

BOARD OF UNIVERSITY AND SCHOOL LANDS

Governor's Conference Room
Ground Floor, State Capitol
September 26, 2019 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. August 29, 2019 – pg. 1

2. **Operations – Jodi Smith**
 - A. Acreage Adjustment Survey- pg. 12
 - B. Oil & Gas Mineral Estate Assessment- pg.14
 - C. Surface Land Management, Investments and Minerals Management Administrative Rules- pg. 15

3. **Surface – Mike Humann**
 - A. County Rents & Prices Survey- pg. 76
 - B. Overview of Surface Division- pg. 84

4. **Minerals – Jodi Smith**
 - A. BNI Coal Lease- pg. 86

5. **Investments – Mike Shackelford**
 - A. Theodore Roosevelt Library Endowment Investment Agreement- pg. 99
 - B. Investment Policy Statement – Second Reading- pg. 100
 - C. Investment Fees & Expenses Report- pg. 128
 - D. Other Funds Report – Second Quarter 2019- pg. 136

6. **Reports – Jodi Smith**
 - A. Report of Easements Issued by the Commissioner – pg. 143
 - B. Energy Infrastructure and Impact Office Report- pg. 148
 - C. Unclaimed Property Report- pg. 150
 - D. Investment Update- pg. 151
 - E. 2020 Land Board Meeting Schedule- pg.152

7. **Litigation – Jodi Smith**
 - A. Newfield Exploration Company et al Civ. No. 27-2018-CV-00143- pg. 156
 - B. Northwest Landowners Association Civ. No. 05-2019-CV-00085- pg. 158
 - C. William S. Wilkinson et al. Case No. 53-2012-CV-00038- pg. 160
 - D. Paul Sorum et al. Civ. No. 09-2018-CV-00089- pg. 163

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:

Next Meeting Date – October 28, 2019 10:00 AM

**Minutes of the Meeting of the
Board of University and School Lands
August 29, 2019**

The August 29, 2019 meeting of the Board of University and School Lands was called to order at 8:04 AM in the Governor's Conference Room of the State Capitol by Chairman Doug Burgum.

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Division Manager
Dennis Chua	Investments Analyst
Allie Nagel	Minerals Division Land Professional
Rick Owings	Grants Administrator
Jeff Engleson	Investments

Guests in Attendance:

Dave Garner	Attorney General's Office
Reice Haase	Governor's Office
Geoff Simon	Western Dakota Energy Association
Brady Pelton	North Dakota Petroleum Council
Rob Forward	DW Slate
Marcia Beard	RVK
Charles Tuttle	

APPROVAL OF MINUTES

A motion to approve the minutes of the July 17, 2019 meeting was made by Secretary Al Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

O P E R A T I O N S

Surface Land Management, Investments, and Minerals Management Administrative Rules

In House Bill 1300, the 65th Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the 66th Legislative Assembly directed the Board of University and School Lands be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-32-51 of the Act.

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code. North Dakota Century Code § 28-32-07 states: “Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change.”

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management are posted on the Department’s website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was scheduled for August 28, 2019. The Department will continue to receive comments until September 9, 2019.

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmass, Lee & Jackson, Inc. “to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission.” The contract’s scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.

Acreage Adjustment Township Survey Status attachments were provided at the board meeting and are available upon request.

Adoption of Investments Director, Jeff Engleson Retirement Congratulations Resolution

After more than 33 years of employment with the Department of Trust Lands, Jeff Engleson is retiring as the Director of Investments.

E N E R G Y I N F R A S T R U C T U R E A N D I M P A C T O F F I C E

Retirement of Grants

Of the grants awarded during Fiscal Years 2017 through 2019, one is complete, and one has a remaining balance available for retirement as the grant holder is non-responsive. The list of recommended retirement of grants for the Board’s consideration is as follows:

Political Sub	Grant	Awarded	Paid	Balance	Project
CITY OF KENMARE	G170056	\$15,000.00	\$10,304.00	\$4,696.00	TRAINING
WHITE SHIELD PSD #85	G180062	\$29,510.00		\$29,510.00	RENOVATION & IMPROVEMENT PROJECTS

\$34,206.00

White Shield PSD is a non-responsive grant holder per N.D. Admin. Code § 85-02-04-02, which states:

A grantee that does not respond to the director's notice is deemed to concur with the cancellation of the grant. The board may cancel the grant immediately and retire the remaining balance to the originating grant fund. If an extension of an aged grant is not granted, the board may cancel the grant immediately and retire the remaining balance to the originating grant fund.

Final notifications were sent to White Shield PSD on December 27, 2018, stating their grant was considered delinquent and to avoid retirement of funding, EIIO needed a written grant status response no later than January 21, 2019. Additionally, the grantee's legislators were included in the notification process.

White Shield Public School District PSD has failed to submit progress reports and to respond to repeated communications via emails, phone calls, and letters with the Energy Infrastructure and Impact Office (EIIO).

The City of Kenmare was awarded a grant in 2017 for training and equipment for their ambulance service in the amount of \$15,000. The City of Kenmare completed its projects and has a remaining balance that the grantee has authorized for retirement.

Motion: The Board retires the two grants identified in the preceding list for a total of \$34,206.00. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.

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

I N V E S T M E N T S

Authority over Financial Assets – Board Resolution

Historically when new investment personnel are hired, Northern Trust Company and other investment advisors have requested a Board resolution, or other formal documentation, identifying the individuals responsible for managing the Board's investment program. Recently the Department hired Michael Shackelford as the Investment Director and Dennis Chua as an Investment Analyst.

The following resolution is proposed for adoption:

BE IT RESOLVED, that Michael Shackelford and Dennis Chua shall have authority to represent the Board in all activities involving the financial assets under the Board's control, as provided for in state law and in accordance with Board policy.

The individuals that will be authorized to give direction to advisors and custodians include Commissioner Jodi Smith, Investment Director Michael Shackelford, and Investment Analyst Dennis Chua. The Department complies with the North Dakota State's Office of Management and

Budget, Fiscal and Administrative Policy 216 – Internal Control and Fraudulent/Significant Dishonest Act.

Motion: **The Board adopts the resolution that Michael Shackelford and Dennis Chua, the Investment Director and Investment Analyst, respectively, shall have authority to represent the Board in all activities involving the financial assets under the Board’s control, as provided for in state law and in accordance with Board policy.**

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

Investment Policy Statement Review and Update – First Reading

Per the Board Investment Policy Statement (IPS), the Board’s IPS is to be formally reviewed at least every four years. However, the Commissioner has chosen to review the IPS on an annual basis to ensure it remains relevant with continued asset growth.

At the October 25, 2018, Board meeting a first reading of proposed IPS changes occurred; however, the Board did not have an opportunity for a second reading. Therefore, the Board will have the opportunity to review the 2018 recommended changes in addition to the 2019 recommended changes. The majority of the proposed changes to the IPS are to address outdated language and modify the IPS based upon changes the Board has made over the last year.

The substantive changes from 2018 include the following:

- **Securities Litigation (page 10):** In August of 2018, the Board directed the Commissioner to contract with Financial Recovery Technologies (FRT), a securities litigation monitoring and claims filing services firm. The Commissioner and staff are in the process of finalizing a contract with FRT. Over the next year FRT will work with the Commissioner and staff to update the Board’s current securities litigation program and policies to more actively engage in securities litigation monitoring.
- **Distribution Policy (page 12-13):** By law, distributions from the Common Schools Trust Fund occur from August through April of each school year. In the past lower amounts were paid out early in the year and higher amounts were paid out later in the year; this was an attempt to match distributions with income as it was earned. Starting in fiscal year 2018, at OMB’s request, distributions are being made in approximately equal amounts each month.
- **Capitol Building Fund Strategic Asset Allocation (page 22):** When the first IPS was adopted, in August 2015, the Board adopted investment guidelines for the Capitol Building Fund. At that time, the Commissioner was of the belief that the Capitol Grounds Planning Commission (CGPC) had also adopted those guidelines, when in fact, the guidelines had been presented to the Commission, but were never formally adopted. This change corrects the policy to state that the Board, not the Commission, has adopted the guidelines.

The substantive changes for 2019 include the following:

- **Strategic Asset Allocation Target (page 14):** The IPS was updated to include the revised asset allocation targets that were adopted by the Board on May 30, 2019, as a result of the termination of Westwood Holdings Group.

- **Policy Benchmark for the Permanent Trust Funds (page 16):** The policy benchmark for the permanent trusts funds was updated to reflect the new target allocation adopted by the Board on May 30, 2019. In addition, the benchmark used to measure fixed income performance was changed to the Barclays US Universal Index, from the previously blended benchmark. This change more closely aligns the target benchmark for fixed income portion of the portfolio with the current generally US focus of the fixed income portfolio.
- **National Statistical Ratings Organization (NSRO) (page 17):** The definition of a national ratings agency eligible to rate collateralized obligations was expanded to include any NSROs registered with the SEC, not just Moody's and Standard and Poor's.

Investment Policy Statement (redline version) attachment was provided at the board meeting and is available upon request.

Quarterly Investment Reports – 2nd Quarter 2019

Marcia Beard from RVK will review the performance of the Board investment program for the period ending June 30, 2019. While here Marcia will also provide the Board some insight as to the performance of the UBS Trumbull Property Fund and also provide some perspective on the current inverted yield curve.

The first report to be reviewed is 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 (Attachment 1). A more comprehensive, detailed report is also available.

Next RVK will provide an update on the real estate market as a whole, as well as insight into the downward revaluation of retail assets in the UBS Trumbull Property Fund, which resulted in a negative return for the quarter (-3.69%).

Recently, the news had been dominated by the yield curve inversion and how it has been a strong predictor of recessions in the past. Following the discussion on real estate, Marcia will share with the Board recent research undertaken by RVK specifically regarding the yield curve inversion

The second performance related document RVK will touch on outlines 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 (Attachment 2). The normal report prepared by staff for these funds could not be prepared in a timely manner due to a delay in fiscal yearend report processing.

RVK Permanent Trust Fund Performance Analysis Report, UBS Trumbull Property Fund Performance Update, Investment Perspectives – What to Know About Yield Curve Inversion,

RVK Ultra-short Performance Report, Attachments were provided at the board meeting and are available upon request.

R E P O R T S

Report of Easements Issued by Land Commissioner 06/20/2019 to 08/20/2019

Granted to: PEARL TOWNSHIP, BEACH-ND
For the Purpose of: Easement-Amend: Road Right-of-Way

(08/29/19)

Right-of-Way Number: RW0008351
 Trust: A - Common Schools
 Legal Description: GOL-143-104-16-NE4, SE4

Granted to: XTO HOLDINGS, LLC, SPRING-TX
 For the Purpose of: Easement: Well-Directional Wellsite Location
 Right-of-Way Number: RW0008375
 Trust: A - Common Schools
 Legal Description: DUN-148-96-36-SW4

Granted to: NORTHEAST REGIONAL WATER DISTRICT, CAVALIER-ND
 For the Purpose of: Easement: Pipeline-Potable Water Pipeline
 Right-of-Way Number: RW0008425
 Trust: U – University Of ND
 I – ND Industrial School
 M – School of Mines
 Legal Description: TOW-163-65-6-SE4, TOW-163-65-7- NE4, LOT 4

Granted to: WHITING OIL AND GAS CORPORATION, DENVER-CO
 For the Purpose of: Easement-Amend: Pipeline-Gas Gathering Pipeline
 Right-of-Way Number: RW0008434
 Trust: A - Common Schools
 Legal Description: MOU-155-92-36-SW4

Granted to: WHITING OIL AND GAS CORPORATION, DENVER-CO
 For the Purpose of: Easement-Amend: Pipeline-Gas Gathering Pipeline
 Right-of-Way Number: RW0008435
 Trust: A - Common Schools
 Legal Description: MOU-155-92-36-SW4

Granted to: HESS NORTH DAKOTA IPELINES, LLC, HOUSTON-TX
 For the Purpose of: Easement: Pipeline-Multiple Pipelines & Communication Cable
 Right-of-Way Number: RW0008441
 Trust: A - Common Schools
 Legal Description: MOU-156-92-36-SW4

Granted to: BRIDGER PIPELINE LLC, CASPER-WY
 For the Purpose of: Easement: Pipeline-Oil Gathering Pipeline
 Right-of-Way Number: RW0008478
 Trust: A - Common Schools
 Legal Description: MCK-153-94-36-SW4

Granted to: RESOURCE ENERGY CAN-AM LLC, HIGHLANDS RANCH-CO
 For the Purpose of: Permit: Road-Access Road
 Right-of-Way Number: RW0008524
 Trust: A - Common Schools
 Legal Description: DIV-164-101-36-SE4, SW4

Granted to: HIGHLINE WATER LLC, WILLISTON-ND
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008528
 Trust: A - Common Schools
 Legal Description: DIV-160-96-36-SE4, SW4

<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX Easement-Amend: Pipeline-Oil Gathering Pipeline RW0008529 A - Common Schools MCK-150-97-36-SE4, SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>AMES SAVAGE WATER SOLUTIONS LLC, WILLISTON-ND Permit: Temporary Water Layflat Line RW0008530 C – Capital Building A – Common Schools MOU-155-94-28-SE4 MOU-155-94-32-NE4 MOU-155-94-36-NW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>MINNESOTA ZOO, APPLE VALLEY-MN Letter of Permission: Access to School Land RW0008534 A - Common Schools MCK-153-94-16-ALL</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>HERMAN ENERGY SERVICES, LLC, HALLIDAY-ND Permit: Temporary Water Layflat Line RW0008539 A - Common Schools MOU-153-92-16-NE4, NW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>TRAVIS MEIER, TUTTLE-ND Letter of Permission: Access to School Land RW0008540 Y - Mayville SHE-145-76-21-NE4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK- ND Permit: Temporary Water Layflat Line RW0008543 A - Common Schools MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4</p>
<p>Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:</p>	<p>ND ENERGY SERVICES INC, DICKINSON-ND Permit: Temporary Water Layflat Line RW0008553 A - Common Schools DUN-144-96-16-SE4</p>

Granted to: AMERICAN ENGINEERING TESTING INC, DICKINSON-ND
 For the Purpose of: Permit: Soil Testing
 Right-of-Way Number: RW0008557
 Trust: A - Common Schools
 Legal Description: WIL-153-99-22-SW4 LESS ACRES CONDEMNED,
 W2SE4 LESS ACRES CONDEMNED

Granted to: SELECT ENERGY SERVICES LLC, WILLISTON-ND
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008560
 Trust: A - Common Schools
 Legal Description: MCK-153-98-36-SW4

Granted to: SHASTA PATTERSON, DUNN CENTER-ND
 For the Purpose of: Letter of Permission: Access to School Land
 Right-of-Way Number: RW0008567
 Trust: A - Common Schools
 Legal Description: DUN-147-94-36-SW4

Granted to: ENVIRONMENTAL RESOURCES MANAGEMENT, PORTLAND-OR
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008568
 Trust: A - Common Schools
 Legal Description: N/A

Granted to: ENCOMPASS ENERGY SERVICES, LLC, BROOMFIELD-CO
 For the Purpose of: Permit: Planning & Preconstruction Survey
 Right-of-Way Number: RW0008569
 Trust: A - Common Schools
 Legal Description: N/A

Granted to: WILDFIRE HYPERHEATERS LLC, DICKINSON-ND
 For the Purpose of: Permit: Temporary Water Layflat Line
 Right-of-Way Number: RW0008570
 Trust: A - Common Schools
 Legal Description: MCK-150-98-36-SW4

Summary of Oil & Gas Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction on www.energynet.com which concluded on August 7, 2019.

There were 694 tracts offered and 135 tracts listed received competitive bids (if the Board does not receive a competitive bid the lease is awarded to the nominator.) The highest bid per acre was \$15,776.00 for 160 net acres in Dunn County.

County	Mineral Acres	Total Bonus	Bonus/Acres
Billings	352.00	\$88,040.00	\$250.11
Bowman	38,485.55	\$43,756.31	\$1.14
Dunn	469.52	\$7,407,147.52	\$15,776.00

Golden Valley	13,546.10	\$14,872.55	\$1.10
McKenzie	481.46	\$701,838.85	\$1,457.73
Mountrail	80.00	\$123,280.00	\$1,541.00
Ward	5,033.09	\$15,236.09	\$3.03
GRAND TOTAL	58,447.72	\$8,394,171.32	\$143.62

There were 51 bidders registered, 27 of which submitted bids in the eight-day auction. Bidders were from 11 states (CO, GA, MN, MO, MT, ND, NV, OK, TX, WA, and WY).

A total of \$8,394,171.32 of bonus was collected from the auction.

Attachments were provided at the board meeting and are available upon request.

The Financial Position was provided to the Board and is available at the Department upon request.

I N V E S T M E N T S

Investment Updates

Asset allocation

The table below shows the status of the permanent trusts' asset allocation as of July 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	7/31/19 Actual Allocation \$	7/31/19 Actual Allocation %	7/31/19 % Diff.
Large Cap US Equity	14.5%	\$ 712,701,536	14.7%	0.2%
Mid/Small Cap US Equity	4.0%	\$ 196,734,940	4.1%	0.1%
International Equity	14.5%	\$ 699,780,741	14.4%	-0.1%
Emerging Market Equity	4.0%	\$ 194,093,799	4.0%	0.0%
Total Equities	37.0%	\$ 1,803,311,016	37.2%	0.2%
Core Fixed Income	13.8%	\$ 759,760,569	15.7%	1.9%
Non-Core Fixed Income	9.2%	\$ 359,859,024	7.4%	-1.8%
Total Fixed Income	23.0%	\$ 1,119,619,593	23.1%	0.1%
Total Absolute Return	15.0%	\$ 721,741,494	14.9%	-0.1%
Commodities	3.0%	\$ 151,063,864	3.1%	0.1%
MLPs	3.0%	\$ 144,121,928	3.0%	0.0%
TIPS	2.0%	\$ 96,580,025	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 96,480,753	2.0%	0.0%
Total Inflation Strategies	10.0%	\$ 488,246,570	10.1%	0.1%
Core Real Estate	8.0%	\$ 387,779,390	8.0%	0.0%
Core Plus Real Estate	7.0%	\$ 330,698,622	6.8%	-0.2%
Total Real Estate	15.0%	\$ 718,478,012	14.8%	-0.2%
Total Asset	100.0%	\$ 4,851,396,685	100.0%	

Angelo Gordon (\$70.24 million, 1.5% of PTF assets)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. To date, a total of \$69.75 million dollars has been transferred to the fund. An \$11.25 million capital call was funded on July 29, 2019.

To date \$69.75 million has been transferred to the fund out of a total commitment of \$150 million; this represents 46.5% of the total commitment to the fund. According to Angelo Gordon, the Board’s commitment should be fully drawn by late-2020.

**Westwood Holdings Group (\$175,964, 0% of PTF assets)
Absolute Return**

In May 2019, the Board voted to terminate Westwood Holdings Group and reallocate those funds to other existing managers. The Commissioner contracted with State Street Bank to transition the assets of the existing portfolio. The transition went smoothly with the reallocation completely effected as of July 1, 2019. The residual cash and accruals in the account will be cleaned up over the next few months.

The long-term target allocations shown above now reflect the new asset allocation as approved by the Board last May 2019.

Upcoming Investment Manager Meetings

There are no upcoming meetings scheduled with Investment Managers.

LITIGATION

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 9:38 AM.

EXECUTIVE SESSION

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

- **Whiting Oil and Gas Corporation Civ. No. 27-2016-CV-00040 – pg. 92**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143 - pg. 94**
- **DW Slate - pg. 96**
- **Northwest Landowners Association Civ. No. 05-2019-CV-00085 - pg. 97**
- **Paul Sorum et al. Civ. No. 09-2018-CV-00089 - pg. 98**

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

EXECUTIVE SESSION

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Kate Schirado	Administrative Assistant
Allie Nagel	Land Professional

Guests in Attendance:

Reice Haase	Governor's Office
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Office

The executive session adjourned at 11:00 AM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Continental Interpleader and Newfield litigation.

A D J O U R N

There being no further business, the meeting was adjourned at 11:00 AM.

Doug Burgum, Chairman
Board of University and School Lands

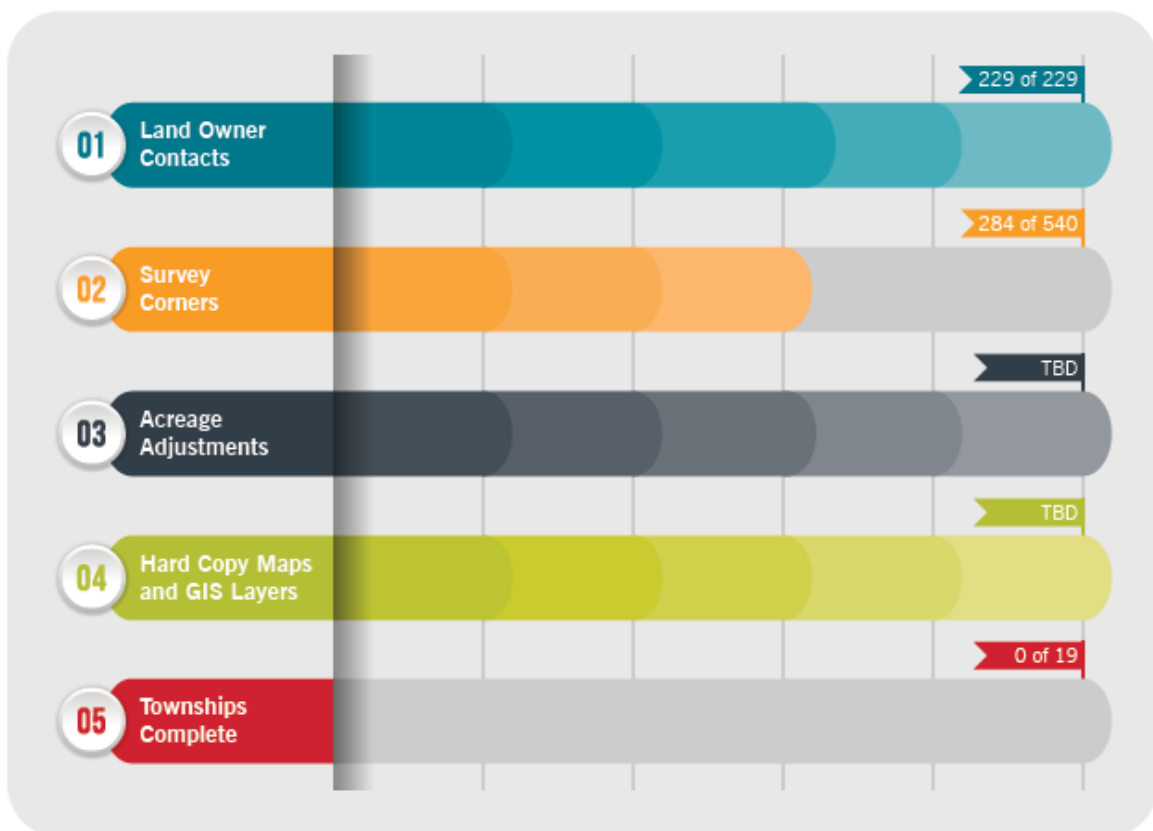
Jodi Smith, Secretary
Board of University and School Lands

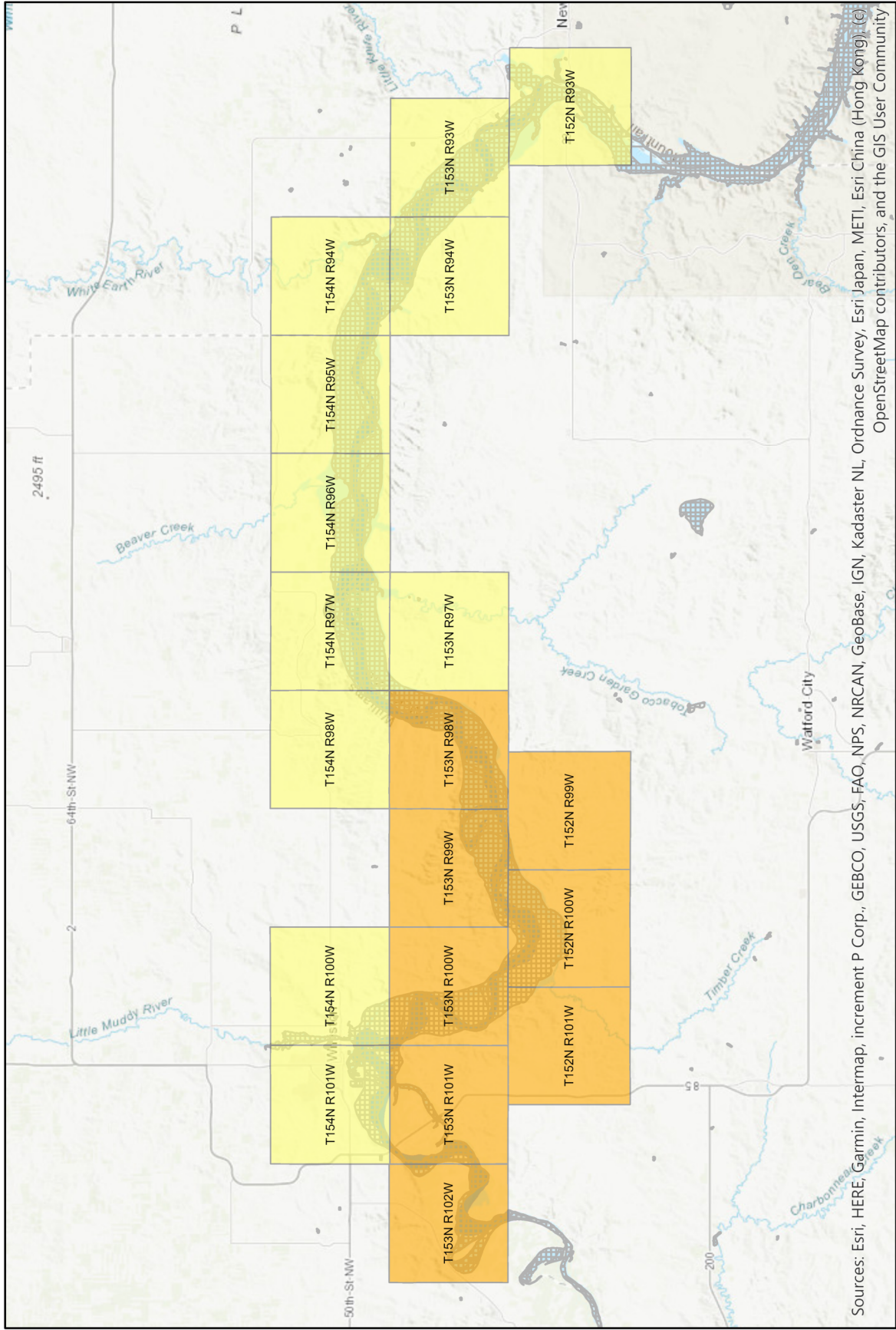
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Acreage Adjustment Survey (No Action Requested)

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission." The contract's scope of work concludes twelve months from the date of execution, at a total cost of \$1,088,635.





Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community

Project Area Townships

	Township Survey Complete
	Aceage Adjustments Complete
	Hard Copy Maps Complete
	Township Deliverable Complete

STATUS

	Township Work To Begin
	Township Survey Started



North Dakota Department of Trust Lands
Township Survey Status
September 17, 2019

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Oil and Gas Mineral Estate Assessment

(No Action Requested)

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography.

The Request for Proposal for the Assessment was released September 20, 2019. The Department will sign an executed contract after January 1, 2020. Once the data is compiled and completed, the findings will be presented to the Board.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: General Administration, Surface Land Management, Investments and Minerals Management Administrative Rules

In House Bill 1300, the Sixty Fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (Act). In Senate Bill 2264, the Sixty Sixth Legislative Assembly directed the Board be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-31-51 of the Act.

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code. North Dakota Century Code § 28-32-07 states: “Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change.”

Revisions to rules concerning General Administration and rules for Surface Land Management, Investments, and Minerals Management were posted on the Department’s website, publication of a notice of intent has been completed, and copies of these rules were sent to sponsoring legislators. A public hearing on these rules was held August 28, 2019, where the Department received oral and written comments. The Department continued to receive comments until September 9, 2019. A summary of the written comments, together with the Department’s discussion and proposed revisions to the rules, has been completed and is attached.

The next step in the process is for the Board to approve the amended rules which will then be submitted for review by the Attorney General’s Office. Pending review by the Attorney General’s Office, the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2019, to become effective January 1, 2021.

Recommendation: The Board approve the adoption of the attached redline version of the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules and authorize the Commissioner to proceed with finalizing and submitting the proposed rules and required information to the Attorney General for an opinion as to their legality.

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

Attachment 1 - Redline Version of the General Administration, Surface Land Management, Investments, and Minerals Management Administrative Rules

Attachment 2 - Summary of Comments on Administrative Rules – spreadsheet

**TITLE 85
BOARD OF UNIVERSITY AND SCHOOL LANDS**

85-01	General Administration
85-02	Energy Infrastructure and Impact Grants
85-03	Unclaimed Property
<u>85-04</u>	<u>Surface Land Management</u>
<u>85-05</u>	<u>Investments</u>
<u>85-06</u>	<u>Minerals Management</u>

**ARTICLE 85-01
GENERAL ADMINISTRATION**

Chapter	
85-01-01	Definitions and General Provisions

**CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS**

Section	
85-01-01-01	Definitions
85-01-01-02	Exception

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.1, and 57-62, apply to this title:

1. “Arm’s length transaction” means a transaction between parties with adverse economic interests where each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships which may compromise their individual interests.
2. “Agricultural use” includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
3. "Board" means the board of university and school lands.
4. “Bonus” means the monetary consideration paid by a lessee for the execution of a lease by the board.
5. “Coal” means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.

6. "Coal lease" means a contract entered into between the board and a third party for a coal mining operation on trust lands.
7. "Coal leased premises" means the land subject to a given coal lease.
8. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
9. "Commercial quantities" means whether (1) the well yields a profit exceeding operating costs over a reasonable period of time, and (2) a reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
10. "Commissioner" means the commissioner of university and school lands.
11. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
12. "Construction aggregate lease" means a contract entered into between the board and a third party for mining of construction aggregate on trust lands.
13. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
14. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
15. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day to day care for the livestock.
16. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
17. "Department" means the office of the commissioner and the department of trust lands.
18. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
19. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical

substances, metallic ores, uranium ores, and oil, gas, and coal which are administered separately.

20. “Fair market value” means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area [under article 85-04](#).

21. “F.O.B.” means free on board.

22. “Gas” means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but shall not include coal, lignite, oil shale, or similar hydrocarbons.

23. “Gas well” means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.

24. “Gross proceeds” means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

25. “Invasive species” means a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

26. “Market value” means the price a willing buyer would pay a willing seller in an arm’s length transaction in which the buyer is not compelled to buy or seller is not compelled to sell.

27. “Net construction aggregate interest” means the undivided portions of the total construction aggregate estate on a given tract of land.

28. “Oil” means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

29. “Oil and gas lease” means a contract entered into between the board and a third party for oil and gas production.

30. “Oil and gas leased premises” means the land subject to a given oil and gas lease.

31. “Oil well” means a well capable of producing oil and which is not a gas well as defined herein.

32. “Payor” means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee’s rights and responsibilities under a lease.

33. “Pest” means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses,

bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.

34. “Surface land lease” means a contract entered into between the board and a third party for agricultural use on trust lands.

35. “Surface land leased premises” means the land area subject to a given surface land lease.

36. “Terminate,” unless otherwise provided, has the same meaning as the word “cancel.”

37. “Trust lands” means any property owned by the state of North Dakota and managed by the board.

38. “Trusts” means permanent trusts and other funds managed or controlled by the board.

39. “Vehicle” means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.

40. “When run” means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time shall be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019, Amended Effective

General Authority: NDCC 28-32-02, 15-05-05, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-01, 4.1-47-04, 15-04, 15-05, 15-07, 15-08, 15-08.1

85-01-01-02. Exception.

The board may grant an exception to articles 85-03, 85-04, and 85-06, when such exception is in the best interests of the trusts.

History: Effective January 1, 2019, Amended Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

ARTICLE 85-04
SURFACE LAND MANAGEMENT

<u>Chapter</u>	
<u>85-04-01</u>	<u>Leasing Trust Lands for Agricultural Use</u>
<u>85-04-02</u>	<u>Construction Aggregate</u>
<u>85-04-03</u>	<u>Permanent Improvements</u>
<u>85-04-04</u>	<u>Encumbrances of Trust Lands</u>
<u>85-04-05</u>	<u>Public Access and Use</u>

CHAPTER 85-04-01
LEASING TRUST LANDS FOR AGRICULTURAL USE

<u>Section</u>	
<u>85-04-01-01</u>	<u>Failure to Pay or Nonsufficient Funds at Auction</u>
<u>85-04-01-02</u>	<u>Annual Surface Land Lease Rental Payment</u>
<u>85-04-01-03</u>	<u>Assignment and Use by a Third Party</u>
<u>85-04-01-04</u>	<u>Sale of Surface Land Lease for Agricultural Use Prohibited</u>
<u>85-04-01-05</u>	<u>Inspection by Prospective Lessee or Purchaser</u>
<u>85-04-01-06</u>	<u>Custodial Agreement</u>
<u>85-04-01-07</u>	<u>Right of Entry</u>
<u>85-04-01-08</u>	<u>Surface Land Lease Termination</u>
<u>85-04-01-09</u>	<u>Board Review</u>
<u>85-04-01-10</u>	<u>Cost Share on Surface Land Leased Premises</u>
<u>85-04-01-11</u>	<u>Cost Share Application</u>
<u>85-04-01-12</u>	<u>Cost Share on Cropland</u>
<u>85-04-01-13</u>	<u>Cost Share Payments</u>
<u>85-04-01-14</u>	<u>Biological Control Agents</u>
<u>85-04-01-15</u>	<u>Record Maintenance</u>

85-04-01-01. Failure to pay or nonsufficient funds at auction.

1. The commissioner will not issue a surface land lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a surface land lease shall be deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year plus three additional calendar years.
3. If a surface land lease payment made at auction is, for any reason, not paid by the bank on which it is drawn, the commissioner shall notify the bidder by mail addressed to the bidder's post office address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-07-20, 54-30-17.1

85-04-01-02. Annual surface land lease rental payment.

1. The annual surface land lease rental payment for the second and succeeding years of a surface land lease must be received by the department no later than five p.m. central standard time on the last business day of January of the surface land lease year. If payment is not received, the surface land lease will automatically terminate without notice.
2. If the annual surface land lease rental payment is, for any reason, not paid by the bank on which it is drawn after five p.m. central standard time on the last business day of January of the surface land lease year, the surface land lease will automatically terminate and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year plus three additional calendar years.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-03. Assignment and use by a third party.

1. A surface land lease or any part thereof shall not be assigned, nor shall the lessee allow the surface land leased premises or any part thereof to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:
 - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.
 - b. An assignment of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day to day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.
 - c. An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-04. Sale of surface land lease for agricultural use prohibited. A lessee is prohibited from selling a board issued surface land lease for agricultural use and any attempt to do so may result in surface land lease termination in accordance with this chapter.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-05. Inspection by prospective lessee or purchaser. The surface land leased premises must be made available for inspection to a prospective lessee or purchaser. If the surface land leased premises contains an occupied farmstead, a prospective lessee or purchaser must provide the current resident with at least two days advance notice of the intended time and date to inspect the property.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-06. Custodial agreement. A custodial agreement may be permitted if a lessee does not own livestock or is understocked. The custodial agreement must be in writing and a copy furnished to the department or the arrangement will be treated as third party use. Unless approval is given by the commissioner, a custodial agreement is not permitted for more than three years.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-07. Right of entry. The department may enter the land subject to the surface land lease at any time without notice for the purpose of inspecting the land and improvements.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-08. Surface land lease termination.

1. Failure to comply with the surface land lease terms, board rules and policies, and applicable laws may result in surface land lease termination by the commissioner. Before a surface land lease is terminated, the department shall personally serve lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.
2. A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after

service on lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.

3. Not less than ten business days after the notice of intent to terminate the surface land lease is served on lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the surface land lease does not release the lessee from liability for any sum due the board or from any damages due.
4. When a surface land lease is terminated, the former lessee shall be ineligible to bid at a surface land lease auction administered by the department for a minimum of the remainder of the current calendar year plus three additional calendar years.

History: Effective

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

~~**85-04-01-09. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.~~

History: Effective

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

85-04-01-10. Cost share on surface land leased premises. The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in cost share reimbursement, as follows:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-11. Cost share application. A lessee shall submit a request for cost share using the electronic cost share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost share shall be determined by the department consistent with the department's cost share policy.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-12. Cost share on cropland. Noxious weeds and invasive species on cropland are not eligible for cost share.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-13. Cost share payments. Cost share payments may be made upon receipt of an invoice for allowable expenses.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-14. Biological control agents. Use of biological control agents to control noxious weeds is authorized in addition to the chemical control.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-15. Record maintenance. A lessee shall furnish complete and accurate information concerning cultivated acres, hayland acres, noxious weed control, grazing, improvements, or any other information concerning the surface land leased premises when requested by the department.

History: Effective _____

General Authority: NDCC 28-32-02, 15-07-20

Law Implemented: NDCC 15-04-01, 15-07-20, 54-30-17.1

CHAPTER 85-04-02
CONSTRUCTION AGGREGATE

<u>Section</u>	
<u>85-04-02-01</u>	<u>Application</u>
<u>85-04-02-02</u>	<u>Construction Aggregate Lease Term</u>
<u>85-04-02-03</u>	<u>Commissioner Authorization</u>
<u>85-04-02-04</u>	<u>Notice of Construction Aggregate Leasing</u>
<u>85-04-02-05</u>	<u>Auctioned Construction Aggregate Leases</u>
<u>85-04-02-06</u>	<u>Use of Construction Aggregate Leased Premises</u>
<u>85-04-02-07</u>	<u>Advance Royalties</u>
<u>85-04-02-08</u>	<u>Royalties</u>
<u>85-04-02-09</u>	<u>Testing</u>
<u>85-04-02-10</u>	<u>Mining and Reclamation Plan</u>
<u>85-04-02-11</u>	<u>Bond</u>
<u>85-04-02-12</u>	<u>Theft of Construction Aggregate</u>
<u>85-04-02-13</u>	<u>Records and Inspections</u>
<u>85-04-02-14</u>	<u>Construction Aggregate Mining Operations</u>
<u>85-04-02-15</u>	<u>Reserved Rights and Termination</u>
<u>85-04-02-16</u>	<u>Board Review</u>
<u>85-04-02-17</u>	<u>Surrender by Lessee</u>
<u>85-04-02-18</u>	<u>Conditions on Expiration, Termination or Surrender</u>
<u>85-04-02-19</u>	<u>Surface Owner Consent</u>
<u>85-04-02-20</u>	<u>Surface Lessee Protection</u>
<u>85-04-02-21</u>	<u>Protection of Cultural Resources</u>

85-04-02-01. Application. An applicant shall submit a request for a construction aggregate lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for a construction aggregate lease, amendment, assignment, or extension. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. Each application and construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres (about sixty-five hectares) of like net construction aggregate interest. An application must be made as follows:

1. Construction aggregate lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department.
2. Amendment. A lessee may submit a request for an amendment to a construction aggregate lease for a specific purpose. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. A construction aggregate lease may be assigned upon written consent of the commissioner. Assignments will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a construction aggregate lease for good cause. The assignor shall remain responsible for compliance of all construction aggregate lease terms and this chapter until the assignment is approved by the commissioner. Upon approval, the assignee shall be responsible for compliance with all construction aggregate lease terms and this chapter. If the request

for an assignment is granted, the department will mail the assignment to the applicant for signature.

4. Extension. A lessee may submit a request for an extension of a construction aggregate lease for up to an additional five year term to be granted at the discretion of the commissioner. The department may adjust the royalty rate if an additional term is granted. If the request for a construction aggregate lease extension is granted, the department will mail the construction aggregate lease extension to the applicant for signature.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-02. Construction aggregate lease term.

1. A construction aggregate lease term may not exceed five years.
2. When the lessee is a state agency or a political subdivision, the royalty rate shall be fixed for a construction aggregate lease term of one year or less. For a construction aggregate lease term greater than one year, the royalty rate shall be based on fair market value with an annual adjustment based on the current fair market value.
3. When the lessee is a private entity requesting less than five thousand cubic yards of construction aggregate, the term of the construction aggregate lease shall be for one year or less.
4. A construction aggregate lease to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.
5. When construction aggregate is requested for an emergency, the term of the construction aggregate lease shall not exceed one year.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-03. Commissioner authorization.

1. The commissioner is authorized to approve and issue a construction aggregate lease on the board's behalf in accordance with this chapter.
2. If an application does not comply with this chapter, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-04. Notice of construction aggregate leasing. Upon receipt of an application for a construction aggregate lease and a determination that the application covers a tract the commissioner is willing to lease, the department shall post on the department's website a

notice of the application for construction aggregate lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a construction aggregate lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed construction aggregate leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the construction aggregate lease.

Those comments will be brought to the board along with the department's recommendations.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-05. Auctioned construction aggregate leases. Notice of an auction must be published in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune. The notice must be published once at least ten days prior to the day of the auction. The notice must contain the legal description of the proposed construction aggregate leased premises, the construction aggregate lease term, and the time and place where the auction will be held. Bidding must be on a royalty per yard basis. Immediately after the bidding session, comments as to whether a construction aggregate lease should be issued can be presented to the department.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-06. Use of construction aggregate leased premises. Lessee may use as much of the construction aggregate leased premises as necessary for prospecting, mining, removal of construction aggregate, and reclamation subject to the requirements of this chapter.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-07. Advance royalties.

1. As consideration for a construction aggregate lease with a term greater than one year, lessee shall pay on the date a construction aggregate lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.
 - a. The advance payment is due each year in which the construction aggregate lease is in force and is due prior to the construction aggregate lease anniversary date.

- b. The advance payment may be credited against construction aggregate mined during the term of the construction aggregate lease. Advance royalty payments for which a credit is not claimed must be forfeited.
 - c. The commissioner may adjust the advance royalty payment amount. Any adjustment takes effect on the anniversary date of the construction aggregate lease following notice to lessee.
- 2. The commissioner may require an advance royalty deposit for a construction aggregate lease with a term of one year or less. The deposit will be credited against construction aggregate mined during the term of the construction aggregate lease.
 - 3. If payment is not timely received, a notice of intent to terminate construction aggregate lease will be issued by the department.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-08. Royalties. Royalties must be received by the department by five p.m. central standard time on the last business day of the calendar month following sale, utilization, stockpiling, or removal from the construction aggregate leased premises of the construction aggregate mined. If payment is not timely received, a notice of intent to terminate construction aggregate lease will be issued. Royalties must be paid in full on any stockpiled construction aggregate remaining on the construction aggregate leased premises ninety days prior to the expiration of the construction aggregate lease.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-09. Testing. The department may require a lessee to conduct drilling tests on the construction aggregate leased premises prior to mining. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the construction aggregate leased premises. Lessee shall furnish the department a map of the construction aggregate leased premises showing the boundaries of the construction aggregate deposit and furnish the department a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct test drilling when required or failure to furnish the required information will result in a notice of intent to terminate construction aggregate lease being issued.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-10. Mining and reclamation plan.

1. Prior to issuance of a construction aggregate lease, the department, in consultation with the lessee, will develop a mining and reclamation plan for the commissioner's approval. Mining must not begin on the construction aggregate leased premises unless the mining and reclamation plan is approved by the commissioner.
2. The intent of the reclamation plan is to reclaim the construction aggregate leased premises to its previous potential use and productivity. The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. In the event the lessee does not comply with the modified reclamation plan, the construction aggregate lease may be terminated.
3. The reclamation plan must indicate the location of the construction aggregate mining operation in relation to the construction aggregate deposit and a plan for the reclamation once the construction aggregate has been removed. The reclamation plan must include the leveling of the disturbed surface at the close of construction aggregate mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed, the preservation and re-spreading of topsoil, and the revegetation of the surface with appropriate flora.
4. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-11. Bond.

1. Payment of all royalties and reclamation of any portion of the construction aggregate leased premises disturbed by lessee is the responsibility of lessee. To assure payment of royalties and satisfactory reclamation, lessee must obtain and retain in force a surety bond, in an amount determined by the commissioner.
2. Lessee may, in-lieu of a surety bond, file another form of security subject to the commissioner's approval.
3. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine area, with no initial surety bond amount being less than ten thousand dollars.
4. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines that an additional surety bond or other security is required, lessee shall submit the additional surety bond or other security within thirty days after request by the commissioner as required by this section.

5. Lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.
6. Upon the payment of all outstanding royalties and satisfactory completion of the reclamation, the commissioner shall release the surety bond. The surety bond may be forfeited to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. The forfeiture of the surety bond by the lessee will not release the lessee of the duty and responsibility to reclaim the construction aggregate leased premises.
7. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-12. Theft of construction aggregate. Lessee shall be responsible for the loss or theft of any construction aggregate from the construction aggregate leased premises and such loss or theft does not relieve the lessee from the responsibility to pay royalties for the construction aggregate.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-13. Records and inspections. Lessee shall keep an accurate record of the quantity, quality, and type of construction aggregate mined. The department may audit, examine, and copy any records as may be necessary to assure lessee is complying with all provisions of the construction aggregate lease, board rules and policies, and applicable laws, and may examine all samples, logs, assays, or cores. All construction aggregate mining operations and reclamation operations may be inspected by the department.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-14. Construction aggregate mining operations. Lessee shall conduct construction aggregate mining operations in a good and workmanlike manner and in accordance with the construction aggregate lease terms, board rules and policies, and applicable laws, and a construction aggregate lease may be terminated by lessor for a failure to comply. Lessee shall take reasonable steps to prevent construction aggregate mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-15. Reserved rights and termination.

1. Failure to comply with construction aggregate lease terms, board rules and policies, and applicable laws may result in construction aggregate lease termination by the commissioner. Before a construction aggregate lease is terminated, the department shall personally serve lessee with the notice of intent to terminate construction aggregate lease specifying the reason for termination.
2. The lessee may file with the department a written request for waiver of the notice of intent to terminate the construction aggregate lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on lessee of the notice of intent to terminate the construction aggregate lease. A request for a written waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except a breach in violation of applicable laws, or the commissioner may allow the lessee time to cure the breach. Termination will not release lessee from liability for royalty owed the board, damages resulting from a breach of a construction aggregate lease term, or to reclaim the construction aggregate leased premises.
3. The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases for the production of coal, oil and gas, uranium, potash or other valuable minerals have priority over any lease for the mining of construction aggregate.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

~~**85-04-02-16. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.~~

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-17. Surrender by lessee. Lessee may surrender a construction aggregate lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a construction aggregate lease does not release lessee from its responsibility to reclaim the construction aggregate leased premises.

History: Effective

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-18. Conditions on expiration, termination or surrender. At the expiration, termination, or surrender of a construction aggregate lease and, upon the completion of reclamation, unless otherwise waived, lessee shall remove its property from the construction aggregate leased premises within one hundred twenty days from the date of expiration, termination, surrender, or the date reclamation is completed. Lessee will be liable to the board for the costs of removal of any property remaining on the construction aggregate leased premises after the deadline for removal. If lessee does not remove all stockpiled construction aggregate from the construction aggregate leased premises by the construction aggregate lease expiration, termination, or surrender date, it will be considered abandoned and will become the property of the board.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-19. Surface owner consent. Where the surface of the construction aggregate leased premises is not managed or owned by the board, lessee shall give the surface owner a written description of the specific locations of any land disturbance contemplated by lessee, accompanied by a map, at least one hundred twenty days prior to the commencement of any construction aggregate mining. Lessee shall provide the department with proof of consent to mine from the surface owner. If there is a change in the nature of the land disturbance contemplated, an updated written description must be provided to the surface owner as soon as possible.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-20. Surface lessee protection. Where the surface of the construction aggregate leased premises is managed or owned by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences that have been damaged, moved, or removed as a result of construction aggregate mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18

85-04-02-21. Protection of cultural resources. If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the construction aggregate leased premises, the director of the state historical board and the commissioner shall be notified immediately and the site and the materials must be protected by lessee from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. Upon written request, the commissioner may grant an extension of the construction aggregate lease term for delays in operations caused by the requirements of this section. In the event no further disturbance is allowed, the construction aggregate lease may be terminated and lessor will refund to lessee any advance royalties not already credited or forfeited as provided in this chapter. The department and the director of the state historical board shall have authority to inspect the construction aggregate leased premises at all times to determine compliance with this section.

History: Effective _____

General Authority: NDCC 15-05-18

Law Implemented: NDCC 15-05-18, 55-02-07

CHAPTER 85-04-03
PERMANENT IMPROVEMENTS

Section

<u>85-04-03-01</u>	<u>Permanent and Nonpermanent Improvements</u>
<u>85-04-03-02</u>	<u>Application</u>
<u>85-04-03-03</u>	<u>Rent Credit, Cost Share and Depreciation</u>
<u>85-04-03-04</u>	<u>General Standards for a Permit for a Permanent Improvement</u>
<u>85-04-03-05</u>	<u>Issuance of a Permit for Permanent Improvement</u>

85-04-03-01. Permanent and nonpermanent improvements.

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.
2. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner. Upon expiration of the surface land lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee. The commissioner, upon written application from the lessee before the end of the one hundred twenty day period, may for good cause extend the period of time for removing nonpermanent improvements.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-02. Application. A lessee shall submit a request for a permanent improvement, using the electronic application available on the department's website or a paper application provided upon request. The lessee shall provide all information specifically required by the application and any supplemental information requested by the department.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-03. Rent credit, cost share and depreciation.

1. Rent credits, cost share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost share must not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from non-department sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from non-department sources and rent credits or cost share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount will be available from the department before the surface land lease auction and will be announced at the surface land lease auction. If the

former lessee is not the successful bidder at auction, the new lessee will be required to compensate the former lessee for the undepreciated amount and the department will continue to depreciate through the original depreciation term. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.

5. No rent credits, cost share, or depreciation for livestock water developments are allowed on surface land leased premises that receive an up-front livestock water deduction in determining the minimum bid for public auction.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26, 15-04-24

85-04-03-04. General standards for a permit for a permanent improvement. In reviewing an application for a permit for a permanent improvement, the commissioner may consider the following:

1. Financial benefit to the trusts;
2. Availability of alternate site or route;
3. The least environmentally damaging site or route;
4. Physical stability of the landscape;
5. Whether technical assistance was sought in planning the proposed permanent improvement;
6. Potential for mineral development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts; and
13. Any other information relevant to the application which would assist in the commissioner's determination.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

85-04-03-05. Issuance of a permit for permanent improvement. The commissioner has authority to determine whether to issue a permit for a permanent improvement and to determine the maximum project cost, rent credit, cost share, and depreciation amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-08-26

CHAPTER 85-04-04
ENCUMBRANCES OF TRUST LANDS

Section

<u>85-04-04-01</u>	<u>Application</u>
<u>85-04-04-02</u>	<u>Surveying and Planning Permit Requirements</u>
<u>85-04-04-03</u>	<u>General Standards for an Encumbrance</u>
<u>85-04-04-04</u>	<u>Issuance of an Encumbrance</u>
<u>85-04-04-05</u>	<u>Right of Entry</u>
<u>85-04-04-06</u>	<u>Expiration of an Encumbrance</u>

85-04-04-01. Application. An applicant shall submit a request for an encumbrance, amendment, assignment, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. An application must be made as follows:

1. Encumbrance. An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Amendment. An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor shall remain responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor shall remain responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department will mail the assignment to the applicant for signature.
4. Extension or renewal. An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department will notify the applicant.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-02. Surveying and planning permit requirements.

1. Prior to accessing trust lands to conduct surveys, including metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and wetland delineations, an applicant shall obtain a surveying and planning permit from the department. The applicant shall complete an electronic application available on the department's website or a paper application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant shall be notified by the third-party applicant of the required access to trust lands at least one calendar week prior to the date of access.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-03. General standards for an encumbrance. In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and

15. Any other information relevant to the application which would assist in the determination.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-04. Issuance of an encumbrance.

1. The commissioner is authorized to approve and issue an encumbrance on the board's behalf in accordance with this chapter.
2. If an application does not comply with this chapter, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.
3. The commissioner may impose such terms as the commissioner deems necessary. An encumbrance must be issued prior to site preparation or construction.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-05. Right of Entry. The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-06. Expiration of an encumbrance. Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

CHAPTER 85-04-05
PUBLIC ACCESS AND USE

Section

<u>85-04-05-01</u>	<u>Vehicular Access</u>
<u>85-04-05-02</u>	<u>Public Access</u>
<u>85-04-05-03</u>	<u>Prohibited Activities</u>
<u>85-04-05-04</u>	<u>Organized Event</u>

85-04-05-01. Vehicular access. The use of vehicles on trust lands is prohibited, except:

1. Within thirty-three feet of section lines;
2. As allowed by the terms of a lease, permit, or easement issued by the board;
3. When used for travel on a public road easement issued by the board;
4. When used by government personnel in the performance of official duties; or
5. When hunting under a special permit issued by the director of the North Dakota game and fish department to shoot from a stationary vehicle and with written permission from the lessee and commissioner.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 20.1-02-05(10)

85-04-05-02. Public access.

1. Non-vehicular public access to leased and unleased trust lands is allowed, if in the best interests of the trusts, unless:
 - a. Specifically prohibited by the commissioner; or
 - b. Lessee posts the land with signage issued by the department, which:
 - (1) Requires notification to the lessee before entry by the public; or
 - (2) Closes the trust lands to all public access.
2. Lessee shall not lease, sell, or otherwise be compensated for access to, on, across or over leased trust lands.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05

85-04-05-03. Prohibited activities. The following activities and items are prohibited on trust lands:

1. Target shooting, explosives, and exploding targets;
2. Camping, picnicking, or camp fires;
3. Unattended hunting blinds, tree stands, and screw in steps;
4. Baiting to attract, lure, feed, or habituate wildlife for any purpose. Bait includes grains, screenings, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting;
5. Disturbing or removing artifacts or any cultural, historical, archeological, or paleontological resources found on trust lands without written permission from the board;
6. Disposing of refuse including garbage, bottles, cans, trees, branches, or other waste materials;
7. Dog training;
8. Metal detecting;
9. Guiding and outfitting;
10. Collecting plant parts for sale or other commercial purposes;
11. Trapping, unless authorized in writing by the commissioner;
12. Tree cutting and firewood gathering, unless authorized in writing by the commissioner; and
13. Beehives, unless specifically authorized in a surface land lease.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-04-18, 15-04-20, 20.1-03-42, 55-02-07, 55-10-09

85-04-05-04. Organized event. Upon written request, the commissioner may allow by written agreement or permit, an organized event involving public access or activity on trust lands if the event:

1. Is an appropriate use of trust lands;
2. Does not damage trust lands;
3. Does not negatively impact the value or financial return of the trust lands in violation of the board's fiduciary duty to the applicable trusts as determined by the commissioner;

4. Protects the state of North Dakota from liability and other claims for damage; and
5. Has been approved by the current surface land lessee, if leased.

History: Effective _____

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

ARTICLE 85-05
INVESTMENTS

Chapter
85-05-01 Investment of Fund Assets

CHAPTER 85-05-01
INVESTMENT OF FUND ASSETS

Section
85-05-01-01 Investment of Fund Assets

85-05-01-01. Investment of fund assets. The board shall invest the financial assets under its control in accordance with the prudent investor rule as defined in North Dakota Century Code section 21-10-07.

History: Effective _____
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-03-04

ARTICLE 85-06
MINERALS MANAGEMENT

<u>Chapter</u>	
<u>85-06-01</u>	<u>Oil and Gas</u>
<u>85-06-02</u>	<u>Coal</u>

CHAPTER 85-06-01
OIL AND GAS

<u>Section</u>	
<u>85-06-01-01</u>	<u>Oil and Gas Lease Nomination</u>
<u>85-06-01-02</u>	<u>Advertisement for Public Auction</u>
<u>85-06-01-03</u>	<u>Public Auction</u>
<u>85-06-01-04</u>	<u>Rejection of Nomination and Bids</u>
<u>85-06-01-05</u>	<u>Form and Term of Oil and Gas Lease</u>
<u>85-06-01-06</u>	<u>Assignment, Amendment, or Extension</u>
<u>85-06-01-07</u>	<u>Voluntary Release</u>
<u>85-06-01-08</u>	<u>Royalties</u>
<u>85-06-01-09</u>	<u>Disputed Title Royalty Escrow Account</u>
<u>85-06-01-10</u>	<u>Breach of Oil and Gas Lease</u>
<u>85-046-01-11</u>	<u>Board Review</u>
<u>85-06-01-12</u>	<u>Reports of Lessee – Delinquency Penalty</u>
<u>85-06-01-13</u>	<u>Audit and Examination</u>
<u>85-06-01-14</u>	<u>Request for Shut-In Status for Oil</u>

85-06-01-01. Oil and gas lease nomination. The department will accept an oil and gas lease nomination for a tract not already under oil and gas lease as reflected in department records and may accept a nomination for a tract under oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department will accept a nomination for an oil or gas lease either electronically through the department’s website or in writing. The nomination period for an oil and gas lease shall be the period set by the commissioner during which the department will accept oil and gas lease nominations. A nomination must be accompanied by a nonrefundable nomination fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nomination period.
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection three, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as “more or less” and may be adjusted by the board within each quarter section.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC15-05-09, 61-33-06, 61-33.1

85-06-01-02. Advertisement for public auction. The department shall publish notice of an oil and gas lease auction in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. The notice must be published once, ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. Should publication of any notice be inadvertently omitted by any newspaper or should the notice contain typographical errors, the department may, in its discretion, proceed with the scheduled leasing if it appears that the omission or error is not prejudicial to the department's interest.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 38-09-15

85-06-01-03. Public auction. The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an online auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, and any processing fees via Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board shall not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.
2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board shall not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.
3. In the event no bids are received, the nominator shall be deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board shall not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-04. Rejection of nomination and bids. The commissioner may, in the best interests of the trusts, reject a nomination or a bid any time prior to the issuance of an oil and gas lease.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09

85-06-01-05. Form and term of oil and gas lease. An oil and gas lease must be issued on a form approved by the board. An oil and gas lease must be made for a term of not less than five years and continue in effect under such term and for as long as oil or gas may be produced from the oil and gas leased premises in commercial quantities or unless otherwise extended. An oil and gas lease must provide for a bonus of not less than one dollar per acre and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued. An oil and gas lease may contain such other terms and conditions as the board deems appropriate.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-06. Assignment, amendment, or extension. A lessee shall submit a written request to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. A request must include any documents requested by the department. Lessee shall submit a fee, in an amount set by the board, to the department with the request.

1. Assignments. All oil and gas lease obligations must be current at the time the assignment is approved. The lessee shall remain bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee shall be bound by all the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws. Assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.
2. Extensions. If, at the expiration of the primary term, production of oil and/or gas has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of this oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner shall, in writing, extend this oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil and/or gas is produced in commercial quantities; lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner shall, in writing, extend this oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil and/or gas is produced in commercial quantities; this oil

and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.

3. Amendments. A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the request is approved.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-15

85-06-01-07. Voluntary release. To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, utilizing the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

History: Effective _____

General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09

85-06-01-08. Royalties. If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due lessor shall be as follows:

1. On any gas produced and marketed (except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons or other products), the royalty, as determined by the board, shall be based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided that the maximum pressure base in measuring the gas under an oil and gas lease shall not at any time exceed 14.73 pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the Balance Method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the board, is based on the residue

gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein shall be based on eighty percent or that percent accruing to lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the oil and gas leased premises, and on forty percent or that percent accruing to lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the oil and gas leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty shall be based on the gross proceeds of sale that would accrue to lessee if the gas were processed under the terms of the most remunerative third party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons where the requirements for using third party transactions cannot be met shall be determined by ~~the greater of:~~

a. The highest market price paid for any gas (or liquid hydrocarbons) of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;

b. The gross proceeds of sale for such residue gas (or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons), F.O.B. at the plant after processing; or

c. The gross proceeds of sale paid to a third party processing gas through the plant; ~~whichever is greater.~~ Lessee shall furnish copies of any and all third party gas processing agreements pertaining to the plant upon lessor's request.

3. On carbon black, sulfur or any other products produced or manufactured from gas (excepting liquid hydrocarbons), whether said gas be "casinghead", "dry" or any other gas, by fractionating, burning or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of lessor. Such market value is to be ~~the greater of:~~

a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area during the same month in which such products are produced; or

b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, ~~whichever is greater;~~ provided that if a third party transaction is used to determine royalty in accordance with subsection two, the royalty due under this subsection shall be determined in accordance with such transaction.

4. Lessee agrees that all royalties accruing to lessor under this rule shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities,

depreciation, risk capital, and otherwise making the oil, gas and other products produced hereunder ready for sale or use.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-09. Disputed title royalty escrow account. Any payor that proposes to withhold royalty payments based upon an ownership dispute shall establish an escrow deposit account and shall deposit the disputed payments into this account.

1. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the commissioner, with the board as a party to the escrow agreement.
2. Prior to a final resolution of the dispute, a partial release of the disputed payments may be made upon written approval by the commissioner and the payor. Upon approval, the disputed payments must be distributed back to the payor for proper distribution to the rightful owner.
3. Upon final resolution of the ownership dispute, and with consent of the commissioner, the escrow agent shall be authorized to release all disputed payments held in the account to payor for proper distribution to the rightful owner. The board is entitled to any interest income earned on the account attributable to North Dakota's ownership interest.
4. This section applies to matters where the amount of the disputed payments is twenty-five thousand dollars or more over a twelve month period. The commissioner and the payor may agree that this section applies to oil and gas leases executed prior to the effective date of this section.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-10. Breach of oil and gas lease.

1. Other than as provided in subsection seven, an oil and gas lease may be cancelled for:
 - a. Nonpayment of any sum due under the oil and gas lease;
 - b. Breach of any of the oil and gas lease terms or conditions provided that such cancellation must not release lessee from liability for any sum due lessor or from any damages due to the breach; or
 - c. A violation of the board rules and policies, and applicable laws.
2. Before an oil and gas lease is cancelled, the department shall mail a notice of intention to cancel the oil and gas lease specifying the reason for cancellation to the lessee by mail

requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.

3. A lessee may file with the commissioner a request for a waiver or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within ~~twenty~~thirty days after the date of notice of intention to cancel the oil and gas lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and must not limit the board's right to cancel the oil and gas lease for any other breach.
4. If lessee has not requested waiver or commissioner review or remedied the default within ~~twenty~~thirty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the oil and gas lease.
5. Cancellation of the oil and gas lease does not release the lessee from liability for any sum due to the board, other than as provided in subsection seven, or from any damages from a breach of the oil and gas lease.
6. Upon cancellation of the oil and gas lease, the department shall file a satisfaction of oil and gas lease with the register of deeds' office in the county where the oil and gas leased premises is located.
7. An oil and gas lease will automatically terminate for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

~~**85-046-01-11. Board review. If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.**~~

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

85-06-01-12. Reports of lessee – delinquency penalty. Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:
 - a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.
2. For oil:
 - a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
 - b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.
3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection six.
5. Unpaid royalties bear interest under North Dakota Century Code section 47-16-39.1.
6. A lessee shall have thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.
 - a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
 - b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
 - c. The commissioner may, for good cause, waive up to twenty-five thousand dollars of the penalty or reduce interest initially sought. A request for a waiver or reduction of penalty in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.
 - d. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty

payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10, 47-16-39.1, 47-16-39.2

85-06-01-13. Audit and examination.

1. The department may audit and examine any records, including:
 - a. Books, accounts, and receipts; and
 - b. Contracts and other records pertaining to the production, transportation, sale, and marketing of the oil or gas or other products produced from the oil and gas leased premises.
2. The department shall serve by certified mail, a written request to payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection one, the department shall notify payor of the results, including the audit findings, the basis for that determination, and the date by which a response to the findings is due.
4. A payor shall have sixty days from the date of the receipt of the audit findings to comply, ~~request an extension,~~ respond to the findings, or request commissioner review. A request ~~for an extension or~~ for commissioner review must be made in writing. ~~-and~~ A request for commissioner review must include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the oil and gas lease is subject to cancellation under section 85-06-01-10, Breach of oil and gas lease.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 47-16-39.1, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10, 47-16-39.2

85-06-01-14. Request for shut-in status for oil.

1. A lessee requesting shut-in status of an oil well, without cancelling the oil and gas lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
 - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
 - b. The township, range, and section of the surface location of the well;
 - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;

- d. The name and address of the operator of the well;
 - e. The cumulative oil production and the number of days of production for the three months immediately preceding the request;
 - f. The written approval of the request from the operator;
 - g. The grounds for the request and the anticipated length of time the well will be shut-in; and
 - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, and the shut-in royalty payment must be submitted with the application. If the application is denied, the shut-in royalty payment will be refunded by the department.
 3. An application is deemed filed when the department receives the application form, application fee, shut-in royalty payment, and any additional information requested by the department.
 4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
 - a. The application is approved and the terms of the shut-in approval;
 - b. The application is denied;
 - c. An additional fifteen day period is necessary to consider the application; or
 - d. The application requires board approval.
 5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
 6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
 7. The commissioner may revoke a shut-in approval if it determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department will provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10, Breach of oil and gas lease.

History: Effective _____

General Authority: NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-09, 15-05-10

CHAPTER 85-06-02
COAL

Section

<u>85-06-02-01</u>	<u>Prospecting Permits</u>
<u>85-06-02-02</u>	<u>Lands Subject to Coal Lease</u>
<u>85-06-02-03</u>	<u>Application for Coal Lease</u>
<u>85-06-02-04</u>	<u>Notice of Coal Leasing</u>
<u>85-06-02-05</u>	<u>Negotiation of Coal Lease</u>
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<u>85-06-02-07</u>	<u>Voluntary Release</u>
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<u>85-06-02-09</u>	<u>Board Review</u>
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<u>85-06-02-15</u>	<u>Reports of Lessee – Delinquency Penalty</u>
<u>85-06-02-16</u>	<u>Audit and Examination</u>

85-06-02-01. Prospecting permits. A request for a prospecting permit is issued in accordance with North Dakota Administrative Code chapter 85-04-04.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-08, 15-05-09

85-06-02-02. Lands subject to coal lease. A coal lease may be issued upon acreage not already under coal lease as reflected in department records. A coal lease is limited to a maximum of one quarter section, unless otherwise authorized by the board.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-08, 15-05-09

85-06-02-03. Application for coal lease. A written application for a coal lease must include:

1. Legal description of the lands to be leased;
2. Proposed terms for the coal lease including the bonus, length, delay rental, and royalty;
3. Documentation showing that the bonus, term, delay rental, and royalty being offered are consistent with market rates; and
4. Nonrefundable application fee in an amount set by the board.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-08, 15-05-09

85-06-02-04. Notice of coal leasing. Upon receipt of an application for a coal lease and a determination by the board that the application covers a tract the board is willing to lease, the department shall post on the department's website a notice of the application for coal lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a coal lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed coal leased premises as shown on the **published** **posted** notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the coal lease.

Those comments will be brought to the board along with the department's recommendations.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-05. Negotiation of coal lease. The department may negotiate with the applicant the terms and conditions of a coal lease that it deems to be in the best interests of the trusts. If the board owns the surface estate of a coal leased premises, compensation for the surface damage must be negotiated separately. The applicant may propose modifications to the bonus, delay rental, royalty, or other terms of the coal lease application. The board may refuse to enter into a coal lease for any reason. The board shall not issue the coal lease until receipt of full payment of at least one year of delay rental, bonus payment, and any applicable fees.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-04, 15-05-09, 15-05-10, 15-05-13

85-06-02-06. Testing. The department may require a lessee to conduct drilling tests on the coal leased premises prior to the coal mining operations. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the coal deposit and estimate the quality, quantity, and type of coal located on the coal leased premises. Lessee shall provide the department a map of the coal leased premises showing the boundaries of the coal deposit and a written report estimating the thickness, depth, quality, quantity, and type of coal. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct drilling tests when required or failure to provide the required documentation, may result in termination of the coal lease under section 85-06-02-08, Breach of coal lease.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-07. Voluntary release. To request a voluntary release of a coal lease, or portion of a coal leased premises, a lessee shall submit a written request to the department utilizing

the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the voluntary release is approved. All coal lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the voluntary release is approved by the commissioner.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-08. Breach of coal lease.

1. A coal lease may be cancelled for:
 - a. Nonpayment of any sum due under the coal lease;
 - b. Breach of any of the coal lease terms or conditions provided that the cancellation must not release lessee from liability for any sum due lessor or from any damages due to the breach; or
 - c. Violation of the board rules and policies, and applicable laws.
2. Prior to cancellation of a coal lease, the department must mail a notice of intention to cancel the coal lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the coal leased premises is located.
3. A lessee may file with the commissioner a request for a waiver or a request for commissioner to review the notice of intention to cancel the coal lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within twenty days after the date of notice of intention to cancel the coal lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may waive any breach except a breach of coal lease terms required under North Dakota Century Code, or the commissioner may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and must not limit the board's right to cancel the coal lease for any other breach.
4. If lessee has not remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, commissioner shall cancel the coal lease.
5. Cancellation of the coal lease does not release the lessee from liability for any sum due to the board or from any damages from a breach of the coal lease.
6. Upon cancellation of the coal lease, the department shall file a satisfaction of coal lease with the register of deeds' office in the county where the coal leased premises is located.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-046-012-09. Board review. ~~If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration.~~ Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-10. Minimum delay rentals.

1. The minimum delay rental shall be five dollars (\$5.00) per acre per year payable for as long as the coal lease is in full force and effect.
2. The first year of delay rental must be paid upon the issuance of a coal lease. The delay rental for each subsequent year of the coal lease is due and payable before the anniversary date of the coal lease.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09, 15-05-10

85-06-02-11. Royalty. Royalties are due to lessor for coal mined or saved from the coal leased premises. If any other valuable substance is found or discovered during exploration or coal mining operations, the operator must notify the department prior to extraction.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09, 15-05-10

85-06-02-12. Assignments. A lessee shall submit a written request to the department for an assignment of coal lease utilizing the form available on the department's website. A request for assignment must include any documents requested by the department. Lessee shall submit a coal lease assignment fee, in an amount set by the board, to the department with the request. Approval of an assignment is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the assignment is approved. All coal lease obligations must be current at the time the assignment is approved. The lessee shall remain bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the assignment is approved by the commissioner. Upon approval of the assignment, the assignee shall be bound by all the terms and conditions of the coal lease, board rules and policies, and applicable laws. Assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09, 15-05-15

85-06-02-13. Surface owner protection. For a coal lease or prospecting permit where the board is leasing or granting the right to explore for coal and has no interest in the surface estate, the lessee or permittee shall comply with North Dakota Century Code chapter 38-18.

History: Effective

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-14. Financial obligation to reclaim. The lessee shall pay the entire cost of reclamation necessitated by the coal mining operation.

History: Effective

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09

85-06-02-15. Reports of lessee – delinquency penalty. A statement and payment of royalty must be received by the department on or before the last day of the month following the mining and removal of coal from the premises.

1. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
2. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver is granted by the commissioner.
3. A lessee shall have thirty days from the date of the receipt of a notice of a penalty assessment to pay the penalty or request a waiver.
 - a. A request for a waiver of the penalty must be in writing and provide the grounds for the request.
 - b. The following factors may be considered when deciding to waive the penalty: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
 - c. The commissioner may, for good cause, waive up to twenty-five thousand dollars of the penalty initially sought. A request for penalty waiver in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.
 - d. A waiver of penalty does not constitute a waiver of the right to seek the full amount of the penalty if the initial claim for royalty payment is not paid. If a claim for unpaid royalties and penalties is settled and payment received, the amount of penalties not collected is deemed waived.

History: Effective

General Authority: NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09, 15-05-10

85-06-02-16. Audit and examination.

1. The department may audit and examine any records, including:
 - a. Cuttings, cores, logs, mine plans, and estimated tonnage in place from any coal leased premises;
 - b. Books, accounts, sales invoices, and receipts;
 - c. Contracts and other records pertaining to the production, transportation, sale, and marketing of the coal produced from the coal leased premises; and
 - d. Documents supporting the cost of the coal mining operation used for calculating the price per ton royalty.
2. The department shall serve by certified mail, a written request to payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection one, the department shall notify payor of the results, including the audit findings, any additional royalties due, the basis for that determination, and the date by which a response to the findings is due. If an exact amount of any delinquent royalties cannot be determined from the documents provided, the department shall request the payor make appropriate adjustments.
4. A payor shall have sixty days from the date of the receipt of the audit findings to comply, respond to the findings, or request commissioner review. A request for commissioner review must be made in writing and include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the coal lease is subject to cancellation under section 85-06-02-08, Breach of coal lease.

History: Effective _____

General Authority: NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

Law Implemented: NDCC 15-05-01, 15-05-09, 15-05-10

SUMMARY OF COMMENTS ON ADMINISTRATIVE RULES

Public Hearing Held August 28, 2019

Comment Period Ending September 9, 2019

ADMIN. RULE SECTION	DATE RECEIVED	COMMENTS RECEIVED		COMMENT	DISCUSSION	ACTION TAKEN
		ORAL OR WRITTEN	COMMENTS RECEIVED			
85-01-01-01 Definitions	8/28/19	Oral & written* (*written comments of Ron Ness dated August 28, 2019 read aloud at the public hearing)	Brady Pelton, ND Petroleum Council	NDPC recognizes the majority of definitions proposed for adoption into Title 85 mirror the definitions currently codified in Land Board policy manuals. Codifying these definitions in the North Dakota Administrative Code is appropriate. Given pending litigation surrounding Board rules on gas royalties, proper definition of terms including "arm's length transaction" and "fair market value" is critical to correct interpretation of oil and gas leases. NDPC is still evaluating these two definitions in particular, and will supplement these comments if necessary.	Due to pending litigation, we cannot make changes to the definition of "arm's length transaction". The definition of "fair market value" relates to surface land management.	The Department of Trust Lands (DTL) recommends the definition of "fair market value" be modified to clarify it relates only to surface land management issues as follows: "Fair market value" means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area <u>under article 85-04.</u> "
85-01-01-02 Exception	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	NDPC supports extending Land Board discretionary exception authority to include the ability to grant exceptions to ND Administrative Code articles on surface land and mineral management. At times, exceptions are an important tool the Board may use to best manage the various public trusts.	No changes requested.	DTL recommends the Board of University and School Lands (Board) make no changes.
85-04-01-09			DTL	Changes should be made to keep the rules consistent with rules for oil and gas and coal.	DTL proposed changes to the language to clarify the process for seeking Board Review for oil and gas and coal. Changes were incorporated herein for consistency purposes.	DTL recommends the Board replace the language with the following: Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this

						request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.
85-04-02-16			DTL	Changes should be made to keep the rules consistent with rules for oil and gas and coal.	DTL proposed changes to the language to clarify the process for seeking Board Review for oil and gas and coal. Changes were incorporated herein for consistency purposes.	DTL recommends the Board replace the language with the following: Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.
85-04-04-01 Application	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	NDPC has identified issues with this section, which formalizes certain requirements for obtaining encumbrances across Trust lands. In particular, there does not appear to be a concrete timeline for review or approval of encumbrances. The absence of a structured process by which a request for an encumbrance, amendment, assignment, extension, or renewal may be approved creates uncertainty as to the time that may be expected for review of such a request by the Department of Trust Lands and the timeline for issuance by the Commissioner once an application is complete. Unclear guidance on the approval process for	Oftentimes we are not provided complete applications. Applications are processed in the order of receipt of full applications. A strict timeline is not appropriate in this type of review process.	DTL recommends the Board make no changes.

				applications made under this section creates cause for concern about potential delays in process.		
85-04-05 – Public access and use	8/29/19	Written	Terry Steinwand, Director ND Game and Fish	1. Who, and under what statutory/jurisdictional authority, will enforce these new rules?	DTL will use all available resources to enforce these rules.	DTL recommends the Board make no changes.
85-04-05 – Public access and use	8/29/19	Written	Terry Steinwand, Director ND Game and Fish	2. What are the penalties for violations of 85-04-05, and where may they be found?	Penalties are available under statute, depending on the infraction.	DTL recommends the Board make no changes.
85-04-05 – Public access and use	8/29/19	Written	Terry Steinwand, Director ND Game and Fish	3. Is there penalty for unauthorized posting of trust lands?	There is no penalty. DTL addresses these issues when found and takes appropriate action.	DTL recommends the Board make no changes.
Index to Chapter 85-06-01			DTL	85-04-01-11 Board review should be changed to 85-06-01-11 Board Review.	Typographical error.	DTL recommends 85-04-01-11 Board review be changed to 85-06-01-11 Board Review.
85-06-01-05 Form and Term of Oil and Gas Lease	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	NDPC believes the terms of an oil and gas lease to be extremely important, especially when considering the importance of consistency to contractual agreements. The rule proposed in this section, while relatively clear on the form of oil and gas leases between industry operators and the State of North Dakota, is conspicuously lacking in detail pertaining to the royalty rate of oil and gas produced on State-leased mineral acres. NDPC believes that such an	There are varying royalty rates based on the date the lease was entered into and depending on the county in which the leased premises is located. The royalty rate is reflected in each individual lease. The proposed rules adequately cover items included in the suggested language.	DTL recommends the Board make no changes.

				<p>important lease term as royalty rate should be codified in the ND Administrative Code and made subject to public input. NDPC therefore suggests the Land Board simply adopt the existing lease and royalty provisions set forth in Section 85-06-06-05 of the 1979 Oil and Gas Rules, which contains the current royalty rates and other provisions as set forth [in the suggested language].</p> <p>Suggested language was provided.</p>		
85-06-01-06 Assignment, Amendment, or Extension	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	<p>NDPC appreciates the proposed rules regarding assignment, amendment, or extension of a State-owned mineral lease. The proposed rules require approval from the Department of Trust Lands for assignment, amendment, or extension of an oil and gas lease, as compared to the rules in place since 1979 where Land Board approval is required. NDPC believes the proposed rule will be beneficial to the processes subject to this section and that the Department has the necessary resources available to properly ensure decisions regarding the assignment, amendment, or extension of State oil and gas leases. As noted below in NDPC's comments on Section 85-06-01-11, however, a process by which the decision of the Department or the Land Commissioner can be further reviewed by the Board is necessary to preserve proper elements of due process.</p>	<p>The authority to make these decisions has been delegated to the Commissioner by the Board.</p> <p>The issue raised concerning Board review will be addressed in the discussion on Section 85-06-01-11.</p>	DTL recommends the Board make no changes.

85-06-01-07 Voluntary Release	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	<p>NDPC believes the language of the rules in place since 1979 to be adequate in ensuring that all lease obligations are current prior to a voluntary release of that lease. Though NDPC understands the interest by the Land Commissioner and Department of Trust Lands in having all obligations of a lease continue until approved by the Commissioner, those obligations and liabilities of a lease that is voluntarily released should more appropriately cease at the time of release.</p> <p>Suggested language was provided.</p>	DTL approval is required before a voluntary release can be completed. Once DTL receives a request for voluntary release, DTL will review to determine if all lease obligations are current.	DTL recommends the Board make no changes.
85-06-01-08 Royalties	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	<p>NDPC recognizes that the issue of royalties on production within State-held oil and gas leases is currently pending legal review in State court. Consequently, NDPC is still evaluating this section and will provide supplemental comments to the Land Board if necessary.</p>	No changes requested.	DTL recommends the Board make no changes.
85-06-01-08 Royalties	9/9/19	Written	Ron Ness, ND Petroleum Council	<p><i>Supplemental comment:</i> As with many contractual agreements used within the oil and gas industry, those between a lessee and a third party gas processor require a particular degree of confidentiality. This is especially true when that information is brought into the public record. For gas processing agreements required to be furnished "upon lessor's request" in subsection 2, paragraph c, of this section, however, no confidentiality protections appear to exist. The 66th Legislative Assembly passed House Bill 1392 in 2019, codifying required protections for records from a private entity to the Land Board "for purposes of the board's audit of the entity's [. . .] oil, gas, or other royalty payments to the</p>	The Department cannot determine that it will only need these documents during an audit and therefore, does not want to limit its ability to request these documents only as part of audits.	DTL recommends the Board make no changes.

				<p>board.” N.D.C.C. 44-04-18.29. This confidentiality protection extends to those records provided to the Land Board that are furnished by the Board to third parties.</p> <p>NDPC believes the appropriate time for the Land Board to request gas processing agreements is in the event of an audit. NDPC further believes “any and all third party gas processing agreements pertaining to the plant” can be properly considered a “record” under N.D.C.C. 44-04-18.29 and that those agreements should be subject to the confidentiality protections of that section of the Century Code when furnished to the Land Board. Therefore, NDPC respectfully recommends the added language [in the suggested language] in subsection 2, paragraph c, for consideration.</p> <p>Suggested language was provided.</p>		
85-06-01-08 Royalties			DTL	<p>Sections 2 and 3 were bulleted for the methods used in calculating royalties. Royalties are owed on the greater of the 2 or 3 methods. The reference to the greater of is in the last option in both sections. It would be easier to read/understand if you start out by saying it’s the greater of the various methods instead of leaving it buried in the last potential valuation method.</p>	<p>DTL proposed changes to the language to clarify what the phrase “the greater of” refers to.</p>	<p>DTL the Board make the following changes to 85-06-01-08(2) & (3):</p> <p>Respective royalties on residue gas and on liquid hydrocarbons where the requirements for using third party transactions cannot be met shall be determined by <u>the greater of</u>:</p> <p>a. The highest market price paid for any gas (or liquid hydrocarbons) of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;</p>

						<p>b. The gross proceeds of sale for such residue gas (or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons), F.O.B. at the plant after processing; or</p> <p>c. The gross proceeds of sale paid to a third party processing gas through the plant whichever is greater. Lessee shall furnish copies of any and all third party gas processing agreements pertaining to the plant upon lessor's request.</p> <p>3. On carbon black, sulfur or any other products produced or manufactured from gas (excepting liquid hydrocarbons), whether said gas be "casinghead", "dry" or any other gas, by fractionating, burning or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of lessor. Such market value is to be <u>the greater of:</u></p> <p>a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of</p>
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						<p>sale in the general area during the same month in which such products are produced; or</p> <p>b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, whichever is greater, provided that if a third party transaction is used to determine royalty in accordance with subsection two, the royalty due under this subsection shall be determined in accordance with such transaction.</p>
85-06-01-10 Breach of Oil and Gas Lease	8/28/19	Oral & written*	Brady Pelton, ND Petroleum Council	NDPC believes it to be of benefit to the State Trusts to allow a lessee of State minerals to drill out its leaseholds and attain production of minerals. In the event of a breach of an oil and gas lease, working with the operator holding the lease has value in the form of an established relationship between the parties. To advance the objectives of that relationship, NDPC recommends allowing a total of thirty (30) days for a lessee to request for a waiver or Commissioner review of a notice of intent to cancel an oil and gas lease. A thirty-day period for a request for a waiver or review is consistent with the time period allowed in the 1979 Oil and Gas Rules. NDPC sees little value in straining the relationship between	DTL reviewed and determined thirty days is a reasonable amount of time.	<p>DTL recommends the Board make the following changes to 85-06-01-10(3):</p> <p>A request must be in writing and filed with the commissioner within twenty<u>thirty</u> days after the date of notice of intention to cancel the oil and gas lease is received or the date of publication.</p> <p>And the following changes to 85-06-01-10(4): If lessee has not requested waiver or commissioner review or remedied the default within twenty<u>thirty</u> days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the oil and gas lease.</p>

				<p>lessees and the State by narrowing that window.</p> <p>Suggested language was provided.</p>		.
85-06-01-11 (Incorrectly numbered as 85-04-01-11)			DTL	Incorrectly numbered. Change from 85-04-01-11 to 85-06-01-11.	Typographical error.	DTL recommends 85-04-01-11 be changed to 85-06-01-11.
85-06-01-11 Board Review	8/28/19	Oral & written	Brady Pelton, ND Petroleum Council	<p>NDPC appreciates the inclusion of a process by which a decision of the Commissioner may be brought before the Land Board for its consideration. However, under the language of the proposed rule, that opportunity for Board review is subject only to the determination of the Commissioner. Absent any requirements pertaining to adjudicative proceedings under the ND Administrative Agencies Practice Act (N.D.C.C. 28-32-21 through N.D.C.C. 28-32-51), there exists no opportunity for an aggrieved party to seek further review by the Land Board itself. To ensure proper due process and to allow access of such an aggrieved party to the highest decision-making body holding jurisdiction over these administrative rules, NDPC strongly recommends adding language to this section creating an administrative adjudicative procedure for those in actual or potential contractual privity with the Land Board. Such procedures will ensure the proper exhaustion of remedies by those holding leases with the State by allowing access to final review by the Board. Because Board oversight of the State Trusts is a</p>	DTL proposed changes to the language to clarify the process for seeking Board Review.	<p>DTL recommends the Board replace the language with the following:</p> <p>Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.</p>

				<p>critical function of the Board, it is imperative that it have the ability to receive petitions for final review from parties seeking relief. As the individuals collectively responsible for overseeing the Trusts, Board members themselves should have the codified ability to bring Commissioner decisions forward for further Board considerations as well.</p> <p>NDPC stands willing to work with the Commissioner and the Board in amending the proposed language of this section to ensure due process rights are preserved. A suggested potential alternative to the proposed language may include the ability of an aggrieved party seeking or holding contractual privity with the Board to submit a petition to the Board for its consideration of any decision made by the Commissioner to that party's detriment. Such a request could potentially be submitted to the Board and the Commissioner within thirty days of an adverse Commissioner decision, creating a timely process by which that decision could be reviewed at the Land Board level.</p>		
85-06-01-11 Board Review	9/9/19	Written	Ron Ness, ND Petroleum Council	<p><i>Supplemental comment:</i> NDPC continues to view the proposed language related to Land Board review of a decision made by the Commissioner to be restrictive to procedural due process rights. The opportunity of a party aggrieved by a decision of the Commissioner to be heard by an overseeing decision making body is fundamental to preserving that right. As stated in NDPC's original comments, there exists no such opportunity under the current proposed language of this rule.</p>	DTL proposed changes to the language to clarify the process for seeking Board Review.	<p>DTL recommends the Board replace the language with the following:</p> <p>Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the</p>

			<p>NDPC therefore strongly recommends adding language to this section creating an administrative adjudicative procedure for those in actual or potential contractual privity with the Land Board. Such procedures will ensure the proper exhaustion of remedies by those holding leases with the State by allowing access to final review by the Board itself. Because Board oversight of the State Trusts is a critical function of the Board, it is imperative that it have the ability to receive requests for final review from directly affected parties seeking relief. As the individuals collectively responsible for overseeing the Trusts, Board members themselves should have the ability to bring Commissioner decisions forward for further Board considerations as well.</p> <p>NDPC respectfully suggests edits to this section as provided [in the suggested language]. First, it is recommended that an individual Land Board member have the ability, along with the Commissioner, to determine whether a decision by the Commissioner may warrant further consideration by the Board as a whole. NDPC also recommends adding language creating the opportunity for an aggrieved party seeking or holding contractual privity with the Board to submit a petition to the Board for its consideration of any decision made by the Commissioner to that party's detriment. NDPC proposes that such a request be submitted to the Board within thirty days of the adverse decision being communicated by the Commissioner.</p> <p>NDPC understands the concern for allowing any party to challenge a decision of the Commissioner. However, the importance of adequate procedural due</p>		<p>aggrieved party may request board review and the commissioner shall decide if board review is warranted.</p>
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				<p>process rights far outweighs the potential burden having such access to a final oversight body may have.</p> <p>Suggested language was provided.</p>		
85-06-01-12 Reports of Lessee-Delinquency Penalty	8/28/19	Oral & written	Brady Pelton, ND Petroleum Council	<p>NDPC believes the automatic thirty percent (30%) assessment for penalties and interest on delayed royalty payments, as proposed in Subsections 4 and 5 of the rules, is clearly excessive in today's economic environment. The thirty percent assessment should be reserved for only the most egregious cases involving fraud or intentional misconduct. NDPC believes there are many situations where there exists good cause for assessing penalty and interest at more standard rates, particularly where there are good faith disputes over title or other complex legal issues.</p> <p>As compared to the Oil and Gas Rules that have been in place since 1979, provisions related to penalties and interest for delinquent amounts have been separated into separate subsections. This separation creates an appearance that penalties and interest are mandatory. To clarify this, NDPC recommends using the language in the 1979 Oil and Gas Rules [and suggested language was provided].</p> <p>Regarding the waiver limitation on penalty and interest amounts, NDPC commends the proposed level of twenty-five thousand dollars (\$25,000). This cap allows for a more appropriate waiver in the event good cause can be shown for delayed royalty payments.</p>	This is already in place for all existing leases. The Commissioner has discretion to assess and waive the penalties.	DTL recommends the Board make no changes.

				Suggested language was provided.		
85-06-01-13 Audit and Examination	8/28/19	Oral & written	Brady Pelton, ND Petroleum Council	NDPC questions whether the sixty (60) day time period for a payor to comply with, respond to, or request Commissioner review of audit findings is adequate in length to allow for a proper and adequate response. NDPC encourages the Land Board to consider increasing that time period to ninety (90) days. At a minimum, NDPC recommends that language be added to this section allowing for an extension request to be made to the Commissioner on a showing of good cause.	DTL feels 60 days is adequate time to respond to audit findings. However, DTL will consider extensions under extenuating circumstances.	DTL recommends the Board make the following changes to 85-06-01-13(4): A payor shall have sixty days from the date of the receipt of the audit findings to comply, <u>request an extension</u> , respond to the findings, or request commissioner review. A <u>request for an extension or for commissioner review must be made in writing, and a request for commissioner review must</u> include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the oil and gas lease is subject to cancellation under section 85-06-01-10, Breach of oil and gas lease.
85-06-01-14 Request for Shut-In Status for Oil	8/28/19	Oral & written	Brady Pelton, ND Petroleum Council	NDPC is unclear as to what types of oil and gas drilling, production, and operational situations are contemplated by the Department as requiring or encouraging a lessee to apply for shut-in status. Guidance on what activities are eligible for shut-in status would be helpful, be it through a guidance document or by administrative rule. Understanding when the Board deems shut-in status of a well appropriate will allow applicants for shut-in status to	Companies are encouraged to apply for a shut in whenever it is anticipated that a well will be offline for more than 60 days from the cessation of production. Listing the circumstances for basis limits the lessee/operator's option to exercise this clause.	DTL recommends the Board make no changes.

				better assess under what circumstances such a request should be made.		
85-06-02-03	8/28/19	Oral	David Straley, North American Coal	Considering the nature of the business, would perhaps like to keep the information confidential with the commissioner and her staff. Understand may be public information but would not like the rates broadcast, and how they present the information. They would like a confidentiality agreement.	This information is subject to open records under N.D.C.C. ch. 44-04.	DTL recommends the Board make no changes.
85-06-02-04			DTL	Should 85-06-02-04(3) be modified to read "The legal description of the proposed coal leased premises as shown on the published <u>posted</u> notice; and")	DTL does not publish this information and only posts to our website.	DTL recommends 85-06-02-04(3) be modified to read "The legal description of the proposed coal leased premises as shown on the published <u>posted</u> notice; and"
85-06-02-06	8/28/19	Oral	David Straley, North American Coal	Considering the nature of the business and for proprietary reasons, would like to keep where the drill holes are being put confidential with the information being kept between the commissioner and staff. They are willing to share but would not want the information broadcast. They would like a confidentiality agreement.	This information is subject to open records under N.D.C.C. ch. 44-04.	DTL recommends the Board make no changes.
85-06-02-09 (Incorrectly numbered as 85-04-01-09)			DTL	Incorrectly numbered. Change from 85-04-01-09 to 85-06-02-09.	Typographical error.	DTL recommends 85-04-01-09 be changed to 85-06-02-09.
85-06-02-09 (incorrectly numbered as 85-04-01-09 – should be 85-06-02-09 Relating to coal)	8/28/19	Oral	David Straley, North American Coal	In addition to the commissioner being able to bring a decision to the board, they would like it included that the coal lease applicant could also bring it to the board if they did not feel they were not being heard adequately. They would like "or the coal lease applicant" put in after commissioner. It would give them an opportunity for a vetting in a public setting before the board.	DTL proposed changes to the language to clarify the process for seeking Board Review.	DTL recommends the Board replace the language with the following: Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party

						seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner review, the aggrieved party may request board review and the commissioner shall decide if board review is warranted.
N/A	8/28/19	Oral	David Straley, North American Coal	They want to make sure that the Department is maintaining its existing practice of developing mineral rights and that coal leases have priority over existing surface leases. Believes the lease covers it but is unsure where it is in the policies and practices.	This is addressed in our surface land lease: "This lease is subject to all existing and future coal, oil, natural gas, uranium, gravel, scoria, clay, and other mineral leases and exploration permits covering the land. LESSEE agrees that the holders of such leases or permits may enter upon the land and conduct exploration and mining operations. This lease is further subject to all existing and future easements, rights-of-way, and other servitudes covering the land and LESSEE agrees to honor same. LESSEE shall not be entitled to any compensation by reason of such leases, permits, easements, rights-of-way, or servitudes unless otherwise provided for by LESSOR."	There is no need to include this provision in the rules and DTL recommends the Board make no changes.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: County Rents and Prices Survey
(No Action Requested)

In order to provide a uniform and equitable leasing system for trust lands, the Fair Market Value Minimum Rent policy of the Board of University and School Lands was developed and uses a market value approach to establish a minimum opening bid at public auction. A similar method is used to determine the estimated land use asset values of trust lands.

The basis for these methods is a survey of cash rental rates and land prices in North Dakota. A County Rents and Prices survey is conducted annually under a contract funded by the North Dakota Department of Trust Lands (Department) to survey private pastureland, cropland, and hay land cash rents and pasture, crop, and hay prices on a county by county basis in North Dakota. Data is collected during the months of November through February from a survey pool of samples obtained from a list of all North Dakota agricultural owners/producers provided by the United States Department of Agriculture Farm Service Agency. A statistical sample of agricultural producers and owners in each county is contacted and asked to provide opinions as to cash rents and land prices in the county (Attachment 1 - County Rents and Prices Survey Questionnaire).

From 1989, when the Department began conducting this survey, through 2017 the survey was conducted by the United States Department of Agriculture's National Agricultural Statistics Service (NASS) North Dakota Field Office. In the spring of 2017, NASS informed the Department that due to reorganization at the federal level, it would no longer be able to complete the cash rent survey as it had in past years and it would no longer be collecting land price data. County rent data would be collected every other year and if the Department wanted data collected in the off-year, there would be at a substantial cost increase to complete the survey. The Department decided to secure the survey through a Request For Proposal (RFP) using the same data collection and analysis format as in previous years. A vendor, DISC Information Services Corporation (DISC), was secured through the RFP process and DISC completed the survey the past two years (Attachment 2 - 2019 County Rents and Prices Survey). The contract with DISC has been renewed for two more years.

While providing valuable information to the Department, the survey is also used by North Dakota private landowners to establish cash rental rates on their lands. The survey is also used by North Dakota State University's Agricultural Economics Department in developing annual crop budgets. The survey allows the Department to obtain county rent and price data at a reasonable cost, versus hiring full time appraisers, which is a common practice in some western states. Attached for your information is a copy of the most recent County Rents and Prices survey, the Fact Sheet – How Are Minimum Bids Calculated (Attachment 3 - Fact Sheet), and a land asset value chart (Attachment 4 – Total Value of Land Asset Value Per Acre Growth Chart). Note that Fact Sheet and the land asset value were developed over time from the County Rent and Price Survey.

Attachment 1 - County Rents and Prices Survey Questionnaire
Attachment 2 - 2019 County Rents and Prices Survey
Attachment 3 - Fact Sheet
Attachment 4 - Total Value of Land & Value Per Acre Growth



North Dakota Land Rent and Price Survey - 2018

NOTICE
PLEASE return this survey within 5 days.

Address Block

SORT CODE - PLEASE DO NOT WRITE IN THIS SPACE

PLEASE USE DARK INK

**You may complete your survey ONLINE at:
www.esurvey.cc/TrustLands**

Dear North Dakota Agricultural Owner/Producer:
Your opinion of average agricultural cash rent land prices in your primary county of operation is very important in determining county averages. Your response is voluntary and not required by law, but would be valuable information for the ND Department of Trust Lands (NDDTL) and other producers who lease agricultural land.
By completing this survey, you are providing valuable information that will help the NDDTL continue our efforts to fund public education. Individual reports are combined with other reports to determine county averages. A Cash Rents and Land Prices survey report will be published from the information you provide to the ND Department of Trust Lands. The report will not include any of your personal information. A contracted vendor is conducting the survey. We will post the results of the survey on our website (<https://land.nd.gov>) each year by early April, or as soon as results become available.

Thank you in advance for taking the time to complete this important survey!
Sincerely,

North Dakota Commissioner of University and School Lands

INSTRUCTIONS: Please provide YOUR OPINION of average CASH RENTS and LAND PRICES per acre of NON-IRRIGATED land in your primary county of operation. Exclude share rents and leasing by Animal Unit Months (AUM's) or Animal Units (AU's).

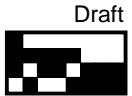
LAND TYPE	AVERAGE CASH RENT Dollars	AVERAGE LAND PRICE Dollars
1. CROPLAND RENTED for CASH.....per acre	\$ _____	\$ _____
2. PASTURE OR GRAZING LAND RENTED for CASH.....per acre	\$ _____	\$ _____
3. TAME HAYLAND (grass-alfalfa mixtures to be cut for hay) RENTED for CASH.....per acre	\$ _____	\$ _____
4. Have you rented pasture or cropland TO or FROM anyone in the past year?		
a. Rented PASTURE TO another owner/producer.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. Rented PASTURE FROM another owner/producer.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. Rented CROPLAND TO another owner/producer.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Rented CROPLAND FROM another owner/producer.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No

5. Primary County of Operation: _____

6. (OPTIONAL) In the event that we would have reason to call you regarding this or future land surveys, may we have the best telephone number to reach you?

□□□□ - □□□□ - □□□□

THANK YOU! For more information on how the ND Department of Trust Lands supports public education, please visit our website at <https://land.nd.gov>



2019 County Rents and Prices

North Dakota

March 2019

An annual survey of farmers and ranchers was conducted to obtain average rental rates and the price of rented land in their localities. Approximately 6,500 North Dakota agricultural producers were sampled for this survey. Questionnaires were mailed on January 9th and a follow-up mailing to non-respondents occurred on February 15th, 2019. Over 1,700 reports contained positive data. We would like to thank all who participated, for without their cooperation this report would not be possible.

The tables in this report contain county-level data for cropland, pastureland, and tame hayland. All data refer to non-irrigated land and only include information for cash rental arrangements. All fee-per-head, animal unit month

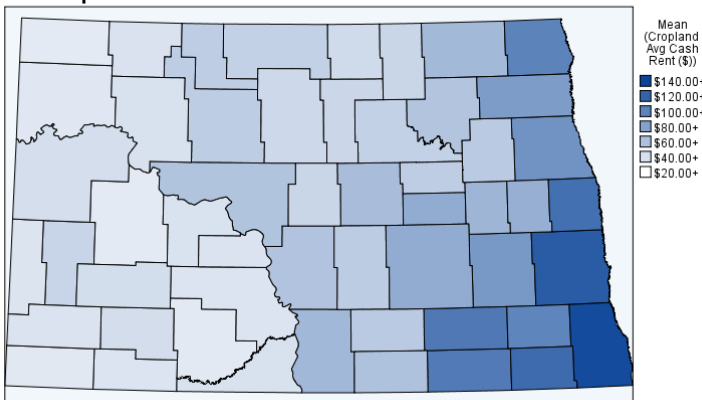
and share rent arrangements were excluded.

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

We advise the reader to exercise discretion when using data from counties with less than fifteen reports tabulated. Using a 3-year average is one way to minimize variability that can occur from year to year.

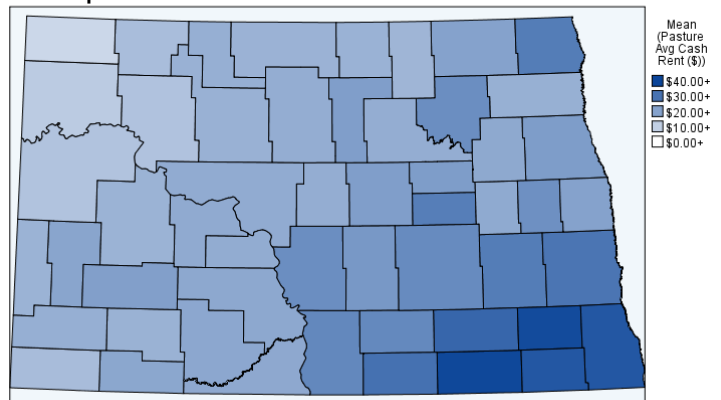
2019 Non-Irrigated Cropland Average Rents

Dollars per acre



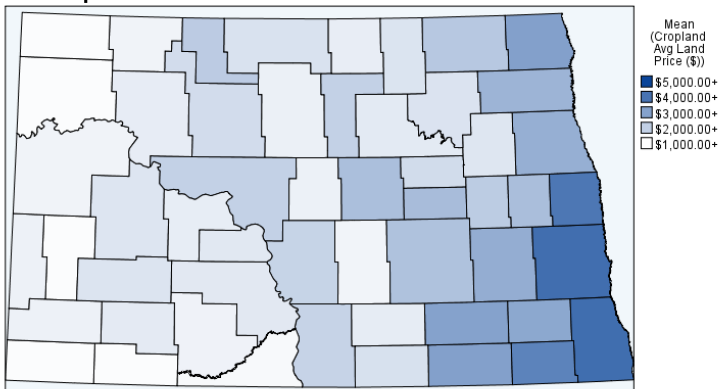
2019 Non-Irrigated Pastureland Average Rents

Dollars per acre



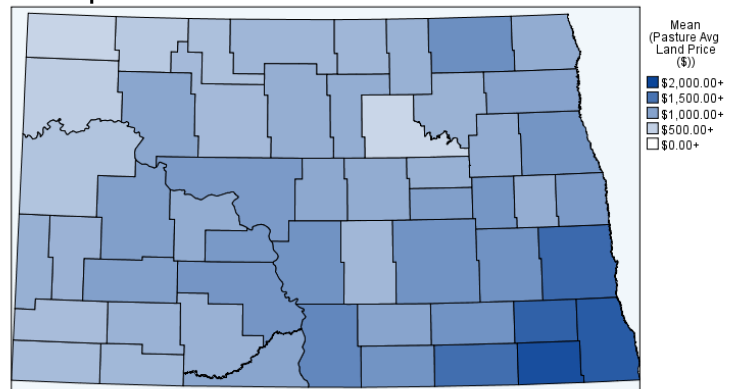
2019 Non-Irrigated Cropland Average Price of Rented Land

Dollars per acre



2019 Non-Irrigated Pastureland Average Price of Rented Land

Dollars per acre



Survey Funded by the North Dakota Department of Trust Lands

NON-IRRIGATED CROPLAND CASH RENTS AND PRICES

North Dakota: 2019 and 5-Year Average

County	2014-2018 average		Number of reports ²	2019			Average rental rate	Average price of rented land
	Rental rate	Price of rented land ¹		Reported local average rental rate				
				Minimum	Maximum	Most frequently		
	(dollars/acre)	(dollars/acre)	(number)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)
Adams.....	37.20	1251.00	14	30.00	60.00	30.00	37.30	1057.00
Barnes.....	85.20	2852.00	44	35.00	125.00	100.00	86.30	2752.00
Benson.....	50.10	1571.00	17	35.00	75.00	50.00	49.10	1450.00
Billings.....	36.10	1209.00	10	30.00	146.00	30.00	46.70	1064.00
Bottineau.....	49.20	1712.00	29	21.00	70.00	50.00	49.30	1611.00
Bowman.....	35.50	1337.00	22	20.00	54.00	30.00	34.50	1062.00
Burke.....	35.00	1140.00	19	25.00	65.00	35.00	38.10	1238.00
Burleigh.....	52.10	1657.00	18	20.00	100.00	50.00	58.20	1919.00
Cass.....	120.50	4291.00	70	52.00	211.00	100.00	124.90	4099.00
Cavalier.....	67.70	2425.00	22	40.00	95.00	60.00	64.80	2175.00
Dickey.....	107.00	3131.00	19	30.00	150.00	80.00	105.20	3023.00
Divide.....	35.90	993.00	14	25.00	45.00	30.00	33.20	1050.00
Dunn.....	34.60	1325.00	9	28.00	40.00	35.00	33.00	1542.00
Eddy.....	54.20	1764.00	14	35.00	75.00	50.00	51.80	1750.00
Emmons.....	73.70	1719.00	25	21.00	100.00	70.00	65.70	1929.00
Foster.....	75.10	2430.00	22	45.00	105.00	75.00	73.10	2425.00
Golden Valley.....	29.70	1066.00	14	20.00	105.00	30.00	37.10	1286.00
Grand Forks.....	84.80	2970.00	44	28.00	190.00	75.00	89.50	2713.00
Grant.....	35.20	1241.00	24	20.00	60.00	35.00	33.90	1258.00
Griggs.....	65.70	2123.00	18	40.00	160.00	50.00	67.20	2092.00
Hettinger.....	43.00	1677.00	17	28.00	55.00	35.00	41.30	1435.00
Kidder.....	48.50	1327.00	18	25.00	158.00	50.00	52.70	1227.00
LaMoure.....	100.50	2912.00	30	65.00	155.00	100.00	106.50	2984.00
Logan.....	59.50	1758.00	18	35.00	75.00	60.00	53.80	1398.00
McHenry.....	46.70	1409.00	31	30.00	71.00	50.00	44.40	1319.00
McIntosh.....	65.70	1864.00	20	40.00	87.00	50.00	59.00	1640.00
McKenzie.....	29.50	1022.00	22	15.00	175.00	30.00	40.70	1245.00
McLean.....	57.30	2007.00	39	35.00	100.00	60.00	57.90	1974.00
Mercer.....	39.60	1313.00	19	21.00	90.00	30.00	38.30	1383.00
Morton.....	40.10	1490.00	29	16.00	55.00	35.00	37.30	1475.00
Mountrail.....	39.50	1403.00	12	25.00	80.00	30.00	39.10	1391.00
Nelson.....	55.70	1472.00	28	35.00	75.00	50.00	53.70	1526.00
Oliver.....	40.70	1483.00	16	20.00	45.00	40.00	38.10	1477.00
Pembina.....	99.90	3446.00	33	50.00	180.00	90.00	99.40	3029.00
Pierce.....	50.80	1620.00	13	27.00	70.00	50.00	45.50	1978.00
Ramsey.....	53.30	1523.00	29	40.00	80.00	60.00	57.80	1588.00
Ransom.....	102.20	3245.00	17	60.00	180.00	100.00	98.70	2870.00
Renville.....	49.70	1986.00	19	40.00	76.00	50.00	51.90	2098.00
Richland.....	132.10	4049.00	74	55.00	205.00	150.00	135.50	4117.00
Rolette.....	44.30	1286.00	10	25.00	65.00	30.00	43.20	1371.00
Sargent.....	113.50	3197.00	26	75.00	165.00	100.00	115.40	3659.00
Sheridan.....	44.70	1353.00	4	40.00	50.00	50.00	46.30	1300.00
Sioux.....	35.10	1064.00	6	30.00	55.00	35.00	39.20	1120.00
Slope.....	37.20	1261.00	16	25.00	52.00	30.00	38.00	1281.00
Stark.....	41.50	1485.00	21	20.00	65.00	40.00	41.30	1563.00
Steele.....	81.40	2792.00	19	50.00	90.00	80.00	71.40	2380.00
Stutsman.....	75.10	2254.00	29	35.00	145.00	75.00	73.40	2300.00
Towner.....	47.10	1629.00	18	30.00	75.00	40.00	46.10	1578.00
Traill.....	113.00	3764.00	48	50.00	175.00	125.00	112.10	3905.00
Walsh.....	80.60	2718.00	60	38.00	200.00	70.00	83.70	2603.00
Ward.....	52.20	1839.00	34	30.00	75.00	50.00	52.00	1737.00
Wells.....	59.20	2072.00	16	45.00	90.00	50.00	62.10	2361.00
Williams.....	35.10	968.00	44	21.00	60.00	35.00	35.10	1059.00

¹ Question wording prior to 2018 asked for the average "value" of rented land, rather than average "price." ² Number of reports is based on positive responses to average rental rate, excluding ineligible responses (e.g., out-of-state).

NON-IRRIGATED PASTURELAND CASH RENTS AND PRICES

North Dakota: 2019 and 5-Year Average

County	2014-2018 average		2019					
	Rental rate	Price of rented land ¹	Number of reports ²	Reported local average rental rate			Average rental rate	Average price of rented land
				Minimum	Maximum	Most frequently		
	(dollars/acre)	(dollars/acre)	(number)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)
Adams.....	18.50	770.00	10	10.00	30.00	20.00	18.90	763.00
Barnes.....	24.70	1022.00	21	12.00	50.00	30.00	27.90	1168.00
Benson.....	15.70	695.00	9	12.00	25.00	20.00	17.40	438.00
Billings.....	19.40	790.00	9	10.00	25.00	19.00	19.20	819.00
Bottineau.....	17.60	728.00	16	12.00	20.00	20.00	16.40	783.00
Bowman.....	14.00	717.00	20	8.00	25.00	15.00	14.30	718.00
Burke.....	11.20	511.00	13	9.00	35.00	15.00	14.00	575.00
Burleigh.....	21.90	1072.00	18	10.00	40.00	20.00	24.20	1159.00
Cass.....	24.90	1332.00	10	15.00	60.00	20.00	29.50	1604.00
Cavalier.....	17.30	912.00	(D)	(D)	(D)	(D)	(D)	(D)
Dickey.....	38.10	1425.00	14	25.00	55.00	40.00	39.30	1555.00
Divide.....	12.00	553.00	6	5.00	12.00	10.00	8.50	455.00
Dunn.....	19.20	932.00	9	14.00	20.00	15.00	16.30	1030.00
Eddy.....	21.60	889.00	12	10.00	40.00	25.00	21.00	845.00
Emmons.....	24.90	952.00	20	10.00	40.00	25.00	25.50	1284.00
Foster.....	24.20	852.00	12	10.00	50.00	30.00	27.70	1027.00
Golden Valley.....	14.60	622.00	13	6.00	30.00	15.00	16.20	846.00
Grand Forks.....	20.10	847.00	16	10.00	50.00	15.00	21.00	1138.00
Grant.....	17.90	837.00	23	10.00	42.00	18.00	18.70	829.00
Griggs.....	20.60	1080.00	16	12.00	50.00	15.00	18.30	1127.00
Hettinger.....	20.00	934.00	14	12.00	25.00	12.00	16.50	823.00
Kidder.....	22.90	800.00	16	15.00	30.00	25.00	22.00	766.00
LaMoure.....	32.20	1292.00	12	18.00	50.00	25.00	32.80	1156.00
Logan.....	24.80	995.00	16	12.00	35.00	25.00	25.40	973.00
McHenry.....	18.60	721.00	20	9.00	25.00	15.00	17.50	866.00
McIntosh.....	27.30	1026.00	15	11.00	65.00	25.00	30.40	1148.00
McKenzie.....	11.10	584.00	14	4.00	25.00	7.00	12.80	631.00
McLean.....	17.30	910.00	28	8.00	35.00	15.00	18.00	1077.00
Mercer.....	17.30	932.00	17	13.00	30.00	15.00	18.10	889.00
Morton.....	19.40	1066.00	30	10.00	30.00	20.00	18.60	1131.00
Mountrail.....	12.10	602.00	12	5.00	25.00	10.00	12.90	956.00
Nelson.....	19.10	762.00	15	10.00	30.00	20.00	18.50	900.00
Oliver.....	18.30	1027.00	16	10.00	38.00	15.00	17.80	1095.00
Pembina.....	19.30	991.00	12	15.00	70.00	20.00	27.90	889.00
Pierce.....	21.00	779.00	11	15.00	25.00	15.00	20.70	881.00
Ramsey.....	26.10	721.00	8	16.00	30.00	30.00	24.30	825.00
Ransom.....	32.50	1239.00	11	10.00	60.00	35.00	38.60	1693.00
Renville.....	16.70	936.00	5	10.00	25.00	10.00	17.20	675.00
Richland.....	37.70	1554.00	20	10.00	75.00	30.00	36.10	1757.00
Rolette.....	18.80	688.00	9	10.00	25.00	10.00	16.40	783.00
Sargent.....	39.30	1509.00	10	18.00	45.00	35.00	36.00	1893.00
Sheridan.....	17.20	717.00	4	14.00	20.00	20.00	17.50	933.00
Sioux.....	16.40	719.00	6	7.00	38.00	7.00	18.50	963.00
Slope.....	13.10	751.00	14	10.00	30.00	12.00	17.10	711.00
Stark.....	21.80	977.00	21	10.00	40.00	20.00	20.50	1018.00
Steele.....	22.00	976.00	4	10.00	40.00	10.00	23.80	875.00
Stutsman.....	24.40	933.00	23	12.00	35.00	30.00	24.80	1157.00
Towner.....	15.90	744.00	7	10.00	20.00	15.00	15.70	838.00
Traill.....	35.50	1300.00	6	10.00	30.00	20.00	20.00	1077.00
Walsh.....	18.40	712.00	15	10.00	22.00	15.00	16.90	991.00
Ward.....	17.10	758.00	21	8.00	40.00	15.00	16.60	744.00
Wells.....	19.90	836.00	10	12.00	45.00	15.00	20.70	889.00
Williams.....	9.40	474.00	20	5.00	20.00	10.00	11.10	532.00

(D) Withheld to avoid disclosing data for individual operations. ¹ Question wording prior to 2018 asked for the average "value" of rented land, rather than average "price." ² Number of reports is based on positive responses to average rental rate, excluding ineligible responses (e.g., out-of-state).

NON-IRRIGATED TAME HAYLAND CASH RENTS AND PRICES

North Dakota: 2019

County	2014-2018 average		2019					
	Rental rate	Price of rented land ¹	Number of reports ²	Reported local average rental rate			Average rental rate	Average price of rented land
				Minimum	Maximum	Most frequently		
	(dollars/acre)	(dollars/acre)	(number)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)	(dollars/acre)
Adams.....	23.10	936.00	9	17.00	40.00	25.00	26.10	1013.00
Barnes.....	26.00	1329.00	12	20.00	60.00	30.00	40.50	1530.00
Benson.....	23.10	697.00	5	15.00	21.00	15.00	17.20	588.00
Billings.....	24.30	934.00	9	21.00	35.00	25.00	27.10	875.00
Bottineau.....	19.00	783.00	8	20.00	28.00	20.00	22.30	994.00
Bowman.....	22.80	880.00	15	15.00	30.00	30.00	24.20	965.00
Burke.....	17.90	573.00	7	10.00	40.00	20.00	22.00	775.00
Burleigh.....	25.30	1126.00	15	10.00	55.00	20.00	31.70	1304.00
Cass.....	55.20	1918.00	6	25.00	75.00	50.00	53.30	2020.00
Cavalier.....	25.40	1074.00	(D)	(D)	(D)	(D)	(D)	(D)
Dickey.....	44.30	1367.00	9	25.00	75.00	40.00	46.70	1650.00
Divide.....	17.40	615.00	4	12.00	23.00	12.00	17.30	569.00
Dunn.....	23.90	1112.00	6	20.00	30.00	30.00	27.20	1100.00
Eddy.....	24.40	830.00	12	15.00	65.00	20.00	29.70	1150.00
Emmons.....	32.60	1024.00	11	10.00	70.00	20.00	32.10	1191.00
Foster.....	33.70	1054.00	6	10.00	65.00	10.00	35.80	1075.00
Golden Valley.....	22.80	881.00	11	12.00	30.00	20.00	21.40	788.00
Grand Forks.....	38.80	1522.00	7	20.00	100.00	30.00	49.30	1863.00
Grant.....	26.10	973.00	19	18.00	50.00	25.00	29.30	1097.00
Griggs.....	78.90	1105.00	8	12.00	70.00	12.00	48.00	933.00
Hettinger.....	26.50	1161.00	11	12.00	38.00	20.00	22.30	941.00
Kidder.....	24.50	863.00	14	10.00	60.00	25.00	30.40	925.00
LaMoure.....	39.60	1532.00	6	25.00	50.00	25.00	37.50	1132.00
Logan.....	32.90	1056.00	11	14.00	50.00	22.00	29.30	981.00
McHenry.....	19.70	765.00	14	8.00	35.00	25.00	20.20	676.00
McIntosh.....	31.80	1155.00	14	15.00	60.00	40.00	32.60	1171.00
McKenzie.....	18.60	633.00	8	13.00	30.00	15.00	22.00	650.00
McLean.....	23.60	1070.00	20	10.00	40.00	25.00	25.80	1197.00
Mercer.....	22.60	1008.00	14	16.00	55.00	30.00	27.10	1155.00
Morton.....	25.10	1192.00	22	15.00	40.00	30.00	28.80	1273.00
Mountrail.....	22.00	812.00	10	10.00	52.00	13.00	24.50	892.00
Nelson.....	25.70	913.00	12	10.00	64.00	20.00	29.90	1238.00
Oliver.....	24.60	1050.00	12	12.00	40.00	30.00	27.70	1321.00
Pembina.....	67.80	995.00	7	30.00	70.00	30.00	44.60	1117.00
Pierce.....	22.80	754.00	9	10.00	30.00	10.00	21.60	1013.00
Ramsey.....	26.80	660.00	8	20.00	40.00	20.00	28.90	1056.00
Ransom.....	45.60	1660.00	6	15.00	100.00	15.00	63.20	2528.00
Renville.....	19.90	944.00	4	16.00	40.00	20.00	24.00	800.00
Richland.....	46.30	1640.00	15	20.00	100.00	20.00	54.70	2082.00
Rolette.....	22.70	651.00	6	20.00	40.00	25.00	28.30	529.00
Sargent.....	50.00	1642.00	10	18.00	60.00	35.00	37.80	2179.00
Sheridan.....	53.10	865.00	(D)	(D)	(D)	(D)	(D)	(D)
Sioux.....	23.40	799.00	6	10.00	38.00	10.00	26.70	1275.00
Slope.....	23.20	847.00	12	10.00	40.00	12.00	23.20	1043.00
Stark.....	26.90	1089.00	16	15.00	70.00	15.00	31.40	1215.00
Steele.....	33.40	1173.00	(D)	(D)	(D)	(D)	(D)	(D)
Stutsman.....	31.90	1221.00	16	14.00	65.00	40.00	32.60	1309.00
Towner.....	24.90	986.00	6	13.00	45.00	13.00	24.20	1088.00
Traill.....	66.70	2567.00	(D)	(D)	(D)	(D)	(D)	(D)
Walsh.....	23.90	896.00	6	10.00	40.00	20.00	22.50	1170.00
Ward.....	20.70	861.00	13	10.00	55.00	25.00	28.20	914.00
Wells.....	24.80	904.00	7	10.00	30.00	10.00	16.70	1000.00
Williams.....	12.60	506.00	12	8.00	31.00	25.00	21.80	671.00

(D) Withheld to avoid disclosing data for individual operations. ¹ Question wording prior to 2018 asked for the average "value" of rented land, rather than average "price."
² Number of reports is based on positive responses to average rental rate, excluding ineligible responses (e.g., out-of-state).

Jodi Smith, Land Commissioner
 1707 North 9th Street
 PO Box 5523
 Bismarck, ND 58506-5523
 Phone: (701) 328-2800
 Fax: (701) 328-3650
www.land.nd.gov
www.nd.gov



HOW ARE MINIMUM BIDS CALCULATED?

The **Fair Market Value Method (FMVM)** of calculating the minimum opening bid on school trust grasslands was initiated in 1990. The FMVM is based on cash rents for grassland in your County or Region (see map), adjusted for those factors which make school land different from private leased land. (Crop and hay tracts use similar methods.)

Where do we get the cash rent in your county or multi-county region?

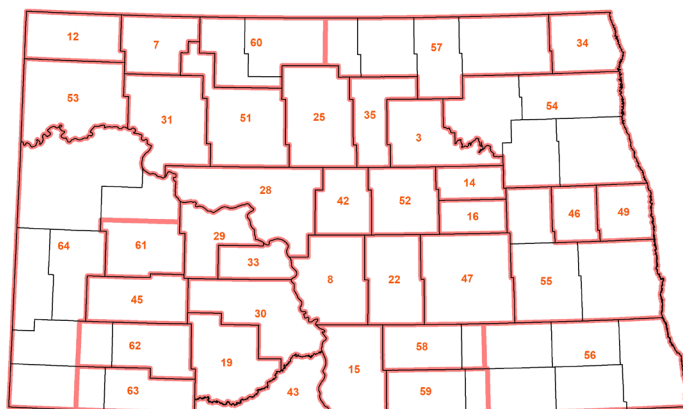
Each year a county-by-county cash rent survey is completed (results at land.nd.gov). Using the rental survey, we find the lowest average county or the lowest average County rent for a multi-county region, average the last 3 years of those lowest average rents, and reduce that figure by 10%.

What other adjustments to the lowest county average rent do we make?

- ◆ We deduct barren acres and other non-productive acres.
- ◆ We deduct \$1.60/acre for a fencing allowance since the State does not provide fences.
- ◆ We adjust each tract up or down to account for its potential forage productivity.

By using this method, we are trying to be fair to our lessees, while fulfilling our constitutional duty to use this land to generate income for public schools in North Dakota. The following table shows the difference between the Land Department’s average minimum opening bid per acre for the 2020 lease year, compared with the range of private market rents for your region. Keep in mind that unless you have an “average” tract, your rent will be either somewhat higher or lower than the average minimum opening bid we’ve shown for your region.

As always, if you have any questions or think that we have made a mistake in evaluating the tract that you lease, and wish to request a field review, contact the Department of Trust Lands. For more information call (701) 328-2800.

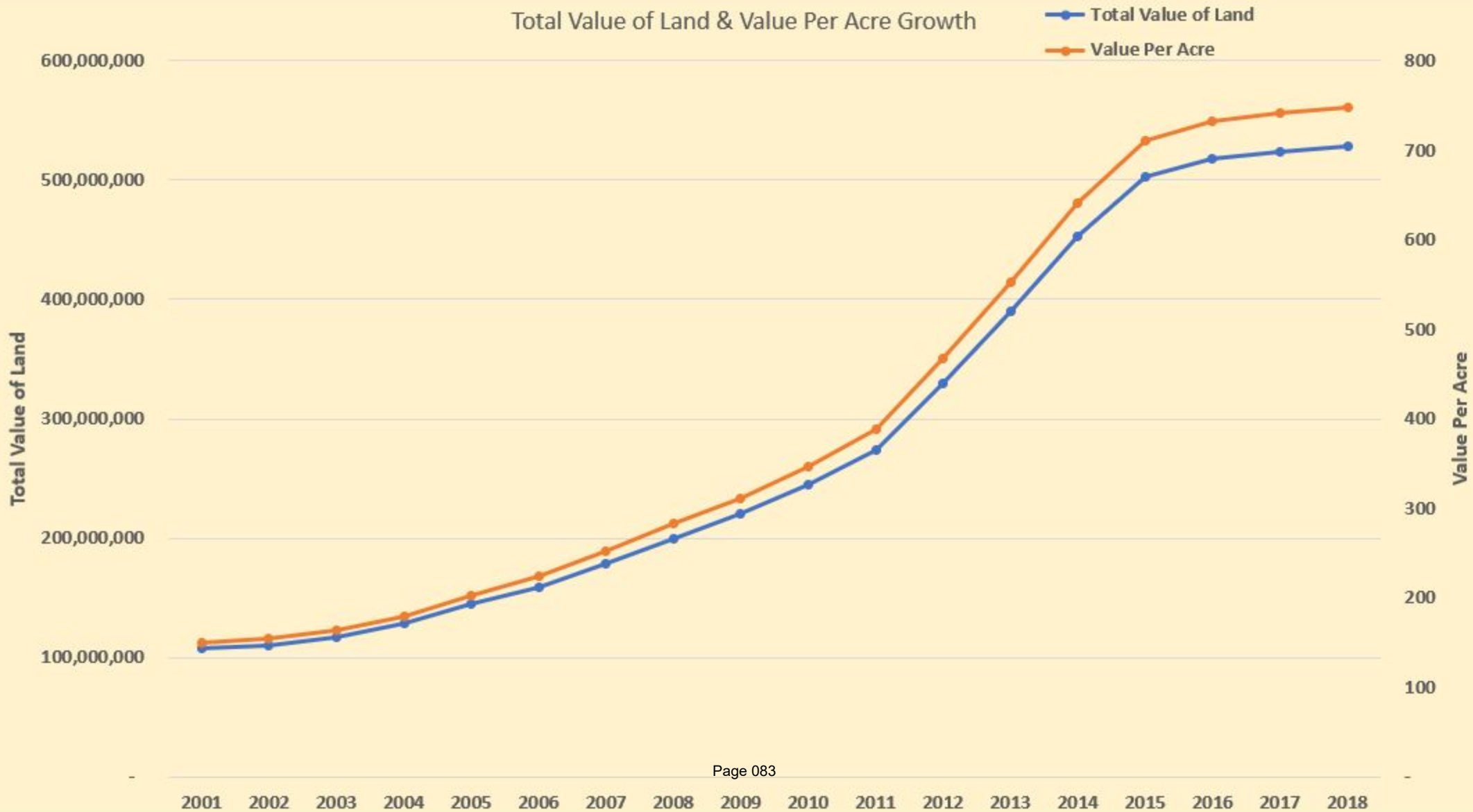


\$/ACRE RENTAL CHART (GRASS)

<u>County/Region</u>	<u>*Survey Avg Rent</u>	<u>**3 yr Avg Rent</u>	<u>***NDDTL</u>
Grant 19	\$18.70	\$18.57	\$15.27
Kidder 22	\$22.00	\$22.20	\$18.54
McHenry 25	\$17.50	\$18.33	\$15.06
Mountrail 31	\$12.90	\$12.30	\$9.63
Sheridan 42	\$17.50	\$17.07	\$13.92
Region 58	\$25.40	\$24.30	\$20.43
Region 63	\$14.30	\$12.90	\$10.17
Region 64	\$12.80	\$11.03	\$8.49

*Identifies the average for the county or lowest county average in a multi-county region for the 2019 year.
 **Identifies the 3-year average for the County or lowest County 3-year average in a multi-county region for 2019.
 ***Identifies the Land Dept. average minimum opening bid on grassland for the 2020 year in your region.

Total Value of Land & Value Per Acre Growth



MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Surface Division Overview
(No Action Requested)

The Surface Management Division manages surface acres owned by the various trust funds under the control of the Board of University and School Lands. The major source of income from these lands, that provide revenue to the various trusts comes from grazing and agricultural leases, with significant revenue generated from rights-of-way, surface damage agreements and construction aggregate mining. The objective of surface management is to obtain a “fair market” return from the lands while maintaining or improving their condition and value. The Surface Management Division currently manages approximately 706,600 surface acres, 15,200 acres are leased as cropland and 5,193 acres are leased as improved hay land.

Surface Acres by County					
As of June 30, 2019					
County	Acres	County	Acres	County	Acres
Adams	17,097.52	Golden Valley	28,983.55	Ramsey	2,056.50
Barnes	2,803.32	Grant	33,517.76	Ransom	1,120.00
Benson	11,999.60	Griggs	1,741.24	Renville	1,910.12
Billings	30,927.06	Hettinger	9,892.50	Richland	513.68
Bottineau	3,271.94	Kidder	28,643.79	Rolette	6,226.08
Bowman	29,310.48	LaMoure	1,435.72	Sargent	1,128.17
Burke	16,137.16	Logan	9,421.53	Sheridan	25,826.44
Burleigh	27,891.66	McHenry	22,720.56	Sioux	23,411.56
Cass	40.00	McIntosh	6,209.87	Slope	23,605.98
Cavalier	556.47	McKenzie	64,586.70	Stark	6,150.13
Dickey	3,981.51	McLean	20,890.99	Stutsman	15,627.81
Divide	20,791.24	Mercer	15,129.38	Towner	8,076.00
Dunn	25,673.31	Morton	18,101.82	Walsh	160.00
Eddy	10,292.81	Mountrail	32,445.59	Ward	10,798.98
Emmons	13,533.97	Nelson	2,694.45	Wells	5,251.89
Foster	3,111.51	Oliver	7,588.41	Williams	38,380.84
Grand Forks	1,274.77	Pierce	13,664.93	Total	706,607.30

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on school trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting, and reclamation.
- Construction Aggregate Mining and Royalties.
- Wind Energy Projects.
- Developing water wells, pipelines, dams and dugouts for livestock water and wildlife enhancement.

- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.
- Seismic permitting.
- Lessee and right-of-way contracts and public inquiries.

The Department reimburses lessees for control of noxious and invasive weeds through a cost-share program. County weed boards and weed officers are involved in the reporting and verification of lessees work on school trust lands.

Total active surface land leases managed by the department is nearly 4,790. Leasing interest continues to be high with over 99 percent of the tracts offered successfully leased. The surface acres managed by the department are inspected at least once during the five-year lease period by trained field inspectors to help with early detection of noxious and invasive weed species and to monitor land integrity. Reclamation inspections on rights-of-ways are also part of the inspections program are conducted by trained field inspectors and company inspectors. Reclamation inspections assist in determining whether a right-of-way having surface disturbance is meeting agreement vegetation standards, erosion and noxious and invasive weed control.

The surface inspection program generates approximately 1,500 tract inspections on an annual basis. These inspections are generally fall integrity inspections, reclamation inspections, livestock grazing, noxious weed, unleased tract and posting inspections. To aid in the inspection of surface acres, the Department has implemented field tablets (Panasonic Toughpads) to collect data remotely and has purchased a small Unmanned Aircraft Vehicle (sUAV). Assistance was provided for a surface division employee (Joseph Stegmiller) to become a FAA Certified Unmanned Aircraft Pilot. Joseph recently received a Geographical Information System (GIS) Certificate from the University of North Dakota Geography Graduate School, which will help the Department utilize the sUAV to provide the following services:

- On demand aerial imagery
- Near-Infrared imagery for pasture health
- 3-D Analysis for aggregate stockpile measurements
- Photos and Videos

Through Joseph's work with the ITD GIS Technical Committee, he has been asked to be part of a discussion panel regarding State Government use of sUAV's at the upcoming Geospatial Summit Conference in Bismarck.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Approval of Surface and Coal Acres – Oliver County, BNI Coal

In accordance with Chapter 1 of the Board of University and School Lands (Board) Minerals Policy Manual relating to coal (Policies), the Board received a nomination from BNI Coal (BNI) for the right to lease 320 surface acres and 320 net coal acres located in: T141N, R84W, Section 16: E½, Oliver County, North Dakota (Attachment 1 - BNI Proposed State Coal Lease Map and Attachment 2 – BNI Coal Nomination of State Tracts Map).

On July 17, 2019, the Board indicated its willingness to lease the tracts and approved BNI's application for surface and coal leases of the E½ of Section 16, T141N, R84W, and directed the Commissioner to begin term discovery and lease negotiations on its behalf.

The Department of Trust Lands (Department) completed due diligence on the title to verify ownership, lease status, legal, etc., to prepare the tracts to be leased. Notice of Application of Coal Lease was posted to the Department's website on July 29, 2019, for fourteen days for public comment. No public comments were received.

The Policies provide that the Department may negotiate the lease terms with the applicant and the application may propose modifications. The Department and BNI negotiated \$100.00 bonus/net surface acre or a total of \$32,000.00 and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease. BNI also offered annual rental payments of \$5.00 per net acre of surface and \$5.00 per net acre of coal. Further, BNI offered \$0.20 per ton of coal mined and removed and a surface royalty of \$0.15 surface royalty per ton of coal mined.

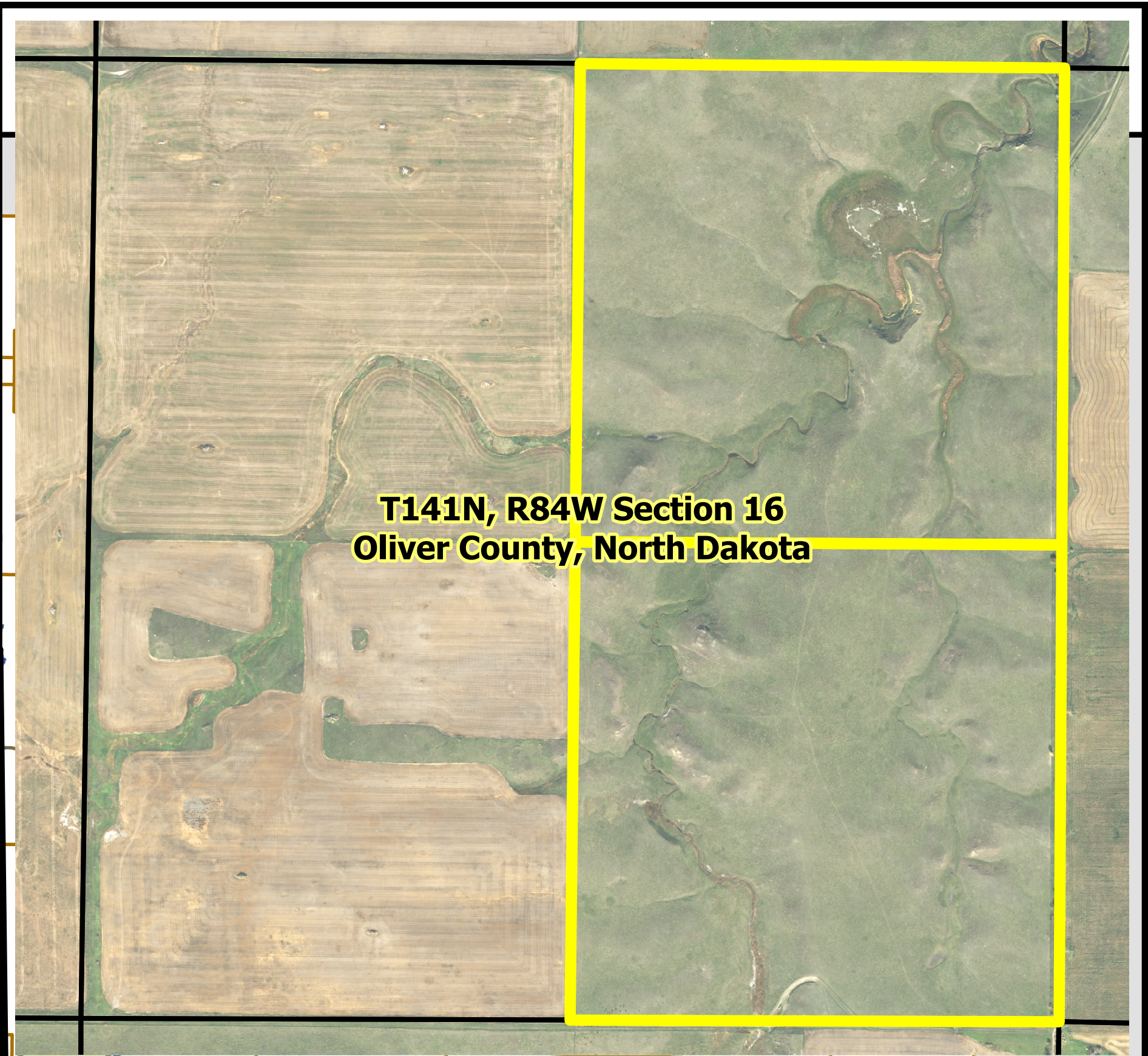
The proposed leases are now presented to the Board for approval (Attachment 3 - Coal Lease-CO-19-00001 and Attachment 4 - Coal Lease-CO-19-00002).

Recommendation: The Board authorizes the Commissioner to issue two leases covering 320 surface acres and 320 net coal acres, with the negotiated terms including a royalty rate at \$0.20 per ton of coal mined and removed, \$0.15 surface royalty per ton of coal mined, \$100.00 bonus/net surface acre or a total of \$32,000.00, and \$100.00 bonus per net coal acre or a total of \$32,000.00 for the right to a 10-year renewable lease.



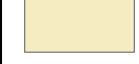

Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger					
Superintendent Baesler					
Treasurer Schmidt					
Attorney General Stenehjem					
Governor Burgum					

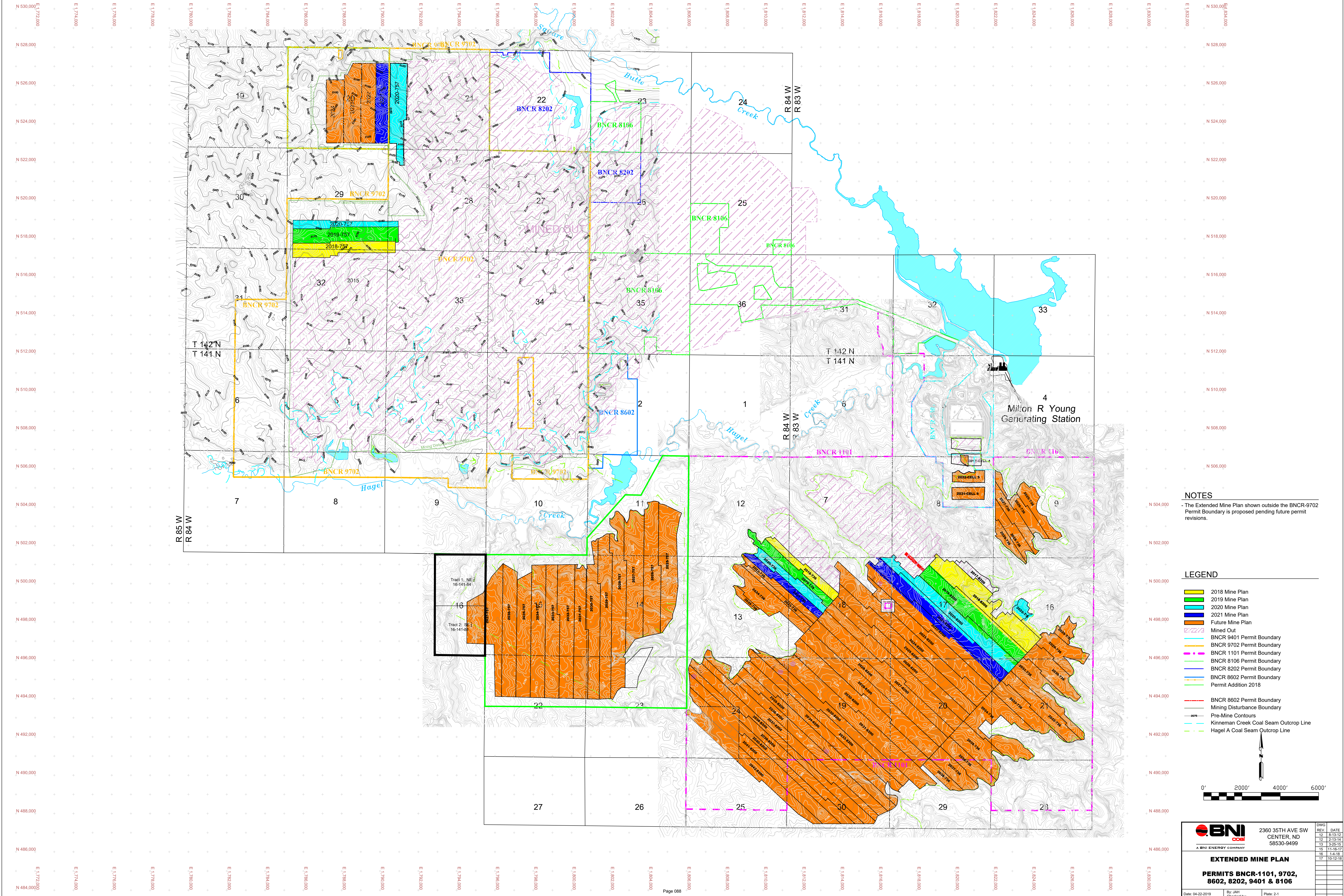
- Attachment 1 - BNI Proposed State Coal Lease Map
- Attachment 2 - BNI Coal Nomination of State Tracts Map
- Attachment 3 - Coal Lease-CO-19-00001
- Attachment 4 - Coal Lease-CO-19-00002

BNI Proposed State Coal Leases



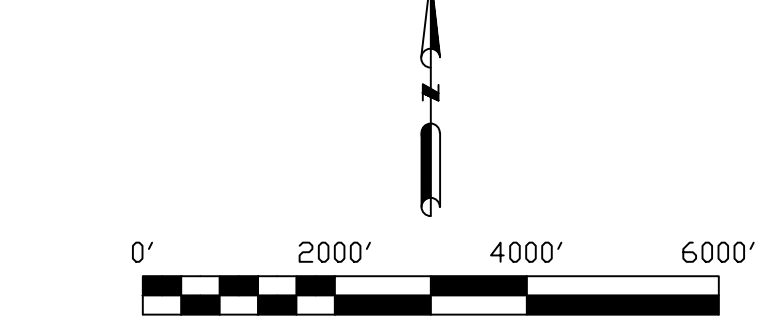
**T141N, R84W Section 16
Oliver County, North Dakota**

-  BNI Coal's Proposed Surface and Coal Leases
-  County Boundaries
-  Tribal Lands
-  Missouri River and Lake Sakakawea



NOTES
 - The Extended Mine Plan shown outside the BNCR-9702 Permit Boundary is proposed pending future permit revisions.

- LEGEND**
- 2018 Mine Plan
 - 2019 Mine Plan
 - 2020 Mine Plan
 - 2021 Mine Plan
 - Future Mine Plan
 - Mined Out
 - BNCR 9401 Permit Boundary
 - BNCR 9702 Permit Boundary
 - BNCR 1101 Permit Boundary
 - BNCR 8106 Permit Boundary
 - BNCR 8202 Permit Boundary
 - BNCR 8602 Permit Boundary
 - Permit Addition 2018
 - BNCR 8602 Permit Boundary
 - Mining Disturbance Boundary
 - Pre-Mine Contours
 - Kinneman Creek Coal Seam Outcrop Line
 - Hagel A Coal Seam Outcrop Line



BNI A BNI ENERGY COMPANY	2360 35TH AVE SW CENTER, ND 58530-9499	DWG REV DATE
	EXTENDED MINE PLAN PERMITS BNCR-1101, 9702, 8602, 8202, 9401 & 8106	12 8-13-12 13 2-13-14 14 3-25-15 15 11-16-17 16 1-4-18 17 10-12-18
Date: 04-22-2019	By: JAH Checked by:	Plate: 2-1

THIS LEASE is effective the (Date), between the State of North Dakota, acting by and through the Board of University and School Lands and its agent, the Commissioner of University and School Lands, called "Lessor," and BNI Coal, with offices at 2360 35th Avenue Southwest, Center, North Dakota 58530, called "Lessee."

ARTICLE I. LEASED PREMISES & TERMS. Lessor, in consideration of the sum of One Hundred Dollars (\$100.00) per net coal acre, does lease to Lessee for the purpose and subject to the terms and conditions herein stated, the following-described land, called the "Leased Premises," situated in the County of Oliver, the State of North Dakota:

Township 141 North, Range 84 West
Section 16: NE ¼
160 net coal acres

The initial term of this lease will be twenty (20) years. Lessee has the option to extend this lease for an additional ten (10) year term by paying a bonus of One Hundred Dollars (\$100.00) per net coal acre before the end of the initial twenty (20) year term. This lease shall continue beyond the second ten (10) year term for so long as coal is being mined in commercial quantities without unreasonable cessation or use of surface of the lease in accordance with attached surface addendum.

ARTICLE II. ANNUAL RENTALS. Lessee shall pay to Lessor an annual rental of Five Dollars (\$5.00) per net coal acre for as long as this lease is in effect. The annual rental shall be paid each year prior to the anniversary date of this lease. The first year's rental has been paid to Lessor, receipt of which is acknowledged. The rentals paid under this lease shall not be deducted from the royalties as they accrue. Lessee shall have the right to prepay in a lump sum the annual rentals payable during the term of this lease or any extension thereof. Prepaid annual rentals will not be refunded in the event the lease is terminated.

ARTICLE III. ROYALTY. Lessee shall pay to Lessor a royalty of Twenty Cents (\$0.20) per ton of coal mined and removed from the Leased Premises. The quantity of all coal mined and removed from the Leased Premises shall be determined through the use of conveyor belt scales, aerial surveys of coal stockpiles and tract surveys. Royalty for coal mined during any calendar month shall be paid by the last day of the following calendar month.

ARTICLE IV. RIGHT TO PROSPECT & MINE. Lessor grants to Lessee the exclusive right to prospect the Leased Premises for coal, to mine and remove by any method of mining the coal on and under the Leased Premises, and to store, prepare for selling and sell said coal; for such purposes Lessor grants to Lessee the right of ingress, egress and regress to and from the Leased Premises.

ARTICLE V. USE OF LEASED PREMISES. Lessor grants to Lessee the right to use as much of the surface of the Leased Premises as necessary for prospecting, mining, removal, preparation and selling of coal, subject to the terms and conditions set forth in the Addendum attached to and made part of this lease. Lessee shall have the right to dig, drill, construct and use wells, ponds, pits and other excavations and to divert, dam and use any water on or under the Leased Premises in a legal manner when necessary to carry out the purpose of this lease.

ARTICLE VI. RIGHTS-OF-WAY. Lessor grants to Lessee rights of way on and under the Leased Premises as are necessary to carry out the purpose of this lease. Such rights of way shall continue after mining operations on the Leased Premises have ceased for as long as necessary to accomplish reclamation pursuant to law.

ARTICLE VII. MINING OPERATIONS. Lessee agrees to conduct mining operations on the Leased Premises in a good and workmanlike manner and in accordance with local, state and federal rules, regulations, ordinances and laws. Lessee will take reasonable steps to prevent mining operations from unnecessarily causing or increasing soil erosion or damage, water pollution, and damage to crops, pasture or forests.

ARTICLE VIII. ARCHAEOLOGICAL MATERIALS. The Lessor hereby reserves and retains title to any and all historical, archaeological, and paleontological materials, whether such materials are found upon the surface or below the surface of the land. If the Lessee discovers a historical, archaeological, or paleontological resource during its operations on the leased premises, the Lessee shall immediately stop work and do nothing to disturb or alter the resource. The Lessee shall notify the Commissioner of the Board of University & School Lands and shall not resume work until the Commissioner notifies the Lessee what protective measures, if any, the Commissioner may require to preserve or protect the resource.

ARTICLE IX. FORCE MAJEURE. Whenever as a result of war, rebellion, riots, acts of God, or a governmental law, order, or regulation, other than a law in Titles 15 or 38 of the North Dakota Century Code and other than an action of the Board of University and School Lands (unless such action specifically provides otherwise), Lessee, despite his good faith effort, is prevented from exercising any rights or performing any obligations under this lease, and this lease is not kept in force and effect by other provisions contained herein, this lease shall remain in full force and effect for the period of such prevention provided Lessee acts diligently, when possible, to legally overcome the obstacle that is preventing lessee from exercising any rights under this lease. This provision will not operate to extend this lease for a period of more than two (2) years, nor will it release Lessee from paying royalties on actual production or from paying annual rentals under Article II of this lease.

ARTICLE X. RECORDS AND INSPECTION. Lessee shall keep an accurate record of the amount of coal mined from the Leased Premises. Lessor or Lessor's representatives may examine and copy such records as may be necessary to assure that Lessee is complying with all provisions of this lease and all rules, regulations and laws. On or before the last day of each calendar month following the date on which Lessee shall commence mining operations on the Leased Premises, Lessee shall furnish Lessor a written report, showing the amount of coal mined and removed from the Leased Premises during the preceding month and the calculation of the amount of royalties due. All mining and related operations shall be subject to the inspection of Lessor, or Lessor's representatives.

ARTICLE XI. RESERVED RIGHTS OF LESSOR. Lessor reserves the right to use, rent, lease or sell the surface of the Leased Premises and the remainder of the mineral estate. Substances other than coal may not be mined and sold or utilized without the prior written consent of Lessor and execution of this lease by Lessor does not constitute consent.

ARTICLE XII. WAIVER OF CONDITIONS. Lessor may, in writing, waive any breach of the conditions contained herein except such conditions as are required by the laws of this state, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the Lessor with respect to any future breach.

ARTICLE XIII. TERMINATION BY LESSEE. Lessee may, with the written consent of Lessor, terminate this lease as to any legal subdivision (40 acres) upon payment of all rents, royalties and other debts owed to Lessor and upon a satisfactory showing to Lessor that the public interest will not be impaired.

ARTICLE XIV. TERMINATIONS BY LESSOR. For any breach of the terms and conditions of this lease or for violation of any local, state or federal rules, regulations, ordinances and laws, this lease may be terminated by Lessor. Such cancellation shall not release Lessee from liability for royalty or rental owed or owing to Lessor or from any damages on account of the breach.

ARTICLE XV. TITLE & LESSOR INTERESTS. Lessor neither warrants nor agrees to defend title to the Leased Premises. If Lessor is found to own less than the entire and undivided coal estate in the Leased Premises, then the specified royalties and rentals shall be paid Lessor in the proportion which Lessor's interest in the coal estate bears to the entire and undivided coal estate.

ARTICLE XVI. LAWS, RULES & REGULATIONS. The provisions of Chapter 15-05 of the North Dakota Century Code and all rules and regulations relating to the development of minerals as adopted and promulgated by the Board of University and School Lands on June 26, 1975, as amended, govern this lease and are incorporated by reference and made a part thereof.

ARTICLE XVII. INDEMNIFICATIONS. Lessee agrees to defend, indemnify, and hold Lessor harmless, from claims resulting from the performance of the Lessee or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Lessee to the Lessor under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Lessor is necessary. Any attorney appointed to represent the Lessor must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Lessee also agrees to defend, indemnify, and hold the Lessor harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

ARTICLE XVIII. ASSIGNMENTS. No assignment or sublease shall be made without the written consent of Lessor.

ARTICLE XIX. SUCCESSORS. This lease shall be binding upon the parties and their respective heirs, successors and assigns. References in this lease to "Lessor" and "Lessee" include their respective heirs, successors and assigns.

ARTICLE XX. AMENDMENTS. Amendments to this lease must be made in writing and executed by both Lessor and Lessee.

ARTICLE XXI. ARTICLE TITLES. The article titles are not a part of this lease and shall not affect the meaning or intent of the lease terms and conditions.

ARTICLE XXII. NOTICES. All notices shall be in writing. Notices to Lessor may be served by personal service on or by registered or certified mail to the Commissioner of University and School Lands, PO Box 5523, Bismarck, ND 58502. Notices to be served on Lessee may be served by personal service or by registered or certified mail to BNI Coal, with offices at 2360 35th Avenue Southwest, Center, North Dakota 58530.

ARTICLE XXIII. TIME. Time is of the essence of this agreement.

BOARD OF UNIVERSITY AND SCHOOL LANDS
OF NORTH DAKOTA

Date: _____

Jodi Smith, Commissioner
Board of University and School Lands

BNI COAL

Date: _____

By: _____

Its: _____

ADDENDUM TO COAL LEASE
DATED XXXXXXXX

Additional Surface-Related Terms

1. Lessee shall pay Lessor for the initial twenty (20) year term of this lease a bonus of One Hundred Dollars (\$100.00) per acre for each acre of surface owned by Lessor and covered by this lease. If, in accordance with Article I of this lease, Lessee exercises its option to extend this lease for another ten (10) year term, then Lessee shall pay Lessor a bonus of One Hundred Dollars (\$100.00) per acre for each acre of surface then covered by this lease.

2. Lessee shall pay Lessor an annual rental of Five Dollars (\$5.00) per surface acre, until final bond release or Forty-Five Dollars (\$45.00) per surface acre when land is being used for mining purposes with payments suspended when royalty payments are being made, for as long as this lease is in effect. The annual rental shall be paid each year prior to the anniversary date of this lease. The first year's rental of One Hundred Dollars (\$100.00) per surface acre shall be paid with the initial bonus payment. Lessee shall have the right to prepay in a lump sum the annual rentals payable during the term of this lease or any extension thereof. Prepaid annual rentals will not be refunded in the event the lease is terminated.

3. Lessee shall pay Lessor a surface royalty of Fifteen Cents (\$0.15) per ton of coal mined and removed from the surface acreage owned by Lessor and covered by this lease.

4. Lessee shall have the right to use as much of the surface of the Leased Premises as necessary for prospecting, mining, removal, preparation and selling of the coal covered by this lease and other coal mined from neighboring lands as part of an integrated mining plan as permitted by the North Dakota Public Service Commission. If Lessor is unable to lease for grazing any portion of the surface of the Leased Premises before the commencement of actual coal removal operations on the Leased Premises, Lessee shall pay Lessor for each acre Lessor is unable to lease for grazing the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor. Payments are due and payable to Lessor by November 1 of each year the Lessee utilizes the surface for such purpose until the commencement of actual coal removal operations on any portion of the Leased Premises. As used in this Addendum the term "actual coal removal operations" shall mean the removal of topsoil, subsoil and other overburden materials and coal from the Leased Premises.

5. After completion of actual coal removal operations and while this lease is in effect, Lessee may use all or any portion of the surface of the Leased Premises in conjunction with its mining operations on other lands for a haul road and runoff retention ponds. Lessee shall pay Lessor the lease income lost for each acre directly and indirectly impacted by such use. The lost lease income shall be the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor. Payments are due and payable to Lessor by November 1 of each year during which the Lessee utilizes the surface for such purpose. Lessee shall conduct its mining and reclamation operations and use of the surface of the Leased Premises in a prudent manner that will not extend final reclamation of the Leased Premises by stockpiling material not required for reclaiming the Leased Premises.

6. Lessee hereby agrees that during the reclamation bond period covering the surface of the Leased Premises, Lessor has the right to receive payment for any portion of the Leased Premises being utilized for agricultural purposes. During such period of time, Lessor hereby authorizes Lessee, for the purpose of satisfying its reclamation responsibilities, to enter into licenses or agreements with third parties for the right to hay or graze such portion of the Leased Premises being utilized for agricultural purposes. In consideration of Lessor's consent authorizing Lessee to enter into such haying or grazing agreements with third parties, Lessee agrees to annually pay Lessor the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor for each acre of the Leased Premises being utilized for agricultural purposes. Payment for such agricultural use is due and payable to Lessor by November 1 of each year.

7. Lessee shall have the right to remove and transport suitable plant growth material from the Leased Premises and to permanently respread that material on lands other than the Leased Premises provided that Lessee replaces such material with material of equal or better quantity and quality.

8. Lessee shall have the right to utilize any scoria and gravel owned by Lessor and located on the Leased Premises in its mining operations on or off the Leased Premises. For any such scoria and gravel deposits where the top of the deposit is within ten (10) feet of the surface, Lessee shall pay Lessor the fair market royalty per ton of scoria and gravel utilized by Lessee. No royalty will be due for any scoria or gravel deposits where the top of the deposit is more than ten (10) feet below the surface. The fair market royalty shall be determined and provided by Lessor by June 1st of each year which shall be applied to any scoria and gravel utilized during the following calendar year and shall be paid in the same manner as provided for in Article III of this lease.

COAL LEASE – CO-19-00002

**STATE OF NORTH DAKOTA
BOARD OF UNIVERSITY AND SCHOOL LANDS**

THIS LEASE is effective the (Date), between the State of North Dakota, acting by and through the Board of University and School Lands and its agent, the Commissioner of University and School Lands, called "Lessor," and BNI Coal, with offices at 2360 35th Avenue Southwest, Center, North Dakota 58530, called "Lessee."

ARTICLE I. LEASED PREMISES & TERMS. Lessor, in consideration of the sum of One Hundred Dollars (\$100.00) per net coal acre, does lease to Lessee for the purpose and subject to the terms and conditions herein stated, the following-described land, called the "Leased Premises," situated in the County of Oliver, the State of North Dakota:

Township 141 North, Range 84 West
Section 16: SE ¼
160 net coal acres

The initial term of this lease will be twenty (20) years. Lessee has the option to extend this lease for an additional ten (10) year term by paying a bonus of One Hundred Dollars (\$100.00) per net coal acre before the end of the initial twenty (20) year term. This lease shall continue beyond the second ten (10) year term for so long as coal is being mined in commercial quantities without unreasonable cessation or use of surface of the lease in accordance with attached surface addendum.

ARTICLE II. ANNUAL RENTALS. Lessee shall pay to Lessor an annual rental of Five Dollars (\$5.00) per net coal acre for as long as this lease is in effect. The annual rental shall be paid each year prior to the anniversary date of this lease. The first year's rental has been paid to Lessor, receipt of which is acknowledged. The rentals paid under this lease shall not be deducted from the royalties as they accrue. Lessee shall have the right to prepay in a lump sum the annual rentals payable during the term of this lease or any extension thereof. Prepaid annual rentals will not be refunded in the event the lease is terminated.

ARTICLE III. ROYALTY. Lessee shall pay to Lessor a royalty of Twenty Cents (\$0.20) per ton of coal mined and removed from the Leased Premises. The quantity of all coal mined and removed from the Leased Premises shall be determined through the use of conveyor belt scales, aerial surveys of coal stockpiles and tract surveys. Royalty for coal mined during any calendar month shall be paid by the last day of the following calendar month.

ARTICLE IV. RIGHT TO PROSPECT & MINE. Lessor grants to Lessee the exclusive right to prospect the Leased Premises for coal, to mine and remove by any method of mining the coal on and under the Leased Premises, and to store, prepare for selling and sell said coal; for such purposes Lessor grants to Lessee the right of ingress, egress and regress to and from the Leased Premises.

ARTICLE V. USE OF LEASED PREMISES. Lessor grants to Lessee the right to use as much of the surface of the Leased Premises as necessary for prospecting, mining, removal, preparation and selling of coal, subject to the terms and conditions set forth in the Addendum attached to and made part of this lease. Lessee shall have the right to dig, drill, construct and use wells, ponds, pits and other excavations and to divert, dam and use any water on or under the Leased Premises in a legal manner when necessary to carry out the purpose of this lease.

ARTICLE VI. RIGHTS-OF-WAY. Lessor grants to Lessee rights of way on and under the Leased Premises as are necessary to carry out the purpose of this lease. Such rights of way shall continue after mining operations on the Leased Premises have ceased for as long as necessary to accomplish reclamation pursuant to law.

ARTICLE VII. MINING OPERATIONS. Lessee agrees to conduct mining operations on the Leased Premises in a good and workmanlike manner and in accordance with local, state and federal rules, regulations, ordinances and laws. Lessee will take reasonable steps to prevent mining operations from unnecessarily causing or increasing soil erosion or damage, water pollution, and damage to crops, pasture or forests.

ARTICLE VIII. ARCHAEOLOGICAL MATERIALS. The Lessor hereby reserves and retains title to any and all historical, archaeological, and paleontological materials, whether such materials are found upon the surface or below the surface of the land. If the Lessee discovers a historical, archaeological, or paleontological resource during its operations on the leased premises, the Lessee shall immediately stop work and do nothing to disturb or alter the resource. The Lessee shall notify the Commissioner of the Board of University & School Lands and shall not resume work until the Commissioner notifies the Lessee what protective measures, if any, the Commissioner may require to preserve or protect the resource.

ARTICLE IX. FORCE MAJEURE. Whenever as a result of war, rebellion, riots, acts of God, or a governmental law, order, or regulation, other than a law in Titles 15 or 38 of the North Dakota Century Code and other than an action of the Board of University and School Lands (unless such action specifically provides otherwise), Lessee, despite his good faith effort, is prevented from exercising any rights or performing any obligations under this lease, and this lease is not kept in force and effect by other provisions contained herein, this lease shall remain in full force and effect for the period of such prevention provided Lessee acts diligently, when possible, to legally overcome the obstacle that is preventing lessee from exercising any rights under this lease. This provision will not operate to extend this lease for a period of more than two (2) years, nor will it release Lessee from paying royalties on actual production or from paying annual rentals under Article II of this lease.

ARTICLE X. RECORDS AND INSPECTION. Lessee shall keep an accurate record of the amount of coal mined from the Leased Premises. Lessor or Lessor's representatives may examine and copy such records as may be necessary to assure that Lessee is complying with all provisions of this lease and all rules, regulations and laws. On or before the last day of each calendar month following the date on which Lessee shall commence mining operations on the Leased Premises, Lessee shall furnish Lessor a written report, showing the amount of coal mined and removed from the Leased Premises during the preceding month and the calculation of the amount of royalties due. All mining and related operations shall be subject to the inspection of Lessor, or Lessor's representatives.

ARTICLE XI. RESERVED RIGHTS OF LESSOR. Lessor reserves the right to use, rent, lease or sell the surface of the Leased Premises and the remainder of the mineral estate. Substances other than coal may not be mined and sold or utilized without the prior written consent of Lessor and execution of this lease by Lessor does not constitute consent.

ARTICLE XII. WAIVER OF CONDITIONS. Lessor may, in writing, waive any breach of the conditions contained herein except such conditions as are required by the laws of this state, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the Lessor with respect to any future breach.

ARTICLE XIII. TERMINATION BY LESSEE. Lessee may, with the written consent of Lessor, terminate this lease as to any legal subdivision (40 acres) upon payment of all rents, royalties and other debts owed to Lessor and upon a satisfactory showing to Lessor that the public interest will not be impaired.

ARTICLE XIV. TERMINATIONS BY LESSOR. For any breach of the terms and conditions of this lease or for violation of any local, state or federal rules, regulations, ordinances and laws, this lease may be terminated by Lessor. Such cancellation shall not release Lessee from liability for royalty or rental owed or owing to Lessor or from any damages on account of the breach.

ARTICLE XV. TITLE & LESSOR INTERESTS. Lessor neither warrants nor agrees to defend title to the Leased Premises. If Lessor is found to own less than the entire and undivided coal estate in the Leased Premises, then the specified royalties and rentals shall be paid Lessor in the proportion which Lessor's interest in the coal estate bears to the entire and undivided coal estate.

ARTICLE XVI. LAWS, RULES & REGULATIONS. The provisions of Chapter 15-05 of the North Dakota Century Code and all rules and regulations relating to the development of minerals as adopted and promulgated by the Board of University and School Lands on June 26, 1975, as amended, govern this lease and are incorporated by reference and made a part thereof.

ARTICLE XVII. INDEMNIFICATIONS. Lessee agrees to defend, indemnify, and hold Lessor harmless, from claims resulting from the performance of the Lessee or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Lessee to the Lessor under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Lessor is necessary. Any attorney appointed to represent the Lessor must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Lessee also agrees to defend, indemnify, and hold the Lessor harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

ARTICLE XVIII. ASSIGNMENTS. No assignment or sublease shall be made without the written consent of Lessor.

ARTICLE XIX. SUCCESSORS. This lease shall be binding upon the parties and their respective heirs, successors and assigns. References in this lease to "Lessor" and "Lessee" include their respective heirs, successors and assigns.

ARTICLE XX. AMENDMENTS. Amendments to this lease must be made in writing and executed by both Lessor and Lessee.

ARTICLE XXI. ARTICLE TITLES. The article titles are not a part of this lease and shall not affect the meaning or intent of the lease terms and conditions.

ARTICLE XXII. NOTICES. All notices shall be in writing. Notices to Lessor may be served by personal service on or by registered or certified mail to the Commissioner of University and School Lands, PO Box 5523, Bismarck, ND 58502. Notices to be served on Lessee may be served by personal service or by registered or certified mail to BNI Coal, with offices at 2360 35th Avenue Southwest, Center, North Dakota 58530.

ARTICLE XXIII. TIME. Time is of the essence of this agreement.

BOARD OF UNIVERSITY AND SCHOOL LANDS
OF NORTH DAKOTA

Date: _____

Jodi Smith, Commissioner
Board of University and School Lands

BNI COAL

Date: _____

By: _____

Its: _____

ADDENDUM TO COAL LEASE
DATED XXXXXXXX

Additional Surface-Related Terms

1. Lessee shall pay Lessor for the initial twenty (20) year term of this lease a bonus of One Hundred Dollars (\$100.00) per acre for each acre of surface owned by Lessor and covered by this lease. If, in accordance with Article I of this lease, Lessee exercises its option to extend this lease for another ten (10) year term, then Lessee shall pay Lessor a bonus of One Hundred Dollars (\$100.00) per acre for each acre of surface then covered by this lease.

2. Lessee shall pay Lessor an annual rental of Five Dollars (\$5.00) per surface acre, until final bond release or Forty-Five Dollars (\$45.00) per surface acre when land is being used for mining purposes with payments suspended when royalty payments are being made, for as long as this lease is in effect. The annual rental shall be paid each year prior to the anniversary date of this lease. The first year's rental of One Hundred Dollars (\$100.00) per surface acre shall be paid with the initial bonus payment. Lessee shall have the right to prepay in a lump sum the annual rentals payable during the term of this lease or any extension thereof. Prepaid annual rentals will not be refunded in the event the lease is terminated.

3. Lessee shall pay Lessor a surface royalty of Fifteen Cents (\$0.15) per ton of coal mined and removed from the surface acreage owned by Lessor and covered by this lease.

4. Lessee shall have the right to use as much of the surface of the Leased Premises as necessary for prospecting, mining, removal, preparation and selling of the coal covered by this lease and other coal mined from neighboring lands as part of an integrated mining plan as permitted by the North Dakota Public Service Commission. If Lessor is unable to lease for grazing any portion of the surface of the Leased Premises before the commencement of actual coal removal operations on the Leased Premises, Lessee shall pay Lessor for each acre Lessor is unable to lease for grazing the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor. Payments are due and payable to Lessor by November 1 of each year the Lessee utilizes the surface for such purpose until the commencement of actual coal removal operations on any portion of the Leased Premises. As used in this Addendum the term "actual coal removal operations" shall mean the removal of topsoil, subsoil and other overburden materials and coal from the Leased Premises.

5. After completion of actual coal removal operations and while this lease is in effect, Lessee may use all or any portion of the surface of the Leased Premises in conjunction with its mining operations on other lands for a haul road and runoff retention ponds. Lessee shall pay Lessor the lease income lost for each acre directly and indirectly impacted by such use. The lost lease income shall be the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor. Payments are due and payable to Lessor by November 1 of each year during which the Lessee utilizes the surface for such purpose. Lessee shall conduct its mining and reclamation operations and use of the surface of the Leased Premises in a prudent manner that will not extend final reclamation of the Leased Premises by stockpiling material not required for reclaiming the Leased Premises.

6. Lessee hereby agrees that during the reclamation bond period covering the surface of the Leased Premises, Lessor has the right to receive payment for any portion of the Leased Premises being utilized for agricultural purposes. During such period of time, Lessor hereby authorizes Lessee, for the purpose of satisfying its reclamation responsibilities, to enter into licenses or agreements with third parties for the right to hay or graze such portion of the Leased Premises being utilized for agricultural purposes. In consideration of Lessor's consent authorizing Lessee to enter into such haying or grazing agreements with third parties, Lessee agrees to annually pay Lessor the Adjusted Fair Market Value per acre for grazing lands in Oliver County as determined and provided by Lessor for each acre of the Leased Premises being utilized for agricultural purposes. Payment for such agricultural use is due and payable to Lessor by November 1 of each year.

7. Lessee shall have the right to remove and transport suitable plant growth material from the Leased Premises and to permanently respread that material on lands other than the Leased Premises provided that Lessee replaces such material with material of equal or better quantity and quality.

8. Lessee shall have the right to utilize any scoria and gravel owned by Lessor and located on the Leased Premises in its mining operations on or off the Leased Premises. For any such scoria and gravel deposits where the top of the deposit is within ten (10) feet of the surface, Lessee shall pay Lessor the fair market royalty per ton of scoria and gravel utilized by Lessee. No royalty will be due for any scoria or gravel deposits where the top of the deposit is more than ten (10) feet below the surface. The fair market royalty shall be determined and provided by Lessor by June 1st of each year which shall be applied to any scoria and gravel utilized during the following calendar year and shall be paid in the same manner as provided for in Article III of this lease.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement

Attached is the proposed Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (Agreement) by and between the Office of the North Dakota Governor and the Board of University and School Lands (Board) to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund.

The Agreement provides for the establishment of an investment account maintained by the Board. It provides for the investment of assets as a permanent trust fund and managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04. It further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12.

Recommendation: That the Board enter into the Asset Management Agreement with the Office of the North Dakota Governor to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund for the prudent investment of the fund assets as a permanent trust fund.

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

Attachment – Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (to be distributed at Board meeting)

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Investment Policy Statement Review and Update – Second Reading

Per the Board of University and School Land's (Board) Investment Policy Statement (IPS), the Board's IPS is to be formally reviewed at least every four years. However, the Commissioner has chosen to review the IPS on an annual basis to ensure it remains relevant with continued asset growth.

At the August 29, 2019, Board meeting a first reading of proposed IPS changes occurred. The majority of the proposed changes to the IPS are to address outdated language and modify the IPS based upon changes the Board has made over the last year.

The substantive changes from 2019 include the following:

- **Securities Litigation (page 10):** In August of 2018, the Board directed the Commissioner to contract with Financial Recovery Technologies (FRT), a securities litigation monitoring and claims filing services firm. The Commissioner and staff are in the process of finalizing a contract with FRT. Over the next year FRT will work with the Commissioner and staff to update the Board's current securities litigation program and policies to more actively engage in securities litigation monitoring.
- **Distribution Policy (page 12-13):** By law, distributions from the Common Schools Trust Fund occur from August through April of each school year. In the past lower amounts were paid out early in the year and higher amounts were paid out later in the year; this was an attempt to match distributions with income as it was earned. Starting in fiscal year 2018, at OMB's request, distributions are being made in approximately equal amounts each month.
- **Capitol Building Fund Strategic Asset Allocation (page 22):** When the first IPS was adopted, in August 2015, the Board adopted investment guidelines for the Capitol Building Fund. At that time, the Commissioner was of the belief that the Capitol Grounds Planning Commission (CGPC) had also adopted those guidelines, when in fact, the guidelines had been presented to the Commission, but were never formally adopted. This change corrects the policy to state that the Board, not the Commission, has adopted the guidelines.
- **Strategic Asset Allocation Target (page 14):** The IPS was updated to include the revised asset allocation targets that were adopted by the Board on May 30, 2019, as a result of the termination of Westwood Holdings Group.
- **Policy Benchmark for the Permanent Trust Funds (page 16):** The policy benchmark for the permanent trusts funds was updated to reflect the new target allocation adopted by the Board on May 30, 2019. In addition, the benchmark used to measure fixed income performance was changed to the Barclays US Universal Index, from the previously blended benchmark. This change more closely aligns the target benchmark for fixed income portion of the portfolio with the current generally US focus of the fixed income portfolio.
- **National Statistical Ratings Organization (NSRO) (page 17):** The definition of a national ratings agency eligible to rate collateralized obligations was expanded to include any NSROs registered with the SEC, not just Moody's and Standard and Poor's.

Recommendation: **The Board approves the amended Investment Policy Statement as presented.**

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

Attachment – Investment Policy Statement (redline version)

ND Board of University and School Lands Investment Policy Statement

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

Last updated 10/26/2017

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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](#)~~adopted on October 1, 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~~ [Constitution](#) states that the Board "has control of the appraisement, 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."¹ State law further requires that the Board "shall apply the prudent investor rule in investing the permanent funds under its control."²

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

¹ N.D. Const. art. IX, § 3

² N.D.C.C. § 15-03-04

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:

Formal Review Agenda Item	Formal Review Schedule
Asset Allocation Policy	At least every four years
Manager Structure Policy	At least every four years
Investment Policy	At least every four years
Total Fund Performance	At least quarterly
Asset Class Composite Performance	At least quarterly
Investment Manager Performance	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.³ The office of the Commissioner of University and School Lands (the Commissioner)⁴ 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 guidelines⁵ 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 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

³ 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.

⁴ 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.

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

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.⁶

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, unless the investment meets the Exclusive Benefit Rule.

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.

⁶ N.D.C.C. § 15-03-04

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.⁷
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.
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.⁸

⁷ N.D.C.C. § 15-03-04

⁸-The exception is the Board's international fixed income mandate with First International which is fully hedged in regards to currency and utilizes a hedged benchmark.

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, theThe Board relies on the custodian to monitor settled class action securities litigation where the Funds have an interest. In resolved litigation, unless directed otherwise, the custodian files proofs of claim on behalf of the Funds and posts disbursements or settlements to the appropriate portfolios as litigation settlement proceeds are received.

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.⁹ 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 fully compensated.

The Board, in consultation with the Attorney General, may consider more active forms of legal engagement in cases where:

1. the estimated loss is greater than 0.1% of the total assets under management of the 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

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.

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

⁹ The lead plaintiff may recover attorney's fees, costs, and expenses if the lawsuit is successful or a settlement is obtained.

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; it 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 upon request advising of the manner in which each proxy was voted during the preceding period.

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 statehood¹⁰ and the state constitution¹¹ 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 law¹², 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 College¹³
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

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

¹¹ N.D. Const. art. IX, §§ 2, 3

¹² 7 U.S.C. § 309 and 25 Stat. 676, ch. 180

¹³ 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 ~~and gas~~ extraction taxes collected by the state¹⁴
2. Net unclaimed property proceeds collected by the Department¹⁵ 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 formula¹⁶ is also described in Article IX, ~~Section 2 of the state constitution:~~

[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.¹⁷ ~~Historically, distributions have been~~

¹⁴ N.D. Const. art. X, § 24

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

¹⁶ 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.

¹⁷ N.D.C.C. § 15.1-28-01

smaller during the early part of each fiscal year and higher towards the end of each fiscal year. At the request of the Office of 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 (described further on page 25).

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
Broad US Equity	17 18.5%	12 13.5%	22 23.5%
Broad International Equity	17 18.5%	12 13.5%	22 23.5%
Fixed Income	24 23%	16 18%	26 28%
Absolute Return	20 15%	15 10%	25 20%
Real Estate	15%	10%	20%
Diversified Inflation Strategies	10%	5%	15%

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.

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
Broad US Equity	Russell 3000 Index	4718.5%
Broad International Equity	MSCI ACWI Ex USA IMI	4718.5%
Fixed Income	75% Barclays US Universal Index and 25% Barclays Multiverse Index	2423%
Absolute Return	Absolute Return Custom Index ¹	2015%
Real Estate	NCREIF ODCE Index	15%
Diversified Inflation Strategies	DIS Custom Index ²	10%

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

² DIS Custom Index: 30% Commodities (Bloomberg Commodities Index ex-energy), 30% MLPs (S&P MLP Index), 20% TIPS (Barclays US TIPS), 20% Natural Resource Equities (S&P Global Natural Resources 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 Investments¹⁸

The Board may invest in the following securities and investment activities as long as such investments comply with the Prudent Investor Rule¹⁹. 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.

¹⁸ 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.

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

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.
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-agency approved by the Board](#) (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 6 of this Policy.

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.

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.

Diversified Inflation Strategies

1. Inflation-indexed bonds, including investments in actively or passively managed investment vehicles. Treasury Inflation Protected Securities (TIPS) are an example of inflation-indexed bonds.
2. Commodities, including but not limited to futures and/or swaps on individually traded commodities or indexes comprising groups of commodities like the Goldman Sachs Commodity Index (GSCI) or Bloomberg Commodities Index.
3. Master Limited Partnerships (MLPs) focused in energy sector including companies that own or operate energy assets or are involved in the transportation, processing, and storage of natural resources. May invest in MLP units issued in private investment in public equity (PIPE) transactions.

4. Natural resources securities including securities of natural resource companies and industrial companies related to the natural resources industry and instruments that derive their value from natural resources.

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.²⁰ 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.²¹ 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.²²

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.

²⁰ N.D.C.C. § 15-08.1-08 and § 61-33-07

²¹ N.D.C.C. § 57-51.1-07.5

²² 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”.²³ 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.²⁴ 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.²⁵

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.²⁶ Historically, the legislature has also included a \$25,000 biennial appropriation for the operations of the Capitol Grounds Planning Commission.

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

²⁴ N.D.C.C. § 48-10-02

²⁵ N.D.C.C. § 48-10-02

²⁶ 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 Capital Grounds Planning Commission 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 Guidelines²⁷

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.

²⁷ Due to the common investment objectives, strategic asset allocation, and investment guidelines, the assets of the Capitol Building Fund may be pooled with the SIIF 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.²⁸ 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.²⁹

Funding Sources

State law provides that 15% of coal severance tax revenues be deposited into the fund.³⁰ 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.³¹ Thus, the Coal Development Trust Fund retains only 30% of the money deposited into the fund, which averages about ~~\$1 million~~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

²⁸ N.D.C.C. § 57-62-02

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

³⁰ N.D.C.C. § 57-62-02

³¹ 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.³² State law authorizes the Board to accept donations of money or land for this trust to be managed in the ~~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 13, however, the specific donor agreement for an account may dedicate a portion of the amount available to distribute to principal.³³

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 31st, 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 14 of this Policy.

³² N.D.C.C. ch. 15-68

³³ N.D.C.C. § 15-68-04

History

Adopted:	8/27/2015
Revised:	9/29/2016
Revised:	10/26/2017
Revised:	

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Summary of Investment Fees Paid in Fiscal Year 2019
(No action requested)

Attached is the report of investment related fees and expenses paid during the fiscal year ended June 30, 2019.

During fiscal year 2019, the pooled investments of the permanent trusts paid \$22,711,405 of investment fees; the average market value of assets invested was \$4.63 billion for fiscal year 2019. The average fee rate paid for the fiscal year was 0.49% of average assets, or 49.0 basis points. Net of fees, the permanent trust pool realized a total return of 3.87% in fiscal year 2019.

The pooled investments of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, and the Capitol Building Fund paid investment fees of \$247,497 during fiscal year 2019 on an average market value of \$609.8 million. This portfolio paid a graduated fee of 6.0 basis points on the first \$500 million and 3.0 basis points thereafter; the portfolio does not pay a custody fee. This investment pool posted a total return of 3.66% net of fees for the fiscal year.

On March 28, 2019, the Board of University and Schools Lands directed the Commissioner to enter into an agreement with Novarca to review the current investment expenses and work with the investment managers to reduce trust fees, subject to final review and approval of all legal documents by the Office of the Attorney General. The Department of Trust Lands (Department) entered into a contract with Novarca in June 2019. Novarca anticipates completing their work in October 2019 and will make recommendations to the Department at that time.

(Attachment – Fiscal Year 2019 Investment Fees & Expenses))

ND Land Board Investment Fees & Expenses

Investment Management Fees and Expenses for the Fiscal Year Ended June 30, 2019

Summary

- During fiscal year 2019 the Permanent Trust Funds (PTFs) paid \$22,711,405 in investment related expenses (including investment manager fees, custodial expenses, and general consultant expenses); this is a decrease of -9.5% over the \$25,081,670 in fees paid in fiscal year 2018. Assets increased by 6.1% during the same period, from \$4.37 billion in FY 2018 to \$4.63 billion in FY 2019. The primary driver of the decrease in trust fees is a result lower incentive fees paid by the PTFs.
- Incentive fees totaling \$1,810,455 were paid during FY 2019 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund and the Angelo Gordon Direct Lending Fund III; this equals 3.9 basis points on the average value of total trust assets during fiscal year 2019, or 8.0% of the total cost of managing the PTF's investment program. Incentive fees totaled \$5,819,245 during FY 2018, the equivalent of 13.3 basis points and 23.2% of the total cost to manage the program.
- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$274,497 in investment management expenses during FY 2019, up from \$146,372 in management fees paid in FY 2018. The increase in management fees is due to the increase in the average assets under management from \$269.6 million in FY 2018 to \$609.8 million in FY 2019. The percent fee decreased from 6.0 basis points in FY 2018 to 4.5 basis points in FY 2019. The decline in percent fees is due to the graduated fee schedule, which charges less on incremental increases in assets.

Table 1 summarizes the amount and effective rate of investment related expenses paid to manage the PTFs for each of the past five fiscal years.

Permanent Trust Fund Pool

TABLE 1	2015	2016	2017	2018	2019
Manager Fees	\$ 11,755,957	\$ 16,026,712	\$ 20,679,283	\$ 24,750,026	\$ 22,388,660
Custodial Fees	283,925	190,257	169,356	183,019	159,687
Consultant Fees	114,000	147,917	145,000	148,625	163,058
Total Fees	\$ 12,153,882	\$ 16,364,886	\$ 20,993,639	\$ 25,081,670	\$ 22,711,405
Total Fee (bps)	35.5	46.3	53.7	57.4	49.0
Incentive Fees		\$ 1,375,889	\$ 3,513,737	\$ 5,819,245	\$ 1,810,455
Incentive Fees (bps)		3.9	9.0	13.3	3.9
Total Fees Ex Incentives	\$ 12,153,882	\$ 14,988,997	\$ 17,479,902	\$ 19,262,425	\$ 20,900,950
Total Fee Ex Incentives (bps)	35.5	42.4	44.7	44.1	45.1
Avg. Assets (\$ billion)	\$3.42	\$3.53	\$3.91	\$4.37	\$4.63

The increase in fees over the past five fiscal years is a result of several factors. During FY 2015 and FY 2016 the Board implemented a new strategic asset allocation for the PTFs. Three of these strategic asset allocation strategies (real estate, absolute return and diversified inflation) required active investment which resulted in higher overall fees than the historically more passive, low cost strategy. Approximately 4 basis points from FY 2015 to FY 2016 was related to incentive fees on real estate.

From FY 2016 to FY 2018, expenses increased by \$8.7 million, of which \$4.4 million is a result of an increase in incentive fees paid to real estate portfolio managers. The remaining balance of \$4.3 million is due to trust growth, with a small portion of the increase due to minor changes made to the PTF's asset allocation and investment structure over the past two years.

From FY 2018 to FY 2019 total fees decreased by \$2.3 million, most of which was due to a decrease of incentive fees paid. However, exclusive of incentive fees, the PTFs paid more in fees due in part to a higher balance from FY 2018 to FY 2019, but also due to allocation in active managers that charge higher fees.

Table 1 breaks out incentive fees paid for the past four years from the base cost (excluding incentive fees) of managing the investment program; it demonstrates that the base cost of managing the program has remained fairly stable since the PTF's current asset allocation was fully implemented in FY 2016. The minor fluctuations since have been due to approved asset allocations changes and rebalancing to and from active managers that charge higher or lower fees.

The major factor in increased cost structure for the PTF's over the past three years has been the incentive fees. In many cases, performance fees are based on a fund's performance over a period of time, not just one year. This may result in incentive fees being paid even when the fiscal year performance has not been strong. For example, in FY 2018 UBS earned a small incentive fee even though performance for the fiscal year was slightly below the benchmark real estate Index.

Table 2 compares the total fees paid by the PTFs during FY 2018 to total fees paid during FY 2019, by broad asset classes.

TABLE 2	FY 2018			FY 2019		
	Fees Paid	Avg Mrkt. Val. (\$ Million)	Avg. Fee (in bps)	Fees Paid	Avg Mrkt. Val. (\$ Million)	Avg. Fee (in bps)
Equity	\$ 2,369,404	\$ 1,446.7	16.4	\$ 2,984,645	\$ 1,554.7	19.2
Fixed Income	2,374,481	954.3	25.1	3,277,444	1,003.2	33.1
Absolute Return	6,755,896	870.9	77.6	7,051,943	920.7	76.6
Inflation Strategies	2,405,113	440.6	54.6	2,445,248	457.5	53.4
Real Estate	10,845,132	654.7	165.6	6,629,380	697.6	95.0
Total Management Fees	\$ 24,750,026	\$ 4,367.2	56.7	\$ 22,388,660	\$ 4,633.7	48.3
Custody Fees	183,019	4,367.2	0.42	159,687	4,633.7	0.34
Consultant Fees	148,625	4,367.2	0.34	163,058	4,633.7	0.35
Total Fees	\$ 25,081,670	\$ 4,367.2	57.4	\$ 22,711,405	\$ 4,633.7	49.0

Tables 3-7 break down the average fees paid for each asset class by manager for FY 2019. An explanation of any relevant changes in FY 2019 fees relative to FY 2018 fees is also included.

Equity

TABLE 3		Fees	Avg. Mkt. Value	Fee
Mandate	Vehicle	Paid	(\$ Millions)	(in bps)
SSGA Russell 1000 Index	CFA	\$ 59,370	\$ 613.9	1.0
SSGA Russell Mid Cap Index	SMA	23,439	78.0	3.0
NTGA Small Cap Equity	CFA	647,785	93.1	70.0
SSGA MSCI World Ex US Index	CFA	102,125	480.0	2.1
QMA International Small Cap Equity	CFA	743,866	117.0	65.0
DFA EM All Cap Core Fund	MFA	468,288	88.2	53.1
Harding Loevner EM Core Equity Fund	MFA	939,772	84.5	112.0
Total Equity		\$ 2,984,645	\$ 1,554.7	19.2

The slight increase in the fee paid for equity investments during FY 2019 is primarily the result of 125% increase in assets placed in the QMA International Small Cap Equity fund account. Fees for the equity holdings in FY 2018 were 16.4 basis points.

Fixed Income

TABLE 4		Fees	Avg. Mkt. Value	Fee
Mandate	Vehicle	Paid	(\$ Millions)	(in bps)
JP Morgan Intermediate Bond Fund	SMA	\$ 614,879	\$ 298.7	20.6
Payden & Rygel Aggregate Bond	SMA	595,133	299.3	20.0
Payden & Rygel Low Duration	MFA	163,459	42.4	43.0
Farm Loan Pool (FLP)	BND	46,867	13.3	50.0
Energy Construction Loan Pool (ECLP)	BND	2,497	1.1	25.0
Lazard High Yield	SMA	84,061	34.5	30.0
First International Advisors	SMA	65,935	32.0	30.0
Brandywine Global Opportunistic FI	CFA	610,144	146.0	41.8
Angelo Gordon Direct Lending Fund III	LPF	845,681	45.9	184.1
Schroders Securitized Credit	SMA	248,788	90.0	35.0
Total Fixed Income		\$ 3,277,444	\$ 1,003.2	33.1

The fixed income fees increased 8 basis points in FY 2019. The increase came from increased allocations to Payden & Rygel Low Duration and Brandywine. Also, the addition of the Angelo Gordon and Schroders accounts contributed to the increase. Fees for the fixed income holdings in FY 2018 were 25.1 basis points.

Absolute Return

TABLE 5		Fees	Avg. Mkt. Value	Fee
Mandate	Vehicle	Paid	(\$ Millions)	(in bps)
GMO Benchmark Free	MFA	\$ 2,519,035	\$ 310.5	82.0
PIMCO All Asset All Authority	MFA	2,908,994	313.9	94.0
Westwood Income Opportunity Fund	SMA	1,623,914	296.3	54.8
Total Absolute Return		\$ 7,051,943	\$ 920.7	76.6

The average fee charged for the absolute return portion of the PTF's portfolio was essentially unchanged during FY 2019. The 1 bp decline from FY 2018 (77.6 basis points) is due to GMO lowering their fees to 82 basis points from 85 bps in FY 2018. Going forward with the removal of the Westwood portfolio, the absolute return fees will increase in basis points, but the total dollars paid in fees will decrease.

Diversified Inflation Strategies

TABLE 6		Fees	Avg. Mkt. Value	Fee
Mandate	Vehicle	Paid	(\$ Millions)	(in bps)
NTQA TIPS Index	CFA	\$ 42,059	\$ 90.1	4.7
Van Eck Natural Resource Equities	SMA	574,234	90.4	63.5
Gresham Commodities MTAP	SMA	808,080	137.9	58.6
Harvest MLP	SMA	1,020,875	139.1	73.4
Total Inflation Strategies		\$ 2,445,248	\$ 457.5	53.4

The average fee charged for the diversified inflation strategies declined slightly by 1.2 basis points during FY 2019 compared with FY 2018. All of the inflation strategies used by the PTFs have graduated fee schedules that charge a lower fee for incremental increases in assets. Thus, as assets grew during FY 2019, the effective fee charged by each manager declined.

Real Estate

TABLE 8		Fees	Avg. Mkt. Value	Fee
Mandate	Vehicle	Paid	(\$ Millions)	(in bps)
Morgan Stanley Prime Property Fund	LPF	2,259,395	\$ 201.3	112.3
UBS Trumbull Property Fund	LPF	1,362,013	182.0	74.8
Jamestown Premier Property Fund	LPF	275,051	69.1	39.8
JP Morgan Income and Growth RE	LPF	1,243,336	130.8	95.1
Prologis Targeted US Logistics Fund	LPF	1,489,585	114.4	130.2
Total Real Estate		\$ 6,629,380	\$ 697.6	95.0

The average fee charged for real estate declined by 73% during FY 2019, from 165.6 bps during FY 2018 to 95.0 bps in FY 2019. Lower real estate fees were driven primarily by a decrease in incentive fees paid, from 88.9 bps in FY 2018 to 19.4 bps in FY 2019. The decrease in incentive fees was driven by lower outperformance versus the prior year and a return of incentive fees from Jamestown. The average base rate

charged by the real estate managers declined by 1.2 bps during FY 2019, due to graduated fee schedules for the managers.

Table 8 details the average base fee and incentive fee charged by each real estate manager during FY 2019, as well as both the gross and net annual returns earned by each portfolio.

TABLE 8	Base Fee	Base Fee	Incentive	Incentive	Net	Gross
Mandate	Fee	Fee	Fee	Fee	Return	Return
		<i>(in bps)</i>		<i>(in bps)</i>		
Morgan Stanley Prime Property Fund	\$ 1,691,458	84.0	\$ 567,937	28.2	7.20%	8.35%
UBS Trumbull Property Fund	1,362,013	74.8	0	0.0	-0.70%	0.05%
Jamestown Premier Property Fund	417,375	60.4	-142,324	-20.6	4.58%	4.99%
JP Morgan Income and Growth RE	1,243,336	95.1	0	0.0	3.24%	4.19%
Prologis Targeted US Logistics Fund	562,625	49.2	926,960	81.0	14.39%	15.95%
Total Real Estate	\$ 5,276,807	75.6	\$ 1,352,573	19.4		

During FY 2019, the PTFs paid total incentive fees of \$1,352,573 versus \$5,819,245 in FY 2018; these incentive fees are based upon contractual agreements made with each manager. During FY 2019, the real estate incentive fees were paid to the Prologis (\$926,960) and Morgan Stanley (\$567,937), funds that generated gross returns of over 14% and 7%, respectively, while the index earned 5.3%. Also, Jamestown made an accounting adjustment in incentive fees of \$142,324.

The two managers that charged incentive fees generated a net out performance of \$13.7 million during FY 2019, or about \$10.15 of additional return for every \$1.00 of incentive fees paid. During FY 2018 the PTFs earned an additional \$20.3 million for the \$5.8 million of incentive fees paid, or about \$3.50 of additional return for every \$1.00 of incentive fees paid.

SIIF/Coal/Capitol Investment Pool

The assets of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund are pooled together and invested in a very short duration fixed income strategy with Northern Trust, the NTI Ultra Short Extended portfolio. This investment pool has a fee schedule that charges 6 bps on the first \$500 million, 5 bps on the next \$500 million, and 4 bps thereafter. No custody fee is paid for this account.

During FY 2019, fees totaling \$274,497 were paid on an average balance of \$609.8 million in this account. During FY 2018, total fees were \$146,372, while the average asset balance was \$269.6 million. The increase in fees paid during FY 2019 was entirely a result of the increase in assets under management. Nevertheless, the percent paid was lower due to the graduated fee schedule (4.5bps in 2019 versus 6.0 bps in 2018).

Appendix: Contracted Fee Arrangements

Equity

Asset Subclass	Account	Contracted Fee
Large Cap Equity	SSGA Russell 1000 Index	1 bps on total market value; cash balances are invested in money market funds, which have a fee of 12 bps
Mid Cap Equity	SSGA Russell Mid Cap Index	3 bps on total market value
Small Cap Equity	NTGA Small Cap Equity	70 bps on total market value
International Equity	SSGA MSCI World Ex US Index	2 bps on total market value; cash balances are invested in money market funds, which have a fee of 12 bps
International Equity	QMA International Small Cap Equity	65 bps on total market value
Emerging Markets Equity	DFA EM All Cap Core Fund	53 bps on total market value (eff. 2/18); 52 bps (eff. 2/19)
Emerging Markets Equity	Harding Loevner EM Core Equity Fund	112 bps on total market value

Fixed Income

Asset Subclass	Account	Contracted Fee
Core Fixed Income	JP Morgan Intermediate Bond Fund	20 bps on the first \$75 million and 18 bps next \$75 million and 12 bps thereafter on money invested directly by the Intermediate Bond team; a significant remainder of this mandate is invested in the JP Morgan MBS mutual fund, which has a fee of 25 bps
Core Fixed Income	Payden & Rygel Aggregate Bond	20 bps on total market value
Core Fixed Income	Payden & Rygel Low Duration	43 bps on total market value
Loan Pools	Farm Loan Pool (FLP)	50 bps of the unpaid principal balance of each loan
Loan Pools	Energy Construction Loan Pool (ECLP)	25 bps withheld from annual interest payments
Non-Core Fixed Income	Lazard High Yield	30 bps on total market value
Non-Core Fixed Income	Brandywine Global Opportunistic FI	45 bps on the first \$50 million, 40 bps on the next \$50 million, and 35 bps thereafter.
Non-Core Fixed Income	First International Advisors	35 bps on the first \$30 million, 25 bps on the next \$20 million, and 20 bps thereafter
Non-Core Fixed Income	Angelo Gordon Direct Lending Fund III	63.75 bps on balance of contributions made to the fund through Fall of 2021 (first 3 years), then 75 bps thereafter.
Non-Core Fixed Income	Schroders Securitized Credit	35 bps on the first \$350 million, 30 bps on next \$250 million, 25 bps thereafter

Absolute Return

Asset Subclass	Account	Contracted Fee
Global Tactical	GMO Benchmark Free	82 bps on total market value
Global Tactical	PIMCO All Asset All Authority	94 bps on total market value
Global Tactical	Westwood Income Opportunity Fund*	80 bps on the first \$25 million, 65 bps on the next \$25 million, and 50 bps thereafter

*No longer an active manager.

Diversified Inflation Strategies

Asset Subclass	Account	Contracted Fee
Inflation Protected	Gresham Commodities MTAP	67 bps on the first \$75 million, 50 bps on the next \$75 million, and 40 bps thereafter
Inflation Protected	Harvest MLP	75 bps on the first \$100 million, and a discount of 5 bps for each \$50 million thereafter until \$300 million, where it is 50 bps thereafter
Inflation Protected	NTQA TIPS Index	6 bps on the first \$50 million and 3 bps thereafter
Inflation Protected	Van Eck Natural Resource Equities	75 bps on the first \$50 million, 50 bps on the next \$200 million, and 47.5 bps thereafter

Real Estate

Asset Subclass	Account	Contracted Fee
Core Real Estate	Morgan Stanley Prime Property Fund	84 bps on total market value plus an incentive fee of 5% * NAV * comparable property NOI growth; the incentive fee total is capped at 35 bps
Core Real Estate	UBS Trumbull Property Fund	95.5 bps on the first \$10 million, 82.5 bps on the next \$15 million, 80.5 bps on the next \$25 million, 79 bps on the next \$50 million, 67 bps on the next \$150 million, and 60 bps thereafter; additionally a 0-25 bps incentive fee based on gross returns in relation to CPI plus 5% per annum. Incentive fee waived for a two year period effective 4/1/18.
Non-Core Real Estate	Jamestown Premier Property Fund	60 bps on total market value, plus an incentive fee of 20% of returns greater than 7%, and 25% of returns greater than 10%. Jamestown gives a fee break for RVK clients, resulting in an aggregation of assets for all RVK clients and a subscription date equal to the earliest of all RVK clients.
Non-Core Real Estate	JP Morgan Income and Growth RE	for NAV of \$100mm or more: 105 bps on the first \$50 million, 90 bps on the next \$50 million, 85 bps on the next \$50 million, 80 bps on the next \$50 million, and 75 bps thereafter
Non-Core Real Estate	Prologis Targeted US Logistics Fund	<p>Reinvested dividends and new investments after July, 2017 have the following fee structure: 1.20% on NAV for Invested Capital between \$0 to \$25M, 1.00% on NAV for Invested Capital over \$25 to \$50M, 0.90% on NAV for Invested Capital over \$50 to \$100M, 0.80% on NAV for Invested Capital over \$100 to \$250M, 0.70% on NAV for Invested Capital over \$250M. Additionally, an incentive fee of 10% over a 7% IRR in a 3 year period with a high water mark with the 3 year period fixed at the fund level applies.</p> <p>Equity invested before July 2017 has the following fee structure: 7.5% of NOI as a base fee; acquisition fee of 0.90% of total acquisition cost on fund acquisitions; renovation fee of 0.70% per year of the acquisition cost of the capital expenditures made for renovation properties during the applicable renovation period. Fees are subject to a quarterly cap of 0.30% of the fund NAV. In addition, an incentive fee of 15% over a 9% net IRR and 20% over a 12% net IRR is payable at the end of each three year incentive period.</p>

Ultra Short (SIIF, CDT & CBT)

Asset Subclass	Account	Contracted Fee
Ultra Short	Northern Trust Investments	6 bps on first \$500 million and 3 bps thereafter

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Other Funds Managed by the Board – 2nd Quarter 2019

(No Action Requested)

Due to delays in getting all necessary and relevant data for the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund, the Other Funds report was not presented to the Board in August.

This report provides the activities of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund during the quarter, as well as the performance of Northern Trust separate investment pool that holds the assets of these three funds.

Attachments:

- Attachment 1: Other Funds Managed by the Board Report – Distributed at Board Meeting
- Attachment 2: RVK Ultra-short Performance Report

**OTHER FUNDS MANAGED
BY THE BOARD**

2ND QUARTER 2019

**Strategic Investment and Improvements Fund,
Coal Development Trust Fund,
&
Capitol Building Fund**

STRATEGIC INVESTMENT AND IMPROVEMENTS FUND

The Strategic Investment and Improvements Fund (SIIF) holds the assets and collects the revenues earned from sovereign mineral acres, including those formerly owned by the Bank of North Dakota and State Treasurer, as well as the 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. Because the entire balance of this fund can be appropriated each biennium, it is invested in a conservative, short-term fixed income portfolio.

	6/30/19 Asset Balances	Total Return for Qtr/Year Ended 6/30/19
<u>Strategic Investment and Improvements Fund</u>		
Investments/Cash	1,045,816,000	QTR: 1.07%; FY: 3.66% N/A
Accruals (Oil Taxes, Royalties, etc.)	88,450,000	
Total	\$ 1,134,266,000	

- ◆ The SIIF had a fund balance of \$1.13 billion on June 30, 2019. The net value of the SIIF grew by \$203.98 million during the quarter ended June 30, 2019; it grew by a total of \$779.56 million during fiscal year 2019. These number could change slightly once the department’s annual audit is completed.
- ◆ The primary source of trust growth for the quarter was once again oil and gas taxes, at \$152.89 million; mineral royalties, including accrued royalties, were the next largest contributor to trust growth at \$49.84 million.
- ◆ Interest income grew to approximately \$5.0 million for the quarter, as strong royalty and tax collection helped grow the balance in the fund to over \$1.1 billion at year end.
- ◆ During the quarter, \$8.2 million was transferred out of the SIIF to the Secretary of State’s Office (SB 2002, emergency clause) for new voting machines. No other emergency clause items that were approved by the 2019 legislature were drawn from the SIIF during the quarter.
- ◆ In January of 2019, the funds set aside to guarantee a loan for the Dakota Spirit AgEnergy biomass fuel production facility were returned to the SIIF by BND after the loan on the facility was paid off early. The legislature adopted a new loan guarantee reserve fund with \$50 million of SIIF funds during the 2019 session.
- ◆ During the 2019 session, the legislature adopted spending and transfer totaling over \$850.5 million from the SIIF; including \$764.4 of transfers to the general fund, \$25 million to ITD and \$20 million to the Aeronautics Commission. Transfers were approved to about fifteen different state agencies from the SIIF for various emergency and one-time needs.
- ◆ Even with the large amount of transfers approved, it is currently projected that the SIIF will end the 2019-21 biennium with a balance of approximately \$989 million, down about \$145 million from its’ June 30,2019 balance.
- ◆ The assigned fund balance of the SIIF was \$229.3 million as of June 30, 2019. The assigned fund balance represents money that has been set aside to cover potential refunds related to lawsuits and legislation concerning ownership of the Missouri and Yellowstone Rivers. This \$229.3 million balance includes the \$100 million appropriation for mineral revenue refunds found in 2017’s Senate Bill 2134.

COAL DEVELOPMENT TRUST FUND

The **Coal Development Trust Fund (CDTF)** is a permanent fund from which the Board issues loans to energy impacted counties, cities and school districts as provided in NDCC Section 57-62-03, and lends to school districts pursuant to NDCC Chapter 15-60. The Board is responsible for investing all funds that have not been loaned to political subdivisions. As directed in the Constitution, the income earned by the CDTF is transferred to the General Fund each year. The CDTF has historically been invested in a conservative short-term fixed income portfolio.

	6/30/3019 Asset Balances	Yield/Total Return for Qtr. Ended 6/30/19
Coal Development Trust Fund		
School Construction Loans	\$ 41,770,000	1.53% Yield
Coal Impact Loans	11,269,000	3.35% Yield
Investments/Cash	<u>17,256,000</u>	1.07% Total Return
Total	\$ 70,295,000	

- ◆ During June 2019, approximately \$3.5 million of school construction loan payments were received by the department. Annual payments are generally due June 1st of each year. The only activity in the Coal Impact Loan Program was the monthly payments on outstanding loans.
- ◆ Effective July 1, 2017, the purpose of the school construction loan program changed from a program that funded major construction projects to a program that now funds loans to schools for unanticipated construction projects and emergency repairs of less than \$2.0 million that have been approved by the Department of Public Instruction.
- ◆ The total amount available to loan under the school construction loan program is \$60 million, up \$10 million from the previous cap. Since the revised program went into effect in July of 2017, only one loan has been approved by DPI.
- ◆ During June 2019, \$900,000 was transferred to the general fund from the Coal Development Trust Fund. The law requires that all earnings from the fund be transferred to the general fund each year. The estimated income from this fund is transferred to the general fund each June; once final audited income is known, an additional payment is made in the fall.
- ◆ Effective July 1, 2017, the amount coal severance taxes being deposited into the CDTF was reduced by 50% from approximately \$1.0 million a year to \$500,000 a year. It will not reduce the size of the current fund, only the future rate of fund growth.

CAPITOL BUILDING FUND

The Capitol Building Fund is a Constitutional fund that was created for the construction and maintenance of public buildings at the capital. It generates revenues from nearly 10,000 surface and 27,700 mineral acres it owns. Because the Fund can be appropriated by the legislature each biennium, it is invested in a conservative, short-term fixed income portfolio.

The Capitol Grounds Planning Commission (CGPC) has official control over the Capitol Building Fund; the Land Board is responsible for investing the assets on behalf of the CGPC, which it has done within the Northern Trust Ultra Short bond fund.

	6/30/19 Asset Balance	Total Return Qtr. Ended 6/30/19
Capitol Building Fund		
Investments/Cash	\$ 7,073,000	1.07% Total Return

- ◆ The Capitol Building Fund had a fund balance of \$7.07 million as of June 30, 2019, an increase of more than \$355,000 over the balance of the fund on March 31, 2019.
- ◆ The biggest source of trust growth during the quarter ended June 30, 2019 was the approximately \$262,000 of oil and gas royalties; the next largest was \$36,000 of interest income.
- ◆ To date, the Capitol Building Fund has received a total of \$887,000 of the \$1.0 million of donations pledged to the Governor's residence project. During the quarter ended June 30, 2019, the CGPC informed the Commissioner that no further transfers will be made.
- ◆ The 65th Legislature did not approve any new spending out of the Capitol Building Fund for the 2017-19 biennium. However, Facilities Management did receive carryover authority for the following amounts:
 - \$1.4 million previously designated in 2015 for Capitol Building entrance and signage projects. In accordance with HB 1015, Section 17, these funds will now be used for extraordinary repairs (\$1.0 million) and entrance and signage projects (\$400,000).
 - \$1.75 million for the new Governor's residence. This authority was approved by the carryover committee in June of 2017.
- ◆ During the quarter, the remaining balance of \$500,000 of the appropriations noted above were transferred to Facilities Management. An additional \$25,000 that was appropriated for operations (HB 1015) was also transferred during the quarter.
- ◆ Approximately \$5.6 million of spending was approved out of the Capitol Building Fund for the 2019-21 biennium, including \$2.0 million for a new south entrance to the Capitol, \$1.9 million for extraordinary repairs and, \$320,000 for operating expenses (all in SB 2015). Additional spending was also approved for work on Supreme Court (\$970,000) and Legislative Council (140,000) offices; These appropriations were included in those agency bills.

INVESTMENT RETURNS

The investment assets of the SIIF, Coal Development Trust Fund, and Capitol Building Fund are commingled in the Ultra-Short bond portfolio managed by Northern Trust. See RVK's review of the performance of the Ultra-short portfolio for the quarter ended June 30, 2019 for details on the how the investments of these funds have performed over time.

Schedule of Investable Assets					
Periods Ending	Beginning Market Value (\$)	Net Cash Flow (\$)	Gain/Loss (\$)	Ending Market Value (\$)	% Return
QTD	818,491,196	155,001,100	9,744,485	983,236,782	1.07

Asset Allocation & Performance							
	Market Value (\$)	Performance (%)					Inception Date
		QTD	FYTD	CYTD	1 Year	Since Incep.	
NT Ultra Short Extended (SA)	983,236,782	1.07	3.66	2.23	3.66	1.95	08/01/2015
NT Ultra Short Extended Custom Index		1.06	3.29	1.97	3.29	1.36	
Difference		0.01	0.37	0.26	0.37	0.59	

Fund Objective	
The objective of this fund is to provide capital preservation with returns which exceed that of its custom benchmark, 50% Bloomberg US Gov't Crdt 1-3 Yr Bond Index and 50% ICE BofAML 3 Mo US T-Bill Index.	

Portfolio Characteristics		
	Portfolio	Benchmark
Effective Duration	0.72	1.07
Modified Duration	0.80	1.04
Spread Duration	0.74	1.08
Convexity	0.01	N/A
Avg. Maturity	0.74	1.11
Avg. Quality	A1	Aa1
Yield To Maturity (%)	1.71	1.94
Coupon Rate (%)	1.81	N/A
Current Yield (%)	1.80	N/A
Holdings Count	151	130

Sector Distribution (%)	
Cash Equiv	32.81
US Trisy	97.60
Gov't Related	0.00
Agency MBS	11.32
ABS	6.43
Inv Grade Corp	30.40

Sector	NT Ultra Short Extended (SA)	NT Ultra Short Extended Custom Index
Cash Equiv	32.81	0.00
US Trisy	19.04	97.60
Gov't Related	0.00	2.41
Agency MBS	11.32	0.00
ABS	6.43	0.00
Inv Grade Corp	30.40	0.00

Performance shown is gross of fees. Net cash flow includes fees, securities lending income and client directed flows. Gain/loss includes dividend and interest income and capital appreciation. Allocations shown may not sum up to 100% exactly due to rounding. The NT Ultra Short Extended Custom Index is calculated monthly and currently consists of 50% Bloomberg US Gov't Crdt 1-3 Yr Bond Index and 50% ICE BofAML 3 Mo US T-Bill Index. Fiscal year end 6/30.



MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS
(September 26, 2019)

RE: Report of Easements Issued by Land Commissioner
(08/21/2019 to 09/17/2019): No Action Requested

Granted to: **AURORA WIND PROJECT, LLC, LENEXA-KS**
For the Purpose of: Easement: Electric-Wind Transmission line
Right-of-Way Number: RW0008236
Date Issued: 9/17/2019
Application Fee: \$100.00
Right-of-way Income: \$7,925.50
Damage Payment to Lessee: N/A
Trust: A- Common Schools
Length (Rods): 320.18
Area (Acres): 18.19
Legal Description: WIL-157-95-16-NE4, NW4

Granted to: **EMMONS-LOGAN WIND LLC, JUNO BEACH-FL**
For the Purpose of: Easement: Electric-Wind Transmission line
Right-of-Way Number: RW0008246
Date Issued: 8/23/2019
Application Fee: \$100.00
Right-of-way Income: \$40,110.23
Damage Payment to Lessee: \$
Trust: A – Common Schools
Length (Rods): 161.13
Area (Acres): 6.10
Legal Description: EMM-133-76-36-SE4

Granted to: **RIVER WATER LLC, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Raw Water Pipeline
Right-of-Way Number: RW0008297
Date Issued: 8/29/2019
Application Fee: \$100.00
Right-of-way Income: \$33,693.00
Damage Payment to Lessee: \$168.45
Trust: A – Common Schools
Length (Rods): 224.61
Area (Acres): 2.81
Legal Description: WIL-155-99-16-NE4, NW4

Granted to: **BATTELLE MEMORIAL INSTITUTE, COLUMBUS-OH**
For the Purpose of: Easement-Amend: Site-Tower Site
Right-of-Way Number: RW0008362
Date Issued: 9/17/2019
Application Fee: \$200.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A- Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: STU-143-67-36-ALL

Granted to: **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**
For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number: RW0008370
Date Issued: 8/23/2019
Application Fee: \$100.00
Right-of-way Income: \$59,600.00
Damage Payment to Lessee: \$149.26
Trust: A – Common Schools
Length (Rods): 149.26
Area (Acres): 1.87
Legal Description: MCK-150-97-36-NW4

Granted to: **LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO**
For the Purpose of: Easement: Pipeline-Multiple Pipelines
Right-of-Way Number: RW0008468
Date Issued: 9/16/2019
Application Fee: \$100.00
Right-of-way Income: \$62,102.00
Damage Payment to Lessee: \$155.25
Trust: A – Common Schools
Length (Rods): 310.51
Area (Acres): 3.88
Legal Description: BRK-159-93-16-NW4, SW4

Granted to: **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**
For the Purpose of: Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number: RW0008487
Date Issued: 9/16/2019
Application Fee: \$100.00
Right-of-way Income: \$89,444.00
Damage Payment to Lessee: \$167.70
Trust: A – Common Schools
Length (Rods): 223.61
Area (Acres): 2.80
Legal Description: MCK-152-97-36-NE4, SE4

Granted to: **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**
For the Purpose of: Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number: RW0008506
Date Issued: 9/17/2019
Application Fee: \$100.00
Right-of-way Income: \$5,782.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 16.52
Area (Acres): 0.21
Legal Description: MOU-154-93-36-SE4

Granted to: **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**
For the Purpose of: Easement: Pipeline-Gas Gathering Pipeline
Right-of-Way Number: RW0008510
Date Issued: 9/17/2019
Application Fee: \$100.00
Right-of-way Income: \$10,852.00
Damage Payment to Lessee: \$24.41
Trust: A – Common Schools
Length (Rods): 27.13
Area (Acres): 0.34
Legal Description: WIL-155-102-16-NE4

Granted to: **ND GAME & FISH DEPT, BISMARCK-ND**
For the Purpose of: Letter of Permission: Access to School Land
Right-of-Way Number: RW0008520
Date Issued: 9/13/2019
Application Fee: N/A
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: MOR-135-83-36-NE4, SE4, SW4

Granted to: **ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT**
For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline
Right-of-Way Number: RW0008525
Date Issued: 8/23/2019
Application Fee: \$100.00
Right-of-way Income: \$18,266.00
Damage Payment to Lessee: \$107.74
Trust: A – Common Schools
Length (Rods): 59.22
Area (Acres): 0.74
Legal Description: DUN-146-95-36-SE4

Granted to: **LEGACY RESERVES OPERATING LP, CODY-WY**
For the Purpose of: Easement: Well-Salt Water Disposal Well Extension
Right-of-Way Number: RW0008526
Date Issued: 9/17/2019
Application Fee: \$100.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: GOL-143-103-36-NE4, NW4, SE4

Granted to: **GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX**
For the Purpose of: Easement: Drop Line-Saltwater Pipeline
Right-of-Way Number: RW0008537
Date Issued: 9/16/2019
Application Fee: \$100.00
Right-of-way Income: \$62,874.00
Damage Payment to Lessee: \$89.82
Trust: A – Common Schools
Length (Rods): 179.64
Area (Acres): 2.24
Legal Description: MCK-151-96-36-SE4, SW4

Granted to: **ELKAN INC, WATFORD CITY-ND**
For the Purpose of: Easement-Amend: Pipeline-Raw Water Pipeline
Right-of-Way Number: RW0008562
Date Issued: 8/27/2019
Application Fee: \$100.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 358.73
Area (Acres): 4.49
Legal Description: MCK-150-98-36-NW4, SW4

Granted to: **ENVIRONMENTAL RESOURCES MANAGEMENT,
PORTLAND-OR**
For the Purpose of: Permit: Planning & Preconstruction Survey
Right-of-Way Number: RW0008568
Date Issued: 8/23/2019
Application Fee: \$100.00
Right-of-way Income: \$500.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: N/A

Granted to: **RIVER WATER LLC, WILLISTON-ND**
For the Purpose of: Easement: Drop Line-Raw Water Pipeline
Right-of-Way Number: RW0008573
Date Issued: 8/30/2019
Application Fee: \$100.00
Right-of-way Income: \$2364.00
Damage Payment to Lessee: \$11.82
Trust: A – Common Schools
Length (Rods): 15.76
Area (Acres): 0.2
Legal Description: WIL-155-99-16-NE4

Granted to: **SELECT ENERGY SERVICES LLC, WILLISTON-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008576
Date Issued: 8/29/2019
Application Fee: \$100.00
Right-of-way Income: \$886.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 53.70
Area (Acres): N/A
Legal Description: MCK-153-94-36-SW4

Granted to: **TRILOGY, LLC, MINOT-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008581
Date Issued: 9/16/2019
Application Fee: \$100.00
Right-of-way Income: \$1,168.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 70.79
Area (Acres): N/A
Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

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

The Energy Infrastructure and Impact Office (EIO) is a division within the Department of Trust Lands (Department). EIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIO 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, EIO has dispersed over \$624 million in funding.

The Oil and Gas Impact Grant Fund currently has 51 grants with a balance of \$19,963,193.67 as of September 13, 2019. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
5/31/2019	70	\$28,202,091.20
6/30/2019	63	\$23,780,767.68
7/31/2019	55	\$21,669,388.00
8/31/2019	51	\$19,963,193.67

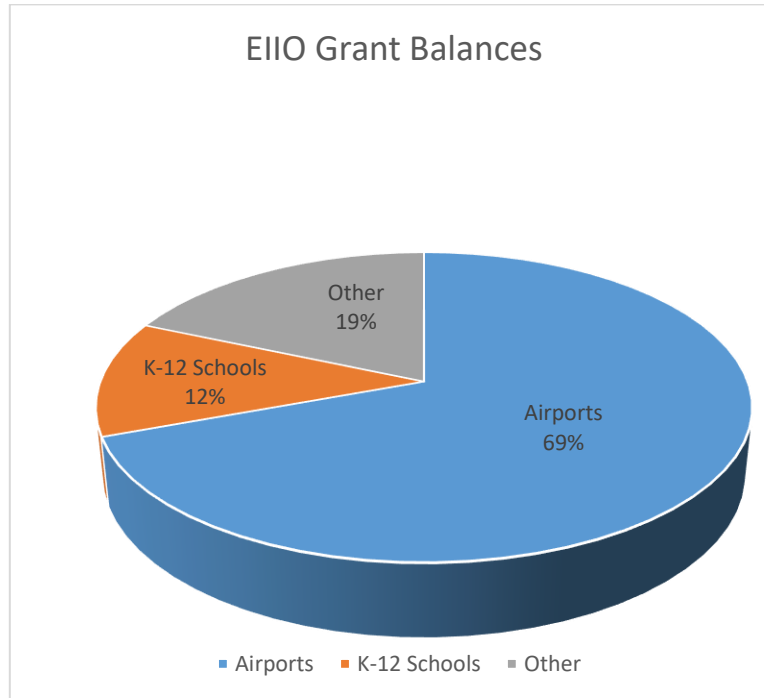
The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has four grants with a balance of \$4,971,638.80 as of September 13, 2019. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last four months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
5/31/2019	5	\$4,997,365.24
6/30/2019	5	\$4,997,365.24
7/31/2019	4	\$4,971,638.80
8/31/2019	4	\$4,971,638.80

The Energy Infrastructure and Impact Office is currently managing 55 grants for a total of \$24,934,832.47. The following shows grant activity for the last four months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
5/31/2019	70	\$28,202,091.20	5/31/2019	5	\$4,997,365.24	\$33,199,456.44
6/30/2019	63	\$23,780,767.68	6/30/2019	5	\$4,997,365.24	\$28,778,132.92
7/31/2019	55	\$21,669,388.00	7/31/2019	4	\$4,971,638.80	\$26,641,026.80
8/31/2019	51	\$19,963,193.67	8/31/2019	4	\$4,971,638.80	\$24,934,832.47

The chart below represents the remaining grant balances of the Oil and Gas Impact Grant Fund:



2019-2021 Biennium Funding

N.D.C.C. § 15-01-02(6) provides the Board of University and School Lands has:

Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

The total of appropriated funding for grants to political subdivisions impacted by oil and gas development activities in House Bill 1013 for the 2019-2021 biennium is \$2 million, thus total grants in either fiscal year cannot exceed \$1.2 million.

EIIO plans to open a contingency grant round in December 2019, using funds from the \$2 million allocation appropriated by the Sixty-sixth Legislative Assembly. It is anticipated that applications will be accepted through January 31, 2020, with scoring completed and the advisory committee meeting held in February. A list of potential awards will likely be presented to the Board at the March 2020 Board meeting.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

**RE: Unclaimed Property
Program 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 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.

The Department's 2017-2019 biennial budget appropriation included \$3.6 million to replace legacy information technology systems as authorized by Senate Bill 2013 of the Sixty-fifth Legislative Assembly. This included funding to replace the Division's information technology system. On April 29, 2019, the new system was successfully launched. The number of monthly claims issued over the past four months has increased as a result of the more efficient information technology system and increased community education.

For the month of August 2019, the Division received 48 holder reports with a property value of \$119,724.60 and paid 610 claims with a total value of \$374,654.52.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Investment Updates

(No Action Requested)

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of August 31, 2019. The figures provided are unaudited.

Account/Asset Class	Long-Term Asset Allocation	8/31/19 Actual Allocation \$	8/31/19 Actual Allocation %	8/31/19 % Diff.
Large Cap US Equity	14.5%	\$ 699,647,094	14.6%	0.1%
Mid/Small Cap US Equity	4.0%	\$ 188,529,381	3.9%	-0.1%
International Equity	14.5%	\$ 695,039,186	14.5%	0.0%
Emerging Market Equity	4.0%	\$ 194,060,740	4.0%	0.0%
Total Equities	37.0%	\$ 1,777,276,401	37.1%	0.1%
Core Fixed Income	13.8%	\$ 746,344,972	15.6%	1.8%
Non-Core Fixed Income	9.2%	\$ 360,927,766	7.5%	-1.7%
Total Fixed Income	23.0%	\$ 1,107,272,738	23.1%	0.1%
Total Absolute Return	15.0%	\$ 713,484,855	14.9%	-0.1%
Commodities	3.0%	\$ 145,705,658	3.0%	0.0%
MLPs	3.0%	\$ 143,100,673	3.0%	0.0%
TIPS	2.0%	\$ 98,949,577	2.1%	0.1%
Natural Resource Equities	2.0%	\$ 92,212,978	1.9%	-0.1%
Total Inflation Strategies	10.0%	\$ 479,968,886	10.0%	0.0%
Core Real Estate	8.0%	\$ 386,152,565	8.1%	0.1%
Core Plus Real Estate	7.0%	\$ 330,698,621	6.9%	-0.1%
Total Real Estate	15.0%	\$ 716,851,186	15.0%	0.0%
Total Asset	100.0%	\$ 4,794,854,066	100.0%	

Angelo Gordon (\$71.61 million, 1.5% of PTF assets as of 8/31/19)

Direct Lending Fund

The Angelo Gordon Direct Lending Fund III portfolio was initially funded in late-August 2018. As of August 31, 2019, the funded capital amounted to \$69.75 million out of the \$150 million commitment.

Another \$15 million capital call was recently received and was funded on September 12, 2019, this would bring the amount funded to \$84.75 million out of a total commitment of \$150 million. This represents 56.5% of the total commitment to the fund. According to Angelo Gordon, the Board's commitment should be fully drawn by late-2020.

Upcoming Investment Manager Meetings

The following meetings with investment managers were planned to discuss updates on strategy, compliance, and performance. It will be held in the Department's conference room. Please inform the Commissioner ahead of time if you plan to attend, so that we can make sure enough presentation materials are available.

Oct. 17, 2019, 10:00AM **Gresham Commodities**
Diversified Inflation Strategies (\$145.7M, 3% of PTF assets)

Oct. 24, 2019, 3:00PM **JP Morgan**
Non-Core Real Estate (\$133.5M, 2.8% of PTF assets)
Nancy Brown, Melissa Anezinis, and Jim Sakelariz

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Board of University and School Lands Meeting Dates For 2020
(No Action Requested)

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

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last two hours each month. The quarterly meetings including Investment reporting will begin at 8:00 AM and are expected to last three hours.

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

- January 30, 2020 - 9:00 AM
- February 27, 2020 – 8:00 AM
- March 26, 2020 – 9:00 AM
- April 30, 2020 – 9:00 AM
- May 28, 2020 – 8:00 AM
- June 25, 2020 – 8:00 AM
- July 30, 2020 – 9:00 AM
- August 27, 2020 – 8:00 AM
- September 24, 2020 – 9:00 AM
- October 29, 2020 – 9:00 AM
- November 26, 2020 – 8:00 AM Tuesday before Thanksgiving
- December 22, 2020 – 9:00 AM Tuesday before Christmas Eve

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**
- **Northwest Landowners Association Civ. No. 05-2019-CV-00085**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Paul Sorum et al. Civ. No. 09-2018-CV-00089**

Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger					
Superintendent Baesler					
Treasurer Schmidt					
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.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: **Newfield** Litigation

(No Action Requested)

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

Date Filed: **March 7, 2018**

Court: **District Court/McKenzie County**

Attorneys: **David Garner**

Opposing

Counsel: **Lawrence Bender and Spencer Ptacek/Fredrikson & Byron, P.A.**

Judge: **Robin Schmidt**

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

History: A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019.

**Current
Status:**

- **Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019.**
- **A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation.**
- **On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing.**
- **On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: **Northwest Landowners Association** Litigation

(No Action Requested)

Case: **Northwest Landowners Association v. State of North Dakota, North Dakota Industrial Commission, Board of University and School Lands of the State of North Dakota, Hon. Douglas Burgum in his official capacity as Governor of the State of North Dakota, and Hon. Wayne Stenehjem in his official Capacity as Attorney General of North Dakota, Civ. No. 05-2019-CV-00085**

Date Filed: July 29, 2019

Court: Bottineau County District Court

Judge: Anthony Swain Benson

Attorney: David Garner

Opposing

Counsel: Derrick Braaten, David Keagle

Issues: Plaintiff has filed this action in State District Court, Bottineau County, to challenge the Constitutionality of S.B. 2344 (inclusive of newly enacted section N.D.C.C. § 47-31-09 relating to injection or migration of substances into pore space; and amended and reenacted N.D.C.C. §§ 38-08-25, 38-11.1-01 and 38-11.1-03 relating to pore space and oil and gas production). Plaintiff seeks a declaration that S.B. 2344 is unconstitutional and void, and of no effect. Plaintiff also seeks a declaration enjoining the State of North Dakota, the Hon. Doug Burgum, and the Hon. Wayne Stenehjem from further implementation or enforcement of S.B. 2344, enjoining the appropriate defendants from authorizing or enacting any administrative rules pursuant to Section 1, subsection 6, of S.B. 2344, enjoining the appropriate defendants from authorizing any impermissible and unconstitutional gifts of surface property rights by entering into any contractual obligations that fail to require compensation for use of pore space as would be required prior to enactment of S.B. 2344. Plaintiff also requested other relief as the Court deems just and equitable, together with costs, disbursements and attorneys' fees as allowed by law. Summons and Complaint was served on the Board on July 29, 2019.

History: On August 6, 2019, Notices of Appearance were filed by Matthew Sagsveen and Nici Meyer on behalf of Defendants and a Stipulation to Extend Time was also filed. The Court entered its Order for Stipulation to Extend Time on August 6, 2019, extending the time for the State Defendants to file a responsive pleading to September 6, 2019.

Current Status:

- **On September 3, 2019, a Stipulation of Dismissal was filed with the Court to dismiss the Board of University and School Lands as a party to this lawsuit. A proposed Order of Dismissal and a proposed Judgment of Dismissal were also filed.**
- **On September 6, 2019, the Answer of the State Defendants not part of the Stipulation of Dismissal was filed.**

- **Order of Dismissal and Judgment of Dismissal filed September 9, 2019, dismissing the Board of University and School Lands without prejudice and without costs to either party.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Wilkinson Litigation
(No Action Requested)

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, Lyle Kirmis

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.

**Current
Status:**

- **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.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

September 26, 2019

RE: Sorum Litigation

(No Action Requested)

Case: Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV-00089

Tribunal: Cass County District Court

Judge: John C. Irby

Attorney: Mark Hanson, Nilles Law Firm

Opposing

Counsel: Terrance W. Moore, Fintan L. Dooley

Issues: The Board was named as a defendant in the above reference case which was served on January 10, 2018. Plaintiffs have filed this action to challenge the Constitutionality of S.B. 2134 passed during the last legislative session and codified as N.D.C.C. ch. 61-33.1. Under the new legislation, “[t]he state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark.” N.D.C.C. § 61-33.1-02. S.B. 2134 established a process by which the Department of Mineral Resources is directed to procure a “qualified engineering and surveying firm” to “review the delineation of the ordinary high water mark of the corps survey segments” for the portion of the Missouri River designated as the “historical Missouri riverbed channel.” N.D.C.C. § 61-33.1-03(2), (3). Following a review process, which includes a public hearing and public comments, the North Dakota Industrial Commission must adopt final review findings which “will determine the delineation of the ordinary high water mark for the segment of the river addressed by the findings.” N.D.C.C. § 61-33.1-03(7). Plaintiffs’ complaint requests from the court a declaratory judgment finding that N.D.C.C. ch. 61-33.1 violates the Public Trust Doctrine and the Anti-Gift, Privileges and Immunities, and Local and Special Law Clauses of the North Dakota Constitution. Plaintiffs are also requesting the Court issue an injunction to prevent all state officials from further implementing and enforcing N.D.C.C. ch. 61-33.1.

History: An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions were filed October 22, 2018. Response Briefs were filed December 10, 2018. Reply Briefs were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff’s filed a letter on March 7, 2019, advising the Court that they felt Defendants’ proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff’s proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs’ proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs’ Proposed Judgment.

Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants' Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs' intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs' Proposed Order and Judgment (Plaintiffs' Amended Proposed) and Reply to Plaintiffs' Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs' filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs.

**Current
Status:**
