

**Minutes of the Meeting of the
Board of University and School Lands
September 30, 2021**

The September 30, 2021 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Governor's Conference Room of the State Capitol and 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
Dennis Chua	Investments
Rick Owings	EIIO Grants Administrator
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
Kate Schirado	Administrative Assistant
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
Susan Dollinger	Unclaimed Property
Jessica Fretty	Unclaimed Property
James Wald	Legal Council
Scott Giere	Revenue Compliance

Guests in Attendance:

Dave Garner	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Corey Barnes	K&L/M-Family LLC
Charles Tuttle	
Matt Perdue	
Brady Pelton	NDPC
C. Rajala	
Don Larson	
Gary Hagen	

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 August 26, 2021 regular meeting and September 9, 2021 Special 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

August 2021 Report of Encumbrances Issued by Land Commissioner

Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	WHITING OIL AND GAS CORPORATION, DENVER-CO Easement: Well-Subsurface Well Bore RW0008935 A - Common Schools WIL-156-97-36-SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	HILAND CRUDE LLC, WILLISTON-ND Easement: Pipeline-Oil Gathering Pipeline RW0008817 A - Common Schools MCK-151-100-16-NW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT Easement: Pipeline-Gas Gathering Pipeline RW0008865 A - Common Schools MCK-149-96-36-SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	CONTINENTAL RESOURCES INC, OKLAHOMA CITY-OK Easement: Pipeline-Pipeline & Communication Cable RW0008872 A - Common Schools DUN-146-96-36-NW4, SE4, SW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	HILAND CRUDE LLC, WILLISTON-ND Easement: Drop Line-Oil Gathering Pipeline RW0008886 A - Common Schools WIL-153-100-36-SE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	HILAND PARTNERS HOLDINGS LLC, WILLISTON-ND Easement: Drop Line-Gas Gathering Pipeline RW0008887 A - Common Schools WIL-153-100-36-NE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	ANDEAVOR FIELD SERVICES LLC, SAN ANTONIO-TX Easement: Pipeline-Gas Gathering Pipeline RW0008913 A - Common Schools MOU-153-92-16-NW4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	THORSTEINSON & SONS CONSTRUCTION LLP, FARGO-ND Easement: Pipeline-Potable Water Pipeline RW0008820 A - Common Schools BIL-139-102-28-NE4
Granted to: For the Purpose of: Right-of-Way Number: Trust: Legal Description:	SLAWSON EXPLORATION COMPANY INC, DENVER-CO Easement-Amend: Pipeline-Salt Water Pipeline RW0008901 A - Common Schools MOU-152-92-14-SE4 MOU-152-92-23-NE4NW4
Granted to:	SLAWSON EXPLORATION COMPANY INC, DENVER-CO

For the Purpose of:	Easement-Amend: Pipeline-Oil Gathering Pipeline
Right-of-Way Number:	RW0008902
Trust:	A - Common Schools
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:	Easement-Amend: Pipeline-Multiple Pipelines & Communication
Cable	
Right-of-Way Number:	RW0008921
Trust:	A - Common Schools
Legal Description:	WIL-153-99-22-SW4 LESS ACRES CONDEMNED
Granted to:	LIBERTY MIDSTREAM SOLUTIONS LLC, DENVER-CO
For the Purpose of:	Easement-Amend: Pipeline-Multiple Pipelines
Right-of-Way Number:	RW0008930
Trust:	A - Common Schools
Legal Description:	BRK-159-93-16-NW4, SW4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement-Amend: Electric-Transmission Line
Right-of-Way Number:	RW0008759
Trust:	A - Common Schools
Legal Description:	MCK-149-103-36-SE4, SW4
Granted to:	ROUGH RIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND
For the Purpose of:	Easement: Electric-Transmission Line
Right-of-Way Number:	RW0008862
Trust:	A - Common Schools
Legal Description:	BIL-144-98-16-SE4
Granted to:	MCKENZIE ELECTRIC COOPERATIVE INC, WATFORD CITY-ND
For the Purpose of:	Easement: Electric-Above Ground Distribution Line
Right-of-Way Number:	RW0008880
Trust:	A - Common Schools
Legal Description:	MCK-146-102-28-N2NE4
Granted to:	MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND
For the Purpose of:	Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number:	RW0008909
Trust:	A - Common Schools
Legal Description:	WIL-153-100-36-SE4
Granted to:	MOUNTRAIL-WILLIAMS ELECTRIC COOPERATIVE, WILLISTON-ND
For the Purpose of:	Easement: Drop Line-Above Ground Electric Distribution Line
Right-of-Way Number:	RW0008910
Trust:	A - Common Schools
Legal Description:	WIL-153-100-36-NE4
Granted to:	AMES SAVAGE WATER SOLUTIONS, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008932
Trust:	A - Common Schools
Legal Description:	WIL-156-95-16-NE4, SE4 WIL-158-95-36-SE4
Granted to:	SELECT ENERGY SERVICES LLC, WILLISTON-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008938
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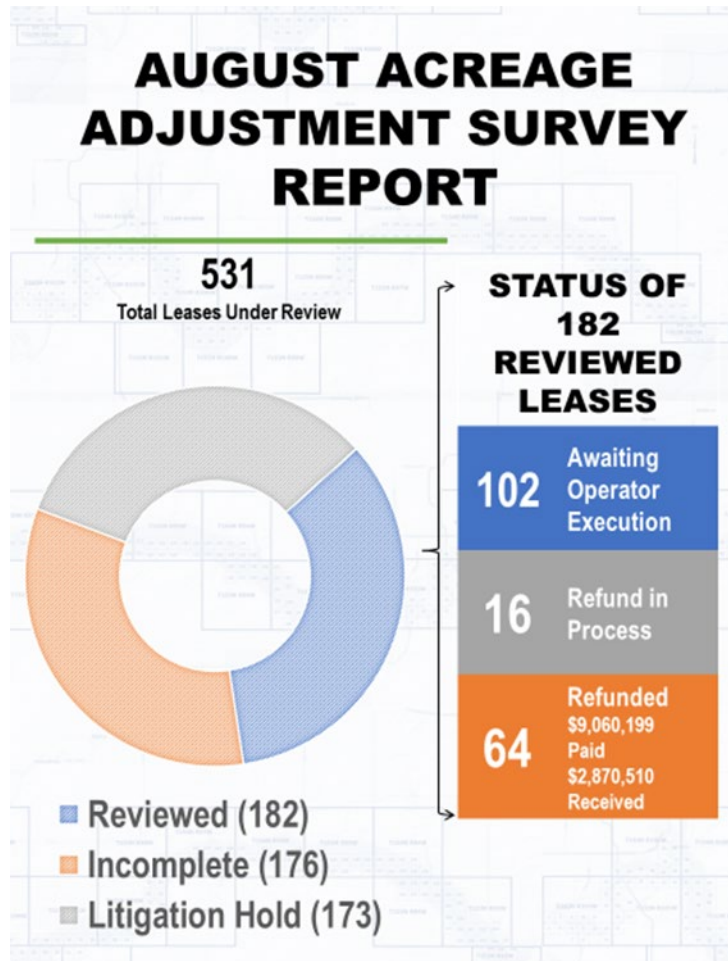
364

Trust: A - Common Schools
Legal Description: WIL-154-100-36-SE4, SW4

Granted to: **CHERRY CREEK WATER LLC, CALEDONIA-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008329
Trust: A - Common Schools
Legal Description: MCK-149-97-16-NW4, SE4
MCK-149-97-36-NW4
MCK-149-97-36-SW4SE4, LOTS 2,3,7, W2SW4, LOTS 4,5,6

Granted to: **NORTHWEST WATER TRANSFER, WILLISTON-ND**
For the Purpose of: Permit: Temporary Water Layflat Line
Right-of-Way Number: RW0008941
Trust: A - Common Schools
Legal Description: MOU-153-89-16-NW4 W OF RD, SW4 W OF RD
August 2021 Consideration Total: \$445,344.64

Acreage Adjustment Report



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

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 (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 August 2021, the Division received 38 holder reports with a property value of \$44,616 and paid 530 claims with a total value of \$741,848.

Investment Updates

Portfolio Rebalancing Updates

Staff is reviewing agreements of recently approved investments namely: Arrowstreet Emerging Market Fund, Northern Emerging Market Index Fund, Acadian, Acadian International Small Cap Fund, SSGA International Small Cap Index Fund. Both GCM Secondaries Fund and Owl Rock are targeted to close at the end of September.

Apollo made \$3.25M capital distribution last 8/31 increasing its unfunded commitment to \$84.8M. While Ares Pathfinder Fund and Angelo Gordon DL Fund IV made capital calls amounting to approximately \$10M each on 9/17 and 9/23 respectively. With the recent distribution and capital calls, total unfunded commitments as of 9/23 stands at \$641.9M. These are as follows:

1. JPM Infrastructure Fund, \$130M
2. Harrison Street Core Property Fund LP, \$130M
3. Apollo Accord Fund, \$84.8M
4. Varde Dislocation Fund, \$50M
5. GCM Private Equity, \$115.1M
6. ARES Pathfinder Fund, \$74.5M
7. Angelo Gordon DL IV, \$57.5M.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 22, 2021. The figures provided are unaudited.

As of September 22, 2021	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,176,088,631.56	19.5%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,127,415,549.04	18.7%	19.0%	14.0%	24.0%
Fixed Income	1,411,862,708.34	23.4%	22.0%	17.0%	27.0%
Transition Account	586,330,802.88	9.7%	0.0%	-5.0%	5.0%
Absolute Return	868,613,088.74	14.4%	15.0%	10.0%	20.0%
DIS	-	0.0%	0.0%	-5.0%	5.0%
Real Estate	783,770,403.00	13.0%	15.0%	10.0%	20.0%
Private Equity (Grosvenor)	15,029,716.00	0.2%	5.0%	0.0%	10.0%
Private Infrastructure (JPM-Infra)	-	0.0%	5.0%	0.0%	10.0%
Opportunistic Investments (Varde & Apollo)	74,922,427.00	1.2%	0.0%	-5.0%	5.0%
Portfolio Total	6,044,033,326.56	100.0%			

SURFACE

Central Power Electric Cooperative, Inc.'s Request to Purchase Trust Land Under N.D.C.C. ch. 15-09 & N.D. Admin. Code ch. 85-04-09 (0.46 acres in the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County)

Central Power Electric Cooperative, Inc. ("Central Power") is requesting consideration of a land sale for a public purpose or quasi-public purpose in lieu of condemnation consisting of approximately 0.46 acres in the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County ("Parcel"). The Parcel is located approximately 15 miles southeast of Velva, North Dakota, along U.S. Highway 52. The Parcel is being requested to expand their existing substation, purchased by Central Power in 1980, which provides service to residents in the surrounding area.

In accordance with N.D. Admin. Code ch. 85-04-09, a notice of application was placed on the Department's website from August 8th through August 20th, 2021, to allow the public an opportunity to provide comment on the proposed sale. No comments were received.

As required under N.D.C.C. ch. 15-09, an appraisal was completed by McHenry County which stated an estimated value of \$1,400.00 per acre for the Parcel. The North Dakota 2021 County Rents and Prices Survey exhibits a 5-year average value of cropland of \$1,409.00 per acre in McHenry County.

N.D.C.C. § 15-09-04 states:

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

(09/30/21)

this title and the fiduciary responsibilities of the board. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant agrees to the price fixed by the board for the land described in the application and pays the full purchase price therefor, the board shall cause the tract to be conveyed to the applicant.

The sale of a 0.46-acre parcel in this tract of land would leave 131 acres more or less in the tract for pasture and meadow purposes.

Motion: The Board 1) approve the requested public purpose or quasi-public purpose in lieu of condemnation land sale to Central Power Electric Cooperative, Inc. of 0.46 acres of land within the NW4 of Section 16, Township 152 North, Range 78 West, McHenry County and set the minimum acceptable sale price at the appraised value of \$1,400.00 per acre (\$1,400 x 0.46 = \$644.00 purchase price), along with Central Power Electric Cooperative, Inc.'s payment of all associated land sale fees and costs, as applicable; and 2) authorize the Commissioner to advertise the proposed sale, conduct a public hearing, and refer the matter to the Board if needed or complete the sale on the Board's behalf.

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		

Central Power Electric Cooperative Inc. – N.D.C.C. ch. 15-09 Land Sale – Location Map and Central Power Electric Cooperative Inc. – N.D.C.C. ch. 15-09 Land Sale – Survey Plat were also presented to the Board and are available upon request from the Department.

No Net Loss Preliminary Land Sale Approval T136N R86W Section 28 NW1/4, Section 32 N1/2N1/2, Section 36 SE1/4 expansion of public comment period

The Board of University and School Lands (Board) received an application from Kelly and Launa Moldenhauer for the purchase of approximately 480 acres of trust land in Grant County as part of a no net loss land sale in accordance with Chapter 85-04-07 and Chapter 85-04-08 of the North Dakota Administrative Code.

Per N.D. Admin. Code § 85-04-07-03(3) and N.D. Admin. Code § 85-04-08-03(4) concerning the sale procedure:

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

(09/30/21)

- a. Name and address of the interested person;
- b. Applicant's name and address;
- c. The legal description of the proposed tract for sale as shown on the published notice; and
- d. A detailed statement as to whether the interested person supports or opposes the sale.

The Department of Trust Lands (Department) received comments from several constituents concerning the public notification of the potential No Net Loss Land Sale.

The Department posted notification in the Bismarck Tribune, the Grant County News and the Hettinger County Herald, and on the Department’s website with comments received until 5:00 pm on September 10, 2021. With that being said, many constituents subscribe to newspapers in their area and not always the official county newspaper. The concerns provided in the comments were that not enough notification to the public had been achieved and requested the comment period be extended and that advertising cover a much larger area to allow more citizens an opportunity to comment.

Motion: The Board authorizes the Commissioner to extend the posting for public comment on the Department’s website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments regarding the sale. The Board also authorizes the Commissioner to provide notice in an appropriate manner, including listing in the appropriate newspapers.

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

Energy Infrastructure and Impact Office Quarterly Program Report

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

The Oil and Gas Impact Grant Fund currently has 6 grants with a balance of \$794,932.56 as of September 7, 2021. The following shows grant activity for the last six months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
3/9/2021	12	\$1,591,589.01
6/7/2021	9	\$972,069.49
9/7/2021	6	\$794,932.56

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.

EIO collaborated with the Williston Basin International Airport and the North Dakota Aeronautics Commission regarding the timeline to get these grants closed out by June 30, 2021. On June 2, 2021, the last payment was made to the Williston Basin International Airport, thus closing out this fund reimbursing the full \$15 Million to the airport. The following shows grant activity for the last six months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
3/9/2021	3	\$1,434,396.94
6/7/2021	0	\$0.00
9/7/2021	0	\$0.00

EIO is currently managing 6 grants for a total of \$794,932.56. The following shows grant activity for the last six 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
3/9/2021	12	\$1,591,589.01	3/9/2021	3	\$1,434,396.94	\$3,025,985.95
6/7/2021	9	\$972,069.49	6/7/2021	0	\$0.00	\$972,069.49
9/7/2021	6	\$794,932.56	9/7/2021	0	\$0.00	\$794,932.56

I N V E S T M E N T S

Investment Fee Report – FY 2021

Attached is a report of the Board of University and School Land's (Board) investment fees paid for the twelve months ending June 31, 2021 (Fiscal Year 2021).

Summary:

- During fiscal year 2021 the Permanent Trust Funds (PTFs) paid \$36,499,278 in total investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is an increase over the \$22,335,336 in fees paid in FY 2020. The PTFs' average asset balance increased during the same period (including contributions and withdrawals), from \$4.85 billion in FY 2020 to \$5.46 billion in FY 2021. The primary driver of the increase in fees is a result of a significant increase in incentive fees paid over the period.
- The PTFs paid incentive fees totaling \$14,756,277 during FY 2021 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund, Ares Pathfinder Fund, Varde Dislocation Fund, Apollo Accord Fund IV, and Angelo Gordon's Direct Lending Funds III and IV; this equals 26.3 basis points on the average value of total trust assets during FY 2021, and 40.4% of the total investment cost of managing the PTF's investment program. Incentive fees totaled \$898,695 during FY 2020, the equivalent of 1.4 basis points and 4.0% of the total investment cost to manage the program.

(09/30/21)

- The specialty consultant fee is paid by the PTFs to Novarca for negotiating 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 assets above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years; there remains 18 months on the specialty consultant fee.
- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$211,420 in investment management expenses during FY 2021, down from \$437,862 in management fees paid in FY 2020. The decrease in management fees is due to the decrease in the average balance from \$718.0 million in FY 2020 to \$361.4 million in FY 2021.
- 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.

Investment Fee Report was also presented to the Board and is available upon request.

O P E R A T I O N S

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 successfully launched.

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

The Surface Land Management was scheduled to go-live on September 25, 2021. However, a two-week delay was necessary to ensure team members had adequate time to train. Thus, the Surface Land Management system will go-live on October 9, 2021.

Additional capital funding was approved through Senate Bill 2013 during the Sixty-seventh Legislative Assembly to support the implementation of software for the Minerals Division. A kick-off for the implementation of the new system occurred on September 20, 2021.

Board of University and School Lands Meeting Dates For 2022

(09/30/21)

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

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last three hours each month in anticipation of executive session needs.

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

- January 27, 2022 9:00 AM – 12:00 AM
- February 24, 2022 9:00 AM – 12:00 PM
- March 31, 2022 9:00 AM – 12:00 PM
- April 28, 2022 9:00 AM – 12:00 PM
- May 26, 2022 9:00 AM – 12:00 PM
- June 30, 2022 9:00 AM – 12:00 PM
- July 28, 2022 9:00 AM – 12:00 PM
- August 25, 2022 9:00 AM – 12:00 PM
- September 29, 2022 9:00 AM – 12:00 PM
- October 27, 2022 9:00 AM – 12:00 PM
- November 17, 2022 9:00 AM – 12:00 PM Thursday before Thanksgiving
- December 19, 2022 9:00 AM – 12:00 PM Monday before Christmas

M I N E R A L S

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 August 26, 2021, the Board provided the Department with guidance as it relates to royalty repayment offers.

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.

LITIGATION

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, Garrett Martin and Ryan Pitts – 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, 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. 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. Mediation was held September 2, 2021. The Deposition of Adam Otteson was held August 31, 2021; Jodi Smith's deposition was held September 14, 2021; the deposition of Kelly Vandamme was held September 22, 2021; and the deposition of John Kemmerer was held for September 23, 2021.

Current Status:

- On September 3, 2021, Plaintiffs filed a Motion to Compel which was later withdrawn on September 16, 2021.
- On September 8, 2021, Plaintiffs submitted a Motion to Admit Ryan Pitts Pro Hac Vice. The Order of Admission was signed September 9, 2021.
- On September 10, 2021, Plaintiffs filed a Motion to Exclude Evidence Attached to Defendants Summary Judgment Brief. They also filed an Emergency Motion for Expedited Briefing Schedule and a request for the hearing on both of these motions be held with the motions for summary judgment.
- Judge Schmidt sent an email to the parties on September 10, 2021 regarding the status.
- On September 14, 2021, the Order Extending Deadline to Submit Motions in Limine and Pretrial Statements to be due September 20, 2021 was signed.
- On September 15, 2021, Defendants filed a Motion to Exclude Evidence and Response to Plaintiffs’ Motion to Exclude.
- The parties attending the oral argument on September 16, 2021 and an Order on Cross Motions for Summary Judgment was issued that date.
- On September 17, 2021, the parties filed a Stipulation regarding Trial Witnesses and the Order Adopting the Stipulation was signed on September 20, 2021.
- On September 20, 2021, the Defendants filed an Expedited Motion to Supplement Exhibits and Plaintiffs filed a Motion in Limine or to Exclude and Limit Anticipated Testimony. The parties also filed their Pretrial Statements and a Combined Exhibit list.

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:

- 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					
Treasurer Beadle			X		
Attorney General Stenehjem	X		X		
Governor Burgum			X		

The Board entered into executive session at 10:09 AM.

EXECUTIVE SESSION**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 (Via Teams)

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

Guests in Attendance:

Dave Garner	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor

The executive session adjourned at 11:02 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 11:02 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands