

# **BOARD OF UNIVERSITY AND SCHOOL LANDS**

Microsoft Teams meeting

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Phone Conference ID: 793 445 823#

**January 27, 2022 at 9:00 AM**

## **AGENDA**

➤ = **Board Action Requested**

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

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

- A. December 21, 2021 – pg. 2

2. **Reports – Jodi Smith**

A. December Report of Encumbrances – pg. 18

B. December Acreage Adjustment Report – pg. 22

C. December Unclaimed Property Report – pg. 27

D. October Financial Position – pg. 28

E. Investments Update – pg. 36

F. Carbon Capture Pilot Project – pg. 38

G. In Lieu Selection Bill Update – pg. 39

3. **Investments – Michael Shackelford**

- A. Real Estate Investment Trusts – pg. 66

B. Investment Policy Statement – pg. 69

4. **Litigation – Jodi Smith**

- A. Newfield Exploration Company et al Civ. No. 27-2018-CV-00143 – no memo

- **Executive session under the authority of NDCC §§ 44-04-19.1 and 44-04-19.2 for attorney consultation with the Board's attorneys to discuss:**

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

**Next Meeting Date – February 24, 2022**

**Minutes of the Meeting of the  
Board of University and School Lands  
December 21, 2021**

The December 21, 2021 meeting of the Board of University and School Lands was called to order at 9:01 AM in the Governor's Conference Room of the State Capitol and 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
Kate Schirado	Administrative Assistant
Christopher Dingwall	Minerals Title Specialist
Dennis Chua	Investments
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
James Wald	Legal Council
Scott Giere	Revenue Compliance
Catelin Newell	Administrative Staff Officer
Rob Dixon	ITD
Chris Suelzle	Minerals Division Director
Matthew Reile	ITD Data Management Intern
Kayla Spangelo	Surface Range Soils Management Specialist

**Guests in Attendance:**

Dave Garner	Office of the Attorney General
Jennifer Verleger	Office of the Attorney General
Charles Carvell	Office of the Attorney General
Mike Nowatski	Office of the Governor
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Geoff Simon	Western Dakota Energy Association
Amy Sisk	Bismarck Tribune
Janet Guarberg	Apollo Global
Akila Grewal	Apollo Global
John Zito	Apollo Global
Ellie Shaw	Apollo Global
Drew Guyette	Angelo Gordon
Trevor Clark	Angelo Gordon
William P. Cullinan	Angelo Gordon
Austin Head-Jones	RVK
Josh Kevan	RVK

Joe Ebisa  
 Brady Pelton  
 Craig Smith  
 Gary Hagen  
 Eric Ocwieja

Journalist  
 NDPC  
 Crowley Fleck

## APPROVAL OF MINUTES

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

## REPORTS

<b>Right of Way R-8974</b>			
<b>Granted To</b>	Paragon Geophysical Services Inc, Wichita, Kansas		
<b>For the Purpose Of</b>	Original Permit - Geophysical Operation		
<b>Initial Payment</b>	\$12,800.00	<b>Permanent Rods</b>	0.00
<b>Date Issued</b>	11/10/2021	<b>Permanent Acres</b>	0.00
<b>Surface Tracts/Trusts</b>			
<b>Legal Description</b>			<b>Trust</b>
Mercer-141-88-36-SW4			A
Oliver-141-86-36-NW4			A
Oliver-142-85-30-E2NW4, LOTS 1,2			A
Oliver-142-86-36-NE4, SE4			A
Oliver-142-87-16-SE4, SW4			A
Oliver-143-86-26-NW4			D
<b>Right of Way Terms</b>			
<b>Financial Type</b>			<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00	
Initial	Set Amount	\$12,800.00	

**Total Initial Payment Amount** \$12,800.00

## November 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 November 2021, the Division received 179 holder reports with a property value of \$1,989,555 and paid 309 claims with a total value of \$901,650.

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

## Investment Updates

### Portfolio Rebalancing Updates

Since the November Board meeting, several capital calls were executed or are scheduled to be executed within 30 days:

- Angelo Gordon DL IV \$17.5M
- Ares Pathfinder \$10M
- GCM Private Equity, \$5.1M
- GCM Secondary, \$29M on 12/15
- JPM Infrastructure, \$130M on 1/3/22
- Harrison Street Core Property, \$60.6M on 1/5/22

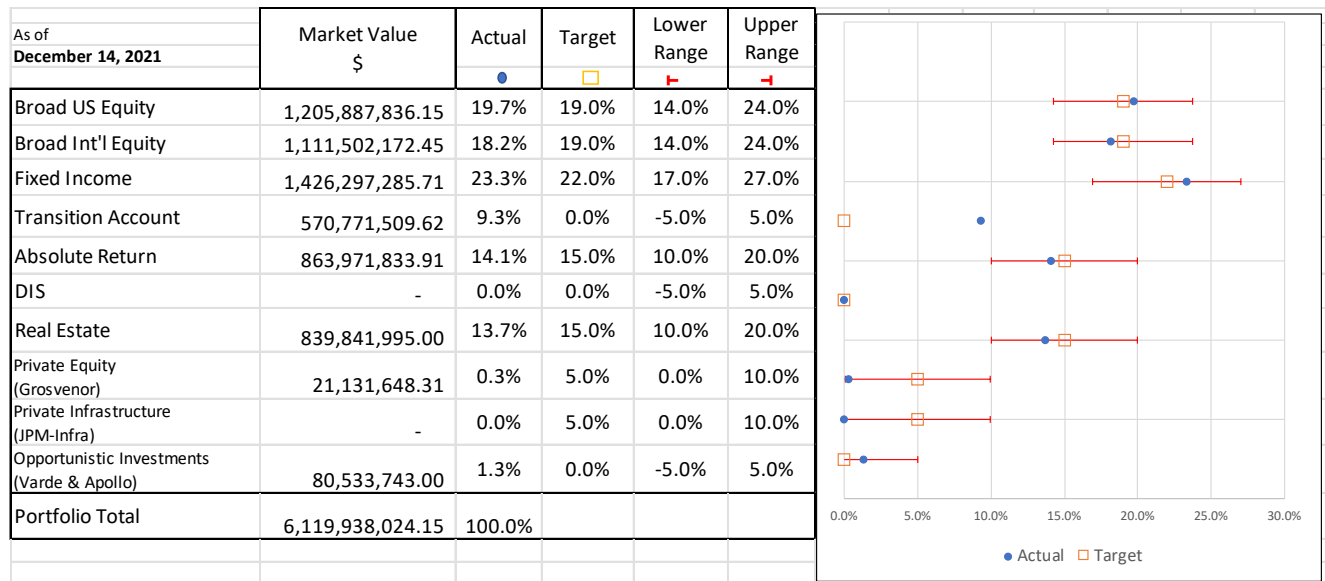
When all capital calls are made, unfunded commitments will stand at \$573.7M. These are:

1. Apollo Accord Fund, \$84.8M
2. Varde Dislocation Fund, \$42.5M
3. GCM Private Equity, \$110M
4. ARES Pathfinder Fund, \$64.5M
5. Angelo Gordon DL IV, \$25M
6. Owl Rock Diversified Lending, \$56.5M
7. GCM Secondary Opportunities Fund, \$121M
8. Harrison Street Core Property Fund LP, \$69.4M

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Dec.14, 2021. The figures provided are unaudited.

By January 5, 2022, the Transition Account will be reduced to \$351M once all capital calls listed above are funded.



## ENERGY INFRASTRUCTURE AND IMPACT

### Quarterly Program Report

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 4 grants with a balance of \$297,596.76 as of December 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
6/7/2021	9	\$972,069.49
9/7/2021	6	\$794,932.56
12/7/2021	4	\$297,596.76

## INVESTMENTS

### March Investment Reports – 3rd 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 September 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.

Next, Josh will touch on 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 Report was presented to the Board for review and is available at the Department upon request.**

### **Apollo Defined Return Fund**

Over the last several months the Department of Trust Land's Staff (Staff) has reviewed options for generating greater returns in the fixed income asset class and to reduce the transition account balance. The first issue is well known given the ultra-low interest rate environment that prevails globally. The issue is compounded by the fact that most higher yielding private credit funds are closed-end, limited term funds that begin making distributions within a few months or a year after initial investment. This return of capital creates reinvestment risk, the risk of having to reinvest distributions at lower returns until a sufficient amount is accumulated to make a meaningful investment in a new or follow-on private credit fund.

The second issue of expediting the investment of capital in the transition account is related to the lack of capital calls within the opportunistic investment asset class and the slow pacing of calls in private equity and private infrastructure asset classes. In the last few months, we have sought to partially address these issues by adding a second private infrastructure manager and adding a private equity secondaries fund. Nevertheless, there will continue to be a slow pacing of private equity primary investments.

To address these issues Staff has engaged one of its best in class fixed income managers to customize a solution for the Permanent Trust Funds (PTFs). Apollo has agreed to create a new fund with an initial seed investment of \$200 million, under highly favorable fee terms to the PTFs as the founding investor. Further, it's proposed that as distributions are made to the PTFs from its prior investment, those amounts will flow into the new fund, thus allowing for continuously investment with little cash drag and reinvestment risk.

Apollo is one of the best performing private credit managers and a top manager within RVK's database, and highly regarded by RVK's fixed income research team. Through June 30<sup>th</sup> this year Apollo Accord Fund IV has generated 11.24% net return in 2021 and 18.29% since inception 10/1/2020. The new fund has a target annual return of 8-12%. The PTFs made a \$100 million commitment to Fund IV, of which less than \$20 million has been called.

**Motion: The Board approve a \$200 Million investment in the Apollo Defined Return Fund and allow for all distributions from the investment in Apollo Accord Fund IV to be reinvested into the Apollo Defined Return Fund; subject to final review and approval of all legal documents by the Office of the Attorney General.**

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

**RVK Recommendation Memo and Apollo Defined Return Fund Presentation were presented to the Board for review and are available at the Department upon request.**

### **Angelo Gordon Direct Lending Separately Managed Account**

Over the last several months the Department of Trust Land's Staff (Staff) has reviewed options for generating greater returns in the fixed income asset class and to reduce the transition account balance. The first issue is well known given the ultra-low interest rate environment that prevails globally. The issue is compounded by the fact that most higher yielding private credit funds are closed-end, limited term funds that begin making distributions within a few months or a year after initial investment. This return of capital creates reinvestment risk, the risk of having to reinvest distributions at lower returns until a sufficient amount is accumulated to make a meaningful investment in a new or follow-on private credit fund.

The second issue of expediting the investment of capital in the transition account is related to the lack of capital calls within the opportunistic investment asset class and the slow pacing of calls in private equity and private infrastructure asset classes. In the last few months, we have sought to partially address these issues by adding a second private infrastructure manager and adding a private equity secondaries fund. Nevertheless, there will continue to be a slow pacing of private equity primary investments.

To address these issues Staff has engaged one of its best in class fixed income managers to customize a solution for the Permanent Trust Funds (PTFs). Angelo Gordon has agreed to create a separately managed account (SMA) with an initial investment of \$50 million, under the same fee terms as our current investment in their funds. Further, as distributions are made to the PTFs out of the existing funds, those amounts will flow into the SMA, thus allowing for continuously investment with little cash drag and reinvestment risk. Eventually, all of the PTFs' direct lending investment with Angelo Gordon will reside in the SMA and will receive the appropriate fee breaks.

Angelo Gordon is one of the best performing direct lending investment managers and a top manager within RVK's database, and highly regarded by RVK's fixed income research team. Through June 30<sup>th</sup> this year AG Direct Lending Fund III has averaged 9.89% net return per year since inception 9/1/2018. The Fund IV should deliver similar results, although it is currently too new to have meaningful results. The PTFs made a \$150 million commitment to Fund III and a \$100 million commitment to Fund IV.

**Motion: The Board approve an initial \$50 Million investment with Angelo Gordon's direct lending platform in a separately managed account, and allow for all distributions from previous investments with Angelo Gordon's direct lending funds to be reinvested into the separately managed account; subject to final review and approval of all legal documents by the Office of the Attorney General.**

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

**RVK Recommendation Memo and AG Direct Lending SMA Presentation were presented to the Board for review and are available at the Department upon request.**

## O P E R A T I O N S

### Cash Management

On November 29, 2021, the Board of University and School Lands (Board) informally requested a review of the Department of Trust Land's (Department) cash management by Department Staff (Staff). Staff reviewed the four primary account categories within the Department: Common Schools' Trust Fund (CSTF) account, other Permanent Trust Funds' (PTFs) accounts, Unclaimed Property (UP) account, and the appropriated accounts (Strategic Investment and Improvement Fund, Capitol Building Fund and Coal Development Trust Fund accounts).

The CSTF is required to make regular monthly payments to the Department of Public Instruction (DPI) during the school year. The CSTF account generally holds an amount that represents between 2 and 3 months of cash owed to DPI at the Bank of North Dakota (BND). BND has agreed with the Department to pay a rate of interest equivalent to the rate paid by Northern Trust's (NT) money market fund. The 2 and 3 months of cash holdings reflects the Staff's long held view of the prudent amount to retain in case of significant economic stress. This view was vindicated in 2020 when the CSTF revenues dropped precipitously, and the cash amount at BND was drawn down to just over one month's amount.

The other PTFs are treated differently than CSTF, because unlike CSTF, the other PTFs only make one annual payment to the beneficiaries in January of each year. As such, the accounts are limited to a target of 1/12 portion of the annual payment each month. As the year progresses the cash amount in the accounts increase by a targeted maximum of 1/12 per month. So that by January of the following year there would be enough to make its annual payment. This limits the amount of cash accumulated in the other PTFs' accounts at any point in time.

[The holdings in the PTF transition account related to the significant changes in the strategic asset allocation was not considered here due to its transient nature, and its investment in short-term bonds.]

The UP account has a Department policy range of \$1.5 million to \$2.5 million. This reflects the experience of the UP Division's cash needs on a monthly basis. The Staff reviews its policies the January after each legislative session, including the UP cash policy range. During the review of policy, the actual monthly distribution experience of UP Division is used to confirm the appropriate policy range.

The appropriated accounts all hold cash in amounts reflective of the outstanding appropriations made by the State Legislature. Excess cash above the appropriated amounts are invested in short-term bonds at NT in the Ultra-Short account. In addition, the Department may invest additional cash in the Ultra-Short account, to the extent that it is informed by the Office of Management and Budget that a particular appropriation may not be called for some time. Unfortunately, there is typically little visibility with regard to cash calls under these appropriations, which means the most prudent course is to hold the cash at BND, earning money market returns.

## L I T I G A T I O N

### Whitetail Wave Litigation

**Case:** Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota – 27-2015-CV-00164

**Date Filed:** June 4, 2015

**Court:** McKenzie County District Court

(12/21/21)



**Judge:** Robin Schmidt  
**Attorney:** David Garner/Jennifer Verleger  
**Opposing Counsel:** Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

**Issues:** On August 1, 2015, the Attorney General's Office was served with a complaint in the above referenced case. This case is challenging the State's determination of the OHWM east of the Highway 85 Bridge, near the northern border of the Fort Berthold Indian Reservation. The Board has currently leased minerals pursuant to the Phase II Investigation for this tract. The Plaintiff is requesting that title to the minerals be quieted and has alleged claims of Unconstitutional takings, trespass, slander of title, and constructive trust/unjust enrichment against the State. The complaint also makes a number of claims specific to XTO Energy Inc., the operator of the wells on the tracts in dispute. Specifically, the Plaintiff is requesting that the State's claim to sovereign lands' mineral interest be restricted to those minerals located below the OHWM of the Missouri River prior to inundation of the Lake Sakakawea.

An answer was filed on behalf of the Board on July 21, 2015. In January 2016, the State Engineer intervened in the case.

**History:** Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018. On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020. On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO. On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021. On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents. On November 5, 2020, Plaintiff filed a Notice of Hearing on the Board of University and School Lands and State Engineer's Brief in Support of Motion to Dismiss for 9:00 a.m. on December 3, 2020, at the McKenzie County Courthouse, Watford City, ND. Also filed was Whitetail Wave LLC's Response to State's Motion to Dismiss. On November 12, 2020, the Board of University and School Lands and State Engineer's Reply Brief in Support of Motion to Dismiss was filed. Also on November 12, 2020, the Response to the State Defendants' Motion to Dismiss was filed by XTO. On January 4, 2021, Whitetail Wave filed its Surreply to State's Motion to Dismiss. On January 19, 2021 the Board of University and School Lands and State Engineer filed their Response to Whitetail Wave's Surreply Regarding State's Motion to Dismiss. On April 13, 2021, the Court entered its Order on State's Motion to Dismiss, denying the State's Motion.

**Current Status:**

- **On May 13, 2021, a status conference was scheduled for May 20, 2021. That conference was held and the 6 person jury trial was rescheduled from August 2021 to December 13-17, 2021, in Watford City.**

- On June 11, 2021, the Notice of Rescheduled trial was received setting deadlines for pretrial conference statement and dispositive motions. Also set the pretrial conference for December 3, 2021.
- On October 12, 2021, the Department of Water Resources filed a Notice of Agency Name Change.
- On October 14, 2021, Defendants filed their Motion for Summary Judgment.
- On November 3, 2021, a status conference hearing was scheduled for November 4, 2021 at 1 p.m.
- On November 15, 2021, Board and Department of Water Resources filed their Response Brief Opposing Plaintiff's Motion for Partial Summary Judgment; XTO filed responses to the Board's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment; and Plaintiff filed a Response to Defendants' Motions for Summary Judgment.
- On November 29, 2021, the following documents were filed: Board of University and School Lands and Dept. of Water Resources' Reply Brief in Support of Motion for Summary Judgment, XTO Energy, Inc.'s Reply Brief in Support of Motion for Summary Judgment; and the service documents.
- On November 30, 2021, the following documents were filed: Brief in Support of Partial Motion for Summary Judgment - Whitetail Wave LLC's Reply; Declaration of Joshua Swanson; and a Request to Appear Telephonically.
- Hearing held December 3, 2021.
- On December 17, 2021, the Order on Cross Motions for Summary Judgment was entered granting the State summary judgment quieting title in the acreage in Section 27 of Township 154 North, Range 96 West, and dismissing with prejudice the remaining claims against the State.

## Wilkinson Litigation

**Case:** William S. Wilkinson, et. al. v. Board of University & School Lands, Brigham Oil & Gas, LLP; EOG Resources, Inc.; Case No. 53-2012-CV-00038

**Date Filed:** January, 2012

**Court:** Williams County District Court

**Judge:** Paul Jacobson

**Attorney:** Jennifer Verleger/Matthew Sagsveen/David Garner

**Opposing Counsel:** Josh Swanson/Rob Stock, Lawrence Bender, John Ward

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

On July 1, 2014, the Plaintiffs filed an amended complaint in the case and added claims of unconstitutional takings, conversion, constructive trust and unjust enrichment, civil conspiracy and deprivation of rights under 42 U.S.C. § 1983. Plaintiffs assert in their amended complaint that the Board should be issuing leases on the west side of the Highway 85 bridge pursuant to the Phase II Investigation – the estimated location of the ordinary high watermark (OHWM) prior to inundation

of Lake Sakakawea – rather than the Phase I Delineation – current location of the OHWM. Plaintiffs argue that the subject property is located under Lake Sakakawea, which did not exist at statehood, and thus the state did not acquire title to it as sovereign lands. Therefore, the State’s title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea as determined by the Phase II investigation.

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

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

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

**History:**

Due to the passage of S.B. 2134, the District Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the North Dakota Industrial Commission (NDIC). Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. The telephonic status conference scheduled for November 2, 2018 was cancelled. A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 2018. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State’s Motion for Proposed Scheduling Order and Plaintiffs’ Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State’s Motion for Proposed Scheduling Order and Plaintiff’s Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn’t rule on the scheduling motions but granted Plaintiffs’ request to file a motion for Summary Judgment within 30 days of the

hearing. On April 15, 2019, Plaintiffs' filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court's calendar), and proposed Order Granting Plaintiffs' Motion for Summary Judgment. On April 17, 2019, Plaintiffs' filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants' time to respond to June 14, 2019, and extending Plaintiffs' deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs' Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs' Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer's Response to Brief in Opposition to Plaintiffs' Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs' Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff's filed their Reply Brief in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

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

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020. The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020. On September 18, 2020 a Notice of Hearing was filed in the District Court setting a status conference for October 13, 2020, at 3:30 p.m. The Court issued an Order After Status Conference dated October 13, 2020, stating that a two day bench trial will be scheduled. A telephonic scheduling conference was scheduled for October 29, 2020, at 10:00 a.m. On October 23, 2020, the Supreme Court Judgment/Opinion was filed with the District Court. On October 30, 2020, the Court issued its Order

After Scheduling Conference. The matter was set for Court Trial on April 16, 2021, for one day and July 23, 2021, also for one day. Defense council expressed concerns with a conflict with other scheduled trials. Therefore, a status conference was set for February 4, 2021 to determine if any conflicts have been obviated. The Court indicated it would consult with the scheduling clerk to determine second priority dates for one day trials in 2021. The Court set backup Court Trial dates of May 27, 2021 and May 28, 2021. Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota were served on the Board on January 26, 2021. The Board has 30 days to respond. On February 25, 2021, the Board served its Answers to Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota, and the State Engineer served its answers to interrogatories. State Engineer's Interrogatories, Request for Admissions, and Request for Production of Documents Regarding Damages (Request II) was served March 12, 2021. On March 19, 2021, Defendant Statoil Oil and Gas, LP's Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. On March 22, 2021, Defendant Statoil Oil and Gas, LP's First Supplemental Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. Plaintiff's Responses to State Engineer's Interrogatories, Requests for Admissions, and Requests for Production of Documents regarding Damages (Request II) was served April 14, 2021. On April 20, 2021, Plaintiffs filed their Motion for Attorneys' Fees and Costs against the State of North Dakota. Plaintiffs scheduled a hearing on this motion for July 22, 2021. Plaintiffs scheduled a status conference for April 27, 2021. At that hearing, it was decided that the trial for May 2021 would be scheduled for July 22 & 23, 2021, in Williston. On May 18, 2021, the Board of University and School Lands and the State Engineer filed their Response Brief Opposing Plaintiffs' Motion for Attorneys Fees and Costs. On June 8, 2021, Plaintiffs filed their Reply to State's Response Brief Opposing Plaintiffs' Motion for Attorneys' Fees and costs. On June 22, 2021, Plaintiffs filed their Pretrial Statement and Defendants, Board and State Engineer, filed their Pre-Trial Brief. Bringham Oil & Statoil brought a Motion to Dismiss on July 7, 2021. On July 8, 2021, the parties exchanged their witness and exhibit lists. Motions in Limine were filed on July 8, 2021 by Bringham Oil and Statoil and the Board and State Engineer.

**Current  
Status:**

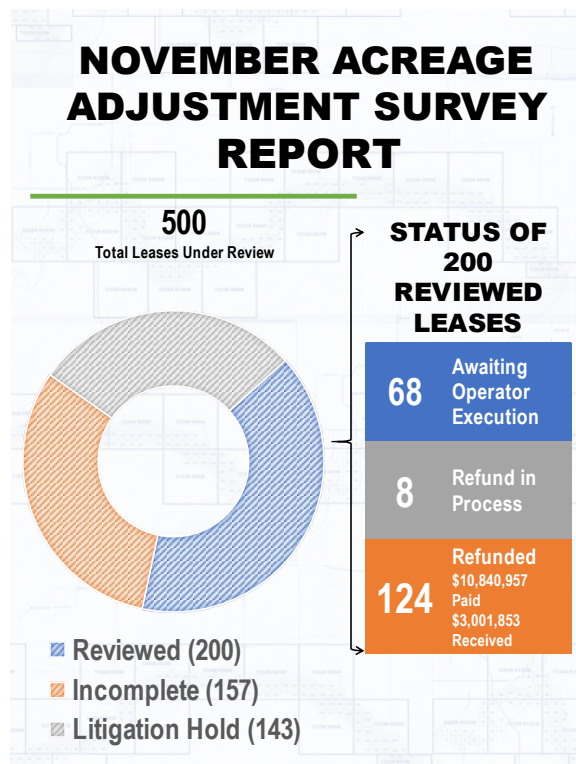
- **The parties shared various drafts of witness and exhibit lists prior to trial.**
- **On July 12, 2021, the State filed its Motion in Limine to Exclude Evidence Regarding Statutory Interest of 6.5% or 18% on Royalties and Motion in Limine to Exclude Evidence Regarding S&P Vanguard 500 Index Fund Investor Shares (VFINX) Damages.**
- **On July 14, 2021, Statoil and Brigham filed Brigham Oil & Gas, L.P. s and Statoil Oil & Gas, L.P. s nka Equinor Energy, O.P. s (Collectively Statoil ) Unopposed Request for Leave to Allow Witness Amy Becker to Appear by Reliable Electronic Means and the request was granted the same day.**
- **On July 15, 2021, Plaintiffs Plaintiffs' Request for Witness to Participate by Telephone or Electronic Means and the requested was granted the same day.**
- **On July 19, 2021, Plaintiffs filed Supplemental Affidavit of Joshua A. Swanson in Support of Plaintiffs' Motion for Attorneys' Fees and Costs against the State of North Dakota.**

- On July 21, 2021, Plaintiffs filed Plaintiff s Brief in Response to Defendant Brigham Oil & Gas LP s (Collectively Statoil ) Motion to Dismiss, Plaintiffs Response Brief in Opposition to Brigham Oil & Gas, L.P. s nka Equinor Energy, LP s (Collectively Statoil ) Motion in Limine, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding S&P 500 Vanguard 500 Index Fund Investor Shares (VFINX) Damages, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding Statutory Interest.
- The trial was held on July 22 and 23, 2021.
- On July 22, 2021, the parties filed a joint exhibit list.
- On July 28, 2021, Brigham Oil & Gas, L.P.'s and Statoil Oil & Gas L.P.'s nka Equinor Energy, L.P.'s (Collectively "Equinor") Reply Brief in Support of Motion to Dismiss was filed, as was the Stipulation/Agreement to Dismiss Plaintiffs' Claims Against Defendant EOG Resources, Inc.
- On July 30, 2021, the Order Dismissing Plaintiffs' Claims Against Defendant EOG Resources, Inc. was filed.
- On August 11, 2021 the parties stipulated and the court entered its Order Dismissing Crossclaims Between Defendant EOG Resources, Inc., and Defendant Statoil Oil & Gas LP.
- On October 4, 2021, an Order Granting Extension of Time for Brigham and Statoil to File Reply Filings was filed.
- On October 5, 2021 Plaintiffs filed their Post-Trial Reply Brief and the Board and the State Engineer filed their Post Trial Response Brief.
- On December 10, 2021, the Court entered the Order for Judgment, which ordered:
  - Statoil's motion to dismiss (Index #594) is denied.
  - Statoil's motion in limine (Index #600) is denied as moot.
  - The State's motions in limine (Index #607 and #615) are denied as moot.
  - Petrogulf's crossclaims against EOG (Index #84) are dismissed with prejudice for failure to prosecute.
  - EOG's counterclaim against Plaintiffs and crossclaims against the Land Board, OXY USA, Inc., and Petrogulf (Index #65) are dismissed with prejudice for failure to prosecute.
  - Statoil's counterclaims against the Plaintiffs are dismissed because it is a prevailing party.
  - Based on the Supreme Court's ruling in *Wilkinson II* and the application of N.D.C.C. ch. 61-33.1 to the Disputed Property "the State of North Dakota does not own title to the mineral interests in the [Disputed] Property."
  - The takings claims in Counts II and III against the State are dismissed with prejudice.
  - The conversion claims in Count IV against Statoil and the State are dismissed with prejudice.

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

**MINERALS**

**Acreage Adjustment Report**



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

### **Repayment of Unpaid Gas Royalties Update**

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

The Department of Trust Lands (Department) has persistently worked with operators to collect payment or establish escrow accounts for royalties from the production of minerals, in accordance with the Board's lease, rules, and policies. Royalty audits began in the late 1980's and a Revenue Compliance Division was created in 2011 to ensure that royalty and other collections made on behalf of the trusts and other funds are complete and accurate.

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

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

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

#### **EXECUTIVE SESSION**

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

- **Acreage Adjustment Survey**
- **Royalty Offers**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Whitetail Wave LLC Case No. 27-2015-CV-00164**

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



The Board entered into executive session at 10:30 AM.

**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
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
James Wald	Legal Counsel (via Teams)

**Guests in Attendance:**

Charles Carvell	Office of the Attorney General
Dave Garner	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor

The executive session adjourned at 11:50 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 11:52 AM.

\_\_\_\_\_  
Doug Burgum, Chairman  
Board of University and School Lands

\_\_\_\_\_  
Jodi Smith, Secretary  
Board of University and School Lands

**Right of Way R-10008**

**Granted To** East Valley Industrial Park LLC, Denver, Colorado  
**For the Purpose Of** Easement Amendment - Railroad Right of Way  
**Initial Payment** **Permanent Rods** 0.00  
**Date Issued** 12/14/2021 **Permanent Acres** 0.00

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
Williams-154-100-16-NE4, NW4	A

**Right of Way Terms**

<b>Financial Type</b>	<b>Payment Amt</b>
Application Fee	Set Amount \$250.00

**Right of Way R-8565**

**Granted To** Bridger Pipeline LLC, Casper, Wyoming  
**For the Purpose Of** Original Easement - Oil Transmission Pipeline  
**Initial Payment** \$306,969.00 **Permanent Rods** 472.26  
**Date Issued** 12/14/2021 **Permanent Acres** 5.90

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
McKenzie-149-98-16-NW4	A
McKenzie-150-97-36-SE4, SW4	A

**Right of Way Terms**

<b>Financial Type</b>	<b>Payment Amt</b>
Application Fee	Set Amount \$200.00
Initial	Set Amount \$306,969.00

**Right of Way R-8613**

<b>Granted To</b>	Bridger Pipeline LLC, Casper, Wyoming		
<b>For the Purpose Of</b>	Original Easement - Oil Transmission Pipeline		
<b>Initial Payment</b>	\$253,493.50	<b>Permanent Rods</b>	389.99
<b>Date Issued</b>	12/14/2021	<b>Permanent Acres</b>	4.87

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
Golden Valley-144-105-16-NE4, NW4	A

**Right of Way Terms**

<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$150.00
Initial	Set Amount	\$253,493.50

**Right of Way R-8628**

<b>Granted To</b>	Grayson Mill Williston LLC, Houston, Texas		
<b>For the Purpose Of</b>	Original On-Lease Surface Damage Agreement - Horizontal Oil Well Site		
<b>Initial Payment</b>	\$44,310.00	<b>Permanent Rods</b>	95.54
<b>Date Issued</b>	12/2/2021	<b>Permanent Acres</b>	14.57

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
McKenzie-151-100-16-SW4	A

**Right of Way Terms**

<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00
Initial	Set Amount	\$44,310.00
Annually	Set Amount	\$2,000.00

**Right of Way R-8870**

**Granted To** Whiting Oil And Gas Corporation, Denver, Colorado  
**For the Purpose Of** Easement Extension/Renewal - Tower Site  
**Initial Payment** **Permanent Rods** 0.00  
**Date Issued** 12/15/2021 **Permanent Acres** 0.00

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
Billings-140-100-16-NW4	A

**Right of Way Terms**

<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00
Annually	Set Amount	\$2,000.00

**Right of Way R-8918**

**Granted To** Oneok Rockies Midstream LLC, Sidney, Montana  
**For the Purpose Of** Original Easement - Gas Gathering Pipeline  
**Initial Payment** \$100,495.00 **Permanent Rods** 215.09  
**Date Issued** 12/29/2021 **Permanent Acres** 2.69

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
Dunn-146-93-16-NE4	A

**Right of Way Terms**

<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00
Initial	Set Amount	\$100,495.00

**Right of Way R-8961**

<b>Granted To</b>	Oneok Rockies Midstream LLC, Sidney, Montana		
<b>For the Purpose Of</b>	Original Easement - Gas Gathering Pipeline		
<b>Initial Payment</b>	\$21,672.50	<b>Permanent Rods</b>	44.12
<b>Date Issued</b>	12/29/2021	<b>Permanent Acres</b>	0.55

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
Dunn-146-93-16-NE4	A

**Right of Way Terms**

<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00
Initial	Set Amount	\$21,672.50

**Right of Way R-8975**

<b>Granted To</b>	Glacier Peak Midstream LLC, Houston, Texas		
<b>For the Purpose Of</b>	Original Easement - Multiple Pipelines		
<b>Initial Payment</b>	\$33,524.00	<b>Permanent Rods</b>	83.81
<b>Date Issued</b>	12/2/2021	<b>Permanent Acres</b>	1.05

**Tracts/Trusts**

<b>Legal Description</b>	<b>Trust</b>
McKenzie-151-100-16-SW4	A

**Right of Way Terms**

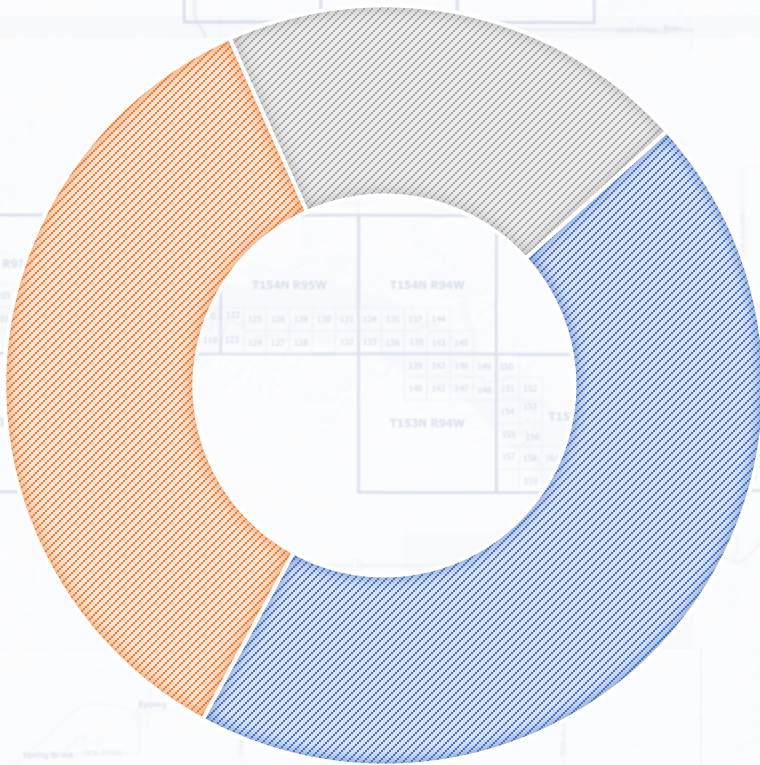
<b>Financial Type</b>		<b>Payment Amt</b>
Application Fee	Set Amount	\$250.00
Initial	Set Amount	\$33,524.00

**Total Initial Payment Amount** \$760,464.00

# NOVEMBER ACREAGE ADJUSTMENT SURVEY REPORT

**500**

Total Leases Under Review






## STATUS OF 223 REVIEWED LEASES

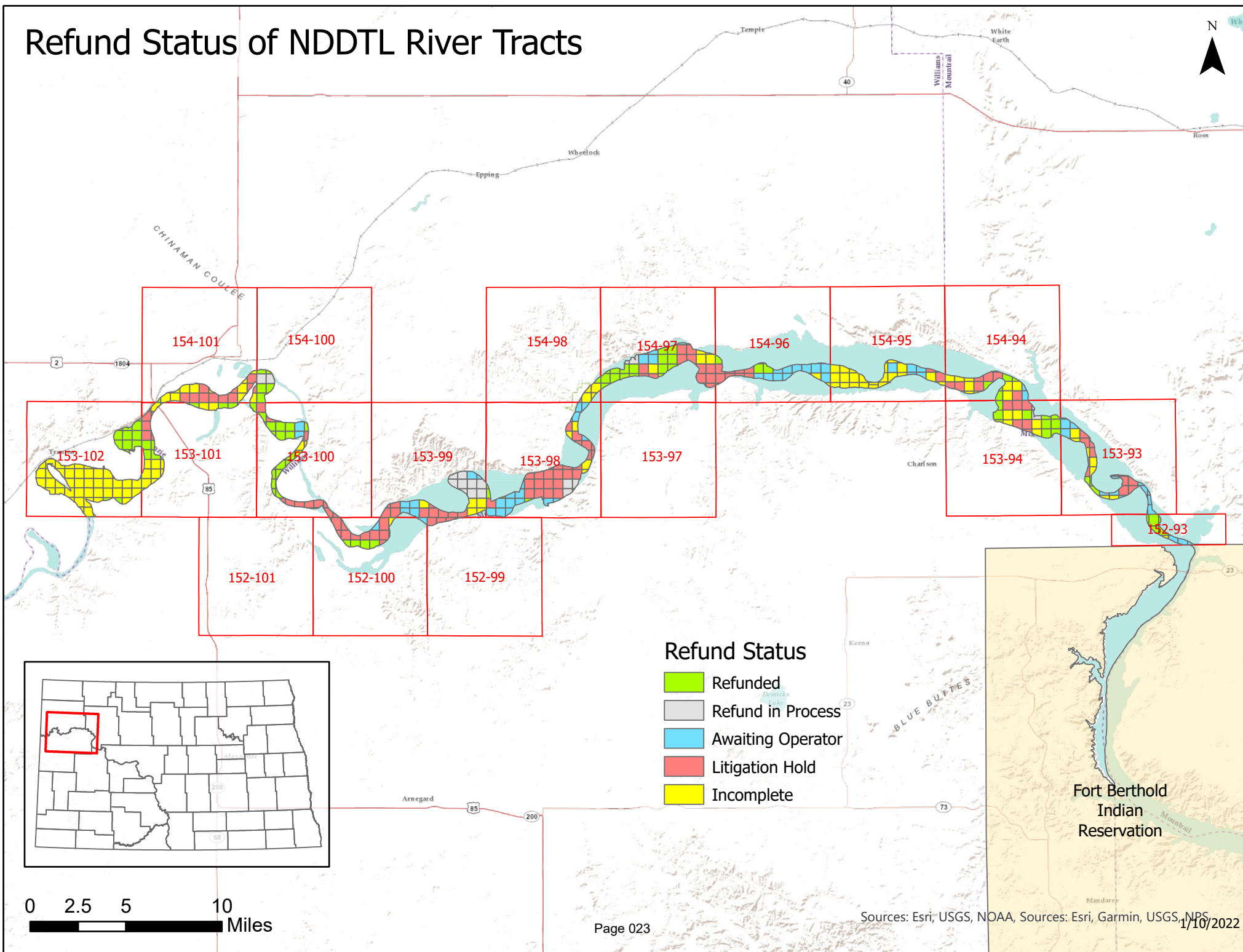
**70** Awaiting  
Operator  
Execution

**11** Refund in  
Process

**142** Refunded  
\$11,281,821  
Paid  
\$3,099,484  
Received

-  Reviewed (223)
-  Incomplete (177)
-  Litigation Hold (100)

# Refund Status of NDDTL River Tracts



**Outstanding Requests for Acreage Adjustment Stipulation and Lease Correction**

<b>LEASE #</b>	<b>LESSEE</b>	<b>DATE LEASE CORRECTION AND ADJUSTMENT STIPULATION SENT</b>	<b>CERTIFIED LETTER SENT TO LESSEE</b>
OG1003025	H KERMIT ANDERSON	11/20/2020	YES
OG1002992	PETROGULF CORPORATION	11/20/2020	YES
OG1002993	PETROGULF CORPORATION	11/20/2020	YES
OG1003093	RIVERBEND OIL & GAS	12/8/2020	YES
OG1003094	RIVERBEND OIL & GAS	12/8/2020	YES
OG1200547	RIVERBEND OIL & GAS	12/9/2020	YES
OG1003099	RIVERBEND OIL & GAS	12/9/2020	YES
OG1003005	RIVERBEND OIL AND GAS	4/6/2021	YES
OG1003051	HESS BAKKEN	4/9/2021	YES
OG1003052	HESS BAKKEN	4/9/2021	YES
OG1003053	HESS BAKKEN	4/9/2021	YES
OG1500774	NORTHERN OIL AND GAS	4/16/2021	YES
OG1500775	NORTHERN OIL AND GAS	4/16/2021	YES
OG1003012	HESS BAKKEN	4/16/2021	YES
OG1003013	HESS BAKKEN	4/16/2021	YES
OG1003014	HESS BAKKEN	4/16/2021	YES
OG0900935	XTO ENERGY INC.	5/11/2021	YES
OG0900936	XTO ENERGY INC.	5/11/2021	YES
OG0900937	XTO ENERGY INC.	5/11/2021	YES
OG0900219	XTO ENERGY INC.	5/17/2021	YES
OG0900221	XTO ENERGY INC.	5/17/2021	YES
OG0900232	XTO ENERGY INC.	8/16/2021	YES
OG0900234	XTO ENERGY INC.	8/16/2021	YES
OG0900235	XTO ENERGY INC.	8/16/2021	YES
OG0900230	XTO ENERGY INC.	8/18/2021	YES



**Outstanding Requests for Acreage Adjustment Stipulation and Lease Correction**

OG0900229	XTO ENERGY INC.	8/18/2021	YES
OG1200556	HESS BAKKEN	6/17/2021	YES
OG1200557	HESS BAKKEN	6/17/2021	YES
OG1200546	RIVERBEND OIL & GAS VI LLC	9/14/2021	YES
OG1000840	RIVERBEND OIL & GAS VI LLC	9/24/2021	YES
OG1003063	HESS BAKKEN INVESTMENTS II LLC	10/21/2021	
OG1003064	HESS BAKKEN INVESTMENTS II LLC	10/21/2021	
OG1101129	THE TED WYOMING TRUST	11/19/2021	
OG1003079	HESS BAKKEN INVESTMENTS II LLC	12/7/2021	
OG1003081	HESS BAKKEN INVESTMENTS II LLC	12/7/2021	
OG1003086	HESS BAKKEN INVESTMENTS II LLC	12/9/2021	
OG1003084	HESS BAKKEN INVESTMENTS II LLC	12/9/2021	
OG1100074	CONTINENTAL RESOURCES	12/9/2021	
OG1003067	HESS BAKKEN INVESTMENTS II LLC	12/10/2021	
OG1003068	HESS BAKKEN INVESTMENTS II LLC	12/10/2021	
OG1003058	HESS BAKKEN INVESTMENTS II LLC	12/17/2021	
OG1003059	HESS BAKKEN INVESTMENTS II LLC	12/17/2021	
OG1003060	HESS BAKKEN INVESTMENTS II LLC	12/17/2021	
OG1800048	BISON PLAINS ELM TREE LEASE LLC	12/17/2021	
OG1600516	RAISA II LLC	12/17/2021	
OG1600517	RAISA II LLC	12/17/2021	
OG0900938	WHITING OIL AND GAS CORPORATION	12/17/2021	
OG1101132	WHITING OIL AND GAS CORPORATION	12/17/2021	
OG1101133	WHITING OIL AND GAS CORPORATION	12/17/2021	
OG1101134	WHITING OIL AND GAS CORPORATION	12/17/2021	
OG1003054	HESS BAKKEN INVESTMENTS II LLC	12/22/2021	
OG1003056	HESS BAKKEN INVESTMENTS II LLC	12/22/2021	
OG1003057	HESS BAKKEN INVESTMENTS II LLC	12/22/2021	

**Outstanding Requests for Acreage Adjustment Stipulation and Lease Correction**

OG1600253	NORTHERN OIL AND GAS	9/29/2021
OG1600254	NORTHERN OIL AND GAS	9/29/2021
OG1600255	NORTHERN OIL AND GAS	9/29/2021
OG1600256	NORTHERN OIL AND GAS	9/29/2021
OG0900942	HESS BAKKEN INVESTMENTS II LLC	9/30/2021
OG1100797	MISSOURI RIVER ROYALTY CORPORATION	10/25/2021
OG1100797	NORTHERN OIL AND GAS	10/25/2021
OG1003464	BLACK BEAR RESOURCES III LLC	10/25/2021
OG1003464	OIL, GAS & OTHER MINERALS LLC	10/25/2021
OG1003464	RAPTOR RESOURCES LLC	10/25/2021
OG1003464	TRINITY WESTERN	10/25/2021
OG1003139	DEEP ROCK RESOURCES LLC	11/8/2021
OG1003139	RED RHINO RESOURCES LLC	11/8/2021
OG0900227	CRAIG & BARBARA EGELAND	11/15/2021
OG0900228	CRAIG & BARBARA EGELAND	11/15/2021
OG1100786	BIP DRILLCO LLC	1/12/2022
OG1100786	MISSOURI RIVER ROYALTY CORPORATION	1/12/2022
OG1100786	NORTHERN ENERGY CORPORATION	1/12/2022
OG1100786	NORTHERN OIL AND GAS	1/12/2022
OG1100786	SINCLAIR OIL & GAS COMPANY	1/12/2022
OG1100787	BIP DRILLCO LLC	1/12/2022
OG1100787	MISSOURI RIVER ROYALTY CORPORATION	1/12/2022
OG1100787	NORTHERN ENERGY CORPORATION	1/12/2022
OG1100787	NORTHERN OIL AND GAS	1/12/2022
OG1100787	SINCLAIR OIL & GAS COMPANY	1/12/2022

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

January 27, 2021

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**RE: December 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 December 2021, the Division received 84 holder reports with a property value of \$494,289 and paid 292 claims with a total value of \$827,934.

ITEM 2C

NORTH DAKOTA  
BOARD OF UNIVERSITY AND SCHOOL LANDS

Financial Position Report  
(Unaudited)

For period ended October 31, 2021



**ITEM 2D**

## Board of University and School Lands

### Comparative Financial Position (Unaudited)

#### Schedule of Net Assets

Assets by Trust:	October 31, 2021	October 31, 2020
Common Schools	\$5,881,557,104	\$4,735,848,156
North Dakota State University	88,809,409	72,770,515
School for the Blind	15,808,435	12,996,377
School for the Deaf	25,114,019	21,209,952
State Hospital	16,777,633	14,304,776
Ellendale *	28,717,986	23,364,412
Valley City State University	15,579,103	12,900,996
Mayville State University	10,713,658	8,396,422
Youth Correctional Center	31,457,354	24,906,514
State College of Science	22,656,531	18,800,963
School of Mines **	27,467,017	22,450,070
Veterans Home	6,206,128	5,274,294
University of North Dakota	42,535,280	35,226,025
Capitol Building	3,788,034	4,675,347
Strategic Investment and Improvements	617,415,898	444,527,052
Coal Development	71,407,659	71,042,728
Indian Cultural Education Trust	1,476,202	1,254,363
Theodore Roosevelt Presidential Library	57,151,981	15,320,107
Total	\$6,964,639,431	\$5,545,269,069
<b>Assets by Type:</b>		
Cash	\$356,546,433	\$121,666,307
Receivables	7,926,454	9,056,870
Investments ***	6,539,210,676	5,302,327,508
Office Building (Net of Depreciation)	292,886	351,435
Farm Loans	4,971,162	6,232,053
Energy Construction Loans	-	923,408
Energy Development Impact Loans	9,523,223	10,288,127
School Construction Loans (Coal)	29,495,505	38,908,935
Due to/from Other Trusts and Agencies	16,673,092	55,514,426
Total	\$6,964,639,431	\$5,545,269,069

**\* Ellendale Trust**

The following entities are equal beneficiaries of the Ellendale Trust:

Dickinson State University	School for the Blind
Minot State University	Veterans Home
Dakota College at Bottineau	State Hospital
	State College of Science - Wahpeton

**\*\* School of Mines**

Benefits of the original grant to the School of Mines are distributed to the University of North Dakota.

**\*\*\* Investments**

Includes available cash available for loans, investments, abandoned stock and claimant liability.

**ITEM 2D**

**Board of University and School Lands**

**Comparative Financial Position (Unaudited)**

**Combined Permanent Trusts**

	October 31, 2021	October 31, 2020
<b>Balance Sheet</b>		
<b>Assets:</b>		
Cash	\$114,964,939	\$69,975,624
Interest Receivable	6,967,080	8,464,117
Investments	6,086,088,332	4,964,690,991
Farm Loans	4,971,162	6,912,781
Energy Construction Loans	-	923,408
Due from Other Agencies	16,597,881	9,169,502
Office Building (Net of Depreciation)	292,886	351,435
<b>Total Assets</b>	<b>\$6,229,882,280</b>	<b>\$5,060,487,858</b>
<b>Liabilities:</b>		
Unclaimed Property Claimant Liability	\$16,461,434	\$16,645,538
Due to Other Funds	21,189	30,154
Accounts Payable	-	-
<b>Total Liabilities</b>	<b>16,482,623</b>	<b>16,675,692</b>
<b>Equity:</b>		
Fund Balance	6,057,564,355	4,892,120,248
Net Income/(Loss)	155,835,302	151,691,918
<b>Total Liabilities and Equity</b>	<b>\$6,229,882,280</b>	<b>\$5,060,487,858</b>
<b>Income Statement</b>		
<b>Income:</b>		
Investment Income	\$36,496,649	\$23,290,601
Realized Gain/(Loss)	155,833,227	18,566,915
Unrealized Gain/(Loss)	(56,552,107)	128,010,005
Royalties - Oil and Gas	45,756,365	9,315,506
Royalties - Coal	82,603	72,330
Royalties - Aggregate	29,222	20,837
Bonuses - Oil and Gas	576,790	915,553
Bonuses - Coal	-	-
Rents - Surface	4,992,962	562,897
Rents - Mineral	41,627	141,955
Rents - Coal	6,100	4,100
Rents - Office Building	-	-
Sale of Capital Asset	-	-
Oil Extraction Tax Income	32,151,170	13,111,825
Unclaimed Property Income	8,507,782	(103,271)
<b>Total Income</b>	<b>227,922,390</b>	<b>193,909,253</b>
<b>Expenses and Transfers:</b>		
Investment Expense	954,962	678,663
In-Lieu and 5% County Payments	-	-
Administrative Expense	935,917	752,409
Operating Expense - Building	26,209	36,264
Transfers to Beneficiaries	70,170,000	40,750,000
<b>Total Expense and Transfers</b>	<b>72,087,088</b>	<b>42,217,336</b>
<b>Net Income/(Loss)</b>	<b>\$155,835,302</b>	<b>\$151,691,917</b>

**ITEM 2D**

## Board of University and School Lands

### Comparative Financial Position (Unaudited)

#### Capitol Building Trust

	October 31, 2021	October 31, 2020
<b>Balance Sheet</b>		
<b>Assets:</b>		
Cash	\$787,149	\$347,030
Interest Receivable	20,132	25,064
Investments	2,980,753	4,177,770
Total Assets	\$3,788,034	\$4,549,864
<b>Liabilities:</b>		
Due to Other Trusts and Agencies	\$0	\$0
<b>Equity:</b>		
Fund Balance	3,462,488	5,535,786
Net Income	325,546	(985,922)
Total Liabilities and Equity	\$3,788,034	\$4,549,864
<b>Income Statement</b>		
<b>Income:</b>		
Investment Income	\$11,933	\$22,715
Realized Gain(Loss)	2,116	901
Unrealized Gain/(Loss)	(17,917)	(5,404)
Rents - Surface	37,965	5,973
Rents - Mineral	802	1,202
Royalties - Oil and Gas	288,953	95,499
Bonuses - Oil and Gas	-	2,160
Bonus - Coal	-	-
Royalties - Aggregate	-	-
Total Income	323,852	123,046
<b>Expenses and Transfers:</b>		
Investment Expense	(3,641)	836
In-Lieu and 5% County Payments	-	-
Administrative Expense	1,947	8,132
Transfers to Facility Management	-	1,100,000
Transfers to Legislative Council	-	-
Transfer to Supreme Court	-	-
Total Expense and Transfers	(1,694)	1,108,968
Net Income/(Loss)	\$325,546	(\$985,922)

**ITEM 2D**

**Board of University and School Lands**

**Comparative Financial Position (Unaudited)**

**Coal Development Trust**

	<u>October 31, 2021</u>	<u>October 31, 2020</u>
<b><u>Balance Sheet</u></b>		
<b>Assets:</b>		
Cash	\$1,014,612	\$106,517
Interest Receivable	208,040	349,814
Investments	31,091,068	17,629,934
Coal Impact Loans	9,523,223	11,087,642
School Construction Loans	29,495,505	41,422,549
Due from other Trusts and Agencies	250,703	246,655
Total Assets	<u>\$71,583,151</u>	<u>\$70,843,111</u>
<b>Liabilities:</b>		
Due to Other Trusts and Agencies	\$175,492	\$172,658
<b>Equity:</b>		
Fund Balance	71,117,671	70,296,353
Net Income	289,988	374,100
Total Liabilities and Equity	<u>\$71,583,151</u>	<u>\$70,843,111</u>
<b><u>Income Statement</u></b>		
<b>Income:</b>		
Investment Income	\$122,585	\$113,840
Interest on School Construction Loans	181,595	219,786
Realized Gain/(Loss)	21,924	38,566
Unrealized Gain/(Loss)	(185,634)	(30,654)
Coal Severance Tax Income	154,921	117,234
Total Income	295,391	458,772
<b>Expenses and Transfers:</b>		
Investment	5,011	1,991
Administrative	392	203
Transfers to General Fund	-	82,478
Total Expense and Transfers	5,403	84,672
Net Income/(Loss)	<u>\$289,988</u>	<u>\$374,100</u>

**ITEM 2D**



## Board of University and School Lands

### Comparative Financial Position (Unaudited)

<b>Strategic Investment and Improvements Fund</b>			October 31, 2021	October 31, 2020
<b>Balance Sheet</b>				
<b>Assets:</b>				
Cash		\$239,642,297	\$40,525,711	
Interest Receivable		791,223	1,247,674	
Investments		376,982,378	349,949,930	
Due from other Trusts or Agencies		-	14,332,397	
Total Assets		\$617,415,898	\$406,055,712	
<b>Liabilities:</b>				
Accounts Payable		\$0	\$0	
<b>Equity:</b>				
Fund Balance		860,465,447	767,541,457	
Net Income		(243,049,549)	(361,485,745)	
Total Liabilities and Equity		\$617,415,898	\$406,055,712	
<b>Income Statement</b>				
<b>Income:</b>				
Investment Income		\$1,321,815	\$1,518,736	
Realized Gain/(Loss)		236,592	59,603	
Unrealized Gain/(Loss)		(2,003,277)	(364,106)	
Interest on Fuel Prod Facility		8,111	2,819	
Interest - Miscellaneous		63,534	-	
Interest and Penalty		34,047	-	
Royalties - Oil and Gas		32,008,412	5,042,875	
Bonuses - Oil and Gas		(3,625,212)	313,056	
Royalties - Coal		67,977	23,928	
Rents - Mineral		13,137	48,372	
Tax Income - Oil Extraction & Production Distribution		-	14,332,397	
Total Income		28,125,136	20,977,680	
<b>Expenses and Transfers:</b>				
Administrative		406,523	97,498	
Investment Expense		9,625	(6,875)	
Transfers to General Fund		-	382,200,000	
Transfer to Agriculture Department (HB 1009)		5,000,000	-	
Transfer to Department of Commerce (SB 2018)		15,000,000	-	
Transfer to ND Insurance Commissioner (SB 2287)		200,000	-	
Transfer to Office of Management & Budget (HB 1015)		205,000,000	-	
Transfer to Office of Management & Budget (SB 2014)		9,500,000	172,802	
Transfer to Innovation Loan Fund (HB 1141)		15,000,000	-	
Transfer to ND University System (SB 2003)		19,000,000	-	
Transfer to Upper Great Plains Transportation (SB 2020)		2,073,000	-	
Transfer from General Fund		(14,463)	-	
Total Expense and Transfers		271,174,685	382,463,425	
Net Income/(Loss)		(\$243,049,549)	(\$361,485,745)	

### ITEM 2D

As of October 31, 2021 the SIIF had a fund balance of \$617,415,898. The fund balance is made up of two parts. The committed fund balance is that portion of the fund that has either been set aside until potential title disputes related to certain riverbed leases have been resolved or appropriated by the legislature. The uncommitted fund balance is the portion of the fund that is unencumbered, and is thus available to be spent or dedicate to other programs as the legislature deems appropriate. The uncommitted fund balance was \$134,173,928 as of October 31, 2021.

## Board of University and School Lands

### Comparative Fiduciary Statements (Unaudited)

#### Indian Cultural Trust

	October 31, 2021	October 31, 2020
<b>Fiduciary Net Position</b>		
<b>Assets:</b>		
Cash	\$4,561	\$3,334
Interest receivable	994	1,295
Investments	1,470,647	1,259,603
Total Assets	1,476,202	1,264,232
<b>Liabilities:</b>		
Accounts payable	-	-
Total Liabilities	-	-
<b>Net Position:</b>		
Net position restricted	1,476,202	1,264,232
Total Net Position	\$1,476,202	\$1,264,232
<b>Changes in Fiduciary Net Position</b>		
<b>Additions:</b>		
Contributions:		
Donations	\$0	\$0
Total Contributions	0	0
Investment Income:		
Net change in fair value of investments	24,125	37,223
Interest	8,782	5,865
Less investment expense	(223)	(166)
Net Investment Income	32,684	42,922
Miscellaneous Income	-	-
Total Additions	\$32,684	\$42,922
<b>Deductions:</b>		
Payments in accordance with Trust agreement	-	-
Administrative expenses	-	-
Total Deductions	-	-
Change in net position held in Trust for:		
Private-Purpose	32,684	42,922
Total Change in Net Position	32,684	42,922
Net Position - Beginning FY Balance	1,441,059	1,221,309
Net Position - End of Month	\$1,473,743	\$1,264,231

## Board of University and School Lands

### Comparative Fiduciary Statements (Unaudited)

#### Theodore Roosevelt Presidential Library

	October 31, 2021	October 31, 2020
<b>Fiduciary Net Position</b>		
<b>Assets:</b>		
Cash	\$132,875	\$133,562
Interest receivable	(61,016)	(3,509)
Investments	57,080,122	15,310,171
Total Assets	57,151,981	15,440,224
<b>Liabilities:</b>		
Accounts payable	-	315
Total Liabilities	-	315
<b>Net Position:</b>		
Net position restricted	57,151,981	15,439,909
Total Net Position	\$57,151,981	\$15,440,224
<b>Changes in Fiduciary Net Position</b>		
<b>Additions:</b>		
Contributions:		
Donations	\$17,500,000	\$0
Total Contributions	17,500,000	0
Investment Income:		
Net change in fair value of investments	(935,382)	451,981
Interest	341,470	71,199
Less investment expense	8,670	2,014
Net Investment Income	(602,582)	521,166
Miscellaneous Income	32	36
Total Additions	\$17,508,702	\$521,202
<b>Deductions:</b>		
Payments in accordance with Trust agreement	\$0	\$0
Administrative expenses	62,928	315
Total Deductions	62,928	315
Change in net position held in Trust for:		
Private-Purpose	17,571,630	521,517
Total Change in Net Position	17,571,630	521,517
Net Position - Beginning FY Balance	38,446,695	14,918,706
Net Position - End of Month	\$56,018,325	\$15,440,223

ITEM 2D

**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**  
January 27, 2022

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

**Portfolio Rebalancing Updates**

Since the last Board meeting, all agreements that were being reviewed have now been executed. We are currently waiting for the documents from the new evergreen funds of Apollo and Angelo Gordon that were approved during the last Board meeting.

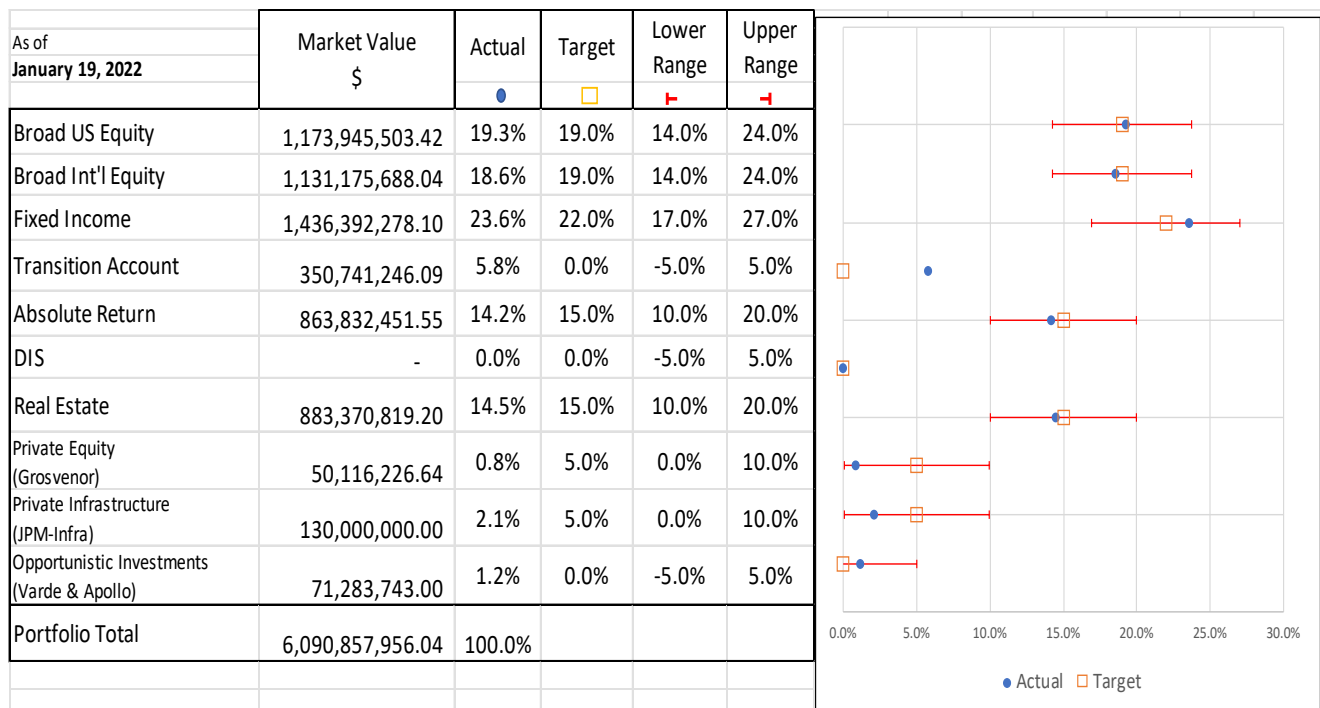
All capital calls reported during the last Board meeting has now been funded. This has brought the Transition Account down to \$350.7M or 5.8%.

Unfunded commitments are at \$735.65M. These are:

1. Apollo Accord Fund, \$96.75M
2. Varde Dislocation Fund, \$42.5M
3. GCM Private Equity, \$110M
4. ARES Pathfinder Fund, \$64.5M
5. Angelo Gordon DL IV, \$25M
6. Owl Rock Diversified Lending, \$56.5M
7. GCM Secondary Opportunities Fund, \$121M
8. Harrison Street Core Property Fund LP, \$69.4M
9. FSI GDIF (Infrastructure), \$150M

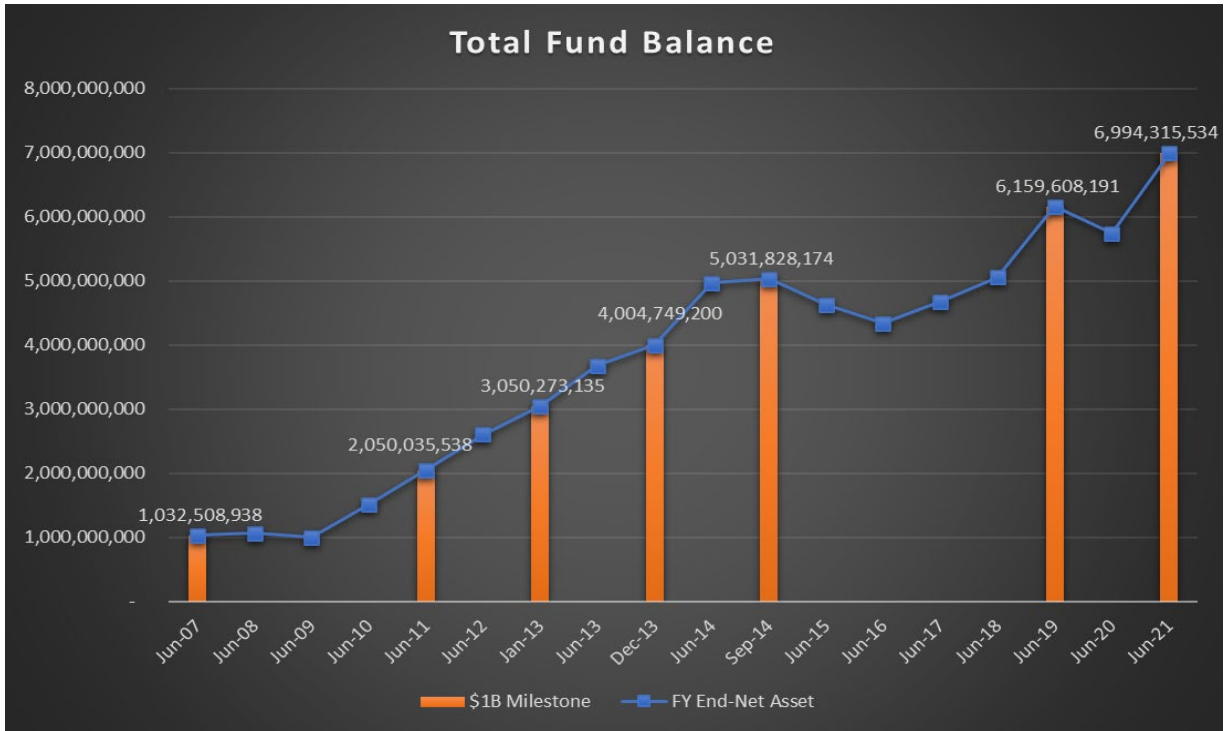
**Asset Allocation**

The table below shows the status of the permanent trusts' asset allocation as of January 19, 2022. The figures provided are unaudited.

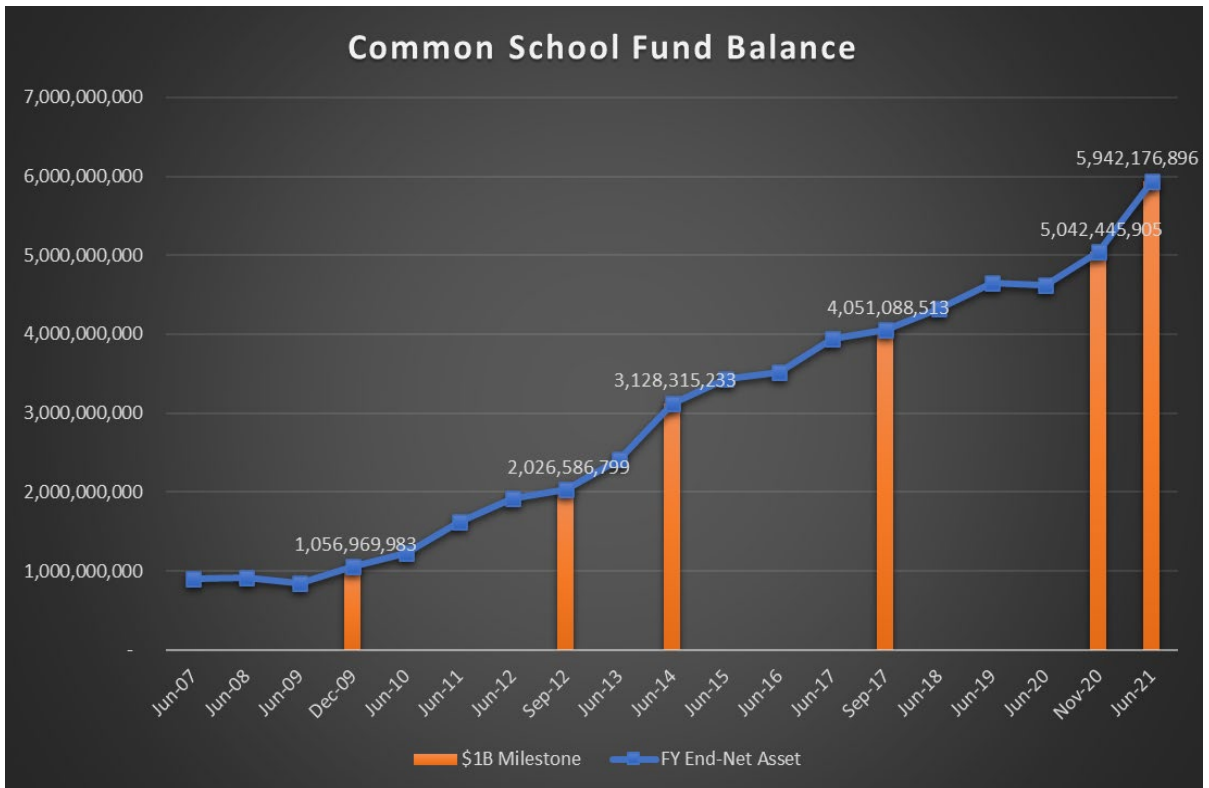


**Graphs of when the Funds First Hit \$1B and each \$1B increase thereafter:**

**A. Total Fund Balance represents all the Permanent Trusts and the SIIF Funds:**



**B. Common Schools Trust Fund Only:**



**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**  
**January 27, 2022**

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**RE: Carbon Capture Pilot Project - Research agreement to assess soil organic carbon (SOC) storage on Trust Lands for potential certification under new carbon credit standard**

North Dakota Department of Trust Lands' (Department) staff have been actively involved in working groups established by Rice University's Baker Institute of Public Policy in Houston, Texas, regarding the development of BCarbon, an innovative, scalable soil carbon certification standard designed to enhance economic resilience for agricultural and industrial stakeholders. The standard allows grassland owners to monetize the removal of carbon dioxide from the atmosphere by storing it in soil as organic carbon. This standard differs from existing certification standards by targeting grassland soils instead of cropland soils. Increasing soil carbon on grasslands has been shown to improve ecosystem drought resilience and reduce flood severity by increasing soil water holding capacity in vulnerable watersheds.

BCarbon, the eponymous nonprofit entity administering the standard, and an energy sector partner will be announcing a three-year agreement to study nature-based carbon sequestration potential in association with the Department, the New Mexico State Land Office (in Santa Fe, New Mexico), the National Indian Carbon Coalition (in St Paul, Minnesota), the Dixon Water Foundation (in Decatur, Texas), and several high-profile private ranches in Texas (e.g., King Ranch).

Department staff are drafting a proposed research agreement between Department and BCarbon. The energy sector partner is paying all administrative, research, and reporting costs associated with the project. Department staff will review project activities and findings and will coordinate with BCarbon contractors to ensure adequate communication with surface lessees. Soil samples will be taken and analyzed by BCarbon contractors each year of the three-year project term.

This project will assist Department in determining the potential rate of soil organic carbon (SOC) accrual on four distinct Department surface acre parcels and assess the feasibility of certifying soil carbon credits for sale under the BCarbon standard. These sites were selected as representative of different soil conditions and grassland management methods present on trust lands. The four research sites are:

- Williams County - T156 R95 SEC16
- McLean County - T146 R83 SEC36
- Burleigh County - T140 R79 SEC36
- Emmons County - T136 R77 SEC17

The certification and sale of soil carbon credits from trust lands is a potential revenue stream. This market-based mechanism may also assist the State in meeting carbon neutrality by 2030. However, this requires more information on soil organic carbon amounts in North Dakota soils and the cost to accurately verify those amounts. This research partnership will allow Department to pursue these efforts with little to no financial or administrative cost.

ITEM 2F

## MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

---

**RE: North Dakota Trust Lands Completion Act**  
(No Action Requested)

On November 26, 2019, the Board of University and School Lands (Board) approved the Commissioner to identify potential tracts for coal acreage exchange with the Federal Government.

The Department of Trust Lands (Department) worked to draft a federal bill that would allow the Board to relinquish land and minerals and select, in lieu thereof, equal value Federal land and minerals within North Dakota.

in 2021, the 67<sup>th</sup> Legislative Assembly unanimously passed Senate Concurrent Resolution 4013, a concurrent resolution urging Congress to pass the North Dakota Trust Lands Completion Act.

On November 4, 2021, the North Dakota Trust Lands Completion Act (S.3200) "[t]o 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" was introduced in the U.S Senate and U.S. House of Representatives and referred to the U.S. Senate Energy and Natural Resources Committee and the House Natural Resources Committee.

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 the Enabling 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 within the State of North Dakota. Title to various mineral interests underlying the reservations were granted to the State of North Dakota at statehood; it is estimated that the state currently owns 31,583 surface acres and 192,610 gross (129,566 net) mineral acres within the boundaries of the reservations.

Established in 1960, the Little Missouri National Grasslands occupy more than 1,033,271 acres of land in western North Dakota and encompass approximately 108,840 surface acres and 149,073 mineral acres of State Land grant parcels fragmented within its boundaries.

S.3200 will authorize the State of North Dakota to relinquish land grant parcels located within the reservations and the Little Missouri National Grasslands and to select, in lieu thereof, other Federal land or minerals of substantially equivalent value. Further, S.3200 will accomplish the following:

- Provide to the Indian Tribes greater control of land and minerals within the reservations;
- Land 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 for 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 lands and minerals in the State of North Dakota of substantially equivalent value.

The land conveyed under S.3200 would be subject to all applicable Federal, State, and Tribal law. The legislation requires consultation with North Dakota's Tribes and all transactions are subject to valid existing rights and are intended to only impact state trust lands and minerals and unappropriated federal land and minerals. It is not the intent for these transactions to impact any treaty lands or any possible unceded territory lands.

S.3200 will essentially allow for the Board to address land management issues as they relate to difficult-to-manage tracts, reduce the number of tracts that are difficult for the public to access, maximize the opportunity for trust land minerals to be mined, and potentially consolidate tracts to allow for more efficient management of the surface. The land within the boundaries of the reservations and the Little Missouri National Grasslands may have been granted to North Dakota through the Enabling Act, acquired from the Board's farm loan pool pursuant to N.D.C.C. § 15-03-04.1 through foreclosure or deed in lieu of foreclosure, or is property defined as "nongrant" and "other than original grant lands" in N.D.C.C. § 15-07-01.

After receiving feedback from interested parties, the Department has agreed to consider the proposal of amended language to S.3200 that would:

- Expressly exclude from selection by the state any federal lands acquired under the authority of the Bankhead–Jones Farm Tenant Act of 1937 (P.L. 75-210) July 22, 1937;
- Require consultation with applicable stakeholders; and
- Ensure preservation of state statutory section line rights through protection or any and all valid existing rights.

Recently, the Department partnered with Mineral Tracker and North American Coal to perform an analysis to identify mineral interests owned or managed by the Board that may be impacted by proximity to Federal minerals.

In order for Mineral Tracker to perform the analysis, three categories of Board-owned or managed minerals were identified. In total, it is the result of the Mineral Tracker study that **115,725 net mineral acres (NMA)** owned by the Board may be impacted by proximity to Federal acreage. The estimated value of the minerals identified, according to the last iteration of our Mineral Estate Valuation Report, is **\$263,390,732**.

Please find a brief description of the analysis below:



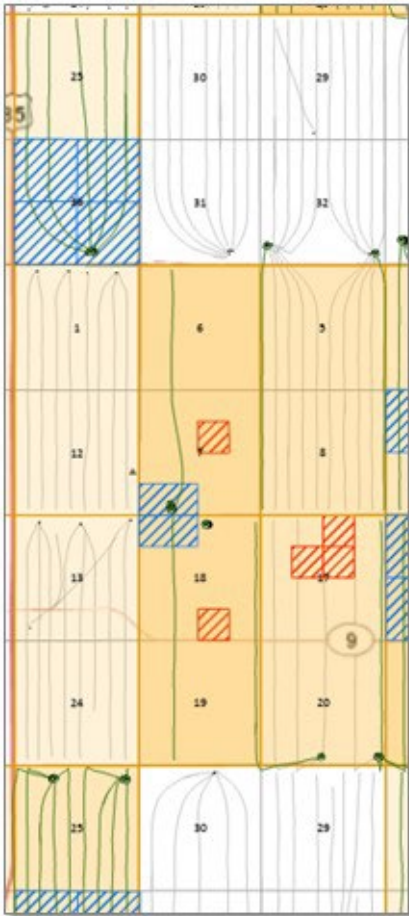
**1. Producing minerals pooled together with Federal minerals**

**Description:** any State-owned minerals pooled into a drill spacing unit that also includes Federal minerals. The minerals are under production, but Federal permitting requirements may impact the operators' ability to drill future wells.

**State NMA:** 85,079

**Value of future development:** \$252,621,818

**Example:** In the map below, State acreage is shown in blue and Federal acreage in red. In both section 18 & 19 and 6 & 7, we would expect several more wells to be drilled based on the known geology of the area. However, the location of the Federal minerals may hinder the operator from further drilling.



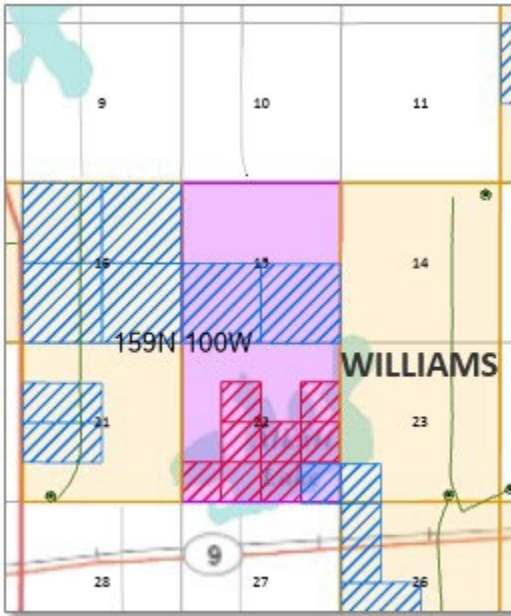
**2. Undeveloped minerals in known areas of Bakken/Three Forks development**

**Description:** any State-owned minerals that are undeveloped, but are likely to have Bakken/Three Forks potential based on known geology, but where development may be hindered by Federal minerals.

**State NMA:** 9,658

**Value of future development:** \$8,323,165

**Example:** In the map below, State acreage is shown in blue and Federal acreage in red. Sections 15 & 22 are surrounded on all sides by producing Bakken drill spacing units. Sections 15 & 22 are in a productive region of the Bakken, but the Federal acreage in section 22 may hinder development of the States acreage in both 15 and 22.



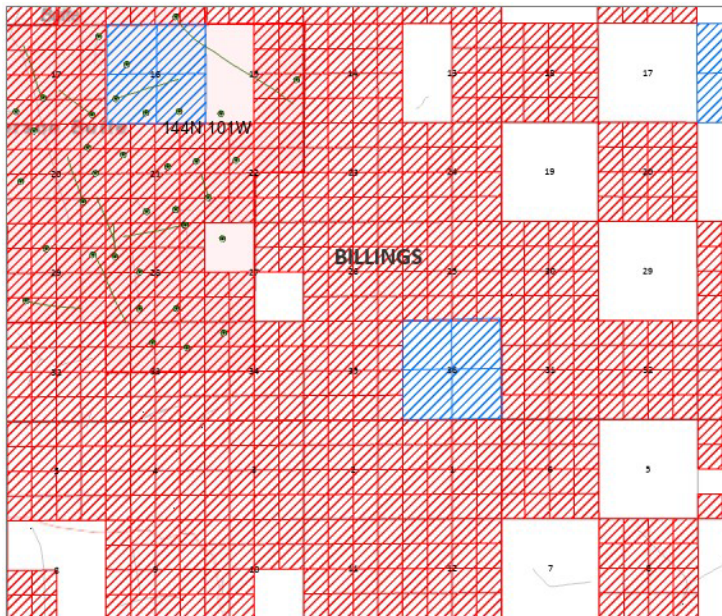
**3. Undeveloped minerals in oil and gas producing regions**

**Description:** any State owned minerals that are undeveloped but are located in areas of legacy oil and gas production outside of the Bakken/Three Forks. The likelihood of productivity is more speculative in this category than in the second category.

**State NMA:** 20,988

**Value of future development:** \$2,445,749

**Example:** In the map below, State acreage is shown in blue and Federal acreage in red. Section 36 is near a legacy oilfield that has current production, but is surrounded on all sides by Federal minerals.



Per information provided by North American Coal, based on previous receipts in the Coal Trust, it is estimated the range of royalty income to be between \$2M-\$7M per section, depending on the tonnage and percent ownership.

Attachment: S.3200

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 3200

To 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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. HOEVEN (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “North Dakota Trust  
5 Lands Completion Act”.

6 SEC. 2. FINDINGS.

7 Congress finds that—

1           (1) in 1889, Congress enacted the North Da-  
2           kota Enabling Act “to provide for the division of  
3           Dakota into two States and to enable the people of  
4           North Dakota, South Dakota, Montana, and Wash-  
5           ington to form constitutions and State governments  
6           and to be admitted into the Union on an equal foot-  
7           ing with the original States, and to make donations  
8           of public lands to such States”;

9           (2) section 10 of the North Dakota Enabling  
10          Act (25 Stat. 679, chapter 180)—

11                 (A) with certain exceptions, granted sec-  
12                 tions 16 and 36 in every township to the new  
13                 States of North Dakota, South Dakota, Mon-  
14                 tana, and Washington “for the support of com-  
15                 mon schools”; and

16                 (B) in cases where portions of sections 16  
17                 and 36 had been reserved, granted, or sold  
18                 prior to those States attaining statehood, au-  
19                 thorized indemnity or “in lieu” selections;

20           (3) the State of North Dakota was granted  
21           land and minerals totaling more than 2,500,000  
22           acres under the North Dakota Enabling Act;

23           (4) the North Dakota Enabling Act provided  
24           further land grants to the State of North Dakota for

1 the support of colleges, universities, the State cap-  
2 itol, and other public institutions;

3 (5) prior to the enactment of the North Dakota  
4 Enabling Act, the United States, through treaties  
5 and Executive orders, including the Treaty between  
6 the United States of America and the Mandan,  
7 Hidatsa, Arikara, and other Tribal Nations, made  
8 and concluded at Fort Laramie September 17, 1851  
9 (11 Stat. 749), the Treaty between the United  
10 States of America and the Sisseton and Wahpeton  
11 Bands of Dakota or Sioux Indians, made and con-  
12 cluded at Washington February 19, 1867 (15 Stat.  
13 505), the Treaty between the United States of  
14 America and different Tribes of Sioux Indians, made  
15 and concluded at Fort Laramie April 29, 1868 (15  
16 Stat. 635), and the Executive order of April 12,  
17 1870, established several reservations of land for  
18 multiple Indian Tribes located in the State of North  
19 Dakota;

20 (6) established in 1960, the Little Missouri Na-  
21 tional Grasslands—

22 (A) occupies more than 1,028,000 acres of  
23 land in western North Dakota; and

1 (B) encompasses approximately 108,840  
2 surface acres and 149,073 mineral acres of  
3 State land grant parcels within its boundaries;

4 (7) authorizing the State to relinquish the State  
5 land grant parcels located within the reservations  
6 and the Grasslands and to select other Federal land  
7 or minerals in lieu of the relinquished State land  
8 grant parcels will—

9 (A) fulfill the promise of land and minerals  
10 to the State;

11 (B) provide to Indian Tribes greater Tribal  
12 sovereignty and control of land and minerals  
13 within the reservations; and

14 (C) provide for greater conservation and  
15 preservation of the Grasslands; and

16 (8) Congress should authorize the State—

17 (A) to relinquish the land and minerals lo-  
18 cated within the reservations and the Grass-  
19 lands; and

20 (B) to select in lieu of the relinquished  
21 land other Federal land or minerals in the  
22 State of North Dakota of equal value.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1           (1) FEDERAL LAND.—The term “Federal land”  
2 means public land and minerals located within the  
3 State of North Dakota, including public land that is  
4 mineral in character.

5           (2) GRASSLANDS.—The term “Grasslands”  
6 means the Little Missouri National Grasslands lo-  
7 cated within the State of North Dakota.

8           (3) NORTH DAKOTA ENABLING ACT.—The term  
9 “North Dakota Enabling Act” means the Act of  
10 February 22, 1889 (25 Stat. 676, chapter 180).

11           (4) PUBLIC LAND.—The term “public land”  
12 has the meaning given the term “public lands” in  
13 section 103 of the Federal Land Policy and Manage-  
14 ment Act of 1976 (43 U.S.C. 1702).

15           (5) RESERVATION.—The term “reservation”  
16 means any Indian reservation located wholly or par-  
17 tially within the State of North Dakota and recog-  
18 nized under United States treaty, Executive order,  
19 or Act of Congress.

20           (6) SECRETARY.—The term “Secretary” means  
21 the Secretary of the Interior.

22           (7) STATE.—The term “State” means the State  
23 of North Dakota, acting through the North Dakota  
24 Board of University and School Lands and its agent,  
25 the Department of Trust Lands.



1           (8) STATE LAND GRANT PARCEL.—The term  
2           “State land grant parcel” means—

3                   (A) a parcel of land granted to the State  
4                   of North Dakota by Congress—

5                           (i) on statehood; or

6                           (ii) through a grant pursuant to the  
7                   North Dakota Enabling Act;

8                   (B) a section of land numbered 16 or 36  
9                   granted to the State of North Dakota by Con-  
10                  gress for school purposes;

11                  (C) a parcel of land selected by the State  
12                  of North Dakota as indemnity for any section  
13                  of land numbered 16 or 36; and

14                  (D) a parcel of land other than a parcel of  
15                  land described in subparagraph (A), (B), or (C)  
16                  obtained by the State after statehood.

17           (9) UNAPPROPRIATED FEDERAL LAND.—

18                   (A) IN GENERAL.—The term “unappropri-  
19                   ated Federal land” means Federal land under  
20                   the management and control of the Bureau of  
21                   Land Management and located within the State  
22                   of North Dakota.

23                   (B) EXCLUSIONS.—The term “unappropri-  
24                   ated Federal land” does not include—

1 (i) surface interests acquired by the  
2 Bureau of Land Management;

3 (ii) any area of critical environmental  
4 concern established pursuant to section  
5 202(c)(3) of the Federal Land Policy and  
6 Management Act of 1976 (43 U.S.C.  
7 1712(c)(3)); or

8 (iii) land that is—

9 (I) withdrawn from public entry;

10 (II) located within a unit of the  
11 National Park System;

12 (III) located within any reserva-  
13 tion;

14 (IV) located within—

15 (aa) T. 147 N., R. 95 W.;

16 (bb) T. 148 N., R. 95 W.;

17 (cc) T. 148 N., R. 96 W.; or

18 (dd) T. 149 N., R. 95 W.;

19 (V) located within a United  
20 States military reservation; or

21 (VI) designated by Congress or  
22 the President for conservation pur-  
23 poses.

24 **SEC. 4. RELINQUISHMENT AND SELECTION; CONVEYANCE.**

25 **(a) RELINQUISHMENT AND SELECTION.—**

1           (1) IN GENERAL.—If the State elects to relin-  
2           quish all right, title, and interest of the State in and  
3           to a State land grant parcel located wholly or par-  
4           tially within the boundaries of any reservation or the  
5           Grasslands, the Secretary shall authorize the State  
6           to select in accordance with this Act 1 or more par-  
7           cels of unappropriated Federal land of substantially  
8           equivalent value within the State of North Dakota.

9           (2) APPROVAL.—Not later than 90 days after  
10          the date on which the State makes a selection under  
11          paragraph (1), the Secretary shall approve or reject,  
12          in whole or in part, the selection.

13         (b) CONVEYANCE.—

14           (1) CONVEYANCE BY SECRETARY.—

15           (A) IN GENERAL.—Not later than 60 days  
16           after the date on which Secretary approves a  
17           State selection of unappropriated Federal land  
18           under subsection (a)(2), the Secretary shall ini-  
19           tiate the actions necessary to convey to the  
20           State the unappropriated Federal land.

21           (B) REQUIREMENTS.—Conveyance of Fed-  
22           eral land by the Secretary under this Act—

23           (i) shall be by clear list, patent, or  
24           deed acceptable to the State; and

1 (ii) shall not be considered a sale, ex-  
2 change, or conveyance under section 203,  
3 205, 206, or 209 of the Federal Land Pol-  
4 icy and Management Act of 1976 (43  
5 U.S.C. 1713, 1715, 1716, 1719).

6 (2) RELINQUISHMENT AND CONVEYANCE BY  
7 STATE.—

8 (A) IN GENERAL.—As consideration for  
9 the conveyance of Federal land under para-  
10 graph (1), on the date on which the Federal  
11 land is conveyed to the State, the State—

12 (i) shall concurrently relinquish and  
13 convey to the Secretary all right, title, and  
14 interest of the State in and to the State  
15 land grant parcel identified for relinquis-  
16 hment under subsection (a)(1); or

17 (ii) in the case of a State land grant  
18 parcel identified for relinquishment under  
19 subsection (a)(1) that is located wholly or  
20 partially within the boundaries of the  
21 Grasslands, shall relinquish and convey to  
22 the Secretary of Agriculture all right, title,  
23 and interest of the State in and to the  
24 State land grant parcel.

1 (B) CLEAR TITLE.—The State shall convey  
2 to the Secretary clear title to all parcels relin-  
3 quished under subparagraph (A).

4 (C) LIMITATION.—Relinquishment and  
5 conveyance by the State of a State land grant  
6 parcel under this Act shall not be considered an  
7 exchange or acquisition for purposes of section  
8 205 or 206 of the Federal Land Policy and  
9 Management Act of 1976 (43 U.S.C. 1715,  
10 1716).

11 (c) SUCCESSION TO RIGHTS AND OBLIGATIONS.—  
12 Each party to which land is conveyed under this Act shall  
13 succeed to the rights and obligations of the conveying  
14 party with respect to any lease, right-of-way, permit, or  
15 other valid existing right to which the land is subject.

16 (d) MANAGEMENT AFTER RELINQUISHMENT.—

17 (1) GRASSLANDS.—All State land grant parcels  
18 relinquished by the State and conveyed to the Sec-  
19 retary of Agriculture under this Act and located  
20 within the Grasslands shall become part of, and be  
21 managed as part of, the Grasslands.

22 (2) RESERVATION.—If a State land grant par-  
23 cel relinquished by the State and conveyed to the  
24 Secretary under this Act is located wholly or par-  
25 tially within the boundaries of any reservation, on

1 request of the applicable Indian Tribe, the portion of  
2 the State land grant parcel located within the  
3 boundaries of the reservation shall be—

4 (A) taken into trust by the Secretary on  
5 behalf of, and for the benefit of, the Indian  
6 Tribe on the date of the conveyance; and

7 (B) considered to be a part of the reserva-  
8 tion of the Indian Tribe.

9 (3) CONSULTATION REQUIRED.—Prior to the  
10 conveyance of a State land grant parcel located  
11 wholly or partially within the boundaries of any res-  
12 ervation, the State and the Secretary shall consult  
13 with the Indian Tribe the land of which is subject  
14 to conveyance in accordance with Executive Order  
15 13175 (25 U.S.C. 5301 note; relating to consulta-  
16 tion and coordination with Indian tribal govern-  
17 ments).

18 (e) SPECIAL RULES FOR MINERAL LAND.—

19 (1) DEFINITION OF UNAPPROPRIATED FEDERAL  
20 LAND SUBJECT TO A LEASE OR PERMIT.—In this  
21 subsection, the term “unappropriated Federal land  
22 subject to a lease or permit” means unappropriated  
23 Federal land subject to a mineral lease or permit  
24 that is—

1 (A) issued under the Mineral Leasing Act  
2 (30 U.S.C. 181 et seq.); and

3 (B) in a producing or producible status  
4 during the 10-year period following the date of  
5 enactment of this Act.

6 (2) SELECTION OF MINERAL LAND.—The State  
7 may select, and the Secretary may convey, unappro-  
8 priated Federal land that is mineral in character  
9 under subsection (b) on the condition that, except as  
10 provided in paragraph (3)(A), if the selected land is  
11 unappropriated Federal land subject to a lease or  
12 permit—

13 (A) the Secretary shall reserve an over-  
14 riding interest in the portion of the mineral es-  
15 tate that is comprised of minerals subject to  
16 leasing under the Mineral Leasing Act (30  
17 U.S.C. 181 et seq.); and

18 (B) such a selection shall not include any  
19 portion of the mineral lease or permit.

20 (3) CONVEYANCE OF MINERAL ESTATE.—

21 (A) IN GENERAL.—If the State selects un-  
22 appropriated Federal land subject to a lease or  
23 permit under paragraph (2), on the option of  
24 the State—

1 (i) the Secretary may convey with the  
2 surface interest in the land the interest in  
3 the mineral estate that is comprised of  
4 minerals subject to leasing under the Min-  
5 eral Leasing Act (30 U.S.C. 181 et seq.);  
6 and

7 (ii) all Federal mining claims over the  
8 land shall be converted to State leases in  
9 accordance with this paragraph.

10 (B) MINING CLAIMS.—To facilitate the  
11 conversion of Federal mining claims to State  
12 leases under subparagraph (A), a Federal min-  
13 ing claimant may file with the Secretary a vol-  
14 untary relinquishment of the Federal mining  
15 claim conditioned on—

16 (i) conveyance of the land to the  
17 State; and

18 (ii) the conversion of the Federal min-  
19 ing claim to a State lease.

20 (C) OBLIGATIONS UNDER FEDERAL  
21 LAW.—Until the date on which the land is con-  
22 veyed to the State under subparagraph (A), a  
23 Federal mining claimant shall be subject to any  
24 obligations relating to the land under Federal  
25 law.



1 (D) NO RELINQUISHMENT.—If the land  
2 previously encumbered by the relinquished Fed-  
3 eral mining claim is not conveyed to the State  
4 under subparagraph (A), the relinquishment of  
5 land under subparagraph (B) shall have no ef-  
6 fect.

7 (E) RIGHTS-OF-WAY; OTHER INTEREST.—  
8 On conveyance to the State of land encumbered  
9 by a relinquished Federal mining claim under  
10 this paragraph, the State shall assume author-  
11 ity over any leases, licenses, permits, rights-of-  
12 way, operating plans, other land use authoriza-  
13 tions, or reclamation obligations applicable to  
14 the relinquished Federal mining claim on the  
15 date of conveyance.

16 (F) VALUATION.—If a Federal mining  
17 claimant does not voluntarily relinquish under  
18 subparagraph (B) a Federal mining claim on  
19 land conveyed to the State, the Secretary shall  
20 take into account the encumbrance represented  
21 by the claim in determining the value of the  
22 land under section 5(b).

23 (f) WITHDRAWAL.—

24 (1) IN GENERAL.—Subject to valid rights in ex-  
25 istence on the date of enactment of this Act, all Fed-

1 eral land selected by the State for conveyance under  
2 this Act, effective beginning on the date on which  
3 the State makes the selection and ending on the  
4 date described in paragraph (2), is withdrawn from  
5 all forms of—

6 (A) entry, appropriation, or disposal under  
7 the public land laws;

8 (B) location, entry, and patent under the  
9 mining laws; and

10 (C) disposition under all laws pertaining to  
11 mineral and geothermal leasing or mineral ma-  
12 terials.

13 (2) DATE DESCRIBED.—The date referred to in  
14 paragraph (1) is the date on which, as applicable—

15 (A) the Federal land is conveyed by the  
16 Secretary to the State;

17 (B) the Secretary rejects the selection  
18 under subsection (a)(2); or

19 (C) the State withdraws the selection.

20 **SEC. 5. VALUATION.**

21 (a) EQUAL VALUE.—With respect to a State land  
22 grant parcel conveyed under this Act in consideration for  
23 a parcel of Federal land selected in accordance with this  
24 Act—

1 (1) the overall value of the State land grant  
2 parcel and the overall value of the parcel of Federal  
3 land shall be substantially equal; or

4 (2) subject to subsection (c), if the overall value  
5 of the parcels is not equal, the party conveying the  
6 parcel of lesser value shall—

7 (A) equalize the value by the payment of  
8 funds to the other party; or

9 (B) enter the imbalance in value on a ledg-  
10 er account in accordance with subsection (e).

11 (b) APPRAISAL REQUIRED.—Except as provided in  
12 subsection (d), the Secretary shall determine the value of  
13 a State land grant parcel and a parcel of Federal land  
14 to be conveyed under this Act through an appraisal com-  
15 pleted in accordance with—

16 (1) the Uniform Appraisal Standards for Fed-  
17 eral Land Acquisitions; or

18 (2) subject to subsection (d)(1), the Uniform  
19 Standards for Professional Appraisal Practice.

20 (c) EQUALIZATION.—With respect to a conveyance to  
21 the Secretary or the Secretary of Agriculture of a State  
22 land grant parcel of lesser value than the parcel of Federal  
23 land to be conveyed to the State under this Act, the total  
24 value of the equalization payment described in subsection  
25 (a)(2)(A) or the ledger entry described in subsection (e),

1 as applicable, may not exceed 25 percent of the total value  
2 of the parcel of Federal land.

3 (d) LOW VALUE PARCELS.—

4 (1) IN GENERAL.—The Secretary, with the con-  
5 sent of the State, may use mass appraisals, a sum-  
6 mary appraisal, or a statement of value made by a  
7 qualified appraiser carried out in accordance with  
8 the Uniform Standards for Professional Appraisal  
9 Practice to determine the value of a State land  
10 grant parcel or a parcel of Federal land to be con-  
11 veyed under this Act instead of an appraisal that  
12 complies with the Uniform Appraisal Standards for  
13 Federal Land Acquisitions if the State and the Sec-  
14 retary agree that market value of the State land  
15 grant parcel or parcel of Federal land, as applicable,  
16 is—

17 (A) less than \$500,000; and

18 (B) less than \$500 per acre.

19 (2) DIVISION.—A State land grant parcel or a  
20 parcel of Federal land may not be artificially divided  
21 in order to qualify for a summary appraisal, mass  
22 appraisal, or statement of value under paragraph  
23 (1).

24 (e) LEDGER ACCOUNTS.—

1           (1) IN GENERAL.—With respect to a State land  
2 grant parcel conveyed under this Act in consider-  
3 ation for a parcel of Federal land, if the overall  
4 value of the parcels is not equal, the Secretary and  
5 the State may agree to use a ledger account to make  
6 equal the value.

7           (2) IMBALANCES.—A ledger account described  
8 in paragraph (1) shall reflect imbalances in value to  
9 be reconciled in a subsequent transaction.

10          (3) ACCOUNT BALANCING.—Each ledger ac-  
11 count described in paragraph (1) shall be—

12               (A) balanced not later than 3 years after  
13 the date on which the ledger account is estab-  
14 lished; and

15               (B) closed not later than 5 years after the  
16 date of the last conveyance of land under this  
17 Act.

18          (4) COSTS.—

19               (A) IN GENERAL.—The Secretary or the  
20 State may assume costs or other responsibilities  
21 or requirements for conveying land under this  
22 Act that ordinarily are borne by the other  
23 party.

24               (B) ADJUSTMENT.—If the Secretary or the  
25 State assume costs or other responsibilities

1           under subparagraph (A), the Secretary or the  
2           State shall make adjustments to the value of  
3           the Federal land conveyed to the State to com-  
4           pensate the Secretary or the State, as applica-  
5           ble, for assuming the costs or other responsibil-  
6           ities.

7           (5) MINERAL LAND.—If value is attributed to  
8           any parcel of Federal land that has been selected by  
9           the State because of the presence of minerals under  
10          a lease entered into under the Mineral Leasing Act  
11          (30 U.S.C. 181 et seq.) that is in a producing or  
12          producible status, and the lease is to be conveyed  
13          under this Act, the value of the parcel shall be re-  
14          duced by the amount that represents the likely Fed-  
15          eral revenue sharing obligation under the Mineral  
16          Leasing Act (30 U.S.C. 181 et seq.) with the State,  
17          but the adjustment shall not be considered as re-  
18          flecting a property right of the State.

19   SEC. 6. MISCELLANEOUS.

20          (a) IN GENERAL.—Land or minerals conveyed under  
21          this Act shall be subject to all applicable Federal, State,  
22          and Tribal law.

23          (b) PROTECTION OF INDIAN RIGHTS.—

24                  (1) TREATY RIGHTS.—Nothing in this Act  
25          modifies, limits, expands, or otherwise affects any

1 treaty-reserved right or other right of any Indian  
2 Tribe recognized by any other means, including trea-  
3 ties or agreements with the United States, Executive  
4 orders, statutes, regulations, or case law.

5 (2) LAND OR MINERALS HELD IN TRUST.—

6 Nothing in this Act affects—

7 (A) land or minerals held in trust by the

8 United States as of the date of enactment of  
9 this Act on behalf of, and for the benefit of, any

10 Indian Tribe; or

11 (B) any individual Indian allotment.

12 (c) HAZARDOUS MATERIALS.—

13 (1) IN GENERAL.—The Secretary and the State  
14 shall make available for review and inspection any  
15 record relating to hazardous materials on land to be  
16 conveyed under this Act.

17 (2) CERTIFICATION.—

18 (A) IN GENERAL.—Prior to completing a  
19 conveyance of Federal land under this Act, the  
20 Secretary shall complete an inspection and a  
21 hazardous materials certification of the land to  
22 be conveyed.

23 (B) STATE LAND GRANT PARCELS.—Prior  
24 to completing a conveyance of a State land  
25 grant parcel under this Act, the State shall

1 complete an inspection and a hazardous mate-  
2 rials certification of the land to be conveyed.

3 (d) GRAZING PERMITS.—

4 (1) IN GENERAL.—If land conveyed under this  
5 Act is subject to a lease, permit, or contract for the  
6 grazing of domestic livestock in effect on the date of  
7 the conveyance, the Secretary or the Secretary of  
8 Agriculture, or the State, as applicable, shall allow  
9 the grazing to continue for the remainder of the  
10 term of the lease, permit, or contract, subject to the  
11 related terms and conditions of the user agreements,  
12 including permitted stocking rates, grazing fee lev-  
13 els, access, and ownership and use of range improve-  
14 ments.

15 (2) CANCELLATION.—

16 (A) IN GENERAL.—Nothing in this Act  
17 prevents the Secretary or the Secretary of Agri-  
18 culture, or the State, from canceling or modi-  
19 fying a grazing permit, lease, or contract if the  
20 land subject to the permit, lease, or contract is  
21 sold, conveyed, transferred, or leased for non-  
22 grazing purposes.

23 (B) BASE PROPERTIES.—If land conveyed  
24 by the State under this Act is used by a grazing  
25 permittee or lessee to meet the base property



1 requirements for a Federal grazing permit or  
2 lease, the land shall continue to qualify as a  
3 base property for the remaining term of the  
4 lease or permit and the term of any renewal or  
5 extension of the lease or permit.

6 (C) RANGE IMPROVEMENTS.—Nothing in  
7 this Act prohibits a holder of a grazing lease,  
8 permit, or contract from being compensated for  
9 range improvements pursuant to the terms of  
10 the lease, permit, or contract under existing  
11 Federal or State laws.

12 SEC. 7. SAVINGS CLAUSE.

13 Nothing in this Act applies to or impacts the owner-  
14 ship of any land or mineral resources.

Æ

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

## RE: Real Estate Investment Trust Index

In November 2013, the Board of University and School Lands' (Board) approved the implementation of a new strategic asset allocation (SAA) for the Permanent Trust Funds (PTFs), including the addition of Real Estate strategies.

The SAA allows for the investment in "Real Estate Partnerships, including investments in private vehicles through limited partnerships or limited liability companies that have an ownership interest in direct real estate properties, whether income-producing or non-income producing."

The investment in private real estate should offer better long-term returns and lower volatility, but it comes with the drawback of cash drag when trying to invest new capital in the sector or during normal quarterly rebalancing. To solve for this issue Staff and RVK looked to Real Estate Investment Trusts (REITs). Specifically, REIT Index funds, which hold publicly traded REITs and are therefore highly liquid. As with the Emerging Market Index and International Small Cap Index, the Board recently approved, the REIT index would be a small add-on to the real estate asset class, used for rebalancing purposes.

Staff and RVK reviewed bids from three large index managers. State Street Global Advisers (SSGA) bid lowest at 6 basis points management fee. 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.

Staff and RVK recommend the selection of SSGA, specifically utilizing their US REIT Index strategy. This index fund will give the PTFs a rebalancing tool for when the PTFs are waiting for one or more private real estate funds to open or when we need to reduce holdings due to faster growth in the asset class versus other assets.

**Recommendation: The Board approve a \$25 Million investment with State Street in a US REIT 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					
Superintendent Baesler					
Treasurer Beadle					
Attorney General Stenehjem					
Governor Burgum					

Attachment 1: RVK Recommendation Memo



## Memorandum

To	North Dakota Board of University and School Lands
From	RVK, Inc.
Subject	REIT Equity Search and Recommendation
Date	January 10, 2022

### Overview

Consistent with the ongoing process to evaluate and improve the approach to investment in each asset category, we have evaluated potential strategies to improve upon the efficiency of the real estate portfolio as it relates to maintaining a fully invested position. Currently, the real estate portfolio consists of private, open-ended core and core plus real estate equity funds. We believe this remains an appropriate way to gain primary direct exposure to real estate assets. The challenge with private market strategies, however, is primarily around getting capital invested as well as executing any changes within the portfolio. Although these funds are open-ended, they often have significant entry or exit queues. It can take several quarters or longer to allocate new money to a manager or to divest from an existing investment. To improve consistency of exposure, we recommend the addition of a strategic allocation to liquid (publicly traded) equity, Real Estate Investment Trusts (REITs). The primary purpose of this allocation will be to facilitate asset class level rebalancing to/from real estate relative to the rest of the portfolio.

### Recommendation

Based on the manager evaluation process and due diligence performed, **Staff and RVK recommend the selection of State Street, specifically utilizing their US REIT Index strategy to gain exposure to the asset class. The REIT asset class is efficient and the universe is relatively concentrated; subsequently, passive management is an appropriate option.** State Street has a lengthy track record, low tracking error, sizeable assets, and a low fee.

### Active Management in the REIT Space

Active management has not been consistently effective within the REIT space. Generally speaking, passive managers have been an efficient and cost-effective way to get exposure to the asset class. First of all, the universe of stocks is concentrated; for instance, the DJ US Select REIT index currently has 114 securities and the concentration in the top ten securities is over 40%. Subsequently, managers' active share is low, more aligned with enhanced index as opposed to fully active strategies. For reference, the median manager in the eVestment US REIT peer group has an active share of 52%. Managers that do have higher active share in the REIT space are frequently making top-down calls or timing the market with cash. Additionally, the net-gross spread can be substantial as the median fee for the eVestment US REIT peer group is 67 basis points. We see little evidence in the data that provides a high conviction level that active



management within public REITs can produce consistent positive alpha after management fees.

### Manager Search Process

The RVK Investment Manager Research team maintains research coverage of all institutional-quality passive managers. RVK reached out to Northern Trust, State Street and BlackRock for vehicle availability and fee quotes. The mutual fund and ETF universes were also screened for the lowest-cost, institutional-quality options in the space. Subsequently, characteristics of these options were reviewed, such as assets under management, track record, tracking error, fees, and team stability. Based upon our review, we recommend selection of State Street due to their fee proposal, tracking capabilities, and quality of the firm and team.

### Fee Comparison

The fee proposal from State Street is shown below as well as the next two leading candidates. The fees noted below are all inclusive, including operating expenses for commingled funds.

Managers	Management Fee*
State Street	0.06%
Manager 2	0.07%
Manager 3	0.08%

*\* Fee calculated based on a \$20-30 million mandate size*

The median fee for a \$25 million US REIT mandate is approximately 67 basis points. State Street's fee ranks in the 1<sup>st</sup> percentile in this peer group. The eVestment US Passive REIT universe is extremely small but the proposed fee also ranks in the 1<sup>st</sup> percentile of the passive only peer group.

**RE: Investment Policy Statement – First Reading**

The Board of University and School Land's (Board) Investment Policy Statement (IPS) is to be formally reviewed at least every four years or when a written investment policy must be established for new funds.

In June 2020, the Board entered into an asset management agreement with the Theodore Roosevelt Presidential Library Foundation to manage the investment assets of the Theodore Roosevelt Presidential Library and Museum Endowment (Endowment), in accordance with NDCD ch. 54-07-12.

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

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

The two substantive changes to the IPS are as follows:

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

Attachment 1 – Redlined Investment Policy Statement

# ND Board of University and School Lands Investment Policy Statement

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An Investment Management Framework for North Dakota’s Permanent Trust Funds, the Capitol Building Fund, the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, ~~and~~ the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment Fund

Revised ~~0401/3027/2020~~2021

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## Mission Statement

The mission of the Board of University and School Lands is to manage the assets of the permanent trusts in a manner that preserves the purchasing power of the funds and maintains stable distributions to fund beneficiaries and to manage all other assets and programs entrusted to the Board in a prudent, professional manner, in accordance with the Constitution of North Dakota and applicable state law.

## General Authority

On February 22, 1889 Congress passed the Enabling Act, dividing Dakota Territory into two states and authorizing the people to form the constitution and government of the state of North Dakota. This act granted a significant amount of land to support common schools, colleges, universities, the state capitol, and other public institutions. North Dakota Constitution article IX, which became effective at statehood on November 2, 1889, entrusted the management of these lands to the "board of university and school lands" (the Board). The Board is made up of the governor as chairman, the secretary of state as vice-chair, the attorney general, superintendent of public instruction, and the state treasurer.

## Investment Authority

The North Dakota Constitution states that the Board "has control of the appraisalment, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law."<sup>1</sup> State law further requires that the Board "shall apply the prudent investor rule in investing the permanent funds under its control."<sup>2</sup>

## Purpose of This Policy

This Investment Policy Statement (Policy) governs the investment of assets for the thirteen Permanent Trust Funds, the Strategic Investment and Improvements Fund (SIIF), the Capitol Building Fund, the Coal Development Trust Fund, ~~and~~ the Indian Cultural Education Trust, [and the Theodore Roosevelt Presidential Library and Museum Endowment Fund](#) (collectively, Funds). It is established to provide a framework for the management of those assets and sets forth the Board's investment objectives, philosophy, guidelines, and practices. The Policy is not intended to be a static, one-time document but is designed to capture investment opportunities while providing parameters that ensure prudence and care in the execution of the investment program. No investment or action pursuant to an investment may be taken unless permitted by this Policy or by action of the Board; any exceptions must be approved by the Board.

The Policy provides guidance for fiduciaries which include the Board, the Commissioner of University and School Lands (Commissioner), investment managers, investment consultants, and custodians. It is the intent of the Policy to provide the foundation for management of the Funds' assets in a prudent manner including

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<sup>1</sup> N.D. Const. art. IX, § 3

<sup>2</sup> N.D.C.C. § 15-03-04

the standards by which the Board can evaluate the Commissioner, investment managers, investment consultants, custodians and other service providers.

This Policy is supplemented by the Commissioner's operating procedures and policies, as well as detailed information within contractual agreements with investment managers.

## Investment Philosophy

In order to meet the above investment objectives, the Board has adopted the following principles:

- Strategic asset allocation is a fiduciary duty and allocation across asset classes is the most important determinant of return variability and long-term total return.
- Risk is an unavoidable component of investing and is a major factor that must be taken into account in assessing investment policy and strategy.
- Diversification by asset class and within asset classes is a primary risk control element.
- Each trust or fund invested by the Board shall have a strategic asset allocation and investment strategy that is appropriate given its specific requirements for return, risk, time horizon, and liquidity.

## Capital Markets Theory

### Return

In order to meet the objective of the Funds, the Board strives to achieve the highest level of investment performance that is compatible with its risk tolerance and prudent investment practices. The Board's mechanism for setting return goals will be accomplished by selecting specific benchmarks that match the objective and time horizon of each fund. The Funds will have a goal for long-term returns to meet or exceed its formal benchmark over a full market cycle, while minimizing the costs associated with implementation of the asset allocation through efficient use of internal and/or external resources.

### Risk

The investment risk philosophy for the Funds is based on the principles of capital market theory that are generally accepted and followed by institutional investors, who by definition are long-term oriented investors. This philosophy holds that:

- Increasing risk is rewarded with compensating returns over time; therefore prudent risk taking is a necessary element of long-term investing.
- Risk can be mitigated through diversification of asset classes and investment approaches, as well as diversification of individual securities.
- The primary determinant of long-term investment performance is the strategic or long-term allocation of assets among various asset classes.
- Relative performance of various asset classes is unpredictable in the short-term and attempts to shift tactically between asset classes or implementation strategies shall not be undertaken by the Board.



Given these principles, the Board has established a long-term asset allocation policy for each fund that balances the returns needed to meet the fund’s objectives and the risk level that is appropriate for that fund under existing and anticipated circumstances. In determining its risk posture, the Board has considered each fund’s purpose and characteristics, current and projected financial condition, liquidity needs, sources of contribution, income, and general economic conditions.

**Diversification**

The Board will choose an investment strategy for each Fund utilizing an appropriate long-term, diversified asset allocation approach. Diversification distributes a portfolio across many investments to avoid excessive exposure to any one source of risk. Other considerations in asset allocation modeling should take into account the purpose of the fund, the size and financial condition of the fund, and general economic conditions. These factors are not intended to be limiting; rather, they are outlined as a general indication of the importance of diversification to proper asset allocation. Under such an allocation, each Fund’s assets may be invested by active and/or passive managers, and by diverse investment strategies and styles within each asset class. The Board will determine the proper allocation among asset classes and investment managers, based on advice and analysis provided by the Commissioner and/or Consultants.

**Formal Review Schedule**

The Board recognizes that though the investments are subject to short-term volatility, the Board shall maintain a long-term investment focus. This prevents ad-hoc revisions to the philosophy and policies in reaction to either speculation or short-term market fluctuations. In order to preserve this long-term view, the Board has adopted the following formal review schedule:

<b>Formal Review Agenda Item</b>	<b>Formal Review Schedule</b>
<b>Asset Allocation Policy</b>	At least every four years
<b>Manager Structure Policy</b>	At least every four years
<b>Investment Policy</b>	At least every four years
<b>Total Fund Performance</b>	At least quarterly
<b>Asset Class Composite Performance</b>	At least quarterly
<b>Investment Manager Performance</b>	At least quarterly

**Roles and Responsibilities**

**The Board**

The Board of University and School Lands is the primary body charged with overseeing investment activities relating to the Funds. Members of the Board are fiduciaries subject to the statutory and common law duties of a fiduciary.

The Board’s mandate, in turn, is to manage each fund entrusted to it ethically and optimally, working to achieve the highest level of investment performance within acceptable levels of risk. The Board is responsible for prudent investment of the Funds. The Board will operate the investment program in compliance with all applicable federal and State laws and regulations. The Board is responsible for

establishing and maintaining all policies and guidelines by which the Funds are managed, and by which the Commissioner operates.

The Board relies on the Commissioner and any external contractors to properly administer the Funds and implement the Funds' investment strategies. The roles of each party as fiduciaries must be clearly identified; such identification increases operational efficiency, ensures clear lines of responsibility, and reduces or eliminates duplication of effort.

## **The Commissioner**

The Board of University and School Lands is required to appoint a commissioner to act on its behalf.<sup>3</sup> The office of the Commissioner of University and School Lands (the Commissioner)<sup>4</sup> has a primary responsibility to manage the permanent educational trust funds and assets under the Board's control as outlined in law. When used in this Policy, the term Commissioner is inclusive of the Department of Trust Lands' Chief Investment Officer and investment staff. State law also gives the office of the Commissioner the responsibility for managing the state Unclaimed Property Division, and the Energy Infrastructure and Impact Office.

The Commissioner is responsible for implementing Board policy, the day to day management of the investment program, and implementing a process for selection and termination of investment managers that is sufficiently transparent for the Board to understand the process and provide meaningful oversight.

## **Investment Consultant**

The Investment Consultant (Consultant) is hired by and reports directly to the Board. The Consultant's duty is to assist the Board in oversight, and the Commissioner in managing the investment process. This includes regular meetings with the Board to provide an independent perspective on the Funds' goals, structure, performance, and managers. The Consultant will render investment advice to the Board regarding such matters as investment policy, strategy, overall portfolio monitoring and composition, and diversification of investments. The Consultant will conduct ongoing due diligence of external investment managers. The Consultant does not have any discretionary authority with respect to investments; the Board makes all final decisions regarding any investments.

## **Investment Managers**

Investment managers (Managers) are hired by and serve at the pleasure of the Board. The Commissioner will provide the Managers with explicit written investment guidelines<sup>5</sup> which detail permissible securities, investment strategies, and performance evaluation criteria. Each Manager will select, buy, and sell specific securities or investments within the parameters specified in their investment guidelines and in adherence to this Policy or to other policies set forth by the Board. Managers will construct and manage investment

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<sup>3</sup> N.D.C.C. § 15-02-01; Specific responsibilities of the Board and the Commissioner are set out in N.D.C.C. ch. 15-01 through 15-08.1.

<sup>4</sup> Commissioner of University and School Lands is the statutory name; in 2011 the Board adopted *The Department of Trust Lands* as the common reference to the agency.

<sup>5</sup> In cases where the Board has selected investments in commingled or mutual funds, the offering document becomes the specific investment guidelines.

portfolios that are consistent with the investment philosophy and disciplines for which they were hired. Managers will provide performance reporting at intervals specified by the Commissioner.

## Custodian

A custodian bank is a specialized financial institution hired by the Board to safeguard the Funds' financial assets; they are a third party that operates separately from Managers. The custodian(s) will collect income and safely keep all cash and securities, process all transactions, and provide monthly accounting/investment reports to the Commissioner and Consultant. The custodian may also provide securities lending, commission recapture, transition management, securities litigation monitoring, or other services for the Funds.

## The Prudent Investor Rule

North Dakota statute dictates that the Board apply the prudent investor rule in investing the Permanent Trust Funds under its control. The law states:

The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable investment returns.<sup>6</sup>

It is the Board's intent to invest all of the Funds in accordance with the Prudent Investor Rule.

## Social and Economically Targeted Investing

Social investing is defined as the practice of aligning one's investment policies with social responsibility. Some of the issues and topics addressed by social investing promoters include environmental causes, avoidance of tobacco producers, avoidance of politically sensitive parts of the world, and workers' rights. With different sets of values, what one investor may deem irresponsible, another may consider good policy.

The Board shall not use the Funds to participate in activist efforts to implement a social agenda regarding ownership of specific securities or efforts of shareholders to bring about social change.

Economically targeted investing is defined as an investment designed to create economic benefits for a targeted geographic area, group of people, or sector of the economy. Economically targeted investing is barred when investing the Permanent Trust Funds, the Capitol Building Fund, ~~and~~ the Indian Cultural Education Trust, [and the Theodore Roosevelt Presidential Library and Museum Endowment Fund](#), unless the investment meets the Exclusive Benefit Rule.

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<sup>6</sup> N.D.C.C. § 15-03-04

## Exclusive Benefit Rule

The Exclusive Benefit Rule is met if the following four conditions are satisfied:

- The cost does not exceed the fair market value at the time of investment.
- The investment provides an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.
- Sufficient liquidity is maintained to permit timely distributions.
- The safeguards and diversity to which a prudent investor would adhere are present.

Economically targeted investing is allowed within the Coal Development Trust Fund and the Strategic Investment and Improvement Fund, if the investment meets the purpose of the fund and is directed by law.

## Conflicts of Interest

Members of the Board, the Commissioner, employees of the Commissioner, Managers, Consultants, and custodians involved in the investment process will refrain from personal business activity that could conflict with the proper execution and management of the Board's investment program, or that could impair their ability to make impartial recommendations and decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process.

## Manager Selection and Evaluation

When analyzing and evaluating any Manager, the Board believes it is important to review the Manager within the context of the structure of the entire asset class and portfolio, and not in isolation. A key to portfolio construction is diversification, not just by asset class but within each asset class. The goal of diversification is to be exposed to different investment strategies, which will have different performance and risk patterns. Diversification is optimal when strategies are complementary.

## Search and Selection

The Board has established the following guidelines for hiring Managers. In establishing these guidelines, it is the Board's intention to assure all interested parties that decisions made in carrying out these actions occur in a full disclosure environment characterized by competitive selection, objective evaluation, and proper documentation. Any action to hire a manager should be based on one or more of the following observations:

- Identification of a new asset class or approach which has been approved in advance by the Board
- A need for diversification of managers and styles within an existing asset class
- A need to replace an investment manager
- A need to retain additional managers in order to reach an asset class structure target

The selection of new Managers will adhere to a consistent process to ensure a competitive and transparent search involving proper evaluation and due diligence of candidates, and selection of Managers that best demonstrate the characteristics sought in a specific search. The Commissioner will ensure that the

objectives for the mandate are clearly articulated and that pricing is reflective of the market. The evaluation process may be conducted by the Commissioner or the Consultant and will include but not be limited to the following steps:

1. Establish investment manager selection criteria
2. Identify qualified candidates through minimum qualification screening
3. Quantitative screening
4. Qualitative screening
5. Manager interviews
6. Analysis of quantitative and qualitative factors including portfolio fit and structure

The Commissioner will prepare documentation of the search process; this documentation will include disclosure of all relevant issues and related due diligence. When reviewing the documentation, the Board shall ensure that decisions were well reasoned, thoroughly considered, and prudent.

### **Monitoring, Evaluation, and Termination of Managers**

The decision to retain a Manager can have the same potential impact on the returns of an asset class composite as manager selection decisions and should be given the same degree of attention. The Board recognizes investment and management decisions directed at individual managers must be evaluated not in isolation but in the context of the overall structure of the asset class and the Fund's portfolio as a whole. To maintain the discipline necessary for a long-term focus, the Board will monitor and evaluate the performance of Managers and identify the specific problems and concerns that may affect returns, with the following objectives:

- Foster a long-term approach to manager evaluation
- Provide a review of the manager's "fit" in the overall asset class composite
- Provide a logical and statistically valid framework for manager skill evaluation
- Promote timely and appropriate responses to actual and potential performance issues
- Provide flexibility to allow application across all asset classes, management styles and market environments

Monitoring and evaluation relies on a process that includes:

1. Monthly reports from the custodian and Managers to the Commissioner
2. Quarterly performance reports from the Commissioner and Consultant for the Board. These reports will detail performance of the Funds, asset class composites, and the performance of individual managers against established benchmarks, as well as peer ranks for each category
3. Qualitative analysis generated in the course of regular, on-going contact between a Manager, the Commissioner, and the Consultant

### **Manager Termination Guidelines**

From time to time it will be necessary for the Board to terminate a contractual relationship with a Manager; these actions must be viewed in the context of the entire portfolio and as a business decision. The Board has established guidelines to assist in making these termination decisions. The overriding consideration

with respect to all decisions is that they shall be made solely in the best interest of the beneficiaries of the Funds.

Any action to terminate a manager should be based on one or more of the following criteria:

1. Significant changes in firm ownership and/or structure
2. Loss of one or more key personnel
3. Significant loss of clients and/or assets under management
4. Shifts in the firm's philosophy or process
5. Significant and persistent lack of responsiveness to client requests
6. Changes in the Board's investment strategy eliminating the need for a particular style or strategy
7. Violations of the Investment Policy or guidelines
8. Unsatisfactory investment performance
9. Identification of a new asset class or approach which has been approved in advance by the Board
10. Need for diversification of styles within an existing asset class
11. Need to reduce exposure to a single manager
12. Any other issue or situation of which the Commissioner, Consultant, and/or Board become aware that is deemed material

Prior to the termination decision, all relevant considerations and issues should be identified and documented in Board meeting minutes and supporting documents. It is the Board's intent to have a plan in place before termination of a Manager. The Commissioner will redeploy the assets of a terminated manager's portfolio in an expedient and prudent manner, which may involve hiring a third party to facilitate the transition or liquidation of assets.

## **General Investment Restrictions and/or Guidelines**

1. All investments made shall be subject to the quality and diversification restrictions established by the Prudent Investor Rule.
2. According to North Dakota law, the Board may not purchase as sole owner commercial or residential real property in the State.<sup>7</sup>
3. Assets may be held in commingled funds and/or privately managed separate accounts. Exposure through commingled funds and mutual funds shall be evaluated on a case-specific basis through analysis of that fund's offering document. Upon review by the Commissioner and approval by the Board, this offering document becomes the specific investment guidelines for that allocation.
4. No more than 5% of the stock of any corporation may be purchased.
5. The securities representing debt and equity of any one company shall not exceed 6% of the market value of any Manager's portfolio without prior approval from the Commissioner; such approval shall be reported to the Board.

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<sup>7</sup> N.D.C.C. § 15-03-04

6. Cash equivalents held by Managers can be disruptive to the allocation process. Unless otherwise authorized, Managers are expected to be fully invested in the types of securities for which they have responsibility.
7. Any use of leverage will be consistent with the strategy for which the Board hired the Manager. Use of leverage will be controlled as appropriate in the Manager's specific guidelines.
8. The Board recognizes that the Funds are exposed to currency risk through international equity, fixed income, and absolute return mandates; the Board prefers to utilize unhedged benchmarks and does not require its Managers to hedge the currency exposure in their portfolios.

## **Securities Litigation and Shareholder Legal Activism**

In carrying out its fiduciary duties to prudently invest and manage the assets entrusted to it, the Board invests in the securities of various public companies, or issuers. From time to time, class action lawsuits are brought against the issuers, directors, and/or officers for alleged violations of federal and state securities laws relating to various disclosure obligations and other breaches of fiduciary or other duties. As shareholders, the trust funds under the Board's control are putative members of the alleged classes.

At the present time, the Board relies on a designated agent to monitor settled class action securities litigation where the Funds have an interest. In resolved litigation, unless directed otherwise, the designated agent files proofs of claim on behalf of the Funds and posts disbursements or settlements to the appropriate portfolios as litigation settlement proceeds are received. The designated agent will provide the Department with its most current class action procedures and will follow such procedures on behalf of the Department. The designated agents class action procedures shall include reviewing various information sources for notification of class action suits, identifying transactions within the class period for the security involved and determining account eligibility and filing proof of claim and supporting documentation.

Department Investment staff will monitor the designated agent's compliance with the Securities Litigation Policy. Investment staff will review all notices and information concerning potential or pending class action litigation that are received by the Department. The Commissioner will report periodically to the Board on recoveries realized as a result of class action participation.

Although there may be value in influencing an eventual settlement or in pursuing a separate legal action in a lawsuit, the administration and opportunity costs can be substantial. The Board uses a monitoring approach to securities litigation to avoid the diversion of staff, financial, and legal resources in building and applying collective plaintiffs' arguments through depositions, discovery, and documentation. Serving as the lead plaintiff does not obtain any additional financial benefit, but rather a lead in a class action suit shares any final judgment or settlement with the class members on an equal, per share basis.<sup>8</sup> Opting out of a "class" or objecting to the terms of a proposed settlement and pursuing independent legal remedies may also be pursued although the administration and opportunity costs can be substantial and involve significant attorney's fees, costs, and expenses which may or may not be recovered.

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<sup>8</sup> The lead plaintiff may recover attorney's fees, costs, and expenses if the lawsuit is successful or a settlement is obtained.

The Commissioner will initiate active participation in securities cases only upon prior approval by the Board. Prior to bringing any recommendation to the Board, the Commissioner will assess the merits and prospects for active participation by reference to the criteria and factors outlined below. The Board, in consultation with the Attorney General, may consider more active forms of legal engagement in cases where:

1. Where the action is in the US, and the estimated loss is a minimum of \$5,000,000 of assets under management of the Board, or from the combined assets under management of the Board and the North Dakota State Investment Board; and
2. the trust funds are among the largest shareholders of the defendant issuer; and
3. service as a lead plaintiff or opting out of a proposed settlement to the "class" of claimants would be in the best interest of the Funds
4. the prima facie merits of the claim for loss, and the factual basis for the action, recognizing that the full discovery process will not commence until the class has been certified by the court in which such case is to be filed.
5. The potential that any defendants or insurers will be able to pay an adequate recovery to the class, without impairing the value of any current security holdings of the Board may yet hold in issuer in the portfolio.
6. Potential costs that may be incurred. Special consideration must be given to any case that must be filed in a non-U.S. venue under the "Morrison" criteria established by the U.S. Supreme Court in a 2010 decision, since costs of litigation and potential liabilities of unsuccessful claims may be significant.

The Board may engage one or more legal firms that specialize in prosecuting security class action cases; any such engagement is subject to special appointment requirements of N.D.C.C. § 54-12-08. For these purposes only, such firm(s) may be granted ongoing access to security holdings information through the custodian bank or designated agent.

The Board may contract with firms that provide securities litigation monitoring/tracking services if it determines it is prudent. In August of 2018 the Board approved the hiring of a securities litigation monitoring and claims filing firm; that firm is currently being brought onboard. In addition to providing litigation monitoring and claims filing services, the firm will work the Commissioner to develop a revised securities litigation policy for the Board.

- NON-U.S./CANADA PASSIVE CLASS AND GROUP RECOVERY EFFORTS: The Board has engaged a securities litigation monitoring and claims filing firm to identify and submit claims in non-U.S./Canada matters that involve passive claim filing regardless of loss size. To the greatest extent possible, the participation process will be automated. Our funds may serve as lead or representative plaintiffs in passive participation matters if the factors specified below for active participation have been met; or if there are other overriding considerations. The current "Passive" International Jurisdictions include Australia, Dutch Foundations and United Kingdom Regulatory Action Compensation Schemes.
- NON US/CANADA GROUP OPT-IN LITIGATION: The risks associated with direct litigation outside of the U.S. vary by country and our participation will need to be evaluated on a matter-by-matter basis. However, countries can be grouped into three risk profile categories - low, medium, and high - with



minimum damages thresholds set for each risk group to limit consideration to those matters where our funds' losses exceed these amounts.

The Board has engaged a securities litigation monitoring and claims firm to (a) identify "opt in" or group litigation, arbitration, settlement and/or other recovery efforts outside of the U.S. and Canada for which they may be eligible and provide damages estimates based on the methodologies accepted under local law, if they exist and recognizing that this will often be uncertain. The Board will compare those damages estimates against pre-defined loss thresholds below and, if damages exceed threshold amounts, evaluate whether participation in the matter will be in the Fund's best interest.

The following initial damages thresholds are based on perceived risks associated with recovery efforts in each country. The Board will periodically review these thresholds and make any necessary adjustments based on experience, updated information about specific risks, and other factors.

<b>Jurisdictional Description</b>	<b>Damages Threshold</b>
<u>Low risk</u> jurisdictions including Japan	To be inserted Ranges to be considered from \$100k to \$500k
<u>Medium risk</u> jurisdictions including Germany, Austria, Belgium, Switzerland, Denmark, Spain, Finland, France, Hong Kong, Indonesia, Ireland, Italy, Korea, Luxembourg, Malaysia, Norway, New Zealand, Portugal, Sweden, and Thailand	To be inserted \$1 mil to \$5 mil
<u>High risk</u> jurisdictions including Taiwan <sup>9</sup> and the United Kingdom	To be inserted Greater than \$7.5

When losses exceed threshold amounts, our funds should consider the following:

- The merits of the case in light of the remedies available under local law.
- Their expected losses and percentage recoveries or results from past matters in that country, if available.
- The process and administrative burden to joining a particular litigation or settlement effort.
- The costs associated with involvement including attorney fees, litigation expenses, and any other potential expense covered by the litigation funder without recourse to the funds.
- How the organizers intend to protect our funds from the risk of adverse party cost shifting.

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<sup>9</sup> While Taiwan is among the most active non-US/Canada jurisdictions, our funds are not likely to have eligibility and given the risks involved, they should limit their participation to situations where money has already been recovered.

- If the litigation or settlement is funded, the identity of the funder, the percentage and cost reimbursement the funder will take from the recovery if the efforts succeed.
- The lawyers handling the case including their reputation, past results, and terms of representation like fee structures, expenses, and contingencies.
- The registration requirements, the potential evidentiary and/or discovery burdens to the funds, and any other administrative burden that may be required from them including any obligation to travel.
- The extent to which the funds' involvement will be disclosed to opposing parties and/or the public.
- Any other reasonable considerations.

## Securities Lending

The objective of the securities lending program is to generate incremental income from overnight and certain term loans of securities. The Funds may participate in a securities lending program.

The program will utilize a high-quality and conservative collateral re-investment approach that safeguards the return of principal and maintains adequate daily liquidity to support trade settlement activity and portfolio restructuring activities. Each securities lending agent will ensure that specific guidelines are in place as to the quality, duration, liquidity and diversification of securities lending collateral.

The Board requires collateral for loans. The use of assets in any securities lending engagements should:

1. Earn a competitive market return through conservative securities lending practices, consistently with the preservation of capital.
2. Minimize risk with respect to both the borrower and the collateral,
3. Operate the securities lending program so that it will not interfere with the management of overall investment portfolio and strategies.

Unless explicitly exempted by the Board, the lending agent shall provide indemnification against losses arising from borrower default, insolvency, and failure to comply with the terms and conditions of the lending agreements.

The Commissioner shall provide a report to the Board annually, outlining the performance and status of the securities lending program.

## Proxy Voting

The Board believes that proxies should be voted in a manner consistent with the long-term interests and objectives of the investment program set forth herein, unless it is in the best interest of the Board not to vote. The Board delegates authority to vote shares to each Manager and expects Managers to vote shares. The principle behind this policy is that Managers have specific reasons for holding shares and will vote shares in a way the Manager believes will best add value to those shares. Managers shall submit written reports to the Commissioner by January 31 of each year advising of the manner in which each proxy was voted during the preceding calendar year and notify the Commissioner of controversial matters which may be subject to proxy voting.

Notwithstanding the forgoing, intangible factors such as social and environmental issues are increasingly being incorporated into proxy voting. The Board expects voting of social and environmental proposals will be based solely on enhancing or protecting long-term value to the assets under its control and not on establishing or endorsing social policy. As part of its fiduciary duty, the Board expects Managers to consider only those factors that relate to the economic value of the Board's investments and shall not subordinate the interests of the Funds to unrelated objectives.

It is the policy of this Board that the Commissioner shall regularly review related proxy votes by the Managers. Any proxy votes deemed by the Commissioner to be contrary to the interests of the Funds under the Board's responsibility, shall be fully explained by the Manager in writing and brought to the Board for its review. An exception to the above policy regarding voting of proxies is for shares held by the Board on behalf of holders of unclaimed property. As a passive holder of these particular shares the Board chooses not to exercise voting rights on the owners' behalf.

## **Funds Administered by the Board**

The pages that follow describe the various funds administered by the Board.

## Permanent Trust Funds

On February 22, 1889, Congress passed "An 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 . . . ." This Act is commonly known as the Enabling Act. This act granted land to the new states "for the support of common schools," which in North Dakota's case totaled more than 2.5 million acres. Further land grants in this legislation provided for the support of colleges, universities, the state capitol, and other public institutions. These additional grants totaled approximately 668,000 acres, bringing the grand total of Enabling Act land grants to nearly 3.2 million acres.

### Purpose

The land grant from the federal government at statehood<sup>10</sup> and the state constitution<sup>11</sup> both provide that the Board of University and School Lands manage the trust land and minerals and associated proceeds, for the exclusive benefit of education and institutional support. In accordance with Article IX of the North Dakota Constitution as well as federal law<sup>12</sup>, the perpetual trust funds must be managed to:

1. Preserve purchasing power
2. Maintain stable distributions to trust beneficiaries

Chapter 15-03 of the North Dakota Century Code governs the management of the Permanent Trust Funds, including the requirement that any investments conform to the prudent investor rule.

### Listing of Permanent Trust Funds

The following are the beneficiaries of the Permanent Trust Funds described in Article IX of the North Dakota Constitution:

1. Common Schools (K-12)
2. North Dakota State University
3. University of North Dakota
4. Mayville State University
5. ND Youth Correctional Center
6. Ellendale State College<sup>13</sup>
7. Valley City State University
8. State College of Science
9. School for the Blind
10. School for the Deaf
11. State Hospital
12. School of Mines (UND)
13. Veterans Home

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<sup>10</sup> The Enabling Act of February 22, 1889 (25 Stat. 676, ch. 180)

<sup>11</sup> N.D. Const. art. IX, §§ 2, 3

<sup>12</sup> 7 U.S.C. § 309 and 25 Stat. 676, ch. 180

<sup>13</sup> Beneficiaries of the Ellendale permanent trust are now Dickinson State University, Minot State University, Dakota College at Bottineau, Veterans Home, School for the Blind, State Hospital, and the State College of Science as directed in 1973 N.D. Sess. Laws ch. 176.

## Funding Sources

### Funding Sources Common to All Permanent Trust Funds

Each permanent trust individually owns surface land tracts and mineral rights that provide revenue from agricultural leases, oil and gas royalties and lease bonuses, as well as other productive uses of the surface and mineral lands owned by each trust.

### Common Schools

The Common Schools Trust Fund is the largest of the Permanent Trust Funds administered by the Board. In addition to the revenues from the surface lands, minerals, and investments that the Permanent Trust Funds own, the Common Schools Trust Fund also receives funding from the following sources:

1. 10 percent of the oil extraction taxes collected by the state<sup>14</sup>
2. Net unclaimed property proceeds collected by the Department<sup>15</sup> until such time that property may be reunited with its owner.

## Distribution Policy

Article IX, Section 2 of the North Dakota Constitution states:

Distributions from an educational or charitable institution's trust fund must be faithfully used and applied each year for the benefit of the institution and no part of the fund may ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of the institution, as provided by law.

The distribution formula<sup>16</sup> is also described in Article IX, Section 2:

[B]iennial distributions from the perpetual trust funds must be ten percent of the five-year average value of trust assets, excluding the value of lands and minerals. The average value of trust assets is determined by using the assets' ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. Equal amounts must be distributed during each year of the biennium.

The year-end values used to calculate permanent trust distributions, as described in Article IX above, is the fund balance of each trust found in the Board's audited financial statements. When determining biennial distributions for the permanent trusts, annual distributions for each trust are rounded to the nearest one thousand dollars.

By statute, distributions from the Common Schools Trust Fund are paid to school districts monthly, from August to April of each fiscal year, through the state tuition fund.<sup>17</sup> . At the request of the Office of

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<sup>14</sup> N.D. Const. art. X, § 24

<sup>15</sup> N.D.C.C. § 47-30.1-23 and N.D. Const. art. IX, § 1

<sup>16</sup> This distribution formula is the result of a constitutional amendment that was approved by North Dakota voters on November 7, 2006. This constitutional change was validated at the federal level by the passing of the Omnibus Public Land Management Act of 2009 (Pub. L. No. 111-11, 123 Stat. 1446) which amended the First Morrill Act (The Act of July 2, 1862 [7 U.S.C. 301 et seq.]) and the Enabling Act of February 22, 1889 (25 Stat. 676, ch. 180). Prior to these changes, distributions for the Permanent Trust Funds were based on projections of interest and income for the funds; distributions could only be paid out of interest earned.

<sup>17</sup> N.D.C.C. § 15.1-28-01

Management and Budget, effective fiscal year 2018, distributions from the Common Schools Trust Fund will be made in relatively equal amounts from August to April of each fiscal year.

Distributions from the other 12 Permanent Trust Funds are made in equal amounts during January and June of each fiscal year and are distributed directly to the benefitting institutions.

**Investment Objective**

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

The Permanent Trust Funds are invested by the Board in a single comingled pool, along with the Indian Cultural Education Trust [and the Theodore Roosevelt Presidential Library and Museum Endowment Fund](#) (described further on pages [28](#) and [29](#)).

**Strategic Asset Allocation**

The Board recognizes that the most important determinant of long-term return and risk is the asset allocation decision. The asset allocation decision is intended to reflect the return objective and risk tolerance expressed in this Investment Policy Statement. It is designed to provide the highest probability of meeting the Funds’ objectives at a level of risk and liquidity that is acceptable to the Board. In establishing its risk tolerance, the Board considers the Funds’ ability to withstand short- and intermediate-term volatility in investment performance and fluctuations in financial condition of the Funds.

To determine the strategic asset allocation target, the Board, with assistance from the Commissioner and Consultant, examines the historical and projected risk and return of the approved asset classes, the correlation among these asset classes as well as the effect the expected investment performance will have on the obligations of the Funds. Based on its long-term return expectations and its determination of the appropriate risk tolerance for the Funds, the Board has chosen the following strategic asset allocation policy for the Permanent Trust Funds:

Asset Class	Strategic Asset Allocation Target	Minimum	Maximum
<b>Broad US Equity</b>	19%	14%	24%
<b>Broad International Equity</b>	19%	14%	24%
<b>Fixed Income</b>	22%	17%	27%
<b>Absolute Return</b>	15%	10%	20%
<b>Real Estate</b>	15%	10%	20%
<b>Private Equity</b>	5%	0%	10%
<b>Private Infrastructure</b>	5%	0%	10%
<b>Opportunistic Investments</b>	0%	0%	5%

The Board and the Commissioner will review the strategic asset allocation policy at least annually for reasonableness relative to significant economic and market changes or to changes in the Funds' long-term goals and objectives. A formal asset allocation study will be conducted at least every four years to verify or amend the targets.

Recognizing that a long-term target allocation utilizing alternative asset classes can take a matter of years to implement prudently, the Board delegates implementation of strategic asset allocation policy to the Commissioner including funding of alternative asset classes and setting interim asset allocation targets.

In addition, during the implementation of a change to or modification of the asset allocation, some strategies may fall outside the allowable allocation ranges until the revised asset allocation is fully implemented.

Opportunistic investments do not have a specified target allocation, as the availability of opportunities is episodic in nature, and the best opportunities tend to appear during periods of market stress. Opportunistic investments are allowable up to a maximum of 5% measured at the time of commitment.

### **Rebalancing**

Rebalancing is the term that describes the periodic movement of funds from one asset or asset class to another in order to realign assets to the strategic asset allocation target. A rebalancing strategy is an important element of asset allocation policy. Systematic rebalancing can reduce portfolio volatility and increase portfolio return over the long-term. However, frequent rebalancing resulting from excessively tight ranges can lead to unnecessary transaction costs.

The Commissioner is responsible for developing and implementing a rebalancing plan that is appropriate for existing market conditions, with a primary objective of minimizing transaction costs, market impact, opportunity costs and portfolio disruptions. To the extent possible, cash flows and revenues will be used to maintain the strategic target allocation. The Commissioner may make minor changes among asset classes and within individual asset classes to more effectively maintain proper exposure to the strategic asset allocation and asset class portfolio structures.

Recognizing that at times it may be impractical or costly to reallocate assets when an upper or lower limit is breached, the asset class will be rebalanced to within its strategic asset allocation range as soon as is practically possible, subject to reasonable transaction costs.

### **Benchmarks**

One return objective to be considered when evaluating the Funds' performance is measured by applying the investment performance of the asset class benchmarks to the Funds' strategic asset allocation target. The Policy Index permits the Board to compare the Funds' actual performance to its total fund benchmark, and to measure the contribution of active investment management and policy adherence.

The Board has selected the following Policy Index for the Permanent Trust Funds:

Asset Class	Policy Index	Strategic Asset Allocation Target
<b>Broad US Equity</b>	Russell 3000 Index	19%
<b>Broad International Equity</b>	MSCI ACWI Ex USA IMI	19%
<b>Fixed Income</b>	Barclays US Universal Index	22%
<b>Absolute Return</b>	Absolute Return Custom Index <sup>1</sup>	15%
<b>Real Estate</b>	NCREIF ODCE Index	15%
<b>Private Equity</b>	Cambridge US Private Equity Index	5%
<b>Private Infrastructure</b>	MSCI World Infrastructure Index	5%

<sup>1</sup> Absolute Return Custom Index: 60% Equity (MSCI All Country World IMI), 40% Fixed Income (Barclays US Aggregate Bond Index)

Recognizing that a long-term target allocation to alternative asset classes can often take a matter of years to implement prudently, the Board will also review an Interim Policy benchmark which will be adjusted as the Commissioner makes progress towards its long-term strategic asset allocation target.

### Permitted Investments<sup>18</sup>

The Board may invest in the following securities and investment activities as long as such investments comply with the Prudent Investor Rule<sup>19</sup>. Fund of Fund strategies are allowable in any of the asset classes. All investments are subject to approval of the Board and satisfactory legal review of applicable contractual terms and conditions.

#### Equity

1. Preferred stock, common stock, initial public offerings, Real Estate Investment Trusts (REIT's), securities of foreign issuers listed on U.S. Exchanges, and any security convertible to common stock or American Depository Receipts (ADR's) that are registered by the U.S. Securities and Exchange Commission (SEC) of any corporation whose securities are listed on at least one U.S. stock exchange that has been approved by or is controlled by the SEC or on the National Association of Securities Dealers (NASD). Global mandates may be considered.
2. Preferred stock, common stock, and convertible issues of any non-U.S. Corporation; which may be denominated in non U.S dollars, provided that the securities are traded on one or more national stock exchanges or included in a nationally recognized list of stocks; and the Board shall not be invested in more than ten percent of the voting stock of any company.

#### Fixed Income

1. Bonds, notes, or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations, or instrumentalities for which the credit of the United States government is pledged for the payment of the principal and interest. Global mandates may be considered.
2. Bonds, notes or other obligations issued by a state, its municipalities, or other political subdivisions, that have received an investment grade bond rating.
3. Bonds, notes, commercial paper or other obligations of any corporation organized and operating within the United States.

<sup>18</sup> Investments listed here are for general information purposes only. Each manager retained by the Board will be given specific guidelines with regard to permissible investments relevant to their mandate.

<sup>19</sup> N.D.C.C. § 15-03-04. See page 5 for more about the Prudent Investor Rule.



4. Debt obligations of non-U.S. governmental or quasi-governmental entities, these may be denominated in foreign currencies; obligations, including but not limited to bonds, notes or commercial paper with an investment grade rating (unless otherwise approved by the Board) of any corporation organized outside of the United States. Currency transactions, including spot or cash basis currency transactions, forward contracts and buying or selling options or futures on foreign currencies, shall be permitted.
5. Collateralized obligations, including but not limited to mortgages, held in trust that: (1) are publicly traded and are registered by the SEC or other Self-Regulatory Organization (SRO) and (2) have underlying collateral that is either an obligation of the United States government or else has a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system or their equivalent by a national statistical ratings organization (NSRO) registered with the SEC(unless otherwise approved by the Board).
6. Derivatives including forwards, futures, options, mortgage derivatives, structured notes, and swaps.
7. High yield fixed income securities rated below 'BBB' according to the Standard and Poor's rating system and below 'Baa' according to the Moody's investors rating system.
8. Loans, warrants and other forms of debt approved by the Board, and managed in conjunction with the Bank of North Dakota, such as farm loans and energy construction loan, as long as the investment meets the Exclusive Benefit Rule described on page 76 of this Policy.

#### **Absolute Return**

Liquid multi-asset/global tactical asset allocation (GTAA) funds that have the ability to shift capital tactically based on relative valuations, providing broad diversification across a range of global investments.

#### **Real Estate**

Real Estate Partnerships, including investments in private vehicles through limited partnerships or limited liability companies that have an ownership interest in direct real estate properties, whether income-producing or non-income producing. The investment strategies may include "core" and "value added" strategies, which derive their return from both income and appreciation. [As well as, Real Estate Investment Trusts \(REIT's\) and other real estate securities and related index strategies for rebalancing tools.](#)

#### **Private Equity**

Private Equity Partnerships, including investments in private vehicles through limited partnerships or limited liability corporations, which have an ownership interest in any type of security across a company's capital structure. The investment strategies may include "buyout", "growth", "venture capital" and "special situations" that are in the business of providing capital for start-up, expansion, buyout/acquisition, recapitalization, debt financing (including distressed debt) and similar business purposes.

#### **Private Infrastructure**

Private Infrastructure Partnerships, including investments through limited partnerships or limited liability companies that have ownership interests in assets or properties where the majority of value

of the investment is derived from revenue sources that have contractual linkages to inflation, implicit linkages to inflation and/or focus on the provision of services with low demand elasticity.

### **Opportunistic Investments**

From time to time, Permanent Trust Funds investments may be made in opportunistic investments. The objective of such investments shall be to enhance returns through opportunities that present themselves due to stressed conditions in the markets or other unique opportunities. The guidelines for such investments shall be determined by the investment management agreement or appropriate offering documents in the case of commingled or partnership investments. An opportunistic investment would occur in a situation where it is deemed the potential return would exceed the Total Fund performance excluding opportunistic returns, or another benchmark as deemed appropriate by the Commissioner and approved by the Board.

### **Cash Investment Guidelines**

The Commissioner will focus on quality when investing cash positions. Cash is an asset class that should emphasize minimal risk. Cash positions will be kept to the minimum necessary for liquidity, distributions and ongoing investment activities. Eligible securities include:

1. Repos secured by U. S. obligations or other securities backed by the U.S., A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less, or asset-backed securities rated AAA. All repo collateral must have a market value of at least 102% of the market value of the contract;
2. Commercial paper issued by corporations organized and operating within the U.S. and rated "prime" quality by a national rating service;
3. Prime bankers' acceptances issued by money center banks;
4. Funding agreements rated at least AA by a nationally recognized rating agency. As used in this paragraph, "funding agreement" means a floating or variable rate insurance company contract that is a general obligation of an insurance company organized and operating within the United States and that is senior to all other debt issued by the company;
5. Time deposits, with banks incorporated in the United States or time deposits that are fully guaranteed by banks incorporated in the United States.

## Strategic Investment and Improvements Fund (SIIF)

### Fund Purpose

The Strategic Investment and Improvements Fund (SIIF), was created July 1, 2011 with merger of the Lands and Minerals Trust Fund and the Permanent Oil Tax Trust Fund.<sup>20</sup> The SIIF holds the assets and collects the revenues earned from State owned mineral acres. The SIIF also receives a substantial portion of the oil and gas production and extraction taxes collected by the State. The Board is responsible for managing the physical and financial assets of the SIIF.

The purpose of the SIIF is to provide for one-time expenditures relating to improving state infrastructure or for initiatives to improve efficiency and effectiveness of state government.

### Funding Sources

The SIIF collects the revenues earned from the mineral acres owned by the State, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the sovereign minerals located under navigable rivers and lakes. The SIIF also receives a portion of the oil and gas production and extraction taxes collected by the State.<sup>21</sup> Legislative changes to the oil tax revenue allocations are common and can have a major impact on the timing and amount oil taxes collected by the SIIF each biennium.

### Distribution Policy

There is no explicit distribution policy or objective; rather the Board is responsible for making sure funds are available to distribute or transfer when needed and as appropriated. The SIIF can be appropriated or obligated by the Legislature every two years, though State law dictates that the SIIF should be appropriated only to the extent that the moneys are estimated to be available at the beginning of the biennium in which the appropriations are authorized.<sup>22</sup>

### Investment Objective

State law provides no guidance as to how the assets of the SIIF should be invested; however, due to the short-term nature of spending decisions and the uncertainty of the fund's mineral based revenues, the Board invests the SIIF with a focus on principal preservation and liquidity. The Board has adopted an investment objective for the SIIF that provides for a diversified portfolio of fixed income securities that will exceed on a multi-quarter basis, net of fees, the return of the benchmark described below.

### Strategic Asset Allocation

Due to the expendable nature of the SIIF, the strategic asset allocation for the fund is 100% low duration investment grade fixed income investments.

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<sup>20</sup> N.D.C.C. § 15-08.1-08 and § 61-33-07

<sup>21</sup> N.D.C.C. § 57-51.1-07.5

<sup>22</sup> N.D.C.C. § 15-08.1-08

## **Investment Guidelines**

The SIF will be invested in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA
- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year, range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

## **Benchmark**

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.

## Capitol Building Fund

### Fund Purpose

The Capitol Building Fund was created at statehood with a grant of land from the federal government. The purpose of the fund, as described in the Enabling Act of 1889, is to provide for “public buildings at the capital”.<sup>23</sup> The Capitol Building Fund was created under Article IX of the North Dakota Constitution; however, unlike the other trusts, this fund is not permanent in that the entire fund is subject to legislative appropriation each biennium.

The Capitol Grounds Planning Commission is responsible for managing all of the assets of the Capitol Building Fund.<sup>24</sup> The Board’s role is to invest and manage the various assets of the fund, as directed by the Capitol Grounds Planning Commission. These roles are statutory, not constitutional in nature; the law specifically states:

The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund and shall account to the commission concerning these funds at the commission's request.<sup>25</sup>

### Funding Sources

The Capitol Building Fund generates revenues from the almost 10,000 surface acres and more than 27,000 mineral acres, which provide revenue from agricultural leases, mineral royalties and lease bonuses.

### Distribution Policy

Since the Capitol Building Fund is a fully expendable fund, there is no distribution policy or objective; rather the Board is responsible for making sure funds are available to distribute or transfer when needed and as appropriated.

State law provides a continuing appropriation of up to \$175,000 per biennium that is available to the Capital Ground Planning Commission without requiring a legislative appropriation for a given biennium.<sup>26</sup> Historically, the legislature has also included a \$25,000 biennial appropriation for the operations of the Capitol Grounds Planning Commission.

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<sup>23</sup> The Enabling Act of February 22, 1889 (25 Stat. 676, chapter 180)

<sup>24</sup> N.D.C.C. § 48-10-02

<sup>25</sup> N.D.C.C. § 48-10-02

<sup>26</sup> N.D.C.C. § 48-10-02

## Investment Objective

Due to the fact that the entire balance of this fund can be appropriated by the legislature each biennium and the uncertainty of the fund's mineral based revenues, the Board has adopted an investment objective with a focus on principal preservation and liquidity.

## Strategic Asset Allocation

Due to the expendable nature of the Capitol Building Fund, the Capital Grounds Planning Commission has adopted a strategic asset allocation for the fund that is 100% fixed income investments.

## Investment Guidelines<sup>27</sup>

The Capital Grounds Planning Commission has adopted guidelines to invest the fund in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA
- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year, range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

## Benchmark

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.

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<sup>27</sup> Due to the common investment objectives, strategic asset allocation, and investment guidelines, the assets of the Capitol Building Fund may be pooled with the SIF for investment purposes.

## Coal Development Trust Fund

### Fund Purpose

The Coal Development Trust Fund is a permanent trust established under Article X, Section 21 of the North Dakota Constitution. The primary purpose of the fund is to provide loans to coal-impacted counties, cities, and school districts and to provide construction loans to school districts; any money that is not in use for loans may be invested by the Board. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources.<sup>28</sup> Both the Constitution and state law mandate that the income earned by the fund be used first to replace any uncollectable loans and the balance must be deposited into the General Fund.<sup>29</sup>

### Funding Sources

State law provides that 15% of coal severance tax revenues be deposited into the fund.<sup>30</sup> The Constitution provides that up to 70% of the taxes deposited into the fund each year may be appropriated by the legislature for lignite research, development, and clean coal demonstration projects approved by the industrial commission.<sup>31</sup> Thus, the Coal Development Trust Fund retains only 30% of the money deposited into the fund, which averages about \$500,000 per year.

### Distribution Policy

The income earned by this fund each year must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the State's general fund. The estimated fiscal year income for this fund is distributed in June of each year; any difference between estimated and actual income is distributed in November or December of each year, once final audited financial statements have been received.

### Investment Objective

Preservation of capital and added value over the benchmark over a full market cycle through active management of the portfolio subject to the investment guidelines set forth below.

### Strategic Asset Allocation

Due to the expendable nature of the income earned by the Coal Development Trust Fund, and the provision in state law about replacing any lost principal with income, the strategic asset allocation for the fund is 100% fixed income investments.

### Investment Guidelines

The Coal Development Trust will be invested in a high quality portfolio that includes a combination of Treasuries, corporate bonds, asset and mortgaged backed securities, and commercial paper and will adhere to the following guidelines:

- Minimum average quality of AA

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<sup>28</sup> N.D.C.C. § 57-62-02

<sup>29</sup> N.D. Const. art. X, § 21 and N.D.C.C. § 57-62-02

<sup>30</sup> N.D.C.C. § 57-62-02

<sup>31</sup> N.D. Const. art. X, § 21

- Minimum quality for any security of BBB (limited to 10%)
- Neutral weighted average maturity of 1 year range of 6 months to 1.5 years
- Maximum maturity: 3 years for fixed rate, 5 years for floating rate
- No more than 50% in investment grade corporate and agency backed securities
- Not more than 2% of the fund will be invested with any single issuer

### **Benchmark**

The benchmark is composed of 50% of the three-month U.S. Treasury Bill and 50% Barclays 1 – 3 Year Gov't Corp Index.



## Indian Cultural Education Trust

### Fund Purpose

The Indian Cultural Education Trust was created in 2003 for the purpose of generating income to benefit Indian culture.<sup>32</sup> State law authorizes the Board to accept donations of money or land for this trust to be managed in the same manner that it manages its other trust land and financial assets, subject to state law and a required donor agreement with one or more federally recognized Indian tribes located in North Dakota, South Dakota, Montana, Minnesota, or Wyoming.

### Three Affiliated Tribes Cultural Education Account

The Three Affiliated Tribes Cultural Education Account is the sole account in the trust, which serves to benefit the Mandan, Hidatsa & Arikara Nation Cultural Education Foundation. Under an agreement signed by the tribe, North American Coal, and the Commissioner, the Board must manage and invest this account exactly as the Permanent Trust Funds are managed and invested.

### Funding Sources

Initial funding of the account was a result of donations of both money and land by North American Coal to the cultural education account. Revenue earned from the donated lands is deposited into the account. Further donations of land or money from Individuals or organizations may provide additional funding to the account.

### Distribution Policy

The distribution calculation for the Indian Cultural Education Trust is identical to that of the Permanent Trust Funds as detailed on page 16, however, the specific donor agreement for an account may dedicate a portion of the amount available to distribute to principal.<sup>33</sup>

The Three Affiliated Tribes Cultural Education Account donor agreement has mandated that no less than 25% of the annual amount available to distribute go to principal. Each year, the Commissioner notifies the Mandan, Hidatsa & Arikara Nation Cultural Education Foundation as to the amount eligible for disbursement. If written request for the disbursement is received by the Commissioner by March 31<sup>st</sup>, all or a portion of that amount shall be distributed as specified in the donor agreement.

### Investment Objective, Strategic Asset Allocation, and Investment Guidelines

Like the Permanent Trust Funds, the investment objective is to preserve purchasing power and maintain stable distributions with a long-term investment horizon. The assets of the Indian Cultural Education Trust are pooled with the Permanent Trust Funds. The strategic asset allocation, benchmarks, and investment guidelines are identical to those of the Permanent Trust Funds, which can be found in the corresponding sections beginning on page 17 of this Policy.

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<sup>32</sup> N.D.C.C. ch. 15-68

<sup>33</sup> N.D.C.C. § 15-68-04

## **Theodore Roosevelt Presidential Library and Museum Endowment Fund**

### **Fund Purpose**

The Theodore Roosevelt Presidential Library and Museum Endowment Fund was created in 2019 during the 66<sup>th</sup> North Dakota Legislative Session as a permanent endowment for grants to support the operation and maintenance of the Theodore Roosevelt Presidential Library and Museum.<sup>34</sup> State law authorizes the Board to accept donations of money for this trust to be managed in the same manner that it manages its other trust land and financial assets, subject to state law.

### **Funding Sources**

Initial funding of the account was a result of appropriation of money by 66<sup>th</sup> North Dakota Legislative Assembly and money borrowed from the Bank of North Dakota. Further appropriations from the North Dakota Legislature or donations of money from Individuals or organizations may provide additional funding to the account.

### **Distribution Policy**

The distribution calculation for the Theodore Roosevelt Presidential Library and Museum Endowment Fund is calculated and paid as follows<sup>35</sup>:

Annual distributions to the Theodore Roosevelt Presidential Library and Museum from the Theodore Roosevelt Presidential Library and Museum Endowment Fund in an amount equal to 4.0% of the Fund's trailing net average value calculated over the previous three (3) fiscal years shall be paid on or before December 31<sup>st</sup> of each year at the request of Theodore Roosevelt Presidential Library Foundation.

### **Investment Objective, Strategic Asset Allocation, and Investment Guidelines**

Like the Permanent Trust Funds, the investment objective is to preserve purchasing power and maintain stable distributions with a long-term investment horizon. The assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund are pooled with the Permanent Trust Funds. The strategic asset allocation, benchmarks, and investment guidelines are identical to those of the Permanent Trust Funds, which can be found in the corresponding sections beginning on page 17 of this Policy.

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<sup>34</sup> N.D.C.C. § 54-07-12

<sup>35</sup> Pursuant to the Agreement between the State of North Dakota and the Theodore Roosevelt Presidential Library Foundation executed June 30, 2020.

## History

Adopted:	08/27/2015
Revised:	09/29/2016
Revised:	10/26/2017
Revised:	09/26/2019
Revised:	12/18/2019
Revised:	01/21/2020
Revised:	04/30/2020
<a href="#">Revised</a>	<a href="#">01/27/2021</a>

## **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:**

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

<b>Action Record</b>	<b>Motion</b>	<b>Second</b>	<b>Aye</b>	<b>Nay</b>	<b>Absent</b>
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.**