

**Minutes of the Meeting of the  
Board of University and School Lands  
April 28, 2022**

The April 28, 2022 meeting of the Board of University and School Lands was called to order at 9:05 AM by Chairman Doug Burgum.

**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (via Teams)

**Department of Trust Lands Personnel present:**

Joseph Heringer	Commissioner
Kate Schirado	Administrative Assistant
Dennis Chua	Investments
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
James Wald	Legal Council
Catelin Newell	Administrative Staff Officer
Chris Suelzle	Minerals Division Director
Peggy Gudvangen	Finance Division Director
Jessica Fretty	Unclaimed Property
Susan Dollinger	Unclaimed Property
Joseph Stegmiller	Surface Range Soils Management Specialist
Jacob Lardy	Land Management Specialist
Scott Giere	Revenue Compliance
Matthew Reile	IT
Christopher Dingwall	Minerals Title Specialist
Mike Humann	Surface Director

**Guests in Attendance:**

Ryan Norrell	Office of the Governor
Dave Garner	Office of the Attorney General
Charles Carvel	Office of the Attorney General
Kevin Balaod	WithIntelligence (Journalist)
Brady Pelton	NDPC
Geoff Simon	Western Dakota Energy Association
Gary Hagen	
Scott Anderson	
Bryan Triebold	
Janilyn Murtha	
Don Larson	

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

A motion to approve the minutes of the March 31, 2022 meeting was made by Treasurer Beadle and the motion was seconded by Secretary Jaeger and the motion carried unanimously on a voice vote.

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

### Commissioner's Report

- Discussions with state auditor's office regarding their office space needs
- Cash management collaboration meeting with OMB & RIO
- Cash management presentation to Government Finance Committee by Investment Director, Michael Shackelford (April 27<sup>th</sup>)
- Surface division meeting with Governor's office to discuss potential Pastureland Improvements Pilot Program
- Meeting with North Dakota Petroleum Council leadership (including Minerals Division Director, Chris Suelzle)
- Meeting with Justin Kringstad, ND Pipeline Authority to discuss oil industry (including Minerals Division Director, Chris Suelzle)
- Attended monthly NDFG natural resources breakfast meeting
- Meetings regarding integration of new accounting and surface systems and development of new minerals system
- Meeting with legislator regarding private mineral owners royalty deduction issues
- Meeting with Apex Clean Energy regarding Discovery Wind Project (McLean County)
- Meetings with oil & gas companies regarding acreage adjustment project and royalty deduction settlements
- Attended SIB on-boarding session and April 22<sup>nd</sup> board meeting
- Attended Spring virtual meeting of National Association of State Trust Lands (April 13<sup>th</sup>)

### Michael Humann Resolution

A resolution thanking and commending Michael Humann, for his years of service to the State of North Dakota and the Board of University and School Lands.

Recommendation: **The Board approve the Resolution recognizing Michael Humann for his 34 plus years of service to the state of North Dakota.**

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

**NORTH DAKOTA  
BOARD OF UNIVERSITY AND SCHOOL LANDS  
RESOLUTION**



ADOPTED  
APRIL 28, 2022

**WHEREAS**, Michael Humann began his employment with the Department of Trust Lands in the fall of 1987; and

**WHEREAS**, Michael has faithfully served as the Board of University and School Lands' agent on countless issues related to prudent and professional management of currently more than 700,000 surface acres; and

**WHEREAS**, through hard work and diligence, Michael's many accomplishments and efforts have greatly benefited the citizens, most notably North Dakota students; and

**WHEREAS**, Michael is recognized statewide amongst his natural resource peers, and beyond, for his expertise in both the preservation of our surface acres and the fiduciary responsibility we hold for our trusts; and

**WHEREAS**, Michael has earned the admiration and respect of his staff and colleagues for his dedication, leadership, professionalism, sense of humor and hard work; and

**WHEREAS**, these many accomplishments and years of dedicated service should be recognized;

**NOW, THEREFORE, BE IT RESOLVED**, that the undersigned as members of the Board of University and School Lands, do hereby thank and commend Michael Humann for his dedication and service to the State of North Dakota, to the Board and most prominently to the "trusts", and wish him every success in future endeavors.

\_\_\_\_\_  
Kirsten Baesler  
Superintendent of Public Instruction

\_\_\_\_\_  
Alvin A. Jaeger, Secretary of State

\_\_\_\_\_  
Thomas Beadle, State Treasurer

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Drew Wrigley, Attorney General

\_\_\_\_\_  
Chairman Doug Burgum, Governor

(04/28/22)

## DIVISION REPORTS

### SURFACE

SURFACE DIVISION



For the month of March 2022, the Division granted 16 encumbrances for a total of \$259,822.59 in income for the trusts.

The Division also conducted its spring surface lease auctions in March. The following summary shows results in comparison to the previous two spring auction seasons. Tracts offered at auction in the spring are released from fall auctions or associated with dropped leases.

DEPARTMENT OF TRUST LANDS SPRING SURFACE AUCTION SUMMARY	2020 (online)	2021	2022
Number of counties	24	19	19
Total tracts offered	144	66	73
Number of tracts bid	108 (75%)	56 (85%)	58 (79%)
Number of bid tracts bid-up	27 (25%)	15 (27%)	17 (23%)
Total amount of minimum advertised bids	\$283,859.00	\$98,815	\$115,482
Total amount received	\$255,173.00	\$121,605	\$167,970

### MINERALS

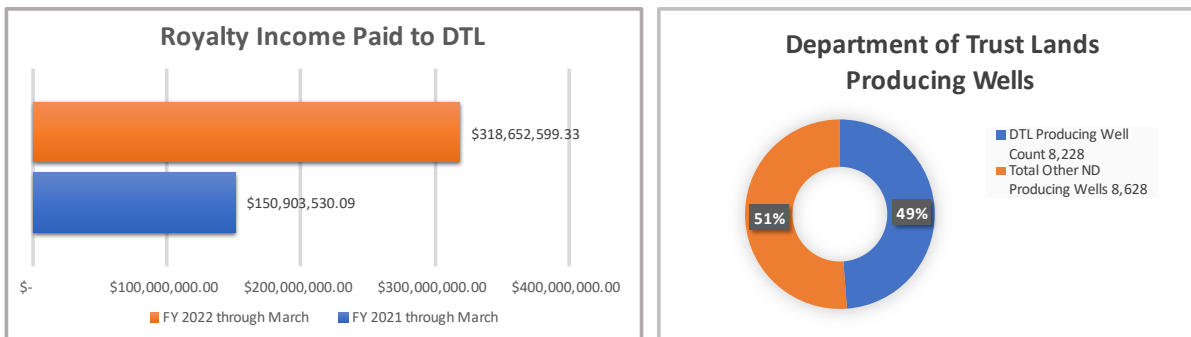
MINERALS DIVISION



For the month of March 2022, the Division approved nine Oil & Gas Lease Extensions, two Coal Lease Extensions and received zero Shut In Requests.

Mineral Tracker reports total DTL producing wells at 8,288, or 49% of the 16,856 total active North Dakota wells.

As of March 2022, for fiscal year 2022 the Department has received \$318,652,599.33 in royalties.

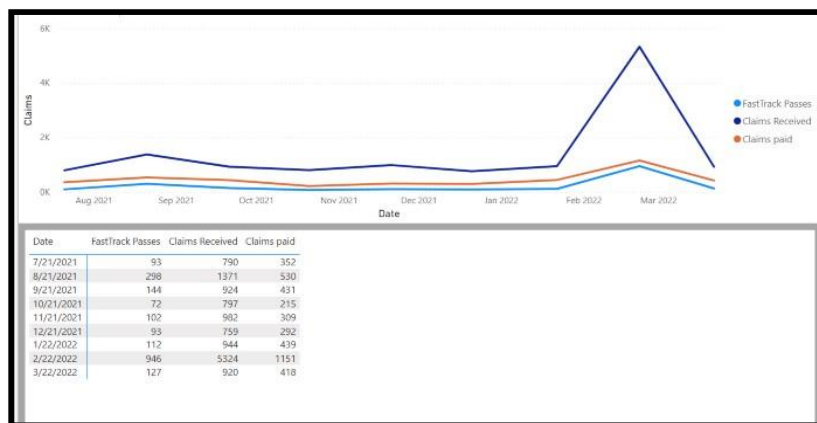


## UNCLAIMED PROPERTY

### UNCLAIMED PROPERTY DIVISION



For the month of March 2022, the Division received 80 holder reports with a property value of \$741,796.49 and paid 418 claims for a total of \$536,873.53.



## FINANCIALS

### The Financial Report (Unaudited) for period ending January 31, 2022

The following statements represent the unaudited financial position for the various trusts and funds managed by the Department of Trust Lands. The unaudited financial positions are two months delayed as a significant portion of the revenue for Commons Schools Trust, Strategic Investment and Improvements Fund, and Coal Development Trust includes gross production tax, oil extraction tax and coal severance tax distributions which are received two months after production date.

**The Financial Report (Unaudited) for period ending January 31, 2022 was presented to the Board for review and is available at the Department upon request.**

## INVESTMENTS

### Portfolio Rebalancing Updates

Staff are currently in the process of reviewing the Fund Documents for both Morgan Stanley Ashbridge Fund II and the Hamilton Lane Infrastructure Opportunities Fund which were approved in the last Board meeting.

Since the last Board meeting, FSI GDIF had called an initial capital call of \$45M scheduled for April 20. The new separately managed Angelo Gordon Direct Lending (AGDL-BUSL) Fund has called back distributions made to both AGDL III & AGDL IV amounting to around \$24.4M scheduled for 5/2. After these calls are funded, this will bring the transition account balance down to only around \$3.9M after which we will proceed to close the account.

Unfunded commitments after the distribution and calls will be at \$579.9M. These are:

1. Varde Dislocation Fund, \$42.5M
2. GCM Private Equity, \$110M
3. ARES Pathfinder Fund, \$54.4M

4. Angelo Gordon DL IV, \$25M
5. Owl Rock Diversified Lending, \$35M
6. GCM Secondary Opportunities Fund, \$128M
7. Harrison Street Core Property Fund LP, \$30M
8. FSI GDIF (Infrastructure), \$105M
9. AGDL-BUSL Fund, \$50M

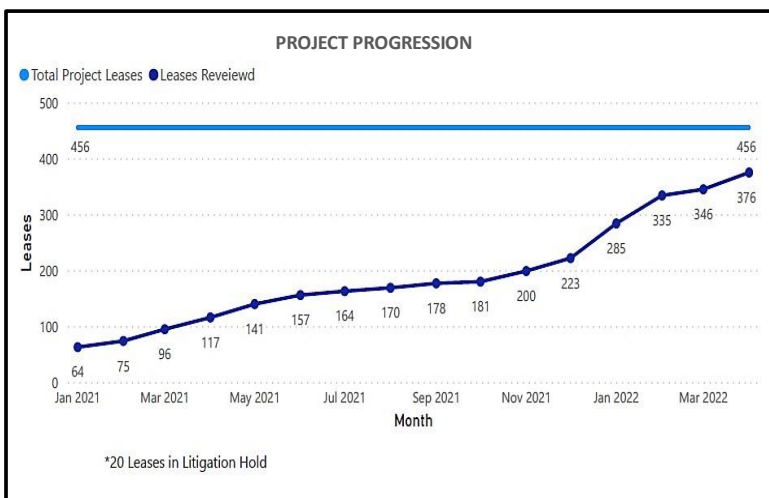
**Asset Allocation**

The table below shows the status of the permanent trusts' asset allocation as of April 18, 2022. The figures provided are unaudited.

As of April 18, 2022	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,138,809,141.07	18.9%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,063,765,947.20	17.6%	19.0%	14.0%	24.0%
Fixed Income	1,668,655,017.68	27.6%	22.0%	17.0%	27.0%
Transition Account	72,986,639.27	1.2%	0.0%	-5.0%	5.0%
Absolute Return	834,205,108.50	13.8%	15.0%	10.0%	20.0%
DIS	-	0.0%	0.0%	-5.0%	5.0%
Real Estate	1,008,475,201.58	16.7%	15.0%	10.0%	20.0%
Private Equity (Grosvenor)	42,069,212.29	0.7%	5.0%	0.0%	10.0%
Private Infrastructure (JPM-Infra)	130,000,000.00	2.2%	5.0%	0.0%	10.0%
Opportunistic Investments (Varde & Apollo)	79,541,726.81	1.3%	0.0%	-5.0%	5.0%
<b>Portfolio Total</b>	<b>6,038,507,994.40</b>	<b>100.0%</b>			

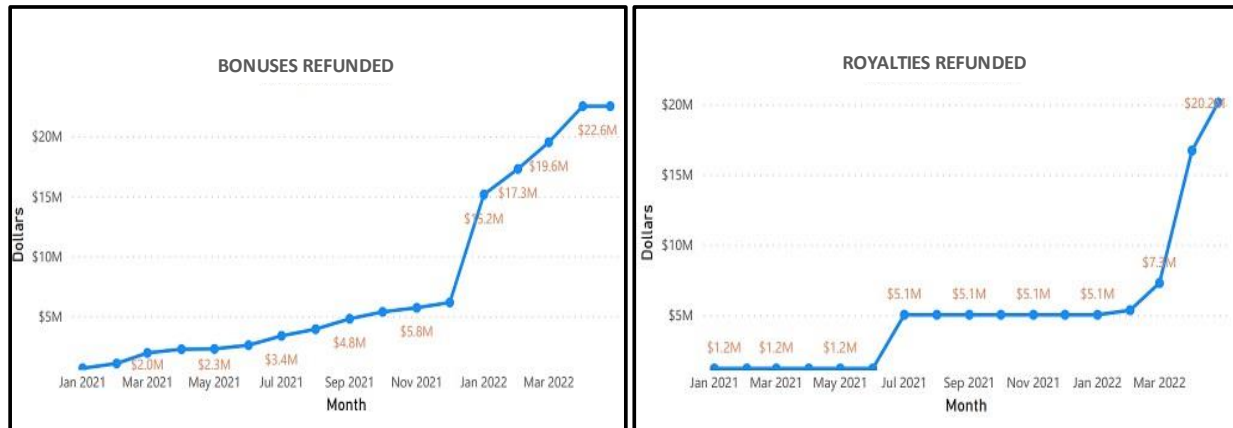
**SPECIAL PROJECTS**

**ACREAGE ADJUSTMENT SURVEY REPORT** NORTH Dakota | Trust Lands  
Be Legendary.™



## ACREAGE ADJUSTMENT SURVEY REPORT

NORTH  
**Dakota** | Trust Lands  
Be Legendary.™



## LITIGATION

**MHA Litigation**

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

**Date Filed:** July 16, 2020

**Court:** United States District Court for the District of Columbia

**Judge:** Honorable Amy Berman Jackson

**Attorney:** Matthew Sagsveen, Beveridge & Diamond

**Opposing**

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

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

In the Complaint's Prayer for Relief, the Tribe requests: (a) that the Jorjani Opinion, which concluded North Dakota owns the lands beneath the Missouri Riverbed within the Fort Berthold Reservation, be set aside; (b) that the Court grant injunctive relief preventing Defendants from taking any steps to implement the Opinion; (c)

(04/28/22)

that the Court compel DOI to account to the Tribe regarding the Missouri Riverbed and underlying minerals, including the production of minerals and the value of royalties owed thereon; (d) the Court declare the 1979 IBLA *Impel Energy* decision (finding the state does not own the riverbed) is *res judicata* and binding on the DOI; (e) the Court compel DOI to take the requisite administrative steps to document that the Missouri Riverbed and underlying minerals are held in trust by the United States for the benefit of the Tribe; (f) the Court compel DOI to take requisite steps to administer and account for the Tribe's mineral rights in lands underlying the Missouri Riverbed; (g) the Court compel DOI to collect, deposit and invest or pay funds owing to the Tribe for the extraction of minerals from the lands underlying the Missouri Riverbed; (h) that the Tribe be awarded reasonable fees, costs, and expenses, including attorney's fees; and (i) that the Court grant such further relief as the Court deems just and equitable.

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

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

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

That any revenues generated from riverbed mineral development under control of DOI not be disbursed until after the Court's resolution of the cross-motions for partial summary judgment on count one. The State of North Dakota filed an Expedited Motion to Intervene on August 10, 2020. The Court issued an Order on August 11, 2020, allowing Plaintiff to respond to the State's Motion by August 17, 2020, and the State to file a reply by August 21, 2020. The Tribe filed its Opposition to the State Motion to Intervene on August 17, 2020. On August 21, 2020, the State filed its reply to the Tribe's opposition to the motion to intervene. The Notice of Lodging of Administrative Record was filed on August 26, 2020. The Court entered its Opinion and Order granting North Dakota's Motion to Intervene and setting forth requirements for filings. On September 1, 2020, the United States filed the United States Department of Interior's Opposition to Plaintiff's Motion for Preliminary Injunction and Cross-Motion for Partial Summary Judgment. On September 8, 2020, Plaintiff filed a Motion to Complete Administrative Record and a proposed Order. Also on September 8, 2020, the State filed the Intervenor-Defendant State



of North Dakota's Cross-Motion for Partial Summary Judgment and Opposition to Plaintiff's Motion for Preliminary Injunction. On April 2, 2021, Plaintiff's Supplemental Submission Regarding Mootness by Mandan, Hidatsa, and Arikara Nation, State of North Dakota's Response to Mootness, and U.S. Department of Interior's Response to Order of the Court were filed. By letter dated April 1, 2021, Associate Solicitor Eric Shepard invited the State of North Dakota to submit materials relevant to the review of M-37056 issued by former Solicitor Daniel Jorjani. On April 12 & 27, Attorney General Stenehjem requested more time to participate due to the inability to access records to complete research. On May 7, 2021, Attorney General Stenehjem advised that we were unable to provide the requested information during the time allotted but are providing a report by Stevens Historical Research Associates that has been prepared to date and reiterated request for more time. On July 30, 2021, the parties filed the Joint Status Report. An Order was filed by the Court on August 2, 2021 dismissing Court I and II of the Complaint, the preliminary injunction motion was denied as moot, and Counts III and IV remain justiciable. The parties are ordered to meet and confer and submit a joint status report by August 13, 2021 that sets forth the parties' views on whether Counts III and IV should continue to be stayed pending issuance of a new M-Opinion and if not, proposing a scheduling for resolving those claims. On August 13, 2021, a Joint Status Report was filed. On August 16, 2021, a Minute Order was entered continuing the stay and that the parties shall file a joint status report within 14 days of the issuance of a new M-Opinion or the conclusion of the Solicitor's Office review without a new M-Opinion, or on November 16, 2021 if nothing has been filed by that date." On November 17, 2021, the Court entered a minute order advising the case remains stayed and provided the parties must file a joint status report by December 16, 2021 or within 14 days of either the issuance of a new M-Opinion or the conclusion of the governments review without a new M-Opinion. A Joint State Report was filed on December 16, 2021, in which the parties proposed the remaining counts in this litigation remain stayed for an additional 30 days to allow Interior to continue to work on the M-Opinion, with a status report submitted within 14 days of issuance of a new M-Opinion or the conclusion of the solicitor's office review without a new M-Opinion, or at the conclusion of this 30 day period. The parties agreed that during the duration of the 30 day stay, the status quo will be maintained concerning lease recordation n the disputed riverbed acreage and any revenues generated from mineral development. On January 24, 2022, the Court issued a Minute Order staying the case and providing that the Parties must file a joint status report by February 22, 2022 or within 14 days of either the issuance of a new M-Opinion or the conclusion of the government's review without a new M-Opinion. On February 4, 2022, the Opinion Regarding the Status of Mineral Ownership Underlying the Missouri River Within the Boundaries of the Fort Berthold Reservation (North Dakota), M-37073, was issued by the Solicitor, Robert T. Anderson. On February 14, 2022, the parties filed a Joint Motion for Extension to File Status Report extending the date the status report would be due to March 4, 2022, and that Motion was granted on February 15, 2022.

**Current Status:**

- **On March 4, 2022, a joint status report was filed which proposed a follow up joint status report within 30 days of the DOI recording title in trust for the Tribe in the BIA Office of Land Title and Records (that recording no sooner than April 4, 2022).**
- **On April 4, 2022, the DOI filed a Notice of Recordation of Trust Title. The parties will file a joint status report within 30 days of completion of recordation of trust title.**

- On April 5, 2022, the Court issued a Minute Order requiring the parties submit a status report by April 19, 2022, addressing whether Count IV should be dismissed as moot in light of recordation of title, and both parties must address Count III.
- On April 19, 2022, the Court issued a Minute Order stating that pursuant to the parties' consent in the most recently filed status report, the portion of Count IV that asks for an order "to take the actions necessary to document that the MHA Nation is a beneficial owner of the Missouri Riverbed and the underlying mineral estate within the Reservation" is dismissed as moot. The parties must file a joint status report as to the remaining accounts by July 20, 2022.

### **Newfield Litigation**

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

Date Filed: March 7, 2018

Court: District Court/McKenzie County

Attorneys: David Garner

Opposing

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

Judge: Robin Schmidt

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

History: A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 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. 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. On September 23, 2021, Plaintiffs filed their Response in Opposition to Defendants' Expedited Motion to Supplement Exhibits and the Court entered the Order Granting Expedited Motion to Supplement Exhibits filed by Defendants. On September 24, 2021, Plaintiffs filed their Response in Opposition to Defendants' Motion to Exclude Evidence, an Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means, and a Special Motion to Exclude and Motion in Limine. Defendants filed a Supplemented Exhibit List. On September 27, 2021, the Court entered its order Granting Plaintiffs' Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means. Defendants filed a Second Supplemented Exhibit List and their response to Plaintiff's Special Motion to Exclude and Motion in Limine. On September 28, 2021, Defendants filed their response to Plaintiff's Motion in Limine or to Exclude and Limit Anticipated Testimony. A pretrial conference was held on October 1, 2021. The trial was held on October 4, 5 & 6. The Court issued its Memorandum Opinion, Findings of Fact, Conclusions of Law and Order for Judgment on October 13, 2021. On October 22, 2021, Plaintiffs filed their Statement of Costs and Disbursements of Lawrence Bender, Statement of Costs and Disbursements of Michelle P. Scheffler, and proposed Judgment. On October 27, 2021, the State sent a letter to the Honorable Robin A. Schmidt advising that the State intended to submit a response to the proposed Judgment filed by Plaintiffs. On November 5, 2021, the State filed its Objection to Plaintiff's Proposed Judgment. On November 12, 2021, Plaintiffs filed a Notice of Motion, Motion, and Brief in Support of Motion for Leave to File a Response to Defendants Objections to the Proposed Judgment. Order for Judgment was entered on November 16, 2021. The Notice of Entry of Judgment and Judgment were entered on November 17, 2021. On January 18, 2022, a Notice of Appeal was filed by the Board. On January 28, 2022, an Order for Transcript was filed with the Supreme Court. On February 1, 2022, a Second Order for Transcript was filed with Supreme Court. On February 8, 2022, the Board filed an Unopposed Motion for Extension of Time to File Appellant Brief until 30 days after the final transcript has been filed of record. On February 10, 2022, the Supreme Court granted the motion for extension with Appellant's brief being due 30 days after the final transcript is filed. The Supreme Court advised that Appellant's brief is due March 16, 2022.

**Current  
Status:**

- **Appellant's (State's) Brief filed March 16, 2022. Appellee's Brief is due on or before April 15, 2022.**

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- **On April 4, 2022, Newfield filed a Motion for Extension of Time to File Appellee Brief and that Motion was granted on April 5, 2022, granting Newfield until May 16, 2022 to file its brief. The State's Reply Brief will be due 14 days after Appellee's Brief is filed**

### **Wilkinson Litigation**

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

**Date Filed:** **January, 2012**

**Court:** **Williams County District Court**

**Judge:** **Paul Jacobson**

**Attorney:** **Jennifer Verleger/Matthew Sagsveen/David Garner**

**Opposing**

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

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

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

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

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

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

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

**History:**

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

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

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

On January 13, 2020, the Brief of Appellant, Board of University and School Lands was filed with the Supreme Court. Appellant North Dakota State Engineer's Principal Brief was also filed on January 13, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Plaintiffs/Appellees Response Brief filed with the Supreme Court on March 2, 2020. Reply Brief of Defendant and Appellant, Board of University and School Lands filed on March 16, 2020. Appellant North Dakota State Engineer's Reply Brief filed March 16, 2020. The North Dakota Supreme Court issued its Opinion of the Court on August 27, 2020. On September 18, 2020 a Notice of Hearing was filed in the District Court setting a status conference for October 13, 2020, at 3:30 p.m. The Court issued an Order After Status Conference dated October 13, 2020, stating that a two day bench trial will be scheduled. A telephonic scheduling conference was scheduled for October 29, 2020, at 10:00 a.m. On October 23, 2020, the Supreme Court Judgment/Opinion was filed with the District Court. On October 30, 2020, the Court issued its Order After Scheduling Conference. The matter was set for Court Trial on April 16, 2021, for one day and July 23, 2021, also for one day. Defense council expressed concerns with a conflict with other scheduled trials. Therefore, a status conference was set for February 4, 2021 to determine if any conflicts have been obviated. The Court indicated it would consult with the scheduling clerk to determine second priority dates for one day trials in 2021. The Court set backup Court Trial dates of May 27, 2021 and May 28, 2021. Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota were served on the Board on January 26, 2021. The Board has 30 days to respond. On February 25, 2021, the Board served its Answers to Plaintiffs' Combined Discovery Requests to Defendant, the Board of University and School Lands of the State of North Dakota, and the State Engineer served its answers to interrogatories. State Engineer's Interrogatories, Request for Admissions, and Request for Production of Documents Regarding Damages (Request II) was served March 12, 2021. On March 19, 2021, Defendant Statoil Oil and Gas, LP's Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. On March 22, 2021, Defendant Statoil Oil and Gas, LP's First Supplemental Answers to Plaintiffs' Combined Discovery Requests to Defendant, Statoil Oil & Gas, LP was served. Plaintiff's Responses to State Engineer's Interrogatories, Requests for Admissions, and Requests for Production of Documents regarding Damages (Request II) was served April 14, 2021. On April 20, 2021, Plaintiffs filed their Motion for Attorneys' Fees and Costs against the State of North Dakota. Plaintiffs scheduled a hearing on this motion for July 22, 2021. Plaintiffs scheduled a status conference for April 27, 2021. At that hearing, it was decided that the trial for May 2021 would be scheduled for July 22 & 23, 2021, in Williston. On May 18, 2021, the Board of University and School Lands and the State Engineer filed their

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Response Brief Opposing Plaintiffs' Motion for Attorneys Fees and Costs. On June 8, 2021, Plaintiffs filed their Reply to State's Response Brief Opposing Plaintiffs' Motion for Attorneys' Fees and costs. On June 22, 2021, Plaintiffs filed their Pretrial Statement and Defendants, Board and State Engineer, filed their Pre-Trial Brief. Brigham Oil & Statoil brought a Motion to Dismiss on July 7, 2021. On July 8, 2021, the parties exchanged their witness and exhibit lists. Motions in Limine were filed on July 8, 2021 by Brigham Oil and Statoil and the Board and State Engineer. The parties shared various drafts of witness and exhibit lists prior to trial. On July 12, 2021, the State filed its Motion in Limine to Exclude Evidence Regarding Statutory Interest of 6.5% or 18% on Royalties and Motion in Limine to Exclude Evidence Regarding S&P Vanguard 500 Index Fund Investor Shares (VFINX) Damages. On July 14, 2021, Statoil and Brigham filed Brigham Oil & Gas, L.P. s and Statoil Oil & Gas, L.P. s nka Equinor Energy, O.P. s (Collectively Statoil ) Unopposed Request for Leave to Allow Witness Amy Becker to Appear by Reliable Electronic Means and the request was granted the same day. On July 15, 2021, Plaintiffs Plaintiffs' Request for Witness to Participate by Telephone or Electronic Means and the requested was granted the same day. On July 19, 2021, Plaintiffs filed Supplemental Affidavit of Joshua A. Swanson in Support of Plaintiffs' Motion for Attorneys' Fees and Costs against the State of North Dakota. On July 21, 2021, Plaintiffs filed Plaintiff s Brief in Response to Defendant Brigham Oil & Gas LP s (Collectively Statoil ) Motion to Dismiss, Plaintiffs Response Brief in Opposition to Brigham Oil & Gas, L.P. s nka Equinor Energy, LP s (Collectively Statoil ) Motion in Limine, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding S&P 500 Vanguard 500 Index Fund Investor Shares (VFINX) Damages, Plaintiffs Response Brief in Opposition to Board of University and School Lands and North Dakota State Engineer s Motion in Limine Regarding Statutory Interest. The trial was held on July 22 and 23, 2021. On July 22, 2021, the parties filed a joint exhibit list. On July 28, 2021, Brigham Oil & Gas, L.P.'s and Statoil Oil & Gas L.P.'s nka Equinor Energy, L.P.'s (Collectively "Equinor") Reply Brief in Support of Motion to Dismiss was filed, as was the Stipulation/Agreement to Dismiss Plaintiffs' Claims Against Defendant EOG Resources, Inc. On July 30, 2021, the Order Dismissing Plaintiffs' Claims Against Defendant EOG Resources, Inc. was filed. On August 11, 2021 the parties stipulated and the court entered its Order Dismissing Crossclaims Between Defendant EOG Resources, Inc., and Defendant Statoil Oil & Gas LP. On October 4, 2021, an Order Granting Extension of Time for Brigham and Statoil to File Reply Filings was filed. On October 5, 2021 Plaintiffs filed their Post-Trial Reply Brief and the Board and the State Engineer filed their Post Trial Response Brief. On December 10, 2021, the Court entered the Order for Judgment, which ordered:

- Statoil's motion to dismiss (Index #594) is denied.
- Statoil's motion in limine (Index #600) is denied as moot.
- The State's motions in limine (Index #607 and #615) are denied as moot.
- Petrogulf's crossclaims against EOG (Index #84) are dismissed with prejudice for failure to prosecute.
- EOG's counterclaim against Plaintiffs and crossclaims against the Land Board, OXY USA, Inc., and Petrogulf (Index #65) are dismissed with prejudice for failure to prosecute.
- Statoil's counterclaims against the Plaintiffs are dismissed because it is a prevailing party.
- Based on the Supreme Court's ruling in *Wilkinson II* and the application of N.D.C.C. ch. 61-33.1 to the Disputed Property "the State of North Dakota does not own title to the mineral interests in the [Disputed] Property."
- The takings claims in Counts II and III against the State are dismissed with prejudice.



- The conversion claims in Count IV against Statoil and the State are dismissed with prejudice.
- The unjust enrichment and constructive trust claims in Count V against Statoil and the State are dismissed with prejudice.
- The civil conspiracy claims in Count VI against Statoil and the State are dismissed with prejudice.
- The 42 U.S.C. § 1983 claim in Count VII against the State is dismissed with prejudice.
- The Plaintiffs are not entitled to statutory damages under either N.D.C.C. § 47-16-39.1 or N.D.C.C. § 28-20-34, and are prohibited from claiming statutory damages until June 2022 under N.D.C.C. § 61-33.1-04(2)(b).
- The Plaintiffs are not entitled to special damages attributable to lost investment opportunities in the S&P 500 VFINX.
- The Plaintiffs request for \$1,441,086.73 in interest is denied.
- The Plaintiffs are not entitled to damages under N.D.C.C. § 32-03-23(3) for Jon Patch's time. The request for \$180,000 in damages is denied.
- The Plaintiffs are not entitled to damages for unjust enrichment and the Plaintiffs' request for bonus/rental payments and royalty payments through disgorgement under the State's contracts in the amount of \$207,336.61 is denied.
- The Plaintiffs are not entitled to attorneys' fees or costs. The Plaintiffs' requests for attorneys' fees and costs are denied.
- Let Judgment be entered accordingly.

On January 10, 2022, the Judgment was entered. On January 10, 2022, the Judgment was entered. On January 13, 2022, the clerk's office sent a letter to Crowley Fleck regarding return of the surety bond. On January 25, 2022, Plaintiffs filed a Notice of Appeal with the Supreme Court.

**Current Status:**

- **On March 14, 2022, Wilkinsons filed the Brief of Appellants. The State's brief is due April 13, 2022.**
- **State granted an extension to file the Brief of Appellees to April 25, 2022.**
- **On April 20, 2022, the Supreme Court scheduled Oral Argument for May 18, 2022 at 10:45 a.m.**

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:

- **Royalty Offers (Nothing to cover)**
- **Mandan, Hidatsa, and Arikara Nation v. United States Department of the Interior; Case No. 20-1918 (ABJ)**

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

**The Board entered into executive session at 10:07 AM.**

**EXECUTIVE SESSION**

**Members Present:**

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction (via Teams)

**Department of Trust Lands Personnel present:**

Joseph Heringer	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Chris Suelzle	Minerals Division Director

**Guests in Attendance:**

Dave Garner	Office of the Attorney General
Charles Carvell	Office of the Attorney
Ryan Norrell	Office of the Governor

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The executive session adjourned at 11:03 AM and the Board returned to the open session and Teams meeting to rejoin the public. During executive session the Board was provided information, provided its attorneys with guidance regarding the MHA litigation, and no formal action was taken.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:04 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Joseph Heringer, Secretary  
Board of University and School Lands