

**BOARD OF UNIVERSITY AND SCHOOL LANDS AGENDA**

Coteau Meeting Room  
Judicial Wing, State Capitol  
June 25, 2020 at **8:00 AM**

➢ = Board Action Requested

Join Microsoft Teams Meeting  
[+1 701-328-0950](tel:+17013280950)  
Conference ID: 909 779 407#

1. **Approval of Meeting Minutes – Jodi Smith**  
   Consideration of Approval of Land Board Meeting Minutes by voice vote.  
   ➢ A. May 28, 2020 – pg. 2

2. **Reports – Jodi Smith**  
   A. May Shut-In Report - pg. 22  
   B. May Report of Encumbrances Issued by the Commissioner - pg. 24  
   C. May Unclaimed Property Report - pg. 26  
   D. Energy Infrastructure and Impact Office Report (ending 06-05-2020) - pg. 27  
   E. March Financial Position - pg. 29  
   F. Investments Update (ending 06-12-2020) - pg. 40

3. **Investments – Michael Shackelford**  
   A. Novarco Update - pg. 41  
   ➢ B. Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement - pg. 50

4. **Minerals – Jodi Smith**  
   ➢ A. Acreage Adjustment Survey - pg. 57

5. **Operations – Jodi Smith**  
   ➢ A. Commissioner Annual Review – to be distributed at meeting - pg. 62  
   ➢ B. Fees Policy – Second Reading - pg. 65  
   ➢ C. Continuing Appropriation Authority Policy – Second Reading - pg. 67  
   ➢ D. Mineral Valuation Policy – Second Reading - pg. 70  
   ➢ E. Administrative Rules – Surface Land Management and Minerals Management - pg. 72  
   ➢ F. Repayment of Unpaid Gas Royalty Update - pg. 98

   ➢ 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:  
   - Repayment of Unpaid Gas Royalty Update

6. **Litigation – Jodi Smith**  
   ➢ A. United States Department of Interior M - 37056 - pg. 100

   ➢ 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:  
   - United States Department of Interior M - 37056

**Next Meeting Date – July 29, 2020**
Minutes of the Meeting of the
Board of University and School Lands
May 28, 2020

The May 28, 2020 meeting of the Board of University and School Lands was called to order at 8:03 AM in the Coteau Meeting Room of the State Capitol by Chairman Doug Burgum.

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

Department of Trust Lands Personnel present:
Jodi Smith  Commissioner
Dennis Chua  Investment Analyst – via Microsoft Teams
Susan Dollinger  Unclaimed Property Administrator – via Microsoft Teams
Michael Humann  Surface Division Director
Kristie McCusker  Paralegal – via Microsoft Teams
Catelin Newell  Administrative Staff Officer
Adam Otteson  Revenue Compliance Division Director
Rick Owings  Administrative Officer – via Microsoft Teams
Mike Shackelford  Investment Division Director
David Shipman  Minerals Division Director – via Microsoft Teams
Kayla Spangelo  Range Management Specialist

Guests in Attendance:
Leslie Bakken Oliver  Governor’s Legal Counsel
Reice Haase  Governor’s Policy Advisor – via Microsoft Teams
Amy Hsiang  RVK – via Microsoft Teams
Josh Kevan  RVK – via Microsoft Teams
George Hicks  Varde Investment Group – via Microsoft Teams
Brad Bauer  Varde Investment Group – via Microsoft Teams
Mona Girotra  Varde Investment Group – via Microsoft Teams
Casey Anderson  ND Game & Fish Department – via Microsoft Teams
Marty Egeland  ND Game & Fish Department – via Microsoft Teams
Brady Pelton  ND Petroleum Council
Joel Brown  Mineral Tracker
Greg Kemohan  Ducks Unlimited
Trenton Hieb  Ducks Unlimited
Geoff Simon  Western Dakota Energy Association

A P P R O V A L  O F  M I N U T E S

A motion to approve the minutes of the April 30, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.
COVID-19 Update

North Dakota received $1.25 billion from the Coronavirus Relief Fund as part of the $2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. The North Dakota Budget Section voted last week to utilize more than half a billion dollars in federal funding for North Dakota's COVID-19 response and recovery efforts, with the majority of the money directed to support economic recovery.

The Commissioner cancelled all surface lease auctions scheduled for March 23, 2020 thru March 27, 2020. There were 141 tracts in 30 counties available for auction. Executive Order 2020-25 allowed the Department of Trust Lands (Department) to host surface auctions outside of the county seat. The Department of Trust Lands was able to secure $100,000 in funding to pay the 3% convenience fee associated with the online surface lease auctions hosted by EnergyNet. The Department has issued refund checks to lessee’s who participated in the online spring auction.

Additionally, the Department received $20,000 to complete an analysis of shut-in and deferred producing wells analysis based upon various economic scenarios to anticipate production and the resulting direct impact on cash flow for the Department. The analysis will allow the Department to better manage cash flows and disbursement obligations through cash deposits versus being required to sell investments. A copy of the analysis has been attached for Board review.

The North Dakota Department of Trust Lands Deferred Production Analysis report was provided to the Board for review and is available at the Department upon request.

Summary of EnergyNet Surface Spring Auction

From April 28th to May 4th the Department held their very first online surface lease auction with EnergyNet. The auction had 70 registered bidders with 56 placing bids.

The table below is a snapshot comparing prior years’ spring auctions to EnergyNet’s online auction.

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of counties</td>
<td>26</td>
<td>27</td>
<td>24</td>
</tr>
<tr>
<td>Total tracts offered</td>
<td>82</td>
<td>99</td>
<td>144</td>
</tr>
<tr>
<td>Number of tracts bid</td>
<td>66 (80.5%)</td>
<td>79 (79.8%)</td>
<td>108 (75%)</td>
</tr>
<tr>
<td>Number of bid tracts bid-up</td>
<td>14 (21% of bid tracts)</td>
<td>27 (34% of bid tracts)</td>
<td>27 (25% of bid tracts)</td>
</tr>
<tr>
<td>Total amount of minimum advertised bids</td>
<td>$151,276.00</td>
<td>$220,960.00</td>
<td>$283,859.00</td>
</tr>
<tr>
<td>Total amount received</td>
<td>$156,286.00</td>
<td>$273,177.00</td>
<td>$255,173.00</td>
</tr>
</tbody>
</table>

Unleased tracts offered at the spring auction are available on a first come first serve basis for minimum opening bid until August 31, 2020.

As of May 28th an additional 7 tracts had been leased.

(05/28/20)
Report of Shut-Ins Approved by Land Commissioner

All shut-in requests in this report are Covid-19 related.

**Granted to:** WINDRIDGE OIL
**Date Issued:** 04/30/2020
**Trust:** L– Bank of North Dakota
**Lease:** OG-13-00025

**Granted to:** WINDRIDGE OIL
**Date Issued:** 04/30/2020
**Trust:** A – Common Schools
**Lease:** OG-13-00027

**Granted to:** PetroHunt
**Date Issued:** 05/13/2020
**Trust:** A – Common Schools
**Lease:** OG-84-00954
**Lease:** OG-84-00023
**Lease:** OG-10-03568
**Lease:** OG-10-02437

**Granted to:** PetroHunt
**Date Issued:** 05/14/2020
**Trust:** A – Common Schools
**Lease:** OG-08-00533
**Lease:** OG-08-00534
**Lease:** OG-08-00535
**Lease:** OG-08-00536
Report of Extensions Approved by Land Commissioner

Granted to: Oasis Petroleum  
Date Issued: 05/20/2020  
Trust: A – Common Schools  
Lease: OG-15-00406  
Lease: OG-15-00407  
Lease: OG-15-00408  
Lease: OG-15-00409

Granted to: Oasis Petroleum  
Date Issued: 05/20/2020  
Trust: D – School for the Deaf  
Lease: OG-15-00410

Acreage Adjustment Survey

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Department executed a contract with Kadrmas, Lee & Jackson, Inc. “to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission.” The contract’s scope of work concludes twelve months from the date of execution, at a total cost of $1,088,635.
Report of Encumbrances Issued by Land Commissioner 3-17-2020 to 5-12-2020

<table>
<thead>
<tr>
<th>Granted to</th>
<th>For the Purpose of</th>
<th>Right-of-Way Number</th>
<th>Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GOODNIGHT MIDSTREAM BAKKEN LLC, DALLAS-TX</td>
<td></td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>For the Purpose of</td>
<td>Easement: Pipeline-Salt Water Pipeline</td>
<td>RW0008250</td>
<td>MCK-150-97-36-S2</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Goodnight Midstream Bakken LLC, Dallas-TX</td>
<td>Easement: Pipeline-Salt Water Pipeline</td>
<td>RW0008253</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>MCK-149-96-16-NE4, S2</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Van Hook Gathering Services LLC, Irving-TX</td>
<td>Easement: Pipeline-Multiple Pipelines</td>
<td>RW0008389</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>MOU-150-92-15-W2SW4</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Equinor Pipelines LLC, Williston-ND</td>
<td>Easement: Pipeline-Multiple Pipelines</td>
<td>RW0008421</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>MOU-155-92-16-NW4</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Billings County, Medora-ND</td>
<td>Easement-Amend: Road Right-of-Way</td>
<td>RW0008452</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>BIL-141-101-21-NE4</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
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<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Equinor Energy LP, Williston-ND</td>
<td>Permit: Road-Access Road</td>
<td>RW0008479</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>WIL-155-100-36-W2</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Granted to:</strong> Hiland Partners Holdings LLC, Houston-TX</td>
<td>Easement: Pipeline-Gas Gathering Pipeline</td>
<td>RW0008606</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>MCK-148-98-16-NE4, SW4</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Oneok Rockies Midstream LLC, Sidney-MT</td>
<td>Easement: Pipeline-Gas Gathering Pipeline</td>
<td>RW0008618</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>MCK-150-98-36-E2, SW4</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Granted to:</strong> Xto Holdings, LLC, Spring-TX</td>
<td>Permit: Road-Access Road</td>
<td>RW0008631</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Right-of-Way Number</td>
<td></td>
<td></td>
<td>GOL-143-103-36-E2</td>
</tr>
<tr>
<td>Trust</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Description</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND
For the Purpose of: Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number: RW0008635
Trust: A – Common Schools
Legal Description: WIL-158-95-36-SE4

Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOP, WILLISTON-ND
For the Purpose of: Easement: Release of Easement
Right-of-Way Number: RW0008636
Trust: A – Common Schools
Legal Description: WIL-158-95-36-S2

Granted to: MOUNTRAIL-WILLIAMS ELECTRIC COOP., WILLISTON-ND
For the Purpose of: Easement-Amend: Electric-Above Ground Distribution Line
Right-of-Way Number: RW0008659
Trust: A – Common Schools
Legal Description: WIL-158-95-36-E2

Granted to: USDA-NRCS, JAMESTOWN-ND
For the Purpose of: Letter of Permission: Access (National Resource Inventory)
Right-of-Way Number: RW0008671
Trust: A – Common Schools
Legal Description: MOU-155-92-25-SW4
SLO-134-106-36-NE4
SLO-134-98-36-NE4
WIL-153-104-36-NE4 W OF HWY

Granted to: B O B ENTERPRISES LLC, KILLDEER-ND
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008675
Trust: A – Common Schools
Legal Description: DUN-146-95-16-NE4

Granted to: B O B ENTERPRISES LLC, KILLDEER-ND
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008677
Trust: A – Common Schools
Legal Description: DUN-148-96-36-LOTS 1,2,6,7
DUN-148-96-36-NW4SE4, S2SE4, LOT 8
DUN-148-96-36-S2NW4, LOTS 3,4,5
DUN-148-96-36-SW4

Granted to: USDA-NRCS MLRA 53B SOIL SURVEY OFFICE, BISMARCK
For the Purpose of: Letter of Permission: Access (Soil Survey Update)
Right-of-Way Number: RW0008680
Trust: A – Common Schools
Legal Description: Numerous tracts in 9 ND Counties

Granted to: EQUINOR ENERGY LP, WILLISTON-ND
For the Purpose of: On-lease Act. Amend: Site-Tank Battery Site
Right-of-Way Number: RW0008682
Trust: A – Common Schools
Legal Description: MOU-155-92-16-NW4
(05/28/20)
Granted to: NTB ASSOCIATES INC, SHREVEPORT-LA  
For the Purpose of: Permit: Planning & Preconstruction Survey  
Right-of-Way Number: RW0008688  
Trust: A – Common Schools  
Legal Description: N/A

Granted to: NORTH RANGE RESOURCES LLC, DICKINSON-ND  
For the Purpose of: On-lease Activity: Well-Vertical Oil Well  
Right-of-Way Number: RW0008690  
Trust: A – Common Schools  
Legal Description: MCK-146-100-36-SE4

Granted to: NORTH RANGE RESOURCES LLC, DICKINSON-ND  
For the Purpose of: On-lease Activity: Well-Horizontal Oil Well  
Right-of-Way Number: RW0008691  
Trust: A – Common Schools  
Legal Description: MCK-146-100-36-SW4

Granted to: WEST DAKOTA WATER LLC, WILLISTON-ND  
For the Purpose of: Permit: Temporary Water Layflat Line  
Right-of-Way Number: RW0008697  
Trust: A – Common Schools  
Legal Description: WIL-158-95-16-N2

Granted to: NDSU (School of Natural Resource Science), FARGO-ND  
For the Purpose of: Letter of Permission: Access to School Land (Native Pollinator  
Right-of-Way Number: RW0008699  
Trust: N - NDSU  
Legal Description: Numerous tracts in 6 ND Counties

Granted to: CALIBER MIDSTREAM NORTH DAKOTA LLC, DENVER  
For the Purpose of: Permit: Temporary Construction  
Right-of-Way Number: RW0008706  
Trust: A – Common Schools  
Legal Description: MCK-152-102-36-SE4

Unclaimed Property Program 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 April 2020, the Division received 98 holder reports with a property value of $808,690 and paid 600 claims with a total value of $610,019.

Energy Infrastructure and Impact Office 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 $624 million in funding.

The Oil and Gas Impact Grant Fund currently has 28 grants with a balance of $7,049,556.08 as of May 13, 2020. The following shows grant activity for the last five months:

<table>
<thead>
<tr>
<th>Date</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/9/2019</td>
<td>36</td>
<td>$15,477,345.77</td>
</tr>
<tr>
<td>12/31/2019</td>
<td>30</td>
<td>$14,388,087.28</td>
</tr>
<tr>
<td>2/13/2020</td>
<td>21</td>
<td>$7,207,988.75</td>
</tr>
<tr>
<td>5/13/2020</td>
<td>28</td>
<td>$7,049,556.08</td>
</tr>
</tbody>
</table>

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 $2,394,929.22 as of May 13, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last five months:

<table>
<thead>
<tr>
<th>Date</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/9/2019</td>
<td>4</td>
<td>$4,793,191.14</td>
</tr>
<tr>
<td>12/31/2019</td>
<td>4</td>
<td>$4,108,325.39</td>
</tr>
<tr>
<td>2/13/2020</td>
<td>3</td>
<td>$3,447,448.60</td>
</tr>
<tr>
<td>5/13/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
</tr>
</tbody>
</table>

The Energy Infrastructure and Impact Office is currently managing 31 grants for a total of $9,444,485.30. The following shows grant activity for the last four months:

<table>
<thead>
<tr>
<th>Date</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
<th>Date</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
<th>Date</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
<th>Total between both Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/13/2020</td>
<td>31</td>
<td>$7,049,556.08</td>
<td>5/13/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
<td>5/13/2020</td>
<td>31</td>
<td>$7,049,556.08</td>
<td>$9,444,485.30</td>
</tr>
</tbody>
</table>

(05/28/20)
The Financial Position (Unaudited) for Period Ending February 29, 2020 was provided to the Board and is available at the Department upon request.

Investment Updates

Asset Allocation
The table below shows the status of the permanent trusts’ asset allocation as of May 11, 2020. The figures provided are unaudited.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Cap US Equity</td>
<td>15.0%</td>
<td>$707,657,371</td>
<td>15.3%</td>
<td>0.27%</td>
</tr>
<tr>
<td>Mid/Small Cap US Equity</td>
<td>4.0%</td>
<td>$171,677,041</td>
<td>3.7%</td>
<td>-0.30%</td>
</tr>
<tr>
<td>Total Broad US Equities</td>
<td>19.0%</td>
<td>$879,334,412</td>
<td>19.0%</td>
<td>-0.03%</td>
</tr>
<tr>
<td>International Equity</td>
<td>12.0%</td>
<td>$628,251,275</td>
<td>13.6%</td>
<td>1.55%</td>
</tr>
<tr>
<td>Emerging Market Equity</td>
<td>7.0%</td>
<td>$173,048,140</td>
<td>3.7%</td>
<td>-3.27%</td>
</tr>
<tr>
<td>Total Broad Int’l Equities</td>
<td>19.0%</td>
<td>$801,299,415</td>
<td>17.3%</td>
<td>-1.71%</td>
</tr>
<tr>
<td>Core Fixed Income</td>
<td>13.0%</td>
<td>$724,519,861</td>
<td>15.6%</td>
<td>2.63%</td>
</tr>
<tr>
<td>Non-Core Fixed Income</td>
<td>9.0%</td>
<td>$434,848,464</td>
<td>9.4%</td>
<td>0.38%</td>
</tr>
<tr>
<td>Total Fixed Income</td>
<td>22.0%</td>
<td>$1,159,368,325</td>
<td>25.0%</td>
<td>3.01%</td>
</tr>
<tr>
<td>Transition Account</td>
<td>0.0%</td>
<td>$102,577,794</td>
<td>2.2%</td>
<td>2.21%</td>
</tr>
<tr>
<td>Total Absolute Return</td>
<td>15.0%</td>
<td>$658,518,394</td>
<td>14.2%</td>
<td>-0.79%</td>
</tr>
<tr>
<td>Commodities</td>
<td>0.0%</td>
<td>$114,664,273</td>
<td>2.5%</td>
<td>2.47%</td>
</tr>
<tr>
<td>MLPs</td>
<td>0.0%</td>
<td>$96,695,041</td>
<td>2.1%</td>
<td>2.09%</td>
</tr>
<tr>
<td>Natural Resource Equities</td>
<td>0.0%</td>
<td>$77,774,895</td>
<td>1.7%</td>
<td>1.68%</td>
</tr>
<tr>
<td>Total Inflation Strategies</td>
<td>0.0%</td>
<td>$289,154,209</td>
<td>6.2%</td>
<td>6.24%</td>
</tr>
<tr>
<td>Core Real Estate</td>
<td>8.0%</td>
<td>$397,114,752</td>
<td>8.6%</td>
<td>0.57%</td>
</tr>
<tr>
<td>Core Plus Real Estate</td>
<td>7.0%</td>
<td>$347,475,975</td>
<td>7.5%</td>
<td>0.50%</td>
</tr>
<tr>
<td>Total Real Estate</td>
<td>15.0%</td>
<td>$744,590,727</td>
<td>16.1%</td>
<td>1.07%</td>
</tr>
<tr>
<td>Private Equity</td>
<td>5.0%</td>
<td>-$</td>
<td>0.0%</td>
<td>-5.00%</td>
</tr>
<tr>
<td>Private Infrastructure</td>
<td>5.0%</td>
<td>-$</td>
<td>0.0%</td>
<td>-5.00%</td>
</tr>
<tr>
<td>Opportunistic Investments</td>
<td>0.0%</td>
<td>-$</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Total Asset</td>
<td>100.0%</td>
<td>$4,634,843,276</td>
<td>100.0%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

Portfolio Rebalancing

On May 8, 2020, the Treasury Inflation-Protected Security (TIPS) Fund was liquidated with the proceeds transferred to an actively managed “transition account” that will hold all cash proceeds through the transition to the new asset allocation. The transition account is managed similar to the Strategic Investment Improvement Fund Ultra-Short Bonds account.

Gresham was informed of the Board of University and School Land’s decision to liquidate the Gresham Commodities investments on May 14, 2020 and an exit strategy has been determined.

Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.
**Gross Production Tax Backed School Construction Loans**

In 2013, the Legislature amended N.D.C.C. ch. 15.1-36 to provide for a mechanism for schools to use a portion of the gross production tax (GPT) revenues received under N.D.C.C. § 57-51-15 to repay school construction loans that have been approved by the Department of Public Instruction (DPI). The first GPT backed school construction loan was funded in March 2015.

DPI is responsible for the school construction loan program; the Board University and School Lands (Board) is only responsible for funding the loans and collecting loan payments. The Board does not have any formal policies related to school construction loans.

Department (Department) of Trust Lands’ staff worked with DPI, the Bank of North Dakota (BND), the State Treasurer’s Office, and bond counsel to develop a GPT backed loan program that works for schools, while also seeking to ensure that the money gets repaid in a timely manner.

In March 2020, the Department received notification that DPI had approved a school construction loan application from the Bottineau School District for a loan principal amount of $650,000 at an interest rate of 2% for a loan term of 20 years.

The following is a brief overview of the processes and procedures used to manage GPT backed school construction loans:

- BND will review all paperwork, provide amortization schedules, coordinate the closing, and hold the actual bond in safe keeping. For these services BND will charge school districts a one-time fee of $200.
- The maximum amount of a GPT backed loan will be determined based on the school district’s previous fiscal year’s GPT revenues. With voter approval of the debt, school districts can get a loan with an annual payment that totals up to 80% of the previous year’s GPT revenues. If there is no voter approval of the debt (as it is not classified as a debt by law), the annual loan payment may equal up to 50% of the previous year’s GPT revenues.
- Loans will be set up with annual payments for up to 20 years with an annual payment due date of December 1.
- Starting in September of each year (this is when GPT distributions “reset” and are thus at their highest rate), the State Treasurer will withhold GPT payments to the school district until 100% of the annual loan payment in the amortization schedule is withheld. Once the authorized amount is withheld and paid over to the Department, the State Treasurer will continue distributing all the GPT revenues to the school district as provided by law.
- Payments will be applied each month, first to interest and then to principal. Because there is a yearly amortization schedule but monthly payments, at any given point in time a school district could be slightly over- or underpaid versus what is state on the annual loan amortization schedule. Any difference will be made up in the final year of the loan.
- If by April 1st of each year it appears that GPT revenues owed to the school district by law are not enough to cover the loan payment due, the Department will contact the district and make arrangements to collect the additional amount due either from the DPI distribution or from other sources the district may have.

**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.

(05/28/20)
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.

In 2017, Department created a Request for Proposals (RFP) for the Land Management and Accounting functions; however, the number of responses were limited and those proposals did not meet the Department’s requirements.

Subsequently, the Department issued an RFP for the Financial Management and Accounting (FMA) system in October 2018. In December 2019, the Department awarded a contract to Ernst and Young to implement the Microsoft Dynamics 365 for Finance and Operations system with a go-live date of July 1, 2020.

During April 2020 the Investment Division participated in three demonstrations by vendors to implement the Microsoft Dynamics 365 product. On April 27, 2020 the RFP was issued to all three vendors. The Department received responses from all three vendors and is in the process of awarding the contract. The Investments Division, Commissioner and Project Manager are working to determine a go-live for software.

Additionally, the Revenue Compliance Division, Commissioner and Project Manager will be working with Wolters Kluwer on upgrading the auditing software used by the Department. The team is working on a go-live for the upgraded software and completion of data migration.

On December 16, 2019, the Department issued the RFP for the Land Management system with responses due February 2020. The Department reviewed responses from five vendors. A Best and Final Offer was requested from vendors that are reasonably susceptible for award on May 4, 2020 and responses were due May 22, 2020.

**OPERATIONS**

**Fee Policy – First Reading**

The Board of University and School Land’s (Board) last comprehensive fee schedule was established on July 25, 1985 and was last reviewed by the Board on June 26, 2014. The recommended action will revise 2014 fee schedule. In 2019, the Department of Trust Lands (Department) participated in the North Dakota State Auditors Office’s comprehensive study of North Dakota state agency fees overseen by the North Dakota Government Finance Committee. In this study, the Department provided information regarding:

- Review of the dates state agency fee provisions were created and modified.
- Revenue generated by the fee as compared to the expenditures related to the purposes for which the fee is imposed.
- The fund or funds in which fee revenue is deposited and from which fee revenue is expended.
- Consideration of whether the fees should be changed and whether the imposition of a fee is appropriate or if other government revenues should be used to fund the provision of services.
“Fees” in the context of this request are those payments which are not specific to any trust fund or tract of land but are deposited in the maintenance fund, which serves as the Department’s operating fund.

Attached is a red-lined and clean version of the proposed Fee Policy. Fees were revised based upon the Department’s expenditures related to the purposes for which the fee is imposed and if the fee is determined by the Board or the Commissioner.

The substantive changes include the following:

- A unified fee for certified copies has been established.
- Application and certain assignment, extension and amendment fees have been established for leasing based upon the internal expenses associated with processing the application.
- Fees that are determined by the Commissioner have been removed from the Board Fee Policy and placed in a Department Fee Policy.
  - Coal Amendment, renewal request fee
  - Coal Extension request fee
  - Oil and Gas Application and Nomination fee
  - Oil and Gas Application Shut-In Application Fee per Unit
  - Subsurface Mineral Lease Assignment Filing Fee
  - Salt-Water Disposal Site Application, Extension and Renewal Fee

The following attachments were provided to the Board and are available at the Department upon request: Attachment 1 – Board of University and School Lands Fee Policy (redline version) and Attachment 2 – Board of University and School Lands Fee Policy (clean version).

**Continuing Appropriation Authority Policy – First Reading**

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

**Board of University and School Lands**

**Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

**A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

(05/28/20)
B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.

2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts’ value.

3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.

4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

The Commissioner has reviewed, in conjunction with the Attorney General’s Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The following attachments were provided to the Board and are available at the Department upon request: Attachment 1 - Continuing Appropriation Authority Policy (red-line version) and Attachment 2 – Continuing Appropriation Authority Policy (clean version).

Mineral Valuation Policy – First Reading

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

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

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets’ sheer size, variance in geological aspects, and topography. MineralTracker, LLC was awarded the project and is working with the Department to complete the Assessment.

As a part of the Assessment, MineralTracker needs three variables to be approved by the Board: (1) the commodity effective date, (2) Commodity Price Schedule, and (3) the discount rate.

The commodity effective date is the date set by the Board by which the asset shall be appraised. An effective date is a date that is used for determining the present value of a product or security that fluctuates in price. It is the date at which funds, assets or money’s value becomes effective. Typically, value dates are used in determining the payment of financial products and accounts where there is a possibility for discrepancies due to differences in the timing of valuations.
Commodity Effective Date: the date as of which the State’s asset shall be appraised.
- Only production and cash flow forecasts from the effective date forward shall be considered subject to the appraisal.
- The effective date is not the same as the “report date”. The report date is the date on which the valuation report is submitted.
- Commonly, the effective date corresponds to a transaction date, inheritance date, or gifting date. The effective date in this instance is left to the discretion of the State.

Commodity Price Schedule: the oil and gas prices that shall be applied to forecasted cash flows.
- Appraisals performed for special purposes may employ a specified commodity pricing schedule to achieve the intended purpose. For fair market appraisals, the New York Mercantile Exchange pricing schedule is often employed. NYMEX pricing is based on the closing price of commodity futures contracts executed on a specified date. An example of a recent NYMEX price schedule is included below.

<table>
<thead>
<tr>
<th>NYMEX as of March 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>2020</td>
</tr>
<tr>
<td>2021</td>
</tr>
<tr>
<td>2022</td>
</tr>
<tr>
<td>2023</td>
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<td>2028</td>
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<tr>
<td>2029</td>
</tr>
<tr>
<td>2030</td>
</tr>
<tr>
<td>2031</td>
</tr>
</tbody>
</table>

- Often, commodity pricing is tied to the effective date (i.e. – an appraisal with an effective date of 1/1/2020 would use a NYMEX Strip price as of 1/1/2020), however a combination of historical and forward looking data could be employed. For example, if the State were to specify an effective date of 1/1/2020, the State could dictate that MineralTracker use available historical data from the effective date to the reporting date and NYMEX pricing from the reporting date forward (see example below).

<table>
<thead>
<tr>
<th>Historical - NYMEX as of March 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Jan 2020</td>
</tr>
<tr>
<td>Feb 2020</td>
</tr>
<tr>
<td>Mar 2020</td>
</tr>
<tr>
<td>Apr-Dec 2020</td>
</tr>
<tr>
<td>2021</td>
</tr>
<tr>
<td>2022</td>
</tr>
<tr>
<td>2023</td>
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<td>2024</td>
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<td>2028</td>
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<tr>
<td>2029</td>
</tr>
<tr>
<td>2030</td>
</tr>
<tr>
<td>2031</td>
</tr>
</tbody>
</table>
• Alternatively, a “flat” pricing schedule may be employed using a single price for oil and a single price for natural gas for all forward-looking cash flow projections.
• The projected commodity pricing will have a significant impact on the overall valuation of the State’s mineral assets.

In the oil and gas industry, standardized reporting and industry analysis typically use a 10% discount rate on projects’ future cash flows. This standardized discount rate also appears in other calculations where a quick, rough estimate of the present value of a project’s cash flow is needed.

**Net Present Value Discounting Rates**: the various discounting rates employed in the net present value calculations applied to the forecasted cash flows.

• Variable discounting rates are applied to account for increasing risk factors associated with various reserve categories.
• Mineral Tracker had indicated typical fair market valuation discounting rates as follows:
  a) Proved Developed Producing (PDP) – 15.0%
  b) Proved Developed Shut-In (PDSI) – 17.5%
  c) Proved Developed Non-Producing (PDNP) – 20.0%
  d) Proved Undeveloped (PUD) – 25.0%
  e) Probable Undeveloped (PROB) – 30.0%
  f) Possible Undeveloped (POSS) – 35.0%

Lands managed by the Board are different than privately held minerals in that they are held generationally and for the public good. Additionally, the minerals managed spread across the state, thus its overall risk profile is different than a typical mineral owner. These factors argue for a lower discount rate to be applied when valuing minerals managed by the Board.

The Department consulted with Mineral Tracker and the US Department of the Interior’s Division of Minerals Evaluation during the process of drafting a proposed the proposed policies. The Board will need to adopt an Effective Date and Discount Rate Policy. Attached is a recommended policy.

The Commissioner is seeking Board feedback prior to the June 25, 2020, Board meeting.

The Mineral Valuation Policy was provided to the Board and is available at the Department upon request.

**SURFACE**

**Wetland Restoration Project, also known as the Leeson In-Lieu Fee Mitigation Site (Mountrail County: SW¼-36-157-88)**

**Project Objectives and Location**
Ducks Unlimited, Inc. (DU) is proposing to include a tract of state owned School Trust Land (Trust Land) in their proposed wetland restoration project known as the Leeson In-lieu Fee Mitigation Project (LMP) which will establish wetland mitigation credits in the Missouri River Basin Northern Zone Service Area (see Figure 1 Project Location and Service Area). Objectives to achieve high quality wetland mitigation credits consist of restoring and enhancing wetland hydrology, re-establishing native wetland and upland vegetation communities, and providing long-term management and site protection to ensure the wetlands and adjacent uplands function individually and collectively as healthy, sustainable resources. In addition to restoring wetland hydrology and water quality within the watershed, the proposed LMP also presents the opportunity to reestablish
a portion of the adjacent upland grass community which will provide additional habitat and connectivity to adjacent areas that consist of several permanently protected state and federally owned properties. This will create an ecologically valuable patch of habitat and connectivity (see Figure 2 Additive Conservation Value).

The proposed LMP area is located approximately 4 miles north and 12 miles west of Berthold, North Dakota, within the Missouri River Basin Northern Zone Service Area. The proposed LMP area consists of approximately 40 acres of private land and approximately 50 acres of Trust Land that together will consist of approximately 90 acres located within the W½, Section 36, T157N, R88W, Mountrail County (see figure 3 Land Ownership). The private land is located in the S½NW¼ of the section and is characterized by mostly grassland with two drained wetlands in an area of a field that is unsuitable for farming. The grassland portion of the private property is currently not being utilized for grazing or haying. The remainder of the private property consists of a minimal amount of property which drains a wetland basin running west to east into a larger co-owned basin. This basin also contains a drain on the neighboring Trust Land which effectively drains the entire wetland. The 50 acres of Trust Land is located directly south of the private property in the N½SW¼ of the section. The Trust Land is characterized by native grasslands and wetlands used for cattle grazing. The three drained wetland basins are in the NW corner of the SW¼ (see Figure 4 Project Boundary). It is believed these wetlands were drained prior to 1950.

Restoration Design & Credit Determination

The primary source of water for the wetlands will be surface water runoff, which is typical of the Prairie Pothole Region. Construction of the project will be completed by a contractor and a DU construction manager. It is likely the project will be constructed in phases, with the private land portion considered Phase 1 and the Trust Land portion being Phase 2. Constructed ditch plugs, embankments, excavations, and fill areas will be used to raise the outlet elevations to historical wetland and overflow elevations and will have gradual slopes to minimize erosion due to moving water and will be protected with erosion control materials. Fill material would be sourced locally (see Figure 5 Design Concept). The cultivated upland areas on the private land will be seeded to native grasses and forbs representative of the local grassland community. Shallow wetland plant communities and deeper areas of the wetlands will rely on revegetation by the existing wetland seed bank. Credits are determined using the mitigation ratios from the Wetland Mitigation Banking In North Dakota Interagency Guidance for Mitigation Bank Sponsors Document. It is anticipated that the project should produce approximately 29 wetland credits. Credits would be released based on project milestones and monitoring results.

Monitoring & Management

DU will monitor the site for a period of five years starting with the first growing season after construction completion. Monitoring will consist of delineating wetland boundaries based on hydrology and vegetation criteria in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0). DU will implement maintenance activities to maintain the success and viability of the wetland mitigation site which may include haying, grazing, weed control, planting/seeding, prescribed fire, hydrological modifications, or other management activities as needed. Monitoring and management activities will be reported in an annual report given to the United States Army Corps of Engineers (USACE) to determine the status of achieving performance standards.

Long-term management and maintenance would be provided by DU, its heirs, assigns or successors, unless the easement lands are transferred to a state or federal resource management agency or this responsibility is contractually conveyed to another entity, subject to approval by USACE. DU will be responsible for a long-term management endowment fund to include a minimum of $100,000 to be held by DU in an interest-bearing account dedicated for long term management of the LMP as required by USACE. Long-term management fund amount (05/28/20)
are determined by estimating the average annual cost for long term management activities. Yearly control of noxious weeds and other minor items was estimated at $1,000. Periodic erosion control or various repairs due to flood events was estimated at $60,000 every 20 years, at a rate of $3,000 per year. A capitalization rate of 4% and average annual cost of $4,000 equates to the $100,000 endowment amount.

**Project Site Agreements**

DU and the private landowner have signed a Site-Specific Agreement (SSA) for the approximate 40-acre private land mitigation parcel. As part of the SSA, the private landowner agreed to sign a conservation easement. The easement is a combination wetland and grassland conservation easement with the United States Fish and Wildlife Service (USFWS). In the event the USFWS declines to accept an easement, the private landowner agreed to a 99 year DU easement to protect the private land site.

The approximate 50-acre Trust Land portion of the LMP would be protected by a 99 year Mitigation Easement Agreement (Easement Agreement (see Attachment 1 – Mitigation Easement Agreement)), having an Initial Period of five (5) years to study project feasibility. The compensation rate for the proposed Easement Agreement is based on a per-acre payment of $1,300 for approximately 15 restored wetland acres (based on the Mountrail County cropland rental value from the 2020 County Rents and Prices Survey - $1,282), which is a payment of $19,500.00 for the restored wetland acres. The remaining amount of $75,000.00 is equivalent to 10% of the estimated potential revenues from the wetland credits developed on Trust Land. The compensation rate negotiated for the Easement Agreement is consistent with what the private landowner will be paid for the Project.

DU has been investigating the feasibility of this proposed project and working with the private landowner and the Department of Trust Lands since 2014. This proposed project has been developed under the DU North Dakota In-Lieu Fee Mitigation Instrument. The Easement Agreement is based on easement templates used by the Department with guidance provided by the Attorney General’s Office and the Office of Risk Management. It allows for the restoration, maintenance, and protection of wetlands, while allowing for potential future mineral development and agricultural use of Trust Lands.

**Motion:** The Board approves the Mitigation Easement Agreement with Ducks Unlimited, Inc., for the Leeson In-lieu Fee Mitigation site.

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent Baesler</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Treasurer Schmidt</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Attorney General Stenehjem</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Governor Burgum</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

The following items were presented to the Board and are available at the Department upon request: Figure 1. Project Location and Service Area, Figure 2. Additive Conservation Value, Figure 3. Land Ownership, Figure 4. Project Boundary, Figure 5. Design Concept, Attachment 1 – Mitigation Easement Agreement.

**North Dakota Game and Fish Department, N.D.C.C. ch. 15-09 Purchase Request (114 acres in the E½SW¼, E½W½SW¼ Section 16, Township 130 North, Range 50 West, Richland County)**

At the December 18, 2019 Board of University and School Lands' (Board) meeting, information was provided regarding the North Dakota Game and Fish Department's (NDGFD) application to...
purchase 114 acres for a shooting range and wildlife management area. The application was brought pursuant to N.D.C.C. ch. 15-09 which allows for the purchase of trust lands by public entities for public purposes. The application covers trust land in the E½SW¼, E½W½SW¼ Section 16, T130N, R50W, Richland County (map attached), along North Dakota State Highway 11, 2.25 miles west of Hankinson, North Dakota. Much of the trust land tract is herbaceous wetland with open water. There are approximately 40 acres of upland, much of which has saline soils not conducive to agricultural production.

Two appraisals were completed as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richland County Appraisal</td>
<td>$2,500.00/acre</td>
</tr>
<tr>
<td>RM Hoefs &amp; Associates, Inc. (Hoefs Appraisal)</td>
<td>$720.00/acre</td>
</tr>
</tbody>
</table>

The Richland County Appraisal was completed by the Richland County Tax Equalization Director and is comprised of four sales. All four sales were agricultural cropland sales which are not comparable to the trust land. The Richland County appraisal is an agricultural value appraisal which over-estimates the value of the trust land; the trust land’s overall utility for agricultural production is poor due to a high-water table, open water, and saline upland soils. The Richland County Appraisal did not consider the tract’s highest and best use.

The Hoefs Appraisal considers the trust lands’ highest and best use, which was determined to be recreation, wetland, and wildlife conservation land. The Hoefs Appraisal was completed by Rose M. Hoefs, a certified general appraiser, and is comprised of six sales. The Hoefs Appraisal discounts the sales because of the trust lands’ high percentage of herbaceous wetlands, reasoning the overall sales price would be discounted since it cannot be cropped and has limited use for livestock forage production. Overall, the water table and salinity of the soils create limitations on the use of the trust lands so it was also reasoned that the sales price would be discounted comparable to land encumbered with wetland easements. The Hoefs Appraisal is well-documented, complete, and is a more accurate reflection of the trust lands’ value.

N.D.C.C. § 15-09-04 states, in part:

The board of university and school lands may sell the property described in the application to the applicant at a price not less than the appraised value if the board concludes that the land described in the application is required for the purposes stated in such application and that a conveyance of the property is consistent with this title and the fiduciary responsibilities of the board.

Motion: The Board 1) approves the appraised value of E½SW¼, E½W½SW¼ Section 16, Township 130 North, Range 50 West, Richland County, for public purpose and at a total sales price of $82,000, plus appraisal ($3,800) and sales costs, including a Land Sale Fee for conveyance preparation and recording costs ($100 total), and advertising costs (amount to be determined); and 2) authorizes the Commissioner to advertise the proposed sale, conduct a public hearing, and refer the matter to the Board if needed, or complete the sale to NDGFD on the Board’s behalf.

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent Baesler</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasurer Schmidt</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney General Stenehjem</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governor Burgum</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Richland County Proposed 15-09 Sale Map was provided to the Board for reference and is available at the Department up on request.

(05/28/20)
INVESTMENTS

April Performance Report

Josh Kevan from RVK reviewed the performance of the Board of University and School Land’s (Board) investment program for the period ending April 30, 2020 and discuss current market conditions. The report to be reviewed is prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts’ investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report with a more comprehensive report available upon request.

The following items were provided to the Board for their review and are available at the Department upon request: Attachment 1: RVK April 2020 Board Report, Attachment 2: RVK 1st Quarter 2020 Permanent Trust Fund Performance Analysis Report, Attachment 3: RVK 1st Quarter 2020 Ultra-short Performance Report.

Opportunistic Investments

On April 30, 2020 the Board of University and School Lands’ approved an asset allocation to Opportunistic Investments within the broader Strategic Asset Allocation for the Permanent Trusts.

Dislocation and Distressed Fund Strategy: Due to the current COVID-19 pandemic and the related economic crisis there are currently opportunities in the credit (non-Treasury) bond market for liquid asset purchases at favorable market values (i.e., “dislocated” prices). As the economic recession unfolds there will be further opportunities in the “distressed” credit market as well – where managers that focus on credit and asset-based underwriting can find value in rescue lending, corporate restructuring and special situation lending. These strategies have limited terms from 4 to 7 years and may or may not employ leverage (borrowing to invest and thereby increase returns).

RVK began the manager search by compiling a list of all managers that are currently raising dislocated credit funds and distressed credit funds or both. After reviewing product details and holding discussions with RVK, the list of managers was reduced down to three based upon strategy, leverage, track record, etc. During early-May, RVK and Department of Trust Lands (Department) staff interviewed the three managers (Apollo, KKR and Varde) with the team recommending Varde to the Board.

Varde is an investment manager founded in 1993 and headquartered in Minneapolis and New York, with offices throughout Europe and Asia. They have over $12 Billion in assets under management and over 26 years of credit investment experience, including distressed and dislocated credit. Varde has over 90 investment professionals with expertise in various areas of the credit market. Varde plans to invest the Fund methodically throughout multiple stages of the recession during the Fund’s 18-month investment period and will not move into opportunities that do not yet present an attractive risk-adjusted return.

Varde’s experience suggests that major credit cycles play out in several stages. Varde believes this will present opportunities that offer private equity-like returns for credit risk. Therefore, Varde’s has chosen a duel strategy of investing in both dislocated credit and distressed credit. Varde views the current stage of the recession as favorable to dislocated high-quality credits. Varde’s belief is that distressed credit will not become attractive until the economy enters the later stages of the recession when there is more visibility as to the depths of the economic damage and thereby to corporate revenues and underlying asset values.
Motion: The Board approves a $100 Million investment in The Varde Dislocation Fund L.P. as part of the Opportunistic Investment allocation, subject to final review and approval of all legal documents by the Office of the Attorney General.

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent Baesler</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasurer Schmidt</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Attorney General Stenehjem</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Governor Burgum</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The following items were provided to the Board are available at the Department upon request: Attachment 1: RVK Recommendation Memo and Attachment 2: The Varde Dislocation Fund Presentation.

ADJOURN

There being no further business, the meeting was adjourned at 10:15 AM.

__________________________________________________________
Doug Burgum, Chairman
Board of University and School Lands

__________________________________________________________
Jodi Smith, Secretary
Board of University and School Lands
RE: May Shut-In Report
(No Action Requested)

Granted to: Luff Exploration Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: L– Bank of North Dakota
Lease: OG-12-01019;OG-12-01020;OG-12-01021

Granted to: Luff Exploration Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: A – Common Schools
Lease: OG-13-00008

Granted to: Marathon Oil Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: R – Sovereign Lands
Lease: OG-09-00949

Granted to: Marathon Oil Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: R – Sovereign Lands
Lease: OG-05-00905

Granted to: Marathon Oil Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: R – Sovereign Lands
Lease: OG-00906

Granted to: Marathon Oil Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: R – Sovereign Lands
Lease: OG-10-00747

Granted to: Marathon Oil Company
For the Purpose of: COVID-19
Date Issued: 05/14/2020
Application Fee: $10.00
Trust: R – Sovereign Lands
Lease: OG-10-00748
**MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS**  
June 25, 2020

**RE:** May Encumbrances Report  
No Action Requested

<table>
<thead>
<tr>
<th>Granted to</th>
<th>EQUINOR PIPELINES LLC, WILLISTON-ND</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the Purpose of:</td>
<td>Pipeline-Multiple Pipelines</td>
</tr>
<tr>
<td>Right-of-Way Number:</td>
<td>RW0008466</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>5/29/2020</td>
</tr>
<tr>
<td>Application Fee:</td>
<td>$100.00</td>
</tr>
<tr>
<td>Right-of-way Income:</td>
<td>$9,900.00</td>
</tr>
<tr>
<td>Damage Payment to Lessee:</td>
<td>$24.90</td>
</tr>
<tr>
<td>Trust:</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Length (Rods):</td>
<td>33.20</td>
</tr>
<tr>
<td>Area (Acres):</td>
<td>0.63</td>
</tr>
<tr>
<td>Legal Description:</td>
<td>WIL-155-100-36-NW4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Granted to</th>
<th>LOWER YELLOWSTONE RURAL ELECTRIC INC, SIDNEY-MT</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the Purpose of:</td>
<td>Electric-Transmission Line</td>
</tr>
<tr>
<td>Right-of-Way Number:</td>
<td>RW0008633</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>5/18/2020</td>
</tr>
<tr>
<td>Application Fee:</td>
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<tr>
<td>Right-of-way Income:</td>
<td>$12,160.40</td>
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<td>Damage Payment to Lessee:</td>
<td>$412.47</td>
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<tr>
<td>Trust:</td>
<td>A – Common Schools</td>
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<tr>
<td>Length (Rods):</td>
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<td>Area (Acres):</td>
<td>4.34</td>
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<td>Legal Description:</td>
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</table>

<table>
<thead>
<tr>
<th>Granted to</th>
<th>OE2 NORTH LLC, DENVER-CO</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the Purpose of:</td>
<td>Pipeline-Gas Gathering Pipeline</td>
</tr>
<tr>
<td>Right-of-Way Number:</td>
<td>RW0008664</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>5/19/2020</td>
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<tr>
<td>Application Fee:</td>
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<tr>
<td>Right-of-way Income:</td>
<td>$112,000.00</td>
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<td>Damage Payment to Lessee:</td>
<td>$320.00</td>
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<td>Trust:</td>
<td>A – Common Schools</td>
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<tr>
<td>Length (Rods):</td>
<td>320.0</td>
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<td>Area (Acres):</td>
<td>4.0</td>
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<tr>
<td>Legal Description:</td>
<td>WIL-156-97-36-SE4</td>
</tr>
<tr>
<td>Granted to:</td>
<td>CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>For the Purpose of:</td>
<td>Temporary Water Layflat Line</td>
</tr>
<tr>
<td>Right-of-Way Number:</td>
<td>RW0008700</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>5/29/2020</td>
</tr>
<tr>
<td>Application Fee:</td>
<td>$100.00</td>
</tr>
<tr>
<td>Right-of-way Income:</td>
<td>$100.00</td>
</tr>
<tr>
<td>Damage Payment to Lessee:</td>
<td>N/A</td>
</tr>
<tr>
<td>Trust:</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Length (Rods):</td>
<td>6.06</td>
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<tr>
<td>Area (Acres):</td>
<td>N/A</td>
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<tr>
<td>Legal Description:</td>
<td>MOU-150-92-10-S2SW4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Granted to:</th>
<th>CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the Purpose of:</td>
<td>Temporary Water Layflat Line</td>
</tr>
<tr>
<td>Right-of-Way Number:</td>
<td>RW0008730</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>5/29/2020</td>
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<tr>
<td>Application Fee:</td>
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<tr>
<td>Right-of-way Income:</td>
<td>$2,640.00</td>
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<tr>
<td>Damage Payment to Lessee:</td>
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<tr>
<td>Trust:</td>
<td>A – Common Schools</td>
</tr>
<tr>
<td>Length (Rods):</td>
<td>160.0</td>
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<tr>
<td>Area (Acres):</td>
<td>N/A</td>
</tr>
<tr>
<td>Legal Description:</td>
<td>MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4</td>
</tr>
</tbody>
</table>
RE:  May 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 May 2020, the Division received 55 holder reports with a property value of $527,441 and paid 501 claims with a total value of $364,778.
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS
June 25, 2020

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

The Energy Infrastructure and Impact Office (EIIO) is a division within the Department of Trust Lands (Department). EIIO provides financial assistance to local units of government that are impacted by oil and gas activity. In turn, EIIO receives a portion of the Oil and Gas Gross Production Tax. The office has been a part of the Department since 1977 and was formally known as the Energy Development Impact Office created under N.D.C.C. ch. 57-62. Over the course of the past 40 years, EIIO has dispersed over $624 million in funding.

The Oil and Gas Impact Grant Fund currently has 28 grants with a balance of $6,846,538.19 as of June 5, 2020. The following shows grant activity for the last five months:

<table>
<thead>
<tr>
<th>Oil and Gas Impact Grant Fund</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/2019</td>
<td>30</td>
<td>$14,388,087.28</td>
</tr>
<tr>
<td>2/13/2020</td>
<td>21</td>
<td>$7,207,988.75</td>
</tr>
<tr>
<td>5/13/2020</td>
<td>28</td>
<td>$7,049,556.08</td>
</tr>
<tr>
<td>6/5/2020</td>
<td>28</td>
<td>$6,846,538.19</td>
</tr>
</tbody>
</table>

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 $2,394,929.22 as of June 5, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last five months:

<table>
<thead>
<tr>
<th>Energy Impact Fund</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/2019</td>
<td>4</td>
<td>$4,108,325.39</td>
</tr>
<tr>
<td>2/13/2020</td>
<td>3</td>
<td>$3,447,448.60</td>
</tr>
<tr>
<td>5/13/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
</tr>
<tr>
<td>6/5/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
</tr>
</tbody>
</table>

The Energy Infrastructure and Impact Office is currently managing 31 grants for a total of $9,241,467.41. The following shows grant activity for the last four months:

<table>
<thead>
<tr>
<th>Oil and Gas Impact Grant Fund</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
<th>Energy Impact Fund</th>
<th>Grants with balances</th>
<th>Current Balance Obligated to Grants</th>
<th>Total between both Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/13/2020</td>
<td>21</td>
<td>$7,207,988.75</td>
<td>2/13/2020</td>
<td>3</td>
<td>$3,447,448.60</td>
<td>$10,655,437.35</td>
</tr>
<tr>
<td>5/13/2020</td>
<td>31</td>
<td>$7,049,556.08</td>
<td>5/13/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
<td>$9,444,485.30</td>
</tr>
<tr>
<td>6/5/2020</td>
<td>31</td>
<td>$6,846,538.19</td>
<td>6/5/2020</td>
<td>3</td>
<td>$2,394,929.22</td>
<td>$9,241,467.41</td>
</tr>
</tbody>
</table>
EIIO emailed grantees with a current balance reminding them to submit their biannual progress report due on June 20, 2020 per N.D.C.C. § 85-02-03-06.

**Progress report.**
1. The grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.

2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.

3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05
Board of University and School Lands
Comparative Financial Position (Unaudited)

Schedule of Net Assets

<table>
<thead>
<tr>
<th>Assets by Trust:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Schools</td>
<td>$4,179,314,796</td>
<td>$4,455,951,771</td>
</tr>
<tr>
<td>North Dakota State University</td>
<td>63,360,895</td>
<td>70,436,709</td>
</tr>
<tr>
<td>School for the Blind</td>
<td>11,353,885</td>
<td>12,169,286</td>
</tr>
<tr>
<td>School for the Deaf</td>
<td>18,593,981</td>
<td>20,965,315</td>
</tr>
<tr>
<td>State Hospital</td>
<td>12,567,926</td>
<td>14,453,476</td>
</tr>
<tr>
<td>Ellendale *</td>
<td>20,255,042</td>
<td>21,351,028</td>
</tr>
<tr>
<td>Valley City State University</td>
<td>11,327,728</td>
<td>12,665,081</td>
</tr>
<tr>
<td>Mayville State University</td>
<td>7,281,895</td>
<td>7,687,687</td>
</tr>
<tr>
<td>Youth Correctional Center</td>
<td>21,070,313</td>
<td>23,360,693</td>
</tr>
<tr>
<td>State College of Science</td>
<td>16,354,640</td>
<td>16,954,722</td>
</tr>
<tr>
<td>School of Mines **</td>
<td>19,414,895</td>
<td>21,080,907</td>
</tr>
<tr>
<td>Veterans Home</td>
<td>4,654,003</td>
<td>5,325,599</td>
</tr>
<tr>
<td>University of North Dakota</td>
<td>30,618,420</td>
<td>33,165,544</td>
</tr>
<tr>
<td>Capitol Building</td>
<td>5,285,575</td>
<td>6,717,792</td>
</tr>
<tr>
<td>Strategic Investment and Improvements</td>
<td>748,789,272</td>
<td>930,288,010</td>
</tr>
<tr>
<td>Coal Development</td>
<td>71,394,540</td>
<td>70,844,570</td>
</tr>
<tr>
<td>Indian Cultural Education Trust</td>
<td>1,104,978</td>
<td>1,254,363</td>
</tr>
<tr>
<td>Theodore Roosevelt Presidential Library</td>
<td>13,506,566</td>
<td>-</td>
</tr>
<tr>
<td>** Total</td>
<td>$5,256,249,350</td>
<td>$5,724,672,553</td>
</tr>
</tbody>
</table>

Assets by Type:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$113,027,624</td>
<td>$39,056,844</td>
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<tr>
<td>Receivables</td>
<td>11,900,064</td>
<td>15,925,236</td>
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<tr>
<td>Investments ***</td>
<td>5,057,541,990</td>
<td>5,458,884,844</td>
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<tr>
<td>Office Building (Net of Depreciation)</td>
<td>386,133</td>
<td>441,971</td>
</tr>
<tr>
<td>Farm Loans</td>
<td>9,324,943</td>
<td>9,319,890</td>
</tr>
<tr>
<td>Energy Construction Loans</td>
<td>926,005</td>
<td>987,731</td>
</tr>
<tr>
<td>Energy Development Impact Loans</td>
<td>10,722,331</td>
<td>11,446,733</td>
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<tr>
<td>School Construction Loans (Coal)</td>
<td>41,391,562</td>
<td>44,670,542</td>
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<tr>
<td>Due to/from Other Trusts and Agencies</td>
<td>11,028,698</td>
<td>143,938,762</td>
</tr>
<tr>
<td>** Total</td>
<td>$5,256,249,350</td>
<td>$5,724,672,553</td>
</tr>
</tbody>
</table>

* Ellendale Trust

The following entities are equal beneficiaries of the Ellendale Trust:

- Dickinson State University
- Minot State University
- Dakota College at Bottineau
- 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
## Combined Permanent Trusts

### Balance Sheet

<table>
<thead>
<tr>
<th>Assets:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$68,327,859</td>
<td>$34,916,543</td>
</tr>
<tr>
<td>Interest Receivable</td>
<td>8,179,240</td>
<td>10,985,847</td>
</tr>
<tr>
<td>Investments</td>
<td>4,334,638,912</td>
<td>4,660,975,112</td>
</tr>
<tr>
<td>Farm Loans</td>
<td>9,324,943</td>
<td>9,319,890</td>
</tr>
<tr>
<td>Energy Construction Loans</td>
<td>926,005</td>
<td>987,731</td>
</tr>
<tr>
<td>Due from Other Agencies</td>
<td>10,948,501</td>
<td>15,465,995</td>
</tr>
<tr>
<td>Office Building (Net of Depreciation)</td>
<td>386,133</td>
<td>441,971</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$4,432,731,593</strong></td>
<td><strong>$4,733,093,089</strong></td>
</tr>
</tbody>
</table>

| Liabilities:                 |                  |                  |
| Unclaimed Property Claimant Liability | $16,551,604   | $17,510,901      |
| Due to Other Trusts          | -                | -                |
| Due to Other Funds           | 11,567           | 14,371           |
| Accounts Payable             | -                | -                |
| **Total Liabilities**        | **16,563,171**   | **17,525,272**   |

| Equity:                      |                  |                  |
| Fund Balance                 | 4,919,177,984    | 4,571,686,280    |
| Net Income/(Loss)            | (503,009,562)    | 143,881,537      |
| **Total Liabilities and Equity** | **4,432,731,593** | **$4,733,093,089** |

### Income Statement

<table>
<thead>
<tr>
<th>Income:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment Income</td>
<td>$87,284,276</td>
<td>$99,509,725</td>
</tr>
<tr>
<td>Realized Gain/(Loss)</td>
<td>(56,705,019)</td>
<td>(24,121,804)</td>
</tr>
<tr>
<td>Unrealized Gain/(Loss)</td>
<td>(571,416,730)</td>
<td>(1,646,649)</td>
</tr>
<tr>
<td>Royalties - Oil and Gas</td>
<td>116,125,962</td>
<td>117,009,739</td>
</tr>
<tr>
<td>Royalties - Coal</td>
<td>383,199</td>
<td>350,060</td>
</tr>
<tr>
<td>Royalties - Aggregate</td>
<td>184,589</td>
<td>33,970</td>
</tr>
<tr>
<td>Bonuses - Oil and Gas</td>
<td>8,407,997</td>
<td>674,167</td>
</tr>
<tr>
<td>Bonuses - Coal</td>
<td>24,000</td>
<td>-</td>
</tr>
<tr>
<td>Rents - Surface</td>
<td>12,469,530</td>
<td>12,175,590</td>
</tr>
<tr>
<td>Rents - Mineral</td>
<td>141,832</td>
<td>31,597</td>
</tr>
<tr>
<td>Rents - Coal</td>
<td>42,668</td>
<td>54,436</td>
</tr>
<tr>
<td>Rents - Office Building</td>
<td>68,276</td>
<td>49,320</td>
</tr>
<tr>
<td>Gain/Loss on Sale of Land - OREO</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sale of Capital Asset</td>
<td>25,000</td>
<td>-</td>
</tr>
<tr>
<td>Oil Extraction Tax Income</td>
<td>73,660,193</td>
<td>72,141,237</td>
</tr>
<tr>
<td>Unclaimed Property Income</td>
<td>8,979,489</td>
<td>9,467,496</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>(320,324,738)</strong></td>
<td><strong>285,728,884</strong></td>
</tr>
</tbody>
</table>

### Expenses and Transfers:

<table>
<thead>
<tr>
<th>Expenses and Transfers:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment Expense</td>
<td>5,942,235</td>
<td>6,898,697</td>
</tr>
<tr>
<td>In-Lieu and 5% County Payments</td>
<td>248,418</td>
<td>244,396</td>
</tr>
<tr>
<td>Administrative Expense</td>
<td>2,322,347</td>
<td>2,191,278</td>
</tr>
<tr>
<td>Operating Expense - Building</td>
<td>286,824</td>
<td>109,300</td>
</tr>
<tr>
<td>Transfers to Beneficiaries</td>
<td>173,885,000</td>
<td>132,403,676</td>
</tr>
<tr>
<td><strong>Total Expense and Transfers</strong></td>
<td><strong>182,684,824</strong></td>
<td><strong>141,847,347</strong></td>
</tr>
<tr>
<td><strong>Net Income/(Loss)</strong></td>
<td><strong>($503,009,562)</strong></td>
<td><strong>$143,881,537</strong></td>
</tr>
</tbody>
</table>
# Capitol Building Trust

## Balance Sheet

<table>
<thead>
<tr>
<th>Assets</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$166,131</td>
<td>$141,290</td>
</tr>
<tr>
<td>Interest Receivable</td>
<td>36,381</td>
<td>47,008</td>
</tr>
<tr>
<td>Investments</td>
<td>5,083,062</td>
<td>6,529,494</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$5,285,574</strong></td>
<td><strong>$6,717,792</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Due to Other Trusts and Agencies</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

## Equity

<table>
<thead>
<tr>
<th>Fund Balance</th>
<th>6,548,608</th>
<th>4,723,483</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Income</td>
<td>(1,263,034)</td>
<td>1,994,309</td>
</tr>
<tr>
<td><strong>Total Liabilities and Equity</strong></td>
<td><strong>$5,285,574</strong></td>
<td><strong>$6,717,792</strong></td>
</tr>
</tbody>
</table>

## Income Statement

<table>
<thead>
<tr>
<th>Income</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment Income</td>
<td>$117,910</td>
<td>$107,561</td>
</tr>
<tr>
<td>Realized Gain/(Loss)</td>
<td>22,926</td>
<td>10,341</td>
</tr>
<tr>
<td>Unrealized Gain/(Loss)</td>
<td>(52,266)</td>
<td>41,582</td>
</tr>
<tr>
<td>Rents - Surface</td>
<td>158,525</td>
<td>145,432</td>
</tr>
<tr>
<td>Rents - Mineral</td>
<td>2,002</td>
<td>640</td>
</tr>
<tr>
<td>Royalties - Oil and Gas</td>
<td>834,465</td>
<td>638,881</td>
</tr>
<tr>
<td>Bonuses - Oil and Gas</td>
<td>802</td>
<td>-</td>
</tr>
<tr>
<td>Royalties - Coal</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Royalties - Aggregate</td>
<td>-</td>
<td>1,070,995</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>1,084,364</strong></td>
<td><strong>2,015,432</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses and Transfers:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment Expense</td>
<td>2,735</td>
<td>1,448</td>
</tr>
<tr>
<td>In-Lieu and 5% County Payments</td>
<td>3,398</td>
<td>3,383</td>
</tr>
<tr>
<td>Administrative Expense</td>
<td>16,905</td>
<td>16,292</td>
</tr>
<tr>
<td>Transfers to Facility Management</td>
<td>2,324,360</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Expense and Transfers</strong></td>
<td><strong>2,347,398</strong></td>
<td><strong>21,123</strong></td>
</tr>
</tbody>
</table>

| Net Income/(Loss)       | ($1,263,034) | $1,994,309     |
## Coal Development Trust

### March 31, 2020 | March 31, 2019

#### Balance Sheet

**Assets:**
- Cash: $220,560 | $113,064
- Interest Receivable: 740,539 | 729,390
- Investments: 18,239,035 | 13,810,358
- Coal Impact Loans: 10,722,331 | 11,446,733
- School Construction Loans: 41,391,562 | 44,670,542
- Due from other Trusts and Agencies: 268,373 | 248,268

**Total Assets:** $71,582,400 | $71,018,355

**Liabilities:**
- Due to Other Trusts and Agencies: $187,861 | $173,788

**Equity:**
- Fund Balance: 70,296,353 | 69,591,292
- Net Income: 1,098,186 | 1,253,275

**Total Liabilities and Equity:** $71,582,400 | $71,018,355

#### Income Statement

**Income:**
- Investment Income: $322,485 | $223,714
- Interest on School Construction Loans: 622,544 | 590,303
- Realized Gain/(Loss): 65,039 | 24,241
- Unrealized Gain/(Loss): (179,093) | 100,346
- Coal Severance Tax Income: 360,755 | 372,981

**Total Income:** 1,191,730 | 1,311,585

**Expenses and Transfers:**
- Investment: 8,419 | 3,602
- Administrative: 2,647 | 2,036
- Transfers to General Fund: 82,478 | 52,672

**Total Expense and Transfers:** 93,544 | 58,310

**Net Income/(Loss):** $1,098,186 | $1,253,275
### Strategic Investment and Improvements Fund

#### March 31, 2020

<table>
<thead>
<tr>
<th>Assets:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$44,176,295</td>
<td>$3,885,479</td>
</tr>
<tr>
<td>Interest Receivable</td>
<td>2,946,833</td>
<td>4,160,974</td>
</tr>
<tr>
<td>Investments</td>
<td>701,666,144</td>
<td>793,843,271</td>
</tr>
<tr>
<td>Due from other Trusts or Agencies</td>
<td>-</td>
<td>128,398,286</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$748,789,272</strong></td>
<td><strong>$930,288,010</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equity:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Balance</td>
<td>1,134,326,018</td>
<td>354,701,097</td>
</tr>
<tr>
<td>Net Income</td>
<td>(385,536,746)</td>
<td>575,586,913</td>
</tr>
<tr>
<td><strong>Total Liabilities and Equity</strong></td>
<td><strong>$748,789,272</strong></td>
<td><strong>$930,288,010</strong></td>
</tr>
</tbody>
</table>

#### March 31, 2020

<table>
<thead>
<tr>
<th>Income Statement</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td>$12,707,345</td>
<td>$7,646,324</td>
</tr>
<tr>
<td>Realized Gain/(Loss)</td>
<td>2,433,995</td>
<td>1,006,230</td>
</tr>
<tr>
<td>Unrealized Gain/(Loss)</td>
<td>(6,809,442)</td>
<td>4,108,297</td>
</tr>
<tr>
<td>Interest on Fuel Prod Facility</td>
<td>-</td>
<td>100,445</td>
</tr>
<tr>
<td>Royalties - Oil and Gas</td>
<td>69,516,530</td>
<td>76,110,923</td>
</tr>
<tr>
<td>Bonuses - Oil and Gas</td>
<td>1,166,894</td>
<td>2,247,413</td>
</tr>
<tr>
<td>Royalties - Coal</td>
<td>323,064</td>
<td>384,441</td>
</tr>
<tr>
<td>Rents - Mineral</td>
<td>54,943</td>
<td>41,083</td>
</tr>
<tr>
<td>Tax Income - Oil Extraction &amp; Production Distribution</td>
<td>-</td>
<td>613,224,139</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td><strong>79,393,329</strong></td>
<td><strong>704,869,295</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses and Transfers:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative</td>
<td>1,146,599</td>
<td>667,764</td>
</tr>
<tr>
<td>Investment Expense</td>
<td>287,627</td>
<td>95,148</td>
</tr>
<tr>
<td>Transfers to General Fund</td>
<td>382,200,000</td>
<td>124,000,000</td>
</tr>
<tr>
<td>Transfer to State Highway Patrol</td>
<td></td>
<td>358,000</td>
</tr>
<tr>
<td>Transfer to Commerce Department</td>
<td>3,000,000</td>
<td>4,000,000</td>
</tr>
<tr>
<td>Transfer to Adjutant General</td>
<td>2,502,253</td>
<td>300,000</td>
</tr>
<tr>
<td>Transfer to ND Department of Health</td>
<td></td>
<td>75,736</td>
</tr>
<tr>
<td>Transfer to Energy Infrastructure&amp; Impact Office</td>
<td>2,000,000</td>
<td></td>
</tr>
<tr>
<td>Transfer to Aeronautics Commission</td>
<td>20,000,000</td>
<td></td>
</tr>
<tr>
<td>Transfer from ND Parks &amp; Recreation</td>
<td>1,877,500</td>
<td></td>
</tr>
<tr>
<td>Transfer to Information Technology Department</td>
<td>25,150,000</td>
<td></td>
</tr>
<tr>
<td>Transfer to Industrial Commission</td>
<td>270,000</td>
<td></td>
</tr>
<tr>
<td>Transfer to Bank of North Dakota</td>
<td>25,137,707</td>
<td></td>
</tr>
<tr>
<td>Transfer to ND Department of Corrections</td>
<td>1,218,000</td>
<td></td>
</tr>
<tr>
<td>Transfer to Office of Management &amp; Budget</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Transfer to Agencies with Litigation Pool</td>
<td>328,201</td>
<td></td>
</tr>
<tr>
<td>Transfer from NDSU - Vet Diag Lab (HB 1008)</td>
<td></td>
<td>(214,266)</td>
</tr>
<tr>
<td>Transfer from Public Service Commission</td>
<td>(52,818)</td>
<td></td>
</tr>
<tr>
<td>Transfer from Department of Health Department</td>
<td>(67,310)</td>
<td></td>
</tr>
<tr>
<td>Transfer from Attorney General Office</td>
<td>(6,387)</td>
<td></td>
</tr>
<tr>
<td>Transfer from State Highway Patrol</td>
<td>(49,403)</td>
<td></td>
</tr>
<tr>
<td>Transfer from Commerce Department</td>
<td>(111,895)</td>
<td></td>
</tr>
<tr>
<td><strong>Total Expense and Transfers</strong></td>
<td><strong>464,930,075</strong></td>
<td><strong>129,282,382</strong></td>
</tr>
</tbody>
</table>
As of March 31, 2020 the SIIF had a fund balance of $748,789,272. The fund balance is made up of two parts. The committed fund balance is that portion of the fund that has either been set aside until potential title disputes related to certain riverbed leases have been resolved or appropriated by the legislature. The uncommitted fund balance is the portion of the fund that is unencumbered, and is thus available to be spent or dedicate to other programs as the legislature deems appropriate. The uncommitted fund balance was $68,208,764 as of March 31, 2020.
<table>
<thead>
<tr>
<th>Assets:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$3,331</td>
<td>$467</td>
</tr>
<tr>
<td>Interest receivable</td>
<td>1,240</td>
<td>2,016</td>
</tr>
<tr>
<td>Investments</td>
<td>1,100,407</td>
<td>1,251,880</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>1,104,978</strong></td>
<td><strong>1,254,363</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts payable</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net Position:</th>
<th>March 31, 2020</th>
<th>March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net position restricted</td>
<td>1,104,978</td>
<td>1,254,363</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>1,104,978</strong></td>
<td><strong>1,254,363</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Changes in Fiduciary Net Position</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Additions:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Donations</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Contributions</strong></td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td>Investment Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net change in fair value of investments</td>
<td>(158,911)</td>
<td>(7,703)</td>
</tr>
<tr>
<td>Interest</td>
<td>22,271</td>
<td>27,154</td>
</tr>
<tr>
<td>Less investment expense</td>
<td>(1,508)</td>
<td>(1,869)</td>
</tr>
<tr>
<td><strong>Net Investment Income</strong></td>
<td>(138,148)</td>
<td>17,582</td>
</tr>
<tr>
<td>Miscellaneous Income</td>
<td>3,066</td>
<td>2,954</td>
</tr>
<tr>
<td><strong>Total Additions</strong></td>
<td>(135,082)</td>
<td>20,536</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deductions:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments in accordance with Trust agreement</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Administrative expenses</td>
<td>2,167</td>
<td>750</td>
</tr>
<tr>
<td><strong>Total Deductions</strong></td>
<td>2,167</td>
<td>750</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Change in net position held in Trust for:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Private-Purpose</td>
<td>(137,249)</td>
<td>19,786</td>
</tr>
<tr>
<td><strong>Total Change in Net Position</strong></td>
<td>(137,249)</td>
<td>19,786</td>
</tr>
<tr>
<td>Net Position - Beginning of Year</td>
<td>1,285,265</td>
<td>1,269,707</td>
</tr>
<tr>
<td>Net Position - January 31, 2020</td>
<td>$1,148,016</td>
<td>$1,289,493</td>
</tr>
</tbody>
</table>
### Theodore Roosevelt Presidential Library

#### March 31, 2020

<table>
<thead>
<tr>
<th><strong>Fiduciary Net Position</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets:</strong></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>$133,448</td>
</tr>
<tr>
<td>Interest receivable</td>
<td>(4,170)</td>
</tr>
<tr>
<td>Investments</td>
<td>13,377,603</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>13,506,881</td>
</tr>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>315</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td>315</td>
</tr>
<tr>
<td><strong>Net Position:</strong></td>
<td></td>
</tr>
<tr>
<td>Net position restricted</td>
<td>13,506,566</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td>$13,506,881</td>
</tr>
</tbody>
</table>

#### Changes in Fiduciary Net Position

<table>
<thead>
<tr>
<th><strong>Additions:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions:</td>
<td></td>
</tr>
<tr>
<td>Donations</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Contributions</strong></td>
<td>$-</td>
</tr>
<tr>
<td>Investment Income:</td>
<td></td>
</tr>
<tr>
<td>Net change in fair value of investments</td>
<td>(1,799,836)</td>
</tr>
<tr>
<td>Interest</td>
<td>187,873</td>
</tr>
<tr>
<td>Less investment expense</td>
<td>14,726</td>
</tr>
<tr>
<td><strong>Net Investment Income</strong></td>
<td>(1,626,689)</td>
</tr>
<tr>
<td>Miscellaneous Income</td>
<td>82,823</td>
</tr>
<tr>
<td><strong>Total Additions</strong></td>
<td>(1,543,866)</td>
</tr>
<tr>
<td><strong>Deductions:</strong></td>
<td></td>
</tr>
<tr>
<td>Payments in accordance with Trust agreement</td>
<td>-</td>
</tr>
<tr>
<td>Administrative expenses</td>
<td>315</td>
</tr>
<tr>
<td><strong>Total Deductions</strong></td>
<td>315</td>
</tr>
<tr>
<td>Change in net position held in Trust for:</td>
<td></td>
</tr>
<tr>
<td>Private-Purpose</td>
<td>(1,544,181)</td>
</tr>
<tr>
<td><strong>Total Change in Net Position</strong></td>
<td>(1,544,181)</td>
</tr>
<tr>
<td>Net Position - Beginning of Year</td>
<td>15,050,748</td>
</tr>
<tr>
<td><strong>Net Position</strong></td>
<td>$13,506,567</td>
</tr>
</tbody>
</table>
RE: Investment Updates
(No Action Requested)

Portfolio Rebalancing Updates

On May 8, 2020, the Treasury Inflation-Protected Securities (TIPS) Fund was liquidated and the proceeds were transferred to an actively managed “Transition Account”. This new account is similar to the SIIF-UltraShort Bonds account and is designed to hold all cash proceeds as we continue to do a disciplined liquidation of all the Diversified Inflation Strategy (DIS) investments.

As of June 12, 2020, $30M has been withdrawn from Gresham. Additionally, Van Eck liquidations have reached a total of $52M. Thus far, $184.5M has been withdrawn from DIS and transferred to the Transition Account. Future liquidations will depend on the market situation with the end of June as the target of full redemption.

All legal documents had been reviewed and submitted for the $100M commitment to the Varde Dislocation Fund LP and the Department of Trust Lands staff is waiting for the initial capital call.

Asset Allocation
The table below shows the status of the permanent trusts’ asset allocation as of June 12, 2020. The figures provided are unaudited.

<table>
<thead>
<tr>
<th>As of June 12, 2020</th>
<th>Market Value $</th>
<th>Actual</th>
<th>Target</th>
<th>Lower Range</th>
<th>Upper Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad US Equity</td>
<td>905,331,860.87</td>
<td>18.8%</td>
<td>19.0%</td>
<td>14.0%</td>
<td>24.0%</td>
</tr>
<tr>
<td>Broad Int’l Equity</td>
<td>917,842,371.80</td>
<td>19.1%</td>
<td>19.0%</td>
<td>14.0%</td>
<td>24.0%</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>1,108,107,002.69</td>
<td>23.1%</td>
<td>22.0%</td>
<td>17.0%</td>
<td>27.0%</td>
</tr>
<tr>
<td>Transition Account</td>
<td>184,629,391.14</td>
<td>3.8%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Absolute Return</td>
<td>726,266,787.20</td>
<td>15.1%</td>
<td>15.0%</td>
<td>10.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>DIS</td>
<td>219,994,918.96</td>
<td>4.6%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>744,590,727.00</td>
<td>15.5%</td>
<td>15.0%</td>
<td>10.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Private Equity</td>
<td>-</td>
<td>0.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Private Infrastructure</td>
<td>-</td>
<td>0.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Opportunistic Investments</td>
<td>-</td>
<td>0.0%</td>
<td>0.0%</td>
<td>-5.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Portfolio Total</td>
<td>4,806,763,059.66</td>
<td>100.0%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Upcoming Investment Manager Meetings
There is no upcoming meeting scheduled.
RE: Novarca - Investment Fees and Costs Analysis Services Consultant Update
(No Action Requested)

On March 28, 2019, the Board directed the Commissioner to engage Novarca to review the investment fees of the assets under the Board’s authority. Novarca’s general approach involved a detailed look at costs experienced by a given investment mandate, with a focus on identifying and reducing fees and expenses related to managing, transacting, and holding assets. The firm reviewed expenses and identified options that serve as a basis to renegotiate fee arrangements with investment managers.

The Commissioner entered into an agreement with Novarca on June 13, 2019, under which Novarca would conduct a study of the fees of the Board’s various investment mandates and negotiate with investment managers to reduce fees paid by the Board’s trust funds. Novarca is compensated solely through a contingency fee in which they are only paid a portion of realized savings in the amount of 27.5% of any fee savings the Board’s trust funds realized by Novarca’s efforts.

Novarca began a study of the investment fees of the Board’s various investment mandates in June 2019 and completed the study in December 2019. Generally, Novarca found that the fees paid by the Board’s trust funds were competitive with the industry. Nevertheless, Novarca believed there was opportunity for further fee savings with certain managers. In January 2020, Novarca began negotiating with several investment managers to reduce management fees paid by the Board’s trust funds.

Result: Novarca was able to successfully negotiate a lower fee with Payden & Rygel on the Long-Term Bond mandate. The new fee terms are in line with the fees paid on the JP Morgan Intermediate Bond mandate, which had been lowered just prior to engaging Novarca. The net fee savings are approximately $83,400 for the first year and may be higher if the mandate grows over time. This represents 0.024% savings on the mandate and 0.002% for the permanent trust funds.

Novarca has not been successful on any other mandates, which would indicate the Board’s trust funds’ fees remain industry competitive.

Attachment – Novarca Presentation
Contents

1. Executive Summary
2. Findings
3. Savings
4. Pimco
5. Disclaimer
Status Update

After a full review of North Dakota Department of Trust Lands’ (NDDTL) investment portfolio Novarca has found NDDTL’s fee structures on the whole to be very competitive.

Norvarca performed a thorough fee review of 21 managers and selected 12 for further diligence and analysis and potential fee reductions. Of the 12, Novarca is in ongoing fee negotiations with 4, has discontinued conversations with 7 due to low-to-zero prospects of fee reductions or due to NDDTL’s decision to re-allocate capital. Novarca has successfully re-negotiated fee agreements with one manager leading to savings for NDDTL.

Once negotiations are concluded, Novarca will enter a monitoring phase to ensure that the savings negotiated are delivered as well as will provide NDDTL with quarterly fee monitoring and reporting to ensure best in class pricing continues to be achieved across the whole portfolio.

COVID-19

The advent of COVID-19 and the subsequent extreme volatility in the markets hindered Novarca’s negotiation timelines. As a result of the market stress, Novarca decided it was in the best interest of all parties to temporarily suspend fee optimization discussions from March through May.
<table>
<thead>
<tr>
<th>Asset Class, Fixed Income &amp; Custody</th>
<th>Manager</th>
<th>Effective Fees</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equities</td>
<td>DFA</td>
<td>0.53% (flat)</td>
<td>Ongoing discussions around a potential fee cut based on previous negotiations with the European office of DFA.</td>
</tr>
<tr>
<td>Equities</td>
<td>Harding Loevner</td>
<td>1.11% (flat)</td>
<td>All investors paying the same in this commingled emerging markets fund; there is a similarly priced collective trust which is 0.97% instead of 1.11%, but it is only open to ERISA investors (pensions plans only, NDDTL does not qualify).</td>
</tr>
<tr>
<td>Equities</td>
<td>QMA</td>
<td>0.65% (flat)</td>
<td>Ideally this fee schedule would see some tiers, e.g. a tier at $100M. However, there were no acceptable structures which would have achieved savings.</td>
</tr>
<tr>
<td>Equities, Fixed Income &amp; Custody</td>
<td>NT Ultra Short</td>
<td>0.055% (blended)</td>
<td>Significant cross-subsidization across different services and different Northern Trust entities results in varying degrees of cost efficiency across the entire NT mandate. NT has expressed a willingness in the past to reduce fees further if it becomes the primary passive investment allocation manager, but the necessary portfolio reallocation required to achieve those savings was beyond Novarca’s scope.</td>
</tr>
<tr>
<td></td>
<td>NT Tips</td>
<td>0.046% (blended)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NT Small Cap Core</td>
<td>0.70% (flat)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NT Securities Lending</td>
<td>70%/30% split</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NT Custody</td>
<td>Various fees</td>
<td></td>
</tr>
<tr>
<td>Fixed Income</td>
<td>JP Morgan</td>
<td>0.15% (flat)</td>
<td>JPM had already given a substantial cut from 0.20% to 0.15% on July 1, 2019, therefore Novarca deemed that additional reductions were not feasible.</td>
</tr>
</tbody>
</table>
## Findings

<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Mandates</th>
<th>Effective Fees</th>
<th>Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed Income</td>
<td>Payden Long Term</td>
<td>0.20% (flat)</td>
<td>Savings target achieved, details on following slide.</td>
</tr>
<tr>
<td>Fixed Income</td>
<td>Brandywine</td>
<td>0.35% (blended)</td>
<td>Part of commingled vehicle, 40% in emerging markets, everyone in commingled vehicle paying the same, willing to explore performance-based fee (but NDDTL not interested at this particular time).</td>
</tr>
<tr>
<td>Absolute Return</td>
<td>PIMCO</td>
<td>0.25% (flat)</td>
<td>PIMCO’s mandate has high fees (301 bps total cost) paired with poor performance (negative alpha). Since the mandate is structured as a mutual fund, PIMCO was however not able / willing to reduce the fees.</td>
</tr>
<tr>
<td>Absolute Return</td>
<td>GMO</td>
<td>0.89% (blended)</td>
<td>Ideally this fee schedule would see additional tiers, e.g. a tier at $250M. However, there were no acceptable structures which would have achieved savings.</td>
</tr>
<tr>
<td>Diversified Inflation</td>
<td>Gresham</td>
<td>0.58% (blended)</td>
<td>Different structures available related to TAP program (ETAP, MTAP etc.) but everyone on fund in same formula, including those with much larger investments than NDDTL's $150M.</td>
</tr>
<tr>
<td>Diversified Inflation</td>
<td>Van Eck</td>
<td>0.62% (blended)</td>
<td>Van Eck was open to a fee holiday, but implementation did not come to fruition due to NDDTL’s decision to re-allocate capital away from Van Eck anyway.</td>
</tr>
<tr>
<td>Real Estate</td>
<td>Prologis</td>
<td>0.91% (blended)</td>
<td>Prologis was unable to meet our fee reduction request.</td>
</tr>
</tbody>
</table>
Savings

Payden & Rygel

- **Fees decreasing across industry:** The relationship between NDDTL and Payden goes back over 20 years, but recent consolidation in the asset management industry has created downward pressure on market rates for fees. Generally, fees among some fixed income managers fell by as much as 20% in 2019.

- **Growth of AUM:** NDDTL’s investment in Long-Term Aggregate Fixed Income strategy has grown from $100M to $350M.

- **Negotiation lead to success:** After several rounds of offers and counteroffers, Novarca was able to get Payden to decrease fees from the original 0.20% flat rate to 0.175% for the first $250M invested and 0.15% for the remainder (0.167% blended rate).

- **Savings achieved:** At current AUM levels, gross fees have been reduced by over 16%, resulting in approximately $83K of net savings per year (projected to increase to ~$115K per year after 3 years at current AUM levels).
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+41 55 511 21 21
RE: 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 for the proposed Theodore Roosevelt Presidential Library and Museum. The state-funded endowment will be created if $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.

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

The Agreement provides for the establishment of an investment account maintained by the Board. It provides for the investment of assets as a permanent trust fund to be managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04.

The Agreement further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12:

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section.

The attached Agreement will replace the Agreement executed in September 2019 and provides additional guidance regarding the distribution of funds and a mechanism for the Department of Trust Lands to cover expenses associated with the management of the endowment.

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

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superintendent Baesler</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasurer Schmidt</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney General Stenehjem</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governor Burgum</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attachment – Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement
Agreement
between the
State of North Dakota
and the
Theodore Roosevelt Presidential Library Foundation

The parties to this agreement (the “Agreement”) are the State of North Dakota, acting through the Office of the Governor (“Governor”) and the Theodore Roosevelt Presidential Library Foundation, a North Dakota nonprofit corporation having its mailing address at PO Box 338, Medora, ND 58645-0338 (“Foundation”), individually referred to as a “Party” and collectively as the “Parties.” The State of North Dakota, acting through the Board of University and School Lands (the “Land Board”) is a party to this Agreement only with respect to its duties and obligations under Section 3.

RECITALS

WHEREAS, the Theodore Roosevelt Presidential Library and Museum Endowment Fund (the “Endowment Fund”) was established in the State Treasury in the North Dakota Session Laws 2019, Chapter 26, section 8, enacted by the 66th North Dakota Legislature and codified under North Dakota Century Code Section 54-07-12 (“the Act”). The sum of $15 million dollars was appropriated to the Endowment Fund; the Governor has provided for the Endowment Fund to be invested under the supervision of the Board of University and School Lands; and,

WHEREAS, the Act further authorizes the Governor to obtain a loan from the Bank of North Dakota in an amount not to exceed $35 million dollars (the “Loan”); the term of the loan may not exceed six years, with an interest set at the prevailing rate charged by the Bank of North Dakota to governmental entities;

WHEREAS, the Act provides that the interest and earnings on the Endowment Fund are appropriated to the Governor on a continuing basis to pay interest and expenses on the Loan obtained pursuant to S.L. 2019, Ch. 26, §8 and to provide grants pursuant to the Act; and

WHEREAS, the Act authorizes the Governor to make grants to a private entity after the Governor has entered into an agreement with the private entity as defined in the Act, and has received certification from the private entity that one hundred million dollars in cash and binding pledge donations have been raised to construct a presidential library located in North Dakota.

WHEREAS, the Theodore Roosevelt Presidential Library Foundation is a private entity that intends to construct and operate the Theodore Roosevelt Presidential Library and Museum (the “Library & Museum”) in North Dakota; and
WHEREAS, the Parties enter into this Agreement to fulfill the above-referenced requirements of the Act to enable the granting of amounts in the Endowment Fund to the Foundation, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the Governor and Foundation agree as follows:

AGREEMENT

1. **Foundation Certification.** 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.

2. **Funding of the Endowment.** No later than December 31, 2020, the Governor will submit an application to the Bank of North Dakota for a loan in the amount of $35 million, as authorized in S.L. 2019, ch. 26, § 8; within 30 days after the loan application is submitted, the Governor will submit the loan application documents in a report to the Budget Section of the of the North Dakota Legislative Council. The Foundation shall provide such information and assistance requested by the Governor to comply with these requirements. As required by the Act, the proceeds of the loan shall be added to the Endowment Fund.

3. **Endowment Fund Management.**

   a. **Investment Management.** The Land Board shall manage and invest the Endowment Fund to preserve its purchasing power and maintain stable distributions, in accordance with the policies, standards and factors it applies to management of all permanent trusts under its jurisdiction. The assets of the Endowment Fund may be commingled with other assets of the Land Board for purposes of investment. Separate records and accounts will be kept for receipts and disbursements of the Endowment Fund. As an endowment fund, the earnings attributable to the Endowment Fund and the annual amount available for distribution from the Endowment Fund will be determined pursuant to paragraph b below. Endowment Fund assets that are not appropriated for distribution in a given year shall continue to be held in the Endowment Fund and administered under this Agreement. The Land Board may only charge expenses against the Endowment Fund that it charges against all other permanent trusts under its jurisdiction.

   b. **Annual Grant Distribution.** The Land Board shall make annual distributions from the Endowment Fund in an amount equal to 4.0% of the Endowment Fund’s trailing net average value calculated over the previous three (3) fiscal years (or all fiscal years the Endowment Fund has been in existence, if less than 3) (the “Annual Grant Distribution”). This net average value calculation shall include all principal, expenses, income, and capital gains and losses,
realized and unrealized. The net average value calculation shall be based on the fiscal year-end balance as of June 30 of each fiscal year. The percentage used to calculate the Annual Grant Distribution may be adjusted from time to time by mutual written agreement of the Governor and the Foundation.

c. **Payment of Grant Funds.** Once the Land Board has received notice of the Foundation’s certification under section 1 above, and commencing on December 31, 2020, the full amount of Annual Grant Distributions shall be granted to the Foundation on a continuing annual basis to be distributed on the last business day of each calendar year thereafter (the “Grant Funds”).

d. **Investment Reports.** The Land Board shall provide an annual investment report to the Foundation that details the investment strategy and performance of, and costs, expenses and distributions from, the Endowment Fund.

4. **Foundation’s Use of Grant Funds.** Foundation shall use the Grant Funds for the following purposes:

   a. **Operating and Maintenance Costs of the Library & Museum.** The Grant Funds shall be spent for operating and maintenance costs of the Library & Museum, including operating expenses during the period of planning and construction. Grant Funds may not be used for expenses of construction of the Library & Museum. If annual distributions of Grant Funds exceed the Foundation’s operating and maintenance expenses for the applicable year, the Foundation will hold such excess amounts in a restricted fund designated for this purpose until such time as the funds are needed for its operating and maintenance expenses.

   b. **Return of grant funds.** Any unused Grant Funds will be returned to the State and deposited in the general fund if the Library & Museum has not been constructed by December 31, 2026 or if the Library & Museum ceases operations.

5. **Foundation Grants to Affected Entities.**

   a. **Grant to Higher Education Institution Foundation.** The Foundation agrees to donate ten million dollars to a higher education institution foundation in North Dakota that is selected mutually by the Foundation and the Governor, for the purpose of creating an endowment to support the digitization, curation and maintenance of a digital library of documents related to Theodore Roosevelt, and for the creation of a Theodore Roosevelt conservation scholars program and related academic mission at a North Dakota higher education institution, in collaboration with the Foundation. The terms of the donation and use of funds shall be set forth in a written agreement among the Foundation, the applicable higher education institution foundation and the applicable higher education institution. The Foundation’s obligation to pay the full amount of this donation is contingent upon the execution of this Agreement, the full
funding of the Endowment Fund of $50 million, and the commencement of
distribution of Grant Funds to the Foundation. The donation may be paid in
installments commencing in the year in which the first Grant Funds are
distributed to the Foundation, with the full amount being paid no later than
December 31, 2021.

b. **Grant to City of Dickinson.** No later than December 31, 2020 or within 90
days of receiving the first payment of Grant Funds, whichever is later, the
Foundation shall donate $300,000 to the City of Dickinson to reimburse prior
costs incurred related to planning for a presidential library in the city.

c. **Use of Grant Funds.** The Foundation may only use Grant Funds as
expressly defined in Paragraphs 4 and 5 of this Agreement.

6. **Budget Section Reporting.** The Parties acknowledge that the Act requires the
Governor to provide a report to the Budget Section of the North Dakota Legislative
Council that includes copies of the documentation received for the certification
provided by Foundation pursuant to section 1. The Foundation shall provide such
information and assistance requested by the Governor to comply with this and any
other reporting requirements.

7. **Effective Date and Term.** This Agreement shall be effective on the date
representatives of both parties have signed this document. The duties of the Parties
hereunder shall continue until all Grant Funds have been spent or returned, as set
forth in this Agreement.

8. **Termination.**

   a. **Termination by Mutual Agreement.** This Agreement may be terminated by
      mutual consent of both Parties executed in writing.

   b. **Termination for Cause.** Either Party may terminate this Agreement effective
      upon delivery of written notice to the other Party, or any later date stated in
      the notice, if the other Party fails to perform its obligations required by this
      Agreement within the time specified or any extension agreed to by the
      notifying Party. The rights and remedies of the Parties provided in this
      subsection are not exclusive and are in addition to any other rights and
      remedies provided by law or under this Agreement.

9. **Taxes and Reporting.** Foundation is exclusively responsible for the payment of any
local, state, or federal taxes associated with its receipt or use of the Grant Funds.
Foundation’s federal employer ID number (FEIN) is 47-1324043.

10. **Applicable Law and Venue.** This Agreement is governed by and construed in
accordance with the laws of the State of North Dakota. Any action to enforce this
Agreement must be adjudicated exclusively in the state District Court of Burleigh
County, North Dakota. Each Party consents to the exclusive jurisdiction of such
court and waives any claim of lack of jurisdiction or *forum non conveniens.*
11. Entire Agreement. This document constitutes the entire agreement between the Parties with respect to this subject matter. No amendment shall be valid unless in writing and signed by both parties.

State of North Dakota, acting through its Office of the Governor

_________________________________________  Date: __________________________
Doug Burgum
Governor

Theodore Roosevelt Presidential Library Foundation

_________________________________________  Date: __________________________
Ed O'Keefe
Chief Executive Officer

State of North Dakota, acting through its Board of University and School Lands
As to the provisions of Section 3 of this Agreement only:

_________________________________________  Date: __________________________
Jodi A. Smith
Commissioner
Exhibit A
Form of Foundation Certification

The Honorable Governor Doug Burgum
600 East Boulevard Avenue
Bismarck ND, 58505-0001

Governor Burgum:

The undersigned, as the Chief Executive Officer of the Theodore Roosevelt Presidential Library Foundation, a North Dakota nonprofit corporation (the “Foundation”) hereby certifies that:

1. I am a duly appointed, qualified and acting officer of the Foundation.

2. The Foundation has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of the Theodore Roosevelt Library & Museum in Medora, North Dakota and for grants to affected entities, as required by the chapter 26, section 5, 2019 North Dakota Session Laws, effective on April 26, 2019 and codified as section 54-08-03 of the North Dakota Century Code (the “Act”), and by the Agreement between the Foundation and the Governor dated___________, 2020.

IN WITNESS WHEREOF, the undersigned has executed this document on the date written below.

THEODORE ROOSEVELT PRESIDENTIAL LIBRARY FOUNDATION

By: Ed O'Keefe
Title: Chief Executive Officer

Date: ___________________________
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

June 25, 2020

RE: Acreage Adjustment Survey

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.

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) subject to inundation by Pick-Sloan Missouri basin project dams.” The bill directed the North Dakota Department of Mineral Resources (DMR) to procure a qualified engineering and surveying firm to conduct a review of the US Army Corp of Engineers (USACE) survey segments limited only to the corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west.

The Historical OHWM review as prepared by Wenck Associates, Inc. (Review) was presented to the North Dakota Industrial Commission (NDIC) on April 17, 2018. Thereafter, the NDIC issued its September 27, 2018 Order of the Commission, Order No. 29129, approving the Review. Information concerning the Review can be found on DMR’s website.

In response to comments, NDIC Order No. 29129 found, among other things, that:

1. “[T]he Wenck Study was not intended to provide accurate acreage allocations for property transfer which is outside the scope of the legislation; the data sets provided to Wenck for use in calculating acreages represent the most efficient method for determination of areas necessary for decisions by the [NDIC]; no land surveying was done nor contracted to be done in the course of [the Wenck] study.” Order at 4.

2. “[T]he cost to complete the necessary research and surveys to apportion property significantly exceeds the appropriated funds.” Id.

3. “[A]dequate documentation and data for parties to determine how interests might be impacted were provided in the Wenck Study and subsequent communications.” Id.

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Board contracted with Kadrmas, 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.” The contract’s scope of work concluded twelve months from the date of execution, May 30, 2019, at a total cost of $1,088,635. KLJ dedicated 35 team members and over 7,000 hours to completing the project.

The project utilized all available data, records, and resources including the Review, the PLSS, Bureau of Land Management (BLM) General Land Office (GLO) updated Master Title Plats (available at the BLM), original GLO Survey Plats (available at the North Dakota State Water Commission), BLM field notes, and any other relevant data, records and resources. Where previous survey data was not available, lacking, or otherwise unusable, the KLJ project was required to conduct the field work necessary to supply the necessary data to complete and/or verify accurate boundaries within the Project Area.
KLJ is available to review the methodology they used to calculate the acreage adjustments and answer any questions the Board may have regarding the acreage adjustment results. KLJ has provided the Department of Trust Lands (Department) with a Final Report for Acreage Determination along the Ordinary High Water Mark as adopted by the North Dakota Industrial Commission Order No. 29129 which will be available on the Department’s website.

The Department will not be recommending approval of the south half of T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36. will be necessary (Attachment 1). Additionally, the Department will not be recommending approval of T152N R93W Section 11 Lot 2 and Section 10 Lot 6 (Attachment 2).

Upon the Board’s adoption of the Acreage Adjustment Survey as prepared by KLJ, the Department will promptly begin updating records to satisfy the Board’s duty under N.D.C.C. § 61-33.1-04(2)(a). This process will be extensive and will require a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be allocated to the correct trust, the Department’s shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck, the Department has approximately 600 active leases covering 44,700 acres.

Prior to any issuance of refunds, appropriate documentation for each parcel requiring adjustment must be reviewed by the Department’s Director of Minerals Management and the Director of Revenue Compliance Division. Following final review by the Commissioner, a refund authorization will be submitted to the Accounting Division. Once refunds are issued, Correction of Oil and Gas Lease documentation will be mailed to the operator and current lessee of record based on the records of the Department. If the lessee fails to return an executed copy or cash the check, the Department will need to take additional steps.

Due to the failure of lessees to submit assignments to the Department for approval as required by Department policies and the Board’s lease, the Department’s records do not always accurately reflect the current lessee of any given lease. This could impact the timeliness of refunds. Refunds of bonus will be issued to the current lessee, based on the records of the Department, and royalty payments will be returned to the current operator of each applicable spacing unit.

Barring delays due to legal challenges or unresponsive lessees, it is anticipated the Department could complete approximately 25 lease corrections each month, resulting in completion of 600 lease corrections within two years of the Board’s adoption of KLJ’s acreage adjustment calculations.

Recommendation:

(1) The Board adopts the acreage adjustment survey on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the North Dakota Industrial Commission except T152N R93W Section 11 Lot 2, Section 10 Lot 6 and T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36.

(2) The Board formally request the North Dakota Industrial Commission complete further review of T152N R93W Section 11 Lot 2 and Section 10 Lot 6.
(3) The Board formally requests the North Dakota Industrial Commission complete further review of T153N, R102W Sections 33 and 34 until a zero accretion point can be determined.

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Attachment 1 – Map T153N R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36
Attachment 2 – Map T152N R93W Section 11 and Section 10
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS
Date June 25, 2020

RE:  Commissioner Annual Review – To be Distributed at Meeting

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RE: Fee Policy – Second Reading

The Board of University and School Land’s (Board) current fee schedule was established on July 25, 1985 and was last reviewed by the Board on June 26, 2014. The recommended action will revise the 2014 fee schedule.

“Fees” in the context of the Study are those payments which are not specific to any trust fund or tract of land but are deposited in the maintenance fund, which serves as the Department of Trust Land’s (Department) operating fund.

Attached is the proposed Fee Policy. Fees were revised based upon the Department’s expenditures related to the purposes for which the fee is imposed and if the fee is determined by the Board or the Commissioner.

The substantive changes include the following:

- A unified fee for certified copies has been established.
- Application and certain assignment, extension, and amendment fees have been established for leasing based upon the internal expenses associated with processing the application.
- Fees that are determined by the Commissioner have been removed from the Board’s Fee Policy and placed in a Department’s Fee Policy.
  - Coal Amendment, renewal request fee
  - Coal Extension request fee
  - Oil and Gas Application and Nomination fee
  - Oil and Gas Application Shut-In Application Fee per Unit
  - Subsurface Mineral Lease Assignment Filing Fee
  - Salt-Water Disposal Site Application, Extension and Renewal Fee

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

Recommendation: The Board adopt the proposed North Dakota Board of University and School Lands Fee Policy – Chapter 2, General.

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Attachment – Board of University and School Lands Fee Policy
FEES

The following fees are non-refundable, unless otherwise noted or unless it is determined by the Commissioner of University and School Lands that circumstances require the fees be waived:

**General Fees:**

Certified copies $ 25.00 per document

**Minerals Fees:**

1. **Coal leasing**
   - Application fee $650.00 per lease
   - Lease assignment fee $ 25.00 per assignment per lease

2. **Oil and gas leasing**
   - Lease assignment fee $ 25.00 per assignment per lease
   - Oil & Gas lease extension or amendment application fee $250.00 per lease

3. **Subsurface mineral leasing – potash and other subsurface minerals mining solution**
   - Application filing fee $ 50.00 per tract

**Surface Fees:**

1. **Construction Aggregate Leasing**
   - Application fee for Lease, Amendment, assignment, extension, renewal $250.00

2. **Encumbrances**
   - Application fee for Encumbrances, Amendment, assignment, extension, renewal $250.00

3. **Land sale/exchange application fee** $500.00 per tract

4. **Appraisal fee** based on actual cost

5. **Recording fee** based on actual cost

6. **Surface Lease assignment** $ 25.00 per lease


Effective Date: June 26, 2014
Revised: July 1, 2020
RE: Continuing Appropriation Authority Policy – Second Reading

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 15-68-06
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

**Board of University and School Lands**

**Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

**A. Unclaimed Property - Continuing Authority.**
Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

**B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.

2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts’ value.

3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.

4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.
The Commissioner has reviewed, in conjunction with the Attorney General’s Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

**Recommendation:** The Board adopt the proposed North Dakota Board of University and School Lands Continuing Appropriation Authority Policy – Chapter 2, General.

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Attachment – Continuing Appropriation Authority Policy
CONTINUING APPROPRIATION AUTHORITY POLICY

Continuing appropriation authority is provided in state law for certain operating expenditures. In addition to that specific statutory authority, the Board provides guidance as to approved expenditures outlined below.

Unclaimed Property.

Unclaimed property expenses as outlined in N.D.C.C. § 47-30.1-23 may be paid under continuing appropriation authority. Those expenses include payment of claims, service charges for address verification and updates, advertising costs, audit services, legal costs, computer software, and outreach efforts.

Grant Land, Non-Grant Land, Mineral Leases, and Investments.

N.D.C.C. §§ 15-03-16, 15-04-24, 15-05-19, 15-06-22, 15-07-22, and 15-08-04 permit certain expenditures under continuing appropriation and appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets. Those expenditures specifically authorized by the Board under continuing appropriation authority include:

1. Equipment, technology service fees and licenses, and travel expenses for Surface Division staff and temporary field inspectors, and temporary field inspectors’ salaries.

2. Advertising surface and mineral lease auctions. N.D.C.C. § 15-04-09 requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts’ value.

3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.

4. Costs of hiring independent contract firms to perform accounting, audit, compliance review, or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

5. Technology service fees and licenses associated with management of investments by Department staff.

Effective date: May 26, 2011 (effective July 1, 2011)
Revised: February 25, 2016; June 25, 2020 (effective July 1, 2020)
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS
June 25, 2020

RE: Mineral Valuation Policy – Second Reading

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

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

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets’ sheer size, variance in geological aspects, and topography. MineralTracker, LLC was awarded the project and is working with the Department to complete the Assessment.

As a part of the Assessment, MineralTracker needs three variables to be approved by the Board: (1) the commodity effective date, (2) commodity price schedule, and (3) the discount rate.

The Department consulted with MineralTracker and the US Department of the Interior’s Division of Minerals Evaluation during the process of drafting the proposed policy. Attached is the recommended Minerals Valuation Policy.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

Recommendation: The Board adopt the proposed North Dakota Board of University and School Lands Minerals Valuation Policy – Chapter 5 - Minerals.

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Attachment – Minerals Valuation Policy
Minerals Valuation

In order to provide a uniform and equitable leasing system for the Board’s oil and gas mineral estate, the Department will conduct a Mineral Valuation Assessment (Assessment). In executing the Assessment, the Department shall consider all Proved Developed Producing wells currently under the Board’s management and perform decline curve analysis to project future oil, gas, and water production for each well. For any undeveloped mineral acreage in which oil and gas reserves are prospective but unproven, the Board shall employ market rate conversions related to the recent leasing bonus payments.

As a part of the Assessment, the Board will approve the Commodity Effective Date, Commodity Price Schedule, and the Discount Rate.

Commodity Effective Date
The Commodity Effective Date for the Board will be set for December 31 of each year.

Commodity Price Schedule
Historical data from the Commodity Effective Date to the date economic reports are generated and NYMEX pricing from the date economic reports are generated forward shall be used.

Discount Rate
The Board shall use the Discount Rate as follows:

- Proved Developed Producing (PDP) – 10.0%
- Proved Developed Shut-In (PDSI) – 12.5%
- Proved Developed Non-Producing (PDNP) – 15.0%
- Proved Undeveloped (PUD) – 20.0%
- Probable Undeveloped (PROB) – 25.0%
- Possible Undeveloped (POSS) – 30.0%

Effective Date: June 25, 2020
Revised:
MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS  
June 25, 2020

RE: Surface Land Management and Minerals Management Administrative Rules  
(No Action Requested)

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

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code. The Board’s rules are included in Title 85 of the North Dakota Administrative Code. As the Department determines additional rules are needed, those are drafted and presented to the Board for review.

Land Sale and Land Exchange Administrative Rules
By the 1970s, approximately 80% of the original 3.2 million acres of the land granted to trusts had been sold, and the Board began an informal policy of not selling surface lands. While often encouraged to sell trust lands to private citizens to put it on the tax rolls, the Board has historically experienced opposition to land sales from the Game and Fish Department, Wildlife Federation, Medora Grazing Association, ND Farmers Union, sportsmen, and other outside entities. The Board formalized its policy of not selling land in 1981 when it limited land sales to smaller and isolated tracts, and to parcels that caused management problems. The Board has had a limited land sale policy ever since. The history of the land sale policy is attached as Attachment 1.

In the 1990s, the Department evaluated the historic return on investment of land in North Dakota and the impact on the value of trust lands to the permanent trust funds. The initial study encompassed land rents and values from 1960 through the 1990s; it was later updated through 2001. The results of this study indicated that land is similar to and should be treated like other asset classes in which the Board invests. In October 1998, the Board formally designated surface lands as an asset class to be managed within the Board’s overall asset portfolio.

Considering land as an investment is central to its management for the long-term best interests of the trusts. Land as an asset class means that it is recognized for its characteristics of value, income, stability and liquidity that are inherent in investments. It also means that investment principles, such as risk versus reward, should be applied to land just as to any other investment asset class.

The study led to a proposal that certain lands with an income return of less than 0% be considered for sale. However, due in large part to public opposition to the sale of trust lands, these tracts were not sold to private owners. Nonetheless, the work done in this area helped demonstrate that the consistent cash flows generated by trust land and its inherent nature as a store of value, make it a stabilizer in the Board’s overall asset portfolio.

On March 26, 2015 the Board revised its land sale policy to:
1. Clarify the general policy to sell land only if certain conditions are met;
2. Add language requiring that sales of larger tracts be coupled with a “no net loss” of acres provision;
3. Remove language specifically related to rates of return and low potential for development as reasons for consideration of a sale of trust lands; and
4. Add a provision to consider selling land in higher value urban locations.
The provision of no net loss of “leasable trust land” was adopted to provide an option to consider tracts that are larger than 80 grassland acres and 40 crop acres being offered for sale without reducing the trust’s leasable real estate holdings. It allows for a sale of trust land and a donation of land to the trust from which the original land was sold. To date, the no net loss policy has not been used and no procedures have been developed to implement the policy. See Attachment 1.

On September 28, 2017, the Board directed the Commissioner to investigate and explore procedural options to implement the Board’s no net loss of “leasable trust land” policy through land exchanges of like or equal acres and value. Attachment 2 are the proposed Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, which take into consideration the requirements of the North Dakota Century Code and the North Dakota Constitution. It provides the Board the ability to sell under-utilized or difficult to manage acquired tracts of land.

The following is a brief review of the Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, compared to the Board’s Land Retention and Sales Policy:

Grant Land Sales (N.D.C.C. ch. 15-06):

- Unchanged from the Board’s Land Retention and Sales Policy with the exception that any letter of application received will be subject to public comment prior to Board review of the application.
- Maintains the provision of no net loss of leasable original grant land through public sale and subsequent land donation to the trust from which the original grant land was sold.
- Maintains the small acreage requirement (land tracts totaling less than 80 acres in size, more or less, for grassland and less than 40 acres in size, more or less, for cropland) as a sales requirement, with such sales not subject to the no net loss of leasable grant land provision.

Acquired Land Sales (N.D.C.C. ch. 15-07):

- Requires any letter of application received for the purchase of acquired lands to be subject to public comment prior to Board review.
- Removes the no net loss of leasable land requirement from land acquired prior to 1980 (these lands were private lands acquired through foreclosure or deed in-lieu of foreclosure and were at one time on the County tax rolls).
- Acquired land sales would not be subject to any acreage restrictions.

Sales of Lands for Public or Quasi-Public Purpose (N.D.C.C. ch. 15-09):

- Sales for this chapter were not subject to the Land Retention and Sales Policy.
- Requires any application received for a public purpose or quasi-public purpose be subject to public comment prior to Board review.

Land Exchange:

- No previous policy.
- Establishes an evaluation process for land exchanges.
- Currently the Constitution and Statutes only allow for exchanges of Federal and State Land and does not allow for exchanges of private and tribal lands.

Offset Well Administrative Rule
The current Policy of the Board and University and School Lands for the Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells has been administered since 1987. It provides a
procedure to administer the provisions in the Board's oil and gas lease which requires our lessee to exercise an option in order to protect the state-owned interest from drainage due to wells drilled on adjacent acreage. The proposed Administrative Rule moves the policy into the rule format with minimal substantial changes. See Attachment 2.

Recommendation: The Board authorizes the Commissioner to proceed with the next steps in the review of the initial draft of the proposed Administrative Rules for Land Sale, Land Exchange and Offset Wells, including formal review by the Office of Attorney General, preparation for public hearings and collection of comments, and submittal to Legislative Council.

<table>
<thead>
<tr>
<th>Action Record</th>
<th>Motion</th>
<th>Second</th>
<th>Aye</th>
<th>Nay</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary Jaeger</td>
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<tr>
<td>Superintendent Baesler</td>
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<td>Treasurer Schmidt</td>
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<td>Attorney General Stenehjem</td>
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<td>Governor Burgum</td>
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</tbody>
</table>

Attachment 1 – Board of University and School Lands History of Land Sale Policy
Attachment 2 – Administrative Rules General Administration (red-lined), Surface Land Management, and Minerals Management.
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>ND Game and Fish Dept. completed a study of all school lands, classifying them by recreational value.</td>
</tr>
<tr>
<td>October 27, 1971</td>
<td>ND Natural Resources and Environmental Management Council chaired by Governor Guy, passed a resolution urging the Board to place a minimum 5 year moratorium on sales of school lands.</td>
</tr>
<tr>
<td>November 29, 1971</td>
<td>Board placed sales moratorium on lands rated as fair and good for wildlife habitat in the Game and Fish 1971 study.</td>
</tr>
<tr>
<td>April 4, 1973</td>
<td>SCR 4008 Urged the Board to rescind the November 29, 1971, policy and also to retain land of value to other agencies.</td>
</tr>
<tr>
<td>May 31, 1973</td>
<td>Board approved rescinding the moratorium on the sale of University and School Lands. Applied for tracts would be submitted to agencies represented on the North Dakota Natural Resources and Environmental Management Council inviting them to appear if they object to the sale. A hearing would be scheduled if objections were received.</td>
</tr>
<tr>
<td>1973</td>
<td>Considerable opposition to sales was experienced with the following appearing in opposition to sales: Game and Fish Department, Bureau of Sport Fisheries and Wildlife, Medora Grazing Association, ND Farm Union, UND, Cass Co. Supt. of Schools, and the Bureau of Reclamation.</td>
</tr>
<tr>
<td>October 25, 1973</td>
<td>ND Wildlife Federation requested a moratorium on sales of school lands.</td>
</tr>
<tr>
<td>January 25, 1974</td>
<td>Board postponed all sales and applications until July 1, 1974.</td>
</tr>
<tr>
<td>February 28, 1974</td>
<td>Board rescinded sales moratorium of January and made all sales subject to a &quot;detailed land use study completed&quot; by the Land Department.</td>
</tr>
<tr>
<td>March 18, 1974</td>
<td>ND Outdoor Recreation Agency passed a resolution asking for land sale moratorium until the proposed school land department land use plan has been completed.</td>
</tr>
<tr>
<td>August 29, 1974</td>
<td>Board rejected all protested land sales applications pending legislative consideration in 1975 of sales issue.</td>
</tr>
<tr>
<td>March 24, 1975</td>
<td>HCR 3041 urged Board to sell lands privately rather than to governmental units.</td>
</tr>
<tr>
<td>May 20, 1975</td>
<td>Board voted to continue with the policy of not selling lands until they were reviewed and found to be of low public value. Essentially, the Department reviewed Game and Fish 1971 study listing of school lands for low value tracts.</td>
</tr>
<tr>
<td>1976 - 1978</td>
<td>A period of sporadic sales. Board minutes do not show an established sale policy but by reviewing the rejected applications, it is apparent that there was at least an informal policy that limited sales.</td>
</tr>
<tr>
<td>September 27, 1979</td>
<td>Board minutes refer to rejecting a sale application consistent with sale policy. Again, no formal policy could be found in the minutes except for the 1975 policy.</td>
</tr>
<tr>
<td>May 28, 1981</td>
<td>Board promulgates a land sale policy.</td>
</tr>
<tr>
<td>1983</td>
<td>Legislature defeated a resolution encouraging the Board to sell school lands while</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
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<tr>
<td>October 25, 1990</td>
<td>Board revised the land sale policy to define “small tracts”.</td>
</tr>
<tr>
<td>1992</td>
<td>Constitutional amendment to allow land exchanges with private citizens was defeated in a general election.</td>
</tr>
<tr>
<td>February 23, 1994</td>
<td>Board reviewed the sale policy but chose not to change it.</td>
</tr>
<tr>
<td>December 14, 1995</td>
<td>Board directed the Commissioner to explore the 0% return concept and added it to the land sale policy.</td>
</tr>
<tr>
<td>1996</td>
<td>Constitutional amendment to allow exchanges of land and mineral interest between the Board and private owners and Indian tribes and to eliminate the requirement that the Board reserve mineral rights in all land transfers was defeated in a primary election.</td>
</tr>
<tr>
<td>1999</td>
<td>Board instructs the Commissioner to explore the concept of selling tracts with a net cash return of 0% or less. A series of eight regional public meetings was held to gather comments on 183 tracts identified as having a net rate of return of 0% or less. Several groups and individuals also inspect these tracts and submitted written comments. Most did not support sales and the idea of basing the value of trust lands solely on the net rate of return was widely unpopular.</td>
</tr>
<tr>
<td>March 26, 2015</td>
<td>Board amended the land sale policy: 1) to clarify the general policy of requiring certain conditions be met prior to selling land; 2) to add that sales of larger tracts be coupled with a “no net loss” of acres provision; 3) to adjust the language specifically referencing the tract’s revenue generating history; and 4) to add a provision for considering selling land in higher value urban locations.</td>
</tr>
<tr>
<td>February 25, 2016</td>
<td>Board added an addendum to the Land Retention and Sales Policy concerning a High Value Land Sale Procedure (paragraph 202.B(3)), which included nomination details, earnest deposit and appraisal requirements.</td>
</tr>
</tbody>
</table>
ARTICLE 85-01
GENERAL ADMINISTRATION

Section 85-01-01 Definitions and General Provisions

CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS


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

1. "Acquired lands" includes all property defined as "nongrant" and "other than original grant lands" in North Dakota Century Code section 15-07-01.

2. "Arm's length transaction" means a transaction between parties with adverse economic interests in which each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships that may compromise their individual interests.

2.3. "Agricultural use" includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.

3. "Board" means the board of university and school lands.

45. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the board.

6. "Certified appraiser" means a person who holds a valid permit as a certified residential or general appraiser.

57. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.

68. "Coal lease" means a contract entered between the board and a third party for a coal mining operation on trust lands.

79. "Coal leased premises" means the land subject to a given coal lease.

810. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
911. "Commercial quantities" means whether:
   a. The well yields a profit exceeding operating costs over a reasonable period of time; and
   b. A reasonably prudent operator would continue operating a well in the manner being
      operated under the facts and circumstances.

102. "Commissioner" means the commissioner of university and school lands.

143. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or
      other clays, and cement materials.

124. "Construction aggregate lease" means a contract entered between the board and a third party
      for mining of construction aggregate on trust lands.

135. "Construction aggregate leased premises" means the land area subject to a given construction
      aggregate lease.

146. "Construction aggregate mining operation" means any type of activity conducted to discover, or
      prospect for, the presence of construction aggregate, or to remove the construction aggregate
      so discovered from its original position on or in the land by any means whatsoever.

157. "Custodial agreement" means an agreement between the lessee and a third party in which the
      lessee agrees to take custody of livestock not owned by the lessee for a specified period of time
      and to provide day-to-day care for the livestock.

168. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of
      production in commercial quantities during the primary term.

179. "Department" means the office of the commissioner and the department of trust lands.

2191. "Encumbrance" means a right other than an ownership interest in real property. The term
       includes easements, permits, surface damage agreements and any other restrictions,
       encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically
       excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical
       substances, metallic ores, uranium ores, and oil, gas, and coal which are administered
       separately.

202. "Fair market value" means the price set by the commissioner after an analysis of prices paid for
       similar products or services in the local area under article 85-04.

243. "F.O.B." means free on board.

244. "Gas" means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but
      does not include coal, lignite, oil shale, or similar hydrocarbons.

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

246. "Gross proceeds" means the sum of all consideration in whatever form or forms, paid for the
      gas attributable to the lease.
27. “High value land” means land where the surrounding land use has changed from agricultural to a land use that has an increased value that cannot be realized by the trusts except through a sale.

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

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

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

31. “Offset drainage” means the drainage of oil or gas to an adjoining tract of land on which a well is being drilled or is already in production.

32. “Offset well” means any well drilled opposite another well on adjoining property with the specific purpose of preventing drainage to the adjoining property.

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

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

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

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

37. “Original grant lands” means all those lands granted to the state of North Dakota by virtue of the Enabling Act of 1889, as further defined in North Dakota Century Code section 15-06-01.

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

39. “Pest” means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.

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

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

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

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

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

45. “Vehicle” means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.
"When run" means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time must be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

History: Effective January 1, 2019; amended effective January 1, 2020.
General Authority: NDCC 15-05-05, 15-07-20, 15-08.1-06, 28-32, 61-33-06
Law Implemented: NDCC 4.1-47-04, 15-01, 15-04, 15-05, 15-07, 15-08, 15-08.1
ARTICLE 85-04
SURFACE LAND MANAGEMENT

Chapter
85-04-01 Leasing Trust Lands for Agricultural Use
85-04-02 Construction Aggregate
85-04-03 Permanent Improvements
85-04-04 Encumbrances of Trust Lands
85-04-05 Public Access and Use
85-04-06 Land Exchange

CHAPTER 85-04-06
LAND EXCHANGE

Section
85-04-06-01 Approval of Land Exchange
85-04-06-02 Criteria for Land Exchange
85-04-06-03 Application for Land Exchange
85-04-06-04 Evaluation of Application
85-04-06-05 Comments and Notice
85-04-06-06 Exchange Report
85-04-06-07 Board Authorization

**85-04-06-01. Approval of land exchange.** The board may approve an exchange of trust lands, which it determines is in the best interests of the trusts and complies with current law. Under North Dakota Century Code section 15-06-01, any land received under an exchange of original grant land maintains its status as “original grant lands.”

**History:** Effective

**General Authority:** N.D. Constitution article IX, § 6; NDCC 28-32-02

**Law Implemented:** N.D. Constitution article IX, § 6; NDCC 15-06-01, 15-06-19.1

**85-04-06-02. Criteria for land exchange.** The department shall consider the criteria listed below numbered one through six in any land exchange. Land exchanges are not required to satisfy all six criteria outlined below.

1. Equal or greater value.

   a. In connection with any exchange the department may use information, provided by the applicant or the department’s own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed exchange land. The same appraiser shall conduct appraisals of the trust lands to be exchanged and the proposed exchange land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.

   b. The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands to be exchanged is determined by the highest and best use of the land, not simply the present use. For example, if an exchange is proposed in which the trust lands to be exchanged are currently leased for grazing but the land is in the path of urban or commercial development, the trust
lands to be exchanged must be appraised for the highest and best use for residential or commercial development rather than its current use as grassland.

c. The department may consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands to be exchanged.

2. Equal or greater income to the trusts. A land exchange must result in the board receiving equal or greater income to the trusts. The projected income for the proposed exchange land will be estimated using the board’s minimum lease rate. The minimum lease rate for the proposed exchange land will be compared to the present income received by the trusts from the trust lands to be exchanged, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.

3. Acreage. Land exchanges should result in the board receiving equal or greater acreage. The board may, however, consider receiving less acreage in return for substantially higher value or income, or both.

4. Consolidation of trust lands. The proposed land exchange must not fragment trust land holdings by creating isolated parcels of trust land. In all exchanges, the board shall reserve all minerals underlying the trust lands to be exchanged pursuant to North Dakota Constitution article IX, § 5, subject to applicable law.

5. Potential for long-term appreciation. The proposed exchange land must have similar revenue potential as the trust lands to be exchanged.

6. Access. A land exchange must not diminish access to trust lands. Accessible trust lands should be exchanged with lands that offer equal or improved access.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-06-19.1, 15-06-22, 15-07-02

85-04-06-03. Application for land exchange. An applicant shall submit a written letter of application to the commissioner to request a land exchange. The application must include:

1. Legal description of the trust lands to be exchanged;

2. Legal description of the proposed exchange land;

3. Applicant’s estimated valuation of the proposed exchange land;

4. The most recent tax assessment for the proposed exchange land;

5. Statement of ownership of the proposed exchange land, including owners’ names and ownership interest;

6. Purpose of exchange request; and

7. A non-refundable application fee as determined by the board.
85-04-06-04. Evaluation of application. The department shall evaluate the application and may request the applicant provide additional information. After the department’s evaluation:

1. The commissioner may reject an application:
   a. If the application does not meet the requirements of sections 85-04-06-02(1) and (2); or
   b. If the application fails to comply with North Dakota law.

2. If the commissioner determines an application meets the requirements of section 85-04-06-02, the commissioner shall present the application to the board to determine if the application reflects a tract the board is willing to exchange.

85-04-06-05. Comments and notice.

1. Upon receipt of an application for land exchange and a determination by the board that the application covers a tract the board is willing to exchange, the department shall post on the department’s website a notice of the application for land exchange, any supporting documentation, and instructions for submitting public comments. The department shall also publish notice of an application for land exchange in the official newspaper of the county where the proposed exchange land and proposed trust lands to be exchanged are located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed exchange land and proposed trust lands to be exchanged and the deadline for comments. Should publication of any notice be inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department’s interest.

2. All comments must be in writing and contain the following:
   a. Name and address of the interested person;
   b. Applicant’s name and address;
   c. The legal description of the proposed exchange land and proposed trust lands to be exchanged as shown on the published notice; and
   d. A detailed statement as to whether the interested person supports or opposes the proposed land exchange.

3. The department shall give notice of the proposed exchange to any entity having a property interest in any portion of trust lands involved in the exchange as reflected
in the records of the department and if the land is leased, the commissioner shall notify the lessee of the intent to exchange the property during the months of October through January.

**History:** Effective

**General Authority:** N.D. Constitution article IX, § 6; NDCC 28-32-02

**Law Implemented:** NDCC 15-06-19.1

**85-04-06-06. Exchange report.** Following the department's application evaluation, the board's determination that the application covers a tract the board is willing to exchange, and expiration of the public comment period, the department shall prepare an exchange report to be presented to the board, which will include the following:

1. A summary discussion of how the exchange meets or exceeds any of the six criteria for land exchange under section 85-04-06-02;

2. A summary of public comments received on the proposed exchange;

3. The department’s concerns or opinions of the merits of the proposed exchange;

4. The department’s recommendations for board direction regarding further review, if needed, of the proposed exchange; and

5. The applicant's commitment to fund the costs of the department's detailed review, including appraisals, title examinations, advertising costs, recording fees, and other costs as may be necessary to complete an exchange as determined by the department. The applicant shall be responsible for payment of all costs, unless payment of the costs is otherwise waived by the board or shared by the parties to the exchange.

**History:** Effective

**General Authority:** N.D. Constitution article IX, § 6; NDCC 28-32-02

**Law Implemented:** NDCC 15-06-19.1

**85-04-06-07. Board authorization.** Upon receipt of the department's exchange report, the board shall consider the specific recommendations of the department and public comments and evaluate the merits of the land exchange. The board shall determine whether further review and public comment are required.

Where a proposed exchange satisfies the exchange criteria, the board may exercise its discretion to suspend further review and disapprove the application as not in the best interests of the trusts.

Alternatively, the board may direct the commissioner to complete specific tasks relating to the merits of the proposed exchange and report back to the board with findings before proceeding further. When the board is satisfied that the department and applicant have generated all information necessary for its decision, the board shall review and determine whether the proposed exchange is in the best interests of the trusts.

The commissioner is authorized to complete all documents for the exchange on the board’s behalf if the board approves the exchange.

**History:** Effective

**General Authority:** N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-06-19.1
ARTICLE 85-04
SURFACE LAND MANAGEMENT

Chapter
85-04-01 Leasing Trust Lands for Agricultural Use
85-04-02 Construction Aggregate
85-04-03 Permanent Improvements
85-04-04 Encumbrances of Trust Lands
85-04-05 Public Access and Use
85-04-06 Land Exchange
85-04-07 Land Sales Under North Dakota Century Code Chapter 15-06
85-04-08 Land Sales Under North Dakota Century Code Chapter 15-07
85-04-09 Land Sales Under North Dakota Century Code Chapter 15-09

CHAPTER 85-04-07
LAND SALES UNDER NORTH DAKOTA CENTURY CODE
CHAPTER 15-06

Section
85-04-07-01 Sale of Original Grant Lands
85-04-07-02 Sale Procedure
85-04-07-03 Payment of Costs
85-04-07-04 Board Review

85-04-07-01. Sale of original grant lands. The board shall retain and manage original grant lands to produce revenue consistent with the long-term maintenance of the original grant lands' income producing potential and ecological health. The commissioner may propose, or accept letters of application for, the sale of original grant land after the original grant land has been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If the tract is high value land;

2. The tract’s potential for mineral development, including sand, gravel, clay, and scoria;

3. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;

4. If the tract and adjacent trust land tracts total less than eighty acres in size, more or less, for grassland and less than forty acres, more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river or lake, which may be sold if the severed portion is less than these amounts; or

5. If the tract and adjacent trust land tracts exceed eighty acres in size, more or less, for grassland or more than forty acres in size, more or less, for cropland, the commissioner may bring to the board an application for purchase which complies with one of the following:
   a. The proposed sale would result in no net loss of leasable original grant land; and
   b. The applicant agrees to donate accessible and leasable land equal or greater in acres and value to the trust from which the original grant land was sold.

1. A letter of application for purchase of original grant land meeting the criteria in section 85-04-07-01 may be accepted at any time. An application must include a non-refundable application fee in an amount set by the board. Upon board approval, a sale of original grant land must be conducted in conformance with North Dakota Century Code chapter 15-06.

2. Upon receipt of a letter of application to purchase a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.

3. The commissioner may recommend to the board that a tract meeting the criteria of section 85-04-07-01 may be sold even though no letter of application has been received. If the commissioner or board determines it is in the best interests of the trusts to proceed with the sale, the sale may proceed without the requirement of a public comment period.

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

a. Name and address of the interested person;

b. Applicant’s name and address;

c. The legal description of the proposed tract for sale as shown on the published notice; and

d. A detailed statement as to whether the interested person supports or opposes the sale.

4. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers.

5. The board shall review all appraisals, any public comments, other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price.

6. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.

7. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.
8. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-06.

9. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.

10. Land must be advertised for sale at public auction under North Dakota Century Code chapter 15-06.

11. If no bids are received on a tract for which no formal application was received, the tract may be sold for the board established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

12. The sale of any tract under this chapter may be by:
   a. Contract under article IX, section 6 of the Constitution of North Dakota; or
   b. A cash sale requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner’s discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-06, 15-08

85-04-07-04. Board review. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner’s review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-06, 15-08
CHAPTER 85-04-08
LAND SALES UNDER NORTH DAKOTA CENTURY CODE
CHAPTER 15-07

Section

85-04-08-01 Sale of Acquired Lands
85-04-08-02 Sale Procedure
85-04-08-03 Payment of Costs
85-04-08-04 Board Review

85-04-08-01. Sale of acquired lands. The board shall retain and manage acquired lands to produce revenue consistent with the long-term maintenance of the acquired lands' income producing potential and ecological health until sold. The commissioner may propose, or accept a letter of application for, the sale of acquired lands if the department has reviewed its potential for mineral development and the acquired lands has been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.

History: Effective _____________
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Sale procedure.

1. A letter of application for sale of acquired lands may be accepted at any time. An application must include a non-refundable application fee in an amount set by the board. Upon board approval, a sale of acquired lands must be conducted in conformance with North Dakota Century Code sections 15-06-25 and 15-07-04.

2. Upon receipt of a letter of application for sale of a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.

3. The commissioner may recommend to the board that a tract be sold even though no letter of application for sale has been received. If the commissioner or board determines it is in the best interests of the trusts to proceed with the sale, the sale may proceed without the requirement of a public comment period.

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

a. Name and address of the interested person;

b. Applicant's name and address;

c. The legal description of the proposed tract for sale as shown on the published notice; and

d. A detailed statement as to whether the interested person supports or opposes the sale.
5. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers.

6. The board shall review all appraisals, public comments received, and any other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall use the appraisal to establish a sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.

7. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.

8. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.

9. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-07.

10. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale. The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.

11. The department shall determine if acquired lands will be advertised for sale at public auction or by sealed bids, with the sale price set by the board as the minimum bid. If no bids are received on property for which an application has been received, the acquired lands may be sold to the applicant at the minimum bid.

12. If no bids are received on property for which no formal application was received, the property may be sold for the board established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.

13. The sale of land may be by:
   a. Contract under article IX, section 6 of the Constitution of North Dakota; or
   b. A cash sale purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

14. Acquired lands may be sold to any mortgagor or a member of the mortgagor's immediate family under North Dakota Century Code section 15-07-10. The sale must be for cash only with twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective ______________
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-07, 15-08
85-04-08-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-07, 15-08

85-04-08-04. Board review. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner’s review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-07, 15-08
85-04-09-01. Sale of lands for public or quasi-public purpose. The department shall consider the following criteria when reviewing an application for sale under North Dakota Century Code chapter 15-09:

1. The tract is required for the purposes stated in the application and issuance of the patent or deed must not have a significant negative impact on the remainder of the trust lands;

2. Environmental impacts are minimal or are required to be mitigated in an acceptable manner;

3. Impacts on the value of the remainder of the trust lands are minimal or are required to be mitigated in an acceptable manner;

4. Impacts to significant archaeological and historical sites are minimal, or are required to be mitigated in an acceptable manner;

5. The sale must produce a positive financial return to the trusts;

6. There is no known significant controversy regarding the project;

7. The surface lessee has been notified of the project; and

8. If the application is for a sale of land for use as a landfill by a public entity, the following requirements must be met:

   a. Applicants shall work with the state department of environmental quality to ensure the operation of the proposed landfill is in accordance with state and federal laws, rules, and regulations;

   b. Before final approval of a sale is given, the applicant shall submit evidence that the site meets appropriate geological, hydrological, and other requirements established by the state department of environmental quality and the United States environmental protection agency. A permit for feasibility testing may be issued prior to final approval of a sale.

   c. When determining the purchase price, the board shall consider the following additional factors:

      (1) The unique geological and hydrological characteristics which make the site suitable for use as a landfill;

      (2) The effect on the value of adjacent state properties caused by using the site as a landfill; and
The price paid by other purchasers for similar landfill sites.

History: Effective ______________
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-09

85-04-09-02. Sale procedure.

1. An application for purchase of land may be accepted and the land sold in conformance with North Dakota Century Code chapter 15-09. An application must be submitted using a paper application provided by the department upon request and be completed and signed by authorized personnel and must include a non-refundable application fee in an amount set by the board unless waived by the commissioner. The application must meet the requirements of North Dakota Century Code section 15-09-01 and may require, depending on the land to be purchased, the following:

   a. A siting and environmental review completed by the department; and

   b. A "metes and bounds" survey of the land to be purchased, including both a plat and written narrative of the survey completed by the applicant. The narrative must include the distances and angles between points of intersection and points of entry and exit tied into the section corners, quarter section corners, or lot corners, and a breakdown of the acreage in the parcel for each separate quarter section or lot included in the purchase.

2. If the land is leased, commissioner shall notify the lessee of the intent to sell the property during the months of October through January.

3. Upon receipt of an application for sale of lands for public or quasi-public purpose and a determination that the application covers a tract the commissioner is willing to consider for sale, the department shall post on the department's website a notice of the application for sale of lands for public or quasi-public purpose, any supporting documentation, and instructions for submitting public comments. All comments must be in writing and contain the following:

   a. Name and address of the interested person;

   b. Applicant's name and address;

   c. The legal description of the proposed tract as shown on the published notice; and

   d. A detailed statement as to whether the interested person supports or opposes the sale.

4. The department shall secure a real property appraisal in accordance with North Dakota Century Code sections 15-06-22 and 15-06-23 and may secure additional appraisals from certified appraisers. Appraisals must consider the matter of severance of adjacent trust lands caused by the sale and the effect on the value of adjacent trust lands, which may reflect a higher appraisal.

5. The department shall provide the board a report of all appraisals, public comments, and any other relevant information to allow the board to determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall establish a minimum acceptable sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.
6. The board shall obtain fair market value for all land sold under North Dakota Century Code chapter 15-09 and must consider its "highest and best use" as defined in North Dakota Century Code section 15-02-05.1.

7. The department shall notify the applicant, if any, of the price set by the board, which must be the approved sale price.

8. The notice of the application and the board approved sale price must be published and a hearing must be held in conformance with North Dakota Century Code section 15-09-03. Should publication of any notice be inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled hearing if it appears the omission or error is not prejudicial to the department's interest.

9. Any comments made at the hearing must be brought to the board, along with the department’s recommendations regarding those comments.

10. If the applicant desires to purchase the property at the price set by the board and pays full purchase price, the commissioner is authorized to complete the sale on the board’s behalf. If an agreement as to price cannot be reached, the applicant may proceed under North Dakota Century Code section 15-09-05.

85-04-09-03. Payment of costs. The purchaser shall be responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-09

85-04-09-04. Fencing. A no-fencing clause may be added to the conveyance in order to keep trust lands from being severed.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-09

85-04-09-05. Reversion clause. Any conveyance must contain a reversion clause stipulating that if the property is at any time not used for its stated purpose at the time of purchase, the board may terminate the estate created by the conveyance and repossess the property. The power of termination and re-entry may be exercised by the board without reimbursement to the purchaser of any part of the purchase price, and without payment of any other consideration.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-09

85-04-08-06. Board review. Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner’s review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective
General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02
Law Implemented: NDCC 15-09

1. If an oil and gas well has been drilled and is producing in commercial quantities from mineral acreage owned by another or from adjacent trust lands leased at a lesser royalty, which well is within one thousand feet of the trust lands, the lessee of the trust lands shall, within one hundred twenty days after completion of such well, exercise one of the following options:

   a. Diligently begin in good faith the drilling of a corresponding offset well on the leased trust lands, or on lands pooled therewith;

   b. Pay a compensatory royalty, as determined by the commissioner, in lieu of the drilling of an offset well. If a lessee elects to pay a compensatory royalty, the lessee shall submit to the commissioner, within thirty days of the date such election, a proposed compensatory royalty agreement based on the estimated drainage area of the well located within one thousand feet of the trust lands. Geological, engineering, or other evidence in the form of a narrative and/or maps which form the basis for the offset drainage computation must be included with the proposed agreement;

   c. Release the leased acreage to avoid the offset requisites; or

   d. Submit a request to the commissioner for a waiver of the offset obligation as follows:

      (1) A request for a waiver of the offset obligation must be in writing and provide the grounds for the request. If a request is made, the lessee shall submit to the commissioner, within thirty days of the request, geological, engineering or other evidence in the form of a narrative and/or maps which, in the opinion of the lessee, indicates that an additional well need not be drilled to reasonably develop or protect the trust lands from offset drainage due to the well located within one thousand feet on trust land. After a review of the evidence required to be submitted, the commissioner may:

         (a) Request that the lessee supply additional evidence to support:
1. The request for a waiver of the offset obligation; or
2. The proposed compensatory royalty agreement submitted by the lessee.

(b) Grant a waiver of the offset obligation;
(c) Approve the proposed compensatory royalty agreement of the lessee;
(d) Require the lessee to pay compensatory royalties as determined by the commissioner;
(e) Take such other action as the commissioner may deem appropriate, including the acceptance of a release either in whole or in part as to all or less than all strata included in the lease; or
(f) Cancel the lease in accordance with section 85-06-01-10.

(2) A waiver of offset obligation is effective from the date of approval by commissioner. The commissioner may revoke a waiver of offset obligation if the commissioner determines the action is in the best interests of the trusts. If a waiver of offset obligation is revoked, the department shall provide notice to the lessee by certified mail. In the event of revocation, lessee shall have one hundred twenty days from the date of revocation to exercise one of the options under this section.

(3) Lessee shall submit a report as to the conditions regarding offset drainage from an offset well every five years from the date of approval of waiver of offset obligation. If there is a change of conditions regarding offset drainage from an offset well at any time, lessee shall be required to submit a report notifying the department of the change within one hundred twenty days of the change of conditions.

(4) The commissioner shall notify the lessee of the commissioner’s decision.

2. If the lessee fails to exercise any of the options in subsection (1) the oil and gas lease is subject to cancellation under section 85-06-01-10.

3. The commissioner is authorized to approve compensatory royalties on the board’s behalf in accordance with this section.

4. If an application does not comply with this section, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.

History: Effective
General Authority: NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06
Law Implemented: NDCC 15-05-09, 61-33-06, 61-33.1
RE: Repayment of Unpaid Gas Royalties Update
(No Action Requested)

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.

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

The Board recently received comments asserting that the Department’s website provides guidance that deductions can be taken from gas royalties. At the February 27, 2020 Board meeting the Board requested additional information regarding the Department’s website, specifically the instructions provided to payors on how to calculate deductions and payments.

In 2014, the Department began the process of developing a required royalty reporting form. The Department consulted with other states, industry partners, and software developers when developing its royalty reporting form. During this process several questions were consistently raised. To address these questions, frequently asked questions (FAQ’s) were posted on the Department’s website in conjunction with the new royalty reporting form and instructions. Two of the FAQ’s address deductions and what is allowed. On June 25th, 2015 an email and letter were sent to royalty payors notifying them of the new royalty reporting form to be used starting October 2015.

The North Dakota Supreme Court has recently stated, however, that deductions are not allowed to be taken from royalty payments thereby addressing the questions the Department received following publication of its website. The Court stated “[t]he Department of Land Trust’s website contains guidance regarding the payment of royalties from oil and gas leases. The Department’s guidance is consistent with our decision in West and provides as follows: ‘gross proceeds of sale means income before deduction of expenses. Basically, it means the price you sell the oil for, regardless of what expenses go into arriving at that price.’” Newfield Expl. Co. vs. State ex rel. N.D. Bd. of Univ. & Sch. Lands, 2019 ND 193, ¶ 8, 931 N.W.2d 478.

Below are the FAQ’s that related to deductions that are currently on the Department’s website. This guidance has been on the Department’s website since 2015. Although the format and location of the website have changed, the guidance has remained the same. Consistent with the Supreme Court’s interpretation of the Board’s lease and the website instructions, the guidance contained in the FAQ’s is consistent with the Board’s position on deductions.

ITEM 5F

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### What deductions are allowed on oil?

Royalty on oil is calculated based on the greater of 1) the highest posted price for the field where produced and when run, 2) the highest market price paid for the area where produced and when run, or 3) the gross proceeds of sale.

Gross proceeds of sale means income before deduction of expenses. Basically it means the price you sell the oil for, regardless of what expenses go into arriving at that price. For example, if you transport the oil to an off-lease location for sale and delivery, the royalty is calculated based on the gross price you receive at the ultimate point of sale and delivery. In this example you may NOT deduct or “net out” the expenses incurred in transporting the oil to the ultimate point of sale and delivery.

### What deductions are allowed on gas?

Royalty on gas is calculated based on the gross proceeds of sale, where the sale constitutes an arm’s length transaction. For a description of what gross proceeds of sale means see “What deductions are allowed on oil.” If a sale of gas does not constitute an arm’s length transaction, Board of University and School Lands Oil & Gas Rule 85-06-06-08 governs calculation of royalties.
May 26, 2020

M-37056

Memorandum

To: Secretary
   Assistant Secretary – Indian Affairs
   Assistant Secretary – Land and Minerals Management

From: Solicitor

Subject: Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota)

On January 18, 2017, the Solicitor issued M-37044, addressing ownership of minerals located beneath the original bed of the Missouri River where it flows through the Fort Berthold Indian Reservation (“Reservation”) within the State of North Dakota (“State”), as well as ownership of minerals beneath uplands flooded by the construction of Garrison Dam and the subsequent formation of Lake Sakakawea. On June 8, 2018, the Solicitor issued M-37052, a partial suspension and temporary withdrawal of M-37044, in order to ensure a thorough legal and factual basis for M-37044 through review of the underlying historical record by a professional historian, a task not performed prior to completion of M-37044.

Since the issuance of M-37052, professional historians employed by Historical Research Associates, Inc. produced a comprehensive report on this matter titled “Historical Examination of the Missouri River within the Fort Berthold Indian Reservation, Precontact-1902” (“HRA Report”). After reviewing the HRA Report and reconsidering relevant judicial precedent and statutes in light of the historical context, I am permanently withdrawing those portions of M-37044 that address ownership of minerals located beneath the original bed of the Missouri River and replacing that analysis with this opinion. For the reasons set forth below, I have concluded that the State of North Dakota is the legal owner of submerged lands beneath the Missouri River where it flows through the Reservation.1

This opinion alters previous Departmental decisions related to this issue and supersedes guidance provided in Solicitor’s Opinion M-28120 in 1936, and by the Interior Board of Land Appeals

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1 Those portions of M-37044 that address the ownership of minerals beneath the flooded uplands remain affirmed, as stated in M-37052.
(“IBLA”) in 1979. These decisions were not informed by the facts provided in the HRA Report, and did not account for subsequent United States Supreme Court (“Supreme Court”) jurisprudence in Montana v. United States, United States v. Alaska, and Idaho v. United States. In these cases, the Supreme Court perfected its reasoning with regard to federal reservations of submerged lands. As such, the Department’s earlier administrative decisions must be reexamined.

I. The Equal Footing Doctrine establishes a strong presumption in favor of State ownership of submerged lands, as reflected in Supreme Court decisions considering the issue.

The Equal Footing Doctrine, also referred to as “equality of the states,” is the constitutional principle that each state admitted to the Union enters on an equal footing with the original thirteen states. As early as 1845, the Supreme Court interpreted this principle to establish a default rule that the “shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively.” The original thirteen states maintained possession of submerged lands upon entrance to the Union, and all “new states have the same rights, sovereignty, and jurisdiction over this subject as the original states.” The Equal Footing Doctrine thus creates a constitutional presumption in favor of state ownership that sets the stage for the submerged lands analysis we undertake here.

Notwithstanding this presumption, Congress does possess authority to “convey land beneath navigable waters, and to reserve such land (...) for a particular national purpose such as a[n] (...) Indian reservation.” If Congress does so prior to statehood, the Equal Footing Doctrine’s presumption of state title to submerged lands may be defeated. However, due to the public importance of navigable waterways, ownership of the land underlying such waters is “strongly identified with the sovereign power of government,” and the Supreme Court instructs us that the presumption in favor of state ownership is a weighty one. Generally speaking, “lands

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6 Note, for instance, that the IBLA relied in part on United States v. Finch, 548 F.2d 822 (1976), as support for its ruling in favor of tribal ownership of submerged lands. See Impel Energy Corp., 42 IBLA 105, 113. Finch was a Ninth Circuit case proceeding nearly parallel with Montana v. United States and was ultimately reversed. This administrative proceeding was precipitated by the Bureau of Land Management analysis applying fundamental judicial precedent regarding states’ rights to submerged land in Lessee of Pollard v. Hagan, 44 U.S. 212 (1845) and Shively v. Bowlby, 152 U.S. 1 (1894) to reject applications for oil and gas leasing beneath the Missouri River on the ground that the lands sought for leasing were owned by the State, not by the federal government. We again endorse that initial position of the Department through this opinion, and we note that the IBLA did not have the benefit of reference to later Supreme Court cases on the issue, including Montana, Alaska, and Idaho.
8 Ibid.
10 Id. at 272-73.
underlying navigable waters within territory acquired by the [federal] Government are held in trust for future States and [ ] title to such lands is automatically vested in the States upon admission to the Union.”12 As the Supreme Court explained in *United States v. Holt State Bank*,

the United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future states, and so has refrained from making any disposal thereof, save in exceptional instances when impelled to particular disposals by some international duty or public exigency. It follows from this that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain.13,14

The Supreme Court has considered several times whether an intent to reserve submerged lands has been so “definitely declared or otherwise made very plain” when the government makes an initial reservation of land prior to statehood, such as in the form of a wilderness reserve or an Indian reservation. Because the act of reserving submerged lands by the United States does not necessarily imply an intent “to defeat a future State’s title to the land,”15 the Supreme Court undertakes a two-step inquiry in such cases. That test, as expressed in the Supreme Court’s analysis in *Idaho v. United States*, asks “[1] whether Congress intended to include land under navigable waters within the federal reservation and, if so, [2] whether Congress intended to defeat the future State’s title to the submerged lands.”16

In the case of land initially reserved by the Executive Branch, the *Idaho* court explained that the “two-step test of congressional intent is satisfied when an Executive reservation clearly includes submerged lands, and Congress recognizes the reservation in a way that demonstrates an intent to defeat state title.”17 The *Idaho* court then inquired as to “whether Congress was on notice that the Executive reservation included submerged lands and whether the purpose of the reservation would have been compromised if the submerged lands had passed to the State.”18 Where this purpose would have been compromised, the Supreme Court has ruled that “[i]t is simply not plausible that the United States sought to reserve only the upland portions of the area.”19

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14 We note that the Supreme Court has not invoked the Indian canon of construction since development of its two-part test to defeat Equal Footing on Executive Order reservations. Consistent with the constitutionally-based presumption that submerged lands are conveyed to the State at the moment of statehood, the Supreme Court has instead relied exclusively on federal intent at the time of reservation establishment, Congressional notice of this intent, and whether the purpose of the reservation would have been compromised if submerged lands had passed to the State at the time of reservation establishment.
17 *Id.* (emphasis added).
18 *Id.* at 273-74 (internal citations omitted).
II. The history of executive actions establishing and modifying the Reservation does not demonstrate a clear intent to include submerged lands under Step One of the Idaho test.

a. The record is silent regarding the riverbed itself.

The description and modification of the Reservation through an 1870 Executive Order, an 1880 Executive Order, and through an 1886 Agreement (ratified by Congress in 1891, subsequent to statehood) is well-documented. The Executive Orders and the 1886 Agreement included language that defined the boundaries of the Reservation to include the Missouri River, and used the river as the boundary line between the Reservation and the State in certain places. For example, the boundary description in the 1870 Executive Order reads:

From a point on the Missouri River 4 miles below the Indian village (Berthold), in a northeast direction 3 miles (so as to include the wood and grazing around the village); from this point a line running so as to strike the Missouri River at the junction of Little Knife River with it; thence along the left bank of the Missouri River to the mouth of the Yellowstone River, along the south bank of the Yellowstone River to the Powder River, up the Powder River to where the Little Powder River unites with it; thence in a direct line across to the starting point 4 miles below Berthold.

The use of the term “left bank” meant the north and east sides of the Missouri River, and this description includes the span of the river within the Reservation’s boundaries. However, the inclusion of a river within the geographic boundaries of a reservation does not of necessity mean that submerged lands underlying the river are also included. The Supreme Court made this point abundantly clear in Montana:

The mere fact that the bed of a navigable water lies within the boundaries described in the treaty does not make the riverbed part of the conveyed land, especially when there is no express reference to the riverbed that might overcome the presumption against its conveyance.

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21 Exec. Order (July 13, 1880), reprinted in 1 CHARLES J. KAPPLER, INDIAN AFFAIRS: LAWS AND TREATIES 881 (2d ed. 1904) (hereinafter “1880 Executive Order” and together with the 1870 Executive Order, “Executive Orders”).
22 Act of March 3, 1891, 26 Stat. 989 at 1032 (hereinafter “1886 Agreement”).
23 1870 Executive Order.
24 The “left” or “right” banks of a river have, since at least 1851, been determined by public lands surveyors by looking downstream from the center of the river and then indicating the left or right side from that viewpoint. E.g., U.S. DEP’T OF THE INTERIOR, GENERAL LAND OFFICE, INSTRUCTIONS TO THE SURVEYORS GENERAL OF PUBLIC LANDS OF THE UNITED STATES FOR THOSE SURVEYING DISTRICTS ESTABLISHED IN AND SINCE THE YEAR 1850, at viii, 12, https://glorecords.blm.gov/reference/manuals/1855_Manual.pdf (Regarding meandering navigable streams, “Standing with the face looking down stream, the bank on the left hand is termed the ‘left bank’ and that on the right hand the ‘right bank.’ These terms are to be universally used to distinguish the two banks of [a] river or stream.”).
After reviewing the HRA Report and its exhaustive analysis of the records created in conjunction with the Executive Orders and the 1886 Agreement, it is plain that the Executive never made any express reference to the riverbed itself. While the Missouri River is obviously included within the geographic boundaries of the Reservation, the record is silent regarding whether the Reservation was intended to include the riverbed. These are entirely different legal questions.

Without any express reference to the riverbed, and without any other contemporaneous evidence suggesting that the Executive intended to include the riverbed within the Reservation, we cannot find that the Reservation “clearly includes submerged lands” as required by the Supreme Court in Idaho.26 Here, the Executive’s intent to include submerged lands is far from clear, falling well below the threshold necessary to overcome the strong presumption of State ownership.

b. The record does not show an intent to protect uses of the riverbed, including fishing.

1. Farming, Grazing, Hunting, and Timber

In contrast to the historical record’s silence with regard to the riverbed, there is substantial evidence that the Executive did have in mind a clear purpose in setting aside lands for the Mandan, Hidatsa, and Arikara Nation (“Nation”). The Executive was actively considering the amount of land sufficient to support the Nation with farming, livestock, and, to a lesser extent, hunting and forestry. This was the core of executive intent here, not the river and its fishing resources.

Long before the federal government’s relationship with the Nation, tribal members practiced extensive subsistence farming. “Being skilled agriculturists, the Upper Missouri tribes might grow hundreds of bushels of corn, beans, and squash in productive years.”27 Bureau of Indian Affairs (“BIA”) agents sought to encourage more farming, actively urging tribal members to move away from the centralized village on the river (“Like-a-Fishhook” village) to take up individual farms.28 BIA agents assisted tribal members in breaking farming ground, and in 1885, they relocated nearly a third of tribal members to farming allotments.29

27 HRA Report at 27.
28 “Bureau of Indian Affairs (BIA) agents were also encouraging the Indians to move out of Like-a-Fishhook village, which they deemed crowded and unsanitary, to take up individual farms. In 1882, Agent Jacob Kauffman persuaded some families to relocate upriver of Like-a-Fishhook, where agency officials had broken farm land for them. . . . In 1885, Agent Abram Gifford relocated about 100 Indians to allotments. This coincides with the recollection of Edward Goodbird (Hidatsa) that ‘[i]n the summer of my sixteenth year nearly a third of my tribe left to take up allotments.’” HRA Report at 19-20, citing Letter from Courtenay to Comm’r of Indian Affairs, August 19, 1879, ARCA 1879, 30; Letter from Jacob Kauffman, Indian Agent, Fort Berthold Agency, to Comm’r of Indian Affairs, August 9, 1883, ARCA 1883, 32–33; Letter from Abram J. Gifford, Indian Agent, Fort Berthold Agency, to Comm’r of Indian Affairs, August 18, 1885, ARCA 1885, 30.
29 See ibid. Note that these allotments were different from those made pursuant to the 1886 Agreement, which was ratified by the Act of March 3, 1891, 26 Stat. 989 at 1032. Allotment under the 1886 Agreement occurred between 1894 and 1895. See Roy W. Meyer, THE VILLAGE INDIANS OF THE UPPER MISSOURI: THE MANDANS, HIDATSAS, AND ARIKARAS, (University of Nebraska Press, 1977), 137–38.
These actions on the part of the BIA are consistent with statements made by the architects of the Reservation. In 1869, Major General Winfield Scott Hancock “instructed the Commanding Officer at [Fort] Stevenson to examine the country about Berthold and to recommend what portion should be set off for [the Nation] (...). I think they should have a reservation sufficiently large for them to cultivate, to procure fuel, and hunt on, if possible, without encroaching too much on the public lands.”30

The required surveying work was accomplished by Captain S. A. Wainwright, who proposed the boundaries adopted by President Grant in the 1870 Executive Order defining the Reservation.31 A letter in the record from Captain Wainwright to his commanding officer, forwarded to the Commissioner of Indian Affairs, then to the Secretary of the Interior, and then to the President, described the Captain’s work and intentions in defining the boundaries of the Reservation as agreed to in the 1870 Executive Order. This letter does not list the riverbed, or fishing, as a consideration for the Reservation. Rather, Captain Wainwright writes that he has “endeavored in this proposed reservation to give [the Nation] land enough to cultivate and for hunting and grazing purposes.”32

The military and Department staff also showed an intent to protect the Nation’s timber resources. For instance, in 1872, BIA Agent John E. Tappan wrote a letter to a “saw log and cordwood contractor,” informing the contractor that “[i]n pursuance of instructions received from Dept. of Interior I hereby furnish you with the boundaries of the reservation laid off for the Indians of this Agency, and would inform you that all persons are strictly forbidden by the War Dept. and Dept. of Interior to cut wood upon any of the land set apart for reservations for Indians unless the consent of the Indian is obtained, and they paid for their wood.”33

The Executive’s focus on agriculture, husbandry, hunting, and forestry was again reflected in the record supporting the 1880 Executive Order. In considering a diminishment to the Reservation, Commissioner of Indian Affairs Rowland E. Trowbridge wrote to BIA Agent Alexander Gardner in April 1880, requesting information and asking Agent Gardner to “designate clearly upon the enclosed maps, what part [tribal members] occupy, and also what part they principally use for hunting purposes[.]”34 In Agent Gardner’s reply, he concluded with a description of the government’s general purposes for the Reservation:

| It is the policy of the Government to encourage Indians in agricultural pursuits, and assist them in becoming self supporting, and for this purpose, it is absolutely necessary that their reservation should contain good [arable?] and grazing lands. To diminish the reservation of these Indians west of the Missouri River, would deprive them of nearly all their good farming lands and timber. No compensation for this loss could be given by increasing the reservation east of the Missouri

31 HRA Report at 53.
34 HRA Report at 66, quoting Letter from Trowbridge to Gardner, April 5, 1880.
River, as the land is poor and barren, and without water or timber—especially the latter.\textsuperscript{35}

Finally, the United States’ focus on agriculture and husbandry was expressed in the preamble to the Congressional bill ratifying the 1886 Agreement, which largely maintained the lands set aside through the Executive Orders. The preamble explained Congress’s purposes for the Reservation:

\begin{quote}
[I]t is the policy of the Government to reduce to proper size existing reservations when entirely out of proportion to the number of Indians existing thereon, with the consent of the Indians, and upon just and fair terms; and whereas the Indians of the several tribes, parties hereto, have vastly more land in their present reservation than they need or will ever make use of, and are desirous of disposing of a portion thereof in order to obtain the means necessary to enable them to become wholly self-supporting by the cultivation of the soil and other pursuits of husbandry[.]
\end{quote}\textsuperscript{36}

Thus, repeatedly and consistently, the record demonstrates a consonant Executive and Congressional purpose for the Reservation to support the Nation’s agricultural and grazing activities, and to a lesser extent its hunting and timber resources.

The Supreme Court has instructed that “the purpose of a conveyance or reservation is a critical factor in determining federal intent.”\textsuperscript{37} Here, the primary purpose of the Reservation was to support tribal farming and the raising of livestock. Neither activity requires the use of the riverbed, and the record supplies no evidence of federal intent to reserve the riverbed for the Nation.

\section{Fishing and Other Uses of the Riverbed}

While the HRA Report includes substantial historical evidence of the Nation’s use of the Missouri River for fishing, for capturing “float bison,” and for trade and security, there is little evidence that these uses were prominent in the Executive’s consideration of the Reservation, and no evidence that Congress was on notice or aware of these uses at all. In 1880, Agent Gardner wrote that the “character of the reservation outside of the grant to the Railroad Co. is not so well adapted to farming, grazing, fishing and hunting and other necessities of the Indians.”\textsuperscript{38} This ancillary reference to fishing appears to be the only written consideration of fishing made by the Executive in connection with designing the Reservation.

Other contemporaneous evidence indicates that fishing was not the primary source of subsistence for the Nation. The HRA Report indicates that by 1890—one year after statehood—seventy

\begin{footnotes}
\footnote{\textit{Ibid.}, quoting Letter from Gardner to Trowbridge, April 13, 1880 (emphasis added). Gardner included a map with his letter marked with handwritten notations indicating which parts of the reservation tribal members used for hunting.}
\footnote{1886 Agreement (emphasis added).}
\footnote{\textit{United States v. Alaska}, 521 U.S. 1, 39 (1997) (emphasis in original).}
\footnote{HRA Report at 66, quoting Letter from Gardner to Trowbridge, April 13, 1880.}
\end{footnotes}
percent (70%) of tribal subsistence came from farming, stock raising, or wage labor; fifteen percent (15%) from government rations; and fifteen percent (15%) from the combined activities of “[h]unting, fishing, root-gathering, etc.”39 Considering the evidence in the record showing the importance of hunting to the Nation, it is likely that food derived from hunting bison and other game comprised the majority of this combined subsistence category.

Ultimately, the Supreme Court, in determining whether submerged lands were reserved in such a way as to defeat the Equal Footing Doctrine, requires an inquiry as to “whether the purpose of the reservation would have been compromised if the submerged lands had passed to the State.”40 The historical record indicates that both the Executive and Congress intended the Nation to develop further agriculture and livestock raising practices, pursuits unaffected by ownership of submerged lands in the Missouri River. As such, I conclude that the Reservation’s purpose would not have been compromised if submerged lands passed to the State.

Finally, while acknowledging that fishing—to include the use of traps and weirs affixed to the riverbed—was a traditional source of subsistence for the Nation, these uses do not require that the riverbed and all submerged lands be included in the federal reservation. Open-water fishing does not require ownership of submerged lands. The existence of fish traps located in shallow water near the banks of the river does not necessitate a finding that the riverbed was held for the Nation. This is especially so where the record does not indicate Executive and Congressional knowledge of such activities.

A reservation of submerged lands must not be lightly inferred. Here, the federal government never definitely declared its intentions regarding the submerged lands beneath the Missouri River; it is uncontested that the record is silent regarding the riverbed itself. Executive intent to deprive the State of the submerged lands has not been “made very plain” as required by Holt State Bank. Thus, without any statement or reference regarding the riverbed, Congress could not conceivably have been placed on notice, as the Idaho court instructed,41 of an Executive intent to reserve submerged lands for the beneficial use of the Nation.

III. The balance of judicial precedent favors State ownership of submerged lands beneath the Missouri River.

After considering the historical record in light of Supreme Court precedent as it relates to the Equal Footing Doctrine, I conclude that the circumstances here are most similar to those cases where the Supreme Court has held that submerged lands were not reserved by the federal government.

The Nation’s claim to the submerged lands beneath the Missouri River is not dissimilar to that of the Red Lake Band of Chippewa Indians’ (“Red Lake”) failed claim on Mud Lake in Holt State Bank. The record in Holt State Bank similarly reveals no express reference to the lakebed or submerged lands by the United States when establishing the reservation. The Supreme Court

39 HRA Report at 21, citing “Table relating to population, dress, intelligence, dwellings, and subsistence of Indians, together with religious, vital, and criminal statistics,” ARCIA 1890, 450–51.
explained there “was no formal setting apart of what was not ceded, nor any affirmative declaration of the rights of the Indians therein, nor any attempted exclusion of others from the use of navigable waters.” 42 Here, the Executive Orders and 1886 Agreement that established the Reservation contain language similar to that found in the treaty reserving land in Minnesota for Red Lake, in that it was “reserve[d] in a general way for the continued occupation of the Indians what remained of their aboriginal territory.” 43 The Executive Orders and the 1886 Agreement are principally boundary-setting documents, composed mostly of technical language setting the metes and bounds of the Reservation. In line with the facts at issue in Holt State Bank, the Executive Orders and 1886 Agreement lack any specific set aside of the riverbed or exclusion from the use of the river as a navigable water.

The conclusion that the submerged lands passed to the State is further supported by the reasoning in Utah Division of State Lands v. United States. 44 There, the United States Geological Survey had reserved Utah Lake and lands circling the lake in order to prevent homesteading that might interfere with future water resource projects. Because the purpose of that reservation did not require use of the lakebed (i.e., the lakebed was not available for settlement), the Supreme Court concluded that “little purpose would have been served by the reservation of the bed of Utah Lake.” 45 Here, too, the purpose of the Reservation did not of necessity require the use of the riverbed. And while I recognize the historic importance of fishing to the Nation, such facts are insufficient to show a federal purpose to reserve the riverbed in the absence of support for this understanding in the Executive or Congressional record. This is particularly so considering the strong presumption in favor of State ownership.

This matter is perhaps most closely analogous to the facts in Montana v. United States. 46 There, the Supreme Court considered the Crow Tribe of Montana’s (“Crow Tribe”) claim to the bed and banks of the Bighorn River. While the river was clearly contained within the geographic boundaries of the Crow Indian Reservation, the “mere fact that the bed of a navigable water lies within the boundaries described in the treaty does not make the riverbed part of the conveyed land, especially when there is no express reference to the riverbed that might overcome the presumption against its conveyance.” 47 As here, the treaty conveying the land to the Crow Tribe was bare of language setting apart, referencing, or even impliedly invoking the riverbed. The Montana court found the riverbed passed to the State of Montana, relying on the analysis of Holt State Bank and characterizing that opinion as finding “nothing in the treaties ‘which even approaches a grant of rights in lands underlying navigable waters; nor anything evincing a purpose to depart from the established policy (…) of treating such lands as held for the benefit of the future State.’” 48 As in Montana, it is uncontested that there is no “express reference” to the Missouri riverbed in any part of the Executive or Congressional record.

The Montana court concluded that the lack of reference to the riverbed was sufficient to find State ownership, and then noted that “[m]oreover, even though the establishment of an Indian
reservation can be an ‘appropriate public purpose’ (…) justifying a congressional conveyance of a riverbed (…) at the time of the treaty the Crows were a nomadic tribe dependent chiefly on buffalo, and fishing was not important to their diet or way of life.”

While unlike the Crow Tribe, there is evidence that the Nation relied in some part on fishing, it is also true that the vast majority of the Nation’s subsistence stemmed from farming, livestock, government assistance, and hunting, dwarfing the importance of fishing to tribal members. Thus, the Montana court’s “moreover” rationale does not change the outcome vis-à-vis the Nation.

In contrast to the Crow Tribe and the Nation, the Coeur d’Alene Tribe’s (“Coeur d’Alene”) reliance on fishing and its persistent negotiation for rights over Lake Coeur d’Alene featured prominently in Idaho v. United States. In Idaho, Coeur d’Alene petitioned the United States to set aside its reservation, arguing that its previous boundaries were unsatisfactory, “due in part to their failure to make adequate provision for fishing and other uses of important waterways.” In a second petition to the Commissioner of Indian Affairs, Coeur d’Alene requested a reservation that included certain river valleys because “we are not as yet quite up to living on farming” and “for a while yet we need have some hunting and fishing.” The Idaho court found that Coeur D’Alene relied “on submerged lands for everything from water potatoes harvested from the lake to fish weirs and traps anchored in riverbeds and banks.”

Notably, the United States Senate directly queried the Secretary regarding the Coeur d’Alene’s claims to the waterways, adopting a resolution that directed the Secretary to “inform the Senate as to the extent of the present area and boundaries of the Coeur d’Alene Indian Reservation in the Territory of Idaho,” including “whether such area includes any portion, and if so, about how much of the navigable waters of Lake Coeur d’Alene, and of Coeur d’Alene and St. Joseph Rivers.” The Secretary replied, placing Congress on notice of the importance of the waterways to the Coeur d’Alene.

These clear references to fishing and the river valleys in Idaho indicate the importance of the question to the Executive and Congress. Indeed, it was a vital issue for federal consideration and addressed the fundamental purpose of the reservation. Last, and potentially dispositive to the Supreme Court’s analysis, in Idaho the State of Idaho conceded that the 1873 Executive Order describing the reservation did, in fact, include submerged lands in the reservation. No such concession and no such plain evidence of tribal petition and negotiation for waterways and fishing resources is present at the Fort Berthold Indian Reservation. The matter here considered is thus distinguishably weaker for the Nation than it was for the Coeur d’Alene in Idaho.

Other cases where tribal reliance on fishing was critical to judicial decision making on ownership of submerged lands demonstrate an even stronger necessity and reliance on fishing. In Alaska Pacific Fisheries Co. v. United States, a tribal reservation was established on the Annette Islands,

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49 Id. at 556.
50 See supra note 39.
52 Id. at 266.
53 Ibid.
54 Id. at 265.
55 Id. at 268, citing Senate Misc. Doc. No. 36, 50th Cong., 1st Sess., 1 (1888).
an Alaskan island chain that offered few other means of subsistence besides fishing.\textsuperscript{56} The islands bore timber but “only a small portion of the upland is arable,” and the tribal members “were largely fishermen and hunters” who had “looked upon the islands as a suitable location for their colony, because the fishery adjacent to the shore would afford a primary means of subsistence[].”\textsuperscript{57} In \textit{Alaska Pacific Fisheries}, the Supreme Court held that the “Indians could not sustain themselves from the use of the upland alone. The use of the adjacent fishing grounds was equally essential.”\textsuperscript{58} This reliance on fishing as a primary and essential source of subsistence eclipses the ancillary nature of fishing for the Nation and draws a necessary contrast to the “purpose of the reservation” inquiry articulated in \textit{Idaho.}

This contrast is also on display in \textit{Donnelly v. United States}.\textsuperscript{59} There, the Supreme Court inquired as to the Klamath Indians’ reliance on fishing. The \textit{Donnelly} majority explained that the Klamath Indians “established themselves along the river in order to gain a subsistence by fishing. The reports of the local Indian agents and superintendents to the Commissioners of Indian Affairs abound in references to fishing as their principal subsistence[].”\textsuperscript{60} Again, this tribe’s reliance on fishing was amply documented and demonstrably far greater than that of the Nation.

The tribes in \textit{Alaska Pacific Fisheries} and \textit{Donnelly} sustained themselves on the abundant anadromous and marine fisheries present in the Pacific Northwest. Neither this level of fishery biomass nor the routine annual harvest of migrating salmonids is present here. Even in the unlikely case that previously-acknowledged State ownership of submerged lands would have affected the Nation’s fishery, the federal purpose for the Reservation would not have been compromised.

Finally, in \textit{United States v. Alaska}, the Supreme Court ruled that the federal government reserved submerged lands in both the National Petroleum Reserve and the Arctic National Wildlife Range. The Supreme Court reached this conclusion after a review of the Executive and Congressional records, which indicate clear and specific purposes for each reserve that necessarily required federal ownership of the submerged lands.\textsuperscript{61} First, the National Petroleum Reserve was set aside by Executive Order in 1923 with the goal of securing a supply of oil for the Navy as “at all times a matter of national concern.”\textsuperscript{62} The Executive Order “sought to retain federal ownership of land containing oil deposits[,]”\textsuperscript{63} reciting that “there are large seepages of petroleum along the Arctic Coast of Alaska and conditions favorable to the occurrence of valuable petroleum fields on the Arctic Coast.”\textsuperscript{64} This language plainly implied a federal purpose that demanded ownership of submerged lands, necessary to obtain the oil and gas present in subsurface deposits. “The purpose of reserving in federal ownership all oil and gas deposits within the Reserve’s boundaries would have been undermined if those deposits

\begin{footnotes}
\item[56] 248 U.S. 78 (1918).
\item[57]  Id. at 88 (emphasis added).
\item[58]  Id. at 89.
\item[59]  228 U.S. 243 (1913).
\item[60]  Id. at 259.
\item[62]  Id. at 39, citing Exec. Order 3797-A (Feb. 27, 1923).
\item[63]  Ibid.
\item[64]  Ibid.
\end{footnotes}
underlying lagoons and other tidally influenced waters had been excluded.”65 Thus, the *Alaska* court concluded that “[i]t is simply not plausible that the United States sought to reserve only the upland portions of the area.”66

This fundamental federal purpose, complemented by multiple direct statements regarding the need for subsurface mineral deposits in the National Petroleum Reserve, is supported by an entirely different and greater order of evidence in favor of federal ownership than at the Missouri River. The bare statement of boundaries expressed in the Executive Orders and 1886 Agreement fail to demonstrate the clear federal purpose necessary to overcome the State’s presumptive ownership.

Similarly, the United States’ statement of justification in *Alaska* for the Arctic National Wildlife Range expressly references “countless lakes, ponds, and marshes” as nesting grounds for migratory birds and “river bottoms with their willow thickets” furnishing habitat for moose.67 The Supreme Court explained that this statement of justification “illustrates that the Range was intended to include submerged lands beneath bodies of water (...)[;] the drafters of the application would not have thought that the habitats mentioned were only upland.”68 Finding that the “express reference to bars and reefs and the purpose of the proposed Range” distinguished the Arctic National Wildlife Range from the circumstances in *Montana* and *Utah Division of State Lands*, the Supreme Court ruled the United States had reserved submerged lands within the Range.69

As discussed above, the historical record at Fort Berthold is much more analogous to *Montana* and *Utah Division of State Lands* than to *Alaska Pacific Fisheries*, *Donnelly*, or *Idaho*. The express language and clear federal purpose in *Alaska* regarding the Range is strongly supportive of federal ownership of submerged lands, whereas here, the Executive Orders merely describe the boundaries of the Reservation with no stated purpose. Similarly, the ratified 1886 Agreement includes a Congressional preamble pointing only to agriculture and livestock—not fishing or riverbed use—as the key federal purpose. As the federal government desired the Nation to sustain itself on agriculture and livestock alone, I can find no express language or fundamental federal purpose in favor of tribal ownership of the submerged lands beneath the Missouri River.

**IV. The United States’ taking of tribal lands for the Garrison Dam project has no bearing on State ownership of submerged lands beneath the Missouri River.**

Through the Flood Control Act of 1944, Congress authorized the Pick-Sloan Missouri Basin Program (“Program”), seeking to conserve and control water resources through a series of reservoirs and dams along the Missouri River. Downstream of the Reservation, the Army Corps of Engineers built Garrison Dam to further the Program, which created the impoundment now known as Lake Sakakawea and flooded a portion of the Reservation. To effect this taking of the

65 Ibid.
66 *Id.* at 40.
67 *Id.* at 51.
68 Ibid.
69 Ibid.
Nation’s land, Congress enacted a statute in 1949 that included the uplands surrounding the future lake.  

Importantly, the Takings Act applies only to the Nation, without specific reference to the State. The Takings Act’s first section states that if the Nation votes in favor of the Program, “all right, title and interest of said tribes, allottees and heirs of allottees in and to the lands constituting the Taking Area described in section 15 (including all elements of value above or below the surface) shall vest in the United States of America,” and in return the United States would monetarily compensate the Nation. The Takings Act is thus in the nature of a bargain with the Nation alone, not a general purpose civil condemnation proceeding applying to all property rights within the Taking Area. By express statutory language, Congress was entering into a bargain solely with the Nation to acquire its lands, including its subsurface rights, and not any other entity. If the United States had brought a civil condemnation action in the courts and acquired title to everything within the bounds of the Taking Area, then it might have been possible to take lands even where the United States and the courts misidentified the owner. However, that was not the case here. The United States received only what she bargained and paid for—tribal interests in the Taking Area, not State interests.

The Department supported the Takings Act through discussions with the Nation on appropriate compensation and through survey and appraisal of the proposed flooded lands. While the Department’s appraisal meticulously catalogued the loss of each parcel of dry lands surrounding the Missouri River, there was no consideration or suggested compensation for loss of submerged lands, likely because there was no commercial value to the submerged lands at the time. Because of this, there was no spotlight shone on ownership of the riverbed, perhaps contributing to the overall failure to consider whether the State held property interests within the Taking Area. Discussion of State property was not considered in the appraisal, the Congressional record, or the text of the Takings Act.

Because the Takings Act expressly applies only to the “right, title, and interest” of the Nation and its members, and not to any other party, I conclude that any property interests belonging to the State at the time of the taking – including its interests in submerged lands – were left undisturbed. I find it implausible that the United States would engage in a lengthy public process and technical appraisal for tribal land, yet intend to silently take State property without compensation in the same action.

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70 A Joint Resolution to vest title to certain lands of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, in the United States, and to provide compensation therefor, Pub. L. No. 81-437, ch. 790, 63 Stat. 1026 (1949) (“Takings Act”).
71 See, e.g., Houser v. United States, 9 Cl. Ct. 35, 39 (1985) (quoting United States v. 416.81 Acres of Land, 525 F.2d 450, 452 (7th Cir. 1975)) (where the United States condemned land for a dam project and paid the State of Idaho, but certain individuals later asserted that they were the true owners, the United States’ title could not be altered because “there are no indispensable parties” to an eminent domain action and “[t]he failure to join a party will not defeat the condemnor’s title to the land”).
72 Bureau of Indian Affairs, MISSOURI RIVER BASIN INVESTIGATIONS, APPRAISAL: LAND, IMPROVEMENTS, SEVERANCE DAMAGES, AND TIMBER TAKING AREA OF GARRISON RESERVOIR, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA, Report No. 96 (June 30, 1949).
73 See id.
This conclusion is consistent with the 1984 Fort Berthold Reservation Mineral Restoration Act ("1984 Act"), which returned to the Tribe the subsurface tribal property interests taken in 1949.\(^{74}\) That Act provided:

\[
\text{[A]ll mineral interests in the lands located within the exterior boundaries of the Fort Berthold Indian Reservation which—}
\]

(1) were acquired by the United States for the construction, operation, or maintenance of the Garrison Dam and Reservoir Project, and

(2) are not described in subsection (b), are hereby declared to be held in trust by the United States for the benefit and use of the Three Affiliated Tribes of the Fort Berthold Reservation.\(^{75}\)

By its terms, the 1984 Act dealt only with those mineral interests acquired in 1949. Such interests included, by the express language of the 1949 Takings Act, only tribal mineral interests. Thus, the 1984 Act does not disrupt the conclusion that the Takings Act considered only tribal interests in the Taking Area. This view is supported by section 204(a) of the 1984 Act, which provides that “[n]othing in this title shall deprive any person (other than the United States) of any right, interest, or claim which such person may have in any minerals prior to the enactment of this Act.” Further, any argument that the United States silently took State land without compensation in 1949, then granted to the Nation mineral rights to such land in 1984, is inconsistent with the Executive’s contemporaneous actions and the Congressional record.

\*V.\ Conclusion.\*

In reaching the conclusion that submerged lands were not reserved for the Nation and thus passed to the State at the moment of statehood, I remain cognizant of the strong presumption in favor of this outcome, stemming from constitutional principles of the equality of the states as the Supreme Court has repeatedly instructed. The Supreme Court has explained that submerged lands are held for the benefit of the future states, and are not disposed of “save in exceptional instances” when the United States is impelled to do so by an “international duty” or “public exigency.”\(^{76}\) Federal reservations of submerged lands “are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain.”\(^{77}\)

Here, unarguably, the United States never “definitely declared” an intention to reserve submerged lands, and our extensive review of the historical record shows that such an intent was not “otherwise made very plain.” To the contrary, the record shows a consistent federal intent to encourage agriculture and husbandry, not fishing or any other use of the riverbed. In such circumstances and in the face of the strong presumption in favor of the State, I find that under the first step of \*Idaho’s\ two-step inquiry, Congress did not intend to include land under navigable waters within the Reservation.

\(^{75}\) Id. at § 202.
\(^{77}\) Ibid.
This conclusion is bolstered by our examination of the relevant judicial precedent. This is not a case where fishing was the primary and essential source of tribal subsistence, as in *Alaska Pacific Fisheries* or *Donnelly*, or a case where tribal fishing rights and interest in the waterways was repeatedly and consistently communicated to the Executive and Congress, as in *Idaho*. Nor is this a matter in which a fundamental federal purpose would be compromised by granting the riverbed to the State, as in *Alaska's National Petroleum Reserve and Arctic National Wildlife Range*.

I advise the Bureau of Indian Affairs and the Bureau of Land Management to take any actions deemed necessarily to comply with this opinion, to include the withdrawal of any existing oil and gas permits for extraction in submerged lands beneath the Missouri River.

Daniel H. Jorjani
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:

- Repayment of Unpaid Gas Royalties
- United States Department of Interior M - 37056

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<td>Treasurer Schmidt</td>
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<td>Attorney General Stenehjem</td>
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<td>Governor Burgum</td>
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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.