

**Minutes of the Meeting of the
Board of University and School Lands
December 17, 2020**

The December 17, 2020 meeting of the Board of University and School Lands was called to order at 9:00 AM in the Pioneer Room of the State Capitol by Chairman Doug Burgum.

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kelly Schmidt	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction via Teams

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Mike Humann	Surface Division Director
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director - via Microsoft Teams
Lynn Spencer	Mineral Title Specialist – via Microsoft Teams
Dennis Chua	Investments Analyst – via Microsoft Teams
Christopher Dingwall	Mineral Title Specialist – via Microsoft Teams
Scott Giere	Revenue Compliance Auditor – via Microsoft Teams
Peggy Gudvangen	Accounting Director – via Microsoft Teams
Jacob Lardy	Surface – via Microsoft Teams
Rick Owings	EIIO – via Microsoft Teams

Guests in Attendance:

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor’s Legal Counsel
Charles Carvell	Office of the Attorney General
Jen Verleger	Office of the Attorney General
Reice Haase	Office of the Governor

Additional Guests in Attendance:

Andrew Lasky	via Microsoft Teams
Austin Head-Jones	via Microsoft Teams
Avni Gandhi	via Microsoft Teams
Renae Bloms	via Microsoft Teams
Brady Pelton	NDPC via Microsoft Teams
Chelsea Dodge	via Microsoft Teams
Craig D’Alessio	via Microsoft Teams
Dennis Blank	via Microsoft Teams
Drew Guyette	via Microsoft Teams
Gerald Heiser	via Microsoft Teams
Joel Holsinger	via Microsoft Teams
Josh Kevan	RVK via Microsoft Teams
Stephen Kranz	via Microsoft Teams
Richard W	via Microsoft Teams
Sonya Lee	via Microsoft Teams
Trevor Clark	via Microsoft Teams
William Cullinan	via Microsoft Teams

APPROVAL OF MINUTES

A motion to approve the minutes of the November 24, 2020 meeting was made by Secretary Alvin Jaeger and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

REPORTS

Repayment of Unpaid Royalties Report

Since the November 24, 2020, Board of University and School Lands meeting, one payor has come into compliance for oil deductions: Citation Oil and Gas LLC.

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

November Report of Encumbrances Issued by Land Commissioner

Granted to:	Tesoro High Plains Pipeline Company Llc, San Antonio-TX
For the Purpose of:	Easement-Amend: Pump Station
Right-of-Way Number:	RW0008693
Trust:	A - Common Schools
Legal Description:	MCK-147-104-36-SE4

Granted to:	Bob Enterprises LLC, Killdeer-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008703
Trust:	A - Common Schools
Legal Description:	DUN-147-95-16-NE4, NW4, SW4 SOUTH OF HWY

Granted to:	Carson Ranch, Grassy Butte-ND
For the Purpose of:	Permit: Road-Access Road
Right-of-Way Number:	RW0008788
Trust:	A - Common Schools
Legal Description:	MCK-146-101-36-NE4

Granted to:	Select Energy Services LLC, Williston-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008790
Trust:	A - Common Schools
Legal Description:	MOU-154-94-16-SW4

Granted to:	Goodnight Midstream Bakken LLC, Dallas-TX
For the Purpose of:	Easement-Amend: Pipeline-Salt Water Pipeline
Right-of-Way Number:	RW0008792
Trust:	A - Common Schools
Legal Description:	MCK-152-97-36-NE4, SE4

Granted to:	Bob Enterprises LLC, Killdeer-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008794
Trust:	A - Common Schools
Legal Description:	DUN-146-95-16-NE4

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Granted to:	Select Energy Services LLC, Williston-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008797
Trust:	A - Common Schools
Legal Description:	MCK-153-94-16-NW4, SW4

November Unclaimed Property Report

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

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

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

For the month of November 2020, the Division received 216 holder reports with a property value of \$1,234,962 and paid 324 claims with a total value of \$348,124.

The Financial Report (Unaudited) for period ending September 30, 2020 was presented to the Board for review and is available at the Department upon request.

Investment Updates

Portfolio Rebalancing Updates

As Harvest (Master Limited Partnerships) hit the 25% sell trigger point, a \$25M liquidation was initiated with withdrawal and transfer to the transition account targeted to be on or before December 15, 2020. This will leave the Diversified Inflation Strategies (DIS) asset class with approximately \$89.6M after the withdrawal based on its December 8, 2020, ending value. The Department of Trust Lands (Department) staff and RVK will continue to monitor the trigger points set for the account and will complete the liquidation when appropriate.

Since being approved, Apollo Accord Fund IV LP (Fund), an Opportunistic Investment, has made capital calls totaling \$5.5M. The remaining unfunded commitment now stands at \$94.5M. On November 27, 2020, the fund made its first distribution amounting to \$14,581.06.

Varde Dislocation Fund IV LP, an Opportunistic Investment, has called on a total of \$15M. This brings the remaining unfunded commitment to \$85M.

The Department staff have started working on the Investment Management Agreement (IMA) for both the JPM Core Bond and the Loomis & Sayles Multi Sector that were recently approved. Additionally, the Agreements for GCM Grosvenor (Private Equity Manager) and JP Morgan (Private Infrastructure Manager) are also being reviewed and worked on.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of December 8, 2020. The figures provided are unaudited.

As of December 8, 2020	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,089,173,741.57	20.3%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,069,667,543.32	19.9%	19.0%	14.0%	24.0%
Fixed Income	1,128,666,763.41	21.0%	22.0%	17.0%	27.0%
Transition Account	407,214,009.17	7.6%	0.0%	-5.0%	5.0%
Absolute Return	800,061,929.85	14.9%	15.0%	10.0%	20.0%
DIS	114,610,914.66	2.1%	0.0%	-5.0%	5.0%
Real Estate	731,764,330.00	13.6%	15.0%	10.0%	20.0%
Private Equity	-	0.0%	5.0%	0.0%	10.0%
Private Infrastructure	-	0.0%	5.0%	0.0%	10.0%
Opportunistic Investments	21,833,305.00	0.4%	0.0%	-5.0%	5.0%
Portfolio Total	5,362,992,536.98	100.0%			

Upcoming Investment Manager Meetings: There are no upcoming meetings scheduled.

Energy Infrastructure and Impact Office Quarterly Program Report

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

The Oil and Gas Impact Grant Fund currently has 17 grants with a balance of \$2,833,286.75 as of December 1, 2020. The following shows grant activity for the last eight months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
5/13/2020	28	\$7,049,556.08
9/9/2020	22	\$5,282,832.07
12/1/2020	17	\$2,833,286.75

The Energy Impact Fund, established within Senate Bill 2013 as enacted by the Sixty-fifth Legislative Assembly, was created to supplement the Oil and Gas Impact Grant Fund for the 2017-2019 biennium. This fund currently has three grants with a balance of \$1,752,239.48 as of December 1, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the

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Commissioner of University and School Lands to transfer any unexpended funds remaining in the Energy Impact Fund when the fund is repealed on June 30, 2021, to the Oil and Gas Impact Grant Fund. The following shows grant activity for the last eight months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
5/13/2020	3	\$2,394,929.22
9/9/2020	3	\$2,394,929.22
12/1/2020	3	\$1,752,239.48

EIO is currently managing 20 grants for a total of \$4,585,526.23. The following shows grant activity for the last eight months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants	Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants	Total between both Funds
5/13/2020	28	\$7,049,556.08	5/13/2020	3	\$2,394,929.22	\$9,444,485.30
9/9/2020	22	\$5,282,832.07	9/9/2020	3	\$2,394,929.22	\$7,677,761.29
12/1/2020	17	\$2,833,286.75	12/1/2020	3	\$1,752,239.48	\$4,585,526.23

Information Technology Project Status Update

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

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

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

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

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

The Investments Division, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

The Surface Division, Project Sponsor, Commissioner and Project Manager are working to determine a go-live for Microsoft Dynamics 365 software.

Additional capital funding is being requested in the upcoming legislative session to support the implementation of software for the Minerals Division.

On December 14, 2020, an upgrade to the Department website is scheduled to occur. This upgrade will provide for transparency in the acreage adjustment and refund process and allow constituents to monitor the status of each lease.

Acreage Adjustment Survey Project

The Sixty-Fifth Legislative Assembly's adoption of Senate Bill 2134 (SB 2134), codified as N.D.C.C ch. 61-33.1, sought to establish state ownership of minerals below the ordinary high water mark of the historical Missouri riverbed channel subject to inundated by Pick-Sloan Missouri Basin project dams.

On behalf of the Board of University and School Lands, the Department of Trust Lands has set in motion the refunding of royalty proceeds that fall within the six-month time frame outlined in N.D.C.C § 61-33.1-04(1). Implementation and release of royalty proceeds is under way as acreage determinations have been calculated on "oil and gas mineral tracts lying entirely above the ordinary high water mark of the historical Missouri riverbed channel on both the corps survey and the state phase two survey . . . absent a showing of other defects affecting mineral title." N.D.C.C § 61-33.1-04(1)(a)

Currently, 39 Lease Correction and Acreage Stipulation packages have been sent to various operators. Of these 39 packages, five have been refunded, seven are held by litigation, 23 are waiting for operator execution, and four are in the process of being refunded.

The following provides the status of acreage determination refunds and the amount at issue for those refunds in each stage of the process:



O P E R A T I O N S

Surface Land Management and Minerals Management Administrative Rules

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

The Department of Trust Lands (Department) considered existing rules, together with policies and procedures, to incorporate necessary wording from those into rules which comply with the North Dakota Administrative Code.

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

The Board approved the amended rules which were then submitted to the Attorney General's Office for review. The Attorney General's Office reviewed the Surface Land Management and Minerals Management. Those Administrative Rules were presented to the Administrative Rules Committee on December 1, 2020 and will become effective January 1, 2021. A final version of the Administrative Rules will be posted on the Departments website.

Board of University and School Lands Policy Manual

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

The Board's Administrative Rules are found in Title 85 of the North Dakota Administrative Code. Revisions to rules concerning General Administration and rules for Surface Land Management and Minerals Management are currently before the Legislative Administrative Rules Committee. Those rules were reviewed by the Attorney General's Office and were presented to the Administrative Rules Committee on December 1, 2020, to become effective January 1, 2021. With those rules becoming effective January 1, 2021, it will be necessary to simultaneously repeal certain Board policies and to implement new Board policies.

The Board currently has a Policy Manual (Board Policy Manual) which includes sections titled Governance, General, Surface Land Management, Investments, and Minerals. It is necessary to revise certain Board policies due to the new Administrative Rules. The Department recommends the following current policies be repealed and replaced with the revised policies upon enactment of the proposed Administrative Rules as follows:

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

Other policies have been incorporated into the proposed Administrative Rules and can be repealed upon enactment of the proposed Administrative Rules as follows:

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills
- Criteria for Retaining Foreclosed Property
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells

The Board repealed a policy on August 30, 2018 titled Railroad Rights-of-Way Ownership. It was later determined that a Board policy would be helpful in memorializing the position of the Board concerning Abandoned Railroad Right of Way Ownership and the attached proposed policy was created.

The first reading of the policies was held at the November 24, 2020 meeting. The Commissioner is requested the Board provide input on the proposed revised North Dakota Board of University and School Lands policies. Additionally, an open comment period was held, and no comments were received.

Motion:

(1) Effective, January 1, 2021, the Board repeals the proposed North Dakota Board of University and School Lands:

- Chapter 15-09 Sales Policy
- Sale of State Land for Landfills Policy
- Criteria for Retaining Foreclosed Property Policy
- Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells Policy

(2) Effective January 1, 2021, the Board adopts the proposed North Dakota Board of University and School Land:

- Land Retention and Sales Policy, to become Limited Land Sales Policy
- Acquired Properties Management, to become Non-Grant Land Acquired After January 1, 2020 Through Foreclosure or Deed in Lieu of Foreclosure

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		

Board of University and School Lands Limited Land Sales Policy, Board of University and School Lands Non-Grant Land Policy, and Board of University and School Lands Abandoned Railroad Right of Way Ownership documents were presented to the Board and are available from the Department upon request.

S U R F A C E

Approval of Fall Surface Auction Leases

The 2020 fall lease auctions were completed online with EnergyNet in October. Subsequent tracts qualifying for the Department of Trust Lands (Department) tie bidding policy and tracts appealed to the Board of University and School Lands (Board) were completed December 9, 2020. The following

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table is a summary of the fall lease results as compared to the two previous fall auction seasons of 2017 and 2019. 2018 was our “off” year occurring every 5th year of the lease cycle.

	2017	2019	2020
Number of counties	40	34	36
Total tracts offered	891	1146	1039
Number of tracts bid unleased	37	78	43
Lease success rate	95.8%	93.2%	95.9%
Number of tracts bid-up	115	146	208
Competitive bidding rate	12.9%	12.7%	20%
Total amount of minimum advertised bids	\$1,689,266	\$2,546,925	\$2,001,193
Total amount received	\$1,875,340	\$2,418,748	\$2,330,000
Total amount collected over minimum bid	\$238,381	\$128,177	\$328,807

With the Board’s approval of leases today the Department will process the lease documents for the lessees.

The bidders for the following tract in McLean County are requesting the Board not approve the lease as bid:

<u>Description</u>	<u>Bidders</u>	<u>Acres</u>	<u>Minimum Bid Per Tract</u>	<u>Amount Bid Per Tract</u>
T149N, R82W Sec 25: SE4	Rick Bernier Stephen Kranz	160	\$1,287	\$5,787

N.D.C.C. Section 15-04-10 provides:

15-04-10. Leasing to be by auction - Requirements governing.

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

If there are tracts for which no bids are received, tracts for which payment is not received by December 31, 2020, and tracts for which leases are not approved by the Board, those tracts will be offered for lease at the spring auction in 2021.

Motion:

- (1) The Board approves the 993 surface leases resulting from the fall 2020 surface lease auctions.**
- (2) The Board does not approve the bids for the following tracts for a total of \$11,975.00: T147N, R82W Section 28: NE4, NW4 and T149N, R82W Section 25: SE4.**

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		

I N V E S T M E N T S

Fixed Income – Direct Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

Department of Trust Lands Staff (Staff) and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK's database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve an additional allocation to Angelo Gordon in their new AG Direct Lending Fund IV. Angelo Gordon has a strong track record in middle market lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Angelo Gordon is an investment manager headquartered in New York with offices globally. Founded in 1988, Angelo Gordon is employee owned with over \$35 Billion in assets under management and over 200 investment professionals.

Motion: The Board approves a \$100 Million investment with Angelo Gordon in the AG Direct Lending Fund IV, LP, (onshore levered vehicle) subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation Memo and AG Direct Lending Fund IV Presentation were presented to the Board and are available from the Department upon request.

Fixed Income – Asset-Based Lending Manager

During its October 29, 2020 meeting, the Board of University and School Lands' (Board) approved changes to the Fixed Income Asset Allocation for the Permanent Trust Funds (PTFs). Among the approved changes was the additional investment to Private Credit. Staff and RVK recommended reducing both core bond holdings and using part of the cash from the Brandywine liquidation to fund two new Private Credit strategies.

The current low interest rate environment is expected to persist for quite some time, as such, Department of Trust Lands Staff (Staff) and RVK believe it is prudent to increase the PTFs' allocation to Private Credit. Certain Private Credit strategies, such as asset-based lending, have an attractive risk/return profile and a low default/loss track record. Asset-based lending involves

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investing in large, diversified portfolios of assets that generate contractual cash flows. These asset portfolios generally consist of; loans, leases and receivables.

Staff and RVK began the manager search by compiling a list of top performing Private Credit managers within RVK’s database. Staff and RVK reviewed the performance and risk history of each manager, along with fees, asset quality, asset characteristics and investment structures. Staff and RVK interviewed managers to review their investment strategies and investment processes.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve a new allocation to Ares Management in their asset-based lending fund: Ares Pathfinder Fund. Ares Management has a strong track record in asset-based lending, with a diligent underwriting process and strong portfolio characteristics that Staff and RVK felt would well suit the PTFs.

Ares Management is an investment manager headquartered in New York with over 25 offices around the world. Ares Management is an alternative investment manager with over \$165 Billion in assets under management and nearly 500 investment professionals.

Motion: The Board approves a \$100 Million investment with Ares Management in the Ares Pathfinder Fund, subject to final review and approval of all legal documents by the Office of the Attorney General.

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

RVK Recommendation and Ares Pathfinder Fund Presentation were presented to the Board and are available from the department upon request.

Securities Litigation Update – Financial Recovery Technologies

Craig D’Alessio and Andrew Lasky from Financial Recovery Technologies (FRT) will provide the Board of University and School Land’s (Board) an update on securities litigation and recoveries in the Permanent Trust Funds (PTFs).

On August 30, 2018 the Board directed the Commissioner to enter into an agreement with FRT to provide comprehensive securities litigation and antitrust monitoring, and claims filing services on behalf of the Board. FRT is a technology-based services firm that helps institutional investors identify litigation eligibility, file claims and collect funds made available in shareholder class action and antitrust settlements.

Since early 2019 FRT has been monitoring the PTFs’ securities litigation and filing claims on behalf of the Board. FRT has filed 53 claims and has so far recovered \$26,793.28 for the PTFs (\$30,446.91 gross received less \$3,653.63 in fees to FRT).

GROSS AMOUNT RECEIVED	FRT FEES	NET TO CLIENT
\$30,446.91	\$3,653.63	\$26,793.28

FRT Securities Litigation Presentation was presented to the Board and is available at the department upon request.

Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement

Senate Bill 2001 of the Sixty-Sixth Legislative Assembly created a \$50 million endowment, the Theodore Roosevelt Presidential Library and Museum Endowment Fund (Fund), for the proposed Theodore Roosevelt Presidential Library and Museum. The Governor may provide grants to a private entity if, among other things, \$100 million in private donations is first raised for construction of the library and museum. The Fund's earnings will be used for operations and maintenance of the library and museum once the Theodore Roosevelt Presidential Library Foundation has raised or secured binding pledges for \$100 million.

The Agreement provides in Section 1: "At such time as the Foundation has received the sum of one hundred million dollars in cash donations and binding pledged donations for the construction of the Library and Museum in North Dakota and for grants to affected entities, the Foundation will issue a certification to the Governor, using the form of certification, substantially set forth in Exhibit A, as required under the Act. Upon receipt of this certification, the Governor shall notify the Land Board."

Attached is the notification provided to the Board of University and School Lands as required in the Agreement.

Governor Notification was presented to the Board and is available upon request.

OTHER

Commissioner Annual Review

As Commissioner and Secretary for the Board of University and School Lands (Board), I am fully committed to the Board and the Department of Trust Lands (Department) vision to be known nationally for superior management of its assets and programs. This will be met through the following shared values:

Communication: We develop and maintain positive relationships, facilitating the open exchange of ideas, opinions and information.

Leadership & Teamwork: We encourage and motivate each other to accomplish goals through collaboration and cooperation across the Department.

Customer Service: We listen and respond effectively to our customers to provide professional and efficient service.

Transparency: We strive to be open, honest, upfront and visible in our actions.

Trust: We foster a high-trust culture that supports a rewarding, healthy, and meaningful work environment for employees.

As Commissioner, over the course of the past three years, there has been significant progress made at the Department. Just 10 days after my term began an employee survey was sent to all Department team members. This employee survey highlighted significant discord within the Department that was presented to the Board in March 2018 with a plan to address the issues. In May 2018, the Board was presented with the Commissioner's annual review which highlighted the course and goals for the upcoming six-months:

Over the course of the next six months, my focus will be to reevaluate the organizational structure and outline strengths and weaknesses of the current organizational structure including the origin of current strengths or weaknesses that could influence capacity to achieve future innovation.

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Additionally, the Board was presented with a Strategic Plan with five goals:

- 1) Customer Service
- 2) Mission Integration
- 3) Land & Mineral Management
- 4) Unclaimed Property
- 5) Investments

In December 2018, the Board was presented with the results of the 2018 Employee Survey which demonstrated a significant improvement over the 2017 Employee Survey results and highlighted the Commissioner's and Department Leadership's focus on: (1) Technology, Tools & Workflow; (2) Teamwork, and; (3) Leadership.

In June 2019, the Board was presented with the Commissioner's annual review highlighting the Department's success in implementing Department policies, reviewing and updating all Board policies, implementation of Administrative Rules, implementation of IT systems for Unclaimed Property and the procurement of additional systems, and improved departmental culture. I also made a commitment to the Board to continue to discover creative solutions, evaluate possibilities and provide a deep mindshare on collaborated and collegial decisions. The 2019, a strategic plan was developed to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders were working toward common goals, establish agreement around intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment. With our focus on the future, this strategic plan has been a disciplined and a collaborate effort resulting in fundamental decisions and actions that have shaped and guided the Department in who it serves, what it does, and why it does it. The Department has worked to align ongoing activities and processes to systematically coordinate and align resources and actions with the mission, vision and strategy throughout the Department. These activities and processes have transformed the static plan. It is now a system that provides strategic performance feedback to decision making and enables the plan to evolve and grow as requirements and other circumstances change. This is illustrated in the attached document which outlines a multi-phase approach to implementing the Department's strategic plan.

In June 2020, the Board was presented with the Commissioner's annual review illustrating the multi-stage approach to implementing the Department's multi-year strategic plan:

Phase 1: Envision - Set the foundations of the Department to build upon and generate initial cost savings.

Phase 2: Foundation - Improve level of maturity and reach next level of efficiency and cost-savings.

Phase 3: Advance - Improve the level of maturity and address most complex components of the transformation.

Phase 4: Transform - Wrap up transformation and fine-tune last details.

As the Commissioner, I am taking a direct role in working with the divisions within the Department to capitalize on our capabilities and resources; thus, improving the effectiveness of the Department. Specifically, I am committed to cultivating and analyzing talent management leadership within the Department. While continuing to deliver our core services, the Department has made significant progress in fulfilling a wide range of responsibilities.

In August 2020, the Department's Strategic Plan for the 2021-23 biennium was presented to the Governor's Office, OMB, and Legislative Council during a budget planning session. This plan was developed by the Department's leadership team through an intensive two-day planning session lead by a facilitator. The resulting document will lead the Department's efforts for the next two years.

In the upcoming year, there will be a heightened focus on implementation of new information technology systems for the Accounting, Investments and Revenue Compliance Divisions. This will include the capability to accept online payments. These changes will require strong leadership to implement the necessary systematic changes to ensure efficiencies are created and the systems are built upon the future and not legacy systems of the past. Over the course of the next year, I will continue to focus on goal achievement while maintaining a consistent high standard in quality of work completed. As the agency pacesetter, I will continually strive to discover creative solutions, evaluate possibilities and provide deep mindshare on decisions made. It is important that I continue to cultivate the resources and tools the team requires to assist them in prioritizing tasks, making decisions, and practicing good quality control.

As the Commissioner I strive to effectively prioritize the most urgent tasks and decisions. When a difficult decision is required, I evaluate the positives and negatives against possible outcomes to make an informed decision. When analyzing a problem, I will continue to define the central issue, identify the constraints to the problem, research and identify all the relevant alternatives and develop an implementation plan with area expertise. Over the course of the upcoming year, I will work with each Board member to ensure their individualistic contributions are recognized and effectively communicated to ensure professional and personal growth. Finally, as the Commissioner, I will work responsively with each Board member's unique strengths and insights. Their integral contributions contribute to developing my leadership so collectively we accomplish our goals using the highest standards of ethics, professionalism transparency, fairness and responsiveness towards those we serve.

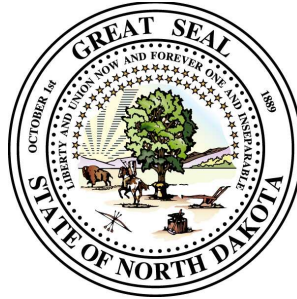
I want to thank the Department staff for their generous support, willingness to collaborate, and flexibility in promoting value and growth within the Department. Their skills and dedication are recognized as fundamental to all successes.

I also want to thank the Board members for their guidance and feedback. I commit to you to remain inquisitive with the aim of promoting discussion and adoption of best practices.

Commissioner annual review power point was presented to the Board and is available from the department upon request.

North Dakota Board of University and School Lands Resolution

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



ADOPTED
December 17, 2020

WHEREAS, Treasurer Kelly Schmidt began serving on the Board of University and Trust Lands in 2005; and

WHEREAS, Treasurer Schmidt has faithfully served on the Board of University and School Lands' on countless issues related to prudent and professional management of the Board-managed trust assets; and

WHEREAS, through hard work and diligence, Treasurer Schmidt's many accomplishments and efforts have greatly benefited the citizens, most notably the school children, of North Dakota; and

WHEREAS, Treasurer Schmidt is recognized statewide, and beyond, for her contribution to the Board; and

WHEREAS, Treasurer Schmidt has been a staunch proponent of the permanence, autonomy and revenue producing potential of the trusts; and

WHEREAS, these many years of service deserve recognition and gratitude;

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

Kirsten Baesler
Superintendent of Public Instruction

Alvin A. Jaeger, Secretary of State

Wayne Stenehjem, Attorney General

Chairman Doug Burgum, Governor

M I N E R A L S

Determination of Cottonwood Lake Navigability, Williams County

The Department of Trust Lands (Department) received a written request addressed to the North Dakota State Water Commission and the Commissioner of the Board of University and School Lands (Board) from Kraken Oil & Gas II, LLC, dated November 15, 2019, requesting the State “either disclaim ownership based on non-navigability, or, if your initial determination is that the lake may be navigable, to commence proceedings pursuant to the newly adopted provisions in NDCC Chapter 61-33.”

The Sixty-Sixth Legislative Assembly passed House Bill 1202, an act to create and enact a new section to chapter 61-33 of the North Dakota Century Code, relating to determinations of navigability; to amend and reenact section 61-33-01 and subdivision e of subsection 3 of section 61-33.1-03 of the North Dakota Century Code, relating to sovereign land management definitions; and to provide for a state engineer review of determinations of navigability.

Under N.D.C.C. § 61-33-02, “[a]ll sovereign lands of the state must be administered by the state engineer and the [Board] subject to the provisions of this chapter.” Under N.D.C.C. § 61-33-06, the Board “shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.” Under N.D.C.C. § 61-33-05, the State Engineer is tasked with making navigability determinations.

The State Engineer has determined:

The State Engineer has no evidence that this waterbody was navigable for the purpose of state title at the time of statehood. Based on current available records, the State Engineer does not presently assert that the land underlying this property constitutes sovereign land, and unless additional evidence of navigability becomes available, the State Engineer and the Board of University and School Lands disclaim title to any portion of the below described property inundated by Cottonwood Lake:

**Section 18 in Township 159 North, Range 98 West, Sections 13,
14, 22, 23, and 24 in Township 159 North, Range 99 West,
Williams County.**

Motion: The Board authorizes the Commissioner to sign the Affidavit Disclaiming Title to Cottonwood Lake in Williams County with further review from the Attorney General’s Office.

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

Affidavit Disclaiming Title for Cottonwood Lake was presented to the Board and is available from the department upon request.

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Repayment of Royalties

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

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

A memo was provided to the Board at its October 29, 2020 meeting regarding prior royalty payor communications. The Board requested at that meeting the topics discussed be revisited during a future executive session meeting.

LITIGATION

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

Date Filed: June 11, 2019

Court: McKenzie County District Court

Judge: Robin Schmidt

Attorney: David Garner

Opposing

Counsel: Lawrence Bender, Spencer Ptacek

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

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

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scheduling conference for January 22, 2020 at 11:15 a.m. Notice of Court Trial was issued on January 23, 2020, setting a three day court trial for April 20, 2021. On February 20, 2020, the Court issued its scheduling order setting all case deadlines. On October 1, 2020, Defendant Oasis Petroleum North America LLC filed a Suggestion of Bankruptcy for Oasis Petroleum Inc. and Certain of its Affiliates and Notice of Automatic Stay of the Proceedings, stating a bankruptcy petition was filed on September 30, 2020.

Current Status:

- On November 20, 2020, Plaintiffs provided the parties with a proposed Stipulation for Dismissal with Prejudice for review.
- All parties stipulated to dismissal and on November 30, 2020, the Court entered its Order of Dismissal dismissing the action with prejudice

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

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

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

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

Current Status:

- On November 5, 2020, the Court entered the Order Granting Defendants' Unopposed Motion for Extension of Time to File Answer or Otherwise Respond to Plaintiff's Complaint.
- Stipulation of the parties for Dismissal under N.D.R.Civ.P. 41(a) and Order of Dismissal filed December 14, 2020.

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

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Judge: Robin Schmidt
Attorney: David Garner/Jennifer Verleger
Opposing Counsel: Whitetail Wave – Christopher Sweeney; XTO Energy – Lawrence Bender

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

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

History: Due to the passage of S.B. 2134, the Court ordered the case stayed and all deadlines be held in abeyance until the final review findings under S.B. 2134 are issued by the Industrial Commission. The Board and State Engineer filed a Motion for Continued Stay of Proceedings on October 19, 2018 and XTO filed a Response in Support of Continued Stay on October 26, 2018. On November 5, 2018, the Court entered its Order for Continued Stay of Proceedings, staying the proceedings, holding all deadlines in abeyance, and ordering that upon final disposition of the Sorum lawsuit the parties will request a status conference to schedule a new trial date and reset other deadlines. The continued stay was affirmed on November 27, 2018. On September 30, 2020, the District Court scheduled a Telephonic Status Conference for October 6, 2020. On October 6, 2020, Spencer Ptacek filed a Notice of Appearance on behalf of XTO. On October 7, 2020, the District Court scheduled a pretrial conference for August 10, 2021, and scheduled a five day, six person jury trial for August 16-20, 2021. On October 22, 2020, the Board of University and School Lands and State Engineer filed their Motion to Dismiss and Supporting documents.

Current Status:

- On November 5, 2020, Plaintiff filed a Notice of Hearing on the Board of University and School Lands and State Engineer's Brief in Support of Motion to Dismiss for 9:00 a.m. on December 3, 2020, at the McKenzie County Courthouse, Watford City, ND. Also filed was Whitetail Wave LLC's Response to State's Motion to Dismiss.
- On November 12, 2020, the Board of University and School Lands and State Engineer's Reply Brief in Support of Motion to Dismiss was filed.
- Also on November 12, 2020, the Response to the State Defendants' Motion to Dismiss was filed by XTO.
- On November 30, 2020, Plaintiff filed a Request to Appear Telephonically at the December 3, 2020 hearing. The Court entered its order that date allowing all parties to appear telephonically without further motion.

Case: **EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust v. State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota; Case No. 1:20-cv-00219-CRH**

Date Filed: December 1, 2020

Court: United States District Court

Judge: Magistrate Judge Clare R. Hochhalter

Attorney: David Garner

Opposing

Counsel: Joshua Swanson

Issues: On December 1, 2020, EEE Minerals, LLC, and Suzanne Vohs as Trustee for The Vohs Family Revocable Living Trust (Plaintiffs) filed a Complaint against State of North Dakota, the Board of University and School Lands of the State of North Dakota; and Jodi Smith as Commissioner for the Board of University and School Lands of the State of North Dakota (Defendants). The Complaint seeks a declaratory judgment that the N.D.C.C. § § 61-33.1-01 to 61-33.1-05 is preempted by federal law and violates the Constitution and the laws of the United States; an order enjoining Defendants from claiming ownership of the property by virtue of North Dakota law in violation of the Vohs Trust and EEE Mineral's rights secured by the laws of the United States and the United States Constitution; damages to the Vohs Trust and EEE Minerals in the amount equal to damages proven at trial; reasonable attorneys fees and costs pursuant to 42 USC § 1988; and other relief the Court deems just and equitable.

History:

Current Status:

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, 8th Circuit

Judge: Honorable Daniel Hovland

Attorney: Charles Carvell, David Garner, 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 public domain lands underlying Continental operated wells located in McKenzie, Mountrail, and Williams Counties. This case involves a disagreement between the State and United States over the location of the ordinary high watermark—and consequently title to underlying minerals—on federally owned land along the now inundated historic Missouri River. Continental is requesting the Court determine title to 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.

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History: 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 that the interpleader action is moot under S.B. 2134.

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 reply on March 16, 2018. The Board filed a Surreply to the Motion to Dismiss on April, 16, 2018. The Order Denying the United States' Motion to Dismiss for Lack of Subject Matter Jurisdiction was entered on December 31, 2018. The Order provided that North Dakota and the United States confer and submit a proposed scheduling order to the Court no later than sixty days from the date of the order. On January 8, 2019 the United States filed its Motion to Stay Action Due to Lapse of Appropriations. On January 10, 2019, the Court granted the United States' Motion and cancelled the January 24, 2019 scheduling conference. The Order stated the "action is stayed until [federal] appropriations are restored and Department attorneys and the Bureau of Land Management personnel are permitted to resume their usual civil litigation functions." The United States filed a Notice of Restoration of Appropriations on January 28, 2019, which requested the Court set a new scheduling conference date. On January 30, 2019, the Court issued an order granting the motion for scheduling conference, requiring the parties submit a revised scheduling/discovery plan by March 15, 2019, and setting a telephonic scheduling conference for 10:00 a.m., March 18, 2019. The parties filed a Joint Motion for Extension of Time to File Scheduling Proposal and Participate in Scheduling Conference on March 12, 2019. The Court entered an Order granting the extension to April 12, 2019 and a scheduling conference was reset for April 15, 2019. The Scheduling Conference was held on April 15, 2019. On June 14, 2019, the Board of University and School Lands filed its Amended Answer to Amended Complaint with Statement of Claim. By August 13, 2019, the United States shall shall assert its claims, if any, to the disputed stake. After the August 13, 2019 filing, the proceedings will be stayed until September 19, 2019 or another date set by the Court. During the stay, the United States and the Board are to discuss whether the dispute that gave rise to the litigation can be resolved. By no later than September 19, 2019, the United States and Board shall inform the Court of the status of their discussions and the Court will consider a schedule for the case. A Status Conference was set for September 20, 2019 before Magistrate Judge Clare R. Hochhalter. On August 1, 2019, the Status Conference previously set for September 20 was reset to October 11, 2019 at 10 a.m. before Magistrate Judge Clare R. Hochhalter. On August 13, 2019, the United States filed a Motion for Extension of Time to Plead and Assert Affirmative Claims and the Motion was granted on the same day, giving the United States until August 27, 2019 to file. The United States filed their Answer to Amended Complaint on August 27, 2019. On October 3, 2019, Defendants filed a joint motion and memornadum for postponement of the October 11, 2019 status conference by 90 days. On October 4, 2019, the Court entered an Order granting the motion to continue status conference. Status conference was reset to January 13, 2020, at 9 a.m. via telephone before Magistrate Clare R. Hochhalter. United States Department of Justice advised it will be working with the United States Department of Interior – Bureau of Land Management regarding a settlement proposal. On November 8, 2019, the Board received an email from the US DOJ in response to the Board's request that the federal government start settlement discussions by making a proposal to the Board. The email states the federal government believes its OHWM

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surveys are accurate, and cited N.D.C.C. § 61-33.1-06, which states: “Notwithstanding any provision of this chapter to the contrary, the ordinary high water mark of the historical Missouri riverbed channel abutting . . . public domain lands . . . must be determined by the branch of cadastral study of the [BLM] in accordance with federal law.” Relying on this statute, US DOJ suggests that the federal surveys are presumptively accurate, and then states: “we respectfully suggest that the best and most appropriate path forward would be for representatives of North Dakota to identify the specific areas where it believes the agency erred in identifying the OHWM and proffer the evidence on which it bases that belief. BLM would then assess that evidence in good faith to ascertain if a compromise, aimed at reducing litigation risk, is possible.” Status conference was held January 13, 2020 and another status conference was set for April 7, 2020.

Current Status:

- On April 7, 2020, an Order RE: Briefing Scheduled was issued by the court setting the following deadlines: Motions for Summary Judgment due simultaneously on May 7, 2020; Responses are due June 5, 2020; and Replies are due June 12, 2020.
- On December 8, 2020, the Court issued its Order Granting the United States’ Motion for Partial Summary Judgment.

The Commissioner recommends the Board consider entering executive session for consultation with legal counsel regarding pending and potential litigation. Executive session began at 11:03 AM.

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:

- **Repayment of Royalties**
- **Whitetail Wave**
- **EEE Minerals Case No. 1:20-cv-00219**
- **Continental Resources Case No. 1:17-cv-00014**

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		

EXECUTIVE SESSION

Members Present:

Doug Burgum	Governor
Alvin A. Jaeger	Secretary of State
Wayne Stenehjem	Attorney General
Kirsten Baesler	Superintendent of Public Instruction via Teams
Kelly Schmidt	State Treasurer

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Catelin Newell	Administrative Staff Officer

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Kristie McCusker
Adam Otteson
David Shipman

Paralegal
Revenue Compliance
Minerals Division Director via Microsoft Teams

Guests in Attendance:

Leslie Bakken Oliver
Dave Garner
Charles Carvell
Jen Verleger

Governor's Legal Counsel
Office of the Attorney General
Office of the Attorney General (Continental Interpleader only)
Office of the Attorney General

The executive session adjourned at 11:53 AM 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 Repayment of Royalties, Whitetail Wave, EEE Minerals, and Continental Interpleader.

A D J O U R N

There being no further business, the meeting was adjourned at 11:55 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands