

**Minutes of the Meeting of the  
Board of University and School Lands  
November 20, 2018**

The November 20, 2018 meeting of the Board of University and School Lands was called to order at 1:38 PM in the Governor's Conference 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
Drew Combs	Minerals Director
Susan Dollinger	Unclaimed Property Administrator
Jeff Engleson	Investments Director
Kristie McCusker	Paralegal
Catelin Newell	Office Manager
Gerard Schwan	Grants Administrator
Joseph Stegmiller	Natural Resource Professional

**Guests in Attendance:**

Brent Sanford	Lt. Governor
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Dave Garner	Attorney General's Office
Mark Hanson	Nilles Law Firm
Geoff Simon	Western Dakota Energy Association
Chris Friez	North American Coal
David Straley	North American Coal
Brady Pelton	North Dakota Petroleum Council
Kyle Wanner	ND Aeronautics Commission

**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 October 25, 2018 meeting was made by Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

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

**Delegation of Authority**

The delegation of authority from the Board of University and School Lands (Board) to the Commissioner of University and School Lands (Commissioner) has been granted through specific Board action. The functions exercised by the Board and those delegated to the Commissioner are subject to ongoing review to ensure appropriate division of functions.

Under N.D.C.C. § 15-02-05, the Board appoints a Commissioner to act as its general agent in the performance of its duties. Specific responsibilities of the Board and the Commissioner are set out in N.D.C.C. chs. 15-01 through 15-08.1. Additionally, various statutes authorize the Commissioner to conduct numerous activities.

Other than as expressly provided by the Board, all matters not specifically reserved for the Board and necessary for the day-to-day management of the Department of Trust Lands (Department) are conducted by the Commissioner. The Commissioner may delegate duties to staff where appropriate. The Department's policies and procedures provide guidance on the execution of specific roles and responsibilities.

The Commissioner shall be responsible for:

- Ensuring that the Department's day-to-day operations are carried out in accordance with all legal and regulatory requirements
- Ensuring that the Department's policies, practices, and decisions are undertaken in a manner that is prudent, equitable, and consistent with commonly accepted business practices and professional ethics
- Ensuring that the Department's assets are protected, adequately maintained, and not placed at unnecessary risk
- Ensuring that Board approved priorities are reflected in the allocation of resources
- Ensuring that budgeting is based on generally accepted accounting principles and that budgets are balanced
- Promoting a healthy work environment for staff
- Representing the organization externally to the community, government, media, and other stakeholders in ways that enhance the public image and credibility of the organization.

The document outlining authority that the Board has delegated to the Commissioner was provided to the Board and is available at the Department upon request. This document will be updated as new authority is delegated and will be maintained in the Department. Documentation will be provided to the Board as requested.

### **Proposed Legislation for 2019**

The Department of Trust Lands (Department) intends to propose legislation, including but not limited to the following:

#### Continuing Authority for Building Repairs and Investments Due Diligence

The Department is seeking continuing authority for building repairs to align the Department with other agencies who own buildings. Additionally, the Department is seeking to add due diligence trips to current continuing authority. N.D.C.C. § 15-03-16.

#### Confidentiality of Audit Information Provided by Operators

The Department is requesting legislation to protect proprietary information provided to the Department by operators during Department audits. N.D.C.C. ch. 15-02.

#### Penalties

The Department is seeking authority for the Board of University and School Lands (Board) to set a penalty for any person who violates any provision of N.D.C.C. chapter 15-02, or any laws, rules, or policies of the Board.

#### Repeal Outdated Surface Statutes

The Department is seeking to repeal outdated Surface Division statutory language, specifically N.D.C.C. §§ 15-04-02, *Lease of Cultivated Lands for Summer Fallow*, and 15-04-04, *Failure to Summer-Fallow Cultivated Lands Cause for Cancellation of Lease*.

#### Uniform Unclaimed Property Act

The Department is proposing N.D.C.C. ch. 47-30.1, based on the Uniform Unclaimed Property Act of 1981, be repealed and replaced with language modeled after the Uniform Unclaimed Property Act of 2016.

### Administrative Rules

The Department is recommending changes to the N.D.C.C. § 28-32-01 to remove the Board as an administrative agency, except for activities under N.D.C.C. chs. 47-30.1 and 57-62. The Department will propose language be added to N.D.C.C. § 15-01-03 creating a Board requirement of a first and second reading on all Board policy amendments.

### Modify Senate Bill 2134

The Department is seeking minor adjustments to N.D.C.C. ch. 61-33.1 authorizing the Department to engage a licensed engineering or land surveying firm to analyze the final review findings by the industrial commission and determine acreage on a quarter-quarter or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the industrial commission. Additionally, upon completion of the acreage adjustment data and adoption by the Board of the final review findings issued by the engineering or land surveying firm providing the acreage adjustment data, the Board shall complete the adjustments, refunds, and payment demands within two years after the date of adoption of the final review findings.

### **Engineer Request for Proposal Update**

On October 25, 2018, the Board of University and School Lands (Board) authorized the Commissioner to contract with an engineering firm to provide the Department of Trust Lands (Department) with the necessary data to implement any acreage adjustments, lease bonus and royalty refunds, and payment demands as may be necessary relating to state-issued oil and gas leases per N.D.C.C. § 61-33.1-04(2).

As the Department does not have the information to determine the exact acreage adjustments required to release any royalty proceeds held by the Board and in order for the Department to fully satisfy its requirements under SB 2134, codified at N.D.C.C. ch. 61-33.1, the Department will need to contract with an engineering firm to analyze the Wenck Study and the PLSS maps. Utilizing GIS, the Wenck Study's shapefile can be imported and overlaid with the Bureau of Land Management's Public Land Survey System (PLSS) maps to break down acreage above and below the Wenck Study's coordinates on a quarter-quarter or government lot basis. However, because the State issued its oil and gas leases on a quarter section basis, if the OHWM of the river runs through any part of a particular quarter section, the Department needs the contracted engineer to identify:

1. The amount of acreage in each quarter section that would be sovereign lands below the OHWM and subject to State lease (based on a quarter section);
2. Acreage above the OHWM in each quarter-quarter section or government lot owned by upland owners to allow for more finite calculations; and
3. Acreage allocations for accretions (where accretions are present) lying above the OHWM attributable to riparian tracts within each section.

The Department is working with Verint, also known as Major Oak Consulting, on drafting a Request for Proposal (RFP) to seek the expertise of an engineering firm to identify the above information.

That RFP will be presented to the Board at the December 17, 2018 Board meeting.

### **Common Schools Trust Fund Revenue and Distribution History**

Educational and institutional trust distributions are based upon the growth in value of the trusts' financial assets over time, rather than on the amount of interest and income earned by each trust during the year. Biennial distributions from the permanent trust funds must be 10 percent of the five-year average value of trust assets, excluding the value of lands and minerals. Equal amounts are distributed during each year of the biennium. With the substantial growth in trust assets over the past 10 years, distributions to beneficiaries have significantly increased.

The key to a successful endowment type investment program is to maintain spending levels at sustainable rates. That was the objective of the constitutional spending formula implemented in 2009. It was advanced with the specific purpose of balancing the Board of University and School Lands' (Board) dual mandates to preserve the purchasing power of the trusts and maintain stable distributions to beneficiaries.

In reviewing the historical annual distributions from the Common Schools Trust Fund (CSTF) and the amount of income and assets available to make those distributions, there are two distinct time periods that should be considered:

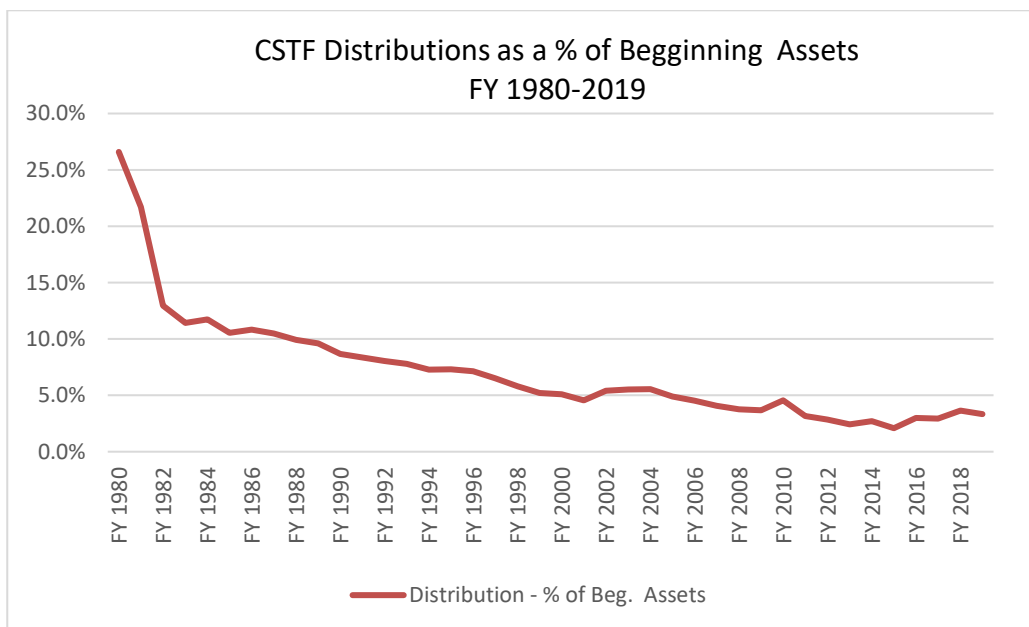
- Statehood through FY 2009: In the majority of the years leading up to 2009, "interest and income" including investment income and dividends, surface rentals, and mineral rentals were distributed to the common schools. Revenues from mineral royalties and bonuses, easements, unclaimed property, etc., were deposited into the corpus, and could not be distributed.

The exception was through a constitutional measure during 1980 through 1984 when a portion of the mineral lease bonuses collected were distributed resulting in higher payout rates.

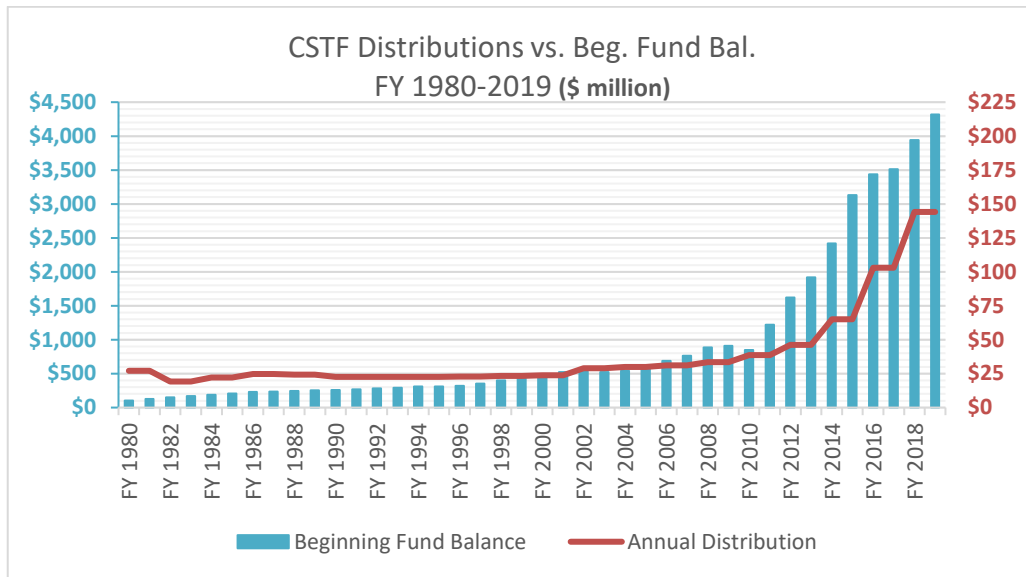
- FY 2010 to present: Since Fiscal Year 2010, distributions have been based on the growth in value of the trust fund over time as determined under the formula found in Article IX, Section 2 of the North Dakota Constitution. Revenues from all sources are deposited into the fund and the total financial value determines distributions. See attachment which contains Article IX, Section 2 language and an example of how the distribution formula.

The following charts show the annual distribution of the CSTF compared to the trust's beginning financial assets for each of the previous two decades. While the spending rate starts above 20% in Fiscal Year 1980, it has been under 5% since 2004.

Over time the formula will generate a yearly distribution rate of between 4.0-4.5%, although the exact rate for each year depends on the amount of new money flowing into the fund and investment returns over the past five years.



The chart below shows CSTF distributions compared to the fund's beginning financial assets from 1980 through 2019:



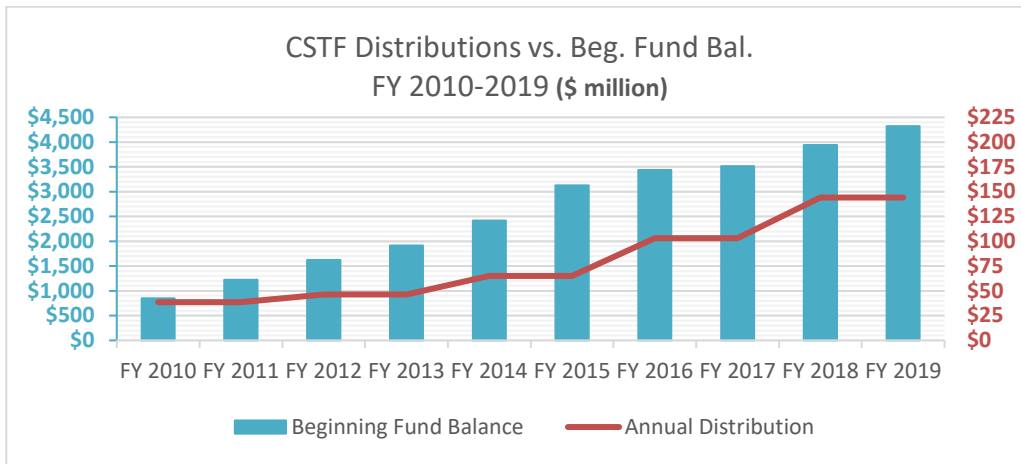
A ratio scale is used in the preceding chart and the chart below, with the orange scale depicted on the right being 5% of the blue scale on the left. When the orange line is above the blue bar for any given year, distributions for that year were greater than 5% of the beginning assets.

For many of the previous 40 years, distributions were made at unsustainable rates. The combination of constitutional language, legislative appropriation of distributions, and an objective to increase distributions made it difficult to manage the spending rate. In 1995, the Board adopted an asset allocation leading toward a total return investing and the percentage of assets approach to distributions. At that time, the Board adopted a 20-year forward looking asset allocation plan to decrease the distribution rate to below 5% and increase exposure to equities to more than 50% to balance the dual mandates to preserve the purchasing power of the trust and maintain stable distributions to beneficiaries.

Legislative action in 2001 resulted in an unanticipated bump to the permanent trust funds' distributions of 20%, undoing the Board's plan to reduce the distribution rate. The disruptive distribution led the Board to further investigate a total return and percent of assets approach to investing and distributions.

In 2003, the Board accepted investment consultant DiMeo-Schneider's asset allocation study, leading to its 2005 legislative resolution and 2006 ballot measure amending Article IX distributions. That law became effective July 1, 2009.

The following is a yearly comparison of CSTF distributions to the beginning financial assets from July 1, 2009, when the ballot measure went into effect, through fiscal year 2019:



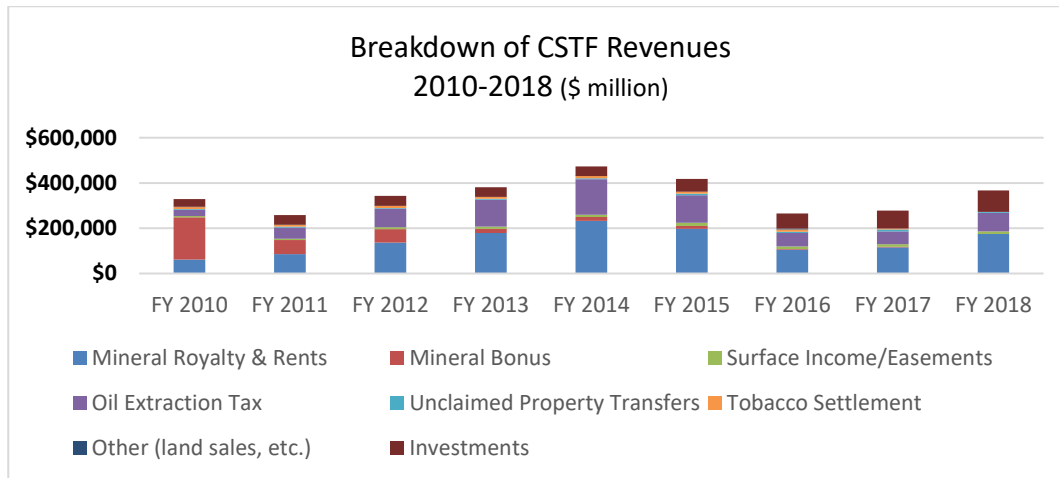
Oil and gas lease bonus and royalty revenues resulted in substantial growth in the CSTF, increasing by 300% over eight years. Strong investment markets have also driven growth since the 2008-2009 recession.

Because the distribution formula is based on asset values over the previous five years and the trust has experienced substantial trust growth over the past ten years, the effective distribution rate has averaged 3.1%. The growth in trust assets resulted in trust distributions growing by 331% from the 2008-2009 biennium to the 2017-2019 biennium.

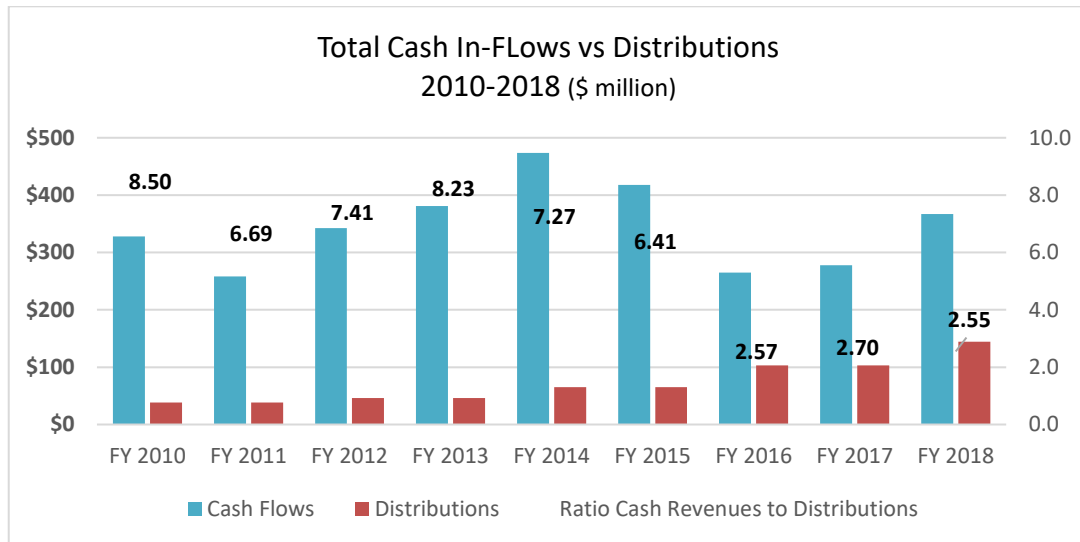
The distribution rate has increased slightly over the past four years as trust growth has slowed. However, the effective distribution rate was 3.7% for FY 2018 and will be 3.3% for FY 2019.

Trust Revenues from Fiscal Year 2010 though Fiscal Year 2018

The following chart provides a breakdown of a cash revenues received by the CTSE.



Trust growth during the illustrated time-frame was driven by an increase in oil and gas lease bonuses in 2010, 2011, and 2012. Bonuses are one-time income items and the trust will most likely not receive similar bonuses in the future. During the period of FY 2012-2015, the greatest sources of trust growth were from oil royalties and oil tax revenues, partly attributable to oil priced at \$100 per barrel. Over the past three years, trust revenues have stabilized as the price of oil has remained consistent.



In conclusion, revenues over the past three years are lower than they were during FY 2013-2015; however, they have stabilized and continue to provide increased distributions from the trusts. In the 2019-2021 biennium distributions by the trusts will increase by \$82,647,297 which is a 27% increase. The distributions per trust can be seen in the chart below:

<u>Trust</u>	<u>2019-21 Biennium</u>	<u>2017-19 Biennium</u>	<u>Percentage of Change</u>	<u>Change in Distribution</u>
Common School	\$ 366,756,000	\$ 288,264,000	27.2%	\$ 78,492,000
<i>Permanent Funds:</i>				
ND State University	\$ 5,916,000	\$ 4,738,000	24.9%	\$ 1,178,000
ND School for the Blind	\$ 880,000	\$ 654,000	34.6%	\$ 226,000
ND School of the Deaf	\$ 1,898,000	\$ 1,598,000	18.8%	\$ 300,000
ND State Hospital	\$ 1,328,000	\$ 1,184,000	12.2%	\$ 144,000
Ellendale *	\$ 1,694,000	\$ 1,931,889	(12.3%)	(\$ 237,889)
Valley City State University	\$ 1,034,000	\$ 808,000	28.0%	\$ 226,000
Mayville State University	\$ 668,000	\$ 542,000	23.2%	\$ 126,000
Youth Correctional Center	\$ 1,864,000	\$ 800,814	132.8%	\$ 1,063,186
ND State College of Science	\$ 1,494,000	\$ 1,260,000	18.6%	\$ 234,000
School of Mines **	\$ 1,746,000	\$ 1,444,000	20.9%	\$ 302,000
ND Veterans Home	\$ 490,000	\$ 436,000	12.4%	\$ 54,000
University of ND	\$ 2,758,000	\$ 2,218,000	24.3%	\$ 540,000
<b>Total Permanent Funds</b>	<b>\$ 21,770,000</b>	<b>\$ 17,614,703</b>	<b>23.6%</b>	<b>\$ 4,155,297</b>
<b>Total Distributions</b>	<b>\$ 388,526,000</b>	<b>\$ 305,878,703</b>	<b>27.0%</b>	<b>\$ 82,647,297</b>

\* The following entities are equal beneficiaries of the Ellendale Trust:

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

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

**Board of University and School Lands Capital Repairs**

The Department of Trust Lands (the “Department”) has been working over the past eight months to develop a long-term facility management plan that aims to reduce the Department’s operating costs, while strategically addressing aging infrastructure and improving the indoor environment. The goal of the Department is to find efficient, effective and economical solutions that address many of the challenges facing the facility.

In November 2018, the Department experienced severe a sewer line clog resulting in raw sewage backup coming out of all the drains. A plumber was required to work on the pipes for two days to clear roots and other blockages to ensure the building remains in compliance with numerous health codes. The work that was done is a temporary solution and additional work will need to be completed to resolve the issue. Two options are currently being reviewed.

**Motion: The Board approves utilizing continuing appropriation, per N.D.C.C. § 15-03-16, to support the costs for necessary repairs of the Departments sewer system.**

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

**E N E R G Y I N F R A S T R U C T U R E A N D I M P A C T O F F I C E**

**Contingency Grant**

In June 2017, the Board of University and School Lands (Board) approved the establishment of a contingency grant to utilize undistributed funds from the 2013-2015 and 2015-2017 biennia. Section 10 of Senate Bill 2013 allowed the use of unexpended funds to provide for grants and administrative costs during the 2017-2019 biennium:

**SECTION 10. EXEMPTION - OIL AND GAS IMPACT GRANT FUND.** The amount appropriated from the oil and gas impact grant fund for the energy infrastructure and impact office line item in section 1 of chapter 13 of the 2015 Session Laws and for oil and gas impact grants in section 5 of chapter 463 of the 2015 Session Laws is not subject to section 54-44.1-11. Any money deposited in the fund for taxable events occurring through June 30, 2017, and any unexpended funds from the appropriation are available for grants and administrative costs associated with the fund during the biennium beginning July 1, 2017, and ending June 30, 2019. (Emphasis added).

The Energy Infrastructure and Impact Office then nominated nine members to serve on the Contingency Grant Advisory Committee (Committee), which the Board approved at the December 6, 2017 meeting:

Dan Kalil (Township Chair), Jay Elkin (County Commissioner), Justin Voll (Mayor), Marcia Lamb (County Auditor), Mark Spooner (Township Chair), John Bruce (School



Superintendent), Dave Mahon (School Superintendent), Gary Weisenberger (Mayor), and Reinhard Hauck (County Commissioner)

During the May 31, 2018 meeting the Board also replaced Mr. Dave Mahon Superintendent of Schools for Bowman County Public School District with Mr. David Wegner, Superintendent of Schools for Beach Public School District #3, to serve on the Committee.

In August 2018 the Board nominated and approved Mr. Allen Ryberg, County Commissioner for Burke County, to the Committee. Mr. Ryberg replaced Mr. John Bruce, Superintendent of Burke Central PSD, who accepted employment in Alaska.

Now the EIO nominates Mr. Philip Riely, the newly elected mayor of Watford City, to replace Mr. Justin Voll. Mr. Riely will continue the good stewardship for the advisory committee.

**Motion: The Board approves the actions of replacing Mr. Justin Voll with Mr. Philip Riely on the Contingency Grant Advisory Committee.**

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

#### **Energy Infrastructure and Impact Office (EIO) Williston and Dickinson Airport Grants**

Senate Bill 2013 was approved and enacted by the 2017 Legislative Assembly. The Legislature also created a new Energy Impact Fund to coexist with the Oil & Gas Impact Grant Fund for the 2017-2019 biennium. Sections 13 and 14 of Senate Bill 2013 authorizes expenditure of grant funds for airports from two separate grant funds:

**SECTION 13. OIL AND GAS IMPACT GRANT FUND - AIRPORT GRANTS.** The grants line item and the total special funds line item in section 1 of this Act include the sum of \$25,000,000 from the oil and gas impact grant fund for grants to airports, for the biennium beginning July 1, 2017, and ending June 30, 2019. Of the \$25,000,000, the board of university and school lands shall award a grant of \$20,000,000 to the Williston airport and a grant of \$5,000,000 to the Dickinson airport. A grant may be awarded to the Williston airport only when any related federal funding is committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

**SECTION 14. ENERGY IMPACT FUND - WILLISTON AIRPORT GRANT.** The grants line item and the total special funds line item in section 1 of this Act include the sum of \$15,000,000 from the energy impact fund for a grant to the Williston airport, for the biennium beginning July 1, 2017, and ending June 30, 2019. A grant may be awarded to the Williston airport only when any related federal funding is S. B. NO. 2013 - PAGE 4 committed and available to be spent on the new airport construction project. Grants awarded but not yet paid under this section are not subject to section 54-44.1-11.

Stipulated in the legislation above is that no project can be awarded to Williston Airport (Sloulin Field) unless related federal funding is committed and available for the new airport construction project. The

North Dakota Aeronautics Commission is the Board of University and School Lands' advisory committee working on this grant sector and confirms that the Federal Aviation Authority has committed \$25 million for the fiscal year and satisfies the stipulation.

The ND Aeronautics Commission recommends funding 6 grants to Dickinson and 11 grants to Williston airports, respectively:

<b>OIL &amp; GAS - DICKINSON AND WILLISTON AIRPORTS</b>				
APPLICANT	APP #	PROJECT	PROJECT TOTAL	AMOUNT REQUESTED
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190005	RUNWAY 15-33 CONSTRUCTION AND LAND ACQUISITION	\$12,438,900	\$1,568,900
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190006	RUNWAY 15-33 CONSTRUCTION	\$12,113,250	\$921,135
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190007	GENERAL AVIATION TAXILANE	\$294,000	\$264,600
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190008	UTILITY POWER SUPPLY RELOCATION	\$270,000	\$243,000
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190009	RUNWAY 14-32 DESIGN AND COORDINATION	\$620,000	\$558,000
DICKINSON MUNICIPAL AIRPORT AUTHORITY	A190010	MINERAL APPRAISAL RESERVES	\$47,000	\$42,300
SLOULIN INTERNATIONAL AIRPORT	A190011	CONSTRUCT GENERAL AVIATION TAXIWAY*	\$2,108,133	\$36,271
SLOULIN INTERNATIONAL AIRPORT	A190012	CONSTRUCT GEN AVIATION APRON & RUNWAY MARKINGS	\$13,929,537	\$1,364,953
SLOULIN INTERNATIONAL AIRPORT	A190013	AIRCRAFT RESCUE & FIREFIGHTING BUILDING	\$7,119,556	\$1,200,285
SLOULIN INTERNATIONAL AIRPORT	A190014	CONSTRUCT PERIMETER & SECURITY FENCE	\$1,200,597	\$338,825
SLOULIN INTERNATIONAL AIRPORT	A190015	CONSTRUCT PERIMETER & INTERNAL ROAD SYSTEM	\$7,440,297	\$744,030
SLOULIN INTERNATIONAL AIRPORT	A190016	NAVAID MALSR TOWERS	\$4,050,678	\$4,050,678
SLOULIN INTERNATIONAL AIRPORT	A190017	ON-SITE WATER AND STORAGE/SEWER PROJECT	\$1,647,300	\$1,482,570
SLOULIN INTERNATIONAL AIRPORT	A190018	ELECTRICAL VAULT & INSTALL RADIO EQUIPMENT	\$918,425	\$240,463
SLOULIN INTERNATIONAL AIRPORT	A190019	COMMERCIAL SERVICE PARKING LOTS	\$6,380,971	\$4,898,751
				<b>\$17,954,761</b>
<b>ENERGY IMPACT FUND - WILLISTON AIRPORT</b>				
APPLICANT	APP #	PROJECT	PROJECT TOTAL	AMOUNT REQUESTED
SLOULIN INTERNATIONAL AIRPORT	A190020	CONSTRUCT GENERAL AVIATION TAXIWAY*	\$2,108,133	\$174,542
SLOULIN INTERNATIONAL AIRPORT	A190021	CONSTRUCT COMMERCIAL SERVICE APRON	\$7,122,335	\$1,968,632
				<b>\$2,143,174</b>
TOTAL GRANT RECOMMENDATION				<b><u>\$20,097,935</u></b>

\* Application A190011 and A190020 is one project funded by two grant funds

There remaining amount available in both funds are exactly what's identified in the recommendation by the North Dakota Aeronautics Commission as shown in the following matrix:

<b>2017-2019 Biennium Breakdown</b>					
Grant Round	# Applications	Amount of Projects	Amount Requested	# Awards	Amount Awarded
O&G Williston Airport - 2018	10	\$8,758,442	\$7,860,548	6	\$5,643,174
O&G Dickinson Airport - 2018	6	\$3,965,326	\$1,402,065	6	\$1,402,065
EI Williston Airport - 2018	5	\$71,279,603	\$12,856,826	5	\$12,856,826
Contingency Grant - 1st Round	18	\$10,576,411	\$7,378,821	3	\$47,681
Contingency Grant - 2nd Round	4	\$1,710,367	\$1,356,598	1	\$250,000
O&G Williston Airport - 2018	9	\$42,687,361	\$14,356,826	9	\$14,356,826
O&G Dickinson Airport - 2018	6	\$25,783,150	\$3,597,935	6	\$3,597,935
EI Williston Airport - 2018	2	\$9,230,468	\$2,143,174	2	\$2,143,174
<b>Subtotals</b>	60	\$173,991,128	\$50,952,793	38	\$40,297,681.00
				Minus Adjustments	\$0.00
				Net Awards	\$40,297,681.00

As of: November 20, 2018

Remaining Allocations	
O&G Williston Airport	\$0
O&G Dickinson Airport	\$0
EI Williston Airport	\$0
	\$0
Contingency Grant	\$3,072,002

These grant awards complete the appropriations specified for airports by the Legislature for the biennium.

**Motion: The Board approves a total of 17 grants to Williston and Dickinson Airports for a total of \$20,097,935 for airport expansion projects, listed in the preceding charts, as authorized by the 2017 Legislative Assembly.**

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		

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

### Summary of Investment Fees Paid in FY 2018

The report of investment related fees and expenses paid during the fiscal year ended June 30, 2018 was presented to the Board and is available at the Department upon request.

During fiscal year 2018, the pooled investments of the permanent trusts paid \$25,081,670 of investment fees; the average market value of assets invested was \$4.37 billion for fiscal year 2018. The average fee rate paid for the fiscal year was 0.537% of average assets, or 53.7 basis points. Net of fees, the permanent trust pool realized a total return of 6.50% in fiscal year 2018.

The pooled investments of the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, and the Capitol Building Fund paid investment fees of \$146,372 during fiscal year 2018 on an average market value of \$335.3 million. This portfolio paid a flat fee of 0.06% on average assets, or 6.0 basis points; the portfolio does not pay a custody fees. This investment pool posted a total return of 1.39% net of fees for the fiscal year.

## M I N E R A L S M A N A G E M E N T

### Board Coal Policy Manual – First Reading

Since January 2018, the Department of Trust Lands (Department) has been reviewing the policies of each of its Divisions. As a result of this review, the Department determined the Board's Coal policies need updating. Board policies instruct the Department on carrying out Department duties and functions. Any changes to these policies will be reviewed by the Board and are not subject to legislative approval.

The Commissioner is requesting the Board provide input on the proposed North Dakota Board of University and School Lands Coal Policy Manual. The Department met with representatives from North American Coal and BNI on October 31, 2018 and requested they provide comments on the proposed North Dakota Board of University and School Lands Coal Policy Manual; no revisions were requested during this meeting.

This is the “first reading” of proposed policies, with suggestions being taken into consideration and a “second reading” to occur on December 17, 2018.

The North Dakota Board of University and School Lands Coal Policy Manual and recommended revisions are available at the Department upon request.

**Coal Lease Auction – November 13, 2018**

At the October 25, 2018 meeting of the Board of University and School Lands (Board), the Board authorized the Commissioner to auction two nominated coal leases, totaling 480 net coal acres and 320 surface acres in McLean Co., with the following terms:

- **Bonus:** \$100 per acre for both surface and mineral equaling an \$80,000.00 upfront payment.
- **Royalty Rate:** \$0.16 per ton (mineral estate) \$0.12 per ton mined (surface) + 3% annual escalator.
- **Annual rental:** \$5.00 per mineral acre and \$5.00 per acre surface.
- **Length of lease:** 15 years with an option to extend for an additional 15 years.

As instructed by the Board, representatives from the Department of Trust Lands conducted a due diligence study to discover the prevailing “market rate” in the area and found the above terms to be, for the most part, on par or better than neighboring tracts.

According to the Board’s rules and policies of leasing coal, a lease auction and hearing was conducted on November 13, 2018. No public comment on this matter was made. Seeing no objection to the proposed coal leasing, the Department moved to the auction phase, and the Falkirk Mining Company, a subsidiary of North American Coal Corporation, was the sole bidder.

**Motion: The Board authorizes the Commissioner to issue the Falkirk Mining Company, Board approved leases, with the nominated terms, covering both the coal estates and surface estates for Township 147 North, Range 82 West Sec. 36: S½ & two leases covering the coal estates in Township 146 North, Range 82 West Sec. 4: S½.**

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

**LITIGATION**

**Board of University and School Lands Major Case Summary as of November 13, 2018**

The following is a summary of active litigation. Detailed case specific memorandums will be presented to the Board upon changes in case status or as new events requiring Board consideration occur.

## UNCLAIMED PROPERTY

**Case:** State of Arkansas, et al. v. State of Delaware  
**Date Filed:** June 9, 2016  
**Court:** United States Supreme Court  
**Judge:** Pierre N. Leval, *Special Master*  
**Attorney:** David Garner  
**Opposing Counsel:** Delaware Attorney General's Office

**Issues:** The United States Supreme Court assumed original jurisdiction over this lawsuit involving unclaimed property brought by 30 states, including the state of North Dakota, against the state of Delaware. The substantive issue involved is whether sums payable on unclaimed and abandoned checks sold by MoneyGram Payments Systems, Inc. should be remitted to the Plaintiff States, as the states of purchase, or to Defendant Delaware, as MoneyGram's state of incorporation. Texas and Arkansas are the lead states on behalf of the other Plaintiff states.

**Current Status:** A Complaint and Answer have been filed. A Special Master has been appointed to preside over the case. The Special Master has accepted the Case Management Order agreed to by the parties. The parties issued discovery requests and responses in November/December 2017. The parties have exchanged discovery and are in the process of resolving issues regarding depositions of certain states. The parties have agreed to stipulate as to the authenticity of the documents produced in discovery rather than undertake depositions.

## REVENUE COMPLIANCE

**Case:** Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands, Civ. No. 27-2017-CV-00661  
**Date Filed:** December 20, 2017  
**Court:** District Court/McKenzie County  
**Attorneys:** David Garner  
**Opposing Counsel:** Mark S. Barron/Baker & Hostetler LLP  
**Judge:** Robin Schmidt

**Issues:** Continental is seeking a Declaratory Judgment that it is currently paying royalties properly under the Board's lease. Specifically, Continental is asking the Court to order that Continental is allowed to deduct certain costs from royalty payments and that it does not owe the Defendants any additional royalty payments based on previous deductions.

**Current Status:** A Complaint and Answer with Counterclaims have been filed. Continental filed an Answer to Counterclaims. Continental served discovery and responses were due July 30, 2018. Defendant served discovery and Continental replied on September 17, 2018. Trial scheduled for February 1, 2019.

**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 and Spencer Ptacek/Fredrikson & Byron, P.A.

**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.

**Current**

**Status:** 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 is scheduled for January 4, 2019 at 1:30 p.m., McKenzie County. Trial is scheduled for September 10 and 11, 2019.

## Minerals

**Case:** EOG Resources, Inc. v. Soo Line Railroad Co., et. al., Civ. No. 31-10-CV-00010

**Date Filed:** Jan. 20, 2010

**Court:** Mountrail County District Court

**Judge:** Todd Cresap

**Attorney:** Hope Hogan/Matthew Sagsveen

**Opposing**

**Counsel:** Multiple parties.

**Issue:** At issue is the ownership of mineral rights underlying the railroad in 8 sections of land in Mountrail County. The disputed property is land that the railroad acquired by condemnation and through right-of-way deeds. The railroad's lessee filed a crossclaim against the State and a number of other parties that claim an ownership interest adverse to the railroad.

**Current**

**Status:** A settlement agreement has been signed by all parties and will be filed with the court once proceeds are distributed in accordance with the agreement.

**Case:** **Whiting Oil and Gas Corporation v. Arlen A. Dean, et. al., Civ. No. 27-2016-CV-00040**

**Date Filed:** January 25, 2016

**Court:** McKenzie County District Court

**Judge:** Robin Schmidt

**Attorney:** Hope Hogan/Jennifer Verleger

**Opposing**

**Counsel:** Paul Forster, Shane Hanson (Whiting Oil and Gas Corp.), Kevin Chapman (multiple defendants)

**Issues:** Whiting Oil and Gas Corporation (“Whiting”) operates the Kuykendall 34-31-1H well located in McKenzie County near the Montana border. The Yellowstone River flows through the Kuykendall well spacing unit. Over time, the river has shifted westward. There are also islands within the Kuykendall spacing unit. On January 25, 2016, Whiting filed this interpleader action to resolve alleged title questions that have arisen due to the movement of the Yellowstone River. Because of these title questions, Whiting is withholding royalty payments. In its lawsuit, Whiting essentially asks the court to require all those asserting title to the minerals in the spacing unit to set forth and prove their claims, and once the court rules on those claims, Whiting will know who to pay.

The Board claims a mineral interest under the Yellowstone River, including the islands, and the Board also claims a 5% mineral interest in some of the riparian tracts in this spacing unit.

The Board and the State Engineer filed a joint response to the Complaint and several cross claims that have been made against the State.

**Current**

**Status:**

The court trial (no jury) scheduled for August 6-10, 2018 was postponed to April 22 - 26, 2019. The initial scheduling order was amended for the State to conduct field work that could not be completed in the winter. Due to property flooding from high flows on the Yellowstone River, the State has been unable to conduct field work. Therefore, a telephonic scheduling conference was held August 16, 2018 to discuss the Court’s wishes for resetting deadlines. All deadlines and the April 2019 trial were cancelled. A January 3, 2019 telephonic status conference was scheduled.

**Case:** **ND Office of State Engineer, Board of University and School Lands v. BLM - Case No. IBLA 2016-170**

**Tribunal:** US Dept. of Interior Office of Hearings and Appeals – Board of Land Appeals

**Attorney:** Charles Carvell, Hope Hogan, and Jennifer Verleger

**Opposing**

**Counsel:** Karan Dunnigan

**Issues:** In 2014, the Bureau of Land Management (BLM) resurveyed land along the Missouri River to locate the boundary, OHWM, between the public domain land owned by the United States and the riverbed owned by the state of North Dakota. In identifying the OHWM, the BLM applied federal law rather than state law. Specifically, the BLM adopted the survey conducted by the Corps of Engineers as part of the Garrison Dam project. In certain areas, the survey overlaps with the state’s claim to sovereign lands.

After the survey work was complete, the BLM published a “Notice of Filing Plats of Survey; North Dakota” in which BLM intends to formally file the survey plats as Official Plats. After the Federal Register Notice appeared, the State Engineer and the Board jointly filed a protest challenging the filing of the survey plats. The BLM rejected the State’s protest and the State appealed the BLM’s decision to the Interior Board of Land Appeals.

**Current Status:**

The State is waiting for a decision from the Interior Board of Land Appeals.

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

**Issues:** In December 2016, Continental Resources, Inc. (Continental) brought an interpleader action against the Board of University and School Lands and the United States regarding certain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case addresses overlapping ownership claims by the State and the United States of minerals underlying the Missouri River. Continental is requesting the Court determine the property interests for the disputed lands so that Continental can correctly distribute the proceeds from the affected wells. Continental has claimed that there is “great doubt as to which Defendant is entitled to be paid royalties related to the Disputed Lands.” Currently, Continental is paying the United States its full royalty based on the acreage it claims. The remaining royalty, over and above what is due the United States, is being escrowed with the Bank of North Dakota pursuant to the Board’s rules.

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

**Current Status:**

The Board filed a response on December 20, 2017 opposing the motion to dismiss. Continental filed a response and the United States filed its reply. The United States filed a Motion to Dismiss on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. Awaiting decision from the Court on the United States’ Motion to Dismiss.

**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:** Hope Hogan/Jennifer Verleger/Matthew Sagsveen  
**Opposing Counsel:** Josh Swanson/Rob Stock, Lawrence Bender, Lyle Kirmis

**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.

**Current Status:**

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. 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 is scheduled for November 30, 2018.

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**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:** Hope Hogan/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.

**Current Status:**

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.

**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:** Hope Hogan/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.

**Current Status:**

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 is scheduled for November 16, 2018.

**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 & Peter Hvidston, 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.

**Current Status:**

An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions due October 22, 2018; Response Briefs due December 6, 2018; and the Reply briefs are due December 21, 2018. A hearing on the Motions for Summary Judgment is scheduled for 9:00 a.m. January 4, 2019, Fargo.

**Paul Sorum, et al. v. The State of North Dakota, et al., Cass County District Court, Civil No.09-2018-CV-00089**

Date Filed:	January 10, 2018
Date Served:	January 10, 2018
Tribunal:	Cass County District Court
Judge:	John C. Irby
Attorney:	Mark R. Hanson, Special Assistant Attorney General
Opposing Counsel:	Terrance W. Moore, Fintan L. Dooley

Plaintiffs brought this action against the State of North Dakota, the Board of University and School Lands, the North Dakota Industrial Commission, Governor Burgum and Attorney General Stenehjem (Defendants) seeking to declare N.D.C.C. ch. 61-33.1 unconstitutional, and to enjoin Defendants from implementation or enforcement of N.D.C.C. ch. 61-33.1.

Plaintiffs argue that the Legislature, by passing Senate Bill 2134, codified at N.D.C.C. ch. 61-33.1, has violated the public trust doctrine and the anti-gift (see N.D. Const. art. X, § 18), “equal protection” (see N.D. Const. art. I, § 21), and special laws (see N.D. Const. art. IV, § 13) clauses of the North Dakota Constitution. Plaintiffs are claiming that the legislation results in the unlawful transfer of “approximately \$1.96 billion in cash and State-owned sovereign lands from the citizens of the State . . . to a small group of private parties in western North Dakota.” Plaintiffs allege N.D.C.C. ch. 61-33.1 “disclaims [the State’s] perpetual rights to all minerals under Lake Sakakawea, a total of about 108,000 mineral acres.”

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|--------------------------|---|
| <b>February 28, 2018</b> | Defendants moved to dismiss Plaintiffs’ Complaint as Plaintiffs failed to join indispensable parties.   |
| <b>March 5, 2018</b>     | Plaintiffs brought a Motion for Preliminary Injunction. A hearing was previously scheduled for March 27, 2018.  |
| <b>March 7, 2018</b>     | Defendants brought an Expedited Motion to Stay or Extend Time to Respond to Plaintiffs’ Motion for Preliminary Injunction and to Postpone the March 27, 2018 Hearing on Such Motion (Motion to Stay). |
| <b>March 8, 2018</b>     | The Court granted Defendants’ Motion to Stay pending a decision on Defendants’ Motion to Dismiss currently pending before the court, and cancelled the March 27, 2018 hearing.                        |
| <b>March 9, 2018</b>     | Plaintiffs opposed the Motion to Stay and requested reconsideration of the Order.   |
| <b>March 14, 2018</b>    | Plaintiffs’ request for reconsideration was denied.   |
| <b>March 19, 2018</b>    | Rule 16 Conference held.  |
| <b>March 21, 2018</b>    | Defendants filed a joint Reply Brief in Support of Motion to Dismiss.   |
| <b>March 27, 2018</b>    | North Dakota Petroleum Council filed a Motion for Leave to File an Amicus Curiae Brief in Opposition of Plaintiff’s Motion for Preliminary Injunction (Motion to File Amicus Brief).                  |
| <b>April 2, 2018</b>     | Defendants filed a Response of No Objection to North Dakota Petroleum Council’s Motion to File Amicus Brief.  |
| <b>April 4, 2018</b>     | Plaintiffs’ filed a Brief in Opposition to North Dakota Petroleum Council’s Motion to File Amicus Brief.  |
| <b>April 5, 2018</b>     | North Dakota Petroleum Council filed a Reply Brief in Support of Motion to File Amicus Brief.   |
| <b>April 9, 2018</b>     | Defendant North Dakota Industrial Commission filed a Second   |

Amended Notice of Hearing on Defendants' Motion to Dismiss changing the time of the hearing on April 11 from 1:30 p.m. to 2:30 p.m.

**April 11, 2018** Request by Media to Attend Hearing Via Telephone Conference Call, proposed Order, Certificate of Service (RE: April 1, 2018 hearing)

**April 11, 2018** Hearing on Defendants' Motion to Dismiss. Motion to Dismiss was denied.

**April 11, 2018** Order Allowing Media Coverage Via Telephone Conference Call denied as untimely.

**April 18, 2018** State Defendants filed a Response to Plaintiffs Motion for Preliminary Injunction, with supporting documents.

**April 25, 2018** Defendants filed a Petition for Supervisory Writ and Exercise of Original Jurisdiction with the North Dakota Supreme Court.

**April 30, 2018** Scheduled hearing on the Plaintiffs' Motion for Preliminary Injunction.

**May 2, 2018** Third Amended Notice of Hearing on Motion for Preliminary Injunction – scheduling hearing for May 21, 2018

**May 9, 2018** Order of Denial issued by the North Dakota Supreme Court – denying Defendants' request for supervisory writ.

**May 14, 2018** Order Denying Motion to Stay Pending Order on Petition for Supervisory Writ and Exercise of Original Jurisdiction

**May 18, 2018** Defendants filed Supplemental Affidavit of Lynn D. Helms in Support of the State Defendants['] Response to Plaintiffs' Motion for Preliminary Injunction

**May 21, 2018** Hearing on Motion for Preliminary Injunction – Judge Irby ordered from the Bench – Judge ordered royalties totaling more than \$200 million be kept by the State, prohibiting the State from forfeiting oil royalties, rents and bonus payments

**May 23, 2018** Notice of Hearing on Motion for Summary Judgment

**May 29, 2018** Plaintiffs' Request for Production of Documents to Defendant (Set 1), Plaintiffs' Requests for Admissions to Defendants, Affidavit of Electronic Service (Discovery not filed)

**May 30, 2018** Motion, Affidavit and proposed Order for Pro Hac Vice of Anne T. Regan,

**May 30, 2018** Motion, Affidavit and proposed Order for Pro Hac Vice Gregory S. Otsuka

**May 31, 2018** Proposed Findings of Fact, Conclusions of Law and Order for Preliminary Injunction, Ex. 1 – Fiscal Note to Findings of Fact, Conclusions of Law and Order for Preliminary Injunction

**June 1, 2018** Letter to Judge Irby re: Plaintiff's proposed Findings

**June 1, 2018** Letter to Judge Irby re: undisputed facts, discovery, etc.; Ex. A – Plaintiffs' Requests for Admissions to Defendants; Ex. B – Plaintiffs' Request for Production of Documents to Defendants (Set No. 1); Ex. C – Email Exchange between attorneys May 30, 2018;

**June 5, 2018** Letter to Judge Irby responding to Gaustad's letter

**June 8, 2018** Notice of Appearance of Mark R. Hanson, Special Assistant Attorney General Representing the Board of University and School Lands of the State of North Dakota

**June 8, 2018** Notice of Hearing (Telephonic Conference) (RE: Discovery Issues)

**June 11, 2018** Transcript (of Hearing on Motion for Preliminary Injunction)

<b>June 12, 2018</b>	Substitution of Counsel Representing the Board of University and School Lands of the State of North Dakota
<b>June 12, 2018</b>	State Defendants' Objection to Plaintiffs' Proposed Order for Preliminary Injunction; Exhibit A – Proposed Order for Preliminary Injunction
<b>June 12, 2018</b>	Notice of Demand for Production or Inspection of Documents to ND Petroleum Council; Subpoena Duces Tecum
<b>June 14, 2018</b>	Proposed Scheduling Order (RE: Stipulated Facts)
<b>June 14, 2018</b>	Notice of Expedited Motion for a Discovery Protection Order by Defendants; Expedited Motion for a Discovery Protection Order by Defendants; Memo in Support of Expedited Motion for a Discovery Protection Order by Defendants; Exhibit A – Notice of Demand for Production or Inspection of Documents to ND Petroleum Council with Subpoena
<b>June 14, 2018</b>	Defendant Board of University and School Lands of the State of North Dakota Joinder in the State Defendants' Objection to Plaintiffs' Proposed Preliminary Injunction
<b>June 20, 2018</b>	Memorandum in Opposition to Expedited Motion for Protective Order, Exhibit 1 -Plaintiff's Request for Production of Documents to Defendants; Exhibit 2 -Plaintiffs Request for Production of Documents to Defendants; Exhibit 3 – May 30, 2018 email
<b>June 22, 2018</b>	Plaintiffs' Objections to Defendants' Proposed Order and Memorandum in Opposition to Defendants' Objections; Exhibit 1 – Transcript Excerpt
<b>June 25, 2018</b>	Reply Memorandum in Support of Expedited Motion for a Discovery Protection Order by Defendants
<b>June 25, 2018</b>	Hearing on Expedited Motion for Discovery Protection Order to be held during telephonic scheduling conference
<b>June 28, 2018</b>	Proposed Order – from Court's June 25, 2018 ruling that (1) on July 23, 2018 the parties submit to the Court a statement of undisputed facts and additional facts a party believes are material undisputed facts, but for which the parties cannot agree, (2) the Court will review the submitted facts and make a determination by August 1 if cross motions for summary judgment are appropriate, (3) if cross motions for summary judgment are appropriate the Court will provide a briefing schedule, (4) discovery is stayed, and (5) if the Court determines that cross-motions for summary judgment are not appropriate, then responses to currently served discovery are due 30 days from the date of such determination by the Court.
<b>July 3, 2018</b>	Order for Pro Hac Vice Admission of Anne T. Regan
<b>July 3, 2018</b>	Order for Pro Hac Vice Admission of Gregory S. Otsuka
<b>July 6, 2018</b>	Order (Scheduling Deadlines) as set out in the June 28 proposed order was signed by the Court.
<b>July 9, 2018</b>	Notice of Hearing – Pretrial Conference – September 6, 2018
<b>July 9, 2018</b>	Amended Notice of Hearing – Scheduling Conference – September 6, 2018
<b>July 13, 2018</b>	Transcript (June 25, 2018 hearing)
<b>July 23, 2018</b>	Deadline for parties to confer & file statement of undisputed material facts and other material facts for which all parties cannot agree
<b>August 1, 2018</b>	Court's anticipated deadline to review undisputed facts and any submitted Claimed Supplemental Undisputed Facts to determine if cross motions for summary judgment are appropriate – if

	appropriate, briefing schedule will be issued. If not appropriate, then (1) the currently served discovery must be answered within 30 days and (2) the parties can engage in further discovery.
<b>August 27, 2018</b>	<del>Hearing Scheduled by Plaintiffs on Motion for Summary Judgment</del> CANCELLED BY THE COURT
<b>August 30, 2018</b>	Letter to Judge Irby – RE: appearance at scheduling conference
<b>September 6, 2018</b>	Notice of Hearing - Scheduling Conference and Pretrial Conference– 9:30 a.m. Cass County Courthouse
<b>September 10, 2018</b>	Proposed Order for Briefing Schedule and Order for Oral Argument Hearing –due dates: Summary Judgments Motions and Briefs – on or before October 22, 2018; Answer Briefs – on or before December 6, 2018 Reply Briefs - on or before December 21, 2018. Hearing on Motions for Summary Judgment – January 4, 2019, 9:00 a.m. – Cass County Courthouse
<b>October 22, 2018</b>	Motion for Summary Judgment, Memorandum of Law in Support of Motion for Summary Judgment, Affidavit of Terrance W. Moore, proposed Order
<b>October 22, 2018</b>	State Defendants' Notice Motion for Summary Judgment, Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment, Affidavit of Lynn Helms, Affidavit of Jodi Smith
<b>January 4, 2019</b>	Hearing on Motions for Summary Judgment – scheduled for January 4, 2019, 9:00 a.m. – Cass County Courthouse

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending or potential litigation.

Motion: **Under the authority of N.D.C.C. §§ 44-04-19.1 and 44-04-19.2, the Board enter into executive session for attorney consultation related to:**

- **Paul Sorum, et al. v. The State of North Dakota, et al.**

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

At 2:54 PM the Board entered executive session for the purposes outlined in its adopted motion.

### EXECUTIVE SESSION

#### 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
Kristie McCusker	Paralegal
Catelin Newell	Office Manager

**Guests in Attendance:**

Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Governor's Policy Advisor
Mark Hanson	Nilles Law Firm
Brent Sanford	Lt. Governor

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The executive session adjourned at 3:39 PM and the Board returned to open session and the public was invited to return to the meeting. During the executive session, the Board was provided information regarding the Paul Sorum et al. v. The State of North Dakota, et al.

**R E P O R T S**

**The Summary of Assets (Unaudited) for Period Ended August 31, 2018 was presented to the Board.**

**Report of Easements Issued by Land Commissioner from 10/16/18 to 11/12/18**

**Granted to:** CALIBER MIDSTREAM NORTH DAKOTA LLC, DENVER-CO  
 For the Purpose of: Easement: Salt Water Disposal Well - Extension  
 Right-of-Way Number: RW0008320  
 Trust: A - Common Schools  
 Legal Description: MCK-152-102-36-SE4, SW4

**Granted to:** PRIDE ENERGY COMPANY, TULSA-OK  
 For the Purpose of: Easement: Salt Water Disposal Well - Extension  
 Right-of-Way Number: RW0008359  
 Trust: A - Common Schools  
 Legal Description: MCK-146-105-36-NE4

**Granted to:** NP RESOURCES LLC, DENVER-CO  
 For the Purpose of: Permit: Access Road  
 Right-of-Way Number: RW0008360  
 Trust: A - Common Schools  
 Legal Description: GOL-143-103-36-NE4

**Granted to:** NP RESOURCES LLC, DENVER-CO  
 For the Purpose of: Assignment: Salt Water Disposal Well-Assignment  
 Right-of-Way Number: RW0008361  
 Trust: A - Common Schools  
 Legal Description: GOL-143-103-36-NE4, NW4

**Granted to:** ROUGHRIDER ELECTRIC COOPERATIVE, INC., DICKINSON-ND  
 For the Purpose of: Easement: Substation/Maintenance Yard  
 Right-of-Way Number: RW0008386  
 Trust: A - Common Schools  
 Legal Description: BIL-142-101-36-SW4

**Granted to:** ND GEOLOGICAL SURVEY, BISMARCK-ND  
 For the Purpose of: Permit: Rare Earth Elements  
 Right-of-Way Number: RW0008396  
 Trust: A - Common Schools  
 Legal Description: SLO-136-102-16-NE4



## Results of Online November Oil and Gas Mineral Lease Auction

On behalf of the Board, the Department conducted an oil and gas mineral lease auction which concluded on November 1, 2018 on <https://www.energynet.com/>.

There were 101 tracts offered and all but two received competitive bids. The highest bid per acre was \$6,000.00 for 14.81 net mineral acres in Dunn County.

There were 44 bidders registered, 23 of which submitted bids in the seven-day auction. Bidders were from 11 states (CO, GA, MI, MN, MT, ND, SD, TX, UT, WA and WY).

A total \$2,112,455.93 of bonus was collected from the auction.

## Investment Updates

### Asset Allocation

Due to the early Board meeting date in November, October final audited numbers are not yet available. The numbers shown are unaudited numbers for October 31, 2018, but should be very close to audited month end figures:

Account/Asset Class	Long-Term Asset Allocation	10/31/18 Actual Allocation \$	10/31/18 Actual Allocation %	10/31/18 % Diff.
Large Cap US Equity	13.3%	\$ 585,160,561	13.1%	-0.2%
Mid/Small Cap US Equity	3.7%	\$ 159,882,785	3.6%	-0.1%
International Equity	13.3%	\$ 556,111,858	12.5%	-0.8%
Emerging Market Equity	3.7%	\$ 161,189,669	3.6%	-0.1%
<b>Total Equities</b>	<b>34.0%</b>	<b>\$ 1,462,344,874</b>	<b>32.8%</b>	<b>-1.2%</b>
Core Fixed Income	12.6%	\$ 715,192,380	16.0%	3.4%
Non-Core Fixed Income	8.4%	\$ 246,301,580	5.5%	-2.9%
<b>Total Fixed Income</b>	<b>21.0%</b>	<b>\$ 961,493,960</b>	<b>21.6%</b>	<b>0.6%</b>
<b>Total Absolute Return</b>	<b>20.0%</b>	<b>\$ 901,328,785</b>	<b>20.2%</b>	<b>0.2%</b>
Commodities	3.0%	\$ 137,784,124	3.1%	0.1%
MLPs	3.0%	\$ 130,494,684	2.9%	-0.1%
TIPS	2.0%	\$ 87,435,262	2.0%	0.0%
Natural Resource Equities	2.0%	\$ 83,391,284	1.9%	-0.1%
<b>Total Inflation Strategies</b>	<b>10.0%</b>	<b>\$ 439,105,353</b>	<b>9.8%</b>	<b>-0.2%</b>
Core Real Estate	8.0%	\$ 381,318,549	8.5%	0.5%
Core Plus Real Estate	7.0%	\$ 314,628,272	7.1%	0.1%
<b>Total Real Estate</b>	<b>15.0%</b>	<b>\$ 695,946,821</b>	<b>15.6%</b>	<b>0.6%</b>
<b>Total Asset</b>	<b>100.0%</b>	<b>\$ 4,460,219,793</b>	<b>100.0%</b>	

### Angelo Gordon (\$47.25 million, 1.1% of PTF assets)

#### Direct Lending Fund

The initial funding of the new Angelo Gordon Direct Lending portfolio occurred in late-August with a transfer of \$6.0 million. As of November 14, 2018, a total of \$47.25 million had been transferred to Angelo Gordon, representing 31.5% of the Board total commitment of \$150 million. The funding of the portfolio is approximately 8 months ahead of the funding timeline initially expected by Angelo Gordon.

### Schroders (\$95.11 million, 2.1% of PTF assets)

#### Securitized Credit

The initial funding of the Schroder's securitized credit portfolio occurred in mid-September with a deposit of \$35.0 million; an additional \$35.0 million was transferred to Schroders in mid-October. The funding of the portfolio was completed in early November with a transfer of \$25.0 million. Performance monitoring of this portfolio will begin effective December 1, 2018, once Schroders has completed the initial investing of all of the funds that have been transferred into the account.

**BND Farm Loan Pool (\$12.8. million, 0.3% of PTF assets)**

**Direct Farm Lending**

During late-October, \$5.0 million was transferred to BND to fund new loan from the farm loan pool account. According to BND there is a solid market for new loans at the present time, so the Board can expect to fund as much as \$5-10 million of loans before the end of 2018.

The Commissioner is excited to once again be using permanent trust dollars to invest in North Dakota farm real estate loans. With rates now yielding close to 6.25%, these high quality loans will meet the trusts' investment needs for years to come, while also providing affordable financing options to farmers and ranchers in North Dakota.

**The 2019 Land Board Meeting Schedule was provided to the Board.**

**A D J O U R N**

There being no further business, the meeting was adjourned at 3:48 PM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands