

Governor's Conference Room and Via Microsoft Teams

Microsoft Teams meeting

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Phone Conference ID: **171 940 67#**

➤ = **Board Action Requested**

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

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

- A. [September 26, 2022](#) – minutes available via link

2. **Operations – Joseph Heringer**

A. Commissioner's Report – pg. 2

3. **Division Reports – Joseph Heringer**

A. Surface – pg. 3

B. Minerals – pg. 4

C. Unclaimed Property – pg. 7

D. Investments Update – pg. 9

4. **Investments – Joseph Heringer**

A. Executive Summary of Assets – pg. 12

B. Asset Allocation & Pacing Studies Update - RVK – pg. 14

5. **Special Projects - Chris Suelzle/Joseph Heringer**

A. Acreage Adjustment Report – pg. 31

B. Trust Lands Completion Act – pg. 33

6. **Litigation – Joseph Heringer - pg. 39**

- **Executive session under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2 for attorney consultation regarding:**
- **Royalty Offers**
 - **Newfield Royalties Case**

Next Meeting Date – November 17, 2022

RE: Commissioner's Report
(No Action Requested)

- Surface team has been very busy conducting annual Fall surface auctions; thank you and great work team!
- Annual financial audit complete; Eide Bailly will present at November meeting
- Meeting with Indian Affairs Commissioner regarding Trust Lands Completion Act
- Mineral Tracker is working on annual minerals valuation project for November presentation
- Investment process continues while we search for new CIO
 - Regular meetings with investment consultant RVK
 - Strategizing asset allocation
 - Pacing studies
 - Hedge fund search
- Minerals system design testing continues with good progress being made
- Chaired SIB Securities Litigation Committee Meeting – September 27th
- Presented investments performance report to Legislative Management's Budget Section – September 28th
- Participated in Hess "Follow the Barrel Tour" – September 29th
- Attended SIB Investment Committee Inaugural Meeting as voting member – October 7th

HR Update

- Chief Investment Officer – first round of interviews completed
- Accounting Position – filled and starting November 1st

SURFACE DIVISION

For the month of September 2022, the Surface Division granted 14 Rights of Way generating \$131,821 in income for the Trusts.

Department staff traveled throughout North Dakota the first three weeks of October conducting annual Fall surface lease auctions. These are done on a five-year rolling basis as leases expire. A summary of auction results will be presented at the November meeting.



For the month of September 2022, the Minerals Division received no oil & gas lease extensions, coal lease extensions, or shut-in requests.

The Division is preparing for the Department's upcoming online Oil & Gas Lease Auction to be held October 25 - November 1, 2022. The auction will be hosted by EnergyNet.

315 mineral tracts, comprising a total of 22,883.72 net mineral acres, have been nominated.

Mineral Tracts nominated for Oil & Gas Lease Auction **October 25 - November 1, 2022**

County	Tracts	Net Min Acres
Billings	6	320
Burke	10	800
Divide	9	678.42
Golden Valley	1	80
McKenzie	6	415.98
Mountrail	89	7,813.67
Ward	194	12,775.65
TOTAL	315	22,883.72

DTL Well Snapshots

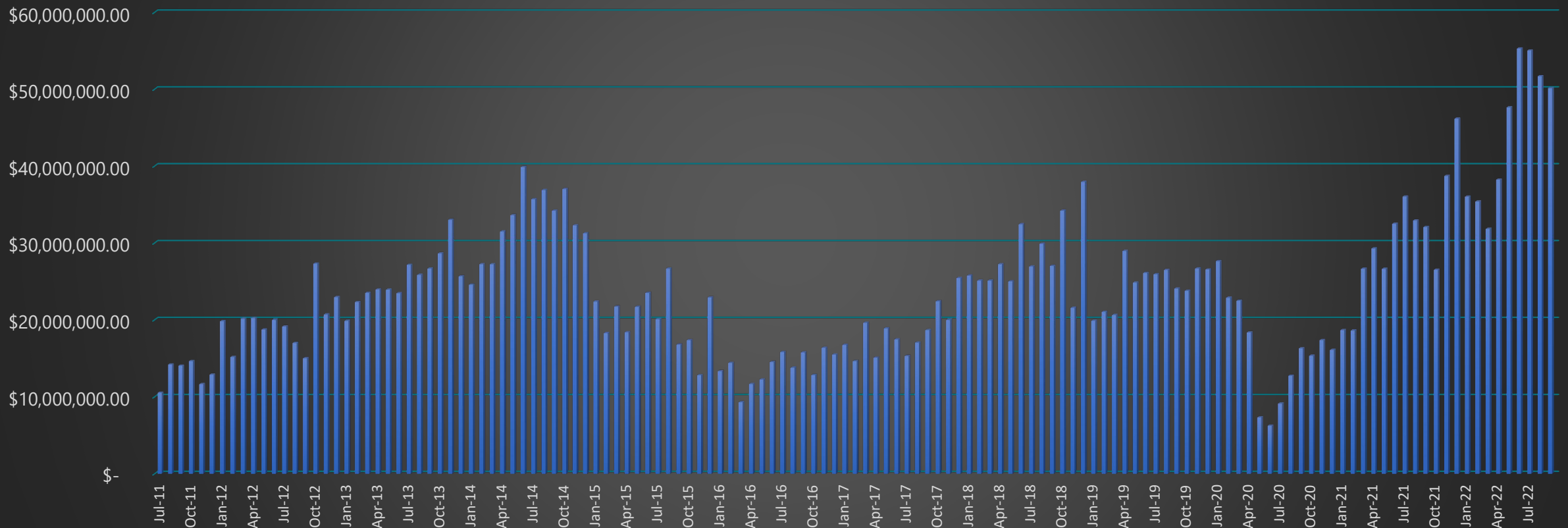
Based on NDIC 08/2022 well data obtained by Mineral Tracker on 10/10/2022

	ND Total	DTL Total	Percentage
Producing Wells in which State-DTL has an interest	17,321	8,505	49.10%
Oil production (in barrels) in which State-DTL has an interest (Gross)	31,047,417	15,573,344	50.16%
State-DTL's interest in oil production (Net) (in barrels)	31,047,417	441,136	1.42%
Wells located on State-DTL Surface	20,039	638	3.18%

MINERALS DIVISION

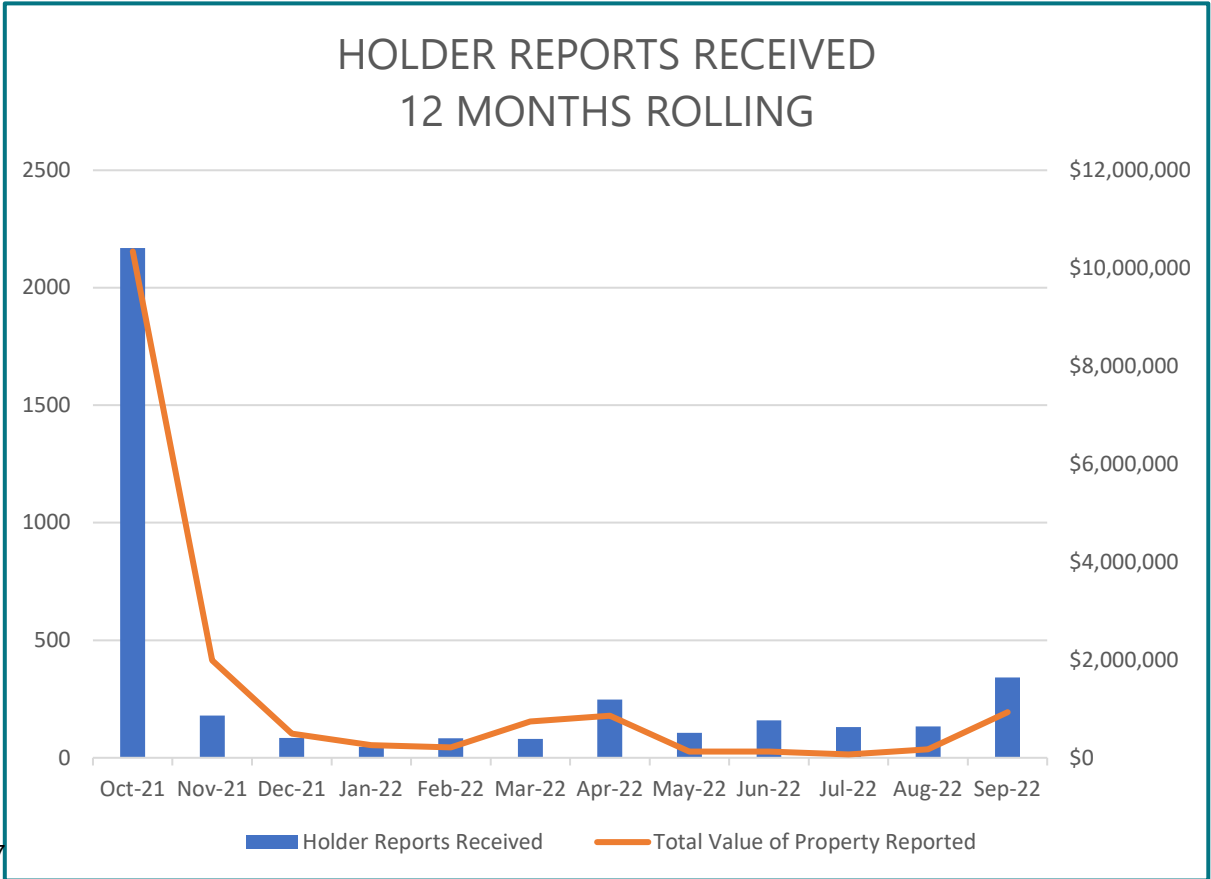
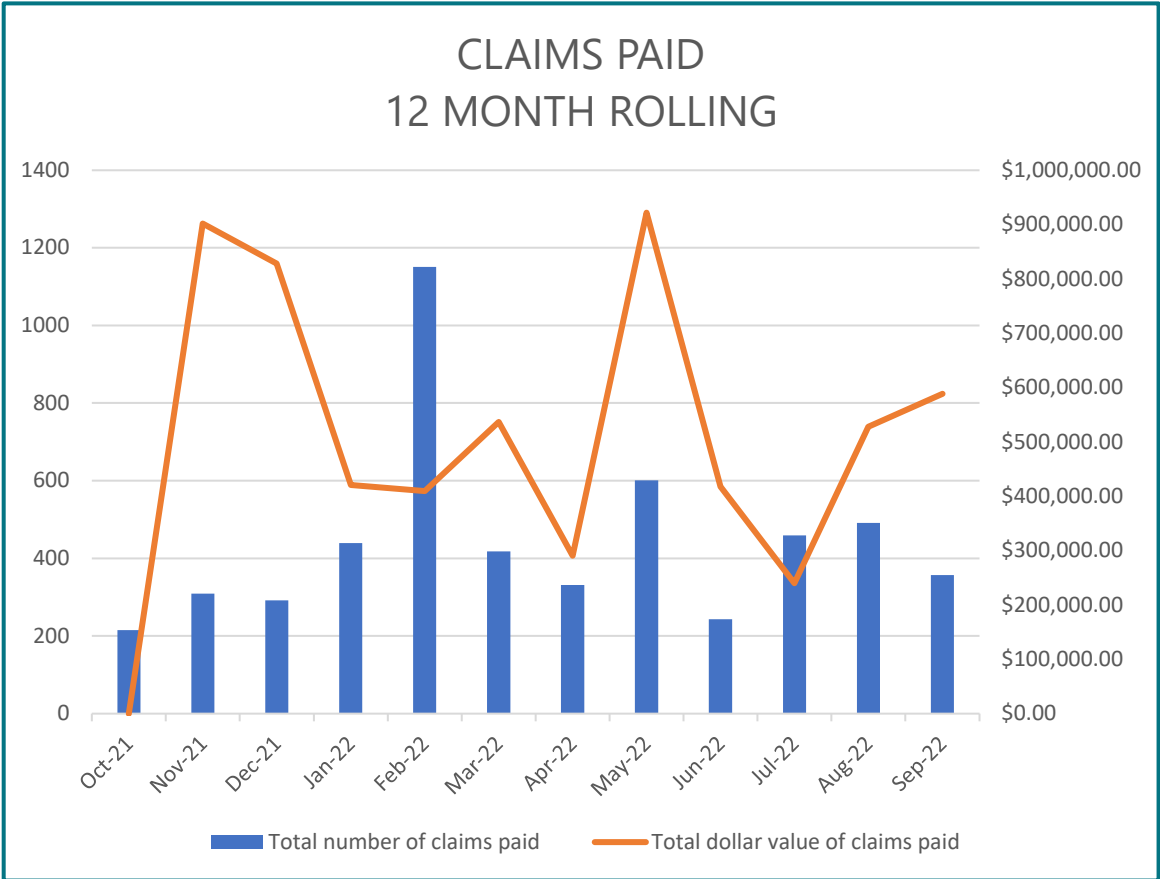
As of September 2022, for fiscal year 2022-23 the Department has received **\$156,898,705** in royalties as compared to **\$101,269,253** last fiscal year at this time.

APPROXIMATELY \$3.2 BILLION IN ROYALTIES HAS BEEN COLLECTED OVER THE PAST 11 YEARS



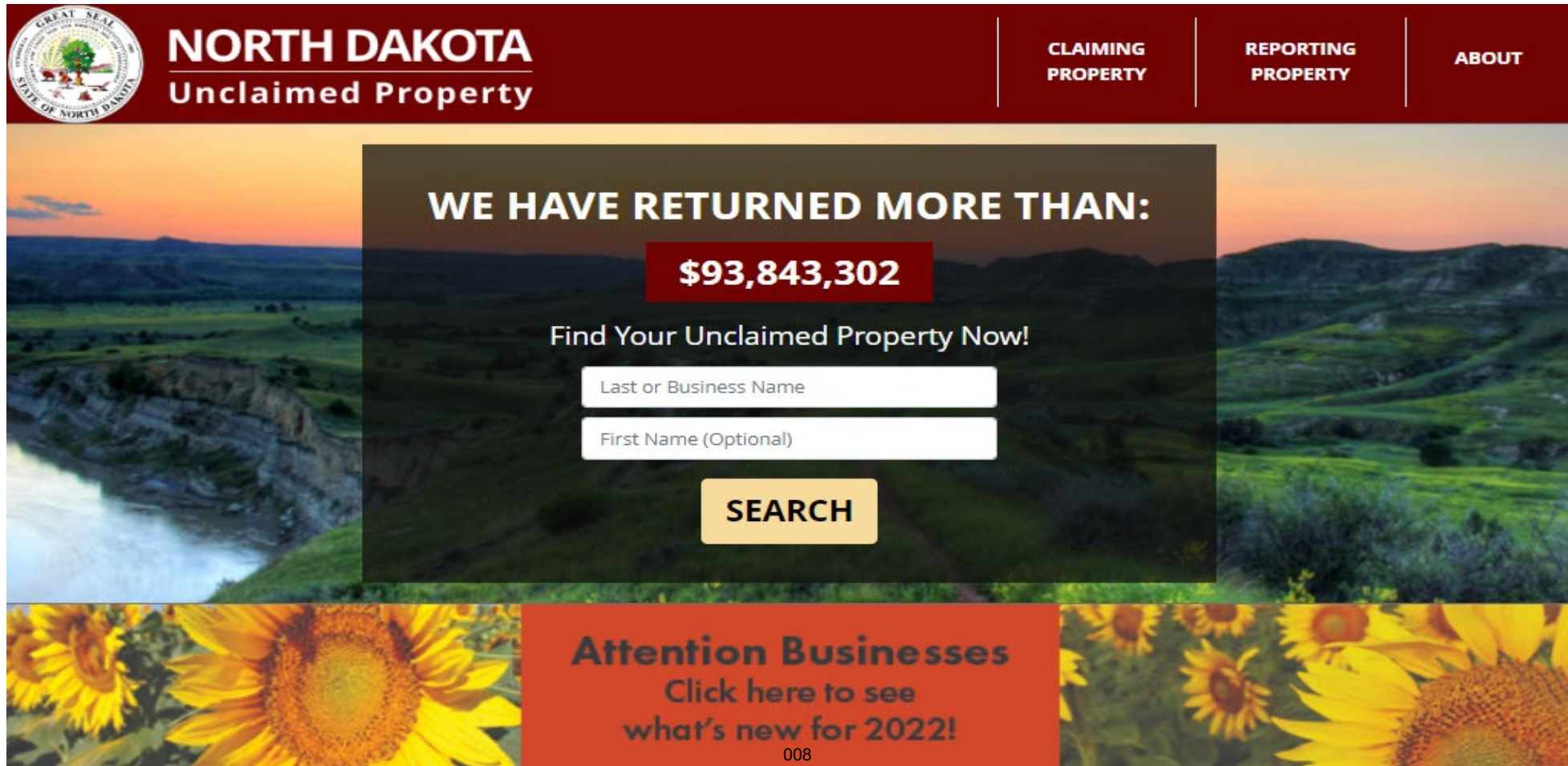
UNCLAIMED PROPERTY DIVISION


For the month of September 2022, the Division paid 357 claims with \$588,577.36 returned to rightful owners/heirs. It received 342 holder reports with a dollar value of \$930,013.19.



UNCLAIMED PROPERTY DIVISION

The Division is approaching a milestone of \$100 million in properties returned to rightful owners.
(Since inception in 1975)



 **NORTH DAKOTA**
Unclaimed Property

[CLAIMING
PROPERTY](#) | [REPORTING
PROPERTY](#) | [ABOUT](#)

WE HAVE RETURNED MORE THAN:

\$93,843,302

Find Your Unclaimed Property Now!

SEARCH

Attention Businesses
Click here to see
what's new for 2022!

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

Portfolio Rebalancing Updates

There was no significant impact to any properties owned by our Private Real Estate Investment Funds due to Hurricane Ian. Only minor roof repairs due to leaks and slight roof damage in some cases. Daily operations were not hampered.

Ares Pathfinder Fund made a simultaneous distribution and capital call which resulted in a net call of around \$15.4M that is due on Oct. 25. We checked with Fund managers for anticipated capital calls and most are in unison that it depends on projected transaction closings. Owl Rock Diversified Lending is projecting a capital call of \$5 – 10M towards the end of the year. Millennium is intending to call an additional \$90 million by the end of the year. Meanwhile, GCM Private Equity has already committed around \$91M to various investments of which \$22M were called. GCM Secondary Opportunities Fund has \$296M pending deals with \$250M pending capital drawn for deals. As can be seen, capital calls for both GCM Funds are very much reliant on underlying investments calling capital or the closing of deals being worked on.

We received a \$3.9M redemption proceed from UBS Trumbull Property Fund, which brings the total redeemed from Trumbull to \$39.5M since we entered its redemption queue. We still have around \$174M remaining in the Fund. We are still waiting on a Q3 redemption amount notice from Jamestown Premier Fund where we currently have around \$66.2M. We will be transferring \$80M excess cash from revenues to fund investments.

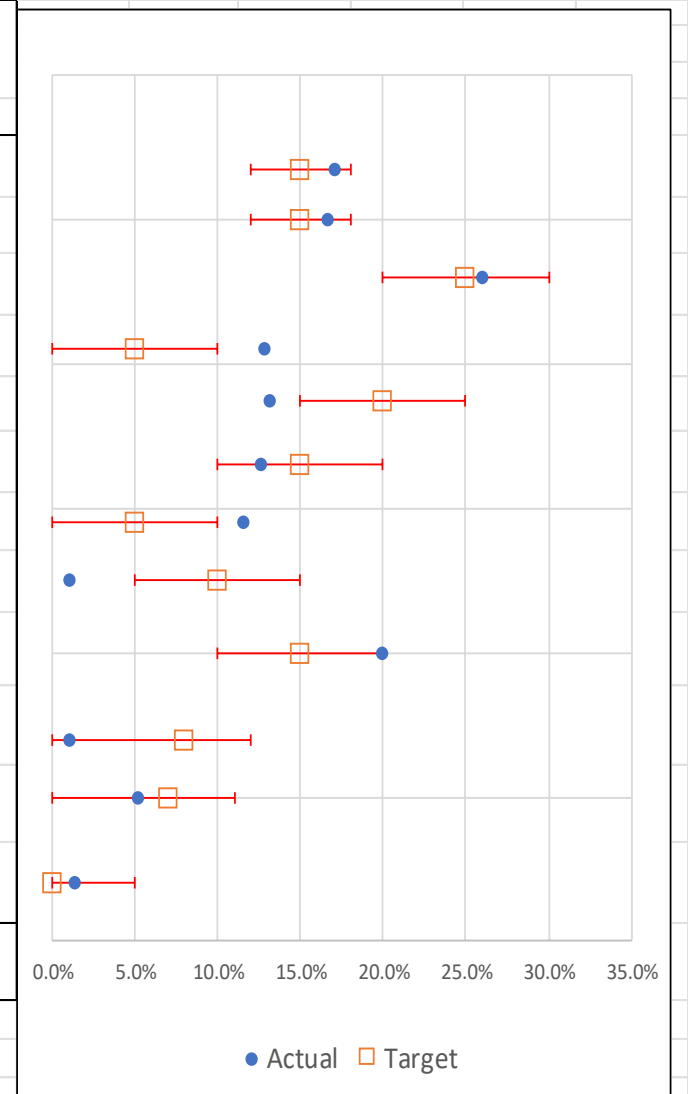
Unfunded commitments after the distributions and calls will be at \$685.25M. These are:

1. Private Credit, \$164M
 - i. *ARES Pathfinder Fund, \$39M*
 - ii. *Owl Rock Diversified Lending, \$60M*
 - iii. *Angelo Gordon Direct Lending (AGDL) IV, \$15M*
 - iv. *AGDL-BUSL Fund, \$50M*
2. Private Equity, \$246.25M
 - i. *Grosvenor Capital Management (GCM) Private Equity, \$105.5M*
 - ii. *GCM Secondary Opportunities Fund, \$128M*
 - iii. *Morgan Stanley Ashbridge TS Fund II, \$12.75M*
3. Private Infrastructure, \$14.5M
 - i. *Hamilton Lane Infrastructure Opportunities Fund, \$14.5M*
4. Opportunistic Investments, 20.5M
 - i. *Varde Dislocation Fund, \$20.5M*
5. Absolute Return, \$240M
 - i. *Millennium USA LP (Hedge Fund), \$240M*

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of October 13, 2022. The figures provided are unaudited.

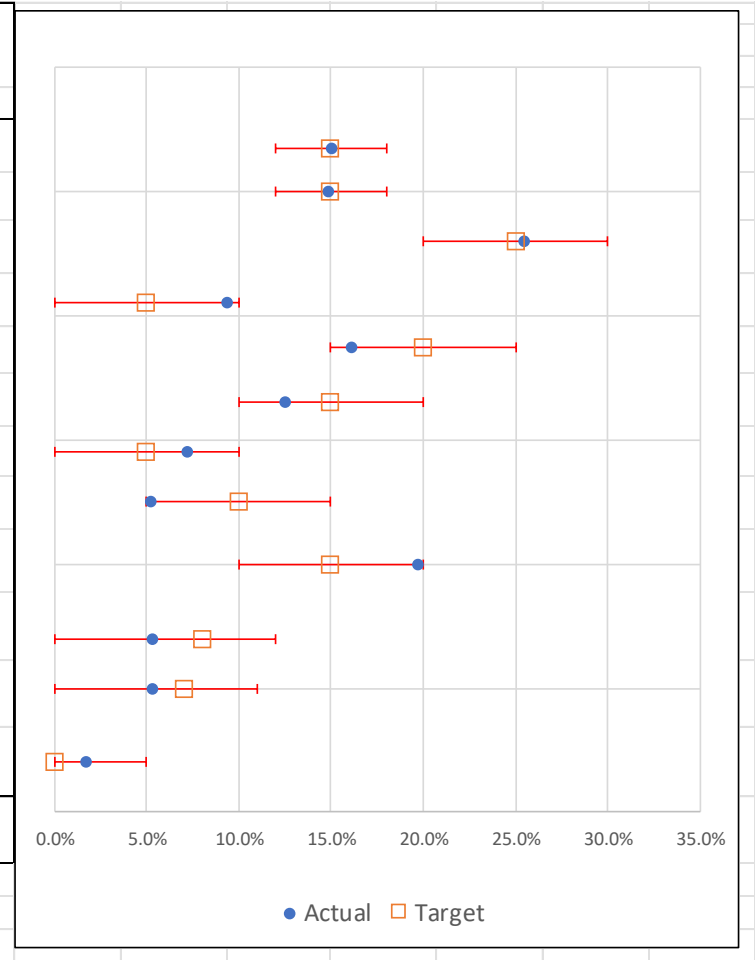
As of October 13, 2022	Market Value \$	Actual	Target	Lower Range	Upper Range
		●	□	└─	─┐
Broad US Equity	972,187,019	17.1%	15.0%	12.0%	18.0%
Broad Int'l Equity	943,617,532	16.6%	15.0%	12.0%	18.0%
Fixed Income	1,475,389,309	26.0%	25.0%	20.0%	30.0%
<i>Public Credit</i>	726,128,929	12.8%	5.0%	0.0%	10.0%
<i>Private Credit</i>	749,260,381	13.2%	20.0%	15.0%	25.0%
Absolute Return	718,888,642	12.7%	15.0%	10.0%	20.0%
<i>Global Tactical Asset Allocation</i>	656,752,302	11.6%	5.0%	0.0%	10.0%
<i>Multi-Strategy Hedge Fund</i>	62,136,340	1.1%	10.0%	5.0%	15.0%
Real Estate	1,135,767,741	20.0%	15.0%	10.0%	20.0%
Private Equity (Grosvenor, GCM Secondaries, MS-Ashbridge)	58,959,443	1.0%	8.0%	0.0%	12.0%
Private Infrastructure (JPM-Infra, FSI-GDIF, HL Infra)	293,057,225	5.2%	7.0%	0.0%	11.0%
Opportunistic Investments (Varde & Apollo)	80,026,276	1.4%	0.0%	0.0%	5.0%
Portfolio Total	5,677,893,187	100.0%			



Hypothetical Funding of All Unfunded Commitments:

Asset Allocation After Funding:

As of October 13, 2022	Market Value \$	Actual	Target	Lower Range	Upper Range
		●	□	└─	─┐
Broad US Equity	864,187,019	15.0%	15.0%	12.0%	18.0%
Broad Int'l Equity	858,117,532	14.9%	15.0%	12.0%	18.0%
Fixed Income	1,467,559,177	25.5%	25.0%	20.0%	30.0%
<i>Public Credit</i>	538,898,797	9.4%	5.0%	0.0%	10.0%
<i>Private Credit</i>	928,660,381	16.1%	20.0%	15.0%	25.0%
Absolute Return	718,888,642	12.5%	15.0%	10.0%	20.0%
<i>Global Tactical Asset Allocation</i>	416,752,302	7.2%	5.0%	0.0%	10.0%
<i>Multi-Strategy Hedge Fund</i>	302,136,340	5.2%	10.0%	5.0%	15.0%
Real Estate	1,135,767,741	19.7%	15.0%	10.0%	20.0%
Private Equity (Grosvenor, GCM Secondaries, MS-Ashbridge)	305,209,443	5.3%	8.0%	0.0%	12.0%
Private Infrastructure (JPM-Infra, FSI-GDIF, HL Infra)	307,637,357	5.3%	7.0%	0.0%	11.0%
Opportunistic Investments (Varde & Apollo)	100,526,276	1.7%	0.0%	0.0%	5.0%
Portfolio Total*	5,757,893,187	100.0%			
*Total includes \$80M new cash to be transferred on 10/17/22 & 10/19/22					



Assumptions:

- i. \$80M new cash will be transferred on 10/17/22 & 10/19/22 to fund calls.
- ii. No redemption proceeds or distributions were received.
- iii. All capital calls came in at the same time.

**RE: Executive Estimate of Board Assets
(No Action Requested)**

EXECUTIVE ESTIMATE OF ASSETS
NORTH DAKOTA DEPARTMENT OF TRUST LANDS
As of September 30, 2022

		MOM\$	MOM%	YOY\$	YOY%
	9/30/2022 Value	8/31/2022 Value	Change	9/30/2021 Value	Change
Cash	526,082,949	403,227,509	30.47%	355,122,331	48.14%
Investments ^[1]	6,303,822,442	6,586,157,072	-4.29%	6,388,861,858	-1.33%
Tax Receivables ^[2]	13,378,324	111,720,730	-88.03%	15,423,709	-13.26%
Loans ^[3]	40,789,675	40,115,716	1.68%	44,105,488	-7.52%
Receivables ^[4]	8,706,554	6,089,238	42.98%	6,978,185	24.77%
Sub-Total Net Assets	\$6,892,779,944	\$7,147,310,265	-3.56%	\$6,810,491,571	1.21%
Mineral Rights ^[5]	2,391,439,503	2,391,439,503	0.00%	2,391,439,503	0.00%
Surface Rights ^[6]	511,088,869	511,088,869	0.00%	523,938,730	-2.45%
Building Value ^[7]	1,015,196		N/A		N/A
Total Net Assets	\$9,796,323,512	\$10,049,838,637	-2.52%	\$9,725,869,804	0.72%

[1] Approximately 60% of the portfolio is publicly traded for which values are current to the as of date. The remaining 40% is private assets, the values of which are updated as the managers provide them, typically 30-60 days after the end of each quarter.

[2] Estimated value of production, extraction, and severance tax payments not yet received by the Department because they are not distributed until two months after production date.

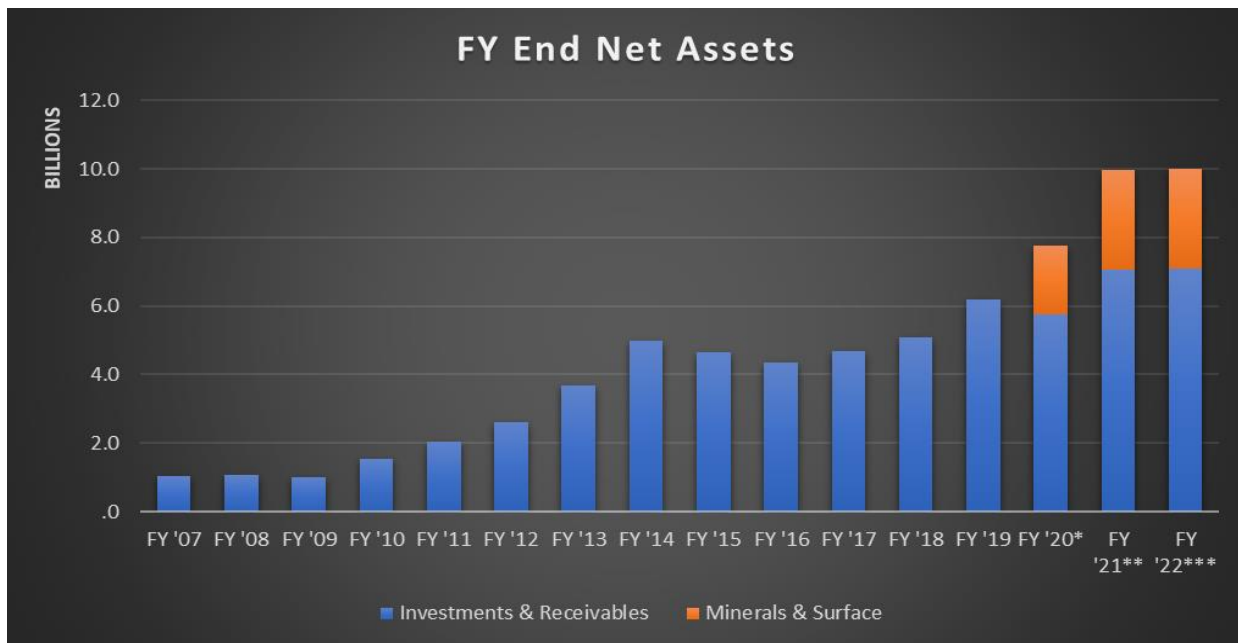
[3] Various loan programs funded with trust assets.

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

[5] Valued annually via contract with Mineral Tracker. The last valuation is as of December 31, 2020.

[6] Valued annually via the Department's fair market value policy/formulas. The last valuation is as of March 2022.

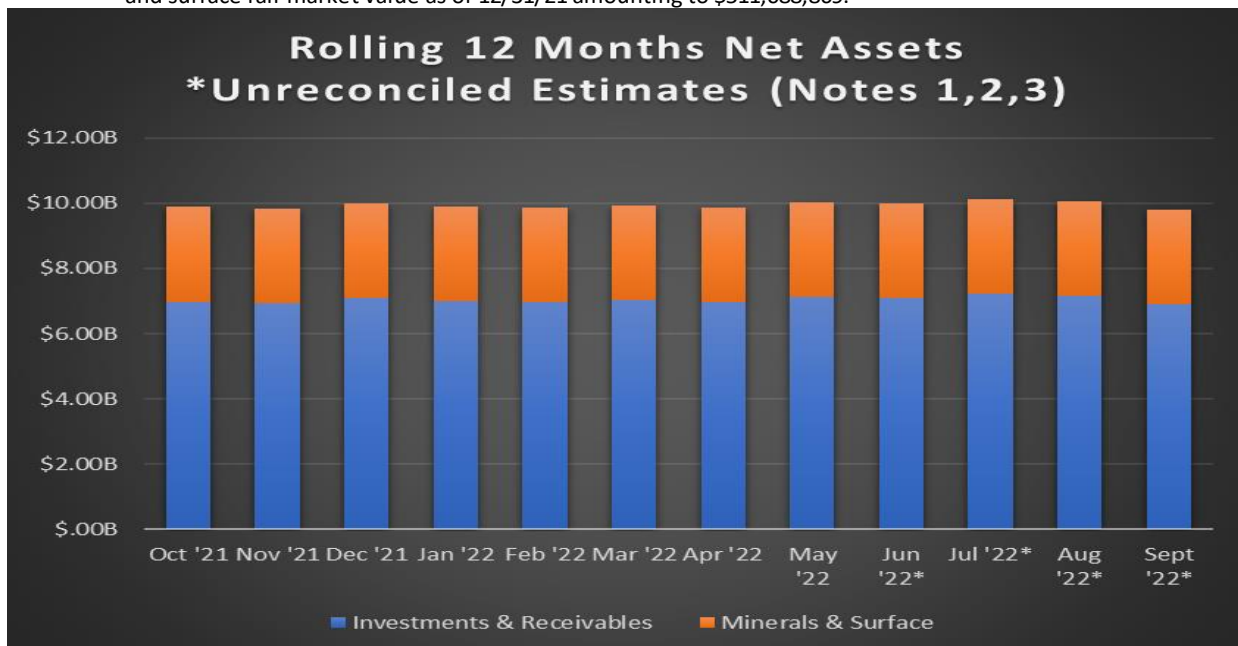
[7] Updated annually via broker price opinion. The last was completed as of Sept. 15, 2022.



* FY End 2020 - included initial Mineral valuations as of 12/31/19 amounting to \$1,449,002,408 and surface fair market value as of 12/31/19 amounting to \$538,179,773.

** FY End 2021 - included new Mineral valuations as of 12/31/20 amounting to \$2,391,439,503 and surface fair market value as of 12/31/20 amounting to \$523,938,730.

*** FY End 2022 - included most recent Mineral valuations as of 12/31/20 amounting to \$2,391,439,503 and surface fair market value as of 12/31/21 amounting to \$511,088,869.



Notes:

1. Oct. 2021 to Nov. 2021 - included most recent Mineral valuations amounting to \$2,391,439,503 and surface fair market value of \$523,938,730.
2. Dec. 2021 to Jul. 2022 - included Mineral valuations amounting to \$2,391,439,503, surface fair market value of \$511,088,869.
3. Sept. 2022 - included \$1,015,149 building value appraised as of 9/15/22.



Transition Plan and Private Markets Pacing Analysis

North Dakota Board of University and School Lands



Current Portfolio Allocation and Transition Plan

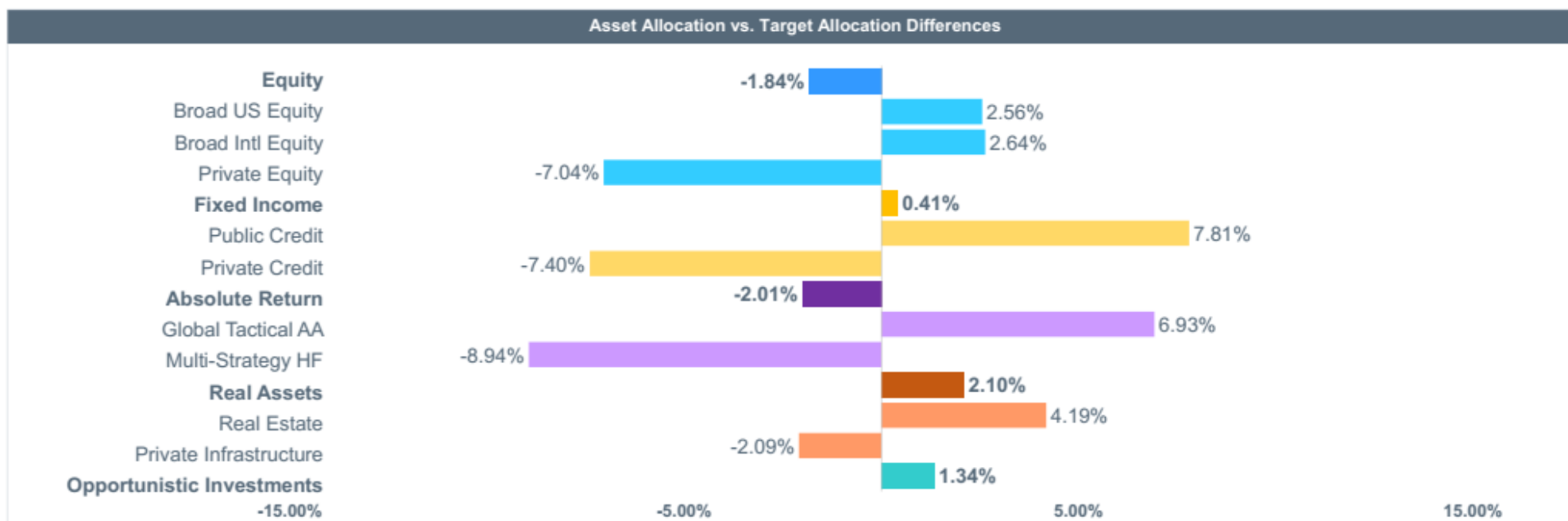


Transition Plan

- Higher level allocations (equity, fixed income, absolute return, real assets) are within reasonable proximity to long-term targets
- Variances exist within the higher level asset categories but generally require asset movement into (and in some cases out of) illiquid strategies that require a longer period of time to execute
 - During the transition period, liquid assets within the same asset category can provide market exposure
- Private equity (and to a lesser extent Private credit) utilize closed end finite life investment structures that necessitate a forward looking pacing plan to guide current and future planned commitment levels
- Multi-strategy hedge fund search process is nearing completion with recommendations and manager recommendations scheduled for December
- Within real assets (real estate and infrastructure) redemption requests have been placed with two current real estate managers and we also recommend initiating a search for a multi-family real estate specialist manager

Asset Allocation at 8/31/22 vs. Target Allocation

Asset Allocation vs. Target Allocation Differences						
	Asset Allocation	Asset Allocation (%)	Target Allocation (%)	Minimum Allocation (%)	Maximum Allocation (%)	
Equity	2,153,567,982	36.16%	38.00%	N/A	N/A	
Broad US Equity	1,045,860,896	17.56%	15.00%	12.00%	18.00%	
Broad International Equity	1,050,490,952	17.64%	15.00%	12.00%	18.00%	
Private Equity	57,216,134	0.96%	8.00%	0.00%	12.00%	
Fixed Income	1,513,702,800	25.41%	25.00%	20.00%	30.00%	
Public Credit	762,929,421	12.81%	5.00%	N/A	N/A	
Private Credit	750,773,379	12.60%	20.00%	N/A	N/A	
Absolute Return	773,712,501	12.99%	15.00%	10.00%	20.00%	
Global Tactical Asset Allocation	710,557,417	11.93%	5.00%	N/A	N/A	
Multi-Strategy Hedge Fund	63,155,084	1.06%	10.00%	N/A	N/A	
Real Assets	1,435,409,993	24.10%	22.00%	N/A	N/A	
Real Estate	1,142,789,262	19.19%	15.00%	10.00%	20.00%	
Private Infrastructure	292,620,732	4.91%	7.00%	0.00%	11.00%	
Opportunistic Investments	80,026,232	1.34%	0.00%	0.00%	5.00%	
Total Fund	5,956,419,510	100.00%	100.00%	-	-	



Private Market Pacing



Pacing Study Outline

OBJECTIVE

Set a reasonable 5-year target commitment allocation schedule that results in the total fund approaching the private market allocation.

- *The commitment pacing plan should be revisited annually*

PROCESS

RVK uses proprietary software to model the existing portfolio and expected forward commitments. A number of assumptions are made throughout this analysis and include the following:

- *Private market investment cash flow/valuation patterns based on historical data from Preqin Alternatives*
- *A custom annualized growth rate for the overall total composite, net of spending rate*

OUTPUT

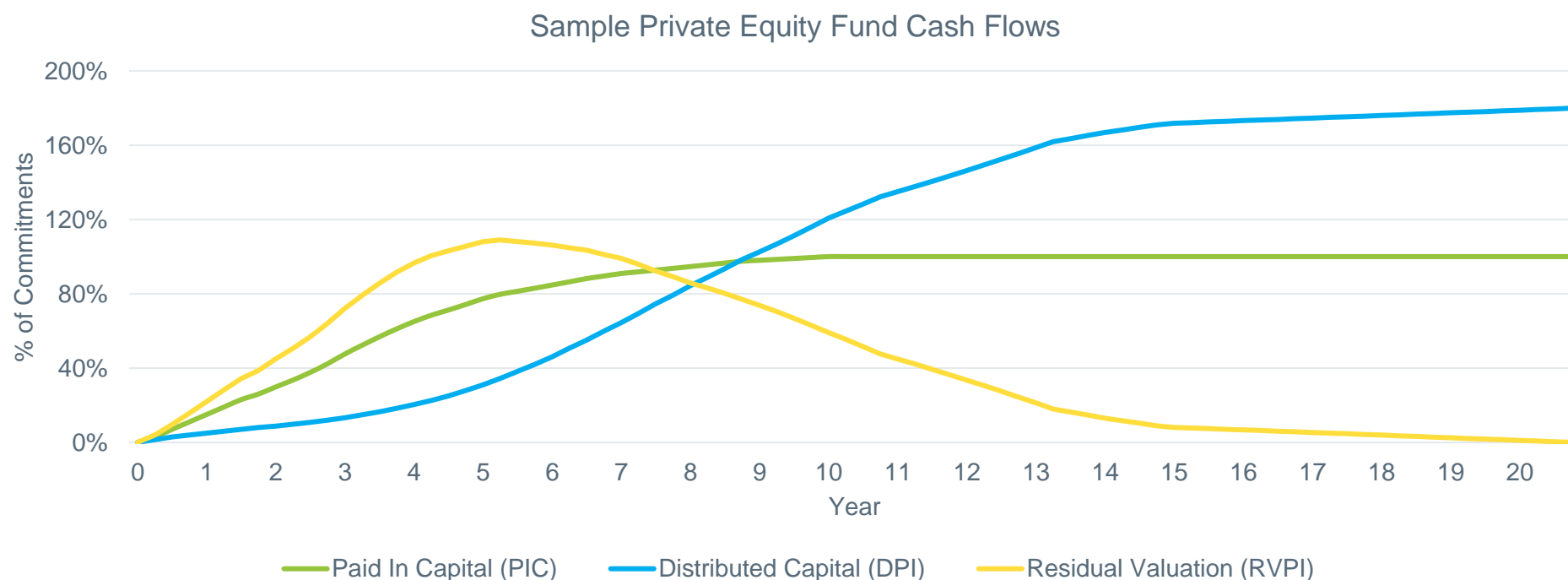
The pacing study provides a recommended annual commitment volume to meet the total fund's private market target.

- *Vintage commitments shown below may be made to one or more investment managers depending on the size of the commitment*
- *Likely to approach private market target slowly to minimize vintage year risk*

Methodology

The purpose of the pacing study is to develop estimates based on long-term industry averages for use in general cash flow and allocation target planning. The previous pages depict cash flow and valuation estimates utilizing averaged historical data. This data is collected from Preqin Alternatives and represents more than 5,000 funds.

Actual cash flows and allocation percentages may vary substantially from these estimates as a result of market conditions. This analysis should be used for planning purposes only, and no expectations should be made that actual cash flows and allocation percentages will occur at the exact time and level depicted in the preceding pages.



Private Equity



Private Equity Pacing Recommendation Summary

1 Current Plan Statistics (as of June 30, 2022)

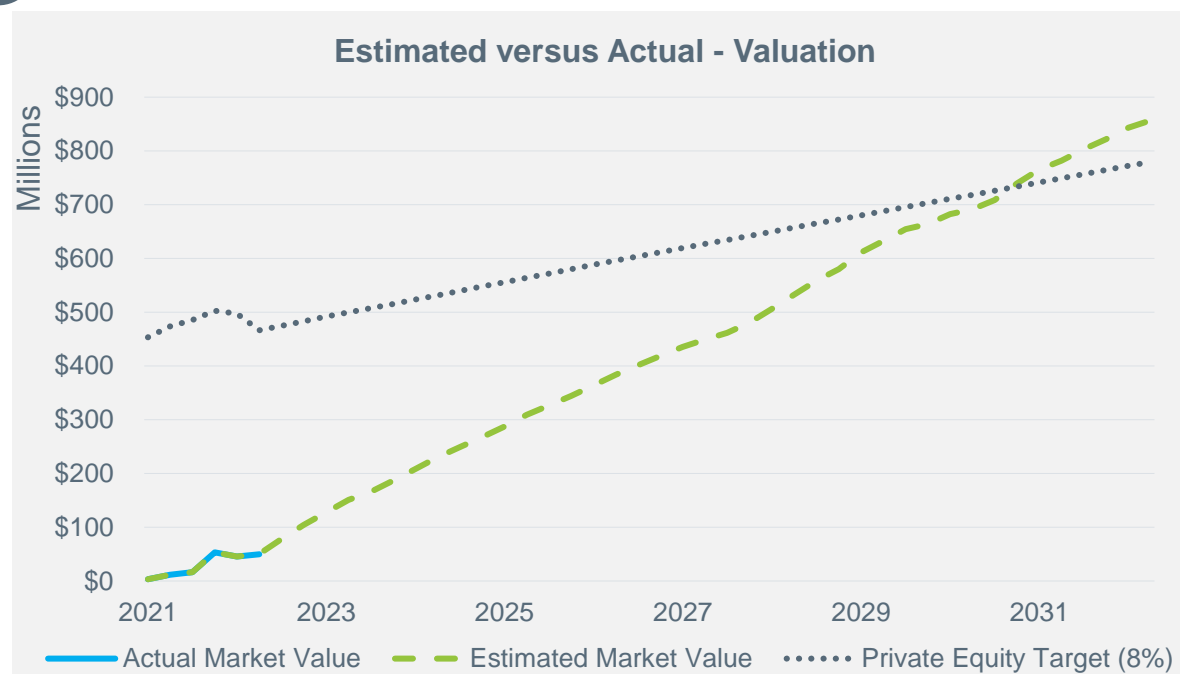
Total plan size	\$5.8 billion
Current private equity target	8.0%
Current private equity allocation	0.86%
Expected growth rate	Approximately 6.01%

2 Recommendation

Year	Commitments
2023	\$110 million
2024	\$110 million
2025	\$110 million
2026	\$110 million
2027	\$110 million

RVK recommends annual private equity commitments of \$110 million.

3 Expected Results



Private Equity Pacing Recommendation Review

- In 2020, RVK recommended \$130 million in commitments every three years to reach the target allocation.
- After updating our analysis in 2022, RVK recommends increasing commitments to a \$110 million annual commitment.
- The increase in commitments is primarily due to the following factors:
 - An increase in the private equity target allocation from 5% to 8%.
 - An increase in the expected growth rate from 5.5% to 6.0%
- We are now currently expecting to reach the plan's 8% allocation by approximately 2029.

2020 Proposed Commitment Schedule

Year	Commitments
2020	\$130 million
2023	\$130 million
2026	\$130 million
2029	\$130 million
2032	\$130 million



2022 Proposed Commitment Schedule

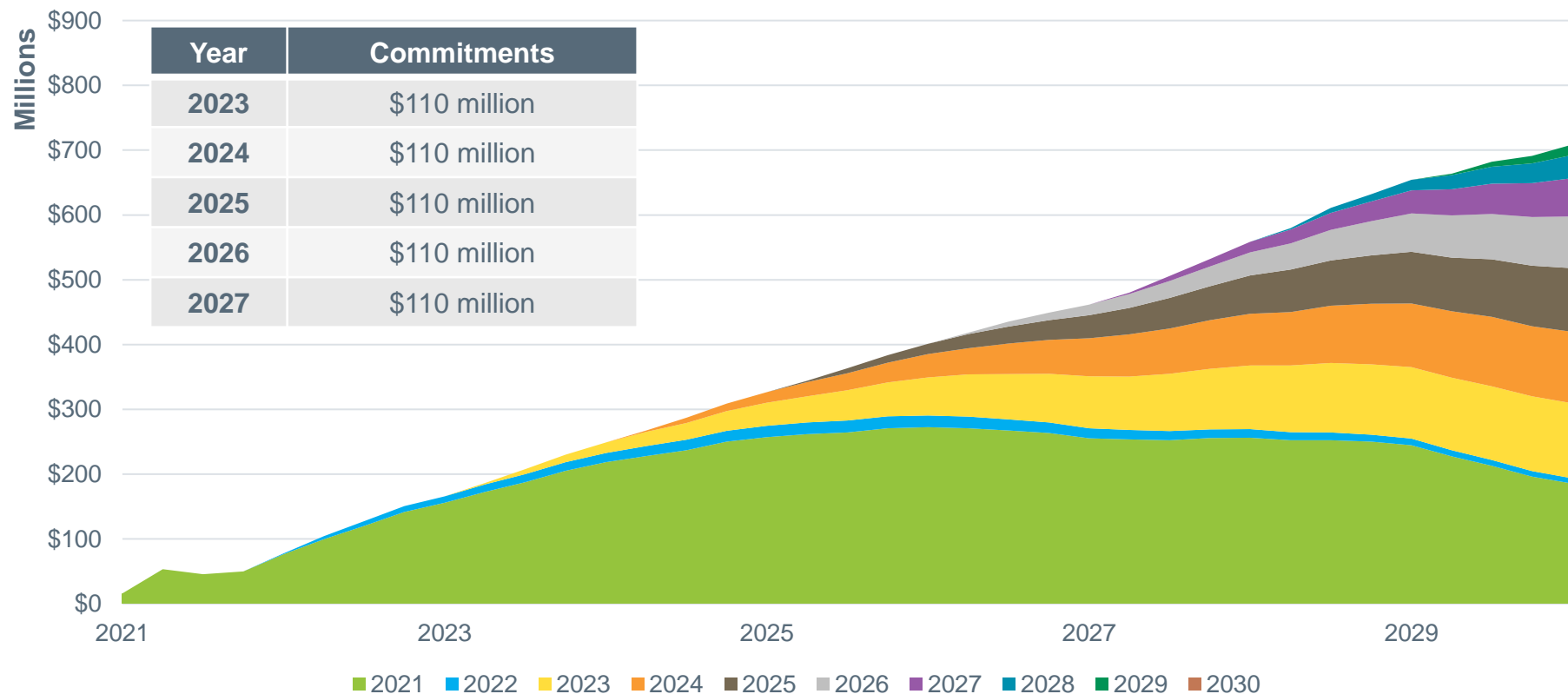
Year	Commitments
2023	\$110 million
2024	\$110 million
2025	\$110 million
2026	\$110 million
2027	\$110 million

Commitment Recommendation

RVK recommends the following commitment schedule, keeping in mind:

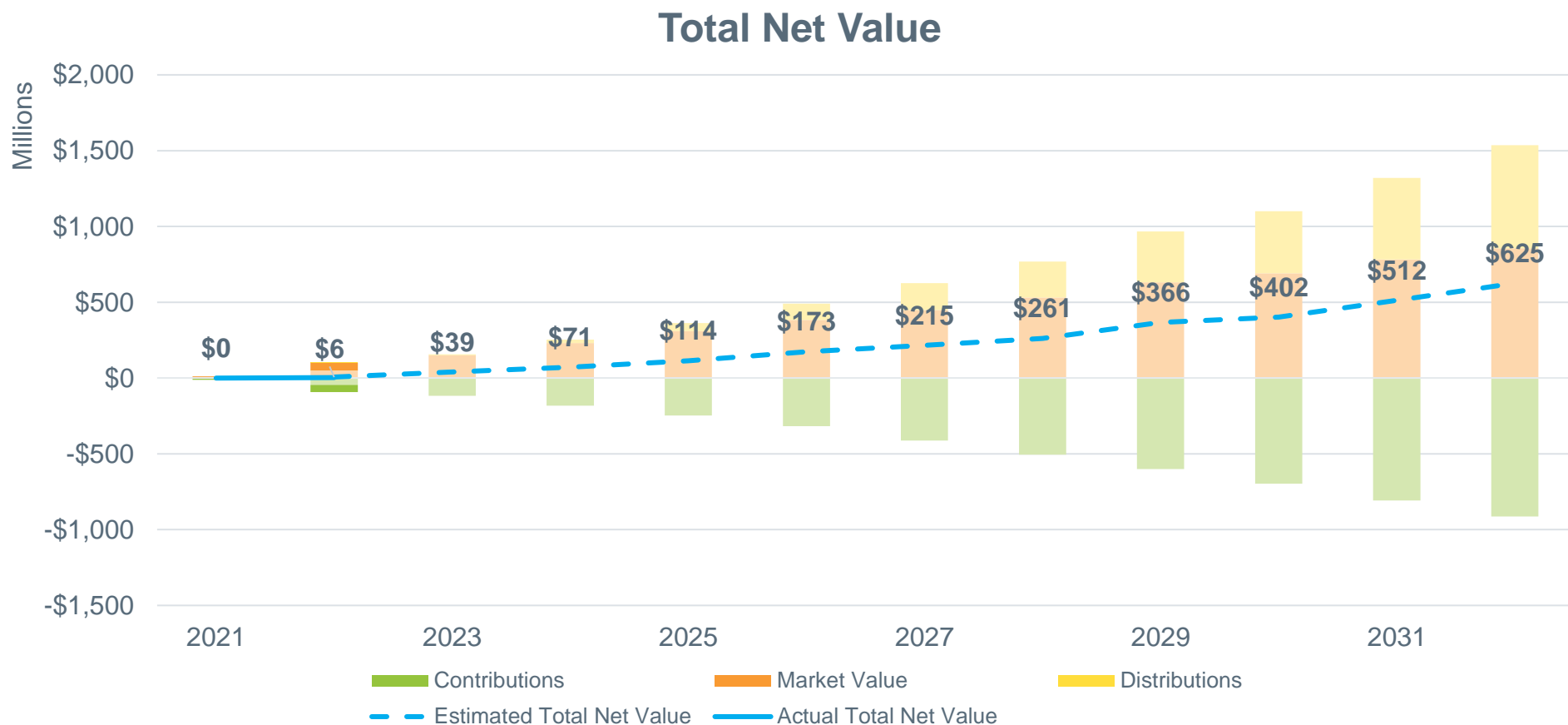
- Vintage year concentration is a large risk in PE
- Annual commitments are likely to represent multiple funds & strategies
- Recommended commitments are approximate
- Attractive PE opportunities may not present equally each year

Estimated Total Valuation by Vintage Year



Value Creation Analysis

Including new commitments, valuation of the private equity portfolio is expected to increase over time as existing investments mature and capital is contributed to the portfolio. RVK estimates the private equity portfolio will have created \$625 million in total net value from inception through 2032.



Private Credit



Private Credit Pacing Recommendation Summary

1 Current Plan Statistics (as of June 30, 2022)

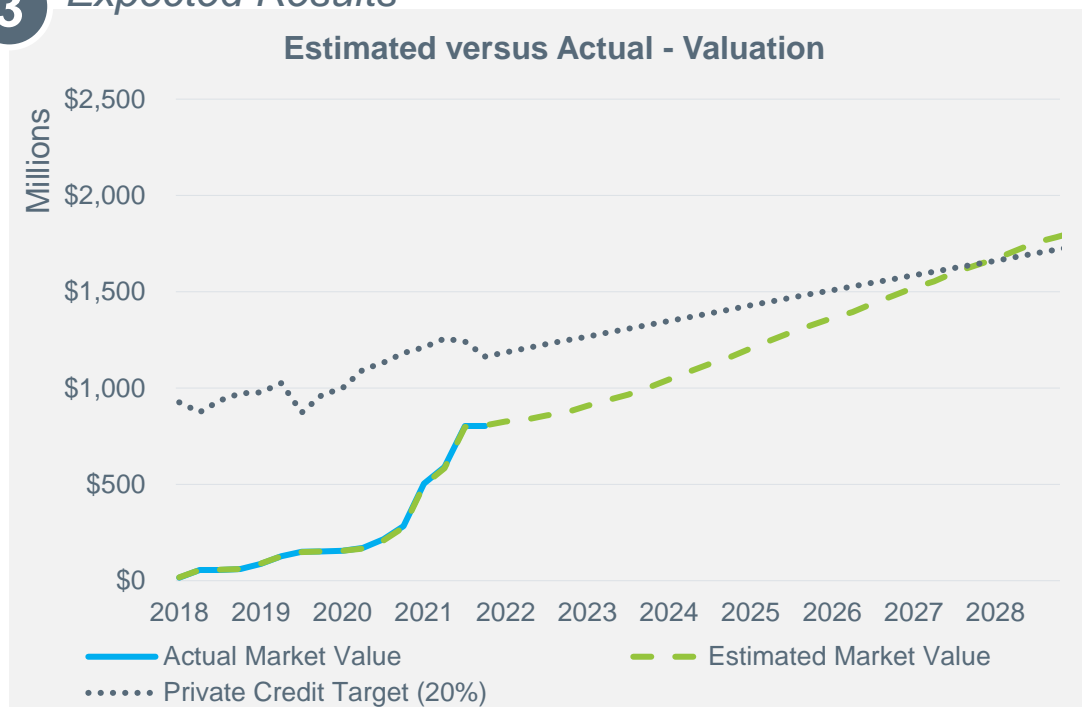
Total plan size	\$5.8 billion
Current private credit target	20.0%
Current private credit allocation	13.8%
Expected growth rate	Approximately 6.01%

2 Recommendation

Year	Commitments
2023	\$120 million evergreen (reinvested) \$120 million evergreen (distributed)
2024	\$100 million evergreen (reinvested) \$100 million closed-end
2025	\$200 million closed-end
2026	\$200 million closed-end
2027	\$200 million closed-end

RVK recommends initial commitments split between evergreen funds with reinvested and distributed income totaling \$240 million to achieve the target allocation by 2028.

3 Expected Results

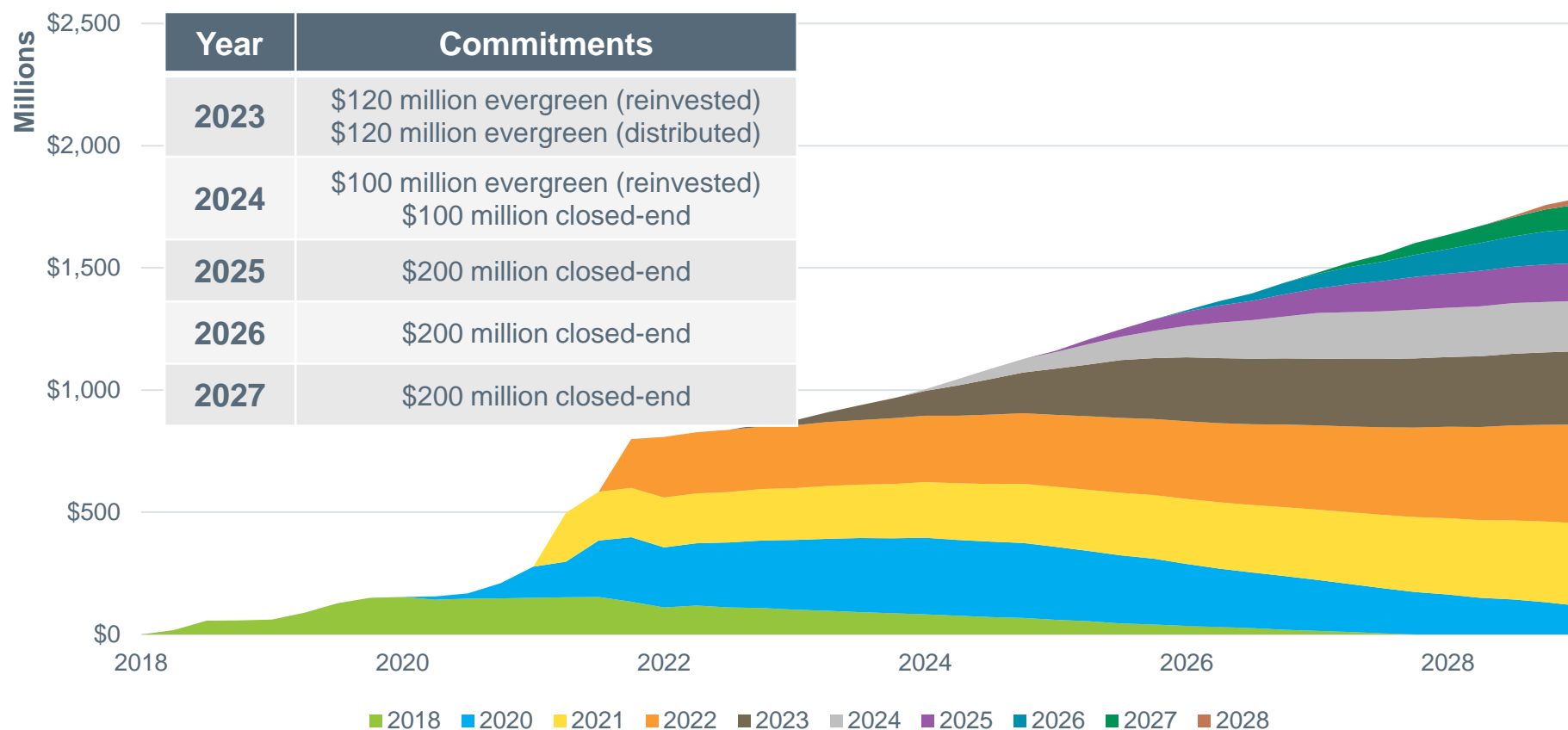


Commitment Recommendation

RVK recommends the following commitment schedule, keeping in mind:

- Vintage year concentration is a large risk in PC
- Annual commitments are likely to represent multiple funds & strategies
- Recommended commitments are approximate
- Attractive PC opportunities may not present equally each year

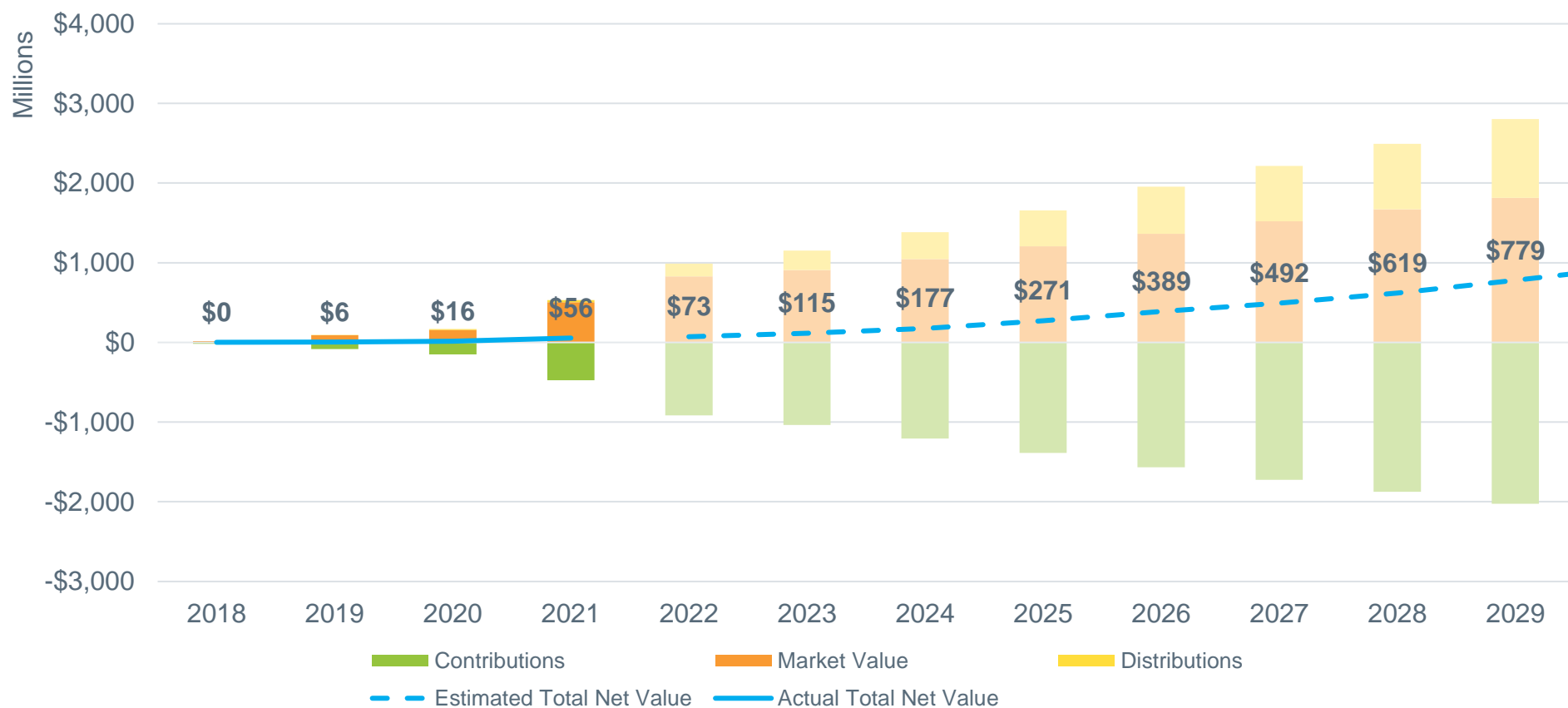
Estimated Total Valuation by Vintage Year



Value Creation Analysis

Including new commitments, valuation of the private credit portfolio is expected to increase over time as existing investments mature and capital is contributed to the portfolio. RVK estimates the private credit portfolio will have created \$779 million in total net value from inception through 2029.

Total Net Value



PORTLAND

BOISE

CHICAGO

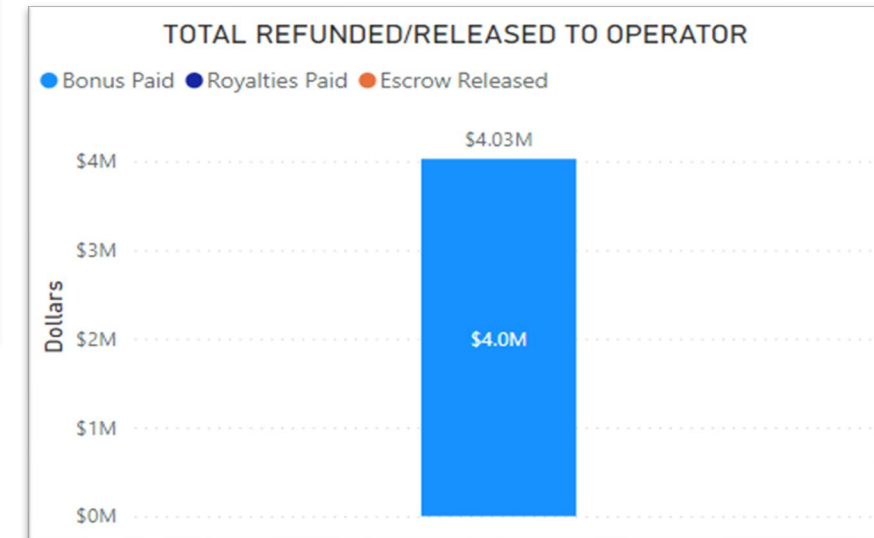
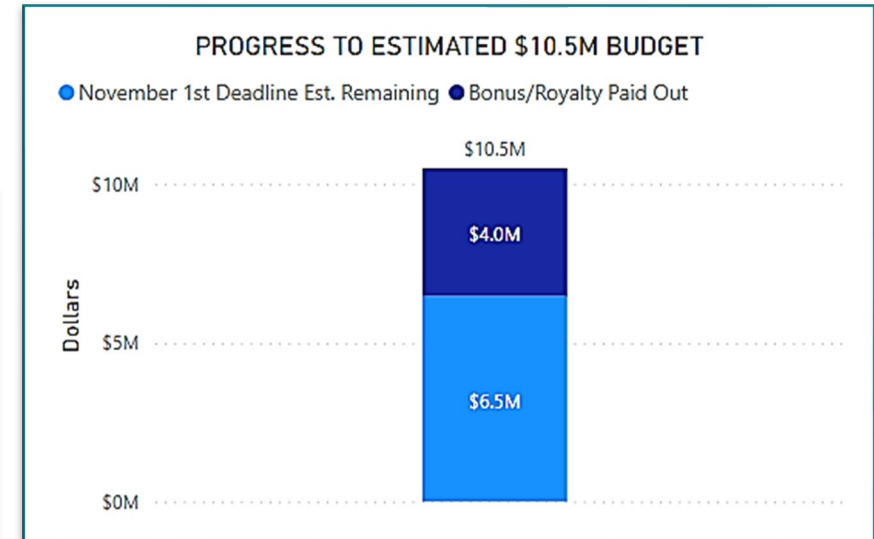
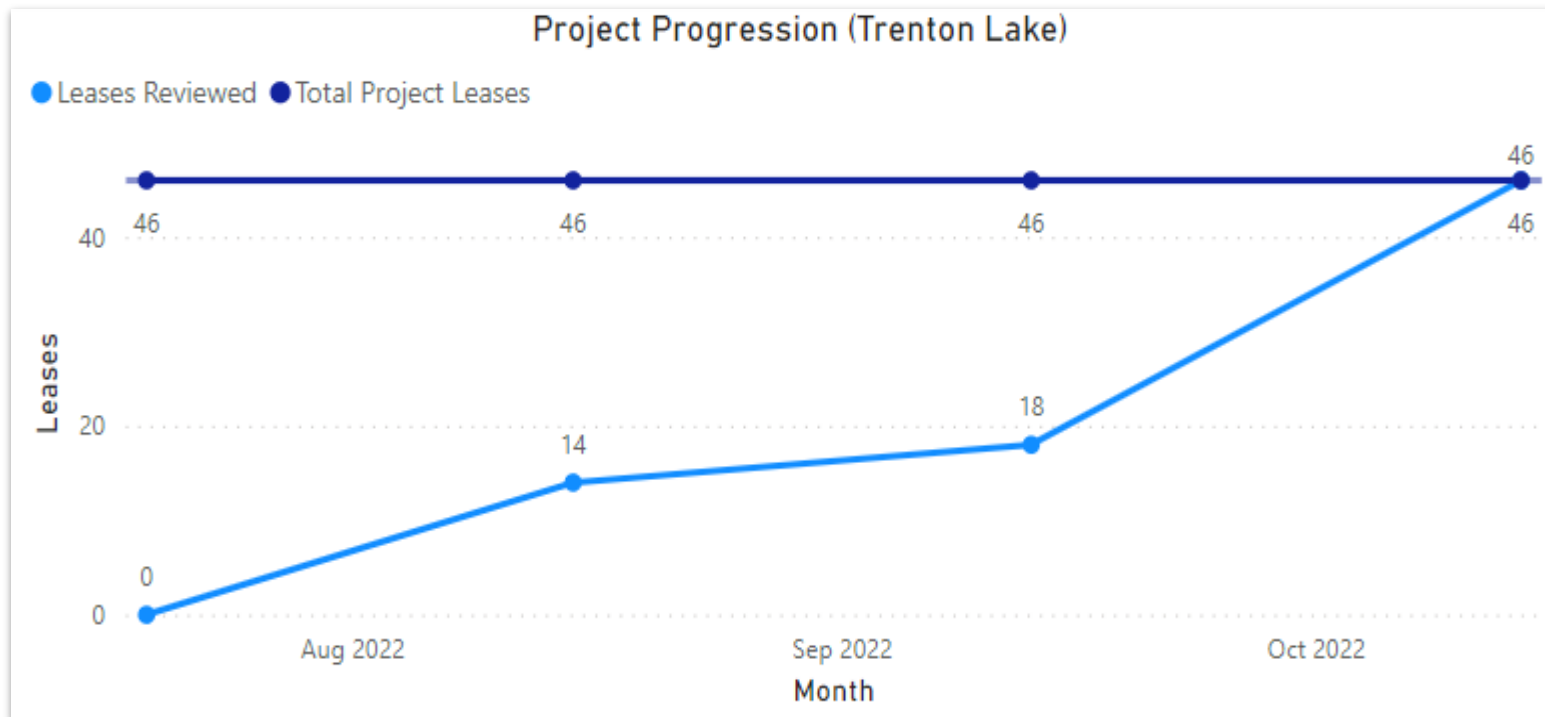
NEW YORK



ACREAGE ADJUSTMENT PART II

November 1st, 2023, DEADLINE

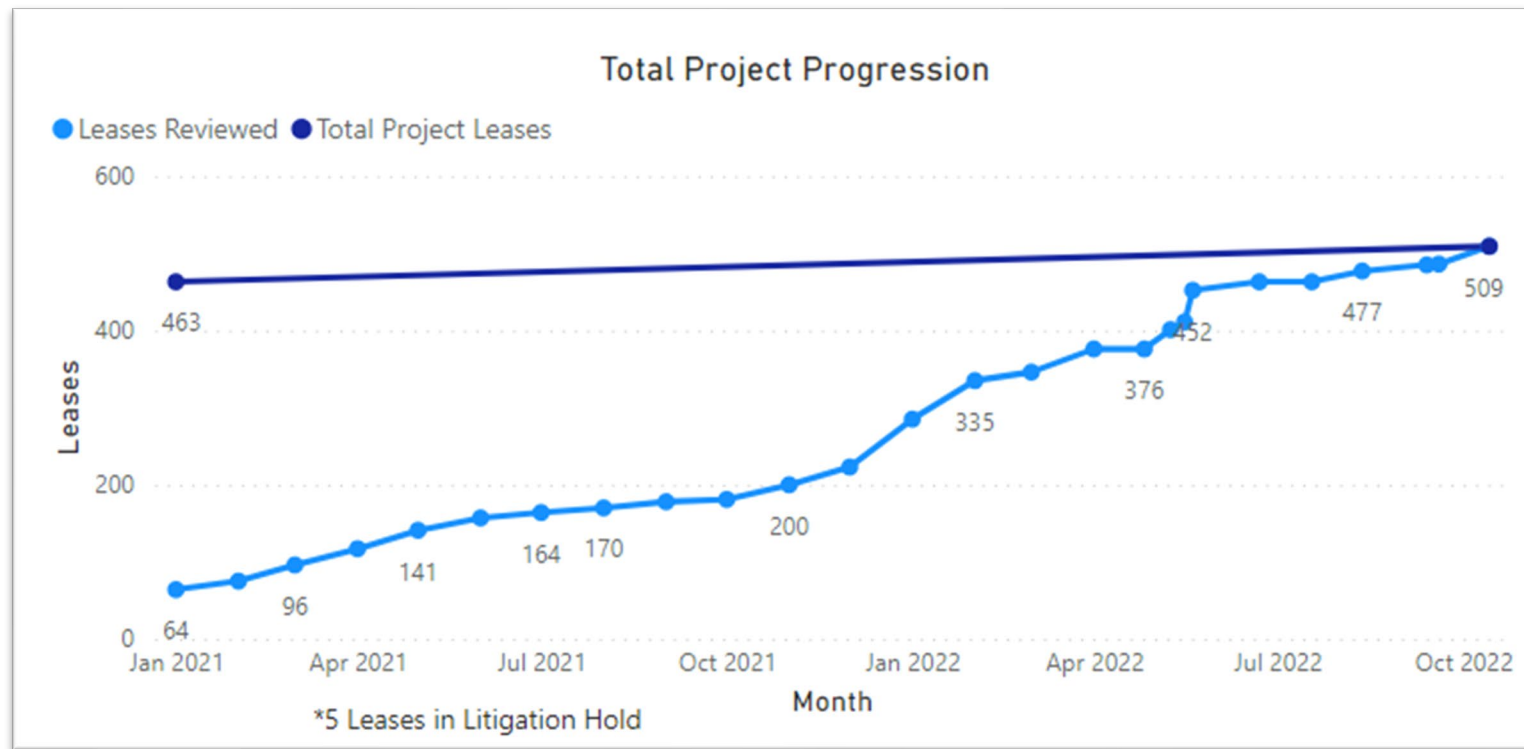
TRENTON LAKE PROJECT PROGRESSION



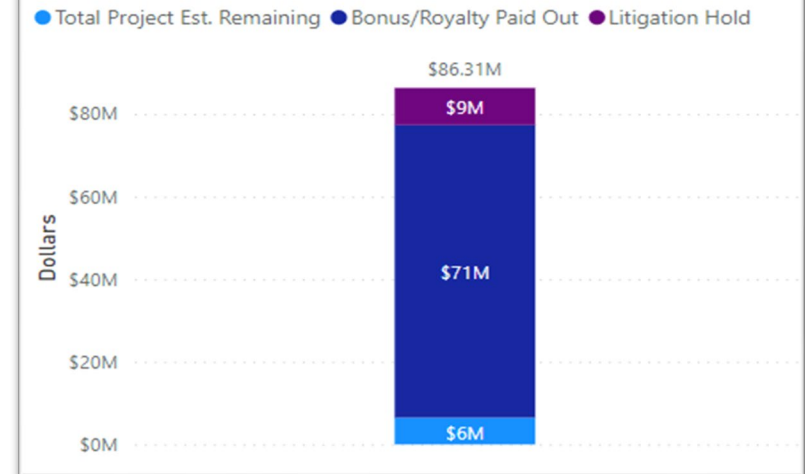
ACREAGE ADJUSTMENT SURVEY REPORT

PROJECT TOTAL

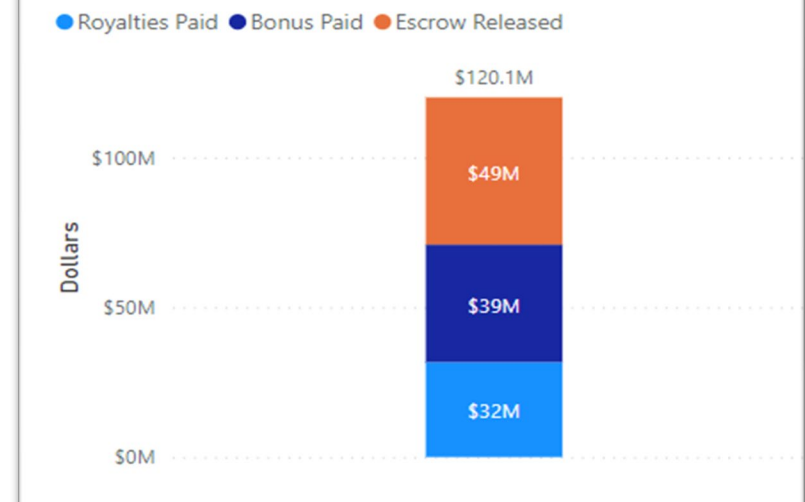
TOTAL PROJECT PROGRESSION



PROGRESS TO ESTIMATED \$87M BUDGET PROJECT VALUE



TOTAL REFUNDED/RELEASED TO OPERATOR



**RE: North Dakota Trust Lands Completion Act Executive Summary & Update
(No Action Requested)**

- Proposed federal law that would allow the U.S. Interior Department ("Interior") to approve land "exchanges" proposed by the ND Land Board/Department of Trust Lands ("DTL")
- Mutually beneficial purposes of such exchanges are to provide DTL with more productive and easily accessible land, while helping North Dakota tribes achieve further consolidation of lands within their reservations
- Land exchanged must be of substantially equivalent value
- Example: DTL could propose the exchange of state-owned surface acres within a reservation for federally owned mineral rights in the development path of mineral producers
- Interior must consult with the affected tribe before approval
- If approved:
 - The reservation land would be transferred to Interior to be held in trust for the tribe and be considered part of the reservation, allowing further consolidation of tribal lands and management/development of the land as the tribe sees fit
 - The mineral rights would be transferred to DTL who can then work to develop the mineral deposits, using the revenue to benefit North Dakota public schools and students
- November 2021 - Bill introduced in the U.S. Senate by Senators Hoeven & Cramer and in the U.S. House by Representative Armstrong; no action was taken due to Congressional gridlock
- Currently, working with delegation for re-introduction and action in the next Congress
- Western North Dakota counties and grazing associations have publicly expressed their support for the bill now that a compromise has been reached to alleviate their concerns about increased federal government ownership of western grazing lands; those lands were taken out of the bill
- Spirit Lake Tribe has publicly expressed support for the bill

North Dakota Grazing Association

Cedar River Grazing Association fkotomac@sdsplains.com

McKenzie County Grazing Association mcga@restel.net

Grand River Grazing Association grgrazassoc@yahoo.com

Medora Grazing Association mga@midstate.net

Horse Creek Grazing Association fivebees@midrivers.co

Sheyenne Valley Grazing Association svga@rrt.net

Little Missouri Grazing Association lmga2012@hotmail.com

Senator John Hoeven
338 Russell Senate Office Building
Washington DC 20510

Senator Kevin Cramer
330 Hart Senate Office Building
Washington DC 20510

Congressman Kelly Armstrong
1740 Longworth House Office Building
Washington DC 20515

Dear Senators and Congressman:

The three Grazing Associations in the Little Missouri Grassland want to express our thanks for working with the western grazing communities and counties of North Dakota to reach agreement on the North Dakota Trust Lands Completion Act, H.R. 5855 and S. 3200. The grazing community supports the introduction and passage of new legislation that would not impact state lands located within the Bankhead-Jones Farm Tenant Act lands in western North Dakota and the National Grasslands.

The Grazing Associations have thanked Trust Land Commissioner, Joe Heringer for meeting to hear our concerns and then to withdraw the National Grasslands from SB3200.

We would appreciate reviewing an amended text prior to introduction and look forward to working with you to consolidate trust land assets elsewhere in the state for the benefit of education funding in North Dakota.

Sincerely,


McKenzie County Grazing Association


Medora Grazing Association


Little Missouri Grazing Association



BILLINGS COUNTY

P.O. Box 168

Medora, ND 58645-0168

Billings County Commission

Michael Kasian District 2



Phone (701) 623-4377

Lester Iverson District 1

Fax (701) 623-4761

Dean Rodne District 3

September 6, 2022

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SEP 12 2022

Senator John Hoeven
338 Russell Senate Office Building
Washington, DC 20510

Senator Kevin Cramer
330 Hart Senate Office Building
Washington, DC 20510

Congressman Kelly Armstrong
1740 Longworth House Office Building
Washington, DC 20515

Dear Senator Hoeven, Senator Cramer and Congressman Armstrong,

The Commissioners of Billings County have been very interested in the North Dakota Trust Lands Completion Act, H.R.5855 and Senate Bill 3200. The North Dakota Land Commission and its current head, Mr. Heringer, have been most helpful in our involvement, along with McKenzie County and others.

We are very pleased that there is now an agreement to remove the National Grasslands from the proposed law.

You, as our Congressional Delegation (and your staffs) have been most accommodating in listening to our concerns. We are appreciative of the fact that Mr. Armstrong reached out to our States Attorney, early on in the process, and gave us assurances that it was not the intent of the proposed legislation to impact our grazing agreements or to impact any existing arrangements.

Your staffs have committed to providing the "Western Counties" with advance notification of any federal legislation that might impact our concerns, as has Mr. Heringer's Land Department and for that we are also grateful.

Sincerely,

Lester Iverson, Chairman

Dean Rodne, Commissioner

Michael Kasian, Commissioner



February 10, 2021

Dear Senate Energy and Natural Resources Committee, Senators and Congressman:

Please accept this letter in support of the Senate Concurrent Resolution No. 4013 which urges Congress to pass the North Dakota Trust Lands Completion Act.

In passing the North Dakota Trust Lands Completion Act will enable tribes within North Dakota such as Spirit Lake Tribe in their continued efforts to diminish a checkerboard land base restoring lands and more control over those acres of lands on Spirit Lake. All lands within the reservation boundaries have cultural and spiritual ties to our Spirit Lake people. These lands were used significantly in ceremonial use and purposes and grow an abundance of foods and medicines that are harvested for cultural use. Furthermore, the passage of the North Dakota Trust Lands Completion Act will allow for Spirit Lake the opportunities to explore future use as the primary beneficiaries of these recovered lands.

This proposed legislation will also provide a much needed boost in financial aid to support North Dakota Public Schools. Currently, there are 5 public schools on or adjacent to the Spirit Lake Reservation supporting education for our tribal members.

The Spirit Lake Tribe fully supports and urges Congress to support and pass the North Dakota Trust Lands Completion Act.

Respectfully,

A handwritten signature in black ink, appearing to read "Douglas Yankton", followed by a horizontal line.

Douglas Yankton
Tribal Chairman
Spirit Lake Tribe

**North Dakota Department of Trust Lands
Senate Concurrent Resolution 4013
Senate Energy and Natural Resources Committee
February 11, 2021**

Presented by: Scott Davis, Executive Director, ND Indian Affairs Commission

Chairman Kreun and members of the Senate Energy and Natural Resources Committee, My name is Scott J. Davis, I am a member of the Standing Rock Sioux Tribe and a descendent of the Turtle Mountain Band of Chippewa and I am proud to serve the great state of North Dakota as the Executive Director of the North Dakota Indian Affairs Commission. As Executive Director, I serve on the Governor's Cabinet. I am here to testify on Senate Bill 4013.

As Executive Director of the ND Indian Affairs and my partnership with The University and School Lands Board are seeking legislative support urging Congress to pass the North Dakota Trust Lands Completion Act (the Act). This bill in the Senate of the United States would authorize the relinquishment and in lieu selection of land and minerals in the State of North Dakota, to restore land and minerals to Indian Tribes within the State of North Dakota, to conserve the Little Missouri National Grasslands, and for other purposes.

In 1889, Congress passed the Enabling Act "to provide for the division of Dakota [Territory] into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Act of February 22, 1889, Ch. 180, 25 Statutes at Large 676.

Section 10 of this Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases where portions of sections 16 and 36 had been sold prior to statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled more than 2.5 million acres.

Under sections 12, 14, 16 and 17 of the Enabling Act (and other acts referred to therein), Congress provided further land grants to the state of North Dakota for the support of colleges, universities, the state capitol, and other public institutions. These additional grants totaled approximately 668,000 acres; thus the total of Enabling Act land grants was nearly 3.2 million acres.

Prior to the enactment of the North Dakota Enabling Act, the United States, through treaties and Executive orders, including the Treaty between the United States of America and the Sisseton and Wahpeton Bands of Dakota or Sioux Indians, made and concluded at Fort Laramie April 29, 1868, and the Executive order of April 12,

1870, established several reservations of land for multiple Indian Tribes located in the State of North Dakota. Title to various mineral interests underlying the reservations were granted to the State of North Dakota at statehood, yet the minerals remain undeveloped due to the location of the minerals within the reservations. Established in 1960, the Little Missouri National Grasslands occupy more than 1,028,000 acres of land in western North Dakota and encompasses approximately 108,840 surface acres and 149,073 mineral acres of State Land grant parcels fragmented within its boundaries.

The Act would authorize the State of North Dakota to relinquish land grant parcels located within the reservations and the Little Missouri National Grasslands and to select other Federal land or minerals in lieu of not receiving full access to and use of the original land the State of North Dakota attained at statehood and would accomplish the following:

- Provide the Indian Tribes greater Tribal sovereignty and control of land and minerals within the reservations; and
- Lands or minerals relinquished within a reservation would be held in trust by the Secretary of the Interior on behalf of the Tribe within each reservation; and
- Provide greater conservation and preservation of the Little Missouri National Grasslands.

Congress, through the enactment of this bill, would authorize the State of North Dakota to:

- Relinquish the land and minerals located within the reservations and the Little Missouri National Grasslands; and
- Select in lieu of the relinquished land other Federal land or minerals in the State of North Dakota of equal value.

The Land conveyed under this Act would be subject to all applicable Federal, State, and Tribal law. In closing, Jodi's office and my office has held numerous phone calls and face to face meetings with Tribal leaders and their land department staff. We will continue to communicate, consult and listen to Tribal leaders as we proceed with this process.

This concludes my testimony; I'd stand for any questions.

Thank you.

RE: Litigation Update
(No Action Requested)

- Newfield (royalty deductions) – ND Supreme Court reversed and remanded in our favor; district court status conference October 28th
- MHA (Missouri riverbed ownership) – Appealed D.C. Federal District Court denial of our motion to intervene; D.C. Circuit Court of Appeals briefing to be completed near year-end
- EEE (OHWM title dispute / takings claim) – ND Federal District Court issued order May 31st granting Board's motion to dismiss on all counts: federal preemption, sovereign immunity, takings; Plaintiffs appealed to 8th Circuit; briefing complete, awaiting scheduling of oral arguments
- Leland/Whiting (OHWM river island ownership) – Watford City trial September 12-16, 2022; awaiting completion of transcripts so briefing can begin
- Continental Interpleader (OHWM fed/state dispute) – briefing complete for "Acquired Federal Lands" issue; awaiting ND Federal District Court decision
- Wilkinson (OHWM title dispute / takings claim) – awaiting ND Supreme Court opinion; oral arguments held May 18, 2022
- Whitetail Wave (OHWM title dispute / takings claim) – ND Supreme Court issued opinion on September 29th dismissing the appeal and sending back to trial court for further quiet title actions on the at issue parcels

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 consultations regarding:

- **Royalty Offers**
- **Newfield Royalties Case**

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

Statement:

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

The Board is meeting in executive session to review confidential records and discuss negotiating strategy regarding the identified claim. Any formal action by the Board will occur after it reconvenes in open session.

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

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

Statements upon return to open session:

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

State that the Board is back in open session.

State that during its executive session, the Board consulted with attorneys regarding the identified issues.

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

-or- .

Ask for a formal motion and a vote on it.

Move to the next agenda item.