

BOARD OF UNIVERSITY AND SCHOOL LANDS

Roughrider Room

Ground Floor, State Capitol

October 29, 2020 at 9:00 AM

[Join Microsoft Teams Meeting](#)

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

Conference ID: 848 175 722#

AGENDA

➤ = Board Action Requested

1. Approval of Meeting Minutes – Jodi Smith

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

➤ A. September 24, 2020 – pg. 2

2. Litigation – Jodi Smith

➤ A. William S. Wilkinson et al. Case No. 53-2012-CV-00038 – pg. 21

➤ B. Starin Case No. 53-2015-CV-00986 – pg. 24

➤ C. Whitetail Wave LLC Case No. 27-2015-CV-00164 – pg. 26

➤ D. Northern Oil and Gas v. Continental et al Case No. 31-2020-CV-00198 – pg. 27

➤ E. Northern Oil and Gas v. Bruin et al Case No. 31-2020-CV-00199 – pg. 28

➤ F. Vitesse Energy LLC et al. Case No. 27-2019-CV-00266 – pg. 29

➤ **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:**

- William S. Wilkinson et al. Case No. 53-2012-CV-00038

- Starin Case No. 53-2015-CV-00986

- Whitetail Wave LLC Case No. 27-2015-CV-00164

- Northern Oil and Gas v. Continental et al Case No. 31-2020-CV-00198

- Northern Oil and Gas v. Bruin et al Case No. 31-2020-CV-00199

- Vitesse Energy LLC et al. Case No. 27-2019-CV-00266

- Repayment of Royalties

3. Minerals – Adam Otteson

A. Repayment of Royalties – pg. 33

4. Operations – Jodi Smith

A. Surface Land Management and Minerals Management Administrative Rules Update – pg. 34

5. Reports – Jodi Smith

A. September Report of Encumbrances – pg. 35

B. September Unclaimed Property Report - pg. 38

C. Investments Update – pg. 39

D. Royalty Repayment Report – pg. 40

E. Shut in Report – pg. 41

6. Investments – Michael Shackelford

A. Permanent Trust Funds Returns vs. Legacy Fund Returns – pg. 42

➤ B. Fixed Income Asset Allocation – pg. 52

C. Permanent Trust Funds Foreign Investments – pg. 60

7. Surface – Jodi Smith

➤ A. Surface Lease Online Auction Update – pg. 61

8. Other

A. Commissioner Annual Review – to be distributed at Board meeting

Next Meeting November 24 8:00 AM

**Minutes of the Meeting of the
Board of University and School Lands
September 24, 2020**

The September 24, 2020 meeting of the Board of University and School Lands was called to order at 9:02 AM in the Peace Garden 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
Robert Dixon	Network Computer Specialist – via Microsoft Teams
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Division Director – via Microsoft Teams
Rick Owings	Grants Administrator EIIO – via Microsoft Teams
Mike Shackelford	Investment Division Director
David Shipman	Minerals Division Director
James Wald	Assistant Attorney General

Guests in Attendance:

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Kirby Francis	Guest via Microsoft Teams
Jim Sakelaris	Guest via Microsoft Teams
Brady Pelton	NDPC Guest via Microsoft Teams
Nicholas Moller	Guest via Microsoft Teams
Brent Bogar	Guest via Microsoft Teams
Josh Kevan	RVK Guest via Microsoft Teams

APPROVAL OF MINUTES

A motion to approve the minutes of the amended June 25, 2020 regular meeting, the August 27, 2020 regular meeting and the September 9, 2020 special meeting was made by Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

It should be noted for the record that the amended portion of the June 25, 2020 meeting was an update to correct the motion relating to the Commissioner's Performance Evaluation as stated: (1) The Board approves a salary increase of 2.5% as recommended by the 66th Legislative Assembly for the Commissioner. (2) The State Treasurer and Governor's Office will work collaboratively to create an annual review process for the Commissioner's position

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R E P O R T S

August Report of Encumbrances Issued by Land Commissioner

Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Road-Section Line Access Road
Right-of-Way Number:	RW0008640
Trust:	A – Common Schools
Legal Description:	WIL-154-96-16-NE4
Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Road-Section Line Access Road
Right-of-Way Number:	RW0008641
Trust:	A – Common Schools
Legal Description:	WIL-159-96-16-NW4
Granted to:	CONTINENTAL RESOURCES INC
For the Purpose of:	Road-Access Road
Right-of-Way Number:	RW0008648
Trust:	A – Common Schools
Legal Description:	MCK-152-97-36-NW4, SW4
Granted to:	MCKENZIE ELECTRIC COOP INC
For the Purpose of:	Release of Easement
Right-of-Way Number:	RW0008656
Trust:	A – Common Schools
Legal Description:	DUN-148-96-36-SW4
Granted to:	MOUNTRAIL-WILLIAMS ELECTRIC COOP
For the Purpose of:	Drop Line-Buried Electric Distribution Line
Right-of-Way Number:	RW0008687
Trust:	A – Common Schools
Legal Description:	MOU-153-92-16-NW4
Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY
For the Purpose of:	Release of Easement
Right-of-Way Number:	RW0008702
Trust:	A – Common Schools
Legal Description:	MCK-153-94-16-NW4, SW4
Granted to:	MOUNTRAIL-WILLIAMS ELEC. COOP
For the Purpose of:	Drop Line-Buried Electric Distribution Line
Right-of-Way Number:	RW0008731
Trust:	A – Common Schools
Legal Description:	MOU-152-92-23-NE4NW4
Granted to:	VERENDRYE ELEC COOP INC, VELVA-ND
For the Purpose of:	Electric-Buried Distribution Line
Right-of-Way Number:	RW0008755
Trust:	Z – Valley/Mayville
Legal Description:	MCH-156-76-22-E2SW4

Granted to:	OVINTIV USA INC, DENVER-CO
For the Purpose of:	Road-Access Road
Right-of-Way Number:	RW0008766
Trust:	A – Common Schools
Legal Description:	MCK-153-96-16-SE4
Granted to:	INTERSTATE ENGINEERING INC, MANDAN ND
For the Purpose of:	Planning & Preconstruction Survey
Right-of-Way Number:	RW0008768
Trust:	A – Common Schools
Legal Description:	N/A
Granted to:	MINNKOTA POWER COOPERATIVE INC
For the Purpose of:	Seismic
Right-of-Way Number:	RW0008769
Trust:	A – Common Schools
Legal Description:	OLI-141-83-16-NE4, SE4 OLI-142-84-36-SE4, SW4

August Unclaimed Property Report

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

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

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

For the month of July 2020, the Division received 153 holder reports with a property value of \$306,487 and paid 332 claims with a total value of \$558,932.

Energy Infrastructure and Impact Office

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

The Oil and Gas Impact Grant Fund currently has 22 grants with a balance of \$5,282,832.07 as of September 9, 2020. The following shows grant activity for the last seven months:

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Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
2/13/2020	21	\$7,207,988.75
5/13/2020	28	\$7,049,556.08
9/9/2020	22	\$5,282,832.07

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 September 9, 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 seven months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
2/13/2020	3	\$3,447,448.60
5/13/2020	3	\$2,394,929.22
9/9/2020	3	\$2,394,929.22

EIIO is currently managing 25 grants for a total of \$7,677,761.29. The following shows grant activity for the last seven months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
2/13/2020	21	\$7,207,988.75	2/13/2020	3	\$3,447,448.60	\$10,655,437.35
5/13/2020	28	\$7,049,556.08	5/13/2020	3	\$2,394,929.22	\$9,444,485.30
9/9/2020	22	\$5,282,832.07	9/9/2020	3	\$2,394,929.22	\$7,677,761.29

Investment Updates

Portfolio Rebalancing Updates

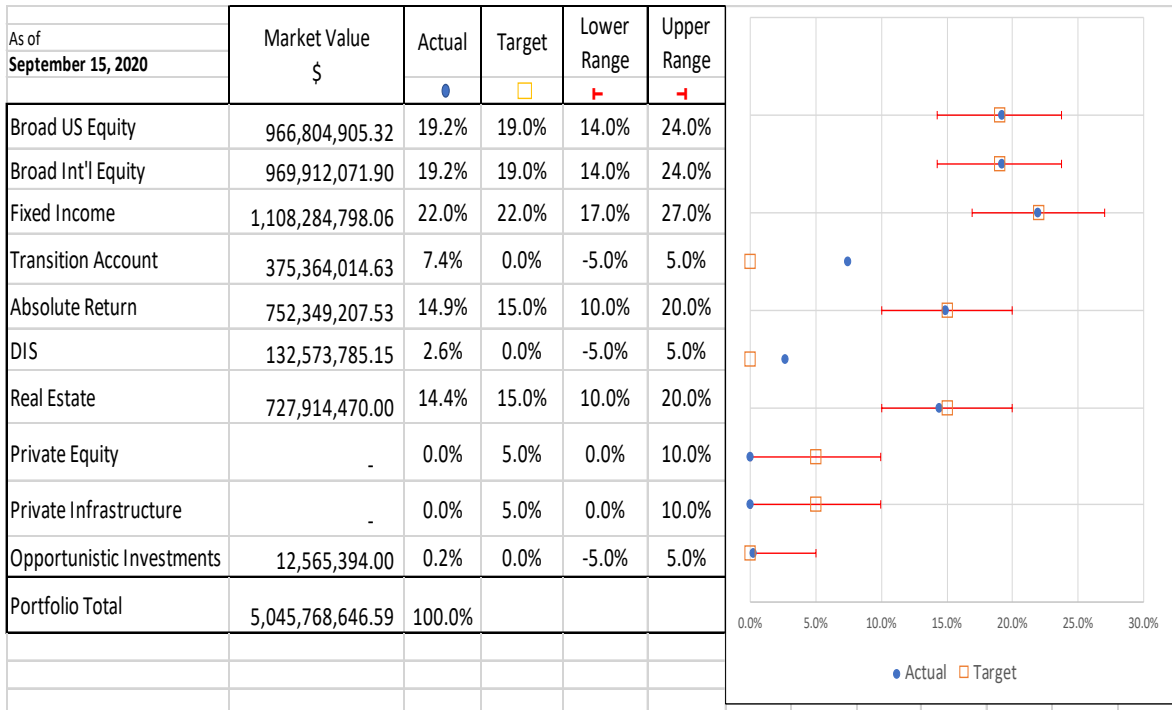
In April 2020, the Board of University and School Lands (Board) approved a new Strategic Asset Allocation. The Department of Trust Lands (Department) staff, along with RVK staff, developed a transition plan to liquidate the TIPS, Commodities, MLPs, and Natural Resource Equities' holdings in the Permanent Trust Funds (PTFs) in a manner that is consistent with the best interests of the PTFs and as market conditions allow. The Department staff and RVK continuously monitoring the trigger points set for these accounts and redemption of investments are completed when appropriate. As of September 15, 2020, Van Eck has approximately \$38M remaining while Harvest has approximately \$94M.

In July 2020, the Board approved \$100M new investment commitment to the Apollo Accord Fund IV, LP (Fund), for an Opportunistic Investment. The Fund has now called on an initial \$2,565,393.79 that was funded on September 15, 2020. The remaining unfunded commitment is now at \$97,434,606.21.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 15, 2020. The figures provided are unaudited.

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Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

Repayment of Unpaid Gas Royalties Report

Gas Royalty Payors Out of Compliance*		
Abraxas Petroleum	Hess	Resource Energy
Armstrong Operating	Hunt Oil	RIM Operating
BTA	Kraken Oil & Gas	Ritter, Laber & Associates
Citation Oil and gas LLC	Liberty Resources	Scout Energy Management
Condor Petroleum	Luff Exploration	Sinclair
Conoco Phillips	Marathon	Slawson
Continental Resources	Murex	Thunderbird Resources
Denbury	Newfield	Whiting
EOG	Oasis	Windridge Operating
Fidelity	Petro Hunt	XTO
Gadeco LLC	Rampart Energy	Zavanna

*Based upon improper deductions taken as discovered in completed audits. As of the time of the report, deductions have not yet been repaid.

Since the September 9, 2020, Board of University and School Lands meeting, one payor has come into compliance:

- Crescent Point

Note, the majority of payors issue payment with their monthly royalty payment made the last week of every month.

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Information Technology Project Status Update

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

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

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

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

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

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 estimated to be in December 2020.

On December 16, 2019, the Department issued the RFP for the Land Management system. The Executive Steering Committee approved the Department moving forward with a Microsoft Dynamics solution. The Project Sponsor, Commissioner and Project Manager are working on determining a kick-off date.

North Dakota Department of Trust Lands Deferred Production Analysis

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 Department of Trust Lands 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. An analysis was presented at the May 28, 2020, Board of University and School Lands meeting. Attached is an updated analysis for review.

North Dakota Department of Trust Lands Deferred Production Analysis document was presented to the Board and is available at the Department upon request.

Board of University and School Lands Meeting Dates For 2021

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special

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meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last two hours each month except for meetings that include the Investment quarterly update which will last three hours as noted below.

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

- January 28, 2021 9:00 AM – 11:00 AM
- February 25, 2021 9:00 AM – 12:00 PM
- March 25, 2021 9:00 AM – 11:00 AM
- April 29, 2021 9:00 AM – 11:00 AM
- May 27, 2021 9:00 AM – 12:00 PM
- June 24, 2021 9:00 AM – 11:00 AM
- July 29, 2021 9:00 AM – 11:00 AM
- August 26, 2021 9:00 AM – 12:00 PM
- September 30, 2021 9:00 AM – 11:00 AM
- October 28, 2021 9:00 AM – 11:00 AM
- November 23, 2021 9:00 AM – 12:00 PM Tuesday before Thanksgiving
- December 21, 2021 9:00 AM – 11:00 AM Tuesday before Christmas Eve

Approval of Additional FTE

On August 27, 2020, the Board of University and School Lands supported the Commissioner in requesting an additional FTE from the Emergency Commission and the Budget Section.

On September 8, 2020, the Emergency Commission approved the Department of Trust Lands (Department) request for an additional FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

On September 17, 2020 the North Dakota Legislative Budget Section approved the Department's request for one FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

The approval did not require additional funding be appropriated as Department currently has available funding in the salary and wages line item to support the FTE.

O P E R A T I O N S

Surface Land Management and Minerals Management Administrative Rules

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (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.

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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 investment 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.

The proposed Administrative Rules presented to the Board in June 2020 provided changes from the Board's Land Retention and Sales Policy as follows:

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 sale 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 provided to the trust from which the original grant land was sold.

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

- Requires any sale of acquired lands to be subject to public comment prior to Board review.
- 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.

In June 2020, the Board authorized the Commissioner to proceed with a public comment period and the collection of comments. Additionally, the Board authorized the Commissioner to submit to Legislative Council the Administrative Rules.

The Department received comments relating to the Definitions, a significant number of comments pertaining Land Exchange and Sales, and one comment regarding the proposed Offset Well rules. The Department is recommending revising the originally proposed Administrative Rules, as shown in the attached red-line version (Attachment 2), prior to submitting to the Attorney General's Office for review. Attachment 3 is a summary of the comments received, the discussion and review by the Department, and the action taken concerning the proposed rules and changes made based on the comments and discussions.

The following is a summary of the changes provided in Attachment 2, the proposed Administrative Rules as revised after the public comment period. These rules do not promote the sale of trust lands but provide the Board the ability to sell in certain circumstances. Changes after comments include:

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

- Removed the definition of high value land and revised rules to reference residential, commercial and industrial zoning.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

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

- Added criteria for the sale of acquired lands.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

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

- Added formal challenge to the criteria considered by the Department and removed significant controversy from the criteria.

Land Exchange:

- Revised language to provide consistency through rules.
- Concerning the Department’s consideration of features not reflected by the market price, language was changed to require mandatory rather than permissive consideration.

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 the 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. Changes were made after comments to reference application of the rule to vertical oil and gas wells only. A definition of vertical oil and gas well was also added.

It is not the intention of the Board to actively sell land. The proposed Administrative Rule is a reflection on the Board’s need to comply with NDCC Section 28-32; requiring the Board to amend necessary Board policies into Administrative Rules.

Motion: The Board approves the Commissioner to proceed in submitting the proposed revised Administrative Rules for Land Sales, Land Exchanges and Offset Wells with the amended language:

- **85-04-07.1 subsection 1. If the tract has been rezoned or has the high potential to be rezoned.**
- **85-04-08.1 subsection 2. If the If the tract has been rezoned or has the high potential to be rezoned**

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

The Board of University and School Lands History of Land Sale Policy, Administrative Rules General Administration (red-lined) and Summary of Comments were presented to the Board and are available at the Department upon request.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Retirement of Grants

Pherrin Township in Williams County was awarded a grant in the amount of \$300,000.00 in Fiscal Year 2015 to assist in upgrades to the 54th street road project. The project included road cuts, culverts, road fills, grading roads and ditches, erosion control, and adding guard rails for the crossings to address safety concerns.

Political Sub	Grant	Awarded	Paid	Balance	Project
PHERRIN TOWNSHIP	G15230	\$300,000.00	\$288,520.80	\$11,479.20	54 TH STREET ROAD PROJECT
				\$11,479.20	

On February 29, 2016, this grant was put into suspension status due state revenue shortfalls. The Energy Infrastructure and Impact Office (EIO) contacted all political subdivisions which had a grant balance. Those that had not started their projects were told to discontinue their projects as their grants were going to be temporarily suspended until funds became available. Political subdivisions that had begun working on their projects could continue, with the funds being retained for those entities that were already receiving invoices.

On February 1, 2017, the suspension of this grant was lifted as funds became available to honor the grants awarded during the revenue shortfall.

On August 24, 2020, Pherrin Township was paid their final disbursement and the project was completed under budget. The remaining amount of \$11,479.20 can be reverted to the Oil and Gas Impact Grant Fund.

Motion: The Board retires the grant identified in the sum of \$11,479.20. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.

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

INVESTMENTS

Private Infrastructure Investments

On April 8, 2020 the Board of University and School Lands' approved an asset allocation to Private Infrastructure within the broader Strategic Asset Allocation for the Permanent Trust Funds (PTFs).

For the PTFs initial investment in infrastructure, Department staff and RVK determined:

- Open-end fund structure which allows for reinvestment potential without conducting a new RFP or waiting for a new fund to open. Ability to withdraw investment under partnership terms. Provides greater manager flexibility to hold and trade assets, and generally have greater diversity of assets (both sector and geography).

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- Core infrastructure strategy which has higher expected yields and lower risk versus non-core which has higher expected total return and a higher risk profile.
- Low exposure to fossil fuels to reduce correlation to PTF contributions.
- Geographically diverse, primarily in developed countries.

Department staff and RVK began the manager search by requesting RVK compile a list of the highest rated managers on their private infrastructure research list. The top six managers on the list were sent a request for proposal (RFP). After reviewing the six RFP responses and holding discussions with RVK, the list of managers was reduced to three managers based upon their experience, performance track record, investment process, etc. Department staff and RVK conducted interviews with the three managers. This due diligence process has resulted in the team recommending JP Morgan's Infrastructure Investments Fund (IIF) to the Board.

JP Morgan's IIF was founded in 2006 and headquartered in New York and London. They have over \$12.5 billion in assets under management with 16 portfolio companies and over 500 assets in 25 countries. JP Morgan has over 50 infrastructure investment professionals in addition to portfolio company board of director appointments.

Motion: The Board approves up to a \$130 Million investment in J.P. Morgan Investment Management Inc.'s Infrastructure Investments Fund as a currency hedged limited partner (IIF Hedged LP) as part of the Permanent Trust Fund's Private Infrastructure allocation, subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Infrastructure Recommendation Memo and JP Morgan Infrastructure Presentation were presented to the Board and are available at the Department upon request.

Investment Fee Report – FY 2020

Attached is a report of the Board of University and School Land's (Board) investment fees paid for the twelve months ending June 31, 2020 (Fiscal Year 2020).

Summary:

- During fiscal year 2020 the Permanent Trust Funds (PTFs) paid \$22,335,336 in investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is a decrease of -1.7% from the \$22,711,405 in fees paid in FY 2019. The PTFs' average asset balance increased by 4.76% during the same period (including contributions and withdrawals), from \$4.63 billion in FY 2019 to \$4.85 billion in FY 2020. The primary driver of the decrease in fees is a result of lower incentive fees paid during the year.
- Incentive fees totaling \$898,695 were paid by the PTFs during FY 2020 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund and the Angelo Gordon Direct Lending Fund III; this equals 1.4 basis points on the average value of total trust assets during FY 2020, or 4.0% of the total fees of managing the PTF's investment program. Incentive fees totaled \$1,810,455 during FY 2019, the equivalent of 3.9 basis points and 8.0% of the total cost to manage the program.

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- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$437,862 in investment management expenses during FY 2020, up from \$274,497 in management fees paid in FY 2019. The increase in management fees is due to the increase in the average assets under management from \$609.8 million in FY 2019 to \$718.0 million in FY 2020.
- The fee consultant Novarca was able to negotiate a fee reduction for the Payden & Rygel Aggregate Bond fund in which fees were lowered from 20 basis points to 17.5 basis points on the first \$250 million and 15 basis points on every dollar above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years.
- The PTFs entered a fee reduction agreement with JP Morgan based on the total amount of fees paid to JP Morgan each year. The agreement will reduce fees from 10% to 25% depending on fees paid each year.

The Investment Fee Report was presented to the Board and are available at the Department upon request.

LITIGATION

Sorum Litigation

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

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

History: An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction

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was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions were filed October 22, 2018. Response Briefs were filed December 10, 2018. Reply Briefs were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff's filed a letter on March 7, 2019, advising the Court that they felt Defendants' proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff's proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiff's proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiff's Proposed Judgment. Thereafter, Plaintiff's filed a letter asking the Court not to rule on Defendants' Objection until Plaintiff's have had the opportunity to be heard and further, that Plaintiff's intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiff's filed their Response to Defendants' Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiff's Proposed Order and Judgment (Plaintiff's Amended Proposed) and Reply to Plaintiff's Response to Defendants' Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants' Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiff's filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiff's scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiff's filed their Motion for Attorney Fees, Costs and Service Award to Plaintiff's and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiff's filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiff's. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiff's Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiff's Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiff's on June 12, 2019. Plaintiff's filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiff's Motion for Attorney Fees, Costs and Service Award to Plaintiff's. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiff's Motion for Attorney Fees, awarding attorney fees to Plaintiff's attorneys and service awards to Plaintiff's. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August

1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2020 to file his brief. On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that was filed in the separate briefs and appendixes. On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants' request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply briefs are due February 14, 2020. On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense. Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020. Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020. Terry Moore filed letter with the District Court on July 28, 2020, concerning issue of injunction and release of funds. On July 29, 2020, the District Court issued a Notice of Hearing scheduling a hearing on Terry Moore's July 28, 2020 letter for August 17 at 1:30 p.m. On July 30, 2020, the North Dakota Supreme Court issued its Opinion. On July 31, 2020, Mark Hanson filed a letter with the District Court advising of the issuance of the North Dakota Supreme Court Opinion and requesting cancellation of the August 17 hearing. That hearing was cancelled. The Supreme Court's Opinion was amended on August 4, 2020, and on August 18, 2020. Neither amendment was substantive. Terrance Moore filed with the Supreme Court the Plaintiffs, Appellees, and Cross-Appellants Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Omlid's Petition for Rehearing on August 12, 2020.

Current Status:

- **On September 22, 2020, the North Dakota Supreme Court entered an order denying the petition for rehearing.**

(09/24/2020)

S U R F A C E

Fall Surface Lease Auctions

The Department of Trust Lands (Department) Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board of University and School Land's (Board) control. One of the major sources of income from these lands comes from agricultural leases (grassland, crop and hay land uses).

On Monday, September 28, 2020, 1,051 surface tracts are scheduled to become available to bid on at public auction using the online auction platform EnergyNet. The auctions will be open for bidding until 5:00 p.m. on Friday, October 9, 2020.

On April 8, 2020, Governor Burgum issued Executive Order 2020-25 (Executive Order) in response to the public health crisis resulting from COVID-19. The Executive Order suspended the requirement in N.D.C.C. § 15-04-10 that requires the Commissioner of University and School Lands to hold public auctions for public land leasing in the county seat. This provided the Commissioner with flexibility for holding public land auctions in a manner to facilitate social distancing and utilize best management practices to mitigate the spread of COVID-19.

In November of 2019, the Department contracted with EnergyNet to host and facilitate online auctions. EnergyNet is a provider of oil, gas, and other commodity auction and sealed bid transaction services. EnergyNet was the sole responder to the Department's Request for Proposal. At the time, it was not anticipated EnergyNet's services would need to be used for surface lease auctions.

After the issuance of the Executive Order, the Department worked with EnergyNet to modify their mineral auction platform to allow it to host surface lease auctions in the spring of 2020. In August of 2020, the Department announced that the fall surface lease auctions would also be hosted online by EnergyNet due to the continuing concerns associated with the public health crisis and hosting auctions that congregate large gatherings of people. Beginning in September of 2020, the Department received feedback from lessees as well as the North Dakota Stockman's Association, the Little Missouri Grazing Association, and the McKenzie Grazing Association. In response, the Department worked with the Governor's staff and the associations on modifications to the auction process, produced guidance for the public to become familiar with the online process, and published a Frequently Asked Questions (FAQ) document, available on the Department's website.

The Executive Order suspended the Department's requirement to hold public actions at a set date and time in the county seat, but it did not change other notice requirements in N.D.C.C. § 15-04-09 or requirements governing leasing by auction under N.D.C.C. § 15-04-10.

Under N.D.C.C. § 15-04-09:

All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.

The Department has published notice of its fall surface lease auction in the official county newspapers where all tracts are located; however, a list of lands offered for leasing in each county has not been submitted to the county treasurers. Historically, the Department considers an auction to be finalized when the Commissioner approves the lease. This typically occurs several days after an auction is complete and the payment has been received.

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Under N.D.C.C. § 15-04-10, when the land is offered for lease, the Department is required to give notice that all bids are subject to approval by the Board. This notice was not stated in the advertisement submitted for publication.

In 2005, former Land Commissioner Gary Preszler obtained an Attorney General's opinion concerning the validity of an Adams County lease after the fall auction. N.D.A.G. 2005-L-44. After the auction, the Board learned that notice of the auction was only run twice in the official county newspaper, rather than three times as required by statute. Commissioner Preszler inquired whether the Department could approve the lease even though the auction was not advertised in full compliance with the notice requirements set forth in the constitution and Century Code.

The Attorney General's opinion confirmed the statute must be followed. "The statute's plain meaning mandated publication of the notice. 'The word "shall" is unambiguous . . . it means "must."' It creates a mandatory duty, 'absent any legislative intent to the contrary. . . . This is particularly so when the statute is addressed to public officials.'" *Id.* at 3 (footnote omitted) (citations omitted).

Here, N.D.C.C. § 15-04-10 requires: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board."

The last paragraph of N.D.A.G. 2005-L-44 states: "Failure to comply with a mandatory duty has serious consequences: 'it invalidate[s] subsequent proceedings.' The Land Board must correct the non-compliance with the notice requirement before it can enter leases for its Adams County school lands." *Id.* at 4.

N.D.C.C. § 15-04-12 allows the Board to adjourn the auction for leasing if the interests of the state will be subserved.

The following is a summary of the comments received and the Department's response:

- Opposition to EnergyNet's anonymous bidding platform, in particular due to the grazing associations bylaws prohibiting members from bidding against each other
 - Although the anonymous bidding platform isn't able to be changed in time for the fall surface auctions beginning on September 28th, Department staff suggested that grazing association members could share their bidder numbers with each other prior to the auction so that members knew the grazing associations' bidder number and not bid against the association.
- Opposition to EnergyNet communications requesting financial information from the registered bidders
 - This resulted from bidders who erroneously registered under the business category
 - In response, the Department published a how-to guide directing registrants to the Government category
- Opposition to the online auction host procurement process
 - The Request for Proposal was issued in November 2019, and EnergyNet was the only bidder
 - A 5-year contract was issued and included all Department auctions
- Opposition to the ACH payment process
 - In response, the Department modified the payment process to allow bidders the option to pay by check
- Opposition to the length of time the auctions are open

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- Public notice has been sent out for the fall auctions
- The length of time auctions are open can be reduced if future online auctions are needed
- Opposition to the indemnity clause for bidding and concern with slow internet connections
 - EnergyNet cannot guarantee that bids placed too close to the auction closing time will be received prior to closing
 - EnergyNet recommends bidders place their bids in advance of the auction closing time
- Opposition to convenience fees for bidders
 - The Department has covered the convenience fees for the fall auctions using CARES Act appropriations
 - Continuing authority can cover costs if future online auctions are needed
- Concern that bidders may not have access to computers or internet
 - Similar concerns are occasionally expressed for unclaimed property claims and access to Department records
 - Public libraries may be a resource for bidders without internet access. In addition, Department staff and EnergyNet representatives will be available to answer any technical questions
- Concern for ease-of-access for out-of-state bidders
 - The Department does not discriminate, the only requirement is for bidders to be of 18 years-of-age or older
 - Out-of-state bidders have always had access to surface auctions and many hire local agents to bid on their behalf for in-person auctions
- Concerns that hunters will increase the bids on certain tracts
 - All Trust Lands are open to the public for hunting
 - Lessees cannot close leased lands for their exclusive hunting privileges

The Attorney General Stenehjem noted the 2020 spring Surface Lease Auctions were held online and the time has passed to raise any issue or concerns regarding the public notification and posting of these tracts.

The Board discussed the online surface lease auction process and concurred that it is appropriate to have the auctions held online at this time.

Motion: The Board requests the fall surface lease auction be postponed allowing for 1) proper public notice pursuant to N.D.C.C. § 15-04-10 requiring: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board." And 2) N.D.C.C. § 15-04-09: All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.

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

A D J O U R N

There being no further business, the meeting was adjourned at 10:43 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Wilkinson Litigation
(No Action Requested)

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

Date Filed: January, 2012

Court: Williams County District Court

Judge: Paul Jacobson

Attorney: Jennifer Verleger/Matthew Sagsveen/David Garner

Opposing

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

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

On July 1, 2014, the Plaintiffs filed an amended complaint in the case and added claims of unconstitutional takings, conversion, constructive trust and unjust enrichment, civil conspiracy and deprivation of rights under 42 U.S.C. § 1983. Plaintiffs assert in their amended complaint that the Board should be issuing leases on the west side of the Highway 85 bridge pursuant to the Phase II Investigation – the estimated location of the ordinary high watermark (OHWM) prior to inundation of Lake Sakakawea – rather than the Phase I Delineation – current location of the OHWM. Plaintiffs argue that the subject property is located under Lake Sakakawea, which did not exist at statehood, and thus the state did not acquire title to it as sovereign lands. Therefore, the State's title to the Missouri River is limited to the channel as it existed prior to inundation of Lake Sakakawea as determined by the Phase II investigation.

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

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

1. Surface ownership could not be determined without the United States as a party to the action;

2. N.D.C.C. ch. 61-33.1 has a retroactive clause and the district court did not have an opportunity to determine if it applies and governs ownership of the minerals at issue;
3. A “takings” analysis must be conducted if the district court determines the State owns the disputed minerals; and
4. The district court erroneously made findings of disputed fact.

History:

Due to the passage of S.B. 2134, the District Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the North Dakota Industrial Commission (NDIC). Plaintiff, after NDIC issued the review findings, requested a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 11, 2018. The telephonic status conference scheduled for November 2, 2018 was cancelled. A Hearing on the Motion for Continued Stay was held November 30, 2018. Defendants submitted a proposed Order and the Judge asked for Plaintiffs to submit a proposed Order, which was filed December 4, 2018. The Court issued its Order on December 12, 2018, denying the Motion for Continued Stay and requiring the parties confer on a scheduling order and submit a Rule 16 scheduling order by January 26, 2019. The State filed a Motion for Proposed Scheduling Order on January 28, 2019, and Plaintiffs filed a notice of hearing on January 31, 2019, and filed their Response to State’s Motion for Proposed Scheduling Order and Plaintiffs’ Request for Rule 16(F) Sanctions on February 1, 2019. State Defendants filed a Reply Brief in Support of Motion for Proposed Scheduling Order on February 8, 2019. Statoil & Gas LP filed a Response to State’s Motion for Proposed Scheduling Order and Plaintiff’s Proposed Scheduling Order on February 11, 2019. Plaintiffs scheduled a hearing in District Court on the Motion for Scheduling Order which was held March 5, 2019, at 2:00 p.m. The District Court didn’t rule on the scheduling motions but granted Plaintiffs’ request to file a motion for Summary Judgment within 30 days of the hearing. On April 15, 2019, Plaintiffs’ filed with the District Court a Notice of Motion, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Joshua Swanson, Notice of Hearing (requesting a hearing be held at the earliest possible date available on the Court’s calendar), and proposed Order Granting Plaintiffs’ Motion for Summary Judgment. On April 17, 2019, Plaintiffs’ filed a Notice of Hearing scheduling a hearing for 2:00 p.m. on July 30, 2019 before the Honorable Paul W. Jacobson, at the Williams County Courthouse, Williston. The parties entered into a Stipulation Extending Time to Respond to Plaintiffs’ Motion for Summary Judgment and Plaintiffs’ Time to Reply which was entered May 1, 2019. The Order Extending Time to Respond was entered May 2, 2019, extending Defendants’ time to respond to June 14, 2019, and extending Plaintiffs’ deadline to file reply to July 1, 2019. On June 10, 2019 Statoil & Gas LP filed its Opposition to Plaintiffs’ Motion for Summary Judgment. Also, on June 10, 2019, the Stipulated Motion to Dismiss Defendant XTO Energy Inc. was filed in which Plaintiffs, Cross-claimant EOG, and Defendant XTO stipulated and requested the Court dismiss XTO from the action with prejudice and without costs and disbursements to any party, as it holds no ownership interest in, right to, claim or title to any mineral interests as alleged by Plaintiffs. The Board of University and School Lands filed its Brief in Opposition to Plaintiffs’ Motion for Summary Judgment on June 14, 2019. Also filed on June 14, 2019 where the State Engineer’s Response to Brief in Opposition to Plaintiffs’ Motion for Summary and the Response of EOG Resources, Inc., to Plaintiffs’ Motion for Summary Judgment. On June 17, 2019, the Court entered its Order Dismissing Defendant XTO Energy, Inc. from the Action. On July 1, 2019, Plaintiff’s filed their Reply Brief

in Support of Motion for Summary Judgment. The hearing on the Motion for Summary Judgment was held on July 30, 2019. Order Granting Plaintiffs' Motion for Summary Judgment was entered on September 6, 2019. The proposed Judgment was submitted on September 12, 2019. The Judgment and Notice of Entry of Judgment were filed with the District Court on September 16, 2019. Board of University and School Lands' Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. State Engineer's Notice of Appeal to the North Dakota Supreme Court was filed on November 15, 2019. Notice of Appeal to North Dakota Supreme Court filed by Statoil Oil & Gas LP f/k/a Brigham Oil & Gas, LLP on November 27, 2019. Appellant's Initial Briefs were due December 12, 2019; however, a Joint Motion for Extension of Time to File Briefs was filed and an extension was granted on December 13, 2019, with all briefs being due to the Supreme Court as follows:

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

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020.

Current Status:

- **The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020.**
- **On September 18, 2020 a Notice of Hearing was filed in the District Court setting a status conference for October 13, 2020, at 3:30 p.m. The Court issued an Order After Status Conference dated October 13, 2020, stating that a two day bench trial will be scheduled.**
- **A telephonic scheduling conference was scheduled for October 29, 2020, at 10:00 a.m.**
- **On October 23, 2020, the Supreme Court Judgment/Opinion was filed with the District Court.**

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Starin/Weyrauch Litigation Memo

(No Action Requested)

Case: Mary K. Starin, as Personal Representative of the Estate of Bruno Herman Weyrauch v. Kelly Schmidt, et. al., Civ. No. 53-2015-CV-00986

Date Filed: August 17, 2015

Court: Williams County District Court

Judge: David Nelson

Attorney: David Garner/Jennifer Verleger

Opposing

Counsel: Dennis Johnson

Issues: Plaintiff initiated this quiet title action to determine title to property located under Lake Sakakawea. In 1939, the State acquired the disputed property through a foreclosure of a Bank of North Dakota loan. In 1945, the State re-sold the property through a contract for deed to the Plaintiff's predecessors in interest. Pursuant to state law, the state reserved 50% of the minerals. The Special Warranty Deed issued after satisfaction of the contract for deed was not recorded and no one has a copy of the fully executed deed. The surface estate was later condemned as part of the Garrison Dam reservoir project. Plaintiffs have brought this action to clear title to the 50% of the minerals that they claim. The Board has leased the 50% mineral interest it reserved in this conveyance.

In January 2016, the State Engineer intervened in this case.

History: Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. When the review findings are issued, the parties must request a status conference with the Court to set a new trial date and other deadlines. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 12, 2018. Plaintiffs filed a Response to Defendants' Motion to Stay Proceedings on October 23, 2018. A hearing on the Motion to Stay Proceedings was held scheduled November 16, 2018. Stay was granted. Trial previously scheduled for February of 2019 was continued until February 1, 2, and 3, 2020. Notice of Hearing scheduling status conference for January 21, 2020 at 9:30 was filed on January 14, 2020.

Current Status:

- On January 21, 2020 the Court entered an Order for Continued Stay of Proceedings which stays the matter until final disposition of the Sorum lawsuit. The court cancelled the trial scheduled for February 5-7, 2020, and rescheduled the trial to February 1-3, 2021.
- On September 28, 2020, the District Court scheduled a Telephonic Status Conference for October 14, 2020.
- On October 2, 2020, the parties filed a Stipulation for Order for Judgment Quieting Title, a proposed Order and proposed Judgment.

ITEM 2B

- On October 7, 2020, the Court entered the Stipulated Order for Judgment Quieting Title and the Judgment Quieting Title. The Notice of Entry of Judgment was also entered on October 7, 2020.
- October 14, 2020 Telephonic Status Conference and February 2021 Trial were cancelled.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Whitetail Wave Litigation Memo
(No Action Requested)

Case: Whitetail Wave LLC v. XTO Energy, Inc.; the Board of University and School Lands; and the State of North Dakota – 27-2015-CV-00164
Date Filed: June 4, 2015
Court: McKenzie County District Court
Judge: Robin Schmidt
Attorney: David Garner/Jennifer Verleger
Opposing Counsel: Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

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

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

History: Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018.

Current Status:

- **On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020.**
- **On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO.**
- **On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021.**
- **On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents.**

ITEM 2C

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Northern Oil & Gas, Inc. v. Continental et al. Litigation Memo
(No Action Requested)

Case: Northern Oil and Gas, Inc. v. Continental Resources, Inc.; Board of University and School Lands of the State of North Dakota; and North Dakota Industrial Commission; Case No. 31-2020-CV-00198

Date Filed: September 25, 2020
Court: Mountrail County District Court
Judge: Honorable Richard L. Hagar
Attorney: David Garner
Opposing Counsel: Nick Andrew Swartzendruber

Issues: On September 25, 2020, Northern Oil and Gas, Inc. filed a Complaint against Continental Resources, Inc., Board of University and School Lands of the State of North Dakota (Board), and North Dakota Industrial Commission (NDIC) seeking review of the findings of the NDIC relating to the location of the historical riverbed channel of the Missouri River with respect to the N/2 of Section 27, Township 153 North, Range 93 West, 5th P.M. Northern requests an order determining that the high water mark of the northern edge of the riverbed extends further to the north and northwest versus what is depicted in the Wenck Survey.

History:

Current Status:

- **Complaint served on the Board on September 25, 2020. Answer due October 16, 2020.**
- **NDIC filed its answer on October 16, 2020. The Board received an extension to file its Answer and filed on October 22, 2020.**
- **On October 23, 2020, Continental filed a Motion to Dismiss for Failure to Join Necessary and Indispensable Parties.**
- **Also on October 23, 2020, a Motion for Pro Hac Vice was filed by Jeffrey C. King to practice on behalf of Continental.**

ITEM 2D

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Northern Oil and Gas, Inc. v. Bruin et al. Litigation Memo

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

Date Filed: September 25, 2020
Court: Mountrail County District Court
Judge: Honorable Stacy Louser
Attorney: David Garner
Opposing Counsel: Nick Andrew Swartzendruber

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

History:

Current Status:

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

ITEM 2E

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Vitesse Litigation Memo
(No Action Requested)

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

Date Filed: June 11, 2019

Court: McKenzie County District Court

Judge: Robin Schmidt

Attorney: David Garner

Opposing

Counsel: Lawrence Bender, Spencer Ptacek

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

History: The Summons and Complaint were served on the State of North Dakota and the Board of University and School Lands, by service on the Attorney General's Office on June 7, 2019. The action was filed on June 11, 2019. The State's Answer was filed with the District Court June 28, 2019. A scheduling conference was held on October 2, 2019. The parties will work on a scheduling order. Lessee's Motion for Leave to Amend complaint filed October 14, 2019. Order Granting Plaintiffs' Motion for Leave to Amend was entered on October 30, 2019. On December 17, 2019, a Notice of Telephonic Scheduling Conference was filed by the court, setting a telephonic scheduling conference for January 22, 2020 at 11:15 a.m.

Current Status:

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

Procedures for Executive Session regarding Attorney Consultation and Consideration of Closed Records

Overview

- 1) The governing body must first meet in open session.
- 2) During the meeting's open session the governing body must announce the topics to be discussed in executive session and the legal authority to hold it.
- 3) If the executive session's purpose is attorney consultation, the governing body must pass a motion to hold an executive session. If executive session's purpose is to review confidential records a motion is not needed, though one could be entertained and acted on. The difference is that attorney consultation is not necessarily confidential but rather has "exempt" status, giving the governing body the option to consult with its attorney either in open session or in executive session. Confidential records, on the other hand, cannot be opened to the public and so the governing body is obligated to review them in executive session.
- 4) The executive session must be recorded (electronically, audio, or video) and the recording maintained for 6 months.
- 5) Only topics announced in open session may be discussed in executive session.
- 6) When the governing body returns to open session, it is not obligated to discuss or even summarize what occurred in executive session. But if "final action" is to be taken, the motion on the decision must be made and voted on in open session. If, however, the motion would reveal "too much," then the motion can be abbreviated. A motion can be made and voted on in executive session so long as it is repeated and voted on in open session. "Final actions" DO NOT include guidance given by the governing body to its attorney or other negotiator regarding strategy, litigation, negotiation, etc. (See NDCC §44-04-19.2(2)(e) for further details.)

Recommended Motion to be made in open session:

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

- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Starin Case No. 53-2015-CV-00986**
- **Whitetail Wave LLC Case No. 27-2015-CV-00164**
- **Northern Oil and Gas v. Continental et al Case No. 31-2020-CV-00198**
- **Northern Oil and Gas v. Bruin et al Case No. 31-2020-CV-00199**
- **Vitesse Energy LLC et al. Case No. 27-2019-CV-00266**
- **Repayment of Royalties**

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

Statement:

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

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

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

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

Statements upon return to open session:

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

State that the Board is back in open session.

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

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

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

-or- .

Ask for a formal motion and a vote on it.

Move to the next agenda item.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Repayment of Royalties

(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.

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

The Department reviewed its records and found that the topic of gas deductions had been communicated to royalty payers to the Department as early as 1979. In response to receiving a draft version of the current lease in early 1979, payers were concerned with the new royalty provisions, specifically, the deductibility of expenses. Many expressed the opinion that the new version of the lease did not allow for the deduction of expenses that they had historically taken.

Subsequent to the adoption of the new lease form in 1979, the Department conducted numerous audits during the late 1980's and early 1990's. In August 1990, the Board was provided a report that stated the following with respect to upcoming issues for Fiscal Year 1991: "Up to this time, most of the money collected by the Audit Division has related to relatively non-controversial issues. However, during FY 1991 we expect to address a number of controversial issues that could result in complaints to the Land Board and lawsuits against oil companies. Many of the audits conducted by the Department throughout the years covered production periods for many years prior to the date of audit notification. For example, one audit completed in 1998 covered production from 1984 through 1991. After working through numerous issues with the operator, the Department resolved these issues and received payment in 2001.

In 2011 the Department created the Revenue Compliance Division. Starting in 2012, the Department began issuing notices of improper deductions to companies that reported deductions on royalty statements submitted for both oil and gas.

In addition to the Departments communication with operators, the Board has either been party to or submitted amicus briefs in legal proceedings involving gas deductions. The Board's position in those cases has been consistent in that gross proceeds does not allow for the deduction of expenses.

ITEM 3A

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Surface Land Management and Minerals Management Administrative Rules

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

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

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

The Board approved the amended rules which were then submitted to the Attorney General's Office for review. We anticipate having a response from the Attorney General's office prior to the October 29, 2020 Board meeting. If approved, the Surface Land Management and Minerals Management Administrative Rules will be presented to the Administrative Rules Committee in December 2020, to become effective January 1, 2021.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: September 2020 Report of Encumbrances

No Action Requested

Granted to: **BILLINGS COUNTY, MEDORA-ND**
For the Purpose of: Easement: Road Right-of-Way
Right-of-Way Number: RW0008453
Date Issued: 9/10/2020
Application Fee: \$100.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 153.00
Area (Acres): 1.92
Legal Description: BIL-141-102-16-NW

Granted to: **SLAWSON EXPLORATION COMPANY INC, DENVER-CO**
For the Purpose of: Easement: Pipeline-Salt Water Pipeline
Right-of-Way Number: RW0008681
Date Issued: 9/10/2020
Application Fee: \$100.00
Right-of-way Income: \$9,275.00
Damage Payment to Lessee: \$39.31
Trust: A – Common Schools
Length (Rods): 52.42
Area (Acres): 0.66
Legal Description: MOU-152-92-14-SE4
MOU-152-92-23-W2W2NE4NE4, NW4NE4

Granted to: **SLAWSON EXPLORATION COMPANY INC, DENVER-CO**
For the Purpose of: Easement: Pipeline-Oil Gathering Pipeline
Right-of-Way Number: RW0008695
Date Issued: 9/10/2020
Application Fee: \$100.00
Right-of-way Income: \$9,275.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 52.42
Area (Acres): 1.66
Legal Description: MOU-152-92-14-SE4
MOU-152-92-23-W2W2NE4NE4, NW4NE4

Granted to: **CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK**
For the Purpose of: On-lease Act: Well-Horizontal Oil Well
Right-of-Way Number: RW0008701
Date Issued: 9/10/2020
Application Fee: N/A
Right-of-way Income: \$1,820.00
Damage Payment to Lessee: \$14.78
Trust: A – Common Schools
Length (Rods): 4.58
Area (Acres): 4.70
Legal Description: DUN-147-96-36-NW4

Granted to: **CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK**
For the Purpose of: On-lease Act. Amend: Well-Horizontal Oil Well
Right-of-Way Number: RW0008704
Date Issued: 9/1/2020
Application Fee: N/A
Right-of-way Income: \$6,750.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 196.60
Area (Acres): 9.50
Legal Description: WIL-153-99-22-SW4 LESS ACRES CONDEMNED, W2SE4
LESS ACRES CONDEMNED

Granted to: **EQUINOR ENERGY LP, WILLISTON-ND**
For the Purpose of: Assignment: Well-Directional Wellsite
Right-of-Way Number: RW0008765
Date Issued: 9/1/2020
Application Fee: \$250.00
Right-of-way Income: N/A
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): N/A
Area (Acres): N/A
Legal Description: MCK-153-98-36-SW4

Granted to: **VAN HOOK GATHERING SERVICES LLC, IRVING-TX**
For the Purpose of: Easement: Pipeline-Multiple Pipelines
Right-of-Way Number: RW0008774
Date Issued: 9/29/2020
Application Fee: \$250.00
Right-of-way Income: \$2,500.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 79.97
Area (Acres): 1.00
Legal Description: MOU-150-92-10-S2SW4

Granted to: **WILLISTON WATER MANAGEMENT, LLC, DENVER-CO**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008776
Date Issued: 9/22/2020
Application Fee: \$250.00
Right-of-way Income: \$5,280.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 320.0
Area (Acres): N/A
Legal Description: MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

Granted to: **ELKAN ENERGY SERVICES LLC, WATFORD CITY-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008777
Date Issued: 9/22/2020
Application Fee: \$250.00
Right-of-way Income: \$427.50
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 25.91
Area (Acres): N/A
Legal Description: MCK-150-98-36-SW4

Granted to: **AMES SAVAGE WATER SOLUTIONS, WILLISTON-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008778
Date Issued: 9/21/2020
Application Fee: \$250.00
Right-of-way Income: \$770.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 45.66
Area (Acres): N/A
Legal Description: MOU-156-94-16-SW4

Granted to: **WILLISTON WATER MANAGEMENT, LLC, DENVER-CO**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008779
Date Issued: 9/21/2020
Application Fee: \$250.00
Right-of-way Income: \$2,760.00
Damage Payment to Lessee: N/A
Trust: A – Common Schools
Length (Rods): 167.27
Area (Acres): N/A
Legal Description: MOU-152-92-14-SE4

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: September 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 September 2020, the Division received 335 holder reports with a property value of \$376,066 and paid 222 claims with a total value of \$659,258.

ITEM 5B

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Investment Updates
(No Action Requested)

Portfolio Rebalancing Updates

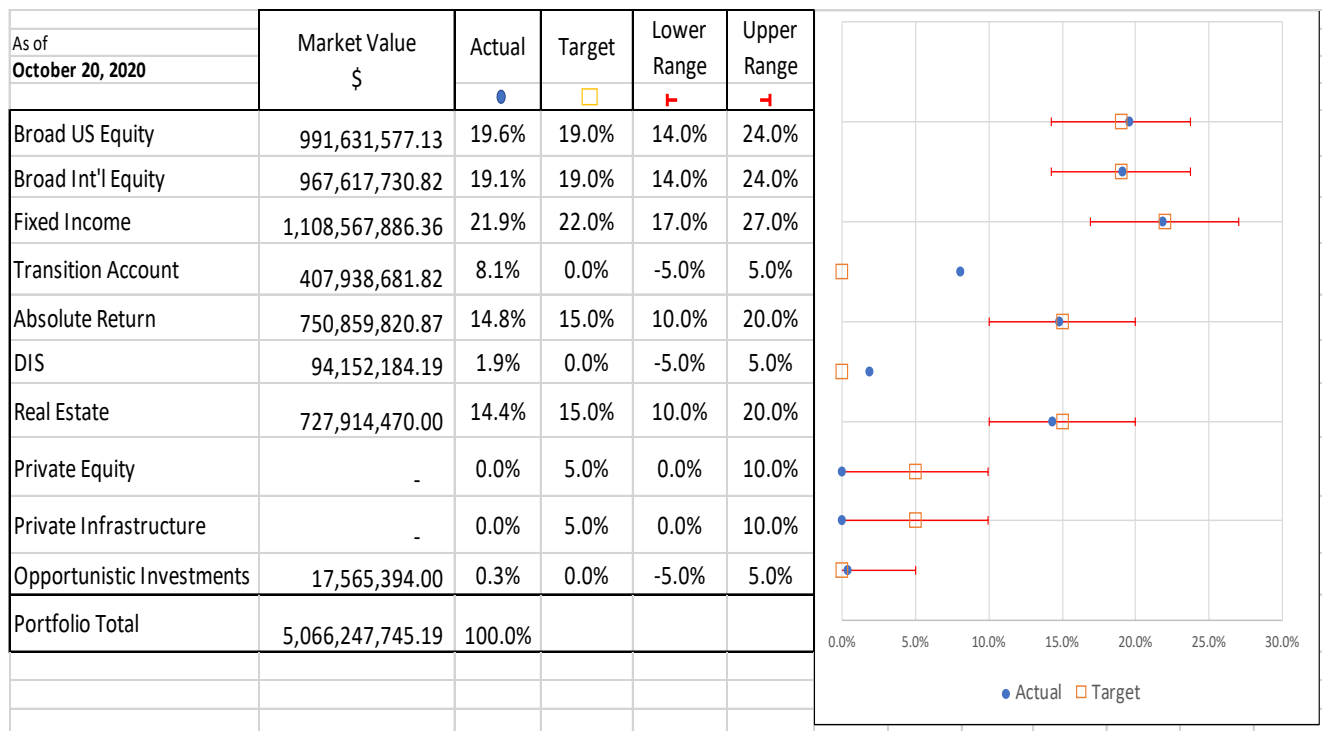
In April 2020, the Board of University and School Lands (Board) approved a new Strategic Asset Allocation. The Department of Trust Lands (Department) staff, along with RVK staff, developed a transition plan to liquidate the Treasury Inflation Protected Security, Commodities, Master Limited Partnership, and Natural Resource Equities’ holdings in the Permanent Trust Funds (PTFs) in a manner that is consistent with the best interests of the PTFs and as market conditions allow. On Oct. 6, 2020, Van Eck was instructed to fully liquidated the portfolio amounting to \$38M transferred to the transition account. Harvest is therefore the only remaining investment left in the Diversified Inflation Strategy asset class with approximately \$94M. The Department staff and RVK will continuously monitor the trigger points set for the account and complete the liquidation when appropriate.

In July 2020, the Board approved \$100M new investment commitment to the Apollo Accord Fund IV, LP (Fund), for an Opportunistic Investment. The Fund has called on an initial \$2,565,393.79 that was funded September 15, 2020. Another \$2,934,606.21 has been called and will be funded on October 26, 2020. This brings the remaining unfunded commitment to \$94,500,000.

On October 1, 2020, Varde Dislocation Fund IV, LP called \$5M the Board’s capital commitment which brings the total investment in the Fund to \$15,000,000. The remaining unfunded commitment is now down to \$85M.

Asset Allocation

The table below shows the status of the permanent trusts’ asset allocation as of Oct. 20, 2020. The figures provided are unaudited.



Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

ITEM 5C

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Repayment of Unpaid Royalties Report

(No Action Requested)

Since the September 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for oil deductions:

- WPX

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

- Thunderbird Resources

Note, the majority of payors issue payment with their monthly royalty payment made the last week of every month.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

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

Granted to:	Burlington Resources Oil and Gas Company, LP
For the Purpose of:	OPERATIONS
Date Issued:	09/16/2020
Trust:	L- Bank of North Dakota
Lease:	OG-09-01476

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Permanent Trust Funds and Legacy Fund Performance Comparison

(No Action Requested)

At the February 2019 Board of University and School Lands (Board) meeting, RVK reviewed a benchmarking performance presentation. This presentation focused on an important aspect of monitoring performance which is the task of appropriately benchmarking performance, including: characteristics of good benchmarks, various options available to benchmark total fund performance and the strengths and limitations of each, and a review of the benchmarks currently used in measuring performance. The presentation also reviewed the merits and challenges of comparing funds that share similar investment objectives and characteristics (at total fund, asset class, and manager level.)

Peer Groups	
Performance Comparison	
<i>• How has the fund performed relative to comparable peer funds?</i>	
Merits	Challenges
<ul style="list-style-type: none">• Can help provide a comparison to the performance of other investors that are deemed to have similar objectives	<ul style="list-style-type: none">• Inconsequential to the purpose of the fund• Funds included in the peer group may have meaningfully different fund characteristics, objectives, and unique constraints, that can significantly drive performance differences in random and unintended ways• Details/characteristics of entities included in the peer group may be unknown and thus relevance of peer group may not be verifiable• Does not capture many of the characteristics of a good benchmark<ul style="list-style-type: none">-is not investable-is ambiguous-does not capture characteristics of the total fund, asset class, or managers

The Board has requested an updated comparison of the investment performance between the Permanent Trust Funds and Legacy Fund for Fiscal Year 2020. Attached is a presentation prepared by the Department of Trust Lands Investment Staff.

Summary:

- For FY2020 the Permanent Trust Funds (PTFs) returned -1.87%, while the Legacy Fund returned 4.23%. The primary driver of the divergence of returns were the investments in commodities, natural resource equities and master limited partnerships (MLPs) held by the PTFs in the Diversified Inflation Strategies (DIS) allocation.
- The PTFs' DIS allocation was down -18.3% in FY2020. The Legacy Fund's Diversified Real Assets allocation (consisting of TIPS and Infrastructure) was up 7.6% (a -25.9% differential).
- Another area of negative performance for the PTFs' was the Absolute Return allocation. Both mutual funds in the Absolute Return allocation hold primarily international equities and debt, from developed and emerging markets. This had the effect of doubling down on the PTFs' international holdings. The Absolute Return allocation was down -6.5% in FY2020. The Legacy Fund holds no comparable allocation.

ITEM 6A

- The PTFs did out-perform the Legacy Fund in Domestic Equities 5.1% versus 2.6%. The PTFs also outperform the Legacy Fund in Real Estate 1.4% versus 0.9%, but the outperformance in Domestic Equities and Real Estate were not enough to overcome underperformance relative to Legacy Fund in other areas such as International Equities (-6.4% vs -2.1%) and Fixed Income (4.4% vs 7.7%), as well as the DIS and Absolute Return underperformance mentioned above.
- As the Board is aware the PTFs' new Strategic Asset Allocation will eliminate its concentration in commodities, natural resources equities and MLPs by liquidating the DIS allocation in favor of adding allocations to Private Equity and Private Infrastructure. The Staff will also be recommending a revision to the Fixed Income asset allocation as mentioned to the Board in prior meetings.
- The PTFs' new asset allocation will not necessarily perform better in a severe market correction like we saw earlier this year, but it should provide better long-term returns, lower volatility, and far less correlation to the PTFs' revenues.

Attachment 1: Permanent Trust Funds and Legacy Fund Performance Presentation

PERMANENT TRUST FUNDS & LEGACY FUND

Fiscal Year-End June 30, 2020

INVESTMENT PERFORMANCE

Net Returns	1 Year Ended 6/30/2020	3 Year Ended 6/30/2020	5 Year Ended 6/30/2020
Permanent Trust Funds	-1.87%	2.77%	3.38%
Legacy Fund	4.23%	5.58%	5.91%
Difference	-6.10%	-2.81%	-2.53%

The asset allocations for the Permanent Trust Funds (PTFs) and the Legacy Fund had key differentials going into the pandemic which led to the significant difference in the returns listed above.

ASSET ALLOCATIONS (PRE-COVID)

Permanent Trust Asset Allocation		Difference	Legacy Fund Asset Allocation	
Equity	38.6%	-12.3%	Equity	50.9%
<i>U.S. Equity</i>	19.2%	-11.4%	<i>U.S. Equity</i>	30.6%
<i>International Equity</i>	19.4%	-1.0%	<i>International Equity</i>	20.4%
Fixed Income	22.5%	-11.6%	Fixed Income	34.1%
Absolute Return	14.7%	14.7%	n/a	-
DIS (TIPS, MLP, NR, Commodities)	9.8%	-0.1%	Diversified Real Assets (TIPS, Infra)	9.8%
Real Estate	14.4%	10.0%	Real Estate	4.4%
Cash - Transition Account	0.0%	-0.8%	Cash	0.8%
	100.0%			100.0%

As of 12/31/2019

The old strategic asset allocation for the PTFs included significant, concentrated exposure to Commodities, Natural Resource Equities, and MLPs, while the Legacy Fund did not hold similar concentrated exposures. Any exposures in the Legacy Fund were held in the fund's equity and infrastructure allocations. In addition, the Absolute Return allocation also detracted from performance, both funds have significant international equity and debt holdings.



Be Legendary.™

PERFORMANCE BY ASSET CLASS

Permanent Trust Asset Allocation		Difference	Legacy Fund Asset Allocation	
U.S. Equity	5.1%	2.6%	U.S. Equity	2.6%
International Equity	-6.4%	-4.3%	International Equity	-2.1%
Fixed Income	4.4%	-3.3%	Fixed Income	7.7%
Absolute Return	-6.5%	-	n/a	-
DIS (TIPS, MLP, NR, Commodities)	-18.3%	-25.9%	Diversified Real Assets (TIPS, Infra)	7.6%
Real Estate	1.4%	0.5%	Real Estate	0.9%
	-1.87%			4.23%

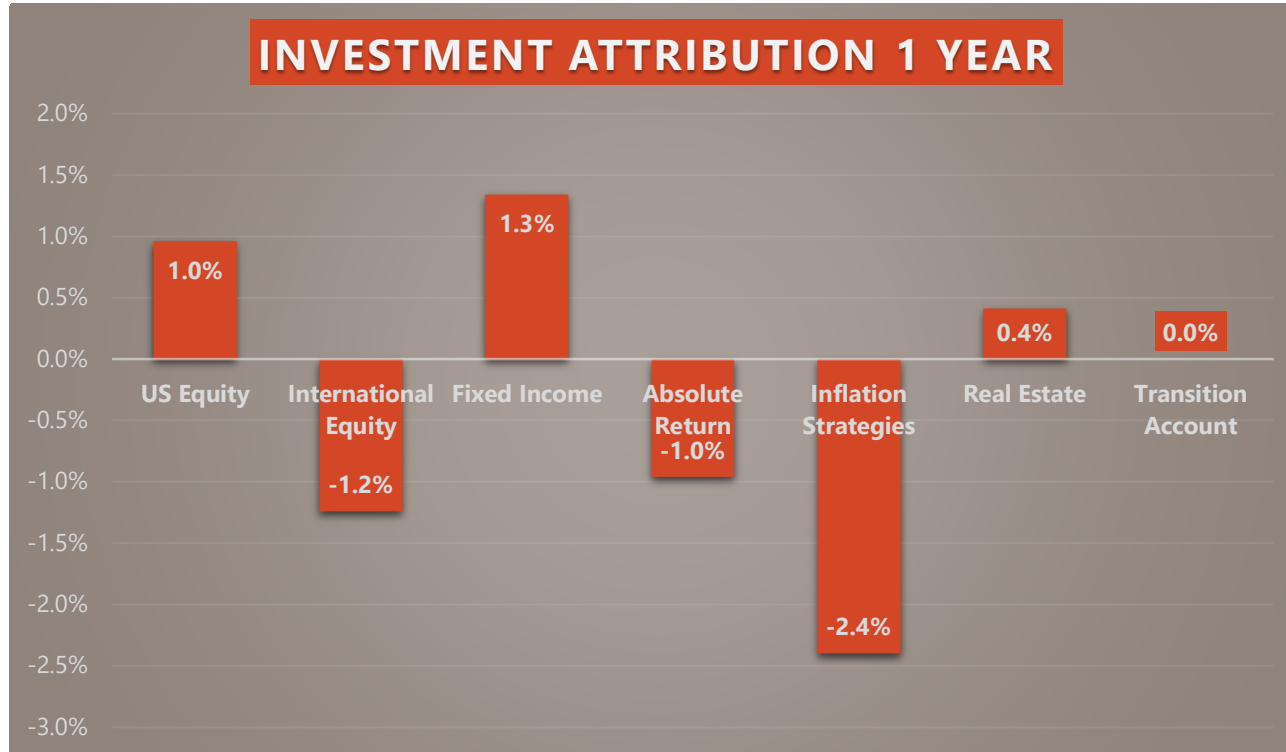
As of 6/30/2020

While the PTFs' domestic equities and real estate holdings outperformed the Legacy Fund's domestic equities and real estate, all other asset allocations underperformed. Significantly, the PTFs' Diversified Inflation Strategies underperformed the Legacy Fund's Diversified Real Assets by -25.9%. In addition, the PTFs' Absolute Return holdings were another major source of underperformance, since both funds in the allocation hold mainly international equities.

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PTF INVESTMENT ATTRIBUTION (1 YEAR)

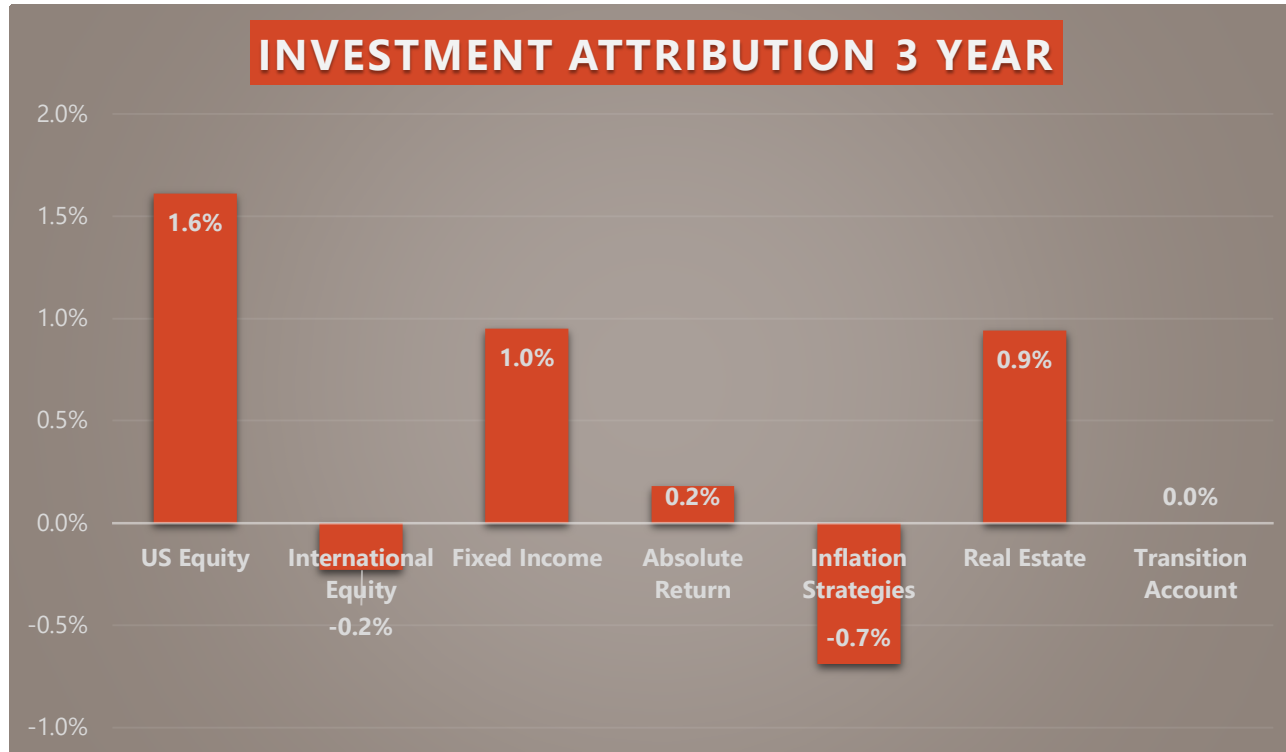


INVESTMENT ATTRIBUTION

Asset Class	1 Year Net Return	Attribution
US Equity	5.1%	1.0%
International Equity	-6.4%	-1.2%
Fixed Income	4.4%	1.3%
Absolute Return	-6.5%	-1.0%
Inflation Strategies	-18.3%	-2.4%
Real Estate	1.4%	0.4%
Transition Account	0.0%	0.0%
Total Fund	-1.87%	-1.87%

The Inflation Strategies allocation, which held Commodities, Natural Resource Equities, and MLPs, contributed the most to the PTFs' underperformance versus the Legacy Fund. In addition, the Absolute Return allocation also detracted from performance. Both PIMCO and GMO have significant international and emerging market holdings. [Investment Attribution shows how much each asset class added (or subtracted) from the total return in the period.]

PTF INVESTMENT ATTRIBUTION (3 YEAR)

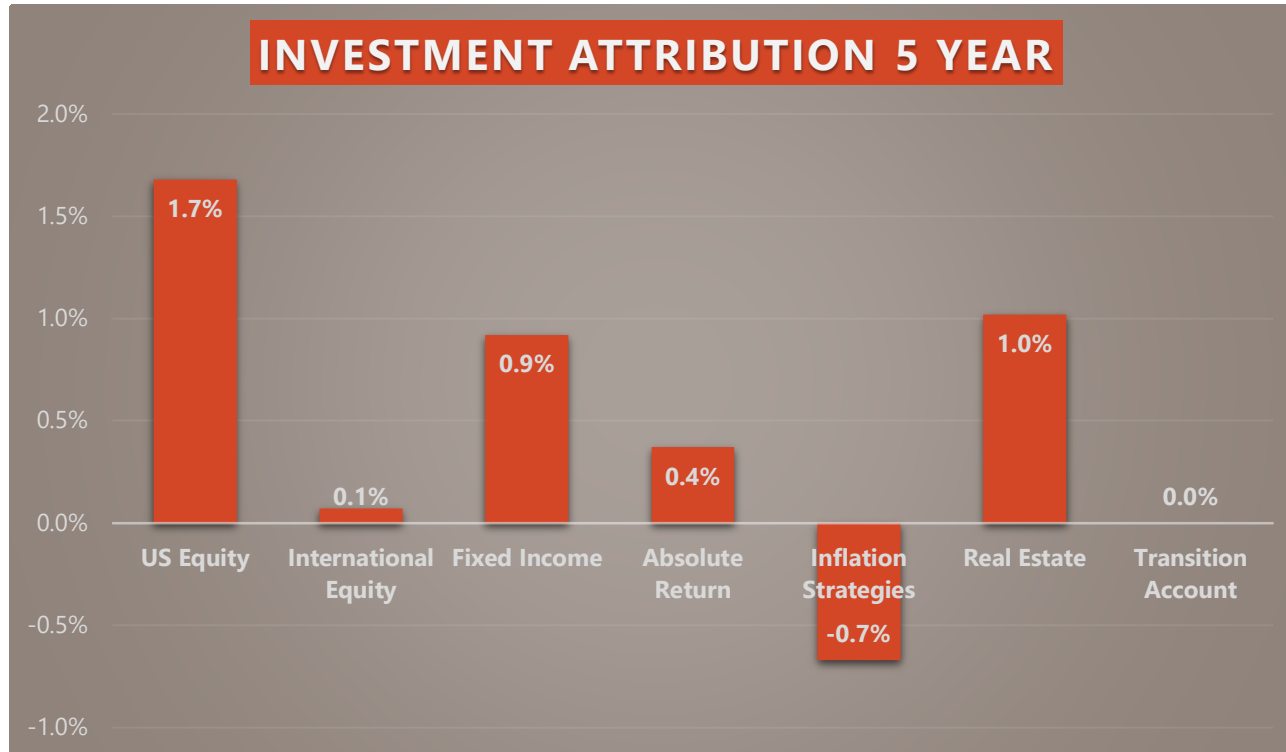


INVESTMENT ATTRIBUTION

Asset Class	3 Year Avg Net Return	Attribution
US Equity	9.5%	1.6%
International Equity	-0.5%	-0.2%
Fixed Income	3.6%	1.0%
Absolute Return	0.2%	0.2%
Inflation Strategies	-5.3%	-0.7%
Real Estate	5.6%	0.9%
Transition Account	0.0%	0.0%
Total Fund	2.77%	2.77%

The Inflation Strategies allocation, which held Commodities, Natural Resource Equities, and MLPs, contributed the most to the PTFs' underperformance versus the Legacy Fund. [Investment Attribution shows how much each asset class added (or subtracted) from the total return in the period.]

PTF INVESTMENT ATTRIBUTION (5 YEAR)



INVESTMENT ATTRIBUTION

Asset Class	5 Year Avg Net Return	Attribution
US Equity	9.9%	1.7%
International Equity	1.5%	0.1%
Fixed Income	3.6%	0.9%
Absolute Return	1.6%	0.4%
Inflation Strategies	-5.6%	-0.7%
Real Estate	7.2%	1.0%
Transition Account	0.0%	0.0%
Total Fund	3.38%	3.38%

The Inflation Strategies allocation, which held Commodities, Natural Resource Equities, and MLPs, contributed the most to the PTFs' underperformance versus the Legacy Fund. [Investment Attribution shows how much each asset class added (or subtracted) from the total return in the period.]

ASSET ALLOCATIONS (COVID)

Permanent Trust Asset Allocation		Difference	Legacy Fund Asset Allocation	
Equity	38.4%	-11.4%	Equity	49.8%
<i>U.S. Equity</i>	19.2%	-10.7%	<i>U.S. Equity</i>	29.9%
<i>International Equity</i>	19.2%	-0.7%	<i>International Equity</i>	19.9%
Fixed Income	23.1%	-11.7%	Fixed Income	34.8%
Absolute Return	15.1%	-15.1%	n/a	-
DIS (TIPS, MLP, NR, Commodities)	3.3%	-6.8%	Diversified Real Assets (TIPS, Infra)	10.1%
Real Estate	15.1%	10.8%	Real Estate	4.3%
Cash - Transition Account	5.0%	3.9%	Cash	1.1%
	100.0%			100.0%

As of 6/30/2020

Under the new strategic asset allocation the PTFs will eliminate the concentrated exposure to Commodities, Natural Resource Equities, and MLPs, and similar to the Legacy Fund, the PTFs will hold far less concentration in the PTFs' equity and infrastructure allocations.

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MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Fixed Income Asset Allocation Recommended Changes

Department staff and investment consultant RVK would like to recommend to the Board of University and School Lands (Board) changes to the Permanent Trust Funds' (PTFs) Fixed Income Asset Allocation.

The PTFs' Fixed Income Asset Allocation is currently skewed toward lower performing strategies and strategies that have negative risk/return profiles, particularly the JP Morgan (JPM) Intermediate Bond mandate and the Brandywine Global Opportunity mandate. Further, most market participants believe the current low interest rate environment will persist for quite some time, as such the current Fixed Income Asset Allocation will deliver lower returns in the future. To solve for these issues Staff and RVK recommend the following changes to the PTFs' Fixed Income Asset Allocation:

In order to increase portfolio yield and return, staff and RVK recommend terminating the JPM Intermediate Bond mandate and replacing it with a core bond mandate. The JPM intermediate bond fund has underperformed with core bond funds including their own core bond fund as well as the US aggregate bond index. The underperformance is primarily due to the limits on duration risk the manager is allowed to add to the fund. By moving to a core mandate, the Board selected manager will have more flexibility to extend duration prudently when the risk environment warrants.

As a result of underperformance, staff and RVK recommend terminating the Brandywine Global Opportunity mandate (~\$185 Million) and replacing it with a new Multi-Sector fixed income mandate (\$100 Million). The Brandywine mandate has underperformed both the PTFs' core and intermediate bond mandates, the global aggregate bond index, as well as the multi-sector funds contemplated as replacements. In addition, RVK research shows the Brandywine strategy has a worse risk/return profile versus the multi-sector funds and the global aggregate bond index. Moving to a multi-sector mandate is expected to decrease portfolio risk while increasing returns.

Staff and RVK recommend a reduction in both core bond holdings to fund other fixed income strategies outlined below. The current low interest rate environment is expected to persist for quite some time, as such, staff and RVK believe it would be prudent to increase the PTFs' allocation to Private Credit. Certain Private Credit strategies, such as direct lending, have an attractive risk/return profile and a low default/loss track record. Private Credit would add higher yield to the portfolio at acceptable risk levels.

The recommended fixed income asset allocation would still maintain sufficient liquidity and stability during challenging economic environments, yet would incrementally add both yield and better performing managers to the portfolio.

If approved, The Fixed Income allocation would change accordingly:

Fixed Income	22.2%	Fixed Income	22.2%	Change
Payden & Rygel Long Term	6.6%	Payden & Rygel Long Term	5.4%	-1.2%
JPM FI Intermediate Bond	6.5%	*New* Core Bond Manager	5.3%	-1.2%
Brandywine Global Opp FI	3.7%	*New* Multi-Sector Manager	2.0%	-1.7%
AG Direct Lending Fund III, LP	2.8%	AG Direct Lending Fund III, LP	2.8%	0.0%
Schroders Securitized Credit	2.4%	Schroders Securitized Credit	2.4%	0.0%
n/a	n/a	*New* Private Credit Manager	2.0%	2.0%
n/a	n/a	*New* Private Credit Manager	2.0%	2.0%
PTF Cash	0.0%	PTF Cash	0.0%	0.0%
FLP	0.2%	FLP	0.2%	0.0%
ECLP	0.0%	ECLP	0.0%	0.0%

Recommendation:

The Board approve the changes to the PTFs' Fixed Income Asset Allocation as indicated below:

- **To authorize the staff to convert the JP Morgan Intermediate bond mandate into a core bond mandate with a manager to be approved by the Board November 2020.**
- **To authorize the staff to terminate the Brandywine Global Opportunity mandate in a manner that is consistent with the best interests of the PTFs and as market conditions allow.**
- **To authorize the staff to liquidate sufficient amounts in the Payden & Rygel and JP Morgan fixed income mandates, along with the cash from the Brandywine termination, to fund the addition to Private Credit and a new Multi-Sector fixed income.**
- **To authorize the staff to recommend investment managers for both Private Credit and Multi-Sector fixed income for future Board approval.**

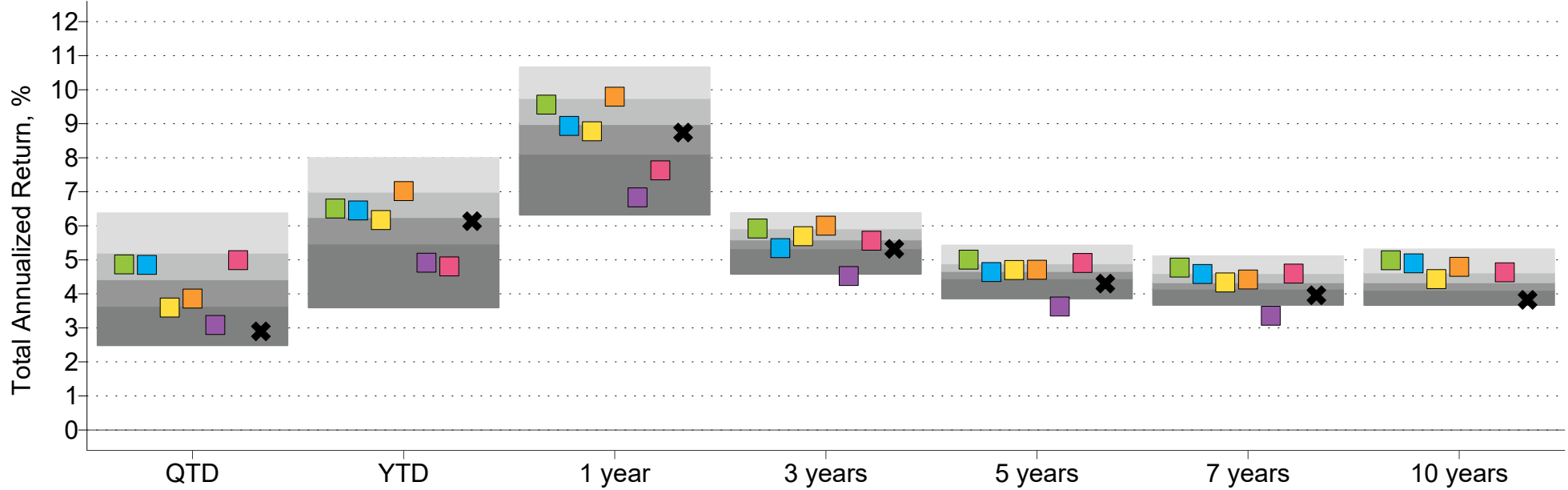
Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger					
Superintendent Baesler					
Treasurer Schmidt					
Attorney General Stenehjem					
Governor Burgum					

Attachment 1: JP Morgan Intermediate vs Core Bond Comparison

Attachment 2: Brandywine Global Opportunity vs Multi-Sector Comparison

Trailing Period Returns and Rankings

As of June 2020 Benchmark: Bloomberg US Agg Universe: eA Core Fixed Income Universe Size: 523



■ Manager 1 ■ Manager 2 ■ Manager 3 ■ Manager 4 ■ JPM: Intermediate (Inc.)
■ Payden & Rygel: Long (Inc.) ✕ Bloomberg US Agg

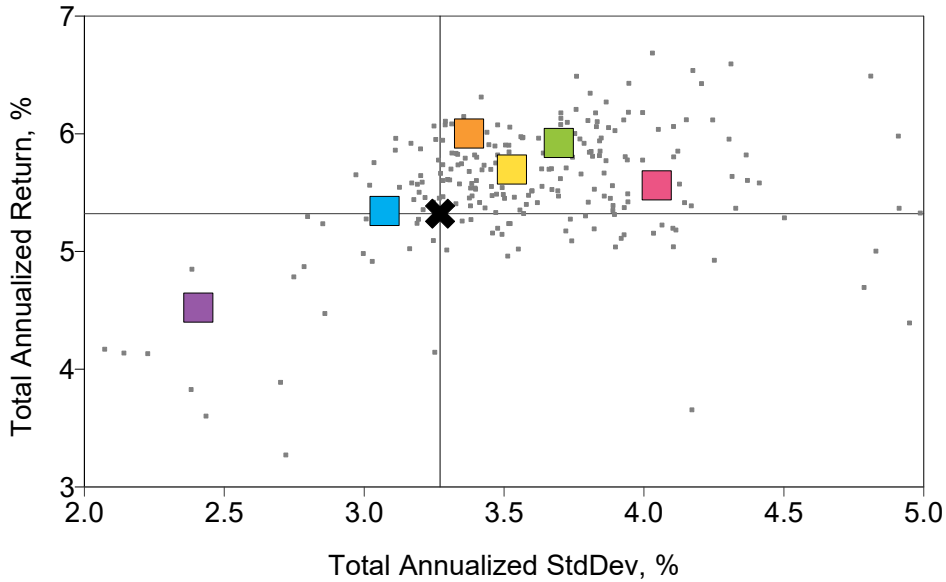
Annualized Performance	QTD		YTD		1 year		3 years		5 years		7 years		10 years	
	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank
Manager 1	4.9	36	6.5	42	9.6	31	5.9	25	5.0	19	4.8	15	5.0	11
Manager 2	4.9	36	6.5	44	8.9	53	5.3	75	4.6	55	4.6	27	4.9	14
Manager 3	3.6	78	6.2	53	8.8	60	5.7	44	4.7	47	4.3	51	4.4	42
Manager 4	3.9	68	7.0	24	9.8	23	6.0	19	4.7	46	4.4	40	4.8	18
JPM: Intermediate (Inc.)	3.1	89	4.9	86	6.8	92	4.5	96	3.6	97	3.4	98	---	---
Payden & Rygel: Long (Inc.)	5.0	31	4.8	87	7.6	86	5.6	53	4.9	25	4.6	26	4.6	25
Bloomberg US Agg	2.9	91	6.1	55	8.7	62	5.3	77	4.3	87	4.0	90	3.8	93
eA Core Fixed Income Median	4.4	50	6.3	50	9.0	50	5.6	50	4.7	50	4.3	50	4.3	50

Performance is gross of fees.

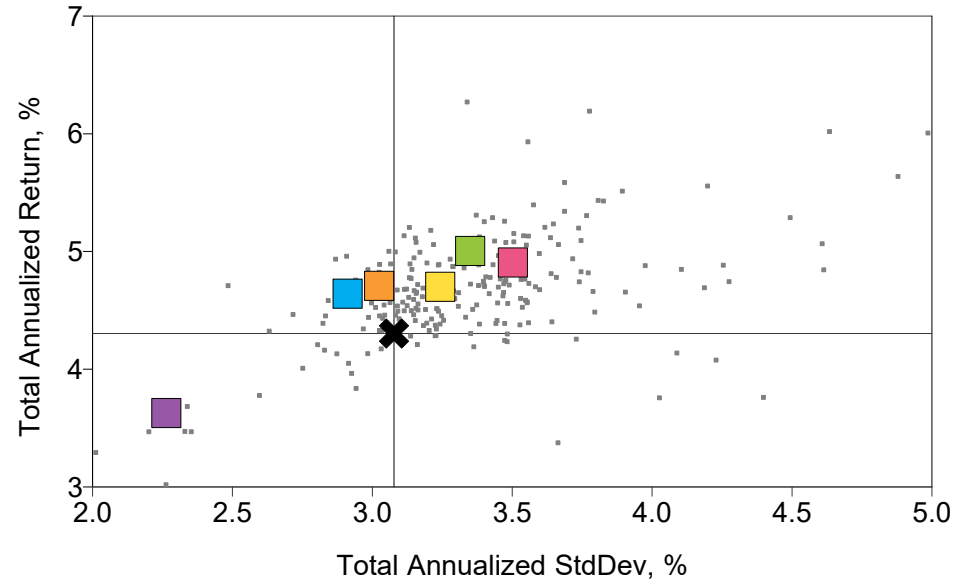
Risk/Return - Three and Five Year

As of June 2020 Benchmark: Bloomberg US Agg Universe: eA Core Fixed Income Universe Size: 523

Three Year Risk/Return



Five Year Risk/Return



- eA Core Fixed Income
- JPM: Intermediate (Inc.)
- Manager 1
- Payden & Rygel: Long (Inc.)

- Manager 2
- Manager 3
- Manager 4
- ✱ Bloomberg US Agg

	Annualized Return	Annualized Std. Dev.
Manager 1	5.92	3.70
Manager 2	5.34	3.07
Manager 3	5.70	3.53
Manager 4	6.00	3.37
JPM: Intermediate (Inc.)	4.52	2.41
Payden & Rygel: Long (Inc.)	5.56	4.05
Bloomberg US Agg	5.32	3.27
eA Core Fixed Income Median	5.59	3.57

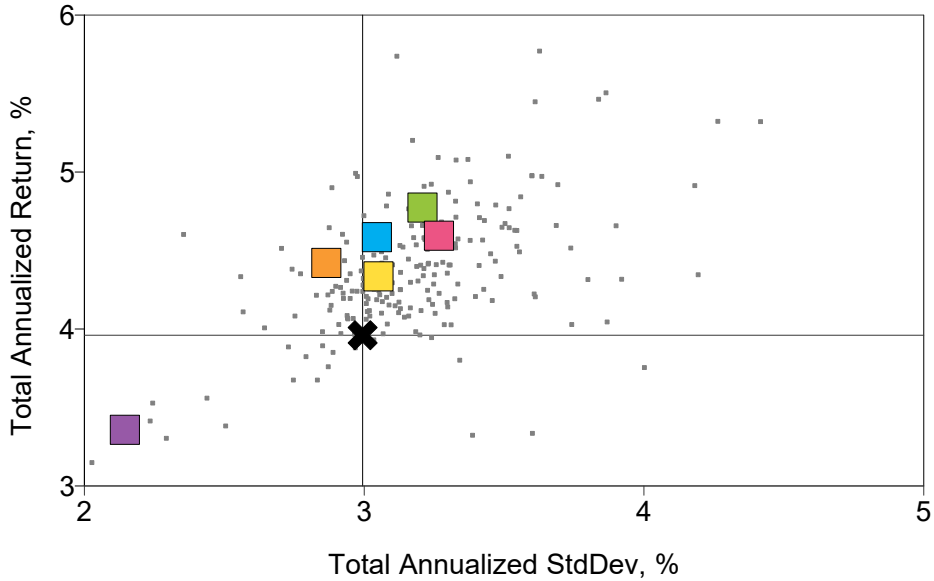
	Annualized Return	Annualized Std. Dev.
Manager 1	5.00	3.35
Manager 2	4.64	2.91
Manager 3	4.70	3.24
Manager 4	4.71	3.02
JPM: Intermediate (Inc.)	3.63	2.26
Payden & Rygel: Long (Inc.)	4.91	3.50
Bloomberg US Agg	4.30	3.08
eA Core Fixed Income Median	4.67	3.27

Performance is gross of fees.

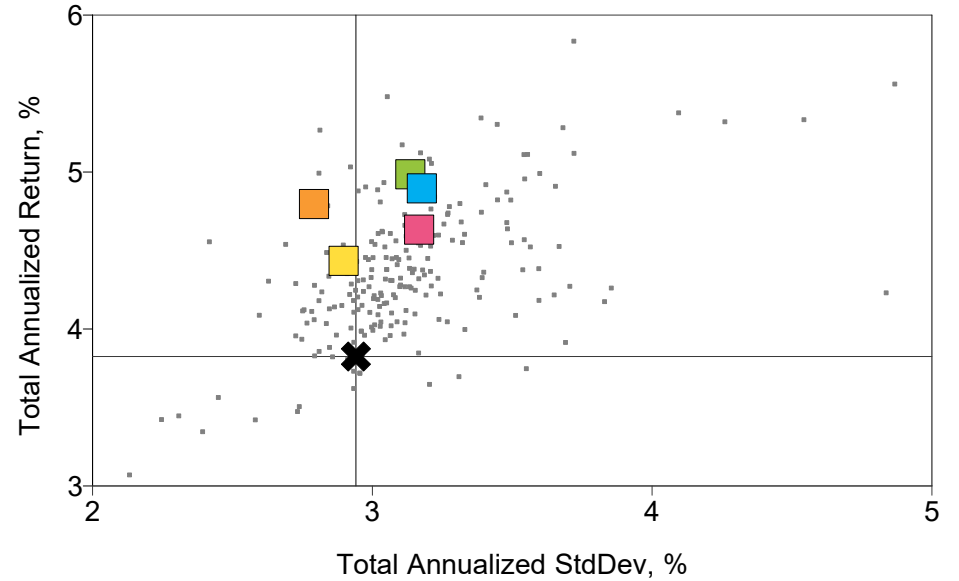
Risk/Return - Seven and Ten Year

As of June 2020 Benchmark: Bloomberg US Agg Universe: eA Core Fixed Income Universe Size: 523

Seven Year Risk/Return



Ten Year Risk/Return



■ eA Core Fixed Income
■ JPM: Intermediate (Inc.)

■ Manager 1
■ Payden & Rygel: Long (Inc.)

■ Manager 2
✘ Bloomberg US Agg

■ Manager 3

■ Manager 4

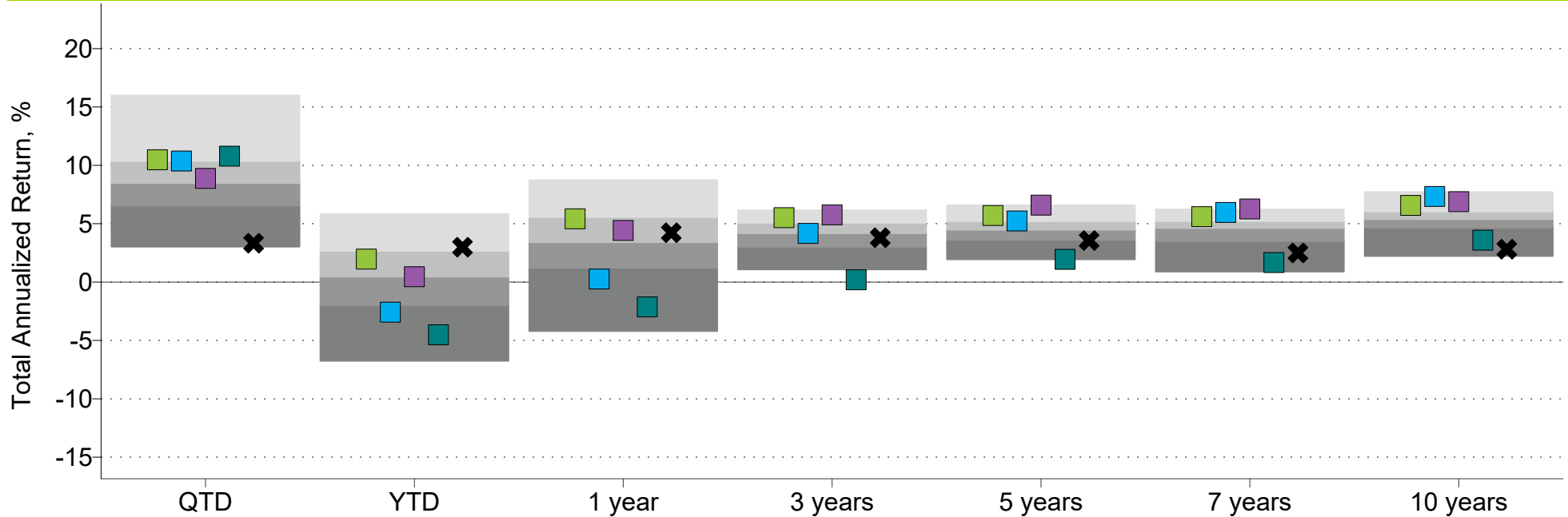
	Annualized Return	Annualized Std. Dev.
Manager 1	4.77	3.21
Manager 2	4.59	3.05
Manager 3	4.33	3.05
Manager 4	4.42	2.86
JPM: Intermediate (Inc.)	3.36	2.14
Payden & Rygel: Long (Inc.)	4.59	3.27
Bloomberg US Agg	3.96	2.99
eA Core Fixed Income Median	4.34	3.13

	Annualized Return	Annualized Std. Dev.
Manager 1	4.99	3.14
Manager 2	4.90	3.18
Manager 3	4.43	2.90
Manager 4	4.80	2.79
JPM: Intermediate (Inc.)	---	---
Payden & Rygel: Long (Inc.)	4.63	3.17
Bloomberg US Agg	3.82	2.94
eA Core Fixed Income Median	4.34	3.07

Performance is gross of fees.

Trailing Period Returns and Rankings

As of June 2020 Benchmark: Bloomberg Global Agg Universe: eA US Multi-Sector FI Universe Size: 129



■ Manager 1
 ■ Manager 2
 ■ Manager 3
 ■ Brandywine: Global Opp (Inc.)
 ✖ Bloomberg Global Agg

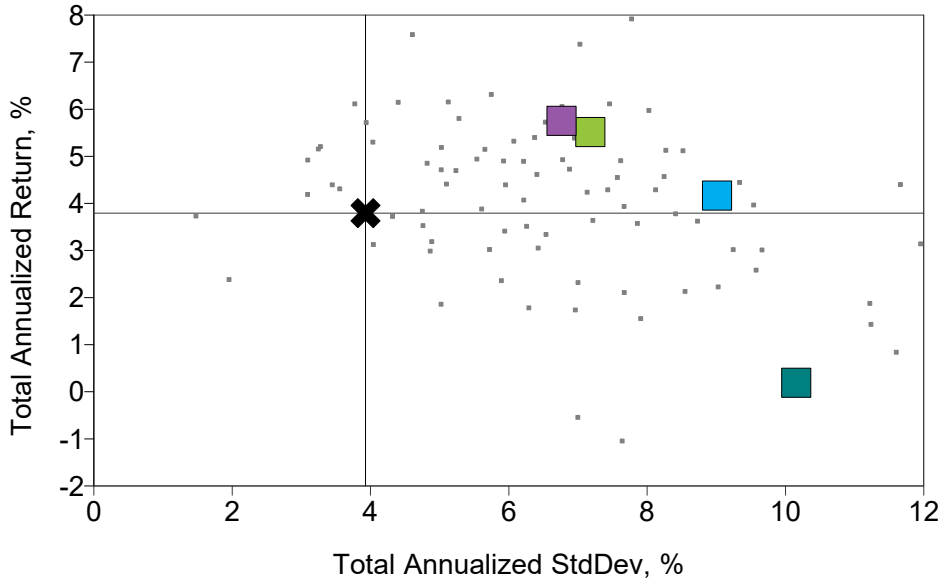
Annualized Performance	QTD		YTD		1 year		3 years		5 years		7 years		10 years	
	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank	Return	Rank
Manager 1	10.5	22	2.0	30	5.4	26	5.5	15	5.7	16	5.6	20	6.6	16
Manager 2	10.4	25	-2.6	82	0.3	79	4.2	51	5.2	24	6.0	12	7.3	9
Manager 3	8.9	40	0.5	50	4.4	36	5.8	12	6.6	5	6.3	5	6.9	13
Brandywine: Global Opp (Inc.)	10.8	19	-4.5	88	-2.1	91	0.2	96	1.9	96	1.7	89	3.6	91
Bloomberg Global Agg	3.3	95	3.0	22	4.2	39	3.8	57	3.6	77	2.5	88	2.8	93
eA US Multi-Sector FI Median	8.5	50	0.5	50	3.4	50	4.2	50	4.5	50	4.6	50	5.4	50

Performance is gross of fees.

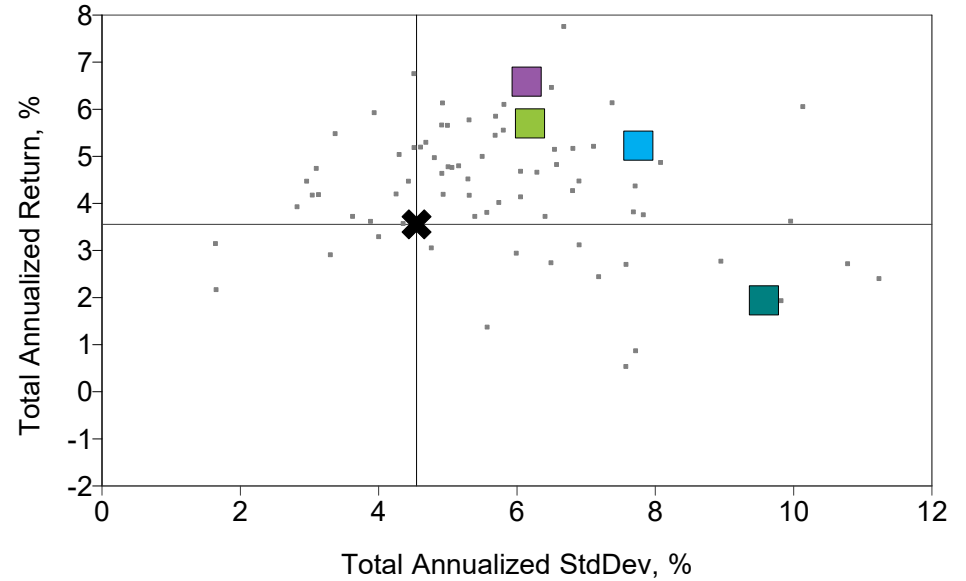
Risk/Return - Three and Five Year

As of June 2020 Benchmark: Bloomberg Global Agg Universe: eA US Multi-Sector FI Universe Size: 129

Three Year Risk/Return



Five Year Risk/Return



■ eA US Multi-Sector FI
 ✕ Bloomberg Global Agg

■ Manager 1 ■ Manager 2

■ Manager 3 ■ Brandywine: Global Opp (Inc.)

	Annualized Return	Annualized Std. Dev.
Manager 1	5.52	7.18
Manager 2	4.17	9.01
Manager 3	5.75	6.76
Brandywine: Global Opp (Inc.)	0.19	10.16
Bloomberg Global Agg	3.79	3.93
eA US Multi-Sector FI Median	4.18	6.77

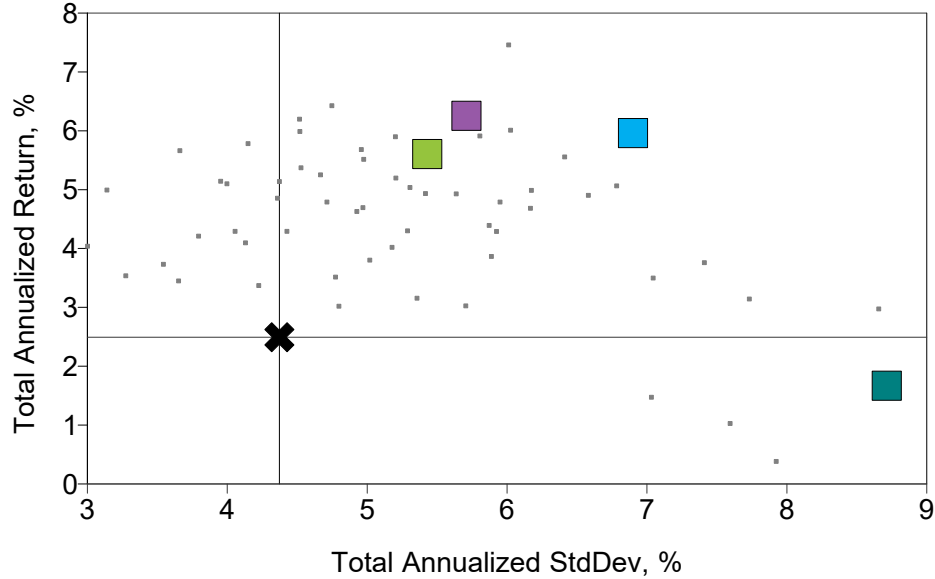
	Annualized Return	Annualized Std. Dev.
Manager 1	5.70	6.19
Manager 2	5.23	7.75
Manager 3	6.59	6.14
Brandywine: Global Opp (Inc.)	1.94	9.57
Bloomberg Global Agg	3.56	4.55
eA US Multi-Sector FI Median	4.47	5.72

Performance is gross of fees.

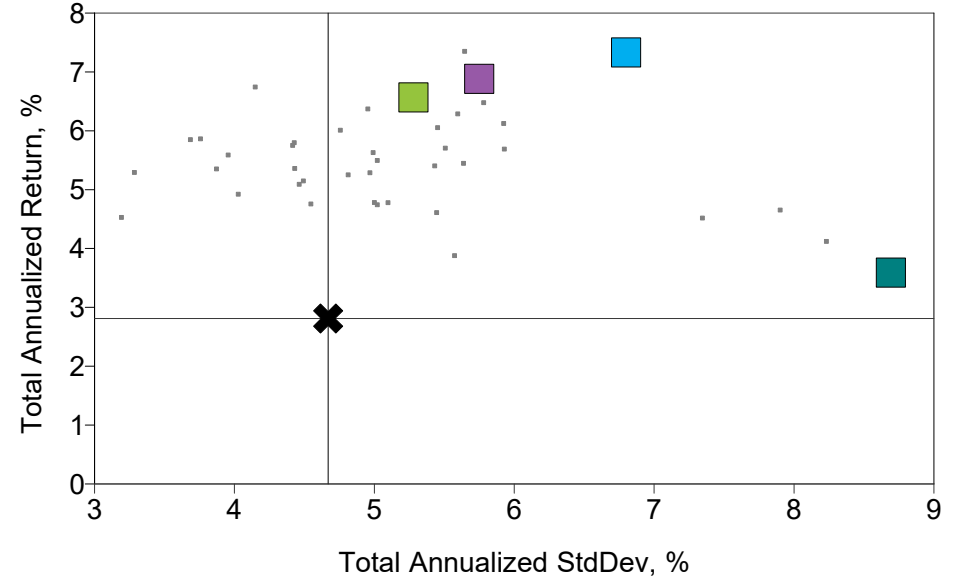
Risk/Return - Seven and Ten Year

As of June 2020 Benchmark: Bloomberg Global Agg Universe: eA US Multi-Sector FI Universe Size: 129

Seven Year Risk/Return



Ten Year Risk/Return



■ eA US Multi-Sector FI ■ Manager 1 ■ Manager 2
✕ Bloomberg Global Agg

■ Manager 3 ■ Brandywine: Global Opp (Inc.)

	Annualized Return	Annualized Std. Dev.
Manager 1	5.60	5.43
Manager 2	5.96	6.90
Manager 3	6.26	5.71
Brandywine: Global Opp (Inc.)	1.67	8.71
Bloomberg Global Agg	2.49	4.37
eA US Multi-Sector FI Median	4.63	5.21

	Annualized Return	Annualized Std. Dev.
Manager 1	6.57	5.28
Manager 2	7.33	6.80
Manager 3	6.88	5.75
Brandywine: Global Opp (Inc.)	3.59	8.69
Bloomberg Global Agg	2.81	4.67
eA US Multi-Sector FI Median	5.38	5.02

Performance is gross of fees.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Permanent Trust Fund Foreign Investments

(No Action Requested)

The Board of University and School Lands (Board) first began investing the Permanent Trust Funds' (PTFs') in international equity markets in the late 1990's. The current international equity manager composition was implemented in 2014 with the hiring of State Street MSCI World ex US, Harding Loevner, DFA, GMO and PIMCO. QMA was subsequently approved in December 2017. In 2014, the Board determined that investing in emerging markets would provide rewarding returns despite the political and economic risks that come with this type of investment. The greatest advantage of emerging market investments is the potential for high growth in returns. Additionally, emerging markets provide a good diversifier for the portfolio because economic downturns in one country or region, including the United States, can be offset by growth in another.

The Board has historically determined that an enhanced risk/return profile for the PTF's will provide improved long-term performance.

Additionally, it is important to note the Board's Investment Policy Statement include the Prudent Investor Rule and a Social and Economically Targeted Investing provision:

The Prudent Investor Rule

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

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

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

Social and Economically Targeted Investing

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

The Board shall not use the Funds to participate in activist efforts to implement a social agenda regarding ownership of specific securities or efforts of shareholders to bring about social change. Economically targeted investing is defined as an investment designed to create economic benefits for a targeted geographic area, group of people, or sector of the economy. Economically targeted investing is barred when investing the Permanent Trust Funds, the Capitol Building Fund, and the Indian Cultural Education Trust, unless the investment meets the Exclusive Benefit Rule.

MEMORANDUM TO THE BOARD OF UNIVERSITY AND SCHOOL LANDS

October 29, 2020

RE: Fall Surface Lease Auctions

The Department of Trust Lands (Department) Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board of University and School Land's (Board) control. One of the major sources of income from these lands comes from agricultural leases (grassland, crop and hay land uses).

Generations of North Dakotans have leased trust lands for agricultural purposes. The land is leased through a series of auctions held each spring and fall. All auctions are open to the public. The lease is awarded to the highest bidder, with the minimum bid set by the Commissioner based upon the Board's Fair Market Value Minimum Rent Policy. Leasing interest is high and the Department manages nearly 4,800 active surface land leases which is consistent from a decade ago.

N.D.C.C. § 15-04-10 provides:

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

Since statehood, the leasing practices of the Department have undergone minimal changes. The most significant shift occurred in 1993 when the Fifty-third Legislative Assembly approved a modification allowing for the auction to be held in the county seat instead of having to be held at the county courthouse or place where the terms of the district court were held. Then in 1995, the Fifty-fourth Legislative Assembly removed language requiring the County Auditor act as the leasing clerk.

The Department recognizes the historical significance of the surface lease auctions and takes any modification to the practices seriously. On April 8, 2020, Governor Burgum issued Executive Order 2020-25 (Executive Order) in response to the public health crisis resulting from COVID-19. The Executive Order suspended the requirement in N.D.C.C. § 15-04-10 that requires the Commissioner of University and School Lands to hold public auctions for public land leasing in the county seat. This provided the Commissioner with flexibility for holding public land auctions in a manner to facilitate social distancing and utilize best management practices to mitigate the spread of COVID-19. As a result of COVID, the Department has shifted the 2020 auctions to an online platform.

In August 2020, the Department sent all lessees from the past 15 years notification that the Fall surface lease auctions would occur online instead of the county seat. As a result of feedback provided to the Department from constituents, the Department modified our procedures. This resulted in an additional mailing being sent to all lessees from the past 15 years. Examples of modified process as a result of feedback are:

- Removed the requirement for bidders to verify bidder allowance from financial institution.
- Created competitive bidding policy to address concerns regarding potential ties.
- Allowed for the submission of checks instead of accepting ACH or wire transfers only.
- Created a "How-To" document and mailed it out to all lessees from the past 15 years.
- Published a Frequently Asked Questions (FAQ) document.

The Department collaborated with the North Dakota Stockman’s Association, the Little Missouri Grazing Association, and the McKenzie Grazing Association to assist in disseminating information to constituents.

The Department has published notice of its fall surface lease auction in the official county newspapers where all tracts are located; however, a list of lands offered for leasing in each county has not been submitted to the county treasurers. As a result of the Department’s failure to properly post the auction by sending a list of the tracts in each county to appropriate county treasurers the auction was rescheduled to occur October 20, 2020 to October 23, 2020.

The 2020 Fall Surface Lease Auctions are not complete as the Department works with bidders who are considered to be “tied” or in competition with two or more bidders during the last 120 seconds of the bidding on a tract as demonstrated in the official EnergyNet record.

On Monday, October 26, 2020, the Department reviewed the final report provided by EnergyNet and is currently in the process of reviewing the final bids. Those bidders will be given the opportunity to continue bidding at a time to be scheduled by the Department, with the opening telephone bid being the final EnergyNet bid amount. If a bidder chose not to continue bidding, the bidder may secede to the winning bidder and no additional process is needed.

At this time, the Department is able to offer the following information as a summary of fall lease auctions (every five years the Department has an “off” year in which fall auctions are not held):

Year of Auction	2015	2016	2017	2019	2020
Number of Counties	34	34	40	34	36
Tracts Offered	1044	1498	891	1146	1039
Percentage of Tracts Leased	96%	97%	95%	93%	96%
Percentage of Tracts Receiving Competitive Bid	12%	9%	13%	8%	21%

The Department is currently in the process of contacting bidders on 41 quarter sections as a result of the Last Minute Bid Competition policy:

Currently, the Department of Trust Lands’, by and thru the Board of University and School Lands, is holding surface lease auctions through EnergyNet. In the event there is a “tie” or competition with two or more bidders during the last 120 seconds of the bidding on a tract, and if the official EnergyNet record demonstrates qualifying bid activity, the Department shall contact those bidders involved in the competitive bidding via email by October 30, 2020. Those bidders will be given the opportunity to continue bidding at a time to be scheduled by the Department, with the opening telephone bid being the final EnergyNet bid amount. If a bidder chose not to continue bidding, the bidder may secede to the winning bidder and no additional process is needed.

The Department has received a formal protest of the auction results on four quarter-sections of land that do not qualify for the Last Minute Bid Competition. Mr. Mark Ellis is protesting:

- T155N, R99W, SECTION 16: NW4
- T155N, R99W, SECTION 16: SE4
- T155N, R99W, SECTION 16: SW4

The Department has received a formal protest of the auction results on one quarter-section of land that do not qualify for the Last Minute Bid Competition. Mr. Trever Sorenson is protesting:

- T158N, R101W, SECTION 16: SE4

The Department has received a formal protest of the auction results on one quarter-section of land that do not qualify for the Last Minute Bid Competition. Mr. Jeff Ellison is protesting:

- T130N, R90W, SECTION 7: NE4

Per N.D.A.C. 84-04-01-09. 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.

The Board will need to make the final determination if the Department is going allow for the bidding to continue on:

- T155N, R99W, SECTION 16: NW4
- T155N, R99W, SECTION 16: SE4
- T155N, R99W, SECTION 16: SW4
- T158N, R101W, SECTION 16: SE4
- T130N, R90W, SECTION 7: NE4

A final summary will be provided during an upcoming Board meeting.

Motion:

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