

BOARD OF UNIVERSITY AND SCHOOL LANDS

**Governor's Conference Room
Ground Floor, State Capitol
September 30, 2021 at 9:00 AM**

[Join Microsoft Teams Meeting](#)

+1 701-328-0950

Conference ID: 424 866 903#

AGENDA

➤ = Board Action Requested

1. Approval of Meeting Minutes – Jodi Smith

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

- A. August 26, 2021 – pg. 2
- B. September 9, 2021 – pg. 22

2. Reports – Jodi Smith

- A. Report of Encumbrances – pg. 28
- B. Acreage Adjustment Report – pg. 33
- C. Unclaimed Property Report – pg. 35
- D. Investments Update – pg. 36

3. Surface – Mike Humann

- A. 15-09 Sale – pg. 37
- B. No Net Loss Preliminary Land Sale Approval T136N R86W Section 28 NW1/4, Section 32 N1/2N1/2, Section 36 SE1/4 expansion of public comment period – pg. 40

4. Energy Infrastructure and Impact Office - Jodi Smith

- A. Quarterly Report – pg. 42

5. Investments – Mike Shackelford

- A. Investment Fee Report FY 2021 – pg. 43

6. Operations – Jodi Smith

- A. IT Update – pg. 50
- B. 2022 Land Board Meeting Schedule – pg. 51

7. Minerals – Jodi Smith

- A. Royalty Offers – pg. 52

8. Litigation – Jodi Smith

- A. Newfield Exploration Company et al Civ. No. 27-2018-CV-00143 – pg. 53 **Executive session under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2 for attorney consultation with the Board's attorneys. - Pg. 56**

Next Meeting Date – October 28, 2021

**Minutes of the Meeting of the
Board of University and School Lands
August 26, 2021**

The August 26, 2021 meeting of the Board of University and School Lands was called to order at 9:00 AM via Microsoft Teams by Chairman Doug Burgum.

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Christopher Dingwall	Mineral Title Specialist
Robert Dixon	IT
Susan Dollinger	Unclaimed Property
Jessica Fretty	Unclaimed Property
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
Rick Owings	ELIO Grants Administrator
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director
Kayla Spangelo	Range Soils Management Specialist
James Wald	Legal Council
Scott Giere	Revenue Compliance
Peggy Gudvangen	Finance Director

Guests in Attendance:

Dave Garner	Office of the Attorney General
Amy Sisk	Bismarck Tribune
Brady Pelton	NDPC
Miranda Letherman	
Josh Kevan	RVK
Craig Smith	Crowley Fleck Attorneys
Harry Gakidis	Acadian
Andrew Miller	Acadian
C. Rajala	
Cyril Espanol	Journalist from Pageantmedia
Adam Willis	Fargo Inforum
Aidan Forde	Arrowstreet
Liodakis Manolis	Arrowstreet
Don Larson	

APPROVAL OF MINUTES

A motion to approve the minutes of the July 29, 2021 regular meeting was made by Attorney General Wayne Stenehjem and seconded by Secretary of State Alvin Jaeger and the motion carried unanimously on a voice vote.

REPORTS**July 2021 Report of Encumbrances Issued by Land Commissioner**
(No Action Requested)

Granted to: **WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND**
 For the Purpose of: Easement: Pipeline-Potable Water Pipeline
 Right-of-Way Number: RW0008738
 Trust: A - Common Schools
 Legal Description: DIV-160-100-28-W2NE4

Granted to: **WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND**
 For the Purpose of: Easement: Pipeline-Potable Water Pipeline
 Right-of-Way Number: RW0008911
 Trust: A - Common Schools
 Legal Description: WIL-159-102-36-NE4

Granted to: **MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**
 For the Purpose of: Easement: Electric-Buried Distribution Line
 Right-of-Way Number: RW0008835
 Trust: A - Common Schools
 Legal Description: MOU-158-91-16-SE4, SW4

Granted to: **OASIS PETROLEUM NORTH AMERICA LLC, HOUSTON-TX**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008916
 Trust: A - Common Schools
 Legal Description: WIL-153-100-36-NE4, SE4, SW4

Granted to: **ND ENERGY SERVICES INC, DICKINSON-ND**
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008923
 Trust: A - Common Schools
 Legal Description: DUN-146-94-16-NE4, NW4

Granted to: **AMERICAN COLLOID COMPANY, BELLE FOURCHE-SD**
 For the Purpose of: Permit: Coal Exploration
 Right-of-Way Number: RW0008873
 Trust: A - Common Schools
 Legal Description: BOW-130-99-1-SW4 & ADA-130-98-8-SW4
 BOTH TRACTS HAVE 50% MINERAL OWNERSHIP - NO SURFACE.

Granted to: **WILLIAM H SMITH & ASSOCIATES PC, GREEN RIVER-WY**
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008929
 Trust: A - Common Schools
 Legal Description: ALL TRUST LAND IN NORTH DAKOTA

Granted to: **WOLD ENGINEERING, P.C., MINOT-ND**
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008881
 Trust: A - Common Schools
 Legal Description: ALL TRUST LAND IN NORTH DAKOTA

Granted to: **PETRO-HUNT LLC, BISMARCK-ND**
 For the Purpose of: Permit: Temporary Construction – Emergency*
 Right-of-Way Number: RW0008936
 Trust: A - Common Schools
 Legal Description: MCK-154-95-36-SE4

*Holding pond constructed to collect run-off from Petro-Hunt oil well fire on adjacent Forest Service Land.

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

DIEDE, COLEHARBOR-ND

Permit: Temporary Construction
 RW0008937
 A
 DUN-147-96-36-NW4, S2SW4

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

NORTH DAKOTA STATE UNIVERSITY (DEPT 7650), FARGO-ND

Permit: Access to School Land for pollinator and ground arthropod study
 RW0008900
 A - Common Schools
 SEVERAL TRACTS IN MCKENZIE & WILLIAMS COUNTIES

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:

ND GEOLOGICAL SURVEY, BISMARCK-ND

Permit: Access to School Land for critical element sampling
 RW0008912
 A – Common Schools, E – Ellendale, N – North Dakota State University, U – University of North Dakota, C – Capitol Building, W – North Dakota State School of Science, J – Indian Cultural Education Trust, M – School of Mines
 SEVERAL TRACTS IN BILLINGS, BOWMAN, DUNN, GOLDEN VALLEY, GRANT, MCKENZIE, MERCER, MORTON, SIOUX, SLOPE, STARK, WILLIAMS COUNTIES

Legal Description:

Granted to:

For the Purpose of:
 Right-of-Way Number:
 Trust:
 Legal Description:

ETHNOSCIENCE INC, BILLINGS-MT

Permit: Access to School Land
 RW0008914
 A - Common Schools
 MCL-147-82-36-SE4, SW4

July 2021 Consideration Total: \$16,785.00

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.energy.net which concluded on August 3, 2021.

There were 23 tracts offered, and all 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 \$1,501.00 (\$240,160.00 for 160.00 acres) in McKenzie County. 12 tracts benefit the Common Schools Trust Fund, and 11 tracts benefit the Strategic Investment and Improvements Fund (SIIF).

County	Tracts/County	Net Mineral Acres	Total Bonus	Average Bonus/Acre
Billings	5	719.94	\$76,390.34	\$106.11
Burke	3	128.00	\$9,128.00	\$71.31
Divide	9	1000.13	\$253,440.43	\$253.41
Dunn	2	160.00	\$80,720.00	\$504.50
McKenzie	2	320.00	\$336,480.00	\$1051.50
Williams	2	153.22	\$75,376.10	\$491.95
GRAND TOTAL	23	2481.29	\$ 831,534.87	\$335.12

338

There was a total of 20 bidders who submitted 383 bids on the 23 tracts. The bidders were from 10 states (AZ, CO, IN, LA, MN, MT, ND, OK, TX, and WY).

A total of \$831,534.87 of bonus was collected from the auction.

July 2021 Report of Shut-Ins Approved by Land Commissioner

Granted to:

For the Purpose of:

Date Issued:

Application Fee:

Trust:

Lease:

Burlington Resources Oil and Gas Company LP

Operations

07/29/2021

\$100.00

SIIF – Strategic Investment and Improvements Fund

OG-09-01476

Granted to:

For the Purpose of:

Date Issued:

Application Fee:

Trust:

Lease:

00904

Marathon Oil Company

Operations

07/30/2021

\$100.00

SIIF – Strategic Investment and Improvements Fund

OG-05-00901; OG-05-00902; OG-05-00903; OG-05-

Granted to:

For the Purpose of:

Date Issued:

Application Fee:

Trust:

Lease:

00747

Marathon Oil Company

Operations

07/30/2021

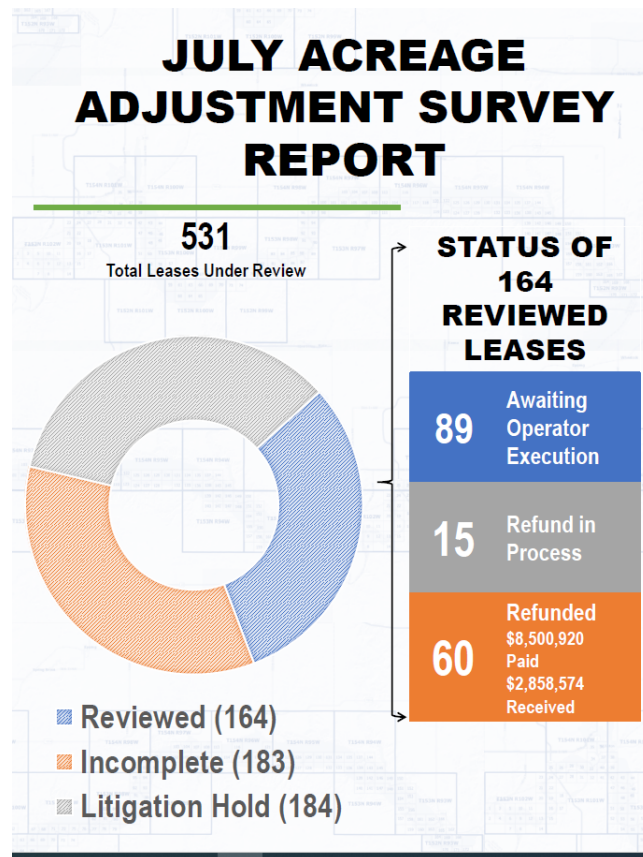
\$100.00

SIIF – Strategic Investment and Improvements Fund

OG-05-00905; OG-05-00906; OG-05-00949; OG-10-

OG-10-00748

Acreage Adjustment Report



NDDTL River Tracts Refund Status map was also presented to the Board and is available upon request.

June 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.

For the month of June 2021, the Division received 68 holder reports with a property value of \$107,566 and paid 352 claims with a total value of \$641,090.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Investment Updates
(No Action Requested)

Portfolio Rebalancing Updates

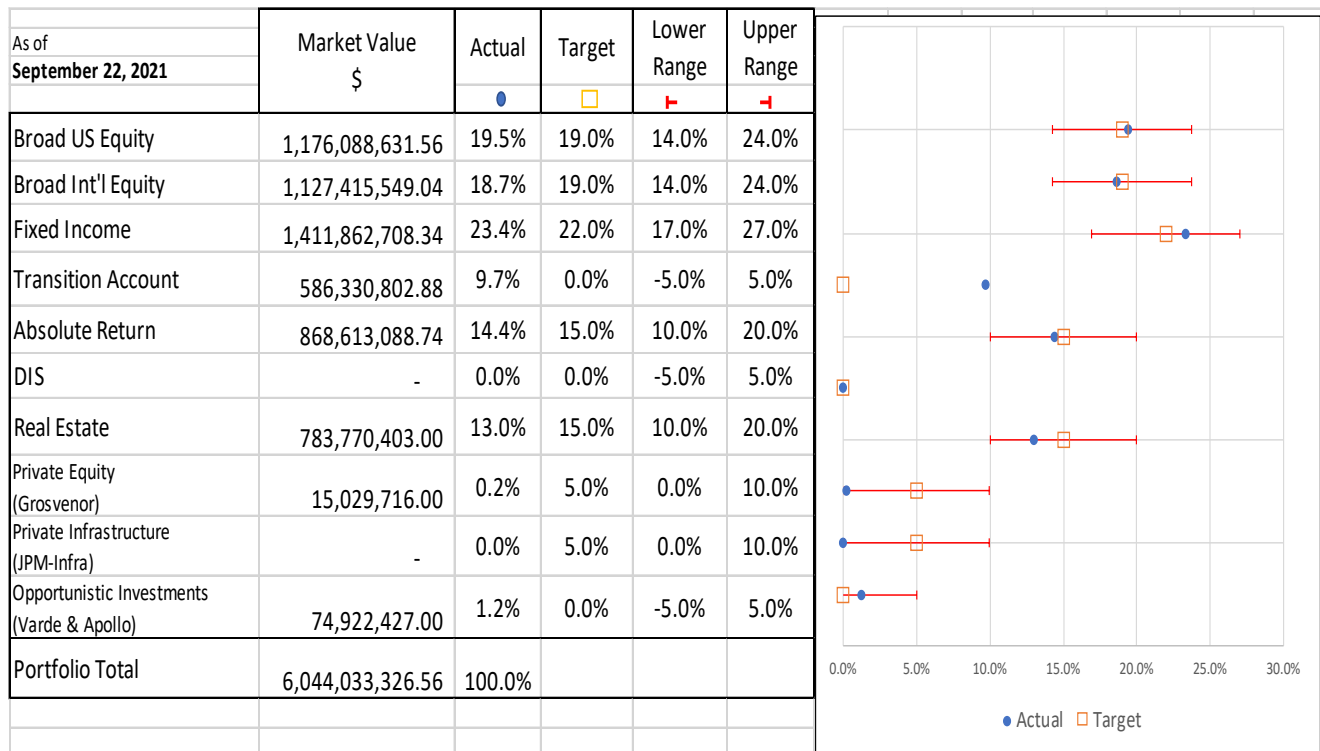
Staff is reviewing agreements of recently approved investments namely: Arrowstreet Emerging Market Fund, Northern Emerging Market Index Fund, Acadian, Acadian International Small Cap Fund, SSGA International Small Cap Index Fund. Both GCM Secondaries Fund and Owl Rock are targeted to close at the end of September.

Apollo made \$3.25M capital distribution last 8/31 increasing its unfunded commitment to \$84.8M. While Ares Pathfinder Fund and Angelo Gordon DL Fund IV made capital calls amounting to approximately \$10M each on 9/17 and 9/23 respectively. With the recent distribution and capital calls, total unfunded commitments as of 9/23 stands at \$641.9M. These are as follows:

1. JPM Infrastructure Fund, \$130M
2. Harrison Street Core Property Fund LP, \$130M
3. Apollo Accord Fund, \$84.8M
4. Varde Dislocation Fund, \$50M
5. GCM Private Equity, \$115.1M
6. ARES Pathfinder Fund, \$74.5M
7. Angelo Gordon DL IV, \$57.5M.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 22, 2021. The figures provided are unaudited.



I N V E S T M E N T S

June Investment Reports – 2nd Quarter 2021

Josh Kevan from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending June 30, 2021 and discuss current market conditions.

The first report to be reviewed was prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report.

The second report shows the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK Permanent Trust Fund Performance Analysis and RVK Ultra-short Performance Report were presented to the Board and are available at the Department upon request.

Emerging Markets Equity Allocation

In April 2014, the Board of University and School Lands' (Board) approved investments in two Emerging Markets equity funds equally divided between Dimensional Fund Advisors' (DFA) Emerging Markets Core Equity mutual fund and Harding Loevner's Institutional Emerging Markets mutual fund.

As a result of consistent underperformance, Department Staff and RVK recommended terminating the DFA and Harding mandates (combined \$230+ Million) and replacing those with two new Emerging Markets (EM) equity mandates. The incumbent mandates have underperformed the benchmark (MSCI Emerging Markets Index) net of fees in the 3, 5, and 7-year periods (the entire length of incumbency). RVK's research shows the incumbents have worse Risk/Return performance, Sharpe Ratios, Information Ratios and Upside/Downside Capture Ratios than the proposed replacement.

Staff and RVK recommend moving to a new active manager and an index, which should decrease portfolio risk while increasing returns. Staff and RVK began the manager search by compiling a list of the top performing managers within RVK's database. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process. Staff and RVK selected and interviewed top managers to review their investment strategies and investment process.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a mandate with Arrowstreet. Arrowstreet Capital has a strong and transparent investment process and portfolio characteristics that Staff and RVK felt would best suit the PTFs. Arrowstreet is an investment manager founded in 1999 and headquartered in Boston, with offices in the U.S., Europe and Asia. They have over \$152 Billion in assets under management and over 110 investment professionals.

Staff and RVK also recommend an investment with Northern Trust Investments in their Emerging Markets Equity index fund. Arrowstreet closes their fund for extended periods of time; this index fund will give the PTFs a rebalancing tool for when the PTFs are waiting for Arrowstreet to open or when we need to reduce holdings due to faster growth in the asset class versus other assets.

Motion: The Board approve terminating investment with DFA and Harding Loevner and using the proceeds (\$230+ Million) to invest with Arrowstreet in an Emerging Markets Equity actively managed mandate, and approve a \$25 Million investment with Northern Trust in an Emerging Markets Equity Index mandate subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation Memo and Arrowstreet Emerging Markets Presentation were presented to the Board and are available at the Department upon request.

International Small Cap Equity Allocation

In September 2017, the Board of University and School Lands' (Board) approved changes to the Permanent Trust Funds' (PTFs) international equity allocation to include international small cap developed market ex-U.S. equities. In December 2017, the Board approved an investment in QMA's EAFE Small Cap commingled fund (EAFE stands for Europe, Australasia and Far East).

As a result of consistent underperformance, Department Staff and RVK recommend terminating the QMA EAFE Small Cap mandate (\$210+ Million) and replacing it with two new EAFE small cap equity mandates. The QMA mandate has underperformed both its benchmark (MSCI EAFE Small Cap Index) and its peers. RVK's research shows the QMA mandate has a worse risk/return performance than its index and peer group. It also has worse periodic Sharpe Ratios, Information Ratios and Upside/Downside Capture Ratios than its peer group.

Staff and RVK recommend moving to a new active manager and an index, which should decrease portfolio risk while increasing returns. Staff and RVK began the manager search by compiling a list of the top performing managers within RVK's database. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process. Staff and RVK selected and interviewed top managers to review their investment strategies and investment process.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a mandate with Acadian. Acadian Asset Management has a strong and transparent investment process and portfolio characteristics that Staff and RVK felt would best suit the PTFs. Acadian is an investment manager founded in 1986 and headquartered in Boston, with offices in the U.S., Europe and Asia. They have over \$117 Billion in assets under management and over 95 investment professionals.

Staff and RVK also recommend an investment with Northern Trust Investments in their EAFE Small Cap Equity index fund. From time-to-time Acadian has waiting lists; this index fund will give the PTFs a rebalancing tool for when the PTFs are waiting in Acadian's investment queue or when we need to reduce holdings due to faster growth in the asset class versus other assets.

Motion: The Board approve terminating investment with QMA and using the proceeds (\$210+ Million) to invest with Acadian in an EAFE Small Cap Equity actively managed mandate, and approve a \$25 Million investment with Northern Trust in an EAFE Small Cap Equity Index mandate subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation Memo and Acadian International Small Cap Presentation were presented to the Board and are available at the Department upon request.

O P E R A T I O N S

Board of University and School Lands Media Relations Policy Manual

The Board of University and School Lands (Board) currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. The Board requested the Commissioner prepare a Media Relations Policy that seeks to work cooperatively with the media to disseminate information of public interest and concern in an accurate, complete, and timely manner and in harmony with the official position of the Board.

The first reading of the policy was held at the July 29, 2021 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and two comments were received (Attachment 2).

Motion: The Board adopt the proposed North Dakota Board of University and School Lands Media Policy.

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

Board of University and School Lands Media Relations Policy and Comments Received were presented to the Board and are available at the Department upon request.

Definitions, Unclaimed Property, Surface Land Management, and Minerals Management Administrative Rules

Due to statutory changes made during the Sixty-seventh Legislative Assembly, the Department of Trust Lands (Department) proposes changes to Title 85, Board of University and School Lands, of the North Dakota Administrative Code as follows:

North Dakota Administrative Code § 85-01-01-01:

Repeal of N.D.A.C. ch. 85-06-01, Administrative Rules relating to public access, necessitated revisions to the N.D.A.C. § 85-01-01-01, including removal of the definition of the word vehicle, which resulted in renumbering the remaining definitions. The definition of encumbrance was revised to be more encompassing of all types of encumbrances. Due to the repeal and reenactment of the Unclaimed Property Act it was necessary to make a clerical correction as to the chapter number. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code ch. 85-03:

Due to the repeal of the Unclaimed Property Act (N.D.C.C. ch. 47-30.1), and the reenactment of the Revised Uniform Unclaimed Property Act (N.D.C.C. ch. 47-30.2) under Senate Bill 2048, the Department proposes revisions to Article 85-03, Unclaimed Property, of the North Dakota Administrative Code. Many of the revisions relate to clerical corrections regarding the North Dakota Century Code chapter, general authority, and law implemented. Further, certain administrative rules were repealed to reflect information that is now part of N.D.C.C. ch. 47-30.2, while others were added based on new requirements under the law. The most significant change relates to the addition of a chapter regarding Examinations. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code ch. 85-04-05:

House Bill 1081 was brought to address enforcement mechanism concerns for N.D.A.C. ch. 85-04-05, Public Access and Use. With the passage of HB 1081, all of N.D.A.C. ch. 85-04-05 was incorporated into N.D.C.C. ch. 15-08. Therefore, the Department requests repeal of this chapter. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code § 85-06-01-12:

Due to changes in N.D.C.C. §§ 15-05-10 and 47-16-39.1, as provided in House Bill 1080, the Department proposes revising N.D.A.C. § 85-06-01-12 as it relates to penalty and interest calculations. Waiver was also removed from this section of the administrative code based on the revised language in N.D.C.C. § 15-05-10. All revisions are spelled out in the attached proposed rules.

Motion: The Board authorizes the Commissioner to proceed with review of the proposed Administrative Rules, including formal review by the Office of Attorney General, preparation for public hearings and collection of comments, and submittal to Legislative Council.

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

Administrative Rules General Administration, Unclaimed Property, Surface Land Management, and Minerals Management were presented to the Board and are available at the Department upon request.

Information Technology Project Status Update

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

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

On July 1, 2020, the new Financial Management and Accounting system was successfully launched.

On September 14, 2020, the Revenue Compliance Division successfully launched the migrated and updated software system.

The Surface Land Management System is tentatively scheduled to go-live on September 25, 2021. MABU, a full service marketing and communications company, has been hired to aid the Department in communication efforts to constituents who will be impacted by the implementation of the new system.

Additional capital funding was approved through Senate Bill 2013 to support the implementation of software for the Minerals Division. A kick-off for the implementation of the new software is scheduled for September 27, 2021.

Strategic Investment and Improvements Fund - Assigned Fund Balance

Mineral revenues from sovereign lands are deposited into the Strategic Investment and Improvements Fund (SIIF). In July, 2016 the Board of University and School Lands (Board) classified \$142,325,049 of this fund as an "Assigned Fund Balance," a potential liability that should not be transferred out of the fund until title claims to riverbed leases are resolved. The amount was derived from the amount of bonus and royalties collected from the leasing and production of sovereign lands' oil and gas interests and in consideration of associated litigation in these areas.

The adoption of Senate Bill 2134 (SB 2134) in 2017 by the Sixty-fifth Legislative Assembly, codified as N.D.C.C. ch. 61-33.1, provided for a determination of the Ordinary High Water Mark (OHWM) for certain stretches of the Missouri River. The bill directed the North Dakota Industrial Commission (NDIC) to review a stretch of river to determine the location of the OHWM pursuant to specific criteria established by the Legislature.

On August 30, 2018 the Board affirmed the existing Assigned Fund Balance of \$229,325,049. It was anticipated that after the NDIC adopted the final review findings, the Department of Trust Lands (Department) would be able to calculate with more certainty the amounts necessary for mineral title disputes.

The survey NDIC was directed to conduct under SB 2134, and completed by Wenck Associates, Inc., did not provide the level of detail needed by the Department or oil and gas operators to make

the necessary adjustments required to refund royalties and lease bonuses. In recognition of this, the Sixty-sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 by adopting Senate Bill 2211 (SB 2211). SB 2211 authorized the Board to “contract with a qualified engineering and surveying firm to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the [OHWM] as delineated by the final review findings of the [NDIC].”

The SB 2134 further directed the adjustment of State leased mineral interests and authorized refunds of mineral proceeds accordingly. SB 2134, Section 3, states:

1. There is appropriated out of any moneys held in reserve in the [SIIF] for mineral title disputes, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of mineral revenue repayments, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.
2. The funding provided in this section is available for the following:
 - a. Repayment of any lease, bonus, rents, and royalty collections attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey, as required in subsection 1 of section 61-33.1-04.
 - b. Repayment of any lease, bonus, rents, and royalty collections attributable to the remaining oil and gas mineral tracts, as required in subsection 2 of section 61-33.1-04.
 - c. Other mineral revenue repayments or other reimbursements that are attributable to oil and gas mineral tracts requiring repayments under this Act.
3. Upon adoption of the final review findings by the industrial commission, the commissioner of university and school lands shall calculate the amount necessary for mineral revenue repayments based on the final review findings.
4. As soon as a repayment amount for a known recipient is calculated but after the expenditure of the \$100,000,000 in subsection 1:
 - a. The commissioner of university and school lands shall request from the sixty-sixth legislative assembly additional funding sufficient for any remaining mineral revenue or other repayments.
 - b. If the \$100,000,000 is expended before the repayment of all amounts calculated for known recipients and before additional funds are made available by the sixty-sixth legislative assembly, the Bank of North Dakota shall extend a line of credit, not to exceed \$87,000,000, to the commissioner of university and school lands. The commissioner of university and school lands shall access the line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of mineral revenue and other repayments under this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The commissioner of university and school lands shall repay the line of credit from funds available in the strategic investment and improvements fund as appropriated by the legislative assembly.

Mineral revenues from sovereign lands are deposited into the SIIF. Current revenue projections indicate there will be sufficient funds within the SIIF to meet obligations and transfers implemented by the 2017 Legislative Assembly, including the total amount estimated for refunds under SB 2134.

On July 17, 2019 the Board approved the existing Assigned Fund Balance of \$229,325,049. The amount was based upon the bonus and royalties anticipated to be collected through the end of Fiscal Year 2019.

On June 25, 2020 the results of the acreage adjustment survey as prepared by Kadrmass, Lee & Jackson, Inc. (KLJ) were presented and approved by the Board, with the exception of certain sections and lots that required further review. The Department has started the process of updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process is extensive and requires a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be allocated to the correct trust, the Department's shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck Associates, Inc., the Department has over 500 active leases covering 44,700 acres.

On July 29, 2020, the Board approved the existing Assigned Fund Balance of \$229,325,049.

Since June 25, 2020, the Department has been completing the necessary acreage adjustments within the Project Area. Based upon the review of the current adjustments, the Department has determined the Board can reduce the amount preserved in the Assigned Fund Balance by \$10,544,933. The recommended reduction is based upon the Assigned Fund Balance related to the lease corrections that have been executed.

Motion: For purposes of its financial reporting, the Board affirms the "Assigned Fund Balance" of the Strategic Investment and Improvements Fund and recommend it set at \$218,780,117. These funds are reserved to make adjustments related sovereign lands mineral ownership.

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

LITIGATION

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:

Current Status:

- 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.

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.

**Current
Status:**

- 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.

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.

Status:

- 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.

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.

On July 29, 2021, the Board provided the Department with guidance as it relates to royalty repayment offers. Since August 1, 2021, the Department approved receipt of payment for:

- BTA Oil Producers, LLC
- Liberty Resources Management Co., LLC

- Lime Rock Resources
- Luff Exploration Company

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.

The Board has requested royalty repayment offers from gas payors and litigation be discussed during executive session.

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

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

The Board entered into executive session at 10:35 AM.

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Thomas Beadle	State Treasurer (Via Teams)
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

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

Guests in Attendance:

Dave Garner	Office of the Attorney General
Charles Carvell	Office of the Attorney General-only present for MHA
Troy Seibel	Office of the Attorney General

The executive session adjourned at 11:35 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.

A D J O U R N

There being no further business, the meeting was adjourned at 11:40 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

**Minutes of the Meeting of the
Board of University and School Lands
September 9, 2021**

The September 9, 2021 special meeting of the Board of University and School Lands was called to order at 2:00 PM via Microsoft Teams by Chairman Doug Burgum. Roll call was taken and all meeting attendees were via Microsoft Teams.

Members Present:

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

Department of Trust Lands Personnel Present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
James Wald	Legal Counsel
Susan Dollinger	Unclaimed Property
Michael Shackelford	Investments Division Director
Rick Owings	EIO Administrative Staff Officer

Guests in Attendance:

Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Jim Lodoen	Legal Counsel
Sophie Blake Baesler	Guest of Superintendent of Baesler

I N V E S T M E N T S

International Small Cap Equity Index

On August 26, 2021, the Board of University and School Lands' (Board) approved an investment in Northern Trust's International Small Cap Equity Index fund on behalf of the Permanent Trust Funds (PTFs). The investment in the index fund will give the PTFs a rebalancing tool for when the PTFs are waiting in Acadian's investment queue.

Due to an error by Northern Trust, the PTFs are not eligible to invest in their International Small Cap Equity Index fund. During the due diligence process staff and RVK engaged several index providers for quotes. Both Northern Trust and State Street Global Advisors (SSGA) offered the lowest fee (6 basis points).

Staff requested SSGA re-bid the mandate. SSGA agreed and re-bid at the same fee (6 basis points). SSGA has a strong track record managing index funds with low tracking error to the actual indices. SSGA is a multinational asset manager with \$3.90 Trillion in assets under management and over 40 years of history.

Motion: The Board approve a \$25 Million investment with State Street Global Advisors, in place of Northern Trust, in the International Small Cap Index Fund mandate subject to final review and approval of all legal documents by the Office of the Attorney General.

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

LITIGATION

Whiting Bankruptcy

Case: In re: Whiting Petroleum Corporation, et al., Chapter 11, Case No. 20-32021 (DRJ)
Date Filed: April 1, 2020
Court: United States Bankruptcy Court for the Southern District of Texas – Houston Division
Attorneys: James Wald, James A. Lodoen
Opposing Counsel: Matthew D. Cavanaugh, Jennifer F. Wertz, and Vienna F. Anaya, Jackson Walker LLP
Judge: David R. Jones

Issues: Debtor filed for Chapter 11 Bankruptcy on April 1, 2020. The Department identified unclaimed property through a third-party audit as well as unpaid royalty liability.

History: Debtor filed for Chapter 11 Bankruptcy on April 1, 2020. The Board filed three separate proofs of claim on September 25, 2020: One claim pertaining to unremediated unclaimed property disbursement liability of \$11,933,098.40, and two claims pertaining to unpaid oil and gas royalties totaling \$6,399,811.63.

Documents filed can be accessed at: <https://cases.stretto.com/whitingpetroleum>.
 Documents applicable to the interests of the Board include:

- 1) Document #566 Disclosure Statement and Plan
- 2) Document #733 Order Confirming Plan
- 3) Document #1081 Debtor's Objection to Claim

Current Status:

- On August 20, 2021, Debtor filed an objection to the Board's proof of claim pertaining to unclaimed property liability. The Board has until September 19, 2021 to respond.

(09/09/21)

- Debtor has until February 28, 2022, to respond to the outstanding proofs of claim pertaining to oil and gas royalties.

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.

**Current
Status:**

- The Deposition of Adam Otteson is scheduled for August 31, 2021; Jodi Smith's deposition is scheduled for September 14, 2021; the deposition of Kelly Vandamme is scheduled for September 22, 2021; and the deposition of John Kemmerer is scheduled for September 23, 2021.
- Mediation is scheduled for September 2, 2021.

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:

- Whiting Petroleum Corporation, et al., Chapter 11, Case No. 20-32021
- 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		
Attorney General Stenehjem	X		X		
Governor Burgum			X		

EXECUTIVE SESSION**Members Present:**

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

Department of Trust Lands Personnel present:

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

Guests in Attendance:

Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Office of the Attorney General

(09/09/21)

Troy Seibel
Jim Lodoen
Sophie Blake Baesler

Office of the Attorney General
Legal Counsel (in attendance for Whiting only)
Guest of Superintendent of Baesler

The executive session adjourned at 3:11 PM and the Board returned to the open session Teams meeting to rejoin the public. During the executive session Teams meeting, the Board was provided information and no formal action was taken.

A D J O U R N

There being no further business, the meeting was adjourned at 3:14 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

(September 30, 2021)

RE: August 2021 Report of Encumbrances Issued by Land Commissioner
(No Action Requested)

Granted to:	WHITING OIL AND GAS CORPORATION, DENVER-CO
For the Purpose of:	Easement: Well-Subsurface Well Bore
Right-of-Way Number:	RW0008935
Date Issued:	8/17/2021
Application Fee:	\$250.00
Right-of-way Income:	\$25,000.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	N/A
Area (Acres):	N/A
Legal Description:	WIL-156-97-36-SE4, SW4

Granted to:	HILAND CRUDE LLC, WILLISTON-ND
For the Purpose of:	Easement: Pipeline-Oil Gathering Pipeline
Right-of-Way Number:	RW0008817
Date Issued:	8/13/2021
Application Fee:	\$250.00
Right-of-way Income:	\$71,576.00
Damage Payment to Lessee:	\$132.33
Trust:	A - Common Schools
Length (Rods):	176.44
Area (Acres):	2.21
Legal Description:	MCK-151-100-16-NW4

Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT
For the Purpose of:	Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008865
Date Issued:	8/13/2021
Application Fee:	\$250.00
Right-of-way Income:	\$47,200.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	117.87
Area (Acres):	1.47
Legal Description:	MCK-149-96-36-SE4, SW4

Granted to:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	Easement: Pipeline-Pipeline & Communication Cable
Right-of-Way Number:	RW0008872
Date Issued:	8/24/2021
Application Fee:	\$250.00
Right-of-way Income:	\$181,544.00
Damage Payment to Lessee:	\$302.58
Trust:	A - Common Schools
Length (Rods):	605.18
Area (Acres):	7.56
Legal Description:	DUN-146-96-36-NW4, SE4, SW4

Granted to: **HILAND CRUDE LLC, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Oil Gathering Pipeline
Right-of-Way Number: RW0008886
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: \$8,520.00
Damage Payment to Lessee: \$20.05
Trust: A - Common Schools
Length (Rods): 20.05
Area (Acres): 0.25
Legal Description: WIL-153-100-36-SE4

Granted to: **HILAND PARTNERS HOLDINGS LLC, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline
Right-of-Way Number: RW0008887
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: \$7,960.00
Damage Payment to Lessee: \$18.65
Trust: A - Common Schools
Length (Rods): 18.65
Area (Acres): 0.23
Legal Description: WIL-153-100-36-NE4

Granted to: **ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX**
For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number: RW0008913
Date Issued: 8/5/2021
Application Fee: \$250.00
Right-of-way Income: \$53,600.00
Damage Payment to Lessee: \$59.50
Trust: A - Common Schools
Length (Rods): 119.00
Area (Acres): 1.48
Legal Description: MOU-153-92-16-NW4

Granted to: **THORSTEINSON & SONS CONSTRUCTION LLP, FARGO-ND**
For the Purpose of: Easement: Pipeline-Potable Water Pipeline
Right-of-Way Number: RW0008820
Date Issued: 8/5/2021
Application Fee: \$250.00
Right-of-way Income: \$1,200.00
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 113.46
Area (Acres): 1.29
Legal Description: BIL-139-102-28-NE4

Granted to: **SLAWSON EXPLORATION COMPANY INC, DENVER-CO**
For the Purpose of: Easement-Amend: Pipeline-Salt Water Pipeline
Right-of-Way Number: RW0008901
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: MOU-152-92-14-SE4
MOU-152-92-23-NE4NW4

Granted to:	SLAWSON EXPLORATION COMPANY INC, DENVER-CO
For the Purpose of:	Easement-Amend: Pipeline-Oil Gathering Pipeline
Right-of-Way Number:	RW0008902
Date Issued:	8/13/2021
Application Fee:	\$250.00
Right-of-way Income:	N/A
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	N/A
Area (Acres):	N/A
Legal Description:	MOU-152-92-14-SE4 MOU-152-92-23-W2W2NE4NE4, NW4NE4
 Granted to:	 CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK
For the Purpose of:	Easement-Amend: Pipeline-Multiple Pipelines & Communication Cable
Right-of-Way Number:	RW0008921
Date Issued:	8/24/2021
Application Fee:	\$250.00
Right-of-way Income:	\$750.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	0.00
Area (Acres):	0.01
Legal Description:	WIL-153-99-22-SW4 LESS ACRES CONDEMNED
 Granted to:	 LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO
For the Purpose of:	Easement-Amend: Pipeline-Multiple Pipelines
Right-of-Way Number:	RW0008930
Date Issued:	8/13/2021
Application Fee:	\$250.00
Right-of-way Income:	N/A
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	N/A
Area (Acres):	N/A
Legal Description:	BRK-159-93-16-NW4, SW4
 Granted to:	 MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement-Amend: Electric-Transmission Line
Right-of-Way Number:	RW0008759
Date Issued:	8/19/2021
Application Fee:	\$100.00
Right-of-way Income:	\$500.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	451.96
Area (Acres):	5.39
Legal Description:	MCK-149-103-36-SE4, SW4
 Granted to:	 ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND
For the Purpose of:	Easement: Electric-Transmission Line
Right-of-Way Number:	RW0008862
Date Issued:	8/17/2021
Application Fee:	\$250.00
Right-of-way Income:	\$4,300.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	159.90
Area (Acres):	4.85
Legal Description:	BIL-144-98-16-SE4

Granted to: **MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND**
For the Purpose of: Easement: Electric-Above Ground Distribution Line
Right-of-Way Number: RW0008880
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: \$209.64
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 22.91
Area (Acres): 0.29
Legal Description: MCK-146-102-28-N2NE4

Granted to: **MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number: RW0008909
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: \$1,000.00
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 26.01
Area (Acres): 0.30
Legal Description: WIL-153-100-36-SE4

Granted to: **MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number: RW0008910
Date Issued: 8/13/2021
Application Fee: \$250.00
Right-of-way Income: \$1,630.00
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 134.40
Area (Acres): 1.63
Legal Description: WIL-153-100-36-NE4

Granted to: **AMES SAVAGE WATER SOLUTIONS, WILLISTON-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008932
Date Issued: 8/5/2021
Application Fee: \$250.00
Right-of-way Income: \$12,800.00
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 567.88
Area (Acres): 0.00
Legal Description: WIL-156-95-16-NE4, SE4
WIL-158-95-36-SE4

Granted to: **SELECT ENERGY SERVICES LLC, WILLISTON-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008938
Date Issued: 8/5/2021
Application Fee: \$250.00
Right-of-way Income: \$6,935.00
Damage Payment to Lessee: N/A
Trust: A - Common Schools
Length (Rods): 420
Area (Acres): 0.00
Legal Description: WIL-154-100-36-SE4, SW4

Granted to:	CHERRY CREEK WATER LLC, CALEDONIA-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008329
Date Issued:	8/2/2021
Application Fee:	\$250.00
Right-of-way Income:	\$17,470.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	1,059.00
Area (Acres):	0.00
Legal Description:	MCK-149-97-16-NW4, SE4 MCK-149-97-36-NW4 MCK-149-97-36-SW4SE4, LOTS 2,3,7, W2SW4, LOTS 4,5,6

Granted to:	NORTHWEST WATER TRANSFER, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008941
Date Issued:	8/25/2021
Application Fee:	\$250.00
Right-of-way Income:	\$3,150.00
Damage Payment to Lessee:	N/A
Trust:	A - Common Schools
Length (Rods):	379
Area (Acres):	0.00
Legal Description:	MOU-153-89-16-NW4 W OF RD, SW4 W OF RD

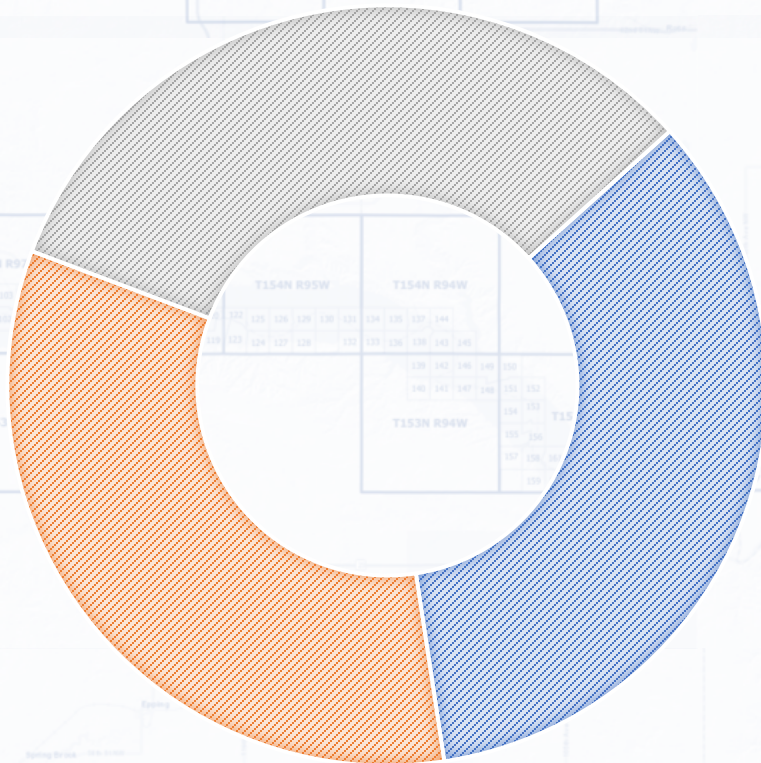
August 2021 Consideration Total: \$445,344.64

AUGUST ACREAGE ADJUSTMENT SURVEY REPORT

531

Total Leases Under Review

**STATUS OF
182
REVIEWED
LEASES**



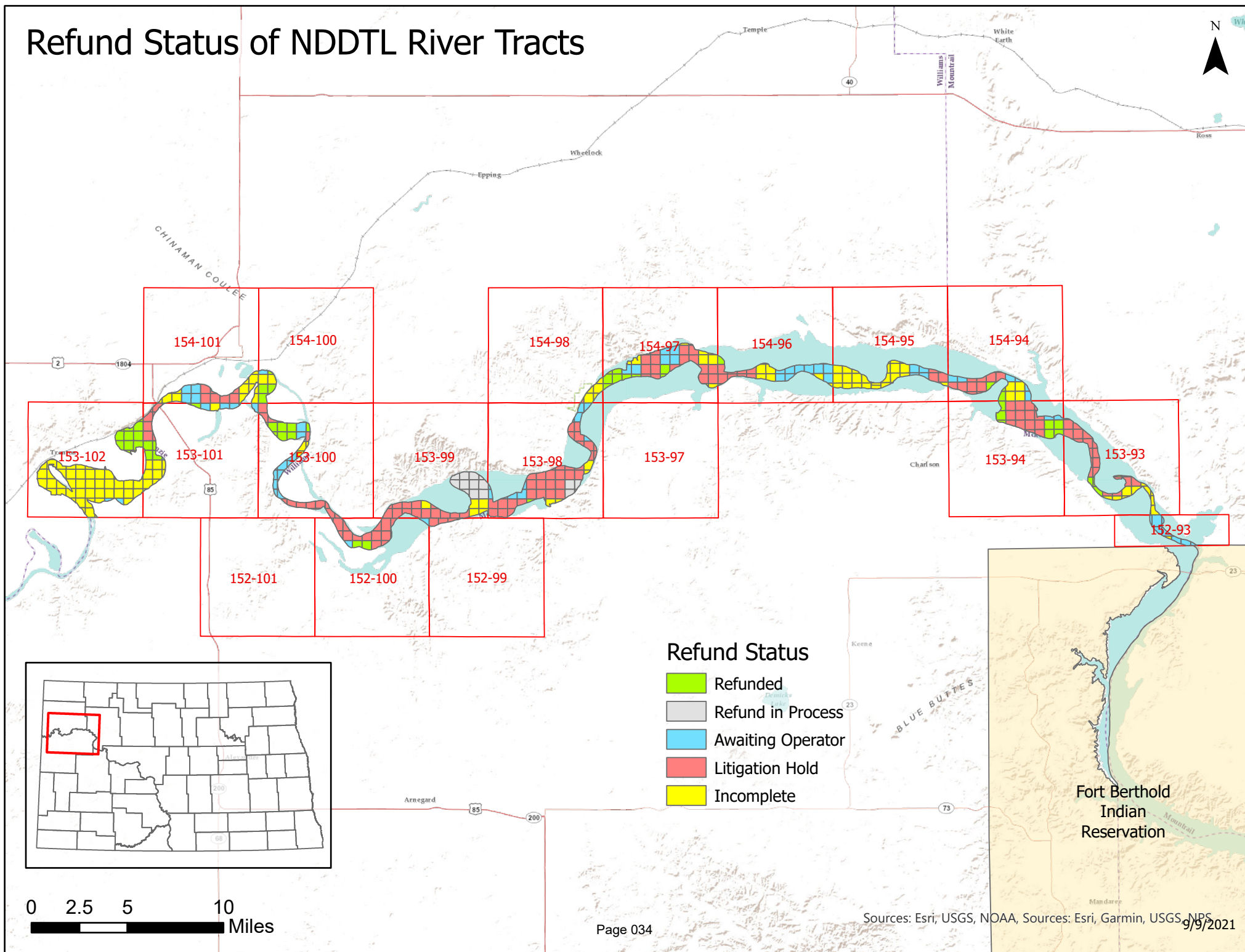
102 Awaiting
Operator
Execution

16 Refund in
Process

64 Refunded
\$9,060,199
Paid
\$2,870,510
Received

- Reviewed (182)**
- Incomplete (176)**
- Litigation Hold (173)**

Refund Status of NDDTL River Tracts



MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: August Unclaimed Property Report
(No Action Requested)

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

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

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands (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.

For the month of August 2021, the Division received 38 holder reports with a property value of \$44,616 and paid 530 claims with a total value of \$741,848.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Investment Updates
(No Action Requested)

Portfolio Rebalancing Updates

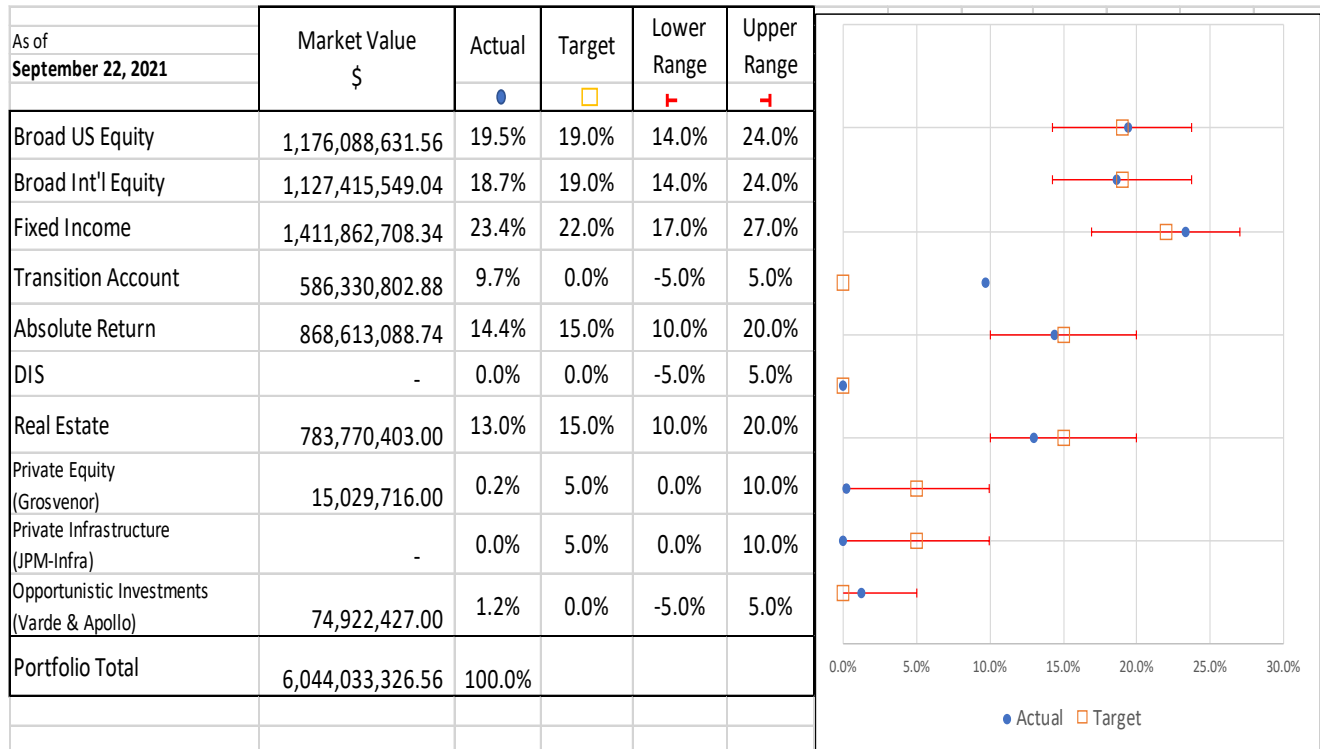
Staff is reviewing agreements of recently approved investments namely: GCM Secondaries Fund, Owl Rock Diversified Lending Fund, Arrowstreet EM Fund, Northern EM Index Fund, Acadian, Acadian Int'l Small Cap Fund, SSGA Int'l Small Cap Index Fund. Both GCM Secondaries Fund and Owl Rock are targeted to close at the end of September.

Apollo made \$3.25M capital distribution last 8/31 increasing its unfunded commitment to \$84.8M. While Ares Pathfinder Fund and Angelo Gordon DL Fund IV made capital calls amounting to approximately \$10M each on 9/17 and 9/23 respectively. With the recent distribution and capital calls, total unfunded commitments as of 9/23 stands at \$641.9M. These are as follows:

1. JPM Infrastructure Fund, \$130M
2. Harrison Street Core Property Fund LP, \$130M
3. Apollo Accord Fund, \$84.8M
4. Varde Dislocation Fund, \$50M
5. GCM Private Equity, \$115.1M
6. ARES Pathfinder Fund, \$74.5M
7. Angelo Gordon DL IV, \$57.5M.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 22, 2021. The figures provided are unaudited.



MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Central Power Electric Cooperative, Inc.'s Request to Purchase Trust Land Under N.D.C.C. ch. 15-09 & N.D. Admin. Code ch. 85-04-09
(0.46 acres in the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County)

Central Power Electric Cooperative, Inc. ("Central Power") is requesting consideration of a land sale for a public purpose or quasi-public purpose in lieu of condemnation consisting of approximately 0.46 acres in the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County ("Parcel"). The Parcel is located approximately 15 miles southeast of Velva, North Dakota, along U.S. Highway 52. The Parcel is being requested to expand their existing substation, purchased by Central Power in 1980, which provides service to residents in the surrounding area.

In accordance with N.D. Admin. Code ch. 85-04-09, a notice of application was placed on the Department's website from August 8th through August 20th, 2021, to allow the public an opportunity to provide comment on the proposed sale. No comments were received.

As required under N.D.C.C. ch. 15-09, an appraisal was completed by McHenry County which stated an estimated value of \$1,400.00 per acre for the Parcel. The North Dakota 2021 County Rents and Prices Survey exhibits a 5-year average value of cropland of \$1,409.00 per acre in McHenry County.

N.D.C.C. § 15-09-04 states:

The board of university and school lands may sell the property described in the application to the applicant at a price not less than the appraised value if the board concludes that the land described in the application is required for the purposes stated in such application and that a conveyance of the property is consistent with this title and the fiduciary responsibilities of the board. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant agrees to the price fixed by the board for the land described in the application and pays the full purchase price therefor, the board shall cause the tract to be conveyed to the applicant.

The sale of a 0.46-acre parcel in this tract of land would leave 131 acres more or less in the tract for pasture and meadow purposes.

Recommendation: The Board 1) approve the requested public purpose or quasi-public purpose in lieu of condemnation land sale to Central Power Electric Cooperative, Inc. of 0.46 acres of land within the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County and set the minimum acceptable sale price at the appraised value of \$1,400.00 per acre ($\$1,400 \times 0.46 = \644.00 purchase price), along with Central Power Electric Cooperative, Inc.'s payment of all associated land sale fees and costs, as applicable; and 2) authorize the Commissioner to advertise the proposed sale, conduct a public hearing, and refer the matter to the Board if needed or complete the sale on the Board's behalf.

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

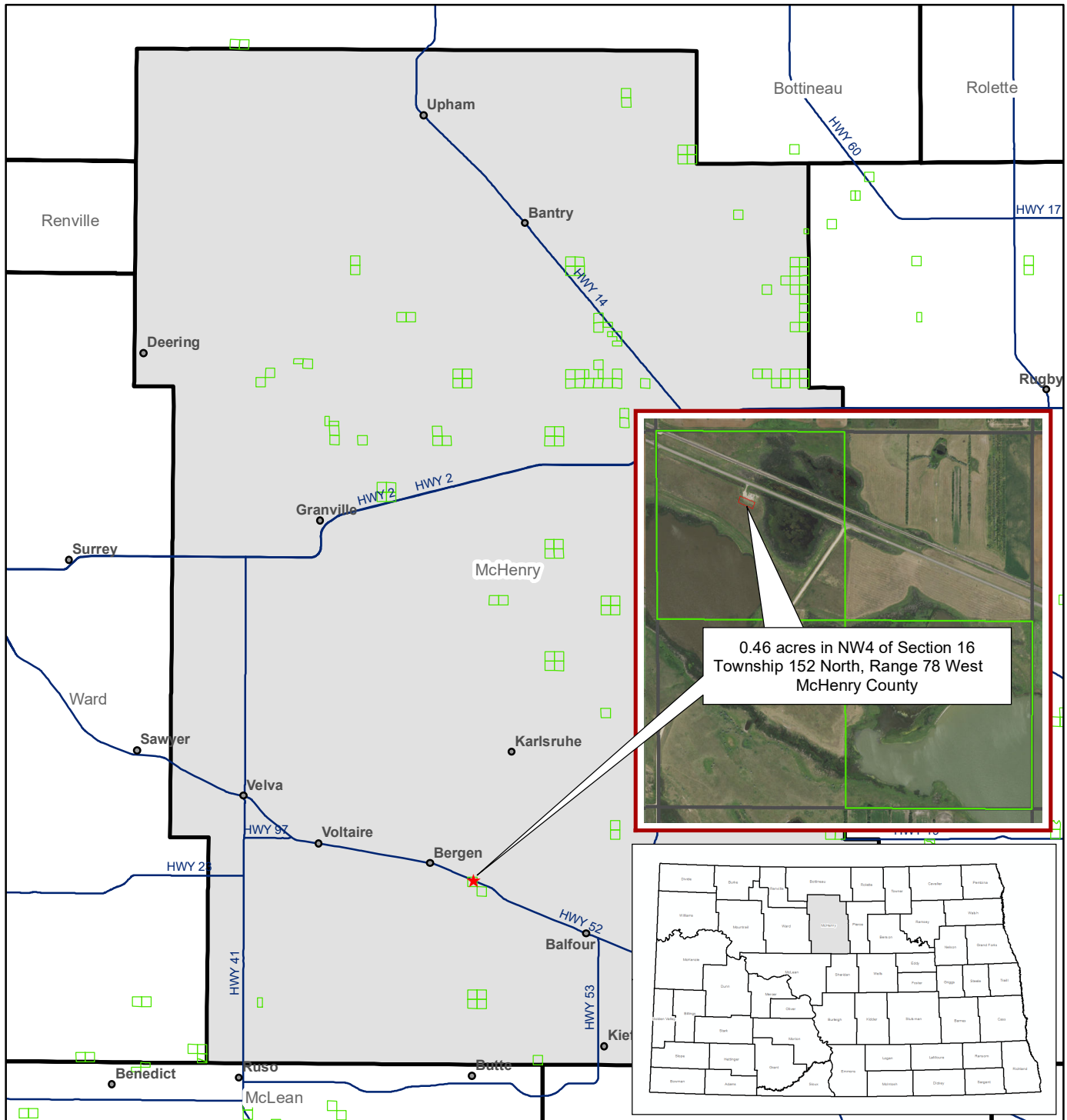
Attachment 1: Central Power Electric Cooperative Inc. – N.D.C.C. ch. 15-09 Land Sale – Location Map

Attachment 2: Central Power Electric Cooperative Inc. – N.D.C.C. ch. 15-09 Land Sale – Survey Plat

Central Power Electric Cooperative Inc.

N.D.C.C. ch.15-09 Land Sale Location Map

NW4 Section 16, Township 152 North, Range 78 West, McHenry County



Legend

County Boundaries

- Counties
- MCHENRY COUNTY
- Surface Trust Lands
- City Locations
- State and Federal Roads

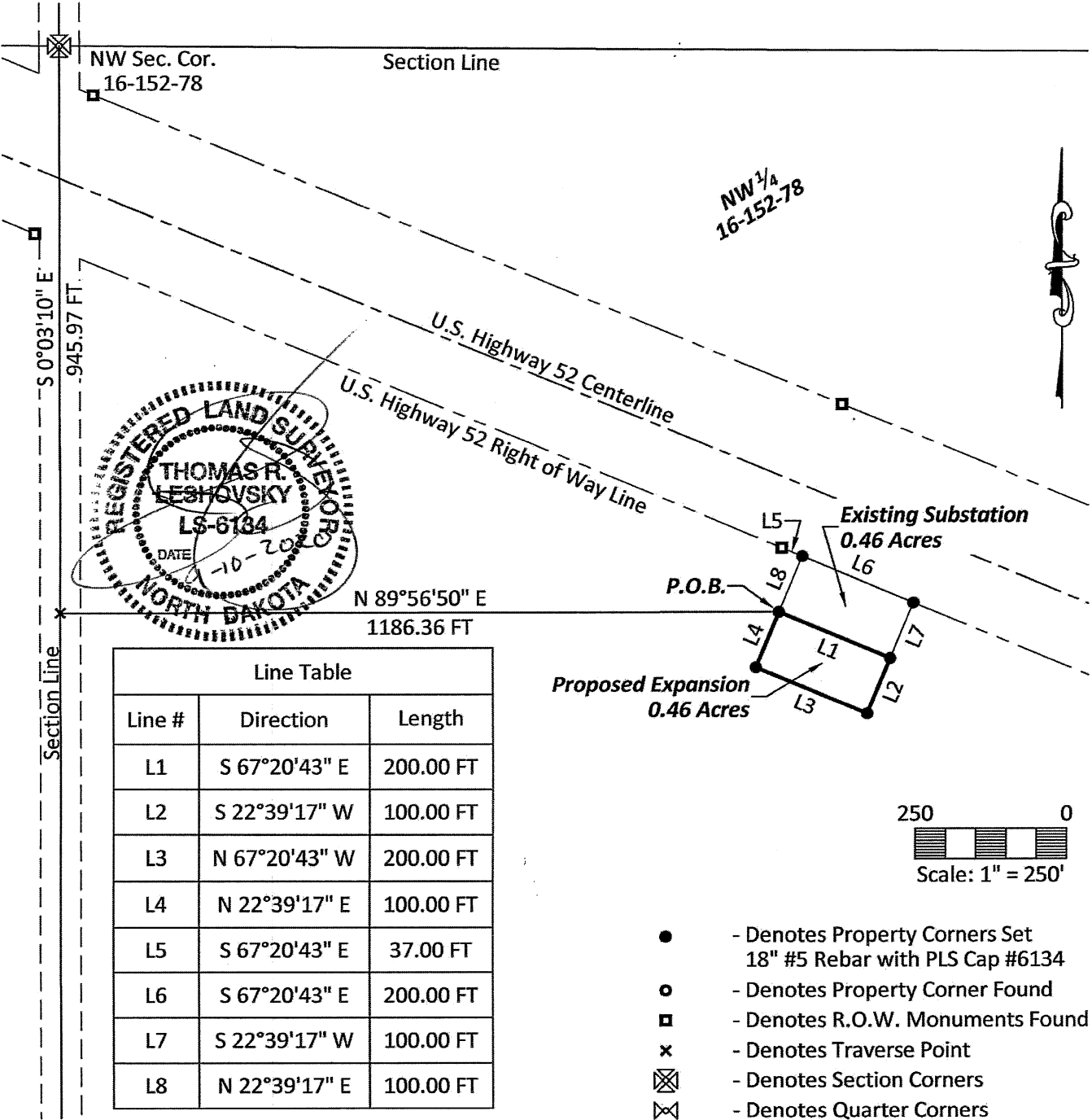
0 15 30 Miles

Map Datum is WGS 84 (same as NAD 83)



PROPOSED SUBSTATION EXPANSION

of _____ lying in the NW¼ _____, Section _____ 16 _____, Township _____ 152 N _____, Range _____ 78 W _____



NOTES:

Bearings and Distances may vary from previous plats due to different methods of measurement.

Plat is subject to all prior Easements of record.

DESCRIPTION:

lying in the NW¼ _____, Section _____ 16 _____, Township _____ 152 N _____, Range _____ 78 W _____ described as follows:

Commencing at the Northwest Corner of Section 16, Township 152 N, Range 78 W, of the 5th Principal Meridian, McHenry County, North Dakota; Thence S 0°03'10" E, along the West Line of the Northwest Quarter, of said Section 16, a distance of 945.97 FT; Thence N89°56'50" E, being Perpendicular to the said West Line of the Northwest Quarter, of said Section 16, a distance of 1186.36 FT, to the Southwest Corner of a Platted Substation, said Point also being the Point of Beginning;

Thence S 67°20'43" E, along the South Line of said Platted Substation, a distance of 200.00 FT; Thence S 22°39'17" W, a distance of 100.00 FT; Thence N 67°20'43" W, a distance of 200.00 FT; Thence N 22°39'17" E, a distance of 100.00 FT, to the Point of Beginning.

Said described tract of land contains 0.46 Acres more or less.

Wold Engineering, P.C.
Consulting Engineers & Land Surveyors
Bottineau: 228-2292 Bismarck: 258-9227 Minot: 852-0338

RE: No Net Loss Preliminary Land Sale Approval T136N R86W Section 28 NW1/4, Section 32 N1/2N1/2, Section 36 SE1/4 expansion of public comment period

The Board of University and School Lands (Board) received an application from Kelly and Launa Moldenhauer for the purchase of approximately 480 acres of trust land in Grant County as part of a no net loss land sale in accordance with Chapter 85-04-07 and Chapter 85-04-08 of the North Dakota Administrative Code.

Per N.D. Admin. Code § 85-04-07-03(3) and N.D. Admin. Code § 85-04-08-03(4) concerning the sale procedure:

Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:

- a. Name and address of the interested person;
- b. Applicant's name and address;
- c. The legal description of the proposed tract for sale as shown on the published notice; and
- d. A detailed statement as to whether the interested person supports or opposes the sale.

The Department of Trust Lands (Department) received comments from several constituents concerning the public notification of the potential No Net Loss Land Sale.

The Department posted notification in the Bismarck Tribune, the Grant County News and the Hettinger County Herald, and on the Department's website with comments received until 5:00 pm on September 10, 2021. With that being said, many constituents subscribe to newspapers in their area and not always the official county newspaper. The concerns provided in the comments were that not enough notification to the public had been achieved and requested the comment period be extended and that advertising cover a much larger area to allow more citizens an opportunity to comment.

Recommendation:

The Board authorizes the Commissioner to extend the posting for public comment on the Department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments regarding the sale. The Board also authorizes the Commissioner to publish notice of a letter of application for sale in all newspapers statewide.

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

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

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

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over \$626 million in funding.

The Oil and Gas Impact Grant Fund currently has 6 grants with a balance of \$794,932.56 as of September 7, 2021. The following shows grant activity for the last six months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
3/9/2021	12	\$1,591,589.01
6/7/2021	9	\$972,069.49
9/7/2021	6	\$794,932.56

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium.

EIIO collaborated with the Williston Basin International Airport and the North Dakota Aeronautics Commission regarding the timeline to get these grants closed out by June 30, 2021. On June 2, 2021, the last payment was made to the Williston Basin International Airport, thus closing out this fund reimbursing the full \$15 Million to the airport. The following shows grant activity for the last six months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
3/9/2021	3	\$1,434,396.94
6/7/2021	0	\$0.00
9/7/2021	0	\$0.00

EIIO is currently managing 6 grants for a total of \$794,932.56. The following shows grant activity for the last six months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
3/9/2021	12	\$1,591,589.01	3/9/2021	3	\$1,434,396.94	\$3,025,985.95
6/7/2021	9	\$972,069.49	6/7/2021	0	\$0.00	\$972,069.49
9/7/2021	6	\$794,932.56	9/7/2021	0	\$0.00	\$794,932.56

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Investment Fee Report – FY 2021

(No Action Requested)

Attached is a report of the Board of University and School Land's (Board) investment fees paid for the twelve months ending June 31, 2021 (Fiscal Year 2021).

Summary:

- During fiscal year 2021 the Permanent Trust Funds (PTFs) paid \$36,499,278 in total investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is an increase over the \$22,335,336 in fees paid in FY 2020. The PTFs' average asset balance increased during the same period (including contributions and withdrawals), from \$4.85 billion in FY 2020 to \$5.46 billion in FY 2021. The primary driver of the increase in fees is a result of a significant increase in incentive fees paid over the period.
- The PTFs paid incentive fees totaling \$14,756,277 during FY 2021 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund, Ares Pathfinder Fund, Varde Dislocation Fund, Apollo Accord Fund IV, and Angelo Gordon's Direct Lending Funds III and IV; this equals 26.3 basis points on the average value of total trust assets during FY 2021, and 40.4% of the total investment cost of managing the PTF's investment program. Incentive fees totaled \$898,695 during FY 2020, the equivalent of 1.4 basis points and 4.0% of the total investment cost to manage the program.
- The specialty consultant fee is paid by the PTFs to Novarca for negotiating a fee reduction for the Payden & Rygel Aggregate Bond fund in which fees were lowered from 20 basis points to 17.5 basis points on the first \$250 million and 15 basis points on assets above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years; there remains 18 months on the specialty consultant fee.
- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$211,420 in investment management expenses during FY 2021, down from \$437,862 in management fees paid in FY 2020. The decrease in management fees is due to the decrease in the average balance from \$718.0 million in FY 2020 to \$361.4 million in FY 2021.
- The PTFs entered a fee reduction agreement with JP Morgan based on the total amount of fees paid to JP Morgan each year. The agreement will reduce fees from 10% to 25% depending on fees paid each year.

Attachment 1: Investment Fee Report

ND Land Board Investment Fees

Investment Fees for the Fiscal Year Ended June 30, 2021

Summary

- During fiscal year 2021 the Permanent Trust Funds (PTFs) paid \$36,499,278 in total investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is an increase over the \$22,335,336 in fees paid in FY 2020. The PTFs' average asset balance increased during the same period (including contributions and withdrawals), from \$4.85 billion in FY 2020 to \$5.46 billion in FY 2021. The primary driver of the increase in fees is a result of a significant increase in incentive fees paid over the period.
- The PTFs paid incentive fees totaling \$14,756,277 during FY 2021 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund, Ares Pathfinder Fund, Varde Dislocation Fund, Apollo Accord Fund IV, and Angelo Gordon's Direct Lending Funds III and IV; this equals 26.3 basis points on the average value of total trust assets during FY 2021, and 40.4% of the total investment cost of managing the PTF's investment program. Incentive fees totaled \$898,695 during FY 2020, the equivalent of 1.4 basis points and 4.0% of the total investment cost to manage the program.
- The specialty consultant fee is paid by the PTFs to Novarca for negotiating a fee reduction for the Payden & Rygel Aggregate Bond fund in which fees were lowered from 20 basis points to 17.5 basis points on the first \$250 million and 15 basis points on assets above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years; there remains 18 months on the specialty consultant fee.
- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$211,420 in investment management expenses during FY 2021, down from \$437,862 in management fees paid in FY 2020. The decrease in management fees is due to the decrease in the average balance from \$718.0 million in FY 2020 to \$361.4 million in FY 2021.

Permanent Trust Fund Pool

TABLE 1	2017	2018	2019	2020	2021
Base Management Fees	\$ 17,165,546	\$ 18,930,781	\$ 20,578,205	\$ 21,144,861	\$ 21,447,927
Custodial Fees	169,356	183,019	159,687	118,792	101,235
General Consultant Fees	145,000	148,625	163,058	157,633	162,233
Specialty Consultant Fees				15,355	31,606
Total Base Fees	\$ 17,479,902	\$ 19,262,425	\$ 20,900,950	\$ 21,436,641	\$ 21,743,001
Total Fee (bps)	44.7	44.1	45.1	44.6	39.8
Manager Incentive Fees	\$ 3,513,737	\$ 5,819,245	\$ 1,810,455	\$ 898,695	\$ 14,756,277
Incentive Fees (bps)	9.0	13.3	3.9	1.4	26.3
Total Fees w/ Incentives	\$ 20,993,639	\$ 25,081,670	\$ 22,711,405	\$ 22,335,336	\$ 36,499,278
Total Fee w/ Incentives (bps)	53.7	57.4	49.0	46.1	66.1
Avg. Assets (\$ billion)	\$3.91	\$4.37	\$4.63	\$4.85	\$5.46

The PTFs' base management fees (excluding incentive fees) over the past five fiscal years have been consistent between 40 and 45 basis points. Indeed, the base management fee was little changed from FY 2020 to FY 2021 (\$21,144,861 vs \$21,447,927) even though average assets rose from \$4.85 billion in FY 2020 to \$5.46 billion in FY 2021. Total management fees, including incentive fees, have oscillated between 46 and 66 basis points over five years owing to significant swings in incentive fees paid primarily to private fund managers. During FY 2020 incentive fees were just \$898,694 due to COVID and the difficult economic environment. As the recovery took hold in the second half of 2020 and the first half of 2021, the private funds have performed well and generated significant net returns, which resulted in \$14,756,277 in incentive fees for FY 2021 (please see Table 11 below for more detail on incentive fees).

TABLE 2	FY 2021					
	Fees Paid	Average Market Value	Average Fee	Net Return	Index Return	Excess over Index
Broad US Equity	\$ 1,063,356	\$ 1,070,400,539	0.10%	45.3%	44.2%	1.1%
Broad Int'l Equity	3,088,368	1,050,808,146	0.29%	37.4%	35.7%	1.7%
Fixed Income	10,136,878	1,152,978,791	0.88%	5.8%	1.1%	4.7%
Absolute Return	7,119,337	808,185,709	0.88%	21.7%	23.1%	-1.4%
Inflation Strategies	560,811	107,392,674	0.55%	n/a	n/a	n/a
Real Estate	11,390,529	740,926,034	1.50%	7.7%	7.1%	0.6%
GCM Private Equity	54,803	9,076,316	1.10%	n/a	n/a	n/a
Opportunistic Credit	2,646,227	37,896,734	9.24%	43.1%	--	43.1%
Transition Account	143,895	479,503,252	0.03%	0.3%	0.1%	0.2%
Total Management Fees	\$ 36,204,204	\$ 5,457,168,193	0.66%	21.7%	22.0%	-0.3%
Custody	101,235	5,457,168,193	0.002%	n/a	n/a	n/a
General Consultant	162,233	5,457,168,193	0.003%	n/a	n/a	n/a
Specialty Consultant	31,606	5,457,168,193	0.001%	n/a	n/a	n/a
Total Fees	\$ 36,499,278	\$ 5,457,168,193	0.66%	21.7%	22.0%	-0.3%

Tables 3-7 break down the average fees paid for each asset class by manager for FY 2021.

Equity

TABLE 3 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
SSGA Russell 1000 Index	CFA	\$ 67,603	\$ 828,700,728	0.8
SSGA Russell Mid Cap Index	SMA	31,171	103,902,441	3.0
NTGA Small Cap Equity	CFA	964,582	137,797,369	70.0
SSGA MSCI World Ex US Index	CFA	134,053	637,600,870	2.1
QMA International Small Cap Equity	CFA	1,168,857	180,367,928	62.7
DFA EM All Cap Core Fund	MFA	516,535	117,371,044	44.3
Harding Loevner EM Core Equity Fund	MFA	1,268,923	115,468,304	109.9
Total Equity		\$ 4,151,724	\$ 2,121,208,684	19.5

The increase in the amount of fees paid for equity investments during FY 2021 is primarily the result of the 17% increase in average asset balance across all equity managers from an average of \$1.8 billion in FY 2020 to an average of \$2.1 billion in FY 2021. Fees in basis points were roughly the same at 18.7 bps vs 19.5 bps. The slight increase in basis point fees is due to more assets managed by active managers in FY 2021 vs FY 2020.

Fixed Income

TABLE 4 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
JP Morgan Intermediate Bond Fund	SMA	\$ 577,874	\$ 320,999,006	18.0
Payden & Rygel Aggregate Bond	SMA	554,938	328,222,897	16.9
Farm Loan Pool (FLP)	BND	29,594	8,850,595	33.8
Energy Construction Loan Pool (ECLP)	BND	1,197	560,102	12.5
Brandywine Global Opportunistic FI	CFA	587,564	162,515,394	40.7
Angelo Gordon Direct Lending Fund III	LPF	6,265,278	140,502,272	441.3
Angelo Gordon Direct Lending Fund IV	LPF	222,358	33,757,251	63.5
Schroders Securitized Credit	SMA	456,128	134,414,148	33.1
Loomis, Sayles & Co.	SMA	135,725	101,039,765	13.3
Ares Pathfinder Fund LP	LPF	1,306,223	12,228,579	1966.2
Total Fixed Income		\$ 10,136,878	\$ 1,152,978,791	87.9

The increase in the amount of fees paid for fixed income investments during FY 2021 is primarily the result of \$5,934,765 in incentive fees paid to Angelo Gordon and Ares for outperformance during the period. The incentive fees were 59% of the total fees paid to fixed income managers (please see Table 11 below for more detail on incentive fees). All other fees were in line with the previous year since there were no significant changes to fees terms.

Absolute Return

TABLE 5 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
GMO Benchmark Free	MFA	\$ 3,196,284	\$ 388,116,088	82.4
PIMCO All Asset All Authority	MFA	3,923,052	420,069,621	93.5
Total Absolute Return		\$ 7,119,337	\$ 808,185,709	88.1

The absolute return's increased fee amount paid in FY 2021 is entirely due to the increase in assets in this class from \$710 million in FY 2020 to \$808 million in FY 2021. The fee terms for both absolute return managers were unchanged.

Diversified Inflation Strategies

TABLE 6 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
Van Eck Natural Resource Equities	SMA	\$ 71,025	\$ 37,016,796	12.3
Harvest MLP	SMA	489,786	94,037,128	55.5
Total Inflation Strategies		\$ 560,811	\$ 107,392,674	55.1

The fees charged for the diversified inflation strategies (DIS) declined on lower average balances during FY 2021 compared with FY 2020. The board eliminated the DIS asset class and the portfolios were liquidated during the fiscal year.

Real Estate

TABLE 7 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
Morgan Stanley Prime Property Fund	LPF	\$ 2,623,492	\$ 219,125,106	117.3
UBS Trumbull Property Fund	LPF	980,657	173,053,048	56.6
Jamestown Premier Property Fund	LPF	116,676	65,776,323	19.5
JP Morgan Income and Growth RE	LPF	944,441	134,238,916	69.8
Prologis Targeted US Logistics Fund	LPF	6,725,263	148,732,642	418.6
Total Real Estate		\$ 11,390,529	\$ 740,926,034	150.2

The fees charged for real estate increased due primarily to the increase in incentive fees paid in FY 2021 versus those paid in FY 2020 (\$6,512,205 versus \$788,509). The incentive fees were paid to Prologis and Morgan Stanley for outperformance during the period (please see Table 11 below for more detail on incentive fees). Excluding incentive fees the FY 2021 base fees paid of \$4,878,324 (65.3 bps) were lower than the FY 2020 base fee of \$5,699,928 (77.9 bps). This was due to staff accepting lower fee arrangements with two managers (UBS and JP Morgan) in exchange for a lock-up period.

Private Equity

TABLE 8 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
GCM Grosvenor - BUSL LP	LPF	\$ 54,803	\$ 9,076,316	109.6
Total Private Equity		\$ 54,803	\$ 9,076,316	109.6

The private equity asset class was newly added by the board during FY 2021, as such there is no prior year comparison. The current fiscal year's fee reflects the base management fee of 109.6 bps and no incentive fees paid to date.

Opportunistic Investments

TABLE 9 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
Varde Dislocation Fund, LP	LPF	\$ 2,354,168	\$ 30,728,043	1079.8
Apollo Accord Fund IV, LP	LPF	292,059	7,168,691	470.4
Total Credit Opportunities		\$ 2,646,227	\$ 37,896,734	924.0

The opportunistic investments asset class was newly added by the board during FY 2021, as such there is no prior year comparison. The fees reflect the base management fee of 99.8 bps and incentive fees of 824.2 bps, which reflect outperformance during the period (please see Table 11 below for more detail on incentive fees).

Transition Account

TABLE 10 Mandate	Vehicle Type	Total Fees Paid	Average Market Value	Fee (in bps)
NT PTF UltraShort	SMA	\$ 143,895	\$ 479,503,252	2.7
Total Transition Account		\$ 143,895	\$ 479,503,252	2.7

The transition account was created in FY 2021 by the board to transition assets from the diversified inflation strategies asset class to the private equity and private infrastructure asset classes. The transition account is managed in the same manner as the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund asset are managed, and with the same low fee structure.

Incentive Fees

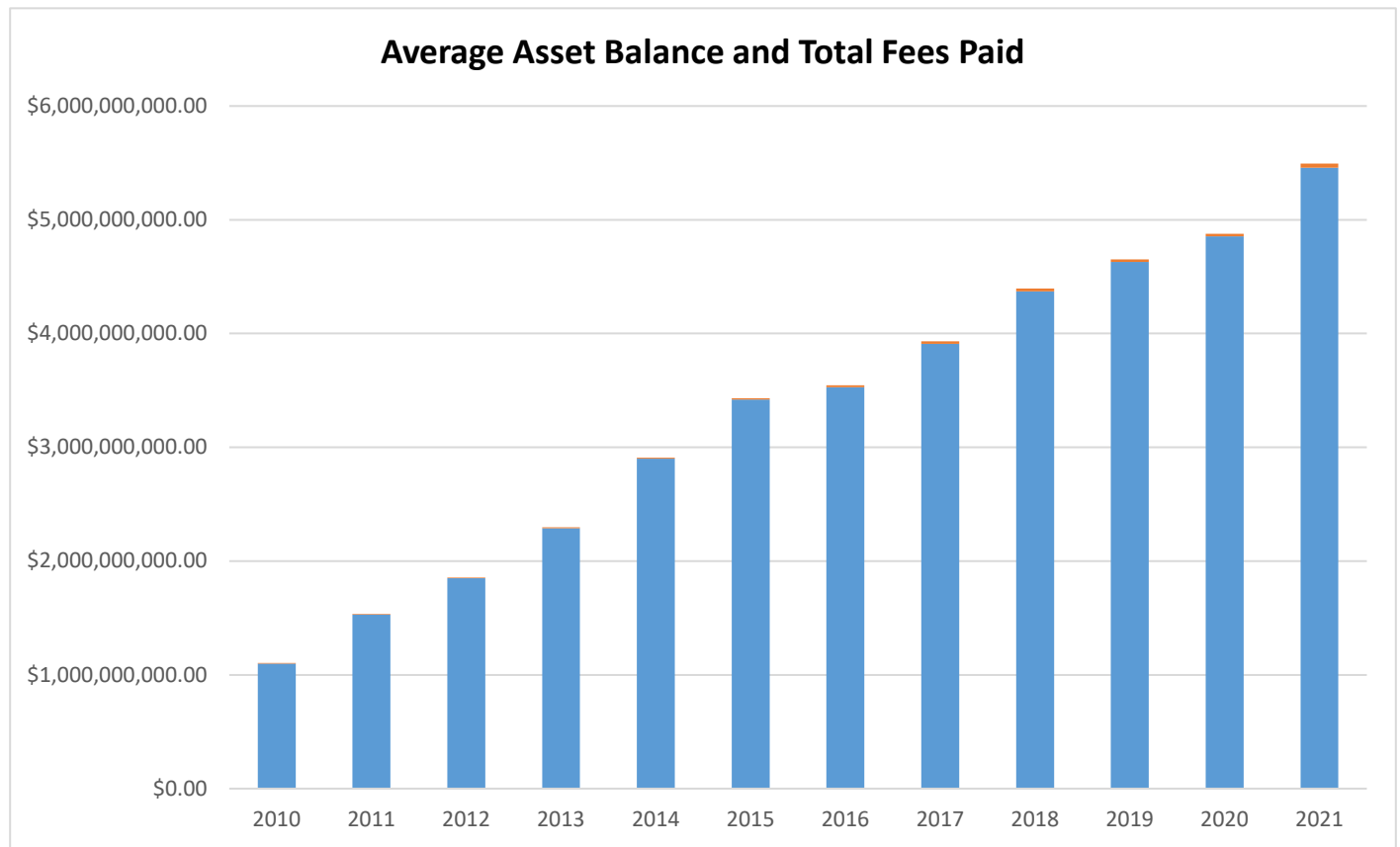
TABLE 11 Mandate	Incentive Fee	Incentive Fee (in bps)	FY2021 Net Return	Index Net Return	Excess Over Index
Angelo Gordon Direct Lending Fund III	\$ 4,586,366	323.7	15.05%	11.67%	3.38%
Angelo Gordon Direct Lending Fund IV *	141,354	40.4	7.74%	0.41%	7.33%
Ares Pathfinder Fund LP **	1,207,045	1783.5	74.23%	3.33%	70.90%
Morgan Stanley Prime Property Fund	793,934	34.8	7.42%	7.09%	0.33%
Jamestown Premier Property Fund	-278,425	-40.7	-9.67%	7.09%	-16.76%
Prologis Targeted US Logistics Fund	5,996,697	370.2	28.54%	7.09%	21.45%
Varde Dislocation Fund, LP	2,048,186	962.8	44.69%	n/a	44.69%
Apollo Accord Fund IV, LP ***	261,120	433.8	18.29%	n/a	18.29%
Total Incentive Fees Paid		\$14,756,277			

TABLE 12 Mandate	FY 2020 Market Value	FY2021 Market Value (Net of Fees)	Increase in Market Value	Incentive Fees
Angelo Gordon Direct Lending Fund III	\$127,236,150	\$179,057,533*	\$ 51,821,383	\$ 4,586,366
Angelo Gordon Direct Lending Fund IV**	32,500,000	35,014,501	2,514,501	141,354
Ares Pathfinder Fund LP***	15,444,063	20,251,140	4,807,077	1,207,045
Morgan Stanley Prime Property Fund	213,468,131	229,300,599	15,832,468	793,934
Jamestown Premier Property Fund	68,589,262	62,407,509	-6,181,753	-278,425
Prologis Targeted US Logistics Fund	134,933,444	175,992,696	41,059,252	5,996,697
Varde Dislocation Fund, LP****	50,000,000	58,192,746	8,192,746	2,048,186
Apollo Accord Fund IV, LP*****	5,894,114	6,979,681	1,085,567	261,120
Total Incentive Fees Paid			\$119,131,241	\$14,756,277

During FY 2021, the PTFs paid total incentive fees of \$14,756,277 versus \$898,694 in FY 2020; these incentive fees are based upon contractual agreements made with each manager. During FY 2021 each manager owed an incentive fee outperformed their benchmark. Some, like Ares, Prologis, Varde and Apollo,

by significant, double-digit amounts. Finally, Jamestown made an accounting adjustment to prior incentive fees paid of -\$278,425, which reduced fees owed to Jamestown by that amount.

* Fund returns, incentive fee and index returns are for one month. ** Fund returns, incentive fee and index returns are for four months. *** Fund returns, incentive fee and index returns are for ten months.



SIIF/Coal/Capitol Investment Pool

The assets of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund are pooled together and invested in a short duration, fixed income strategy with Northern Trust. During FY 2021, fees totaling \$211,420 were paid on an average balance of \$361.4 million in this account. During FY 2020, total fees were \$437,862, while the average asset balance was \$718.0 million. The decrease in fees paid during FY 2021 was entirely a result of the decrease in average asset balance.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Information Technology Project Status Update

(No Action Requested)

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

Severe limitations in the current IT system, including redundant manual processes, have hampered efficiencies. Many of the Department's core data management systems were developed in the 1980s and 1990s, using designs and tools no longer supported by vendors. Some supplemental system improvements and purchases have been implemented; however, the outdated database structure restricts many potential improvements.

On April 29, 2019, the new system for Unclaimed Property was successfully launched.

On July 1, 2020, the new Financial Management and Accounting system successfully launched.

On September 14, 2020, the Revenue Compliance Division successfully launched updated software system.

The Surface Land Management was scheduled to go-live on September 25, 2021. However, a two-week delay was necessary to ensure team members had adequate time to train. Thus, the Surface Land Management system will go-live on October 9, 2021.

Additional capital funding was approved through Senate Bill 2013 during the Sixty-seventh Legislative Assembly to support the implementation of software for the Minerals Division. A kick-off for the implementation of the new system occurred on September 20, 2021.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Board of University and School Lands Meeting Dates For 2022
(No Action Requested)

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last three hours each month in anticipation of executive session needs.

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

- January 27, 2022 9:00 AM – 12:00 AM
- February 24, 2022 9:00 AM – 12:00 PM
- March 31, 2022 9:00 AM – 12:00 PM
- April 28, 2022 9:00 AM – 12:00 PM
- May 26, 2022 9:00 AM – 12:00 PM
- June 30, 2022 9:00 AM – 12:00 PM
- July 28, 2022 9:00 AM – 12:00 PM
- August 25, 2022 9:00 AM – 12:00 PM
- September 29, 2022 9:00 AM – 12:00 PM
- October 27, 2022 9:00 AM – 12:00 PM
- November 17, 2022 9:00 AM – 12:00 PM Thursday before Thanksgiving
- December 19, 2022 9:00 AM – 12:00 PM Monday before Christmas

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: 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.

On August 26, 2021, the Board provided the Department with guidance as it relates to royalty repayment offers.

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.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 30, 2021

RE: Newfield Litigation
(No Action Requested)

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

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

Counsel: Lawrence Bender - Fredrikson & Byron, P.A., and Michelle P. Scheffler, Garrett Martin and Ryan Pitts – 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.

**Current
Status:**

- **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.

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

Overview

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

Recommended Motion to be made in open session:

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

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

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

Statement:

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

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

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

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

Statements upon return to open session:

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

State that the Board is back in open session.

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

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

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

-or- .

Ask for a formal motion and a vote on it.

Move to the next agenda item.