

# **BOARD OF UNIVERSITY AND SCHOOL LANDS**

**January 28, 2021 at 9:00 AM**

**Microsoft Teams**

[Join Microsoft Teams Meeting](#)

[+1 701-328-0950](#)

Conference ID: 755 407 199#

## **AGENDA**

➤ = **Board Action Requested**

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

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

- A. December 17, 2020 – pg. 2
- B. January 12, 2021 – pg. 25

2. **Reports – Jodi Smith**

- A. December Shut-In Report – pg. 32
- B. December Report of Encumbrances – pg. 33
- C. December Unclaimed Property Report – pg. 36
- D. October Financial Position – pg. 37
- E. Investments Update – pg. 46
- F. Acreage Adjustment Report – pg.47
- G. Legislative Update – pg. 48

3. **Energy Infrastructure and Impact Office – Jodi Smith**

- A. Reallocation of Funding Request – Grant 200004 – pg. 52

4. **Minerals – Jodi Smith**

- A. Acreage Adjustment Survey – T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34 and 36 – pg. 56

5. **Litigation – Jodi Smith**

- A. Continental Resources Case No. 1:17-cv-00014 – pg. 58

➤ **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:**

- **Continental Resources Case No. 1:17-cv-00014**
- **Legislative Update**
- **Acreage Adjustment Survey – T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34 and 36**

**Next Meeting Date – February 25, 2021**

**Minutes of the Meeting of the  
Board of University and School Lands  
December 17, 2020**

The December 17, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Pioneer 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 via Teams

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Mike Humann	Surface Division Director
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director - via Microsoft Teams
Lynn Spencer	Mineral Title Specialist – via Microsoft Teams
Dennis Chua	Investments Analyst – via Microsoft Teams
Christopher Dingwall	Mineral Title Specialist – via Microsoft Teams
Scott Giere	Revenue Compliance Auditor – via Microsoft Teams
Peggy Gudvangen	Accounting Director – via Microsoft Teams
Jacob Lardy	Surface – via Microsoft Teams
Rick Owings	EIIO – via Microsoft Teams

**Guests in Attendance:**

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Charles Carvell	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Reice Haase	Office of the Governor

**Additional Guests in Attendance:**

Andrew Lasky	via Microsoft Teams
Austin Head-Jones	via Microsoft Teams
Avni Gandhi	via Microsoft Teams
Renae Bloms	via Microsoft Teams
Brady Pelton	NDPC via Microsoft Teams
Chelsea Dodge	via Microsoft Teams
Craig D'Alessio	via Microsoft Teams
Dennis Blank	via Microsoft Teams
Drew Guyette	via Microsoft Teams
Gerald Heiser	via Microsoft Teams
Joel Holsinger	via Microsoft Teams
Josh Kevan	RVK via Microsoft Teams
Stephen Kranz	via Microsoft Teams
Richard W	via Microsoft Teams
Sonya Lee	via Microsoft Teams
Trevor Clark	via Microsoft Teams
William Cullinan	via Microsoft Teams

## APPROVAL OF MINUTES

A motion to approve the minutes of the November 24, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

## REPORTS

### Repayment of Unpaid Royalties Report

Since the November 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for oil deductions: Citation Oil and Gas LLC.

Since the November 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for gas deductions: Denbury Resources.

### November Report of Encumbrances Issued by Land Commissioner

Granted to:	Tesoro High Plains Pipeline Company Llc, San Antonio-TX
For the Purpose of:	Easement-Amend: Pump Station
Right-of-Way Number:	RW0008693
Trust:	A - Common Schools
Legal Description:	MCK-147-104-36-SE4

Granted to:	Bob Enterprises LLC, Killdeer-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008703
Trust:	A - Common Schools
Legal Description:	DUN-147-95-16-NE4, NW4, SW4 SOUTH OF HWY

Granted to:	Carson Ranch, Grassy Butte-ND
For the Purpose of:	Permit: Road-Access Road
Right-of-Way Number:	RW0008788
Trust:	A - Common Schools
Legal Description:	MCK-146-101-36-NE4

Granted to:	Select Energy Services LLC, Williston-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008790
Trust:	A - Common Schools
Legal Description:	MOU-154-94-16-SW4

Granted to:	Goodnight Midstream Bakken LLC, Dallas-TX
For the Purpose of:	Easement-Amend: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008792
Trust:	A - Common Schools
Legal Description:	MCK-152-97-36-NE4, SE4

Granted to:	Bob Enterprises LLC, Killdeer-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008794
Trust:	A - Common Schools
Legal Description:	DUN-146-95-16-NE4

(12/17/20)

Granted to:	Select Energy Services LLC, Williston-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008797
Trust:	A - Common Schools
Legal Description:	MCK-153-94-16-NW4, SW4

### **November Unclaimed Property Report**

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

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

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of November 2020, the Division received 216 holder reports with a property value of \$1,234,962 and paid 324 claims with a total value of \$348,124.

**The Financial Report (Unaudited) for period ending September 30, 2020 was presented to the Board for review and is available at the Department upon request.**

### **Investment Updates**

#### **Portfolio Rebalancing Updates**

As Harvest (Master Limited Partnerships) hit the 25% sell trigger point, a \$25M liquidation was initiated with withdrawal and transfer to the transition account targeted to be on or before December 15, 2020. This will leave the Diversified Inflation Strategies (DIS) asset class with approximately \$89.6M after the withdrawal based on its December 8, 2020, ending value. The Department of Trust Lands (Department) staff and RVK will continue to monitor the trigger points set for the account and will complete the liquidation when appropriate.

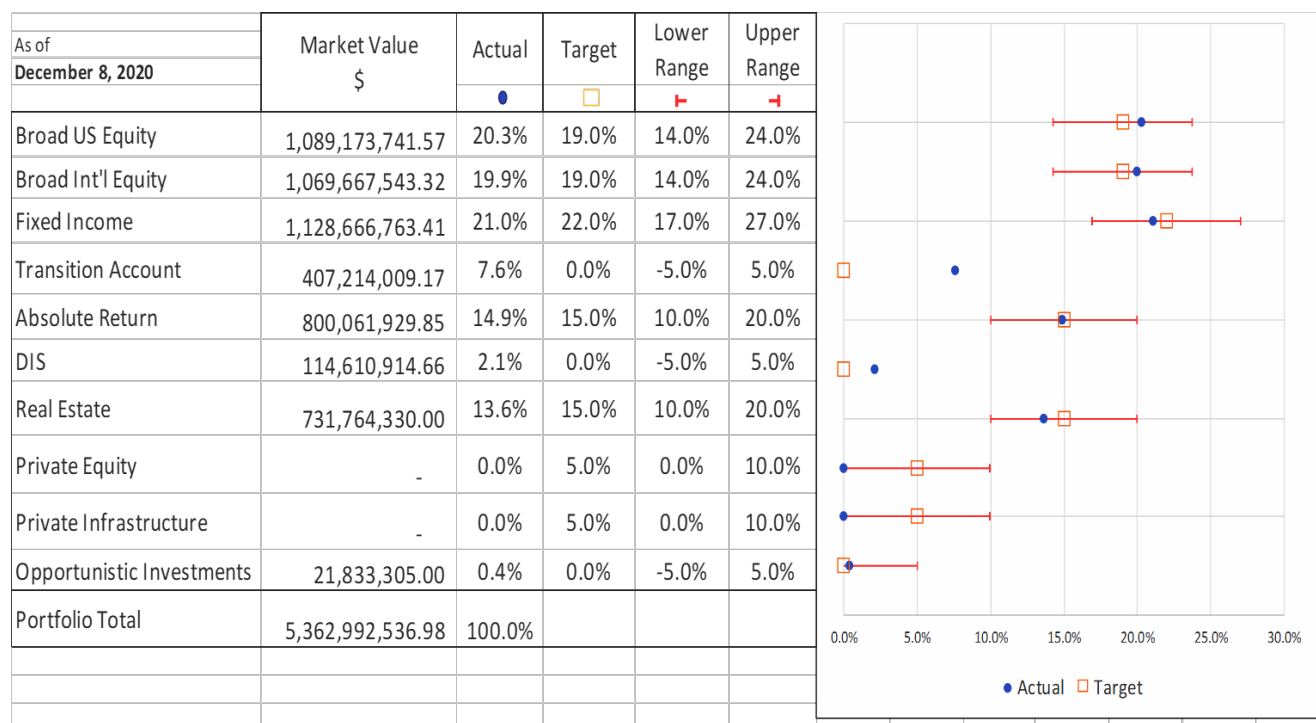
Since being approved, Apollo Accord Fund IV LP (Fund), an Opportunistic Investment, has made capital calls totaling \$5.5M. The remaining unfunded commitment now stands at \$94.5M. On November 27, 2020, the fund made its first distribution amounting to \$14,581.06.

Varde Dislocation Fund IV LP, an Opportunistic Investment, has called on a total of \$15M. This brings the remaining unfunded commitment to \$85M.

The Department staff have started working on the Investment Management Agreement (IMA) for both the JPM Core Bond and the Loomis & Sayles Multi Sector that were recently approved. Additionally, the Agreements for GCM Grosvenor (Private Equity Manager) and JP Morgan (Private Infrastructure Manager) are also being reviewed and worked on.

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of December 8, 2020. The figures provided are unaudited.



Upcoming Investment Manager Meetings: There are no upcoming meetings scheduled.

### Energy Infrastructure and Impact Office Quarterly Program Report

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

The Oil and Gas Impact Grant Fund currently has 17 grants with a balance of \$2,833,286.75 as of December 1, 2020. The following shows grant activity for the last eight months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
5/13/2020	28	\$7,049,556.08
9/9/2020	22	\$5,282,832.07
12/1/2020	17	\$2,833,286.75

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 three grants with a balance of \$1,752,239.48 as of December 1, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the

(12/17/20)

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 eight months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
5/13/2020	3	\$2,394,929.22
9/9/2020	3	\$2,394,929.22
12/1/2020	3	\$1,752,239.48

EIO is currently managing 20 grants for a total of \$4,585,526.23. The following shows grant activity for the last eight 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
5/13/2020	28	\$7,049,556.08	5/13/2020	3	\$2,394,929.22	\$9,444,485.30
9/9/2020	22	\$5,282,832.07	9/9/2020	3	\$2,394,929.22	\$7,677,761.29
12/1/2020	17	\$2,833,286.75	12/1/2020	3	\$1,752,239.48	\$4,585,526.23

### Information Technology Project Status Update

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

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

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

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

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

The Investments Division, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

The Surface Division, Project Sponsor, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

Additional capital funding is being requested in the upcoming legislative session to support the implementation of software for the Minerals Division.

On December 14, 2020, an upgrade to the Department website is scheduled to occur. This upgrade will provide for transparency in the acreage adjustment and refund process and allow constituents to monitor the status of each lease.

### Acreage Adjustment Survey Project

The Sixty-Fifth Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel subject to inundated by Pick-Sloan Missouri Basin project dams.

On behalf of the Board of University and School Lands, the Department of Trust Lands has set in motion the refunding of royalty proceeds that fall within the six-month time frame outlined in N.D.C.C § 61-33.1-04(1). Implementation and release of royalty proceeds is under way as acreage determinations have been calculated on "oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey . . . absent a showing of other defects affecting mineral title." N.D.C.C § 61-33.1-04(1)(a)

Currently, 39 Lease Correction and Acreage Stipulation packages have been sent to various operators. Of these 39 packages, five have been refunded, seven are held by litigation, 23 are waiting for operator execution, and four are in the process of being refunded.

The following provides the status of acreage determination refunds and the amount at issue for those refunds in each stage of the process:



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

### **Surface Land Management 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.

Revisions to rules concerning Surface Land Management and Minerals Management were posted on the Department's website and publication of a notice of intent has been completed. A public hearing on these rules was held August 2020, where the Department received oral and written comments. A summary of the written comments, together with the Department's discussion and proposed revisions to the rules, has been completed.

The Board approved the amended rules which were then submitted to the Attorney General's Office for review. The Attorney General's Office reviewed the Surface Land Management and Minerals Management. Those Administrative Rules were presented to the Administrative Rules Committee on December 1, 2020 and will become effective January 1, 2021. A final version of the Administrative Rules will be posted on the Departments website.

### **Board of University and School Lands Policy Manual**

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 Board's Administrative Rules are found in Title 85 of the North Dakota Administrative Code. Revisions to rules concerning General Administration and rules for Surface Land Management and Minerals Management are currently before the Legislative Administrative Rules Committee. Those rules were reviewed by the Attorney General's Office and were presented to the Administrative Rules Committee on December 1, 2020, to become effective January 1, 2021. With those rules becoming effective January 1, 2021, it will be necessary to simultaneously repeal certain Board policies and to implement new Board policies.

The Board currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. It is necessary to revise certain Board policies due to the new Administrative Rules. The Department recommends the following current policies be repealed and replaced with the revised policies upon enactment of the proposed Administrative Rules as follows:

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

(12/17/20)



Other policies have been incorporated into the proposed Administrative Rules and can be repealed upon enactment of the proposed Administrative Rules as follows:

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills
- Criteria for Retaining Foreclosed Property
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells

The Board repealed a policy on August 30, 2018 titled Railroad Rights-of-Way Ownership. It was later determined that a Board policy would be helpful in memorializing the position of the Board concerning Abandoned Railroad Right of Way Ownership and the attached proposed policy was created.

The first reading of the policies was held at the November 24, 2020 meeting. The Commissioner is requested the Board provide input on the proposed revised North Dakota Board of University and School Lands policies. Additionally, an open comment period was held, and no comments were received.

**Motion:**

**(1) Effective, January 1, 2021, the Board repeals the proposed North Dakota Board of University and School Lands:**

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills Policy
- Criteria for Retaining Foreclosed Property Policy
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells Policy

**(2) Effective January 1, 2021, the Board adopts the proposed North Dakota Board of University and School Land:**

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

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

Board of University and School Lands Limited Land Sales Policy, Board of University and School Lands Non-Grant Land Policy, and Board of University and School Lands Abandoned Railroad Right of Way Ownership documents were presented to the Board and are available from the Department upon request.

## S U R F A C E

### Approval of Fall Surface Auction Leases

The 2020 fall lease auctions were completed online with EnergyNet in October. Subsequent tracts qualifying for the Department of Trust Lands (Department) tie bidding policy and tracts appealed to the Board of University and School Lands (Board) were completed December 9, 2020. The following

(12/17/20)

table is a summary of the fall lease results as compared to the two previous fall auction seasons of 2017 and 2019. 2018 was our “off” year occurring every 5<sup>th</sup> year of the lease cycle.

	2017	2019	2020
Number of counties	40	34	36
Total tracts offered	891	1146	1039
Number of tracts bid unleased	37	78	43
Lease success rate	95.8%	93.2%	95.9%
Number of tracts bid-up	115	146	208
Competitive bidding rate	12.9%	12.7%	20%
Total amount of minimum advertised bids	\$1,689,266	\$2,546,925	\$2,001,193
Total amount received	\$1,875,340	\$2,418,748	\$2,330,000
Total amount collected over minimum bid	\$238,381	\$128,177	\$328,807

With the Board’s approval of leases today the Department will process the lease documents for the lessees.

The bidders for the following tract in McLean County are requesting the Board not approve the lease as bid:

<u>Description</u>	<u>Bidders</u>	<u>Acres</u>	<u>Minimum Bid Amount Bid Per Tract</u>	<u>Amount Bid Per Tract</u>
T149N, R82W Sec 25: SE4	Rick Bernier Stephen Kranz	160	\$1,287	\$5,787

N.D.C.C. Section 15-04-10 provides:

**15-04-10. Leasing to be by auction - Requirements governing.**

The commissioner of university and school lands, or such other person appointed by the commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease that all bids are subject to approval by the board.

If there are tracts for which no bids are received, tracts for which payment is not received by December 31, 2020, and tracts for which leases are not approved by the Board, those tracts will be offered for lease at the spring auction in 2021.

Motion:

- (1) **The Board approves the 993 surface leases resulting from the fall 2020 surface lease auctions.**
- (2) **The Board does not approve the bids for the following tracts for a total of \$11,975.00: T147N, R82W Section 28: NE4, NW4 and T149N, R82W Section 25: SE4.**

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

(12/17/20)

## I N V E S T M E N T S

### Fixed Income – Direct Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

Department of Trust Lands Staff (Staff) and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK's database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve an additional allocation to Angelo Gordon in their new AG Direct Lending Fund IV. Angelo Gordon has a strong track record in middle market lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Angelo Gordon is an investment manager headquartered in New York with offices globally. Founded in 1988, Angelo Gordon is employee owned with over \$35 Billion in assets under management and over 200 investment professionals.

**Motion: The Board approves a \$100 Million investment with Angelo Gordon in the AG Direct Lending Fund IV, LP, (onshore levered vehicle) subject to final review and approval of all legal documents by the Office of the Attorney General.**

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

RVK Recommendation Memo and AG Direct Lending Fund IV Presentation were presented to the Board and are available from the Department upon request.

### Fixed Income – Asset-Based Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

The current low interest rate environment is expected to persist for quite some time, as such, Department of Trust Lands Staff (Staff) and RVK believe it is prudent to increase the PTFs' allocation to Private Credit. Certain Private Credit strategies, such as asset-based lending, have an attractive risk/return profile and a low default/loss track record. Asset-based lending involves

(12/17/20)

investing in large, diversified portfolios of assets that generate contractual cash flows. These asset portfolios generally consist of; loans, leases and receivables.

Staff and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK's database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a new allocation to Ares Management in their asset-based lending fund: Ares Pathfinder Fund. Ares Management has a strong track record in asset-based lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Ares Management is an investment manager headquartered in New York with over 25 offices around the world. Ares Management is an alternative investment manager with over \$165 Billion in assets under management and nearly 500 investment professionals.

**Motion: The Board approves a \$100 Million investment with Ares Management in the Ares Pathfinder Fund, subject to final review and approval of all legal documents by the Office of the Attorney General.**

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

RVK Recommendation and Ares Pathfinder Fund Presentation were presented to the Board and are available from the department upon request.

### **Securities Litigation Update – Financial Recovery Technologies**

Craig D'Alessio and Andrew Lasky from Financial Recovery Technologies (FRT) will provide the Board of University and School Land's (Board) an update on securities litigation and recoveries in the Permanent Trust Funds (PTFs).

On August 30, 2018 the Board directed the Commissioner to enter into an agreement with FRT to provide comprehensive securities litigation and antitrust monitoring, and claims filing services on behalf of the Board. FRT is a technology-based services firm that helps institutional investors identify litigation eligibility, file claims and collect funds made available in shareholder class action and antitrust settlements.

Since early 2019 FRT has been monitoring the PTFs' securities litigation and filing claims on behalf of the Board. FRT has filed 53 claims and has so far recovered \$26,793.28 for the PTFs (\$30,446.91 gross received less \$3,653.63 in fees to FRT).

GROSS AMOUNT RECEIVED	FRT FEES	NET TO CLIENT
\$30,446.91	\$3,653.63	\$26,793.28

FRT Securities Litigation Presentation was presented to the Board and is available at the department upon request.

(12/17/20)

## **Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement**

Senate Bill 2001 of the Sixty-Sixth Legislative Assembly created a \$50 million endowment, the Theodore Roosevelt Presidential Library and Museum Endowment Fund (Fund), for the proposed Theodore Roosevelt Presidential Library and Museum. The Governor may provide grants to a private entity if, among other things, \$100 million in private donations is first raised for construction of the library and museum. The Fund's earnings will be used for operations and maintenance of the library and museum once the Theodore Roosevelt Presidential Library Foundation has raised or secured binding pledges for \$100 million.

The Agreement provides in Section 1: "At such time as the Foundation has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of the Library and Museum in North Dakota and for grants to affected entities, the Foundation will issue a certification to the Governor, using the form of certification, substantially set forth in Exhibit A, as required under the Act. Upon receipt of this certification, the Governor shall notify the Land Board."

Attached is the notification provided to the Board of University and School Lands as required in the Agreement.

Governor Notification was presented to the Board and is available upon request.

## **O T H E R**

### **Commissioner Annual Review**

As Commissioner and Secretary for the Board of University and School Lands (Board), I am fully committed to the Board and the Department of Trust Lands (Department) vision to be known nationally for superior management of its assets and programs. This will be met through the following shared values:

**Communication:** We develop and maintain positive relationships, facilitating the open exchange of ideas, opinions and information.

**Leadership & Teamwork:** We encourage and motivate each other to accomplish goals through collaboration and cooperation across the Department.

**Customer Service:** We listen and respond effectively to our customers to provide professional and efficient service.

**Transparency:** We strive to be open, honest, upfront and visible in our actions.

**Trust:** We foster a high-trust culture that supports a rewarding, healthy, and meaningful work environment for employees.

As Commissioner, over the course of the past three years, there has been significant progress made at the Department. Just 10 days after my term began an employee survey was sent to all Department team members. This employee survey highlighted significant discord within the Department that was presented to the Board in March 2018 with a plan to address the issues. In May 2018, the Board was presented with the Commissioner's annual review which highlighted the course and goals for the upcoming six-months:

*Over the course of the next six months, my focus will be to reevaluate the organizational structure and outline strengths and weaknesses of the current organizational structure including the origin of current strengths or weaknesses that could influence capacity to achieve future innovation.*

(12/17/20)

Additionally, the Board was presented with a Strategic Plan with five goals:

- 1) Customer Service
- 2) Mission Integration
- 3) Land & Mineral Management
- 4) Unclaimed Property
- 5) Investments

In December 2018, the Board was presented with the results of the 2018 Employee Survey which demonstrated a significant improvement over the 2017 Employee Survey results and highlighted the Commissioner's and Department Leadership's focus on: (1) Technology, Tools & Workflow; (2) Teamwork, and; (3) Leadership.

In June 2019, the Board was presented with the Commissioner's annual review highlighting the Department's success in implementing Department policies, reviewing and updating all Board policies, implementation of Administrative Rules, implementation of IT systems for Unclaimed Property and the procurement of additional systems, and improved departmental culture. I also made a commitment to the Board to continue to discover creative solutions, evaluate possibilities and provide a deep mindshare on collaborated and collegial decisions. The 2019, a strategic plan was developed to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders were working toward common goals, establish agreement around intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment. With our focus on the future, this strategic plan has been a disciplined and a collaborate effort resulting in fundamental decisions and actions that have shaped and guided the Department in who it serves, what it does, and why it does it. The Department has worked to align ongoing activities and processes to systematically coordinate and align resources and actions with the mission, vision and strategy throughout the Department. These activities and processes have transformed the static plan. It is now a system that provides strategic performance feedback to decision making and enables the plan to evolve and grow as requirements and other circumstances change. This is illustrated in the attached document which outlines a multi-phase approach to implementing the Department's strategic plan.

In June 2020, the Board was presented with the Commissioner's annual review illustrating the multi-stage approach to implementing the Department's multi-year strategic plan:

**Phase 1:** Envision - Set the foundations of the Department to build upon and generate initial cost savings.

**Phase 2:** Foundation - Improve level of maturity and reach next level of efficiency and cost-savings.

**Phase 3:** Advance - Improve the level of maturity and address most complex components of the transformation.

**Phase 4:** Transform - Wrap up transformation and fine-tune last details.

As the Commissioner, I am taking a direct role in working with the divisions within the Department to capitalize on our capabilities and resources; thus, improving the effectiveness of the Department. Specifically, I am committed to cultivating and analyzing talent management leadership within the Department. While continuing to deliver our core services, the Department has made significant progress in fulfilling a wide range of responsibilities.

In August 2020, the Department's Strategic Plan for the 2021-23 biennium was presented to the Governor's Office, OMB, and Legislative Council during a budget planning session. This plan was developed by the Department's leadership team through an intensive two-day planning session lead by a facilitator. The resulting document will lead the Department's efforts for the next two years.

(12/17/20)

In the upcoming year, there will be a heightened focus on implementation of new information technology systems for the Accounting, Investments and Revenue Compliance Divisions. This will include the capability to accept online payments. These changes will require strong leadership to implement the necessary systematic changes to ensure efficiencies are created and the systems are built upon the future and not legacy systems of the past. Over the course of the next year, I will continue to focus on goal achievement while maintaining a consistent high standard in quality of work completed. As the agency pacesetter, I will continually strive to discover creative solutions, evaluate possibilities and provide deep mindshare on decisions made. It is important that I continue to cultivate the resources and tools the team requires to assist them in prioritizing tasks, making decisions, and practicing good quality control.

As the Commissioner I strive to effectively prioritize the most urgent tasks and decisions. When a difficult decision is required, I evaluate the positives and negatives against possible outcomes to make an informed decision. When analyzing a problem, I will continue to define the central issue, identify the constraints to the problem, research and identify all the relevant alternatives and develop an implementation plan with area expertise. Over the course of the upcoming year, I will work with each Board member to ensure their individualistic contributions are recognized and effectively communicated to ensure professional and personal growth. Finally, as the Commissioner, I will work responsively with each Board member's unique strengths and insights. Their integral contributions contribute to developing my leadership so collectively we accomplish our goals using the highest standards of ethics, professionalism transparency, fairness and responsiveness towards those we serve.

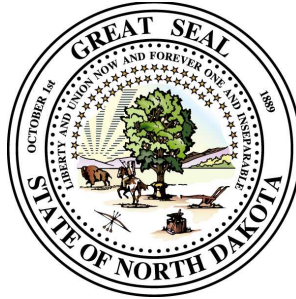
I want to thank the Department staff for their generous support, willingness to collaborate, and flexibility in promoting value and growth within the Department. Their skills and dedication are recognized as fundamental to all successes.

I also want to thank the Board members for their guidance and feedback. I commit to you to remain inquisitive with the aim of promoting discussion and adoption of best practices.

Commissioner annual review power point was presented to the Board and is available from the department upon request.

## North Dakota Board of University and School Lands Resolution

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



ADOPTED  
December 17, 2020

**WHEREAS**, Treasurer Kelly Schmidt began serving on the Board of University and Trust Lands in 2005; and

**WHEREAS**, Treasurer Schmidt has faithfully served on the Board of University and School Lands' on countless issues related to prudent and professional management of the Board-managed trust assets; and

**WHEREAS**, through hard work and diligence, Treasurer Schmidt's many accomplishments and efforts have greatly benefited the citizens, most notably the school children, of North Dakota; and

**WHEREAS**, Treasurer Schmidt is recognized statewide, and beyond, for her contribution to the Board; and

**WHEREAS**, Treasurer Schmidt has been a staunch proponent of the permanence, autonomy and revenue producing potential of the trusts; and

**WHEREAS**, these many years of service deserve recognition and gratitude;

**NOW, THEREFORE, BE IT RESOLVED**, that the undersigned as members of the Board of University and School Lands, do hereby thank and commend Treasurer Kelly Schmidt for her dedication and service to the State of North Dakota, to the Board and most prominently to the "trusts", and wish her every success in future endeavors.

---

Kirsten Baesler  
Superintendent of Public Instruction

---

Alvin A. Jaeger, Secretary of State

---

Wayne Stenehjem, Attorney General

---

Chairman Doug Burgum, Governor



## M I N E R A L S

### **Determination of Cottonwood Lake Navigability, Williams County**

The Department of Trust Lands (Department) received a written request addressed to the North Dakota State Water Commission and the Commissioner of the Board of University and School Lands (Board) from Kraken Oil & Gas II, LLC, dated November 15, 2019, requesting the State “either disclaim ownership based on non-navigability, or, if your initial determination is that the lake may be navigable, to commence proceedings pursuant to the newly adopted provisions in NDCC Chapter 61-33.”

The Sixty-Sixth Legislative Assembly passed House Bill 1202, an act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Under N.D.C.C. § 61-33-02, “[a]ll sovereign lands of the state must be administered by the state engineer and the [Board] subject to the provisions of this chapter.” Under N.D.C.C. § 61-33-06, the Board “shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.” Under N.D.C.C. § 61-33-05, the State Engineer is tasked with making navigability determinations.

The State Engineer has determined:

The State Engineer has no evidence that this waterbody was navigable for the purpose of state title at the time of statehood. Based on current available records, the State Engineer does not presently assert that the land underlying this property constitutes sovereign land, and unless additional evidence of navigability becomes available, the State Engineer and the Board of University and School Lands disclaim title to any portion of the below described property inundated by Cottonwood Lake:

**Section 18 in Township 159 North, Range 98 West, Sections 13,  
14, 22, 23, and 24 in Township 159 North, Range 99 West,  
Williams County.**

**Motion: The Board authorizes the Commissioner to sign the Affidavit Disclaiming Title to Cottonwood Lake in Williams County with further review from the Attorney General’s Office.**

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

Affidavit Disclaiming Title for Cottonwood Lake was presented to the Board and is available from the department upon request.

(12/17/20)

## Repayment of Royalties

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

A letter entitled Formal Notification of Gas Royalty Repayment Obligations dated February 11, 2020 with enclosed Gas Deduction Compliance Notification (Letter) was sent to all entities required to pay royalties to the Board pursuant to the Board's lease. At the February 27, 2020 Board meeting the Board requested additional information regarding the prior communication with royalty payors regarding gas deductions.

A memo was provided to the Board at its October 29, 2020 meeting regarding prior royalty payor communications. The Board requested at that meeting the topics discussed be revisited during a future executive session meeting.

## LITIGATION

**Case:** Vitesse Oil, LLC; Vitesse Energy, LLC; and Iron Oil Operating LLC v. State of North Dakota; North Dakota Board of University and School Lands; and Jodi A. Smith, Commissioner of University and School Lands, Case No. 27-2019-CV-00266;

**Date Filed:** June 11, 2019

**Court:** McKenzie County District Court

**Judge:** Robin Schmidt

**Attorney:** David Garner

**Opposing**

**Counsel:** Lawrence Bender, Spencer Ptacek

**Issues:** On June 7, 2019, the Attorney General's Office was served with a complaint in the above referenced case. This case is requesting a judgment be entered under Chapter 32-12 of the North Dakota Century Code quieting title in Leases in favor of Plaintiffs; a judgment be entered under Chapter 32-12 of the North Dakota Century Code declaring that the Leases remain valid and in effect with respect to all of the Subject Lands based on the force majeure provision of the Board's lease; that the Court enter a temporary restraining order, preliminary injunction, and permanent injunction, prohibiting Defendants from selling or attempting to sell new leases covering the oil and gas in and under the Subject Lands or otherwise interfering with Plaintiffs exclusive right to explore for and produce the same; and that Plaintiffs be awarded their costs and reasonable attorney fees.

**History:** The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General's Office on June 7, 2019. The action was filed on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019. Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019. On December 17, 2019, a Notice of Telephonic Scheduling Conference was filed by the court, setting a telephonic

(12/17/20)

scheduling conference for January 22, 2020 at 11:15 a.m. Notice of Court Trial was issued on January 23, 2020, setting a three day court trial for April 20, 2021. On February 20, 2020, the Court issued its scheduling order setting all case deadlines. On October 1, 2020, Defendant Oasis Petroleum North America LLC filed a Suggestion of Bankruptcy for Oasis Petroleum Inc. and Certain of its Affiliates and Notice of Automatic Stay of the Proceedings, stating a bankruptcy petition was filed on September 30, 2020.

**Current Status:**

- On November 20, 2020, Plaintiffs provided the parties with a proposed Stipulation for Dismissal with Prejudice for review.
- All parties stipulated to dismissal and on November 30, 2020, the Court entered its Order of Dismissal dismissing the action with prejudice

**Case:** **Northern Oil and Gas, Inc. v. Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC; Board of University and School Lands of the State of North Dakota; and North Dakota Industrial Commission; Case No. 31-2020-CV-00199**

**Date Filed:** September 25, 2020

**Court:** Mountrail County District Court

**Judge:** Honorable Stacy Louser

**Attorney:** David Garner

**Opposing**

**Counsel:** Nick Andrew Swartzendruber

**Issues:** On September 25, 2020, Northern Oil and Gas, Inc. (Northern) filed a Complaint against Bruin E&P Operating, LLC; Bruin Williston I, LLC, Bruin Williston II, LLC, Bruin Williston Holdings, LLC, Bruin E&P Non-Op Holdings, LLC, (collectively referred to as Bruin), Board of University and School Lands of the State of North Dakota (Board), and North Dakota Industrial Commission (NDIC) seeking review of the findings of the NDIC relating to the location of the historical riverbed channel of the Missouri River with respect to the N/2 of Section 10, Township 152 North, Range 93 West, 5<sup>th</sup> P.M. Northern requests an order determining that the high water mark of the northern edge of the riverbed is further south than what is depicted in the Wenck Survey.

**History:** Complaint served on the Board on September 25, 2020. Board's Answer filed October 16, 2020. Defendant Bruin filed Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint on October 16, 2020, requesting an extension until November 20, 2020.

**Current Status:**

- On November 5, 2020, the Court entered the Order Granting Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint.
- Stipulation of the parties for Dismissal under N.D.R.Civ.P. 41(a) and Order of Dismissal filed December 14, 2020.

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

**Date Filed:** June 4, 2015

**Court:** McKenzie County District Court

(12/17/20)

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

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

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

**History:** Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018. On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020. On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO. On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021. On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents.

**Current Status:**

- On November 5, 2020, Plaintiff filed a Notice of Hearing on the Board of University and School Lands and State Engineer's Brief in Support of Motion to Dismiss for 9:00 a.m. on December 3, 2020, at the McKenzie County Courthouse, Watford City, ND. Also filed was Whitetail Wave LLC's Response to State's Motion to Dismiss.
- On November 12, 2020, the Board of University and School Lands and State Engineer's Reply Brief in Support of Motion to Dismiss was filed.
- Also on November 12, 2020, the Response to the State Defendants' Motion to Dismiss was filed by XTO.
- On November 30, 2020, Plaintiff filed a Request to Appear Telephonically at the December 3, 2020 hearing. The Court entered its order that date allowing all parties to appear telephonically without further motion.

**Case:** **EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust v. State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota; Case No. 1:20-cv-00219-CRH**

**Date Filed:** December 1, 2020

**Court:** United States District Court

**Judge:** Magistrate Judge Clare R. Hochhalter

**Attorney:** David Garner

**Opposing**

**Counsel:** Joshua Swanson

**Issues:** On December 1, 2020, EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust (Plaintiffs) filed a Complaint against State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota (Defendants). The Complaint seeks a declaratory judgment that the N.D.C.C. § § 61-33.1-01 to 61-33.1-05 is preempted by federal law and violates the Constitution and the laws of the United States; an order enjoining Defendants from claiming ownership of the property by virtue of North Dakota law in violation of the Vohs Trust and EEE Mineral's rights secured by the laws of the United States and the United States Constitution; damages to the Vohs Trust and EEE Minerals in the amount equal to damages proven at trial; reasonable attorneys fees and costs pursuant to 42 USC § 1988; and other relief the Court deems just and equitable.

**History:**

**Current Status:**

**Case:** **Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., Case No. 1:17-cv-00014**

**Date Filed:** December 23, 2016

**Court:** Federal District Court, 8<sup>th</sup> Circuit

**Judge:** Honorable Daniel Hovland

**Attorney:** Charles Carvell, David Garner, and Jen Verleger

**Opposing**

**Counsel:** Lawrence Bender, David Ogden, Paul Wolfson, Shaun Pettigrew

**Issues:** In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain public domain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic Missouri River. Continental is requesting the Court determine title to the disputed lands so that Continental can correctly distribute the proceeds from the affected wells. Continental has claimed that there is “great doubt as to which Defendant is entitled to be paid royalties related to the Disputed Lands.” Currently, Continental is paying the United States its full royalty based on the acreage it claims. The remaining royalty, over and above what is due the United States, is being escrowed with the Bank of North Dakota.

**History:**

The United States removed this action to federal district court on January 11, 2017. The Board filed its answer to the complaint on February 13, 2017. The United States filed its answer to the complaint on May 12, 2017. An Amended Complaint was filed by Continental Resources on September 14, 2017. The United States filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on October 18, 2017. In support of its motion, the United States alleges that it has not waived its sovereign immunity under the Quiet Title Act and that the interpleader action is moot under S.B. 2134.

The Board filed a response on December 20, 2017 opposing the motion to dismiss. Continental filed a response and the United States filed its reply. The United States filed a reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States' Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the "action is stayed until [federal] appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions." The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memorandum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal. On November 8, 2019, the Board received an email from the US DOJ in response to the Board's request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM

(12/17/20)

surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: "Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law." Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: "we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible." Status conference was held January 13, 2020 and another status conference was set for April 7, 2020.

**Current Status:**

- On April 7, 2020, an Order RE: Briefing Scheduled was issued by the court setting the following deadlines: Motions for Summary Judgment due simultaneously on May 7, 2020; Responses are due June 5, 2020; and Replies are due June 12, 2020.
- On December 8, 2020, the Court issued its Order Granting the United States' Motion for Partial Summary Judgment.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 11:03 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:**

- **Repayment of Royalties**
- **Whitetail Wave**
- **EEE Minerals Case No. 1:20-cv-00219**
- **Continental Resources Case No. 1:17-cv-00014**

Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger	X		X		
Superintendent Baesler			X		
Treasurer Schmidt			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 via Teams
Kelly Schmidt	State Treasurer

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Catelin Newell	Administrative Staff Officer

(12/17/20)

Kristie McCusker  
Adam Otteson  
David Shipman

Paralegal  
Revenue Compliance  
Minerals Division Director via Microsoft Teams

**Guests in Attendance:**

Leslie Bakken Oliver  
Dave Garner  
Charles Carvell  
Jen Verleger

Governor's Legal Counsel  
Office of the Attorney General  
Office of the Attorney General (Continental Interpleader only)  
Office of the Attorney General

---

The executive session adjourned at 11:53 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 Repayment of Royalties, Whitetail Wave, EEE Minerals, and Continental Interpleader.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:55 AM.

---

Doug Burgum, Chairman  
Board of University and School Lands

---

Jodi Smith, Secretary  
Board of University and School Lands



**Minutes of the Meeting of the  
Board of University and School Lands  
January 12, 2021**

The January 12, 2021 special meeting of the Board of University and School Lands was called to order at 9:00 AM via Microsoft Teams by Chairman Doug Burgum. All Board members and guests were present via Microsoft Teams.

**Members Present:**

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

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Dennis Chua	Investment Analyst
Susan Dollinger	Holder Compliance Officer
Scott Giere	Revenue Compliance Auditor
Peggy Gudvangen	Accounting Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director
Lynn Spencer	Mineral Title Specialist

**Guests in Attendance:**

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Office of the Governor
Mark Hanson	Niles Law Firm

**Additional Guests in Attendance:**

Brady Pelton  
Craig C. Smith  
Don Larson  
Fargo Forum  
Geoff Simon  
JP  
Kate Black  
Ron Ness  
Will Miller

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

**Sorum Litigation**

<b>Case:</b>	<b><u>Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV-00089</u></b>
<b>Tribunal:</b>	<b>Cass County District Court</b>
<b>Judge:</b>	<b>John C. Irby</b>
<b>Attorney:</b>	<b>Mark Hanson, Nilles Law Firm</b>
<b>Opposing Counsel:</b>	<b>Terrance W. Moore, Fintan L. Dooley</b>

(01/12/21)

**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

(01/12/21)

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. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2019 to file his brief. On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that was filed in the separate briefs and appendixes. On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants' request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply

briefs are due February 14, 2020. On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense. Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020. Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020. Terry Moore filed letter with the District Court on July 28, 2020, concerning issue of injunction and release of funds. On July 29, 2020, the District Court issued a Notice of Hearing scheduling a hearing on Terry Moore's July 28, 2020 letter for August 17 at 1:30 p.m. On July 30, 2020, the North Dakota Supreme Court issued its Opinion. On July 31, 2020, Mark Hanson filed a letter with the District Court advising of the issuance of the North Dakota Supreme Court Opinion and requesting cancellation of the August 17 hearing. That hearing was cancelled. The Supreme Court's Opinion was amended on August 4, 2020, and on August 18, 2020. Neither amendment was substantive. Terrance Moore filed with the Supreme Court the Plaintiffs, Appellees, and Cross-Appellants Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Omlid's Petition for Rehearing on August 12, 2020. On September 22, 2020, the North Dakota Supreme Court entered an order denying the petition for rehearing.

**Current Status:**

- **On January 5, 2021, Plaintiffs' Petition for a Writ of Certiorari was docketed with the United States Supreme Court.**

**Motion: The Board proceeds in filing a waiver to submit a formal opposition brief to the petition for a Writ of Certiorari filed with the Supreme Court.**

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

### **Energy Construction Loan Program**

At the October 30, 2008 meeting the Board of University and School Lands (Board) approved allocating \$20 million within the Common Schools Trust Fund (CSTF) to an oil impact area construction loan program called the Common Schools Trust Fund Loan Program. The guidelines or principles that were used to administer the program are as follows:

- The Board would participate with North Dakota financial institutions in up to 50% of a first mortgage on any property financed, with a maximum per property of \$2.0 million.
- For ease of administration, all loans made through this program would be funded by the CSTF.
- Loans would be made at current prevailing market rates, with the Board receiving terms and conditions at least as advantageous as other participating financial institutions.
- Loans would be amortized over 20 years, or less.

(01/12/21)

- Loans would be made only for new construction projects, not the purchase of existing properties.
- Normal lender credit underwriting standards such as loan-to-collateral values, full loan documentation, certified or licensed appraisals, and the requirement for personal guarantees when appropriate would apply.
- The Commissioner and staff will review each loan request with the Bank of North Dakota (BND) and must give final approval to each loan made through the program.

In 2011, the name of the program was changed from the Common Schools Trust Fund Loan Program to the Energy Construction Loan Program (ECLP) and ECLP encompassed the Common Schools Trust Fund Loan Program and loans such as the Williston hotel. All loans approved from the ECLP are funded through by the CSTF.

On June 21, 2011, the Acting Commissioner entered into a Master Participation Agreement with BND outlining the provisions of the governing and control of all loan participations subsequently entered into between BND and the Board.

Per the Department of Trust Lands' (Department) Audited Financial Statements for the year ended June 30, 2020, NOTE 10 – ENERGY CONSTRUCTION LOAN PROGRAM:

The Board approved participation in an energy construction loan program with the BND for the purpose of new construction loans in areas of North Dakota impacted by oil development. The primary focus of the loan program is for multi-family housing and commercial loans. The Board will participate in up to 50% of a first mortgage at market rates: loans must be amortized over 20 years or less. The Board authorized the Commissioner to allocate up to \$20,000,000 to this program. The Common Schools Trust Fund is the only trust participating in this program.

The loan program meets the “exclusive benefit” rule, whereby any investment decision made must be for the sole benefit of the Common School Trust fund. The loan program is administered by the BND who charges an annual fee of one-quarter percent on all outstanding loans.

As of June 30, 2020, the non-current and current portions of the loans were \$892,811 and \$30,597, respectively. As of June 30, 2019, the non-current and current portions of the loans were \$948,850 and \$30,597, respectively.

As of June 30, 2020, and 2019 the program had a net position of \$941,672 and \$1,005,399 respectively. For the same period, the program earned net income of \$46,273 and \$46,810.

Additionally, unaudited updates on the ECLP are provided in the monthly Financial Position. At the December 2020 Board meeting, the Board was provided with the September 2020 Financial Position:

<b>Board of University and School Lands</b>			
<b>Comparative Financial Position (Unaudited)</b>			
<b>Combined Permanent Trusts</b>			
	September 30, 2020	September 30, 2019	
<b>Balance Sheet</b>			
<b>Assets:</b>			
Cash	\$69,975,624	\$44,774,503	
Interest Receivable	8,464,117	9,797,462	
Investments	4,964,690,991	4,847,698,410	
Farm Loans	6,912,781	8,959,194	
<b>Energy Construction Loans</b>	<b>923,408</b>	<b>956,223</b>	
Due from Other Agencies	9,169,502	17,474,357	
Office Building (Net of Depreciation)	351,435	414,051	
<b>Total Assets</b>	<b>\$5,060,487,858</b>	<b>\$4,930,074,200</b>	

Over the history of ECLP, four loans were approved for a total funding amount of approximately \$22.3 Million. There is a 5% return on these loans since inception (as of November 30, 2020). Currently, the Board has two outstanding loans that were issued through the ECLP:

Name	Payment Frequency	Payment Amount	Original Loan	Remaining Balance
LSS Housing Parshall LLC	Semi-Annual	\$25,969	\$625,000	\$425,034
Bakken Heights V LLP	Monthly	\$4,627	\$707,477	\$496,314

In December 2020, BND notified the Department that the LLS Housing Parshall LLC loan was in default. The Department is currently working with BND to monitor the loan and work with all creditors involved.

**Motion: The Board approves the Bank of North Dakota to buyout the remaining balance on the Energy Construction Loan Program loans for LSS Housing Parshall LLC and Bakken Heights V LLP.**

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

### Legislative Update

BILL	TITLE	FN PROVIDED	COMMITTEE	STATUS		
				House	Senate	Governor
<a href="#">SB 2013</a>	A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.		Appropriations		Introduced	
<a href="#">HB 1081</a>	Relating to authority of the game and fish department employees to enforce laws.		Energy & Natural Resources	Introduced		
<a href="#">SB 2048</a>	Revised Uniform Unclaimed Property Act	Yes	Industry, Business & Labor		Introduced	
<a href="#">HB 1080</a>	Relating to the obligation to pay oil and gas royalties on leases owned and managed by the board of university and school lands.	Yes	Finance & Taxation	Introduced		

<a href="#">SB 2065</a>	Relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.		Energy & Natural Resources		Introduced	
<a href="#">SB 2070</a>	Relating to the regulated substance response; to amend and reenact sections 11-33-01, 40-47-01, and 58-03-11 of the North Dakota Century Code, relating to the regulated substance response; and to repeal sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code, relating to contaminated properties.		Energy & Natural Resources		Introduced	
<a href="#">HB 1202</a>	Relating to funds managed by the state investment board and the investments of the board of university and school lands			Introduced		

## A D J O U R N

There being no further business, the meeting was adjourned at 9:43 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**

January 2021

---

**RE: December 2020 Report of Shut-Ins Approved by Land Commissioner**  
(No Action Requested)

<b>Granted to:</b>	<b>Slawson Exploration Company, Inc.</b>
For the Purpose of:	COVID-19
Date Issued:	12/28/2020
Application Fee:	\$10.00
Trust:	A – Common Schools
Lease:	OG-04-01299, OG-04-01300, OG-04-01301, OG-04-01302



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

January 28, 2021

---

**RE: December 2020 Report of Encumbrances Issued by Land Commissioner**  
(No Action Requested)

**Granted to: DUCKS UNLIMITED INC, BISMARCK-ND**

For the Purpose of: Easement: Flowage  
Right-of-Way Number: RW0007508  
Date Issued: 12/21/2020  
Application Fee: \$100.00  
Right-of-way Income: \$9,450.00 (\*)  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 0.00  
Area (Acres): 48.60  
Legal Description: MOU-157-88-36-SW4

**Granted to: SARGENT COUNTY-WATER RESOURCE DIST., FORMAN-ND**

For the Purpose of: Easement: Flowage  
Right-of-Way Number: RW0008620  
Date Issued: 12/18/2020  
Application Fee: \$100.00  
Right-of-way Income: \$1,293.75  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 206.94  
Area (Acres): 9.72  
Legal Description: SAR-130-57-16-NW4

**Granted to: XTO HOLDINGS, LLC, SPRING-TX**

For the Purpose of: Permit: Road-Section Line Access Road  
Right-of-Way Number: RW0008641  
Date Issued: 12/7/2020  
Application Fee: \$100.00  
Right-of-way Income: N/A  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 78.66  
Area (Acres): 0.98  
Legal Description: WIL-159-96-16-NW4

**Granted to: CENTRAL POWER ELECTRIC COOP INC, MINOT-ND**

For the Purpose of: Easement: Pipeline-Potable Water Pipeline  
Right-of-Way Number: RW0008661  
Date Issued: 12/21/2020  
Application Fee: \$100.00  
Right-of-way Income: \$4,460.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 70.09  
Area (Acres): 0.88  
Legal Description: BRL-139-80-36-SW4 LESS ACRES SOLD

**Granted to:** **MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND**  
For the Purpose of: Easement: Electric-Buried Distribution Line  
Right-of-Way Number: RW0008726  
Date Issued: 12/16/2020  
Application Fee: \$100.00  
Right-of-way Income: \$2,070.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 164.95  
Area (Acres): 2.07  
Legal Description: MOU-150-92-10, MOU-150-92-15-S2SW4, W2SW4

**Granted to:** **EQUINOR PIPELINES LLC, WILLISTON-ND**  
For the Purpose of: Easement-Amend: Pipeline-Multiple Pipelines  
Right-of-Way Number: RW0008727  
Date Issued: 12/10/2020  
Application Fee: \$150.00  
Right-of-way Income: \$1,500.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 608.00  
Area (Acres): 7.59  
Legal Description: MCK-151-101-36-NW4, SE4, SW4

**Granted to:** **MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND**  
For the Purpose of: Easement: Electric-Above Ground Distribution Line  
Right-of-Way Number: RW0008753  
Date Issued: 12/21/2020  
Application Fee: \$250.00  
Right-of-way Income: \$2,350.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 192.59  
Area (Acres): 2.35  
Legal Description: MOU-155-91-12-NE4

**Granted to:** **DIVIDE COUNTY HWY DEPT, CROSBY-ND**  
For the Purpose of: Easement: Road Right-of-Way  
Right-of-Way Number: RW0008782  
Date Issued: 12/3/2020  
Application Fee: \$250.00  
Right-of-way Income: \$440.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 0.00  
Area (Acres): 0.31  
Legal Description: DIV-161-97-36-NE4

**Granted to:** **MCKENZIE ELECTRIC COOP INC, WATFORD CITY-ND**  
For the Purpose of: Easement-Amend: Drop Line-Electric  
Right-of-Way Number: RW0008787  
Date Issued: 12/18/2020  
Application Fee: \$250.00  
Right-of-way Income: \$1,000.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 0.00  
Area (Acres): 0.00  
Legal Description: MCK-147-104-36-SE4

**Granted to:** **CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND**  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008804  
Date Issued: 12/18/2020  
Application Fee: \$250.00  
Right-of-way Income: \$2,640.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 160.00  
Area (Acres): 0.00  
Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

**Granted to:** **STANTEC CONSULTING INC, FARGO-ND**  
For the Purpose of: Permit: Planning & Preconstruction Survey  
Right-of-Way Number: RW0008805  
Date Issued: 12/18/2020  
Application Fee: \$250.00  
Right-of-way Income: \$500.00  
Damage Payment to Lessee: N/A  
Trust: A - Common Schools  
Length (Rods): 0.00  
Area (Acres): 0.00  
Legal Description: All Trust Land in North Dakota

\* agreement contains an additional payment requirement

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 28, 2021

---

**RE: November Unclaimed Property Report**  
(No Action Requested)

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

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

Since 1975, the Unclaimed Property Division (Division) of the Department of Trust Lands has been responsible for reuniting individuals with property presumed abandoned. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the State and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the State in 1985.

For the month of December 2020, the Division received 75 holder reports with a property value of \$413,563 and paid 371 claims with a total value of \$1,333,531.

NORTH DAKOTA  
BOARD OF UNIVERSITY AND SCHOOL LANDS

Financial Position Report  
(Unaudited)

For period ended October 31, 2020



**ITEM 2D**

<b>Board of University and School Lands</b>		
<b>Comparative Financial Position (Unaudited)</b>		
<b>Schedule of Net Assets</b>		
<b>Assets by Trust:</b>	<b>October 31, 2020</b>	<b>October 31, 2019</b>
Common Schools	\$4,735,848,156	\$4,726,706,850
North Dakota State University	72,770,515	73,401,884
School for the Blind	12,996,377	12,992,296
School for the Deaf	21,209,952	21,646,427
State Hospital	14,304,776	14,818,624
Ellendale *	23,364,412	22,611,742
Valley City State University	12,900,996	13,159,004
Mayville State University	8,396,422	8,328,106
Youth Correctional Center	24,906,514	24,437,021
State College of Science	18,800,963	18,542,870
School of Mines **	22,450,070	22,453,683
Veterans Home	5,274,294	5,464,604
University of North Dakota	35,226,025	35,147,476
Capitol Building	4,675,347	5,784,796
Strategic Investment and Improvements	444,527,052	722,065,056
Coal Development	71,042,728	70,758,910
Indian Cultural Education Trust	1,254,363	1,298,394
Theodore Roosevelt Presidential Library	15,320,107	15,350,156
<b>Total</b>	<b>\$5,545,269,069</b>	<b>\$5,814,967,899</b>
<b>Assets by Type:</b>		
Cash	121,666,307.00	110,092,699
Receivables	9,056,870	7,428,129
Investments ***	5,302,327,508	5,616,722,170
Office Building (Net of Depreciation)	351,435	414,051
Farm Loans	6,232,053	9,918,081
Energy Construction Loans	923,408	953,752
Energy Development Impact Loans	10,288,127	11,027,192
School Construction Loans (Coal)	38,908,935	41,391,562
Due to/from Other Trusts and Agencies	55,514,426	17,020,263
<b>Total</b>	<b>\$5,545,269,069</b>	<b>\$5,814,967,899</b>

**\* Ellendale Trust**

The following entities are equal beneficiaries of the Ellendale Trust:

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

**\*\* School of Mines**

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

**\*\*\* Investments**

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

ITEM 2D

# Board of University and School Lands

## Comparative Financial Position (Unaudited)

### Combined Permanent Trusts

	October 31, 2020	October 31, 2019
<b>Balance Sheet</b>		
<b>Assets:</b>		
Cash	\$73,567,540	\$62,874,942
Interest Receivable	7,728,664	4,154,441
Investments	4,927,374,103	4,921,036,065
Farm Loans	6,232,053	9,918,081
Energy Construction Loans	923,408	953,752
Due from Other Agencies	8,950,699	16,951,778
Office Building (Net of Depreciation)	351,435	414,051
Total Assets	<u>\$5,025,127,902</u>	<u>\$5,016,303,110</u>
<b>Liabilities:</b>		
Unclaimed Property Claimant Liability	\$16,645,538	\$16,551,604
Due to Other Trusts	-	-
Due to Other Funds	32,890	40,919
Accounts Payable	-	-
Total Liabilities	<u>16,678,428</u>	<u>16,592,523</u>
<b>Equity:</b>		
Fund Balance	4,892,120,248	4,919,177,984
Net Income/(Loss)	116,329,226	80,532,603
Total Liabilities and Equity	<u>\$5,025,127,902</u>	<u>\$5,016,303,110</u>
<b>Income Statement</b>		
<b>Income:</b>		
Investment Income	\$31,524,462	\$30,063,368
Realized Gain/(Loss)	23,582,881	(3,563,840)
Unrealized Gain/(Loss)	76,489,806	25,485,856
Royalties - Oil and Gas	20,577,603	39,623,636
Royalties - Coal	78,036	113,199
Royalties - Aggregate	147,634	17,914
Bonuses - Oil and Gas	915,553	7,537,934
Bonuses - Coal	-	24,000
Rents - Surface	1,584,326	3,757,930
Rents - Mineral	141,955	76,083
Rents - Coal	6,100	22,732
Rents - Office Building	-	-
Gain/Loss on Sale of Land - OREO	-	-
Sale of Capital Asset	-	25,000
Oil Extraction Tax Income	17,682,007	35,331,183
Unclaimed Property Income	7,229,074	5,904,984
Total Income	<u>179,959,437</u>	<u>144,419,979</u>
<b>Expenses and Transfers:</b>		
Investment Expense	1,256,305	1,450,524
In-Lieu and 5% County Payments	-	-
Administrative Expense	1,203,550	1,113,573
Operating Expense - Building	45,356	198,279
Transfers to Beneficiaries	61,125,000	61,125,000
Total Expense and Transfers	<u>63,630,211</u>	<u>63,887,376</u>
Net Income/(Loss)	<u>\$116,329,226</u>	<u>\$80,532,603</u>

ITEM 2D

# Board of University and School Lands

## Comparative Financial Position (Unaudited)

### Capitol Building Trust

	October 31, 2020	October 31, 2019
<b>Balance Sheet</b>		
<b>Assets:</b>		
Cash	\$470,649	\$178,675
Interest Receivable	24,298	36,133
Investments	4,180,400	5,569,988
Total Assets	<u>\$4,675,347</u>	<u>\$5,784,796</u>
<b>Liabilities:</b>		
Due to Other Trusts and Agencies	\$0	\$0
<b>Equity:</b>		
Fund Balance	5,535,786	6,548,608
Net Income	(860,439)	(763,812)
Total Liabilities and Equity	<u>\$4,675,347</u>	<u>\$5,784,796</u>
<b>Income Statement</b>		
<b>Income:</b>		
Investment Income	\$28,754	\$63,038
Realized Gain(Loss)	938	16,328
Unrealized Gain/(Loss)	(9,537)	(8,383)
Rents - Surface	30,518	51,517
Rents - Mineral	1,602	1,602
Royalties - Oil and Gas	197,257	220,982
Bonuses - Oil and Gas	2,160	802
Bonus - Coal	-	-
Royalties - Aggregate	-	-
Total Income	<u>251,692</u>	<u>345,886</u>
<b>Expenses and Transfers:</b>		
Investment Expense	884	757
In-Lieu and 5% County Payments	-	-
Administrative Expense	11,247	8,941
Transfers to Facility Management	1,100,000	1,100,000
Total Expense and Transfers	<u>1,112,131</u>	<u>1,109,698</u>
Net Income/(Loss)	<u>(\$860,439)</u>	<u>(\$763,812)</u>
ITEM 2D		



Board of University and School Lands		
Comparative Financial Position (Unaudited)		
<b>Coal Development Trust</b>		
	October 31, 2020	October 31, 2019
<b><u>Balance Sheet</u></b>		
<b>Assets:</b>		
Cash	\$805,153	\$241,855
Interest Receivable	121,830	337,988
Investments	20,848,143	17,691,827
Coal Impact Loans	10,288,127	11,027,192
School Construction Loans	38,908,935	41,391,562
Due from other Trusts and Agencies	235,134	228,280
Total Assets	<u>\$71,207,322</u>	<u>\$70,918,704</u>
<b>Liabilities:</b>		
Due to Other Trusts and Agencies	\$164,593	\$159,796
<b>Equity:</b>		
Fund Balance	70,750,579	70,296,353
Net Income	292,150	462,555
Total Liabilities and Equity	<u>\$71,207,322</u>	<u>\$70,918,704</u>
<b><u>Income Statement</u></b>		
<b>Income:</b>		
Investment Income	\$121,739	\$150,497
Interest on School Construction Loans	66,090	221,144
Realized Gain/(Loss)	3,899	43,777
Unrealized Gain/(Loss)	(43,216)	(22,142)
Coal Severance Tax Income	148,124	154,112
Total Income	<u>296,636</u>	<u>547,388</u>
<b>Expenses and Transfers:</b>		
Investment	3,892	2,070
Administrative	594	285
Transfers to General Fund	-	82,478
Total Expense and Transfers	<u>4,486</u>	<u>84,833</u>
Net Income/(Loss)	<u>\$292,150</u>	<u>\$462,555</u>
ITEM 2D		

Board of University and School Lands		
Comparative Financial Position (Unaudited)		
Strategic Investment and Improvements Fund	October 31, 2020	October 31, 2019
<b>Balance Sheet</b>		
<b>Assets:</b>		
Cash	\$46,686,058	\$46,663,973
Interest Receivable	1,186,647	2,916,683
Investments	350,160,844	672,484,400
Due from other Trusts or Agencies	46,493,502	-
Total Assets	<u>\$444,527,051</u>	<u>\$722,065,056</u>
<b>Liabilities:</b>		
Accounts Payable	\$0	\$0
<b>Equity:</b>		
Fund Balance	767,541,457	1,134,326,018
Net Income	(323,014,406)	(412,260,962)
Total Liabilities and Equity	<u>\$444,527,051</u>	<u>\$722,065,056</u>
<b>Income Statement</b>		
<b>Income:</b>		
Investment Income	\$2,001,264	\$5,914,253
Realized Gain/(Loss)	62,569	1,614,625
Unrealized Gain/(Loss)	(693,502)	(822,851)
Interest on Fuel Prod Facility	4,202	-
Royalties - Oil and Gas	11,576,661	23,859,056
Bonuses - Oil and Gas	313,056	856,346
Royalties - Coal	52,695	78,862
Rents - Mineral	48,372	39,960
Tax Income - Oil Extraction & Production Distribution	46,493,502	-
Total Income	<u>59,858,819</u>	<u>31,540,251</u>
<b>Expenses and Transfers:</b>		
Administrative	338,166	577,707
Investment Expense	(2,983)	43,963
Transfers to General Fund	382,200,000	382,200,000
Transfer to Commerce Department		3,000,000
Transfer to Adjutant General		2,502,253
Transfer to Energy Infrastructure& Impact Office		2,000,000
Transfer to Aeronautics Commission		20,000,000
Transfer from ND Parks & Recreation		1,877,500
Transfer to Information Technology Department		5,150,000
Transfer to Industrial Commission		270,000
Transfer to Bank of North Dakota		25,137,707
Transfer to ND Department of Corrections		1,218,000
Transfer to Office of Management & Budget	338,042	
Transfer to Agencies with Litigation Pool		
Transfer to State Treasurer		
Transfer from NDSU - Vet Diag Lab (HB 1008)		
Transfer from Public Service Commission		(52,818)
Transfer from Department of Health Department		(67,310)
Transfer from Attorney General Office		(6,387)
Transfer from State Highway Patrol		(49,403)
Transfer from Commerce Department		
Total Expense and Transfers	<u>382,873,225</u>	<u>443,801,213</u>
Net Income/(Loss)	<u>(\$323,014,406)</u>	<u>(\$412,260,962)</u>

ITEM 2D

As of September 30, 2020 the SIIF had a fund balance of \$444,527,051. The fund balance is made up of two parts. The committed fund balance is that portion of the fund that has either been set aside until

two parts. The committed fund balance is that portion of the fund that has either been set aside until potential title disputes related to certain riverbed leases have been resolved or appropriated by the legislature. The uncommitted fund balance is the portion of the fund that is unencumbered, and is thus available to be spent or dedicate to other programs as the legislature deems appropriate. The uncommitted fund balance was \$142,334,878 as of October 31, 2020.

# Board of University and School Lands

## Comparative Fiduciary Statements (Unaudited)

### Indian Cultural Trust

	October 31, 2020	October 31, 2019
<b><u>Fiduciary Net Position</u></b>		
<b>Assets:</b>		
Cash	\$3,334	\$473
Interest receivable	1,115	149
Investments	1,249,913	1,297,771
Total Assets	<u>1,254,362</u>	<u>1,298,393</u>
<b>Liabilities:</b>		
Accounts payable	-	-
Total Liabilities	-	-
<b>Net Position:</b>		
Net position restricted	1,254,362	1,298,393
Total Net Position	<u>\$1,254,362</u>	<u>\$1,298,393</u>
<b><u>Changes in Fiduciary Net Position</u></b>		
<b>Additions:</b>		
Contributions:		
Donations	-	-
Total Contributions	<u>\$0</u>	<u>\$0</u>
Investment Income:		
Net change in fair value of investments	25,422	5,703
Interest	7,942	7,797
Less investment expense	-	(375)
Net Investment Income	<u>33,364</u>	<u>13,125</u>
Miscellaneous Income	(311)	3
Total Additions	<u>33,053</u>	<u>13,128</u>
<b>Deductions:</b>		
Payments in accordance with Trust agreement	-	-
Administrative expenses	-	-
Total Deductions	<u>-</u>	<u>-</u>
Change in net position held in Trust for:		
Private-Purpose	33,053	13,128
Total Change in Net Position	<u>33,053</u>	<u>13,128</u>
Net Position - Beginning FY Balance	1,221,309	1,285,265
Net Position - End of Month	<u>\$1,254,362</u>	<u>\$1,298,393</u>
ITEM 2D		

# Board of University and School Lands

## Comparative Fiduciary Statements (Unaudited)

### Theodore Roosevelt Presidential Library

October 31, 2020

October 31, 2019

#### **Fiduciary Net Position**

##### **Assets:**

Cash	\$133,573	\$132,782
Interest receivable	(5,684)	(17,265)
Investments	15,192,534	15,234,639
Total Assets	15,320,422	15,350,156

##### **Liabilities:**

Accounts payable	315	-
Total Liabilities	315	-

##### **Net Position:**

Net position restricted	15,320,107	15,350,156
Total Net Position	\$15,320,422	\$15,350,156

#### **Changes in Fiduciary Net Position**

##### **Additions:**

Contributions:		
Donations	-	-
Total Contributions	\$0	\$0

##### **Investment Income:**

Net change in fair value of investments	308,724	205,039
Interest	96,417	13,330
Less investment expense	3,786	995
Net Investment Income	401,355	217,374

Miscellaneous Income	96,417	13,330
Total Additions	100,203	14,325

##### **Deductions:**

Payments in accordance with Trust agreement	-	-
Administrative expenses	315	-
Total Deductions	315	-

##### **Change in net position held in Trust for:**

Private-Purpose	100,518	14,325
Total Change in Net Position	100,518	14,325

Net Position - Beginning FY Balance	14,918,706	15,050,748
Net Position - End of Month	\$15,019,224	\$15,065,073

ITEM 2D

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 28, 2021

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

## Portfolio Rebalancing Updates

\$25M was liquidated and withdrawn from Harvest MLP account on December 15, 2020. After the withdrawal, the Diversified Inflation Strategies (DIS) asset class has approximately remaining \$96M. The Department staff and RVK will continue to monitor the trigger points set for the DIS.

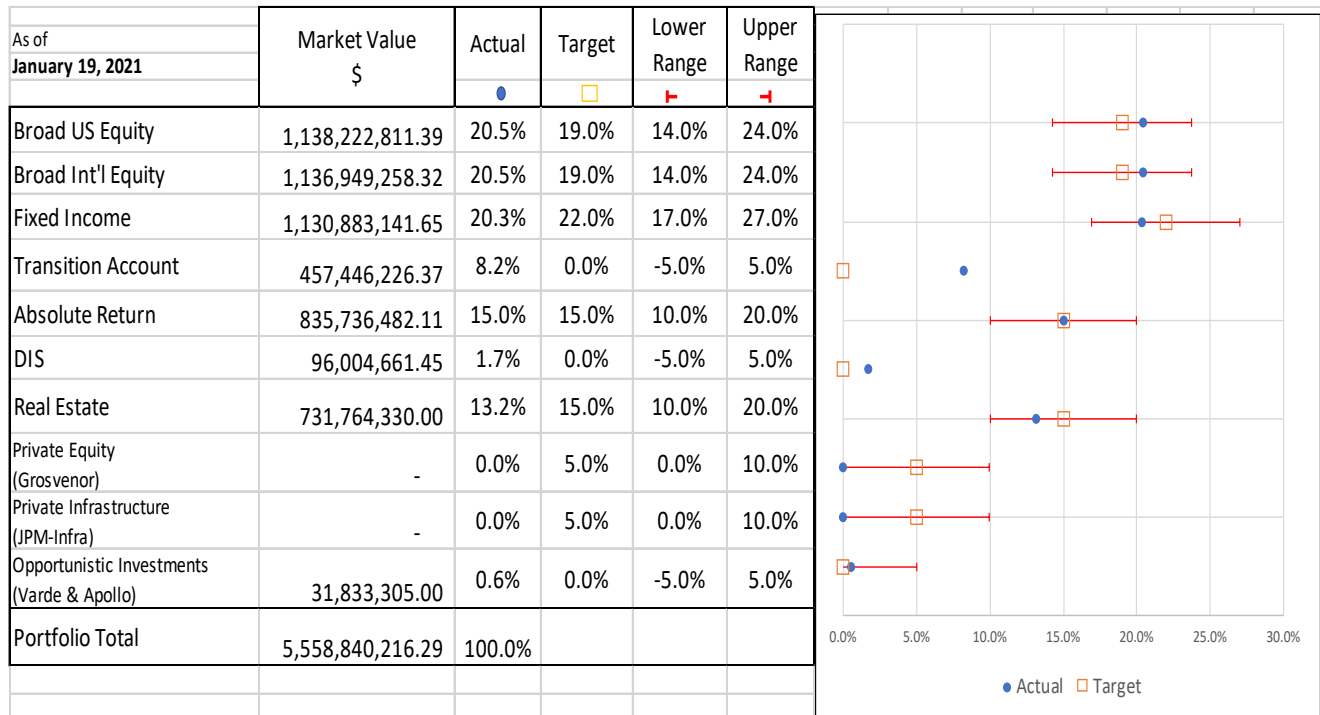
On January 7, 2021, Varde Dislocation Fund IV LP, the other Opportunistic Investment, made a \$10M capital call. The remaining unfunded commitment is \$75M.

Apollo Accord Fund IV LP (Fund), another Opportunistic Investment, made capital calls totaling \$5.5M. The remaining unfunded commitment is \$94.5M. The fund so far had made two distributions equaling \$18,734.59.

The Staff have executed the Agreements for GCM Grosvenor (Private Equity Manager), JP Morgan (Private Infrastructure Manager), and ARES Pathfinder Fund LP (Asset-Focused Credit). Meanwhile the Agreements for Angelo Gordon, JPM Core Bond, and the Loomis & Sayles Multi-Sector are being reviewed by the Attorney General's Office

## Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of January 19, 2021. The figures provided are unaudited.



## Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

## MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 28, 2021

**RE: Acreage Adjustment Survey Project**  
(No Action Requested)

The Sixty-Fifth Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel subject to inundated by Pick-Sloan Missouri Basin project dams.

On behalf of the Board of University and School Lands, the Department of Trust Lands has set in motion the refunding of royalty proceeds that fall within the six-month time frame outlined in N.D.C.C § 61-33.1-04(1). Implementation and release of royalty proceeds is under way as acreage determinations have been calculated on "oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey . . . absent a showing of other defects affecting mineral title." N.D.C.C § 61-33.1-04(1)(a)

Currently, 63 Lease Correction and Acreage Stipulation packages have been sent to various operators. Of these 63 packages, 10 have been refunded, 13 are being held by clouded title, 44 are waiting for operator execution, and 3 are in the process of being refunded.

The following provides the status of acreage determination refunds and the amount at issue for those refunds in each stage of the process:



# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">HB 1031</a>	Relating to legislative management studies of state agency fees.	Legislative Management	Gov't & Veterans Affairs	Passed		
<a href="#">HB 1054</a>	Relating to bond requirements for abandoned oil and gas wells.	Energy and Natural Resources	Energy & Natural Resources	Introduced		
<a href="#">HB 1080</a>	Relating to the obligation to pay oil and gas royalties on leases owned and managed by the board of university and school lands.	Rep. Dockter	Finance & Taxation	Introduced		
<a href="#">HB 1081</a>	Relating to authority of the game and fish department employees to enforce laws.	Rep. Zubke	Energy & Natural Resources	Introduced		
<a href="#">HB 1202</a>	Relating to funds managed by the state investment board and the investments of the board of university and school lands	Rep. Kempenich, Brandenburg, Delzer, M. Ruby, Schatz, Tveit  Sen. Klein, Patten	Gov't & Veterans Affairs	Introduced		
<a href="#">HB 1269</a>	Relating to the state land advisory board.	Rep. Kempenich, Schatz, Zubke	Political Subdivisions	Introduced 1-28-2021		
<a href="#">HB 1322</a>	Relating to the attorney general's review of proposed administrative rules and the authority of the administrative rules committee to object to or void an administrative rule.	Rep. B. Koppelman, K. Koppelman, Pyle, D. Ruby, Steiner  Sen. Burckhard, Clemens, Lemm, Meyer, J. Roers	Judiciary	Introduced 1-26-2021		
<a href="#">HB 1340</a>	Relating to prohibiting entry onto private land without permission	Rep. Simons, Ertelt, Hoverson, Jones, Kempenich, Magrum, Skroch  Sen. Heitkamp, Hogue	Judiciary	Introduced		
<a href="#">HB 1349</a>	Relating to open record and meeting laws	Rep. Devlin, Karls  Sen. Dwyer, Lee, Oban	Political Subdivisions	Introduced		
<a href="#">HB 1358</a>	Relating to oil and gas tax revenue hedging	Rep. Kempenich, Christensen, Mock, Steiner, Trottier		Introduced 1-26-2021		



# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
		Sen. Bekkedahl, Dwyer, Schaible				
<a href="#">HB 1385</a>	Relating to the attorney general review of the proposed administrative rules	Rep. Becker, Kasper, Louser, Schauer, Tveit  Sen. Meyer, Vedaa, Wobbema	Finance & Taxation Committee	Introduced		
<a href="#">HB 1392</a>	Relating to the duration of school and public land leases.	Rep. Schatz, Brandenburg, Christensen, D. Johnson, Kempnich, Longmuir, Monson, Simons  Sen. Anderson, Elkin, Erbele	Government & Veterans Affairs	Introduced		
<a href="#">SB 2013</a>	A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.	Appropriations	Appropriations		Introduced	
<a href="#">SB 2036</a>	A BILL for an Act to provide for a legislative management study regarding access to lands and electronic posting.	Legislative Management	Energy & Natural Resources		Passed	
<a href="#">SB 2048</a>	Revised Uniform Unclaimed Property Act	Industry, Business and Labor	Industry, Business & Labor		Introduced	
<a href="#">SB 2065</a>	Relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.	Energy & Natural Resources	Energy & Natural Resources		Introduced	
<a href="#">SB 2070</a>	Relating to the regulated substance response; to amend and reenact sections 11-33-01, 40-47-01, and 58-03-11 of the North Dakota Century Code, relating to the regulated substance response; and to repeal sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code, relating to contaminated properties.	Energy & Natural Resources	Energy & Natural Resources		Introduced	

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">SB 2144</a>	Relating to criminal trespass and electronic posting; and to provide a penalty.	Sen. Erbele, Patten, Bell Rep. Damschen, Dobervich, Tveit	Finance & Taxation		Passed	
<a href="#">SB 2191</a>	Relating to the disposal of abandoned personal property	Sen. Holmberg	Political Subdivisions		Introduced	
<a href="#">SB 2217</a>	Relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to provide a penalty	Sen. Bekkedahl, Dwyer, Kannianen Rep. Brandenburg, Kempenich, Zubke	Finance & Taxation		Introduced	
<a href="#">SB 2262</a>	Relating to the authority of the industrial commission	Sen. Kannianen, Bekkedahl, Burckhard Rep. Fegley, Longmuir	Energy & Natural Resources		Introduced 1-28-2021	
<a href="#">SB 2282</a>	Relating to membership of the board of university and school lands	Sen. Schaible, Klein, Luick Rep. D. Johnson, Schmidt	Government & Veterans Affairs		Introduced	
<a href="#">SB 2291</a>	Relating to social investments made by the state investment board and the boycott of energy or commodities companies	Sen. Bell	Energy & Natural Resources		Introduced	
<a href="#">SB 2307</a>	Relating to the abandoned oil and gas well plugging and site reclamation fund; and to provide an effective date	Sen. Heckaman Rep. Boschee	Finance & Taxation		Introduced	
<a href="#">SB 2319</a>	Relating to oil and gas agreements; and to provide an effective date	Sen. Kannianen	Finance & Taxation		Introduced	
<a href="#">SB 2327</a>	Relating to school district bonded indebtedness grants	Sen. Heitkamp, O. Larsen Rep. Louser, Magrum, D. Ruby	Education		Introduced	
<a href="#">SB 2342</a>	Relating to healthy soil grant and healthy soil assessment and education programs	Sen. Piepkorn, Elkin, Hogan, Mathern Rep. Dobervich, Simons	Agriculture		Introduced	

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 27, 2021

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">HCR 3016</a>	Relating to the membership of the board of university and school lands	Rep. Schmidt, D. Anderson, Brandenburg, D. Johnson, Kempenich, Schatz, Weisz  Sen. Klein, Luick, Myrdal, Vedaa	Government & Veterans Affairs	Introduced		
<a href="#">SCR 4007</a>	Relating to the membership of the board of university and school lands	Sen. Schaible, Klein, Luick  Rep. D. Johnson, Schmidt	Government & Veterans Affairs		Introduced	

# MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 28, 2021

**RE: Energy Infrastructure and Impact Office (EIIO)  
Reallocation of Funding Request – G200004**

In April 2020, the Board of University and School Lands (Board) awarded nine contingency grants totaling \$1.2M from the Oil and Gas Impact Grant Fund as appropriated by the Sixty-Sixth Legislative Assembly. The Tolley Fire Department was awarded \$355,172 for a 50 x 50 building addition, to be primarily used for vehicle storage, monthly meetings, and trainings. Additionally, the Tolley Fire Department intends to use the building as an emergency shelter for area residents, to host community events, to provide informational meetings, and to provide temporary shelter for those who have been involved in an emergency situation but do not require medical attention at a hospital.

The grant application included a construction and site preparation bid in the amount of \$555,000. In June 2020, the Tolley Fire Department re-bid the project to modify the project to a 50 x 62 building. The bids were significantly less at \$330,000.

To date EIIO has awarded the Tolley Fire Department funds in the amount of \$294,701, with \$60,471 remaining. If 100% of the invoices are submitted to the EIIO Oil and Gas Impact Fund, then 100% of the cost of the construction would have been paid, which was not a part of the original grant application.

The Tolley Fire Department is requesting the remaining funding be reallocated to stock the new building with pots, pans, utensils, small kitchen appliances, washer and dryer, bedroom furniture, tables and chairs, generator and hook up, television for emergency medical services and fire training, etc. (Attachment 1 and 2)

**Recommendation: The Board approves the reallocation of funds for G200004 for the Tolley Fire Department to use the grant funds as awarded with the remaining funds to be used to stock the new building addition.**

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

Attachment 1 – Tolley Fire Department Reallocation Request

Attachment 2 – Tolley Fire Department Budget Analysis



## Tolley Fire Department

PO Box 104 ~ Tolley, ND 58787

David Stark, Fire Chief: (701) 720-7885

---

January 15, 2021

Dear Board of University & School Lands:

The Tolley Fire Department is requesting a reallocation of grant funds for grant #G20004. Our building project is approximately 95% complete and our grant has a remaining fund balance of \$60,470.98.

Our original grant application was submitted in the amount of \$555,000.00. Our department was generously granted \$355,172.00 towards our project. Following notification of the grant award, our department re-bid the project to keep the building within the budget parameters of the approved funds. Our department has been fiscally responsible thru out the project while increasing the size of the building by an additional 600 square feet from our original proposal. It should also be noted that our project was completed thru local contractors and businesses that directly benefitted our local economy.

The Tolley Fire Department has incurred out of pocket expenses in the amount of \$4,366.50 for the land purchase, property survey, abstract update and post-construction professional cleaning services.

A budget analysis has been provided for your review indicating approved project expenses thru January 15, 2021. A reallocation of funds analysis has also been provided indicating what the remaining grant funds would be utilized for.

Our vision for the building is that it would be a shared-use facility that will serve our region for a variety of purposes. The primary use of the building is for emergency response vehicle storage, monthly meetings and trainings. Additionally, the Tolley Fire Department intends to use the building as an emergency shelter for area residents, to host community events, to provide informational meetings, and to provide temporary shelter for those who have been involved in an emergency situation but do not require medical attention at a hospital. Just recently, we had a family lose their home to a fire and were in need of a temporary place to stay and our new building could provide that opportunity in times of need. The new building is also ADA compliant which no other facility provides in our community.

Since the completion of our building, we have held (2) monthly meetings and volunteer member attendance has increased significantly due to the larger space. We currently have three separate



training events planned for the spring of 2021 that will not only include the (6) fire departments in Renville County but also (4) other departments from Ward & Burke counties. Other possible events for 2021 include a regional blood drive and a charitable poker tournament. Our department will also be hosting a grand opening / community appreciation event on July 3, 2021 to celebrate the new building as well as our department's 70<sup>th</sup> anniversary (dependent on COVID capacity restrictions).

A reallocation of grant funds would allow us to preserve and utilize our financial resources for other necessary operating expenses and continue our fire department's ability to remain viable and functional for future generations. Losing the remaining funding, will inhibit our organization's ability to make the building ready for its' intended use and will greatly impact its' operational capacity.

Thank you for your time, the opportunity to apply for funding and reviewing our request. Thank you to Rick Owings as well and his assistance to our department thru out the grant process. It is greatly appreciated!

Sincerely,

A handwritten signature in blue ink that reads "Amy Ones, Treasurer". The signature is written in a cursive, flowing style.

Amy Ones, Secretary / Treasurer  
Tolley Fire Department

**TOLLEY FIRE DEPARTMENT  
FIRE HALL PROJECT BUDGET  
GRANT # G200004**

DATE	INV #	CK #	CONTRACTOR	LABOR	MATERIALS	SITE WORK	CONCRETE	ELECTRICAL	PLUMBING	FLOOR HEAT	MISC	CONTINGENCY	TOTAL
			<b>BUDGET</b>	<b>100,000.00</b>	<b>84,562.00</b>	<b>16,625.00</b>	<b>41,851.00</b>	<b>25,000.00</b>	<b>11,529.00</b>	<b>19,265.00</b>	<b>26,050.00</b>	<b>30,290.00</b>	<b>355,172.00</b>
8/15/2020	146525	10392	Farmers Union Lumber	-	17,891.49	-	-	-	-	-	-	-	17,891.49
	540	10393	Upper Souris Water	-	-	-	-	-	-	-	-	1,135.35	1,135.35
	5514	10394	Christianson Heating & A/C	-	-	-	-	-	-	4,370.00	-	-	4,370.00
	5515	10394	Christianson Heating & A/C	-	-	-	-	-	-	5,213.25	-	-	5,213.25
9/15/2020	1	10395	Feist Plumbing, LLC	-	-	-	-	-	6,290.00	-	-	960.00	7,250.00
	1873	10402	Ready Builders, Inc.	30,000.00	-	-	-	-	-	-	-	-	30,000.00
	631	10403	PCS	-	-	-	28,210.00	-	-	-	-	-	28,210.00
	146873	10404	Farmers Union Lumber	-	8,399.09	-	-	-	-	-	-	-	8,399.09
	146882	10404	Farmers Union Lumber	-	11,689.01	-	-	-	-	-	-	-	11,689.01
10/15/2020	10414	10414	Ready Builders, Inc.	26,000.00	-	-	-	-	-	-	-	-	26,000.00
	VARIOUS	10415	Farmers Union Lumber	-	11,536.44	-	-	-	-	-	-	-	11,536.44
11/15/2020	5642	10424	Christianson Heating & A/C	-	-	-	-	-	-	9,681.75	-	-	9,681.75
	5643	10424	Christianson Heating & A/C	-	-	-	-	-	-	-	750.00	-	750.00
	39132	10425	Farden Construction	-	-	16,625.00	-	-	-	-	-	-	16,625.00
	2	10428	Feist Plumbing, LLC	-	-	-	-	-	2,015.00	-	-	985.00	3,000.00
	652	10430	PCS	-	-	-	13,641.00	-	-	-	-	1,944.00	15,585.00
	10-9112	10427	Farmers Union Oil	-	-	-	-	-	-	-	3,000.00	2,400.00	5,400.00
	VARIOUS	10426	Farmers Union Lumber	-	12,810.24	-	-	-	-	-	-	-	12,810.24
12/15/2020	13887	10454	Miller Electric, Inc.	-	-	-	-	25,000.00	-	-	-	1,289.00	26,289.00
	VARIOUS	10455	Farmers Union Lumber	-	17,845.67	-	-	-	-	-	-	-	17,845.67
	1884	5250	Ready Builders, Inc.	5,250.00	-	-	-	-	-	-	-	-	5,250.00
	3	10457	Feist Plumbing, LLC	-	-	-	-	-	3,224.00	-	-	104.00	3,328.00
	VARIOUS	10433	Farmers Union Oil	-	-	-	-	-	-	-	-	666.61	666.61
	322405009	Visa	Karl's Appliance	-	-	-	-	-	-	-	2,700.00	817.89	3,517.89
	2555	Visa	Garbel's Furniture	-	-	-	-	-	-	-	1,150.00	-	1,150.00
1/15/2021	21964	10467	Burke Divide Electric Coop	-	-	-	-	-	-	-	9,134.56	-	9,134.56
	481451	10468	Bruns Drywall	6,500.00	-	-	-	-	-	-	-	-	6,500.00
	1	10458	Duane Ingerson	-	-	-	-	-	-	-	-	3,390.00	3,390.00
	VARIOUS	10469	Farmers Union Lumber	-	1,702.67	-	-	-	-	-	-	-	1,702.67
	4	10470	Feist Plumbing, LLC	-	-	-	-	-	-	-	-	380.00	380.00
1/15/2021			<b>BUDGET BALANCE</b>	<b>32,250.00</b>	<b>2,687.39</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>9,315.44</b>	<b>16,218.15</b>	<b>60,470.98</b>

## MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

January 28, 2021

**RE: Acreage Adjustment Survey - T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36**

Under North Dakota law, the Board of University and School Lands (Board) is vested with the authority to manage state-owned minerals including the oil, gas, and related hydrocarbons within the beds of the State's navigable waters. On behalf of the State, the Board oversees the Strategic Investment and Improvements Fund (SIIF) which collects the revenues from these sovereign minerals.

### Timeline of State Activity Related to Sovereign Lands

- The 1977 Legislature defined "sovereign lands" as "those beds, islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams." 1977 N.D. Sess. Laws, ch. 144, § 1, codified as N.D.C.C. § 15-08.2-02 (repealed 1989 N.D. Sess. Laws, ch. 552, § 4).
- From 1977 to 1989, the Board had authority over both the surface and subsurface of sovereign lands, including the power to convey interests.
- In 1989, the Legislature again defined state title as "those beds, islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams." 1989 N.D. Sess. Laws, ch. 552, § 3, codified as N.D.C.C. § 61-33-01.
- The 1989 Legislature gave the State Engineer's Office authority to manage the surface and the Board authority over the oil, gas, and related hydrocarbons within the subsurface, with each agency having the power to convey interests.
- In 2007, the Office of the State Engineer issued the North Dakota Sovereign Land Management Plan and Ordinary High Water (OHWM) Mark Delineation Guidelines.
- In 2009, the Board and the State Engineer engaged Bartlett & West, a private engineering company, to undertake a comprehensive study of the OHWM along the Yellowstone River and the Missouri River from the Montana border to river mile marker 1549 near Williston (Phase I Delineation).
- In 2010, the Board again contracted with Bartlett & West to approximate the location of the OHWM for the historic Missouri River under Lake Sakakawea from river mile marker 1574 near the Furlong Loop to river mile marker 1482, the border of the Fort Berthold Reservation (Phase II). This study was completed using historical aerial photography, elevation data, and topographic maps.
- In 2010, the Board authorized Phase III to investigate specific and isolated sections of the Missouri and Yellowstone Rivers between Williston to the Montana border that could not be fully completed under Phase I due to location and complexity (this includes the Trenton Lake area.)
- In 2012, the Board initiated the review of the estimated historic OHWM between the Four Bears Bridge and the Garrison Dam (Phase IV) using the same techniques as Phase II.
- In 2013, the North Dakota Supreme Court issued decisions in *Reep v. State* and *Brigham v. State* holding that the State owns the mineral interests up to the ordinary high water mark of navigable rivers and water bodies.
- In 2017, the Sixty-Fifth Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C. ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel (Historical OHWM) inundated by Pick-Sloan Missouri basin project dams.
- In 2019, 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 Board contracted with Kadmas, Lee & Jackson, Inc. (KLJ) "to analyze the final review findings and determine the acreage on



a quarter-quarter basis or government lot basis above and below the [Historical OHWM] as delineated by the final review findings of the industrial commission.”

On June 25, 2020, the Board formally requested the North Dakota Industrial Commission complete further review of T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36. The North Dakota Industrial Commission entered Order No. 31104 providing the Department of Trust Lands (Department) with necessary information to complete the acreage adjustment survey in T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36.

The Department has consulted with the State Engineer as to the State’s sovereign land ownership in Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36 of Township 153 North, Range 102 West, Williams/McKenzie Counties, North Dakota (more commonly referred to as the Trenton Lake area.)

Recommendation:

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

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

January 28, 2021

---

**RE: Continental Resources, Inc. - Interpleader**  
(No Action Requested)

**Case:** **Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., Case No. 1:17-cv-00014**  
**Date Filed:** **December 23, 2016**  
**Court:** **Federal District Court, 8<sup>th</sup> Circuit**  
**Judge:** **Honorable Daniel Hovland**  
**Attorney:** **Charles Carvell, David Garner, and Jen Verleger**  
**Opposing Counsel:** **Lawrence Bender, David Ogden, Paul Wolfson, Shaun Pettigrew**

**Issues:** In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain public domain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic Missouri River. Continental is requesting the Court determine title to the disputed lands so that Continental can correctly distribute the proceeds from the affected wells. Continental has claimed that there is “great doubt as to which Defendant is entitled to be paid royalties related to the Disputed Lands.” Currently, Continental is paying the United States its full royalty based on the acreage it claims. The remaining royalty, over and above what is due the United States, is being escrowed with the Bank of North Dakota.

**History:** The United States removed this action to federal district court on January 11, 2017. The Board filed its answer to the complaint on February 13, 2017. The United States filed its answer to the complaint on May 12, 2017. An Amended Complaint was filed by Continental Resources on September 14, 2017. The United States filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on October 18, 2017. In support of its motion, the United States alleges that it has not waived its sovereign immunity under the Quiet Title Act and that the interpleader action is moot under S.B. 2134.

The Board filed a response on December 20, 2017 opposing the motion to dismiss. Continental filed a response and the United States filed its reply. The United States filed a reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States’ Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States’ Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the “action is stayed until [federal] appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions.” The United States filed a

Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memorandandum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal. On November 8, 2019, the Board received an email from the US DOJ in response to the Board's request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: "Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law." Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: "we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible." Status conference was held January 13, 2020 and another status conference was set for April 7, 2020.

**Current  
Status:**

- **On April 7, 2020, an Order RE: Briefing Scheduled was issued by the court setting the following deadlines: Motions for Summary Judgment due simultaneously on May 7, 2020; Responses are due June 5, 2020; and Replies are due June 12, 2020.**

ITEM 5A

- On December 8, 2020, the Court issued its Order Granting the United States' Motion for Partial Summary Judgment.

## **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:**

- - **Continental Resources Case No. 1:17-cv-00014**
- - **Legislative Update**
- - **Acreage Adjustment Survey – T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34 and 36**

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

**Statement:**

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

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

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

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

Statements upon return to open session:

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

State that the Board is back in open session.

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

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

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

**-or- .**

Ask for a formal motion and a vote on it.

**Move to the next agenda item.**