES - CASH COLLECTED



\*March royalty revenue is from January gas production and February oil production.

# PRICE MAIN DRIVER OF O/G ROYALTIES

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





# UNCLAIMED PROPERTY DIVISION

<https://unclaimedproperty.nd.gov>

For the month of March 2024, the Division paid 551 claims with \$1,102,118.17 returned to rightful owners/heirs. The Division also received 157 holder reports with a dollar value of \$506,516.99.

In addition to its regular claims, the Division also exchanges property for owners with addresses in other states pursuant to Revised Uniform Unclaimed Property Act (RUUPA).



**RE: Investment Updates  
(No Action Requested)**

**Q2 Pipeline**

Absolute Return: multi-strat hedge fund recommendation

Infrastructure: infrastructure recommendation

**Capital Calls Funded (as of March 31, 2024):**

2023 \$80M

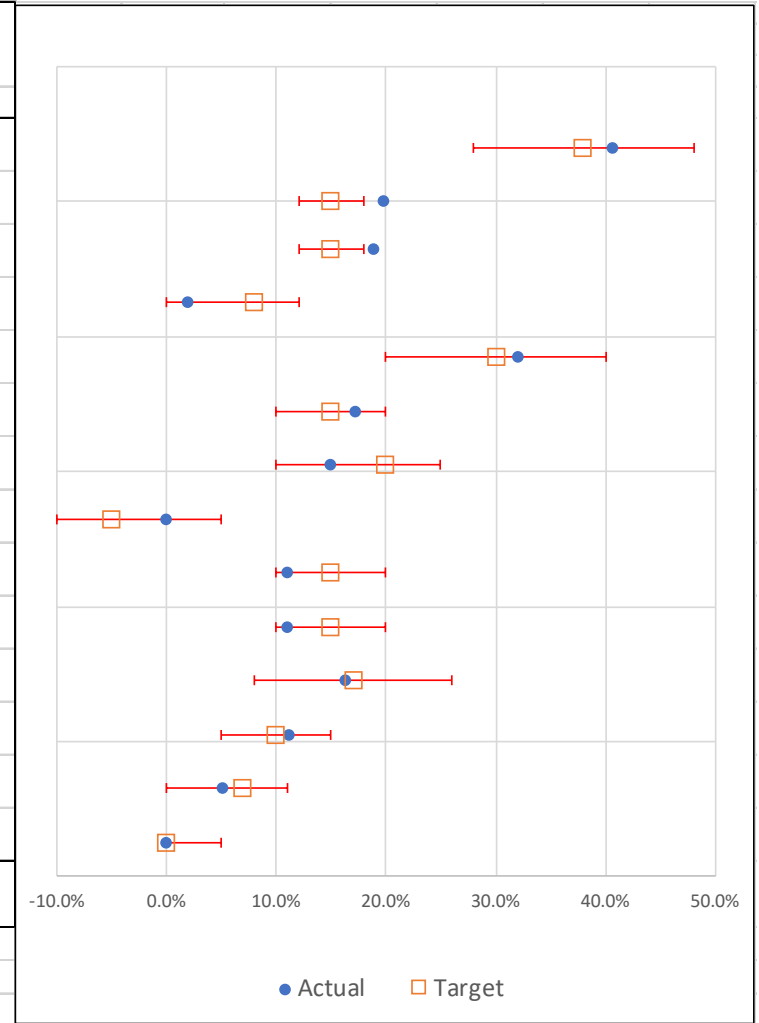
2024 YTD \$69M

**Total Unfunded Commitments \$1,036M (as of March 31, 2024):**

1. Private Credit, \$335M
  - i. *Ares Pathfinder Fund, \$14M*
  - ii. *Owl Rock Diversified Lending, \$55M*
  - iii. *Monarch Capital VI, \$66M*
  - iv. *Ares Pathfinder Core, \$200M*
  
2. Private Equity, \$546M
  - i. *GCM Grosvenor Private Equity, \$82M*
  - ii. *GCM Grosvenor Secondary Opportunities Fund III, \$98M*
  - iii. *Morgan Stanley Ashbridge TS Fund II, \$10M*
  - iv. *Khosla Ventures, \$31M*
  - v. *Blue Owl Strategic Equity, \$25M*
  - vi. *GCM Grosvenor Private Equity Series 2, \$300M*
  
3. Real Assets, \$5M
  - i. *Hamilton Lane Infrastructure Opportunities Fund, \$5M*
  
4. Absolute Return, \$150M
  - i. *Millennium USA, \$150M*

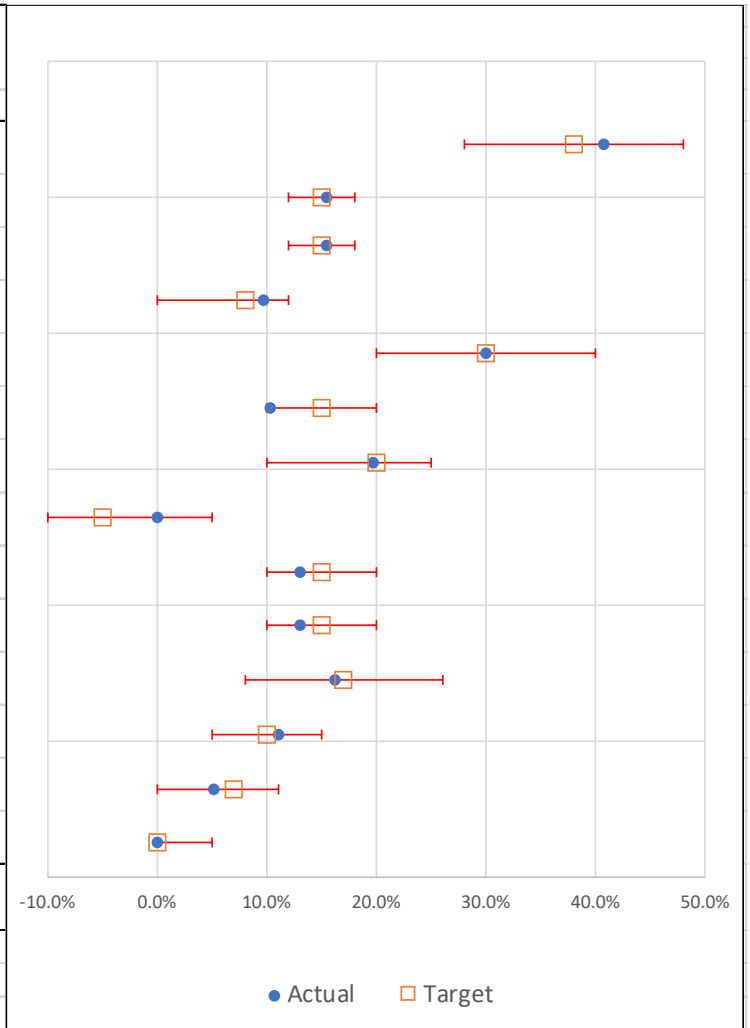
**Current Asset Allocation (unaudited)**

As of	Market Value (\$)	Actual	Target	Lower Range	Upper Range
March 31, 2024		●	□	└	┘
<b>Equity</b>	2,858,139,982	40.7%	38.0%	28.0%	48.0%
<i>Broad US Equity</i>	1,389,653,002	19.8%	15.0%	12.0%	18.0%
<i>Broad Int'l Equity</i>	1,327,549,180	18.9%	15.0%	12.0%	18.0%
<i>Private Equity</i>	140,937,799	2.0%	8.0%	0.0%	12.0%
<b>Fixed Income</b>	2,254,064,362	32.1%	30.0%	20.0%	40.0%
<i>Public Credit</i>	1,206,824,485	17.2%	15.0%	10.0%	20.0%
<i>Private Credit</i>	1,047,239,877	14.9%	20.0%	10.0%	25.0%
<i>Cash / (Implied Leverage)</i>	-	0.0%	-5.0%	-10.0%	5.0%
<b>Absolute Return</b>	768,458,912	10.9%	15.0%	10.0%	20.0%
<i>Multi-Strategy Hedge Fund</i>	768,458,912	10.9%	15.0%	10.0%	20.0%
<b>Real Assets</b>	1,140,932,169	16.2%	17.0%	8.0%	26.0%
<i>Real Estate</i>	786,837,251	11.2%	10.0%	5.0%	15.0%
<i>Private Infrastructure</i>	354,094,918	5.0%	7.0%	0.0%	11.0%
<b>Opportunistic Investments</b>	-	0.0%	0.0%	0.0%	5.0%
<b>Portfolio Total</b>	7,021,595,425	100.0%			



**Hypothetical Asset Allocation (after funding all commitments)**

As of March 31, 2024	Market Value (\$)	Actual	Target	Lower Range	Upper Range
		●	□	└	┘
<b>Equity</b>	<b>2,858,139,982</b>	<b>40.7%</b>	<b>38.0%</b>	<b>28.0%</b>	<b>48.0%</b>
<i>Broad US Equity</i>	1,089,653,002	15.5%	15.0%	12.0%	18.0%
<i>Broad Int'l Equity</i>	1,081,549,180	15.4%	15.0%	12.0%	18.0%
<i>Private Equity</i>	686,937,799	9.8%	8.0%	0.0%	12.0%
<b>Fixed Income</b>	<b>2,104,064,362</b>	<b>30.0%</b>	<b>30.0%</b>	<b>20.0%</b>	<b>40.0%</b>
<i>Public Credit</i>	721,824,485	10.3%	15.0%	10.0%	20.0%
<i>Private Credit</i>	1,382,239,877	19.7%	20.0%	10.0%	25.0%
<i>Cash / (Implied Leverage)</i>	-	0.0%	-5.0%	-10.0%	5.0%
<b>Absolute Return</b>	<b>918,458,912</b>	<b>13.1%</b>	<b>15.0%</b>	<b>10.0%</b>	<b>20.0%</b>
<i>Multi-Strategy Hedge Fund</i>	918,458,912	13.1%	15.0%	10.0%	20.0%
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<i>Real Estate</i>	781,837,251	11.1%	10.0%	5.0%	15.0%
<i>Private Infrastructure</i>	359,094,918	5.1%	7.0%	0.0%	11.0%
<b>Opportunistic Investments</b>	<b>-</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>5.0%</b>
<b>Portfolio Total</b>	<b>7,021,595,425</b>	<b>100.0%</b>			



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

## **Portfolio Review:** Strategies and Enhancements



**Frank Mihail**

*Chief Investment Officer*

Joined Jan 2023 - Responsible for strategic planning and reporting to stakeholders  
13 years experience in portfolio management



**Teresa Hettinger**

*Investment Operations Officer*

Joined May 2023 - Responsible for account management and transactions  
30 years experience in financial planning and operations



**New Hire (offer extended)**

*Investment Officer*

Joining Q2 2024 - Responsible for portfolio monitoring and performance reporting

## **Investment Objective**

*The assets of the Permanent Trust Funds are invested with a perpetual time horizon, in a manner that seeks to balance the longer-term goal of preserving the purchasing power of the trusts with the shorter-term goal of maintaining a stable stream of distributions to beneficiaries. The long-term nature of the funds, combined with a disciplined investment approach, provide the ability to the Permanent Trust Funds to withstand short-term volatility, to profit from periods of elevated risk aversion, and to be rewarded for providing liquidity.*

## **Select Investment Philosophies from CIO**

- Smoothed returns (private markets) can act as a buffer during periods of high volatility
- Long/short active management (hedge funds) can protect during crisis periods
- Alpha is more prevalent in inefficient markets
- Seek high Sharpe ratio (risk-adjusted return) strategies and strategies with asymmetric upside
- Be capital efficient by using leverage where possible
- Use leverage prudently – inversely proportional to the asset class volatility profile
- Select fewer, high conviction managers
- Incentivize managers to outperform (performance-based fees) and give them the leash to do it (tracking error)



# LAND BOARD ACCOMPLISHMENTS

(Five quarters from Dec 31, 2022 to Mar 31, 2024)

Total Portfolio	Approved new strategic asset allocation Approved 17 new commitments / reallocations totaling \$3.5B Investment portfolio reached all time high of \$7B
US Equity	Reallocated \$565M across 2 long/short extension strategies
Int'l Equity	Reallocated \$454M across 2 long/short extension strategies
Private Equity	Committed \$325M to primaries, secondaries and co-invest Committed \$120M across 3 venture capital funds
Public Credit	Approved \$775M reallocation to core bond passive index Hired bond overlay manager
Private Credit	Committed \$320M to asset-backed and distressed strategies
Absolute Return	Reallocated \$550M across 3 multi-strategy hedge funds
Real Estate	Reallocated \$382M to real estate passive index

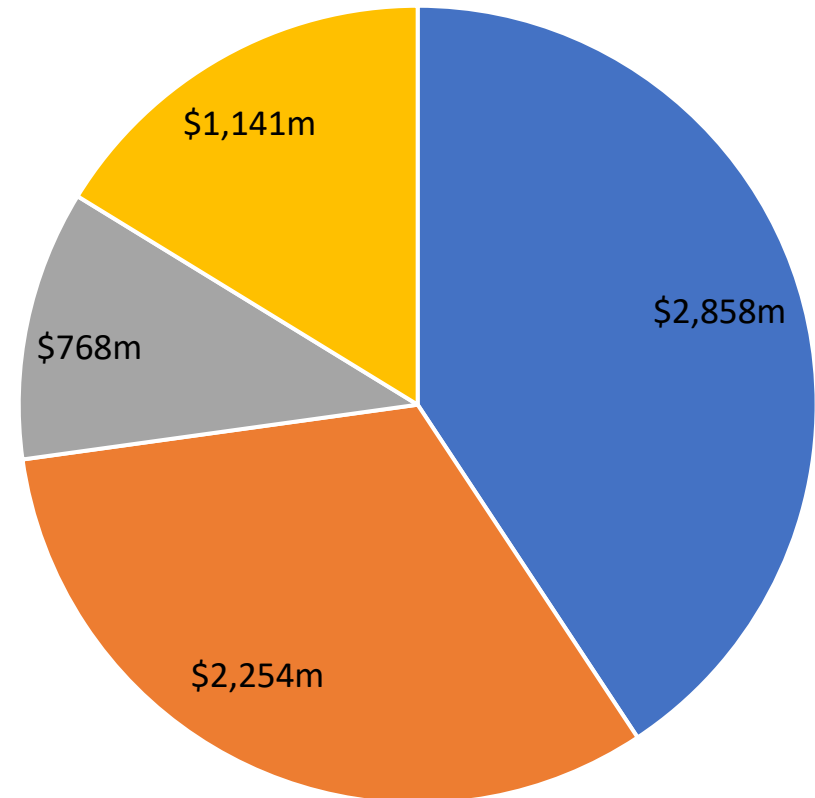
## Diversification

- 38% Equities for growth
- 30% Credit for income
- 15% Absolute Return for uncorrelated returns
- 17% Real Assets for income and inflation protection

## Recent Enhancements

- Approved new strategic asset allocation
  - decreased real estate and GTAA
  - increased hedge funds and public credit
  - allow prudent use of bond leverage

## Record level \$7.0B investment portfolio as of Mar 31, 2024

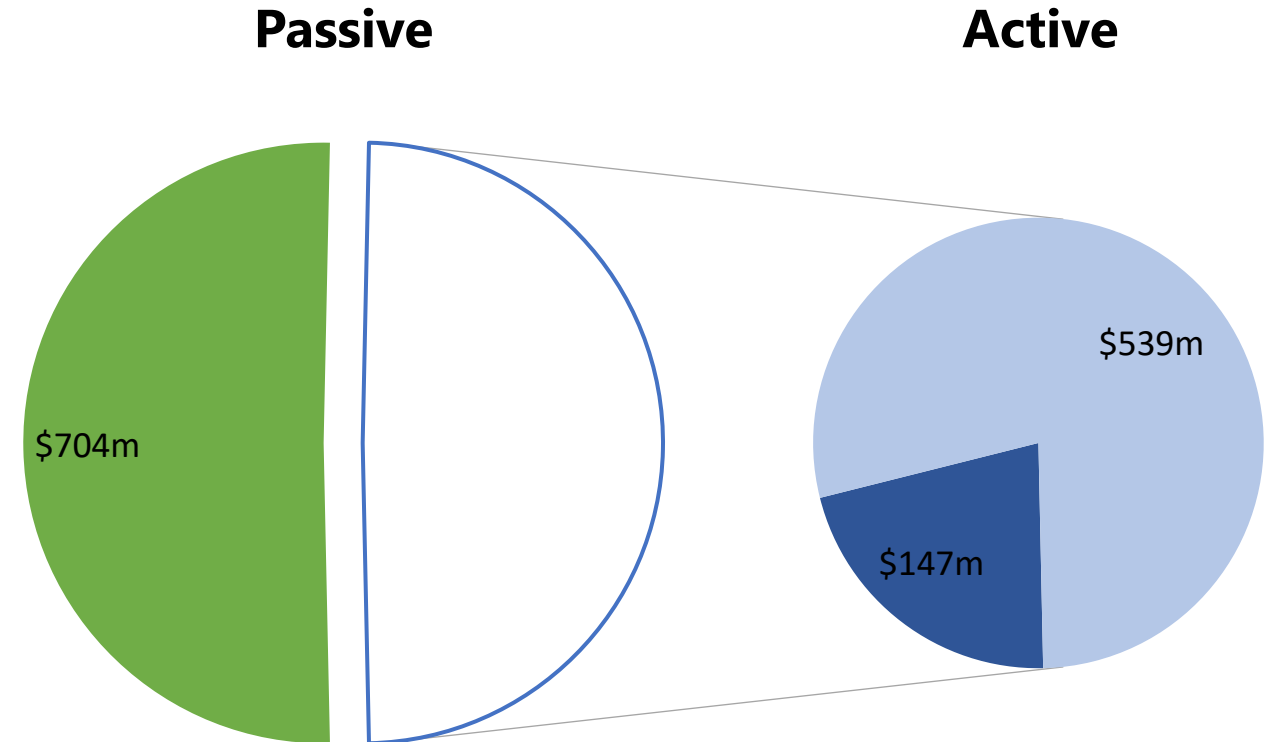


## Barbell Strategy

- Passive index
- Long/short active management

## Recent Enhancements

- Approved Arrowstreet Small Cap 130/30
- Approved Jacobs Levy Large Cap 130/30



■ Russell 1000 Index   ■ Arrowstreet Small 130   ■ Jacobs Levy Large 130

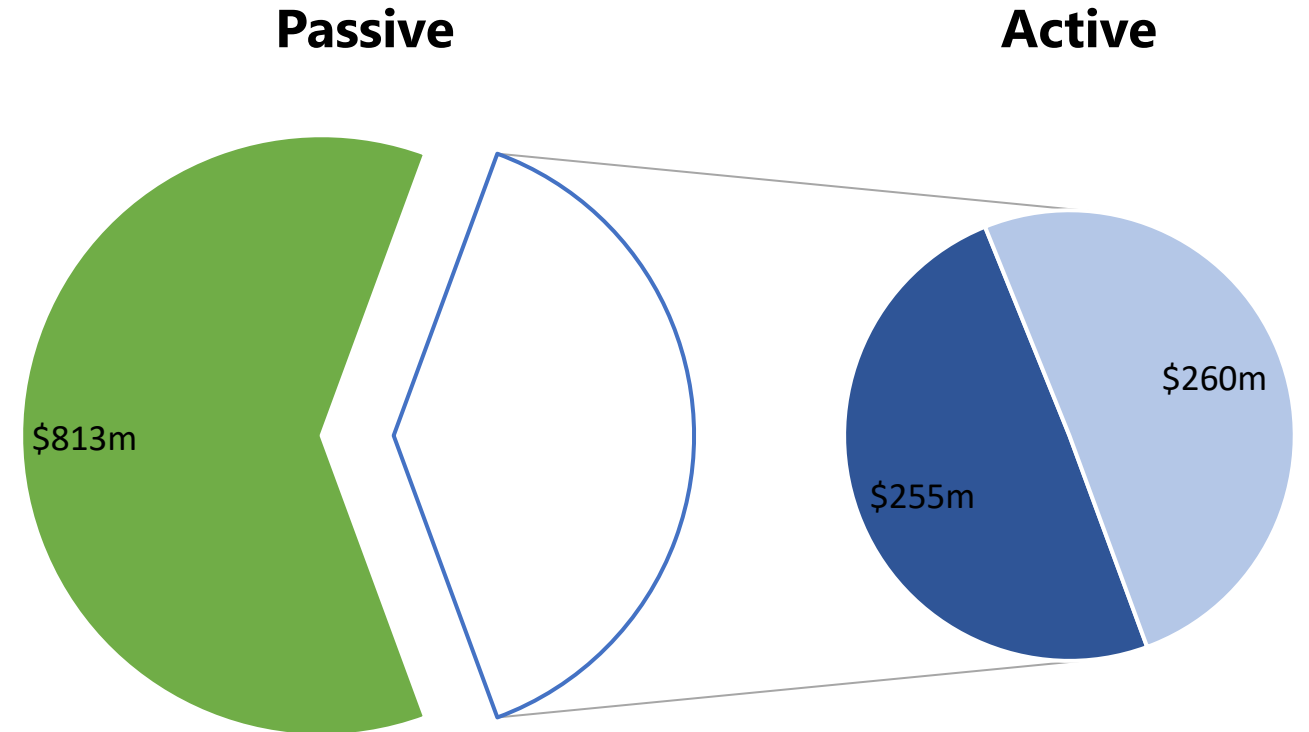
# BROAD INTERNATIONAL EQUITY

## Barbell Strategy

- Passive index
- Long/short active management

## Recent Enhancements

- Approved Arrowstreet EM 150/50
- Approved Acadian Int'l Small Cap 130/30



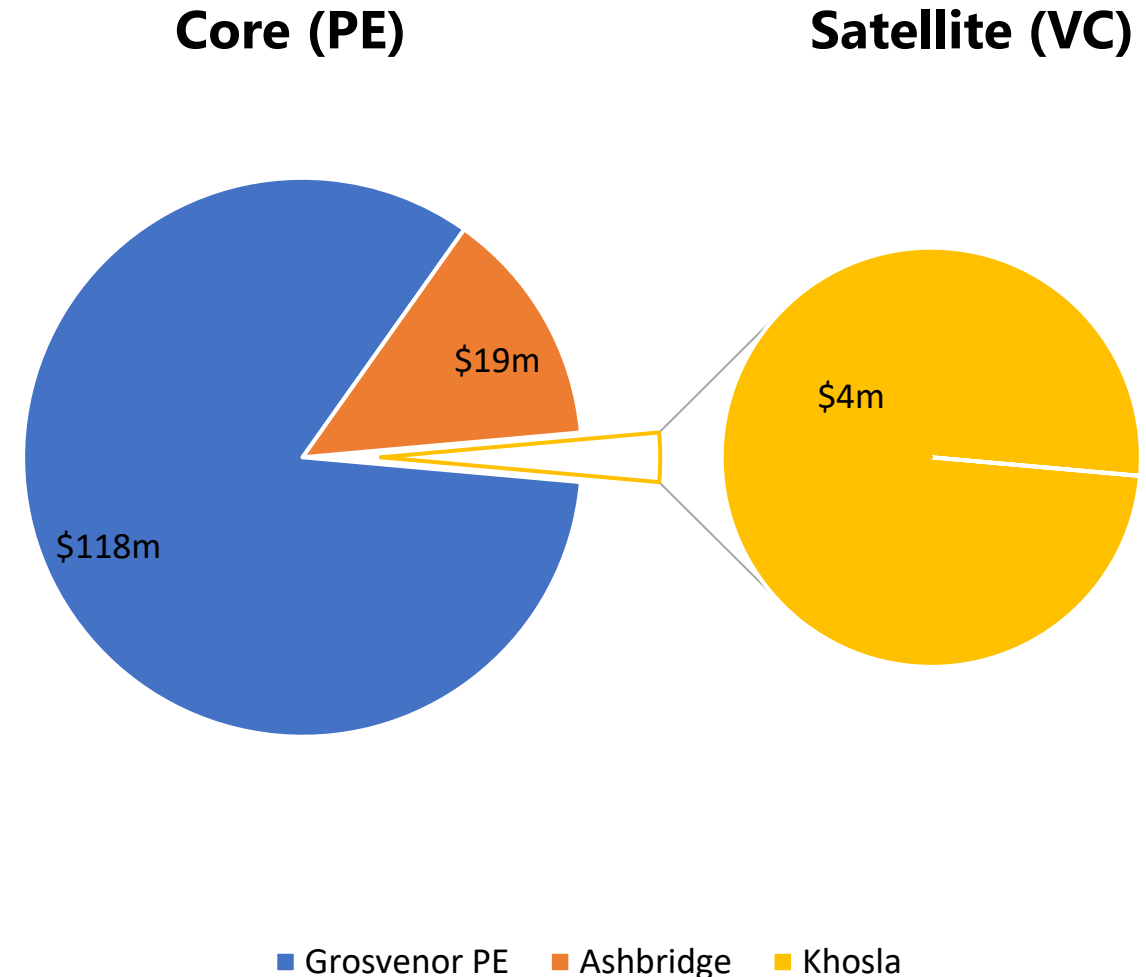
■ MSCI World Ex US Index   ■ Arrowstreet EM 150   ■ Acadian Small 130

## Core-Satellite Strategy

- Core private equity portfolio comprised of primary, secondary and co-investments diversified across vintages and geographies
- Satellite venture capital portfolio comprised of elite venture capital firms with complementary skillsets

## Recent Enhancements

- Approved Khosla Ventures
- Approved Blue Owl GP-led secondaries
- Approved Grosvenor PE Series 2
- Approved Industry Ventures
- Approved a16z Multiplexer

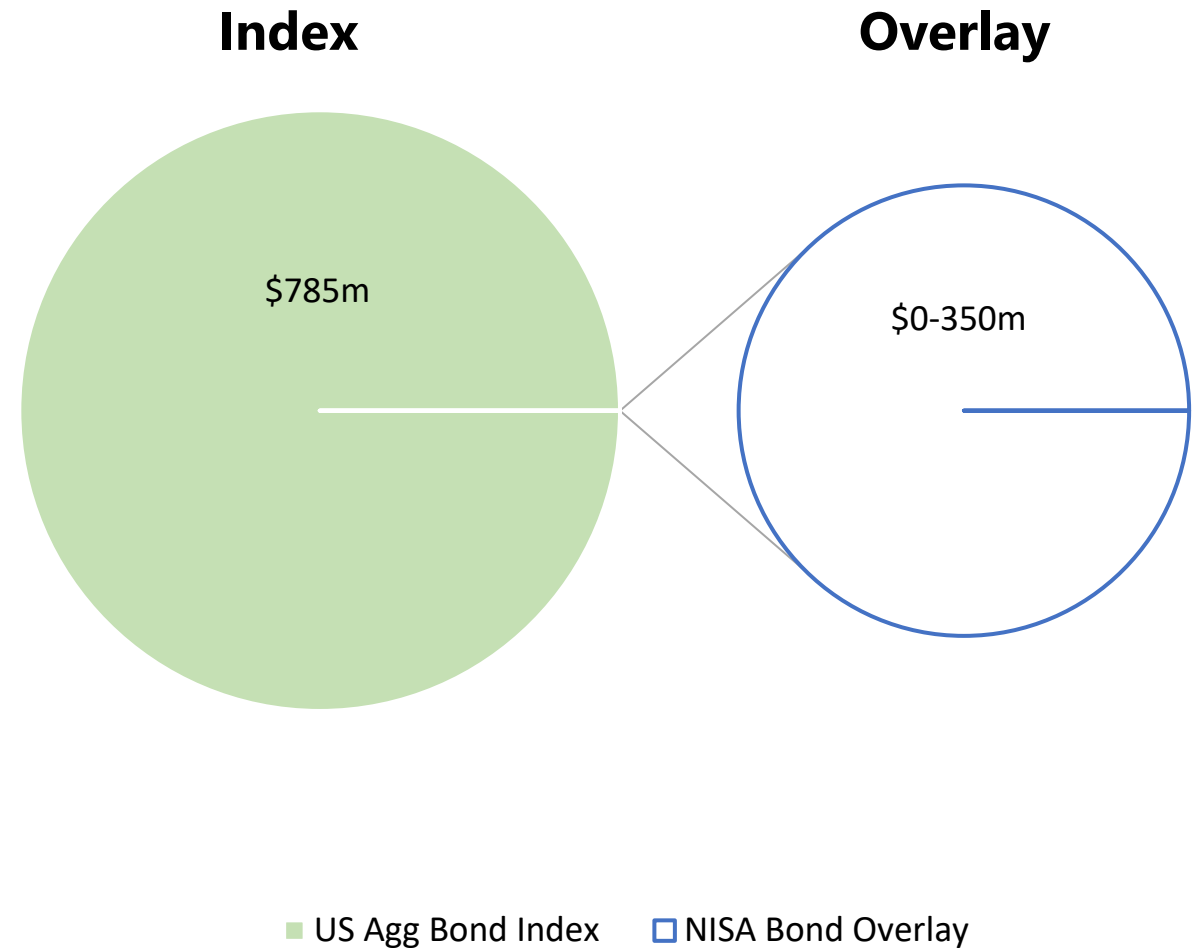


## Passive Index

- Serve as liquidity anchor while keeping costs low
- Leverage low volatility core bonds

## Recent Enhancements

- Approved NISA bond overlay
- Approved SSGA US Agg Bond Index

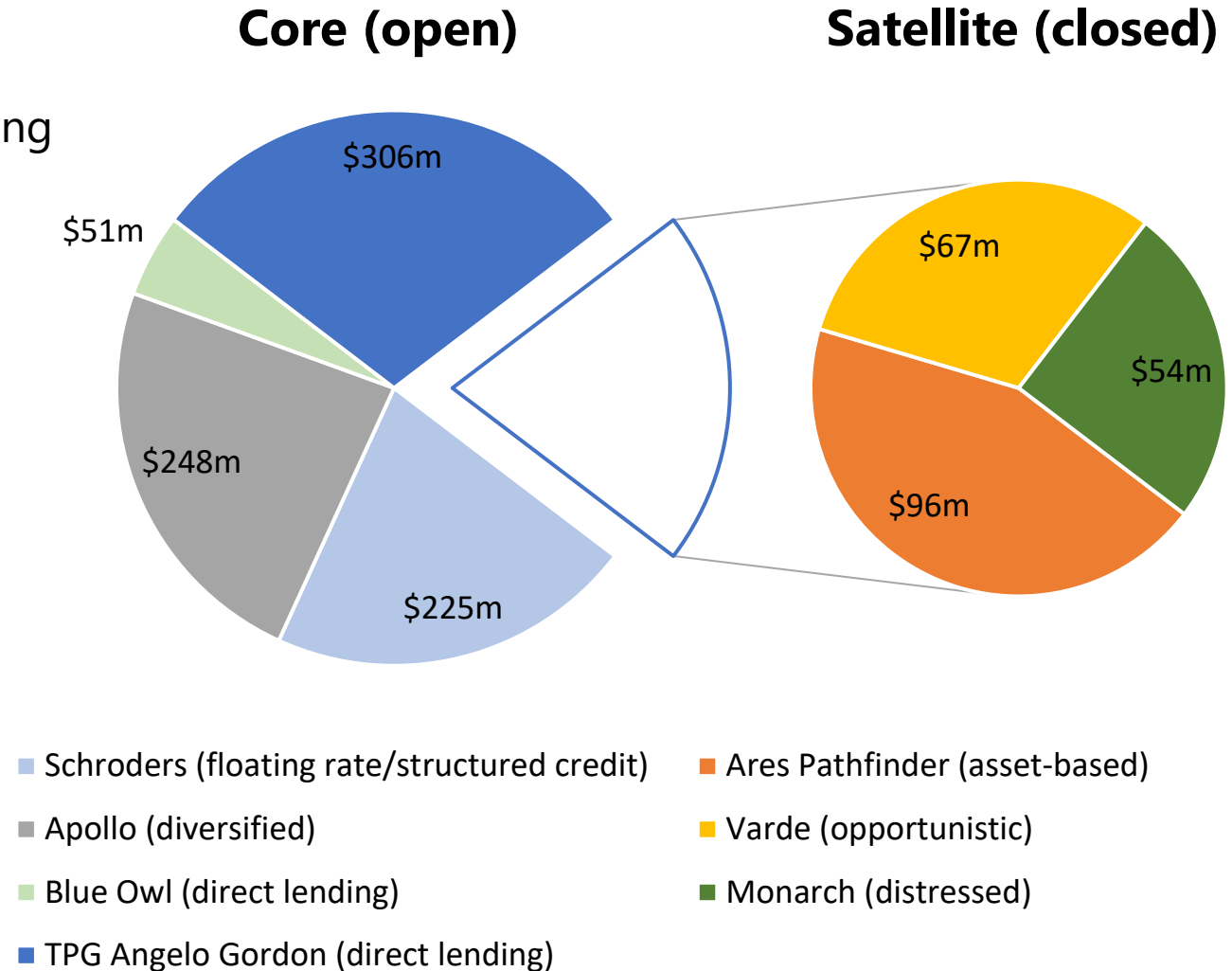


## Core-Satellite Strategy

- Core portfolio comprised of high-quality lending strategies in open-end / evergreen funds
- Satellite portfolio comprised of opportunistic close-end funds to drive excess returns

## Recent Enhancements

- Approved Monarch Capital VI (distressed)
- Approved Ares Pathfinder Core (asset-based)



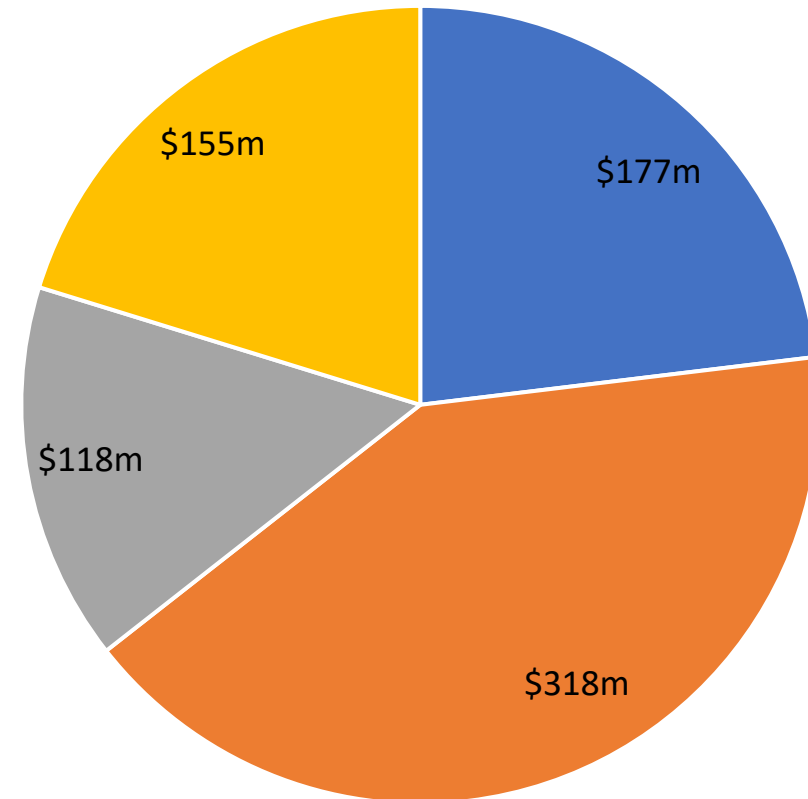
## Portable Alpha Strategy

- High Sharpe ratio (risk-adjusted return) portfolio of multi-strategy hedge fund managers targeting zero beta
- Mitigate hedge fund drag by replacing missing portfolio beta through leveraging other asset classes (capital efficiency)

## Recent Enhancements

- Approved Balyasny
- Approved Two Sigma
- Approved Verition
- New multi-strategy recommendation (May 2024)

## Multi-Strategy



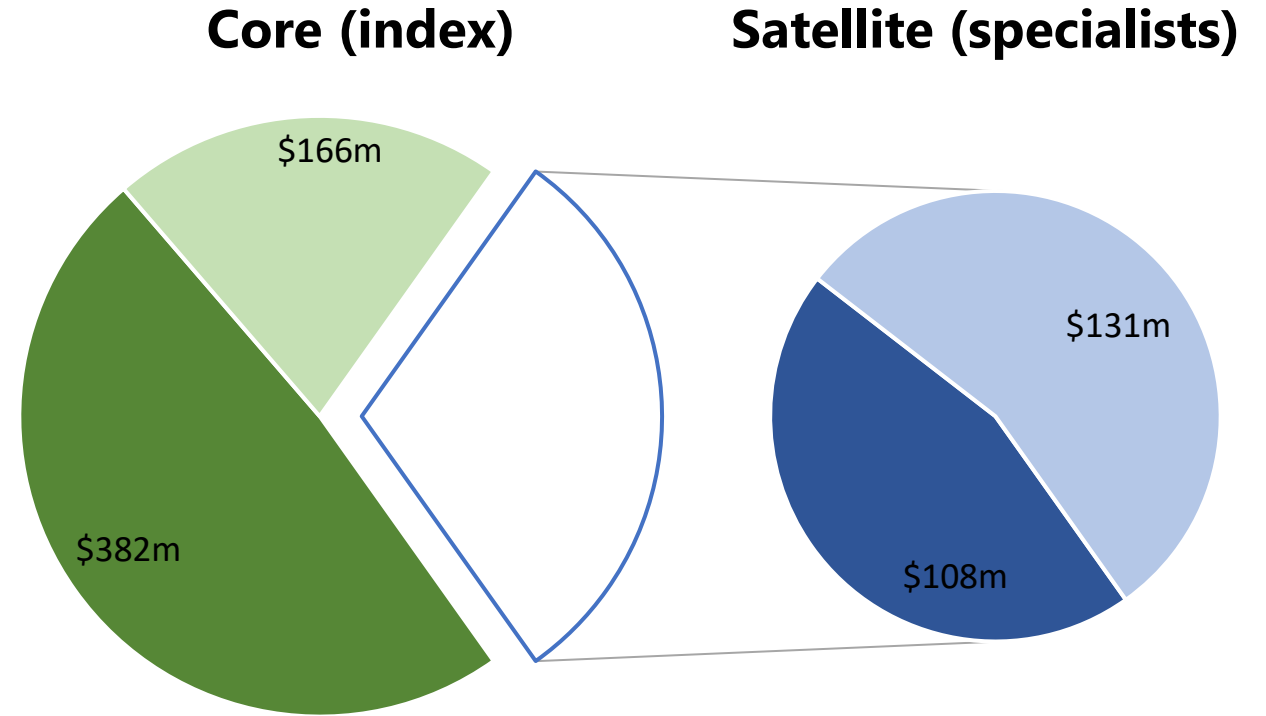


## Core-Satellite Strategy

- Core portfolio, passively tracking benchmark
- Satellite portfolio comprised of geographic or sector specialists to drive excess returns in areas that exhibit secular tailwinds

## Recent Enhancements

- Approved IDR Property Index with exposure to 21 real estate funds, tracking our benchmark (NCREIF ODCE Index)



■ IDR Transition (MS, UBS)

■ In Liquidation (JPM, Jamestown)

■ Prologis (industrial)

■ Harrison St (student/senior/medical)

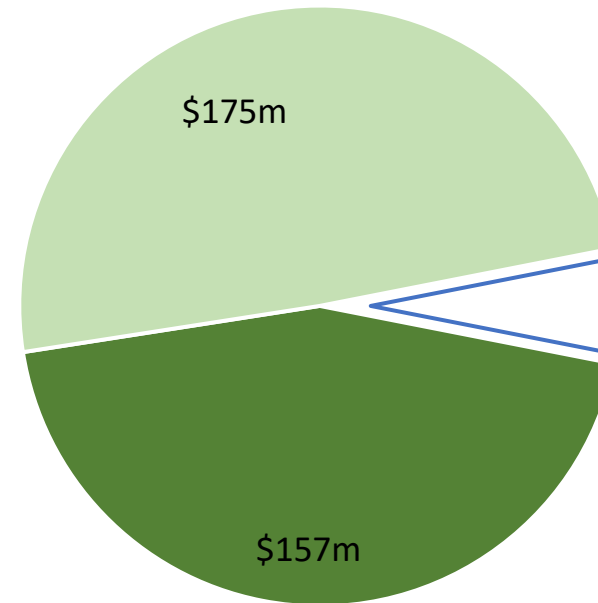
## Core-Satellite Strategy

- Core portfolio comprised of open-end diversified core infrastructure funds
- Satellite portfolio comprised of closed-end secondary and co-investments to drive excess returns

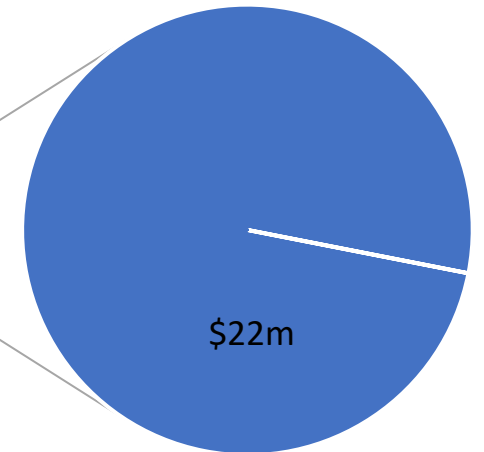
## Recent Enhancements

- New infra recommendation (May 2024)

### Core (open)



### Satellite (closed)



■ JP Morgan IIF   ■ FSI Igneo GDIF   ■ Hamilton Lane

# NORTH DAKOTA DEPARTMENT OF TRUST LANDS

Funding Public Education Through Stewardship of Natural Resources

*Joseph Stegmiller, Surface Management Director*

North Dakota Department of Trust Lands

Fair Market Value Update

April 24<sup>th</sup>, 2024



# Fair Market Value Policy

Approved by the Board in 1989

Responsibility: To set a minimum bid at a “Fair Market Value” while maximizing revenue for the trusts.

Challenge: Setting a minimum bid for roughly 5,000 tracts that are scattered throughout North Dakota.

Solution: A Fair Market Value Equation that is calculated on a per tract level and takes into consideration local economics and productivity.

History of Lease Rate:

- 1907 - 6 cents/acre
- 1918 - 9 cents/acre
- 1945 - 15 cents/acre
- 1953 - 25 cents/acre
- 1963 - 2.5% of land value
- 1980's - \$2.25/acre
- 1989 – Fair Market Value Policy approved

# Grassland FMV Calculation

$$\underbrace{\underbrace{(((RR-F) \times SE)}_{\text{"Local Economics"}} \times \underbrace{(GPI \div RAPI)}_{\text{"How Productive is the Tract"}})}_{\text{"Tract Specific Adjustments"}} - BW) \times \text{Grass Acres} - W + (BF \times \text{Grass Acres}) + \underbrace{LF}_{\text{Lease Fee}}$$

- Regional Rent (RR) – local regional rent based on three-year average from ND Rents and Prices Survey
- Fence Reduction (F) – a reduction to compensate for fences not being provided by the State.
- Survey Error (SE) - a reduction for potential survey error from the ND Rents and Prices Survey
- Grassland Productivity Index (GPI) – tract specific rating based on soil productivity
- Resource Area Productivity Index (RAPI) – average productivity within a designated area
- Badlands Water Adjustment (BW) – a reduction for tracts with limited water development potential (within badlands)
- Water Adjustment (W) – a reduction for tracts with limited water development potential (outside of badlands)
- Board Owned Fencing (BF) – an adjustment for certain tracts that do have State owned fences
- Lease Fee (LF) – an administrative fee charged per acre

# Grassland FMV Calculation

Proposed Changes:

$$((((RR - F) \times SE) \times ((GPI \times \underline{TSA^*}) \div RAPI)) - \underline{BW^*}) \times \text{Grass Acres} - \underline{W^*} + (\underline{BF^*} \times \text{Grass Acres}) + LF$$

- Fence Reduction (F) increase from \$1.60/acre to \$2.50/acre
- Survey Error (SE) decrease from 10% to 5%
- Badlands Water Adjustment (BW) phased out
- Board Owned Fencing (BF) phased out
- Lease Fee (LF) increased from \$0.05/acre to \$0.10/acre

Streamlined Calculation:

$$\underbrace{(((RR - F) \times SE))}_{\text{"Local Economics"}} \times \underbrace{(((GPI \times \overset{\text{"Tract Specific Adjustment"}}{TSA^*}) \div RAPI))}_{\text{"How Productive is the Tract"}} \times \text{Grass Acres} + \underbrace{LF}_{\text{Lease Fee}}$$



# Grassland FMV Calculation

## Fence Reduction (F)

Proposed:

$$((((RR - F) \times SE) \times ((GPI \times TSA^*) \div RAPI)) - BW^*) \times \text{Grass Acres} - W^* + (BF^* \times \text{Grass Acres}) + LF$$

- Fence Reduction (F) increase from \$1.60/acre to \$2.50/acre

The State does not provide fences for leasing Trust Lands

- Typically, private land leases do include pre-existing fences.
- The Department acknowledges the lack of fences on Trust Lands by giving a Fence Reduction (F)
- Fence Reduction (F) is based of cost of material, labor, and interest rates.
- History of Fence Reduction:
  - 1989 - \$1.50/acre (low material cost, high interest rates)
  - 2018 - \$1.60/acre (high material cost, low interest rates)
  - 2024 - \$2.50/acre (high material cost, high interest rates)



# Grassland FMV Calculation

## Survey Error (SE)

Proposed:

$$((((((RR - F) \times SE) \times ((GPI \times TSA^*) \div RAPI)) - BW^*) \times \text{Grass Acres}) - W^* + (BF^* \times \text{Grass Acres}) + LF$$

- Survey Error (SE) decrease from 10% to 5%

Regional Rent (RR) is based on values from the ND Rents and Prices Survey

- The Department is more confident in the Survey
- The Survey is utilized extensively by outside sources (private landowners, banks, extension offices, etc.)
- The survey has a +35-year history
- History of Survey Error (SE):
  - 1989 – 20%
  - 1998 – 10%
  - 2024 – 5%

### 2024 County Rents and Prices North Dakota

April 2024

An annual survey of farmers and ranchers was conducted to obtain average rental rates and the price of rented land in their localities. Approximately 33,800 North Dakota agricultural producers were sampled for this survey. Over 13,500 questionnaires were mailed in late January 2024 and submitted responses were accepted for the study through March 31, 2024 to maximize response rates. Over 1,800 reports contained positive data. We would like to thank all who participated, for without their cooperation this report would not be possible.

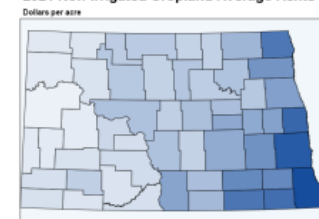
The tables in this report contain county-level data for cropland, pastureland, and tame hayland. All data refer to

non-irrigated land and only include information for cash rental arrangements. All fee-per-head, animal unit month and share rent arrangements were excluded.

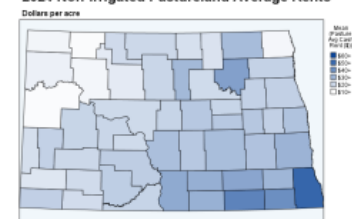
The minimum and maximum prices show the range of reported local average data in each county. Field size, topography, soil type, location and availability of rental land affect this range. The published prices in this report should never be used as the only factor to establish rental arrangements.

We advise the reader to exercise discretion when using data from counties with less than fifteen reports tabulated. Using a 5-year average is one way to minimize variability that can occur from year to year.

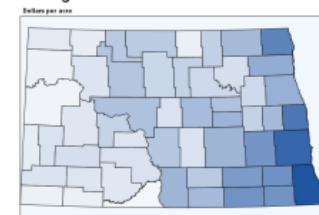
2024 Non-Irrigated Cropland Average Rents



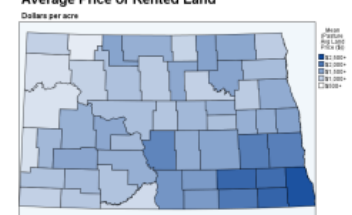
2024 Non-Irrigated Pastureland Average Rents



2024 Non-Irrigated Cropland Average Price of Rented Land



2024 Non-Irrigated Pastureland Average Price of Rented Land





# Grassland FMV Calculation

## Badlands Water Reduction (BW)

Proposed:

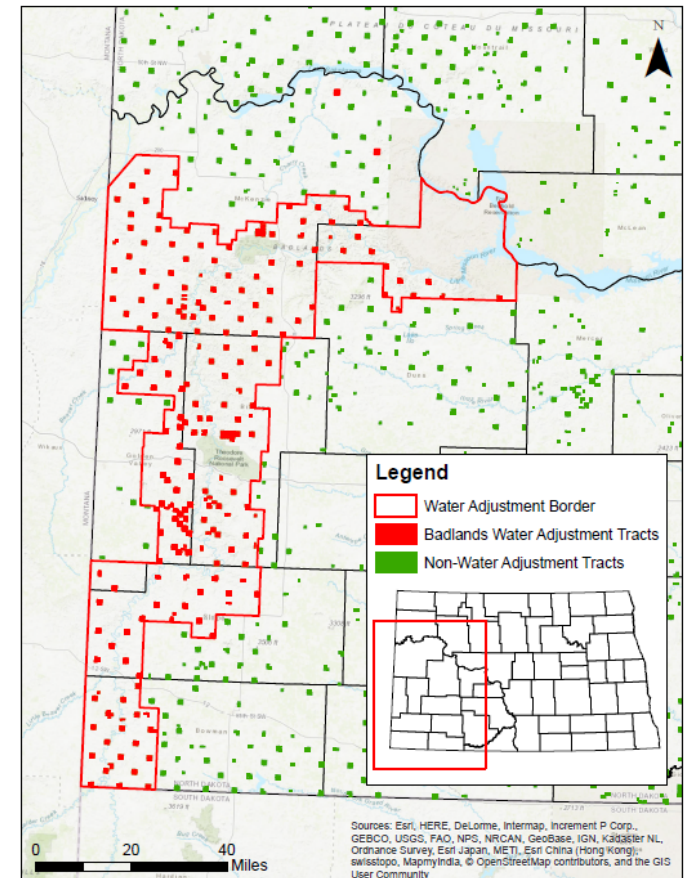
$$((((((RR - F) \times SE) \times ((GPI \times TSA^*) \div RAPI)) - BW^*) \times \text{Grass Acres}) - W^* + (BF^* \times \text{Grass Acres}) + LF$$

- Badlands Water Adjustment (BW) phased out

Historically, the Department has given a reduction to tracts within the Badlands region

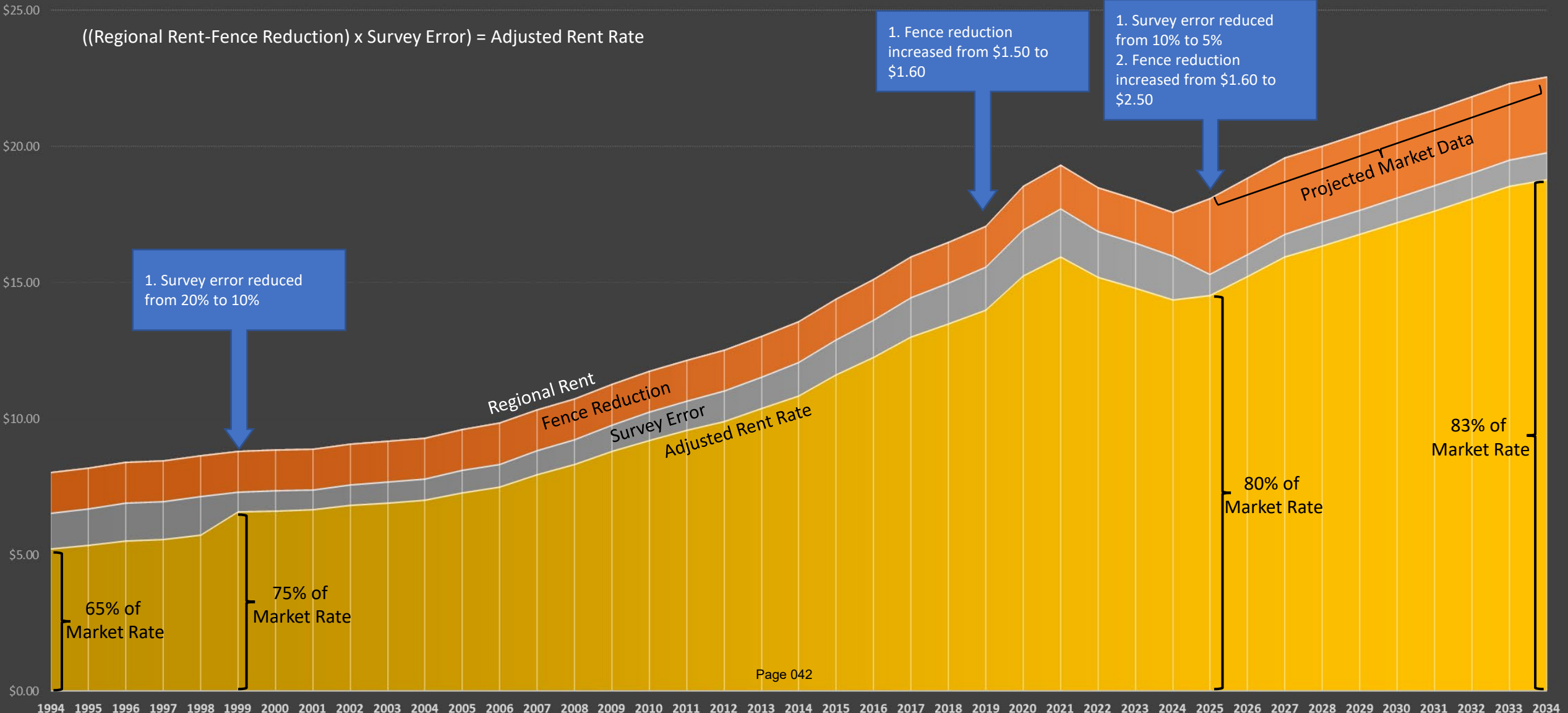
- The Reduction was due to difficulty of developing livestock water sources.
- These tracts were not eligible for Livestock Water Development funding
  - During the drought of 2021, the Department started providing funding but at a reduced rate
- History of Badlands Water Adjustment (BW)
  - 1989 - \$0.50      1,800 cubic yard dam/dugout
  - 1998 - \$0.65      1,800 cubic yard dam/dugout
  - 2013 - \$0.65      1,800 cubic yard dam/dugout
  - 2018 - \$0.85      3,733.5 ft water pipeline
  - 2024 - phase out

Badlands Water Adjustment Tracts



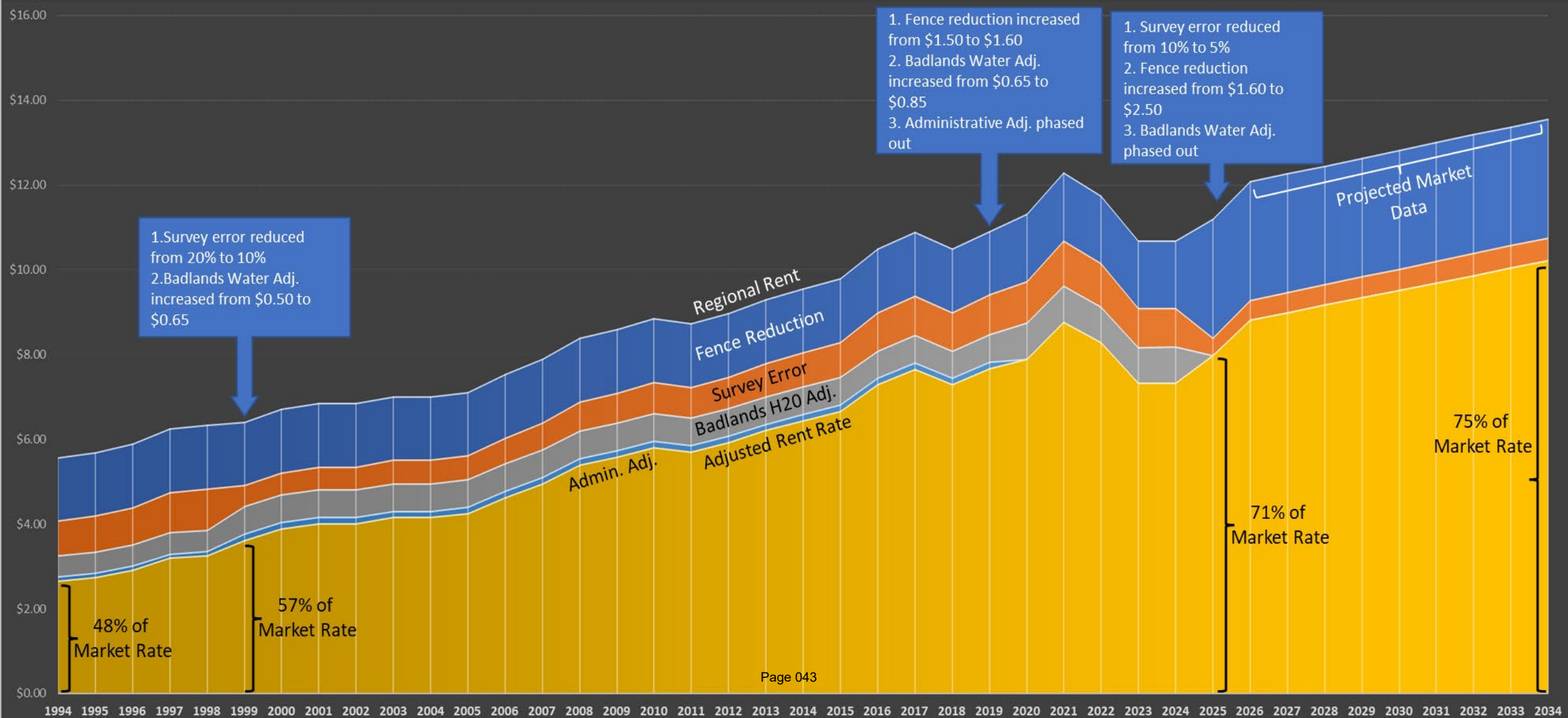
# Grassland FMV Calculation

## Grant Co. FMV History



# Grassland FMV Calculation

## Billings Co. FMV History



# Cropland FMV Calculation

$$\underbrace{(((\text{CPI} \div \text{RCPI}) \times (\text{RR} \times \text{SE})) \times \text{Cropland Acres})}_{\text{"How Productive is the Tract"} + \underbrace{\text{LF}}_{\text{Lease Fee}}$$

"Local Economics"

- Cropland Productivity Index (CPI) – tract specific rating based on soil productivity
- Regional Cropland Productivity Index (RCPI) – average productivity within a designated area
- Regional Rent (RR) – local regional rent based on three-year average of the mode from ND Rents and Prices Survey
- Survey Error (SE) - a reduction for potential survey error from the ND Rents and Prices Survey
- Lease Fee (LF) – an administrative fee charged per acre

Proposed:

$$(((\text{CPI} \div \text{RCPI}) \times (\text{RR} \times \text{SE})) \times \text{Cropland Acres}) + \text{LF}$$

- Regional Rent (RR) changed from mode to mean of survey results.
- Update Maximum and Minimum Limits
- Lease Fee (LF) increased from \$0.05/acre to \$0.10/acre

# Cropland FMV Calculation

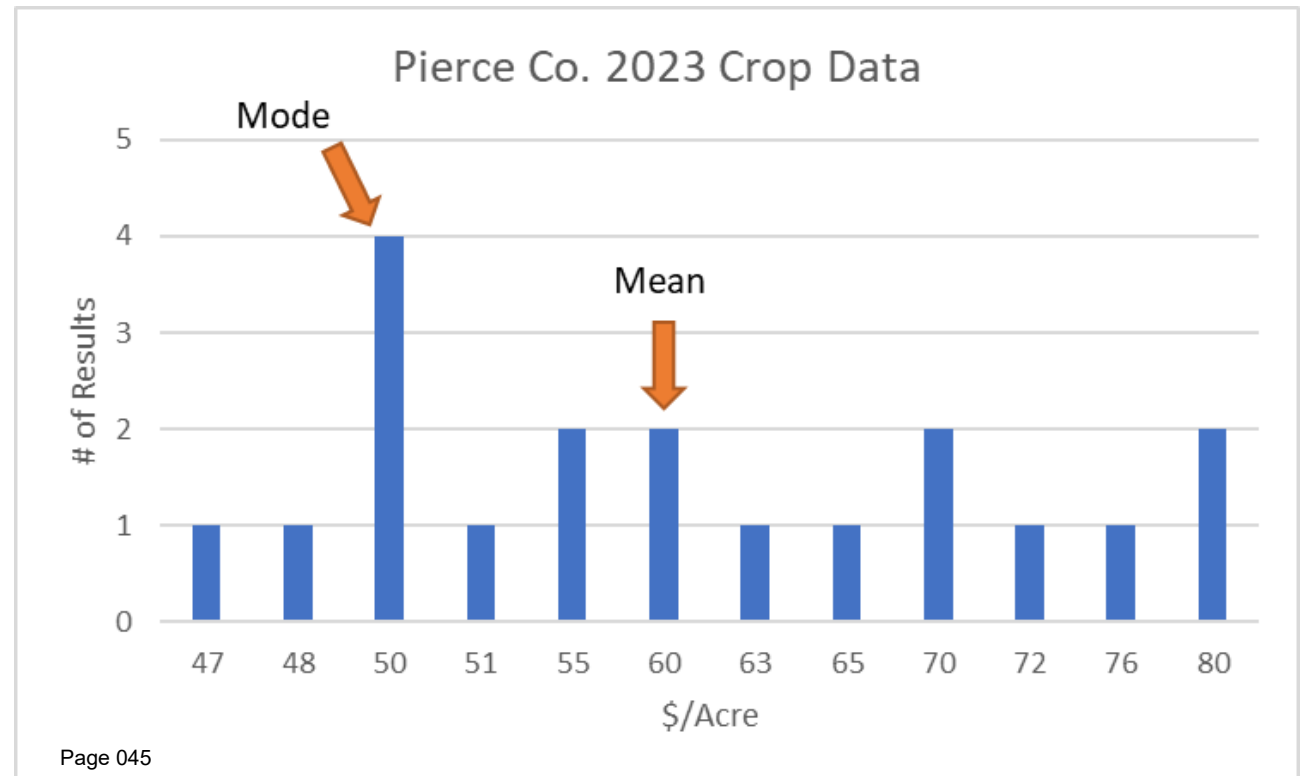
## Regional Rent (RR)

$((CPI \div RCPI) \times (RR \times SE)) \times \text{Cropland Acres} + LF = \text{Cropland Minimum Bid}$

- Regional Rent (RR) changed from mode to mean of survey results.

Currently, Cropland FMV uses the three-year moving average of the Mode from the Survey results

- Mode may not be the best representation of the data
- Small samples, non-normal data





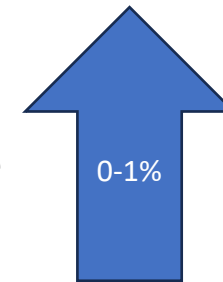
# Proposed Changes Summary

## Grassland Proposed Changes:

$$((((RR - F) \times SE) \times ((GPI \times TSA^*) \div RAPI)) - BW^*) \times \text{Grass Acres} - W^* + (BF^* \times \text{Grass Acres}) + LF$$

- Fence Reduction (F) increase from \$1.60/acre to \$2.50/acre
- Survey Error (SE) decrease from 10% to 5%
- Badlands Water Adjustment (BW) phased out
- Board Owned Fencing (BF) phased out
- Lease Fee (LF) increased from \$0.05/acre to \$0.10/acre

Increase Revenue  
of grass acres by

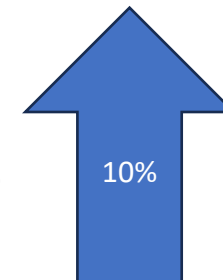


## Cropland Proposed Changes:

$$(((CPI \div RCPI) \times (RR \times SE)) \times \text{Cropland Acres}) + LF$$

- Regional Rent (RR) changed from mode to mean of survey results.
- Lease Fee (LF) increased from \$0.05/acre to \$0.10/acre

Increase Revenue  
of crop acres by



# THANK YOU!

*Joseph Stegmiller, Surface Management Director*

North Dakota Department of Trust Lands

[land.nd.gov](http://land.nd.gov)

701.328.2800

**RE: Fair Market Value Minimum Rent Policy Update – First Reading**

In 1989, the Board of University and School Lands approved the pasture fair market value method for determining the minimum opening bid on school trust lands. Prior to this method, a flat rate per acre was used. The fair market value method allowed for individual tract adjustments based on productivity and local economics.

N.D.C.C. § 15-04-07 states that the “[t]he board of university and school lands shall set the minimum rental for . . . lands, which is subject to review and change” by the board. The Department has initiated a 5-year review timeline which also coincides with the surface leasing cycle.

The policy has now been reviewed and revised. A copy of the proposed Fair Market Value Minimum Rent Policy (FMV) is attached for the Board’s review. Revisions include:

Grass FMV Specific:

- Increase the Fence Reduction from \$1.60/acre to \$2.50/acre
- Eliminate the following tract-specific adjustments:
  - Badlands Water Adjustment
  - Board-Owned Fencing Adjustment
- Decrease the Survey Error reduction from 10% to 5%

Crop FMV Specific:

- Regional Rent change from a three-year moving average of the mode (most frequently reported) to a three-year moving average of the average reported
- Minimum opening Bid changed from three-year moving average of the lowest reported value to 75% of the Regional Rent
- Maximum opening Bid changed from 105% of the Regional Rent to 115% of the Regional Rent

General Policy:

- Lease Fee – Increase from \$0.05/acre to \$0.10/acre
- Language and formatting revisions for better readability and clarity

The Department is requesting Board provide input on the proposed FMV Policy

**Recommendation: The Board approve a first reading of the attached revised Fair Market Value Minimum Rent Policy, offering of the proposed revisions for public comment, and placement of the revisions on the agenda of the next scheduled Board meeting for a second reading and final adoption.**

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

Attachment – Fair Market Value Minimum Rent Policy (redline)



## FAIR MARKET VALUE MINIMUM RENT POLICY

In order to provide a uniform and equitable leasing system for trust lands, the Fair Market Value Minimum Rent (FMV) policy uses a market value approach to establish a minimum opening bid at public auction. The Department contracts with a vendor to conduct a survey to assess land cash rents and land prices from agricultural owners and producers at a county level throughout North Dakota (County Rents and Prices Survey (Survey)) on an annual basis. The Survey provides statistically reliable land use data to help the Department gain insight into current rental rates.

The Commissioner may adjust the grassland Resource Area Productivity Index, Region Cropland Productivity Index, and fencing and water adjustments, as needed. The Board shall review any substantive adjustments that would impact the entire method.

Technical adjustments may be necessary when errors are discovered in the tract data. The Commissioner is authorized to make these and other technical adjustments that impact the minimum bid for individual tracts before the public auction or during the term of a lease, provided the lease has not been bid up.

### Grassland FMV

$$\left( \left( \left( \left( \left( \text{RR} - \text{F} \right) \times \text{SE} \right) \times \left( \left( \frac{\text{GPI} \times \text{TSA}^*}{\text{RAPI}} \right) - \text{BW}^* \right) \times \text{Grass Acres} \right) - \text{W}^* + \left( \text{BF}^* \times \text{Grass Acres} \right) \right) + \text{LF} \right) = \text{Grassland Minimum Bid}$$

1. Regional Rent (RR): The RR is calculated based on a three-year moving average rental rate for pastureland (grassland), as annually reported in the Survey. Individual counties will typically be a region. Counties may be combined to create a region based on land resource similarity, adjacent land ownership, presence of trust lands, and low survey report numbers. (Addendum A - Grassland Leasing Regions map).
  - a. If one county is designated as a region the RR is based on that county's average rental rate.
  - b. If a region includes more than one county the RR is based on the lowest county average rental rate of the counties in the region.
2. Fence (F): To recognize that in most cases the Board does not provide or maintain fences, while most private landlords do, a deduction will be applied to regional rent. (Addendum B - Fence Adjustment Determination for Fair Market Value Minimum Rent Policy).
3. Potential Survey Error (SE): Because of the potential for error in the Survey, a downward adjustment of ~~510%~~ (0.9~~50~~) will be applied to each regional rent. This adjustment compensates for differences reported by those who leased land, versus those who did not lease land, to keep trust lands competitively priced.

4. Grassland Productivity Index (GPI): The Department rates the productivity of each individual tract based on soils data. prepares a Grassland Productivity Worksheet to rate a tract's potential rangeland forage productivity. (Addendum C – Grassland Productivity Worksheet). Tracts that potentially produce more forage in a land resource area may be priced proportionately higher, and tracts with lower potential forage production may be priced proportionately lower, than an average tract.

For tracts not surrounded by Forest Service National Grasslands, the tracts' GPI are calculated at the "high good" productivity rate, while tracts surrounded by or adjacent to Forest Service National Grasslands or Tribal or reservation land are calculated at the "mid good" productivity rate. These ratings are based on the Natural Resources Conservation Service method of determining forage productivity. The lower GPI for tracts surrounded by or adjacent to Forest Service National Grasslands or Tribal or reservation land more closely reflects long term average use on trust land in those areas.

5. Resource Area Productivity Index (RAPI): The RAPI is the average potential grassland productivity for trust lands in a land resource area. (Addendum CD – Grassland Resource Areas map and Addendum DE – Land Resource Area Productivity Chart). The average is calculated by adding the carrying capacity, at the high good rating, of each individual tract within the land resource area and dividing that sum by the number of grass acres for those tracts within the land resource area.

~~6. Badlands Water Adjustment (BW\*): In the Badlands, where there is lower grassland productivity, it is not always cost effective to develop water. Therefore, to recognize that livestock water sources serve multiple Badlands' tracts shared by multiple land owners, a deduction on a per grass acre basis may be applied in lieu of providing rent credit or cost share for developing water on trust lands. (Addendum F – Badlands Water Adjustment Determination for Fair Market Value Minimum Rent Policy and Addendum G – Badlands Water Adjustment Tracts map).~~

~~7.6. Tract Specific Water Adjustment (outside Badlands) (TSAW\*): If it is determined that there is no potential development for permanent livestock water sources on the tract or on adjacent tracts or other issues that make the tract difficult to lease, the GPI will be reduced by 40% (0.60).~~

~~8. Board Owned Fencing (BF\*): For tracts where the Board owns a boundary fence, a positive adjustment is made to negate any Fencing (F) deduction. (Addendum B – Fence Adjustment Determination for Fair Market Value Minimum Rent Policy).~~

~~9.7. Surface Lease Fee (LF): A lease fee of five ten cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.~~

~~\* These are tract specific adjustments that take into account a tract's unique characteristics.~~

10.8. Grassland Opening Bid Limits.

- a. Minimum: The minimum opening bid for grassland will not be less than 25% of the three-year moving average of the regional rent adjusted for potential survey error and fencing.
- b. Maximum: The maximum opening bid for grassland will not be greater than 125% of the three-year moving average of the regional rent adjusted for potential survey error and fencing.

**Cropland FMV**

$$(((\text{CPI} \div \text{RCPI}) \times (\text{RR} \times \text{SE})) \times \text{Cropland Acres}) + \text{LF} = \text{Cropland Minimum Bid}$$

1. Cropland Productivity Index (CPI): ~~The Department rates the productivity of each individual tract based on soils data. The Department prepares a Cropland Productivity Worksheet to rate a tract's potential cropland productivity. (Addendum H— Cropland Productivity Worksheet).~~ Tracts that have a higher than average potential cropland productivity may be priced proportionately higher, and tracts with lower potential cropland productivity may be priced proportionately lower, than an average tract.
2. Region Cropland Productivity Index (RCPI): The RCPI is the average potential cropland productivity for all cropland in a region. (Addendum ~~EI~~ - Region Cropland Productivity Index map). The acreage of each cropped soil in a region is multiplied by the soil's crop productivity index. The totals for each cropped soil are added and divided by the total cropland acres in a region.
3. Regional Rent (RR): The RR will be calculated based on a three year moving average of the ~~average rental rate most frequently reported for~~ non-irrigated cropland rental rate, as annually reported in the Survey. Individual counties will be a region.
4. Potential Survey Error (SE): Because of the potential for error in the Survey, a downward adjustment of 5% (0.95) will be applied to each regional rent. This adjustment compensates for differences reported by those who leased land, versus those who did not lease land, to keep trust lands competitively priced.
5. Surface Lease Fee (LF): A lease fee of ~~tenfive~~ cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.
6. Cropland Opening Bid Limits.
  - a. Minimum: The minimum opening bid for cropland will not be less than 75% of the three-year moving average of ~~the regional rent as reported by the Survey~~RRy.

- b. Maximum: The maximum opening bid for cropland will not be greater than 1105% of the three-year moving average of the ~~RR regional rent for cropland reported by the Survey.~~

**Hayland FMV**

(RR X Hayland Acres) + LF (If HPI < 0.50)

**OR**

((RR X 1.10) X Hayland Acres) + LF (If HPI > or = 0.50)  
= Hayland Minimum Bid

1. Regional Rent (RR): The RR will be based on a three-year moving average rental rate for pastureland (grassland), as annually reported in the Survey. Individual counties will be a region. (Addendum ~~FJ~~ – Region Hayland Productivity Index map).
2. Hayland Productivity Index (HPI): ~~The HPI is calculated by taking the individual tract's hayland tons per acre divided by the region's highest hayland tons per acre. The Department rates the productivity of each individual tract based on soils data. (Addendum K – Hayland Productivity Worksheet).~~
3. Surface Lease Fee (LF): A lease fee of ~~fivet~~en cents per total tract acre will be charged annually to partially offset the expenses of conducting lease auctions, issuing leases, and maintaining surface lease records.

**Opening bid for terminated leases**

1. If a lease is terminated, the tract may be offered at public auction for the remainder of the lease term, not to exceed the expiration date of the original lease.
2. When a lease terminates, the opening bid for that tract at the next auction will be set as follows:
  - a. For a tract that leased for the minimum opening bid, the opening bid will be calculated using the tract's current FMV.
  - b. For a tract that leased for higher than the minimum opening bid, the opening bid will be calculated at the midpoint between the current FMV and the terminated lease amount.
  - c. For a tract that leased for higher than the minimum opening bid and terminated twice within the five year lease term, the opening bid will be the previous lease amount.
  - d. For a tract that remains unleased for a calendar year, the opening bid will be calculated using the tract's current FMV.

Effective Date: December 17, 2018  
Revised: January 1, 2020, ~~May 30, 2024~~

**RE: Board Policy Manual Revisions – First Reading**

The Board of University and School Lands (“Board”) has long had a Policy Manual (“Policy Manual”) that serves as written directives used to guide the execution of Board goals. The purpose of the Policy Manual is to provide a bridge between the leadership vision of the Board and the management tactics of the Commissioner of University and School Lands (“Commissioner”). Board policies instruct the Commissioner on carrying out the duties and functions of the Department of Trust Lands (“Department”). Any changes to the Policy Manual must be reviewed by the Board and are not subject to legislative approval. The current Policy Manual consists of the following sections:

1. Governance
  - Policy Introduction / Amendment / Passage
2. General
  - Definitions
  - Fees
  - Continuing Appropriation Authority Policy
  - Media Relations Policy
3. Surface Land Management
  - Fair Market Value Minimum Rent Policy
  - Abandoned Railroad Right of Way Ownership
  - Limited Land Sales
  - Non-Grant Land Acquired after January 1, 2020 through Foreclosure or Deed in Lieu of Foreclosure
4. Investments
  - Farm Loan Policy
  - Investment Policy Statement
5. Minerals
  - Coal
  - Oil and Gas
  - Minerals Valuation
  - Potash

The Commissioner occasionally recognizes the need for revisions to the Policy Manual. In addition to an update to the Fair Market Value Minimum Rent Policy, the Commissioner has identified the need for minor revisions to the Definitions and the Fees sections of the Policy Manual.

#### Definitions

The Board’s rules were recently amended to remove “honey bee pasture or meadow” from the definition of “Agricultural use” in N.D.A.C. § 85-01-01-01(3). Accordingly, the Commissioner proposes to update the definition of “Agricultural use” in the Policy Manual to align with this new definition.

““Agricultural use” includes the use of trust lands for the purpose of grazing, cropping, and ~~haying, and honey bee pasture or meadow.~~”

Oil & Gas Lease Extension Fee

Under the terms of the Board’s oil & gas lease, a lessee is given five years to commence production of oil or gas on the leased premises. If, upon the impending expiration of this primary term of five years, the production of oil or gas has not been obtained in commercial quantities, but a lessee is making a good faith effort to promptly obtain production, a lessee may request an extension of the lease for 180 days. The review of the circumstances around the request and processing of the application take a considerable amount of staff time. Accordingly, the Commissioner proposes to raise the “lease extension or [lease] amendment application fee” from \$250 to \$1,000 per lease.

Land Sale/Exchange Application Fee

Sale of Trust Land, while infrequent, is a significant decision that requires extensive analysis and careful consideration. When an application for a land sale or exchange is received, Department staff spends a considerable amount of time processing the application and analyzing the proposed sale, the cost and expense of which often far exceeds the current \$500 fee amount. Therefore, the Commissioner proposes to raise the “Land Sale/Exchange Application Fee” from \$500 to \$1,000 per tract.

Surface Lease Assignment Fee

The Department currently processes approximately 30 surface lease assignments every year. As part of the proposed revisions to the Fair Market Value Minimum Rent Policy, it is intended that the cost associated with processing surface lease assignments will be covered by the Lease Fee, negating the need for a separate Surface Lease Assignment Fee. As such, the Commissioner proposes eliminating the Surface Lease Assignment Fee from the Fees section of the Policy Manual.

**Recommendation: The Board approve the Commissioner to proceed in offering the proposed revisions for public comment and placement of the revisions on the agenda of the next scheduled Board meeting for a second reading and final adoption.**

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

Attachment – Redline versions of the “Definitions” and “Fees” sections of the Policy Manual

## DEFINITIONS

**Definitions.** The following definitions apply to this manual:

1. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, and haying, and honey bee pasture or meadow.
2. "Bank" means the Bank of North Dakota established under North Dakota Century Code chapter 6-09.
3. "Board" means the Board of University and School Lands.
4. "Commissioner" means the Commissioner of University and School Lands.
5. "Department" means the office of the Commissioner and the Department of Trust Lands.
6. "Fair market value" means the price set by the Commissioner after an analysis of prices paid for similar products or services in the area of the leased premises.
7. "Funds" means monies under control of the Board.
8. "Lease" means a contract entered into between the Board and a third party for agricultural use of trust lands.
9. "Leased premises" means the land area subject to a given lease for agricultural use.
10. "Loans" means loans secured by a first mortgage on farm or ranch lands in the state. The collateral for these loans must not be encumbered by any prior mortgage, lien, tax lien, judgment, or other prior encumbrances, and all real property taxes must be current.
11. "Mortgagor" means a person who is a resident of the state of North Dakota or a legal entity registered in the state of North Dakota and conducting business in the state.
12. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
13. "President" means the President of the Bank of North Dakota as provided for in North Dakota Century Code chapter 6-09.
14. "Trust" means permanent trusts and other funds managed or controlled by the Board.
15. "Trust lands" means any property owned by the state of North Dakota and managed by the Board.

Effective Date: October 25, 2018; December 17, 2018; March 28, 2019

Revised: January 1, 2020; May 30, 2024

**FEES**

The following fees are non-refundable, unless otherwise noted or unless it is determined by the Commissioner of University and School Lands that circumstances require the fees be waived:

**General Fees:**

Certified copies \$-25.00 per document

**Minerals Fees:**

**1. Coal leasing**

Application fee \$650.00 per lease  
Lease assignment fee \$-25.00 per assignment per lease

**2. Oil and gas leasing**

Lease assignment fee \$-25.00 per assignment per lease  
Oil & Gas lease extension or amendment application fee \$250.00 1,000 per lease

**3. Subsurface mineral leasing – potash and other subsurface minerals mining solution**

Application filing fee \$-50.00 per tract

**Surface Fees:**

**1. Construction Aggregate Leasing**

Application fee for Lease, Amendment, assignment, extension, renewal \$250.00

**2. Encumbrances**

Application fee for Encumbrances, Amendment, assignment, extension, renewal \$250.00

**3. Land sale/exchange application fee**

\$500.00 1,000 per tract

**4. Appraisal fee**

based on actual cost

**5. Recording fee**

based on actual cost

~~**6. Surface Lease assignment**~~

~~\$ 25.00 per lease~~

General Authority: N.D.C.C. § 15-01-02.1; N.D. Admin. Code §§ 85-04-02-01, 85-04-04-01, 85-06-01-06, 85-06-02-03, 85-06-02-12, 85-06-07-02

Effective Date: June 26, 2014

Revised: July 1, 2020; May 30, 2024



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

- **Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands**
  - **Case Summary:** OHWM title dispute / takings claim – On August 22, 2023, Whitetail Wave appealed the trial court’s rulings for the state (takings, Wenck Line, quiet title) and the award of attorney fees to co-defendant XTO Energy. North Dakota Supreme Court arguments held January 17, 2024. **The Supreme Court issued its opinion April 4, 2024, affirming the District Courts ruling in our favor that this was simply a title dispute and no taking occurred.**

Commencement: June 2015

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

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

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

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = Takings claim dismissed resulting in no liability to state

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

- **Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands**
  - **Case Summary:** Continental Oil Royalty Deductions – Now that the Newfield gas royalty deductions case has been resolved, this has come off stay and the parties have filed a joint scheduling order laying out the discovery and preparation timeline for trial that is currently scheduled for August 4-8, 2025, in McKenzie County.

Commencement: December 2017

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

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

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

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

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

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

Commencement: July 2020

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

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

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

Court: United States District Court for the District of Columbia

Judge: Honorable Amy Berman Jackson

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

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

- **Continental Resources, Inc., v. North Dakota Board of University and School Lands and the United States of America (Interpleader)**
  - **Case Summary:** OHWM fed/state dispute – ND Federal District Court issued opinion March 21, 2023, granting Board's motion for partial summary judgment on "Acquired Federal Lands" issue; this means the Wenck survey controls for establishing the historical ordinary high-water mark of the Missouri River in areas where the uplands were acquired by the federal government, and not original "public domain lands"; federal government appealed and we filed cross appeal; final brief was filed January 10, 2024, with oral arguments to be scheduled thereafter.

Commencement: December 2016

ND Assigned Attorneys: Philip Axt, ND Solicitor General

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

Counsel for USA: Shaun Pettigrew (Environment and Natural Resources  
Division (ENRD) of the U.S. Department of Justice)

Court: United States District Court, District of North Dakota

Judge: Magistrate Judge Clare R. Hochhalter

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

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

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

- **Case Summary:** OHWM river island ownership, trial was held on September 12-16, 2022; post-trial briefing completed December 2023; awaiting Judge Schmidt's ruling.

Commencement: January 2016

ND Assigned Attorneys: Matthew Sagsveen, AG Dir. of Natural Resources and Native  
American Affairs  
James Wald, DTL General Counsel

Counsel for Whiting Oil and Gas Corp: Paul Forster (Crowley Fleck, PLLP, Bismarck, ND)  
Shane Hanson (Crowley Fleck, PLLP, Bismarck, ND)

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

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

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

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

## **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, to review confidential records, and discuss negotiating strategy regarding:**

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

<b>Action Record</b>	<b>Motion</b>	<b>Second</b>	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>
Secretary Howe					
Superintendent Baesler					
Treasurer Beadle					
Attorney General Wrigley					
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 30 minutes.

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 consulted with attorneys regarding the identified legal issues.

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.**