

**Minutes of the Meeting of the
Board of University and School Lands
August 26, 2021**

The August 26, 2021 meeting of the Board of University and School Lands was called to order at 9:00 AM via Microsoft Teams by Chairman Doug Burgum.

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Christopher Dingwall	Mineral Title Specialist
Robert Dixon	IT
Susan Dollinger	Unclaimed Property
Jessica Fretty	Unclaimed Property
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
Rick Owings	EIIO Grants Administrator
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director
Kayla Spangelo	Range Soils Management Specialist
James Wald	Legal Council
Scott Giere	Revenue Compliance
Peggy Gudvangen	Finance Director

Guests in Attendance:

Dave Garner	Office of the Attorney General
Amy Sisk	Bismarck Tribune
Brady Pelton	NDPC
Miranda Letherman	
Josh Kevan	RVK
Craig Smith	Crowley Fleck Attorneys
Harry Gakidis	Acadian
Andrew Miller	Acadian
C. Rajala	
Cyril Espanol	Journalist from Pageantmedia
Adam Willis	Fargo Inforum
Aidan Forde	Arrowstreet
Liodakis Manolis	Arrowstreet
Don Larson	

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

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

R E P O R T S

July 2021 Report of Encumbrances Issued by Land Commissioner
(No Action Requested)

Granted to:	WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND
For the Purpose of:	Easement: Pipeline-Potable Water Pipeline
Right-of-Way Number:	RW0008738
Trust:	A - Common Schools
Legal Description:	DIV-160-100-28-W2NE4
Granted to:	WESTERN AREA WATER SUPPLY AUTHORITY, WILLISTON-ND
For the Purpose of:	Easement: Pipeline-Potable Water Pipeline
Right-of-Way Number:	RW0008911
Trust:	A - Common Schools
Legal Description:	WIL-159-102-36-NE4
Granted to:	MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND
For the Purpose of:	Easement: Electric-Buried Distribution Line
Right-of-Way Number:	RW0008835
Trust:	A - Common Schools
Legal Description:	MOU-158-91-16-SE4, SW4
Granted to:	OASIS PETROLEUM NORTH AMERICA LLC, HOUSTON-TX
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008916
Trust:	A - Common Schools
Legal Description:	WIL-153-100-36-NE4, SE4, SW4
Granted to:	ND ENERGY SERVICES INC, DICKINSON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008923
Trust:	A - Common Schools
Legal Description:	DUN-146-94-16-NE4, NW4
Granted to:	AMERICAN COLLOID COMPANY, BELLE FOURCHE-SD
For the Purpose of:	Permit: Coal Exploration
Right-of-Way Number:	RW0008873
Trust:	A - Common Schools
Legal Description:	BOW-130-99-1-SW4 & ADA-130-98-8-SW4 BOTH TRACTS HAVE 50% MINERAL OWNERSHIP - NO SURFACE.
Granted to:	WILLIAM H SMITH & ASSOCIATES PC, GREEN RIVER-WY
For the Purpose of:	Permit: Planning & Preconstruction Survey
Right-of-Way Number:	RW0008929
Trust:	A - Common Schools
Legal Description:	ALL TRUST LAND IN NORTH DAKOTA
Granted to:	WOLD ENGINEERING, P.C., MINOT-ND
For the Purpose of:	Permit: Planning & Preconstruction Survey
Right-of-Way Number:	RW0008881
Trust:	A - Common Schools
Legal Description:	ALL TRUST LAND IN NORTH DAKOTA
Granted to:	PETRO-HUNT LLC, BISMARCK-ND
For the Purpose of:	Permit: Temporary Construction – Emergency*
Right-of-Way Number:	RW0008936
Trust:	A - Common Schools
Legal Description:	MCK-154-95-36-SE4

*Holding pond constructed to collect run-off from Petro-Hunt oil well fire on adjacent Forest Service Land.

Granted to: **DIEDE, COLEHARBOR-ND**
 For the Purpose of: Permit: Temporary Construction
 Right-of-Way Number: RW0008937
 Trust: A
 Legal Description: DUN-147-96-36-NW4, S2SW4

Granted to: **NORTH DAKOTA STATE UNIVERSITY (DEPT 7650), FARGO-ND**
 For the Purpose of: Permit: Access to School Land for pollinator and ground arthropod study
 Right-of-Way Number: RW0008900
 Trust: A - Common Schools
 Legal Description: SEVERAL TRACTS IN MCKENZIE & WILLIAMS COUNTIES

Granted to: **ND GEOLOGICAL SURVEY, BISMARCK-ND**
 For the Purpose of: Permit: Access to School Land for critical element sampling
 Right-of-Way Number: RW0008912
 Trust: A – Common Schools, E – Ellendale, N – North Dakota State University, U – University of North Dakota, C – Capitol Building, W – North Dakota State School of Science, J – Indian Cultural Education Trust, M – School of Mines
 Legal Description: SEVERAL TRACTS IN BILLINGS, BOWMAN, DUNN, GOLDEN VALLEY, GRANT, MCKENZIE, MERCER, MORTON, SIOUX, SLOPE, STARK, WILLIAMS COUNTIES

Granted to: **ETHNOSCIENCE INC, BILLINGS-MT**
 For the Purpose of: Permit: Access to School Land
 Right-of-Way Number: RW0008914
 Trust: A - Common Schools
 Legal Description: MCL-147-82-36-SE4, SW4

July 2021 Consideration Total: \$16,785.00

Summary of Oil and Gas Lease Auction

On behalf of the Board of University and School Lands (Board), the Department of Trust Lands conducted an oil and gas lease auction on www.energy.net which concluded on August 3, 2021.

There were 23 tracts offered, and all received competitive bids (if the Board does not receive a competitive bid, the lease is awarded to the nominator). The highest bid per acre was \$1,501.00 (\$240,160.00 for 160.00 acres) in McKenzie County. 12 tracts benefit the Common Schools Trust Fund, and 11 tracts benefit the Strategic Investment and Improvements Fund (SIIF).

County	Tracts/County	Net Mineral Acres	Total Bonus	Average Bonus/Acre
Billings	5	719.94	\$76,390.34	\$106.11
Burke	3	128.00	\$9,128.00	\$71.31
Divide	9	1000.13	\$253,440.43	\$253.41
Dunn	2	160.00	\$80,720.00	\$504.50
McKenzie	2	320.00	\$336,480.00	\$1051.50
Williams	2	153.22	\$75,376.10	\$491.95
GRAND TOTAL	23	2481.29	\$ 831,534.87	\$335.12

There was a total of 20 bidders who submitted 383 bids on the 23 tracts. The bidders were from 10 states (AZ, CO, IN, LA, MN, MT, ND, OK, TX, and WY).

A total of \$831,534.87 of bonus was collected from the auction.

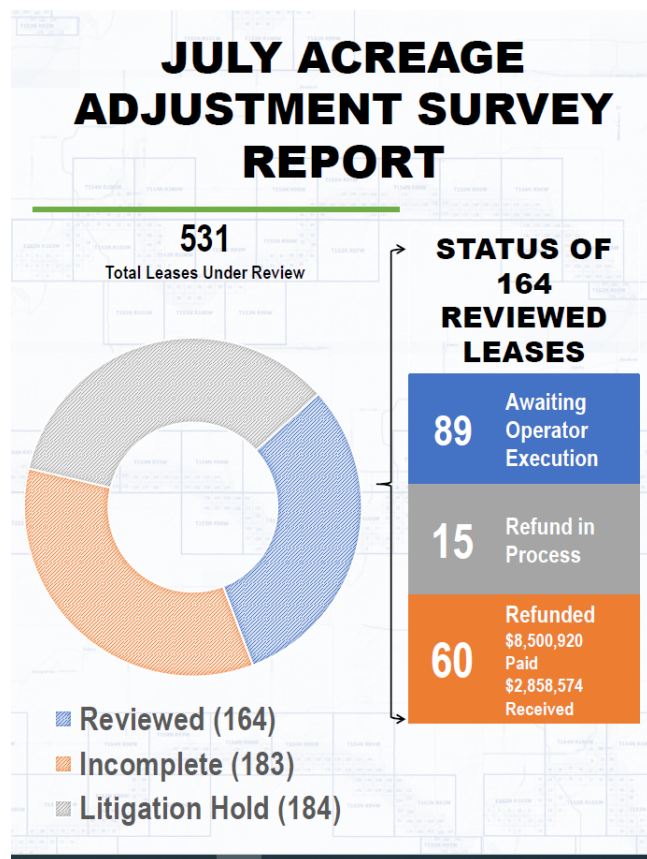
July 2021 Report of Shut-Ins Approved by Land Commissioner

Granted to: Burlington Resources Oil and Gas Company LP
For the Purpose of: Operations
Date Issued: 07/29/2021
Application Fee: \$100.00
Trust: SIIF – Strategic Investment and Improvements Fund
Lease: OG-09-01476

Granted to: Marathon Oil Company
For the Purpose of: Operations
Date Issued: 07/30/2021
Application Fee: \$100.00
Trust: SIIF – Strategic Investment and Improvements Fund
Lease: OG-05-00901; OG-05-00902; OG-05-00903; OG-05-00904

Granted to: Marathon Oil Company
For the Purpose of: Operations
Date Issued: 07/30/2021
Application Fee: \$100.00
Trust: SIIF – Strategic Investment and Improvements Fund
Lease: OG-05-00905; OG-05-00906; OG-05-00949; OG-10-00747
OG-10-00748

Acreage Adjustment Report



NDDTL River Tracts Refund Status map was also presented to the Board and is available upon request.

June Unclaimed Property Report

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

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

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

For the month of June 2021, the Division received 68 holder reports with a property value of \$107,566 and paid 352 claims with a total value of \$641,090.

The Financial Report (Unaudited) for period ending May 31, 2021 was presented to the Board for review and is available at the Department upon request.

Investment Updates

Portfolio Rebalancing Updates

In August, \$100M new cash from the Common Schools Trust was transferred to the portfolio. \$64.37M of the \$100M was from the oil extraction tax back pay as appropriated by the Sixty-sixth Legislative Assembly in Senate Bill 2362.

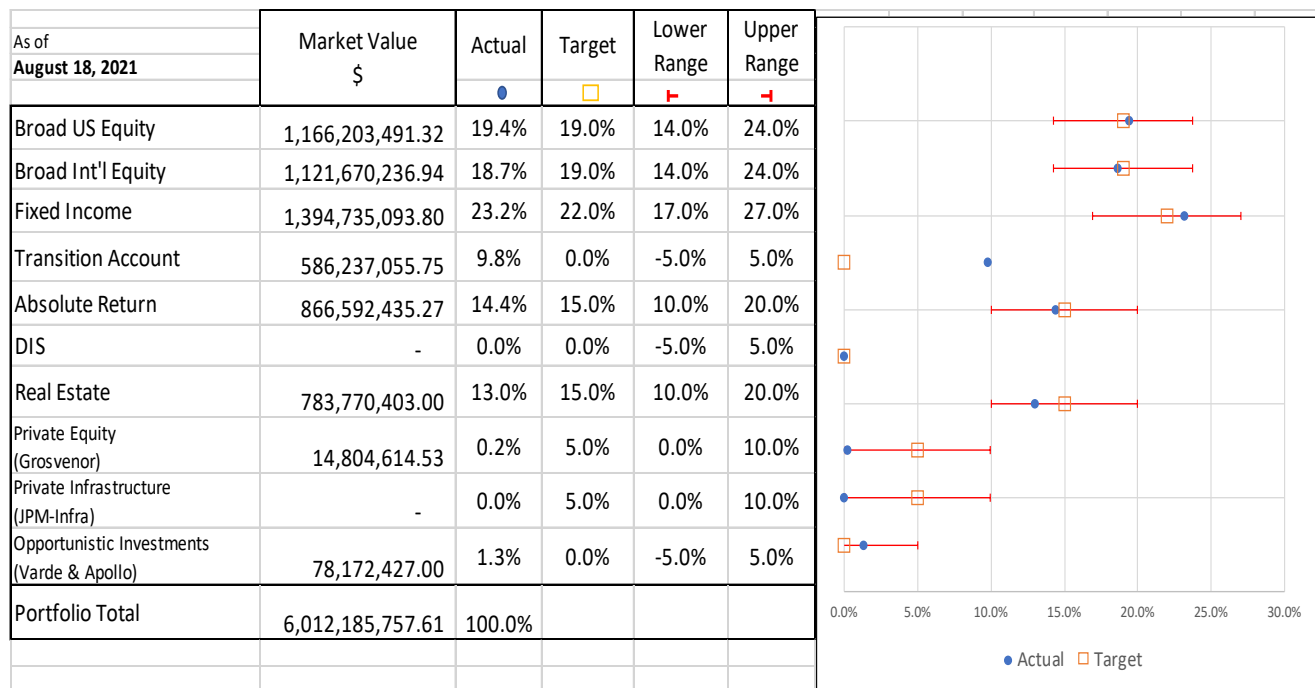
There were no capital calls made since the last Board meeting. Although on a Q2 update call with Ares Pathfinder Fund, it was communicated Ares Pathfinder Fund is expecting to call approximately 10% by mid-September.

Total unfunded commitments as of 8/18 is at \$658.7M. Broken down as follows:

1. JPM Infrastructure Fund, \$130M
2. Harrison Street Core Property Fund LP, \$130M
3. Apollo Accord Fund, \$81.5M
4. Varde Dislocation Fund, \$50M
5. GCM Private Equity, \$115.2M
6. ARES Pathfinder Fund, \$84.5M
7. Angelo Gordon DL IV, \$67.5M.

ASSET ALLOCATION

The table below shows the status of the permanent trusts' asset allocation as of August 18, 2021. The figures provided are unaudited.



Please note that Q2 Statements from Angelo Gordon Direct Lending Funds III & IV (under Fixed Income) and GCM Grosvenor Private Equity have not been received yet. Hence values for these Funds were based on their Q1 market values adjusted for any capital calls and/or distributions.

INVESTMENTS

June Investment Reports – 2nd Quarter 2021

Josh Kevan from RVK will review the performance of the Board of University and School Land's (Board) investment program for the period ending June 30, 2021 and discuss current market conditions.

The first report to be reviewed was prepared by RVK to enable the Board to monitor and evaluate the collective performance of the permanent trusts' investments and the performance of individual managers within the program. In order to provide an overview of the program and highlight critical information, an executive summary has been incorporated into the Board report.

The second report shows the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK Permanent Trust Fund Performance Analysis and RVK Ultra-short Performance Report were presented to the Board and are available at the Department upon request.

Emerging Markets Equity Allocation

In April 2014, the Board of University and School Lands' (Board) approved investments in two Emerging Markets equity funds equally divided between Dimensional Fund Advisors' (DFA) Emerging Markets Core Equity mutual fund and Harding Loevner's Institutional Emerging Markets mutual fund.

As a result of consistent underperformance, Department Staff and RVK recommended terminating the DFA and Harding mandates (combined \$230+ Million) and replacing those with two new Emerging Markets (EM) equity mandates. The incumbent mandates have underperformed the benchmark (MSCI Emerging Markets Index) net of fees in the 3, 5, and 7-year periods (the entire length of incumbency). RVK's research shows the incumbents have worse Risk/Return performance, Sharpe Ratios, Information Ratios and Upside/Downside Capture Ratios than the proposed replacement.

Staff and RVK recommend moving to a new active manager and an index, which should decrease portfolio risk while increasing returns. Staff and RVK began the manager search by compiling a list of the top performing managers within RVK's database. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process. Staff and RVK selected and interviewed top managers to review their investment strategies and investment process.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a mandate with Arrowstreet. Arrowstreet Capital has a strong and transparent investment process and portfolio characteristics that Staff and RVK felt would best suit the PTFs. Arrowstreet is an investment manager founded in 1999 and headquartered in Boston, with offices in the U.S., Europe and Asia. They have over \$152 Billion in assets under management and over 110 investment professionals.

Staff and RVK also recommend an investment with Northern Trust Investments in their Emerging Markets Equity index fund. Arrowstreet closes their fund for extended periods of time; this index fund will give the PTFs a rebalancing tool for when the PTFs are waiting for Arrowstreet to open or when we need to reduce holdings due to faster growth in the asset class versus other assets.

Motion: The Board approve terminating investment with DFA and Harding Loevner and using the proceeds (\$230+ Million) to invest with Arrowstreet in an Emerging Markets Equity actively managed mandate, and approve a \$25 Million investment with Northern Trust in an Emerging Markets Equity Index mandate subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation Memo and Arrowstreet Emerging Markets Presentation were presented to the Board and are available at the Department upon request.

International Small Cap Equity Allocation

In September 2017, the Board of University and School Lands' (Board) approved changes to the Permanent Trust Funds' (PTFs) international equity allocation to include international small cap developed market ex-U.S. equities. In December 2017, the Board approved an investment in QMA's EAFE Small Cap commingled fund (EAFE stands for Europe, Australasia and Far East).

As a result of consistent underperformance, Department Staff and RVK recommend terminating the QMA EAFE Small Cap mandate (\$210+ Million) and replacing it with two new EAFE small cap equity mandates. The QMA mandate has underperformed both its benchmark (MSCI EAFE Small Cap Index) and its peers. RVK's research shows the QMA mandate has a worse risk/return performance than its index and peer group. It also has worse periodic Sharpe Ratios, Information Ratios and Upside/Downside Capture Ratios than its peer group.

Staff and RVK recommend moving to a new active manager and an index, which should decrease portfolio risk while increasing returns. Staff and RVK began the manager search by compiling a list of the top performing managers within RVK's database. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process. Staff and RVK selected and interviewed top managers to review their investment strategies and investment process.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a mandate with Acadian. Acadian Asset Management has a strong and transparent investment process and portfolio characteristics that Staff and RVK felt would best suit the PTFs. Acadian is an investment manager founded in 1986 and headquartered in Boston, with offices in the U.S., Europe and Asia. They have over \$117 Billion in assets under management and over 95 investment professionals.

Staff and RVK also recommend an investment with Northern Trust Investments in their EAFE Small Cap Equity index fund. From time-to-time Acadian has waiting lists; this index fund will give the PTFs a rebalancing tool for when the PTFs are waiting in Acadian's investment queue or when we need to reduce holdings due to faster growth in the asset class versus other assets.

Motion: The Board approve terminating investment with QMA and using the proceeds (\$210+ Million) to invest with Acadian in an EAFE Small Cap Equity actively managed mandate, and approve a \$25 Million investment with Northern Trust in an EAFE Small Cap Equity Index mandate subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation Memo and Acadian International Small Cap Presentation were presented to the Board and are available at the Department upon request.

O P E R A T I O N S

Board of University and School Lands Media Relations Policy Manual

The Board of University and School Lands (Board) currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. The Board requested the Commissioner prepare a Media Relations Policy that seeks to work cooperatively with the media to disseminate information of public interest and concern in an accurate, complete, and timely manner and in harmony with the official position of the Board.

The first reading of the policy was held at the July 29, 2021 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and two comments were received (Attachment 2).

Motion: The Board adopt the proposed North Dakota Board of University and School Lands Media Policy.

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

Board of University and School Lands Media Relations Policy and Comments Received were presented to the Board and are available at the Department upon request.

Definitions, Unclaimed Property, Surface Land Management, and Minerals Management Administrative Rules

Due to statutory changes made during the Sixty-seventh Legislative Assembly, the Department of Trust Lands (Department) proposes changes to Title 85, Board of University and School Lands, of the North Dakota Administrative Code as follows:

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North Dakota Administrative Code § 85-01-01-01:

Repeal of N.D.A.C. ch. 85-06-01, Administrative Rules relating to public access, necessitated revisions to the N.D.A.C. § 85-01-01-01, including removal of the definition of the word vehicle, which resulted in renumbering the remaining definitions. The definition of encumbrance was revised to be more encompassing of all types of encumbrances. Due to the repeal and reenactment of the Unclaimed Property Act it was necessary to make a clerical correction as to the chapter number. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code ch. 85-03:

Due to the repeal of the Unclaimed Property Act (N.D.C.C. ch. 47-30.1), and the reenactment of the Revised Uniform Unclaimed Property Act (N.D.C.C. ch. 47-30.2) under Senate Bill 2048, the Department proposes revisions to Article 85-03, Unclaimed Property, of the North Dakota Administrative Code. Many of the revisions relate to clerical corrections regarding the North Dakota Century Code chapter, general authority, and law implemented. Further, certain administrative rules were repealed to reflect information that is now part of N.D.C.C. ch. 47-30.2, while others were added based on new requirements under the law. The most significant change relates to the addition of a chapter regarding Examinations. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code ch. 85-04-05:

House Bill 1081 was brought to address enforcement mechanism concerns for N.D.A.C. ch. 85-04-05, Public Access and Use. With the passage of HB 1081, all of N.D.A.C. ch. 85-04-05 was incorporated into N.D.C.C. ch. 15-08. Therefore, the Department requests repeal of this chapter. All revisions are spelled out in the attached proposed rules.

North Dakota Administrative Code § 85-06-01-12:

Due to changes in N.D.C.C. §§ 15-05-10 and 47-16-39.1, as provided in House Bill 1080, the Department proposes revising N.D.A.C. § 85-06-01-12 as it relates to penalty and interest calculations. Waiver was also removed from this section of the administrative code based on the revised language in N.D.C.C. § 15-05-10. All revisions are spelled out in the attached proposed rules.

Motion: The Board authorizes the Commissioner to proceed with review of the proposed Administrative Rules, including formal review by the Office of Attorney General, preparation for public hearings and collection of comments, and submittal to Legislative Council.

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

Administrative Rules General Administration, Unclaimed Property, Surface Land Management, and Minerals Management were presented to the Board and are available at the Department upon request.

Information Technology Project Status Update

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

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

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

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

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

The Surface Land Management System is tentatively scheduled to go-live on September 25, 2021. MABU, a full service marketing and communications company, has been hired to aid the Department in communication efforts to constituents who will be impacted by the implementation of the new system.

Additional capital funding was approved through Senate Bill 2013 to support the implementation of software for the Minerals Division. A kick-off for the implementation of the new software is scheduled for September 27, 2021.

Strategic Investment and Improvements Fund - Assigned Fund Balance

Mineral revenues from sovereign lands are deposited into the Strategic Investment and Improvements Fund (SIIF). In July, 2016 the Board of University and School Lands (Board) classified \$142,325,049 of this fund as an "Assigned Fund Balance," a potential liability that should not be transferred out of the fund until title claims to riverbed leases are resolved. The amount was derived from the amount of bonus and royalties collected from the leasing and production of sovereign lands' oil and gas interests and in consideration of associated litigation in these areas.

The adoption of Senate Bill 2134 (SB 2134) in 2017 by the Sixty-fifth Legislative Assembly, codified as N.D.C.C. ch. 61-33.1, provided for a determination of the Ordinary High Water Mark (OHWM) for certain stretches of the Missouri River. The bill directed the North Dakota Industrial Commission (NDIC) to review a stretch of river to determine the location of the OHWM pursuant to specific criteria established by the Legislature.

On August 30, 2018 the Board affirmed the existing Assigned Fund Balance of \$229,325,049. It was anticipated that after the NDIC adopted the final review findings, the Department of Trust Lands (Department) would be able to calculate with more certainty the amounts necessary for mineral title disputes.

The survey NDIC was directed to conduct under SB 2134, and completed by Wenck Associates, Inc., did not provide the level of detail needed by the Department or oil and gas operators to make

(08/26/21)

the necessary adjustments required to refund royalties and lease bonuses. In recognition of this, the Sixty-sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 by adopting Senate Bill 2211 (SB 2211). SB 2211 authorized the Board to “contract with a qualified engineering and surveying firm to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the [OHWM] as delineated by the final review findings of the [NDIC].”

The SB 2134 further directed the adjustment of State leased mineral interests and authorized refunds of mineral proceeds accordingly. SB 2134, Section 3, states:

1. There is appropriated out of any moneys held in reserve in the [SIIF] for mineral title disputes, not otherwise appropriated, the sum of \$100,000,000, or so much of the sum as may be necessary, to the commissioner of university and school lands for the purpose of mineral revenue repayments, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item.
2. The funding provided in this section is available for the following:
 - a. Repayment of any lease, bonus, rents, and royalty collections attributable to oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey, as required in subsection 1 of section 61-33.1-04.
 - b. Repayment of any lease, bonus, rents, and royalty collections attributable to the remaining oil and gas mineral tracts, as required in subsection 2 of section 61-33.1-04.
 - c. Other mineral revenue repayments or other reimbursements that are attributable to oil and gas mineral tracts requiring repayments under this Act.
3. Upon adoption of the final review findings by the industrial commission, the commissioner of university and school lands shall calculate the amount necessary for mineral revenue repayments based on the final review findings.
4. As soon as a repayment amount for a known recipient is calculated but after the expenditure of the \$100,000,000 in subsection 1:
 - a. The commissioner of university and school lands shall request from the sixty-sixth legislative assembly additional funding sufficient for any remaining mineral revenue or other repayments.
 - b. If the \$100,000,000 is expended before the repayment of all amounts calculated for known recipients and before additional funds are made available by the sixty-sixth legislative assembly, the Bank of North Dakota shall extend a line of credit, not to exceed \$87,000,000, to the commissioner of university and school lands. The commissioner of university and school lands shall access the line of credit, to the extent necessary, the sum of which is appropriated, for the purpose of mineral revenue and other repayments under this Act for the biennium beginning July 1, 2017, and ending June 30, 2019. The commissioner of university and school lands shall repay the line of credit from funds available in the strategic investment and improvements fund as appropriated by the legislative assembly.

Mineral revenues from sovereign lands are deposited into the SIIF. Current revenue projections indicate there will be sufficient funds within the SIIF to meet obligations and transfers implemented by the 2017 Legislative Assembly, including the total amount estimated for refunds under SB 2134.

On July 17, 2019 the Board approved the existing Assigned Fund Balance of \$229,325,049. The amount was based upon the bonus and royalties anticipated to be collected through the end of Fiscal Year 2019.

On June 25, 2020 the results of the acreage adjustment survey as prepared by Kadmas, Lee & Jackson, Inc. (KLJ) were presented and approved by the Board, with the exception of certain sections and lots that required further review. The Department has started the process of updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process is extensive and requires a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be allocated to the correct trust, the Department's shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck Associates, Inc., the Department has over 500 active leases covering 44,700 acres.

On July 29, 2020, the Board approved the existing Assigned Fund Balance of \$229,325,049.

Since June 25, 2020, the Department has been completing the necessary acreage adjustments within the Project Area. Based upon the review of the current adjustments, the Department has determined the Board can reduce the amount preserved in the Assigned Fund Balance by \$10,544,933. The recommended reduction is based upon the Assigned Fund Balance related to the lease corrections that have been executed.

Motion: For purposes of its financial reporting, the Board affirms the "Assigned Fund Balance" of the Strategic Investment and Improvements Fund and recommend it set at \$218,780,117. These funds are reserved to make adjustments related sovereign lands mineral ownership.

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

LITIGATION

Nelson Litigation

Case: Marvin Nelson, Michael Coachman & Paul Sorum v. The Board of University and School Lands of the State of North Dakota and the State of North Dakota – Civ. No. 27-2021-CV-00285

Tribunal: McLean County District Court

Judge: Daniel El-Dweek

Attorney: David Garner

Opposing

Counsel: Plaintiffs Appearing Pro Se

(08/26/21)

Issues: The Board was named as a defendant in the above reference case which was served on July 26, 2021. Plaintiffs have filed a Summons for Petition or Quiet Title, Petition for Quiet Title, and a Memorandum in Support of Petition for Quiet Title. Plaintiffs are seeking to quiet title to the property described as:

That area of the bed of Lake Sakakawea known as Lake Jesse (Jesse Lake) delineated by the US Army Corps of Engineers Shoreline Survey used in acquiring land for the creation of Lake Sakakawea in Section 30 of Township 153 North Range 98 West and in Sections 23,24,25,26 in Township 153 North Range 99 West (approximately 488.68 acres).

History:

Current Status:

- On August 5, 2021, Paul Sorum emailed a Request for Setting for Petition for Quiet Title and Memorandum in Support of Quiet Title requesting the Court schedule a one-hour hearing on Petitioners' Petition for Quiet Title and Petitioners' Memorandum in Support of Petition for Quiet Title.
- On August 16, 2021, Defendants filed a Motion to Dismiss.

MHA Litigation

Case: Mandan, Hidatsa, and Arikara Nation v. United States Department of the Interior; David L. Bernhardt, in his official capacity as Secretary of the United States Department of Interior; and Daniel H. Jorjani, in his official capacity as Solicitor of the United States Department of the Interior; Case No. 20-1918 (ABJ)

Date Filed: July 16, 2020

Court: United States District Court for the District of Columbia

Judge: Honorable Amy Berman Jackson

Attorney: Matthew Sagsveen, Beveridge & Diamond

Opposing

Counsel: Steven D. Gordon, Philip Merle Baker-Shenk, Timothy Purdon, and Timothy Billion for Plaintiffs; Reuben S. Schifman for United States Department of Interior

Issues: In July, 2020, the Mandan, Hidatsa, and Arikara Nation (Tribe) filed a Complaint against the United States Department of the Interior (DOI); David Bernhardt, Secretary of DOI; and Daniel Jorjani, DOI Solicitor. The Complaint asserts four causes of action. Count One asserts that Solicitor Opinion M-37056 issued May 26, 2020, by Jorjani is flawed because it is inconsistent with past DOI opinions and decisions and contrary to the historical record. Count Two asserts the Opinion is flawed because it is the result of improper political influence. Counts Three and Four seek, essentially, an accounting and seem premised on the success of either Count One or Count Two.

In the Complaint's Prayer for Relief, the Tribe requests: (a) that the Jorjani Opinion, which concluded North Dakota owns the lands beneath the Missouri Riverbed within the Fort Berthold Reservation, be set aside; (b) that the Court grant injunctive relief preventing Defendants from taking any steps to implement the Opinion; (c) that the Court compel DOI to account to the Tribe regarding the Missouri Riverbed and underlying minerals, including the production of minerals and the value of royalties owed thereon; (d) the Court declare the 1979 IBLA *Impel Energy* decision (finding the state does not own the riverbed) is *res judicata* and binding on the DOI; (e) the Court compel DOI to take the requisite administrative steps to document that the Missouri Riverbed and underlying minerals are held in trust by the United States for the benefit of the Tribe; (f) the Court compel DOI to take requisite steps to administer and account for the Tribe's mineral rights in lands underlying the Missouri Riverbed; (g) the Court compel DOI to collect, deposit and invest or pay funds owing to the Tribe for the extraction of minerals from the lands underlying the Missouri Riverbed; (h) that the Tribe be awarded reasonable fees, costs, and expenses, including attorney's fees; and (i) that the Court grant such further relief as the Court deems just and equitable.

Along with its Complaint, the Tribe filed a motion for preliminary injunction asking that the Court to immediately order DOI to refrain from doing anything to implement the Jorjani Opinion until the Court has decided the merits of the Tribe's claims regarding that Opinion.

History:

Summons and Complaint filed July 16, 2020. A scheduling conference was held by telephone on July 23, 2020, with a follow up on July 29. The parties agreed the pending motion for preliminary injunction can be considered to be Plaintiff's motion for partial summary judgment on count one and resolved with defendant's cross motion for partial summary judgment as to that count. The merits of count one will be consolidated with any hearing on the motion for preliminary injunction. An Order issued by the Court on July 31, 2020 provides:

- Administrative record - due August 26, 2020;
- Defendant's consolidated opposition to motion for preliminary injunction and cross-motion for partial summary judgment - due September 1, 2020.
- Plaintiff's consolidated reply and cross-opposition to Defendant's motion - due October 1, 2020.
- Defendant's cross-reply to opposition - due October 15, 2020.
- No lease or other official record affecting ownership of the Missouri Riverbed mineral estate within the Reservation may be modified or changed before 200 days from the date of this order – February 16, 2021, unless Defendant seeks the court's permission and amendment of the order, the Plaintiff has an opportunity to be heard, and the motion is granted.

That any revenues generated from riverbed mineral development under control of DOI not be disbursed until after the Court's resolution of the cross-motions for partial summary judgment on count one.

The State of North Dakota filed an Expedited Motion to Intervene on August 10, 2020. The Court issued an Order on August 11, 2020, allowing Plaintiff to respond to the State's Motion by August 17, 2020, and the State to file a reply by August 21, 2020. The Tribe filed its Opposition to the State Motion to Intervene on August 17, 2020. On August 21, 2020, the State filed its reply to the Tribe's opposition to the motion to intervene. The Notice of Lodging of Administrative Record was filed on August 26, 2020.

The Court entered its Opinion and Order granting North Dakota's Motion to Intervene and setting forth requirements for filings. On September 1, 2020, the United States filed the United States Department of Interior's Opposition to Plaintiff's Motion for Preliminary Injunction and Cross-Motion for Partial Summary Judgment. On

September 8, 2020, Plaintiff filed a Motion to Complete Administrative Record and a proposed Order. Also on September 8, 2020, the State filed the Intervenor-Defendant State of North Dakota's Cross-Motion for Partial Summary Judgment and Opposition to Plaintiff's Motion for Preliminary Injunction. On April 2, 2021, Plaintiff's Supplemental Submission Regarding Mootness by Mandan, Hidatsa, and Arikara Nation, State of North Dakota's Response to Mootness, and U.S. Department of Interior's Response to Order of the Court were filed.

Current Status:

- By letter dated April 1, 2021, Associate Solicitor Eric Shepard invited the State of North Dakota to submit materials relevant to the review of M-37056 issued by former Solicitor Daniel Jorjani.
- On April 12 & 27, Attorney General Stenehjem requested more time to participate due to the inability to access records to complete research.
- On May 7, 2021, Attorney General Stenehjem advised that we were unable to provide the requested information during the time allotted but are providing a report by Stevens Historical Research Associates that has been prepared to date and reiterated request for more time.
- On July 30, 2021, the parties filed the Joint Status Report.
- An Order was filed by the Court on August 2, 2021 dismissing Court I and II of the Complaint, the preliminary injunction motion was denied as moot, and Counts III and IV remain justiciable. The parties are ordered to meet and confer and submit a joint status report by August 13, 2021 that sets forth the parties' views on whether Counts III and IV should continue to be stayed pending issuance of a new M-Opinion and if not, proposing a scheduling for resolving those claims.

Newfield Litigation

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

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

Counsel: Lawrence Bender - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP

Judge: Robin Schmidt

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

- **History:** A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13,

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2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision." The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019. Telephonic Status Conference scheduled for March 17, 2020 before the District Court. On May 14, 2020, the Court scheduled a five-day Court Trial to start on October 4, 2021, McKenzie County Courthouse. On July 28, 2020, a Stipulated Scheduling Order was entered, setting dates for various deadlines. On April 1, 2021, the State served Defendants State of North Dakota, ex re. the North Dakota Board of University and School Lands, and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands' Interrogatories, Requests for Production of Documents, and Requests for Admissions to Plaintiff. On April 1, 2021, the Plaintiffs served the following on the State: Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of a Representative of the North Dakota Department of Trust Lands; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Lance Gaebe; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Taylor K. Lee; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Jodi Smith; and Plaintiffs' First Set of Interrogatories, Requests for Production, and Requests for Admission to all Defendants. On July 1, 2021, Defendants filed their Motion for Summary Judgment and Plaintiffs filed their Motion for Partial Summary Judgment.

Status:

- **On August 2, 2021, Plaintiffs filed a Motion to Admit Garrett S. Martin Pro Hac Vice and their Response Brief in Opposition to Motion for Summary Judgment. Also on August 2, 2021, Defendants filed their Brief in Response to Plaintiffs' Motion for Partial Summary Judgment.**
- **On August 4, 2021, the parties filed an Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to Motions for Summary Judgment and the Joint Motion to Exceed Volume Limitations.**
- **On August 5, 2021, the Court issued its Order Granting Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to motions for Summary Judgment and the Order Granting Joint Motion to Exceed Volume Limitations. The parties now have until August 30, 2021 to file their opposition/response briefs and the page limit was extended from 12 pages to 30 pages for both parties.**
- **On August 9, 2021, Plaintiffs requested a hearing on Plaintiff's Motion for Partial Summary Judgment and Defendants Motion for Summary Judgment and scheduled that hearing for September 16, 2021, at 10 a.m. Also on August 9, 2021, a Pretrial Conference was scheduled for 10 a.m. on October 1, 2021.**

Repayment of Unpaid Gas Royalties Update

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

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

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

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

On July 29, 2021, the Board provided the Department with guidance as it relates to royalty repayment offers. Since August 1, 2021, the Department approved receipt of payment for:

- BTA Oil Producers, LLC
- Liberty Resources Management Co., LLC

- Lime Rock Resources
- Luff Exploration Company

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

The Board has requested royalty repayment offers from gas payors and litigation be discussed during executive session.

EXECUTIVE SESSION

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

- **MHA Civ. No 1:20-cv-01918-ABJ**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **Royalty Offers**

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

The Board entered into executive session at 10:35 AM.

EXECUTIVE SESSION

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Kate Schirado	Administrative Assistant
Adam Otteson	Revenue Compliance Director
Rick Owings	Administrative Staff Officer

Guests in Attendance:

Dave Garner	Office of the Attorney General
Charles Carvell	Office of the Attorney General-only present for MHA
Troy Seibel	Office of the Attorney General

The executive session adjourned at 11:35 AM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session meeting, the Board was provided information and no formal action was taken.

A D J O U R N

There being no further business, the meeting was adjourned at 11:40 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands