

**Minutes of the Meeting of the
Board of University and School Lands
December 21, 2021**

The December 21, 2021 meeting of the Board of University and School Lands was called to order at 9:01 AM in the Governor's Conference Room of the State Capitol and via Microsoft Teams by Chairman Doug Burgum.

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kate Schirado	Administrative Assistant
Christopher Dingwall	Minerals Title Specialist
Dennis Chua	Investments
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
James Wald	Legal Council
Scott Giere	Revenue Compliance
Catelin Newell	Administrative Staff Officer
Rob Dixon	ITD
Chris Suelzle	Minerals Division Director
Matthew Reile	ITD Data Management Intern
Kayla Spangelo	Surface Range Soils Management Specialist

Guests in Attendance:

Dave Garner	Office of the Attorney General
Jennifer Verleger	Office of the Attorney General
Charles Carvell	Office of the Attorney General
Mike Nowatski	Office of the Governor
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Geoff Simon	Western Dakota Energy Association
Amy Sisk	Bismarck Tribune
Janet Guarberg	Apollo Global
Akila Grewal	Apollo Global
John Zito	Apollo Global
Ellie Shaw	Apollo Global
Drew Guyette	Angelo Gordon
Trevor Clark	Angelo Gordon
William P. Cullinan	Angelo Gordon
Austin Head-Jones	RVK
Josh Kevan	RVK

(12/21/21)

Joe Ebisa
 Brady Pelton
 Craig Smith
 Gary Hagen
 Eric Ocwieja

Journalist
 NDPC
 Crowley Fleck

APPROVAL OF MINUTES

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

REPORTS

Right of Way R-8974			
Granted To	Paragon Geophysical Services Inc, Wichita, Kansas		
For the Purpose Of	Original Permit - Geophysical Operation		
Initial Payment	\$12,800.00	Permanent Rods	0.00
Date Issued	11/10/2021	Permanent Acres	0.00
Surface Tracts/Trusts			
Legal Description			Trust
Mercer-141-88-36-SW4			A
Oliver-141-86-36-NW4			A
Oliver-142-85-30-E2NW4, LOTS 1,2			A
Oliver-142-86-36-NE4, SE4			A
Oliver-142-87-16-SE4, SW4			A
Oliver-143-86-26-NW4			D
Right of Way Terms			
Financial Type			Payment Amt
Application Fee	Set Amount	\$250.00	
Initial	Set Amount	\$12,800.00	

Total Initial Payment Amount \$12,800.00

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

For the month of November 2021, the Division received 179 holder reports with a property value of \$1,989,555 and paid 309 claims with a total value of \$901,650.

The Financial Report (Unaudited) for period ending September 30, 2021 was presented to the Board for review and is available at the Department upon request.

Investment Updates

Portfolio Rebalancing Updates

Since the November Board meeting, several capital calls were executed or are scheduled to be executed within 30 days:

- Angelo Gordon DL IV \$17.5M
- Ares Pathfinder \$10M
- GCM Private Equity, \$5.1M
- GCM Secondary, \$29M on 12/15
- JPM Infrastructure, \$130M on 1/3/22
- Harrison Street Core Property, \$60.6M on 1/5/22

When all capital calls are made, unfunded commitments will stand at \$573.7M. These are:

1. Apollo Accord Fund, \$84.8M
2. Varde Dislocation Fund, \$42.5M
3. GCM Private Equity, \$110M
4. ARES Pathfinder Fund, \$64.5M
5. Angelo Gordon DL IV, \$25M
6. Owl Rock Diversified Lending, \$56.5M
7. GCM Secondary Opportunities Fund, \$121M
8. Harrison Street Core Property Fund LP, \$69.4M

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Dec.14, 2021. The figures provided are unaudited.

(12/21/21)

By January 5, 2022, the Transition Account will be reduced to \$351M once all capital calls listed above are funded.

As of December 14, 2021	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,205,887,836.15	19.7%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,111,502,172.45	18.2%	19.0%	14.0%	24.0%
Fixed Income	1,426,297,285.71	23.3%	22.0%	17.0%	27.0%
Transition Account	570,771,509.62	9.3%	0.0%	-5.0%	5.0%
Absolute Return	863,971,833.91	14.1%	15.0%	10.0%	20.0%
DIS	-	0.0%	0.0%	-5.0%	5.0%
Real Estate	839,841,995.00	13.7%	15.0%	10.0%	20.0%
Private Equity (Grosvenor)	21,131,648.31	0.3%	5.0%	0.0%	10.0%
Private Infrastructure (JPM-Infra)	-	0.0%	5.0%	0.0%	10.0%
Opportunistic Investments (Varde & Apollo)	80,533,743.00	1.3%	0.0%	-5.0%	5.0%
Portfolio Total	6,119,938,024.15	100.0%			

ENERGY INFRASTRUCTURE AND IMPACT

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 4 grants with a balance of \$297,596.76 as of December 7, 2021. The following shows grant activity for the last six months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
6/7/2021	9	\$972,069.49
9/7/2021	6	\$794,932.56
12/7/2021	4	\$297,596.76

INVESTMENTS

March Investment Reports – 3rd Quarter 2021

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

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

Next, Josh will touch on the performance of the Ultra-Short portfolio in which the Strategic Investment and Improvements Fund, the Coal Development Trust Fund and the Capitol Building Fund are invested.

RVK Permanent Trust Fund Performance Analysis Report was presented to the Board for review and is available at the Department upon request.

Apollo Defined Return Fund

Over the last several months the Department of Trust Land's Staff (Staff) has reviewed options for generating greater returns in the fixed income asset class and to reduce the transition account balance. The first issue is well known given the ultra-low interest rate environment that prevails globally. The issue is compounded by the fact that most higher yielding private credit funds are closed-end, limited term funds that begin making distributions within a few months or a year after initial investment. This return of capital creates reinvestment risk, the risk of having to reinvest distributions at lower returns until a sufficient amount is accumulated to make a meaningful investment in a new or follow-on private credit fund.

The second issue of expediting the investment of capital in the transition account is related to the lack of capital calls within the opportunistic investment asset class and the slow pacing of calls in private equity and private infrastructure asset classes. In the last few months, we have sought to partially address these issues by adding a second private infrastructure manager and adding a private equity secondaries fund. Nevertheless, there will continue to be a slow pacing of private equity primary investments.

To address these issues Staff has engaged one of its best in class fixed income managers to customize a solution for the Permanent Trust Funds (PTFs). Apollo has agreed to create a new fund with an initial seed investment of \$200 million, under highly favorable fee terms to the PTFs as the founding investor. Further, it's proposed that as distributions are made to the PTFs from its prior investment, those amounts will flow into the new fund, thus allowing for continuously investment with little cash drag and reinvestment risk.

Apollo is one of the best performing private credit managers and a top manager within RVK's database, and highly regarded by RVK's fixed income research team. Through June 30th this year Apollo Accord Fund IV has generated 11.24% net return in 2021 and 18.29% since inception 10/1/2020. The new fund has a target annual return of 8-12%. The PTFs made a \$100 million commitment to Fund IV, of which less than \$20 million has been called.

Motion: The Board approve a \$200 Million investment in the Apollo Defined Return Fund and allow for all distributions from the investment in Apollo Accord Fund IV to be reinvested into the Apollo Defined Return 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		
Treasurer Beadle		X	X		
Attorney General Stenehjem					
Governor Burgum					

RVK Recommendation Memo and Apollo Defined Return Fund Presentation were presented to the Board for review and are available at the Department upon request.

Angelo Gordon Direct Lending Separately Managed Account

Over the last several months the Department of Trust Land's Staff (Staff) has reviewed options for generating greater returns in the fixed income asset class and to reduce the transition account balance. The first issue is well known given the ultra-low interest rate environment that prevails globally. The issue is compounded by the fact that most higher yielding private credit funds are closed-end, limited term funds that begin making distributions within a few months or a year after initial investment. This return of capital creates reinvestment risk, the risk of having to reinvest distributions at lower returns until a sufficient amount is accumulated to make a meaningful investment in a new or follow-on private credit fund.

The second issue of expediting the investment of capital in the transition account is related to the lack of capital calls within the opportunistic investment asset class and the slow pacing of calls in private equity and private infrastructure asset classes. In the last few months, we have sought to partially address these issues by adding a second private infrastructure manager and adding a private equity secondaries fund. Nevertheless, there will continue to be a slow pacing of private equity primary investments.

To address these issues Staff has engaged one of its best in class fixed income managers to customize a solution for the Permanent Trust Funds (PTFs). Angelo Gordon has agreed to create a separately managed account (SMA) with an initial investment of \$50 million, under the same fee terms as our current investment in their funds. Further, as distributions are made to the PTFs out of the existing funds, those amounts will flow into the SMA, thus allowing for continuously investment with little cash drag and reinvestment risk. Eventually, all of the PTFs' direct lending investment with Angelo Gordon will reside in the SMA and will receive the appropriate fee breaks.

Angelo Gordon is one of the best performing direct lending investment managers and a top manager within RVK's database, and highly regarded by RVK's fixed income research team. Through June 30th this year AG Direct Lending Fund III has averaged 9.89% net return per year since inception 9/1/2018. The Fund IV should deliver similar results, although it is currently too new to have meaningful results. The PTFs made a \$150 million commitment to Fund III and a \$100 million commitment to Fund IV.

Motion: The Board approve an initial \$50 Million investment with Angelo Gordon's direct lending platform in a separately managed account, and allow for all distributions from previous investments with Angelo Gordon's direct lending funds to be reinvested into the separately managed account; 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		
Superintendent Baesler	X		X		
Treasurer Beadle		X	X		
Attorney General Stenehjem			X		
Governor Burgum			X		

RVK Recommendation Memo and AG Direct Lending SMA Presentation were presented to the Board for review and are available at the Department upon request.

O P E R A T I O N S

Cash Management

On November 29, 2021, the Board of University and School Lands (Board) informally requested a review of the Department of Trust Land's (Department) cash management by Department Staff (Staff). Staff reviewed the four primary account categories within the Department: Common Schools' Trust Fund (CSTF) account, other Permanent Trust Funds' (PTFs) accounts, Unclaimed Property (UP) account, and the appropriated accounts (Strategic Investment and Improvement Fund, Capitol Building Fund and Coal Development Trust Fund accounts).

The CSTF is required to make regular monthly payments to the Department of Public Instruction (DPI) during the school year. The CSTF account generally holds an amount that represents between 2 and 3 months of cash owed to DPI at the Bank of North Dakota (BND). BND has agreed with the Department to pay a rate of interest equivalent to the rate paid by Northern Trust's (NT) money market fund. The 2 and 3 months of cash holdings reflects the Staff's long held view of the prudent amount to retain in case of significant economic stress. This view was vindicated in 2020 when the CSTF revenues dropped precipitously, and the cash amount at BND was drawn down to just over one month's amount.

The other PTFs are treated differently than CSTF, because unlike CSTF, the other PTFs only make one annual payment to the beneficiaries in January of each year. As such, the accounts are limited to a target of 1/12 portion of the annual payment each month. As the year progresses the cash amount in the accounts increase by a targeted maximum of 1/12 per month. So that by January of the following year there would be enough to make its annual payment. This limits the amount of cash accumulated in the other PTFs' accounts at any point in time.

[The holdings in the PTF transition account related to the significant changes in the strategic asset allocation was not considered here due to its transient nature, and its investment in short-term bonds.]

The UP account has a Department policy range of \$1.5 million to \$2.5 million. This reflects the experience of the UP Division's cash needs on a monthly basis. The Staff reviews its policies the January after each legislative session, including the UP cash policy range. During the review of policy, the actual monthly distribution experience of UP Division is used to confirm the appropriate policy range.

The appropriated accounts all hold cash in amounts reflective of the outstanding appropriations made by the State Legislature. Excess cash above the appropriated amounts are invested in short-term bonds at NT in the Ultra-Short account. In addition, the Department may invest additional cash in the Ultra-Short account, to the extent that it is informed by the Office of Management and Budget that a particular appropriation may not be called for some time. Unfortunately, there is typically little visibility with regard to cash calls under these appropriations, which means the most prudent course is to hold the cash at BND, earning money market returns.

L I T I G A T I O N

Whitetail Wave Litigation

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

(12/21/21)

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. 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 January 4, 2021, Whitetail Wave filed its Surreply to State's Motion to Dismiss. On January 19, 2021 the Board of University and School Lands and State Engineer filed their Response to Whitetail Wave's Surreply Regarding State's Motion to Dismiss. On April 13, 2021, the Court entered its Order on State's Motion to Dismiss, denying the State's Motion.

Current Status:

- **On May 13, 2021, a status conference was scheduled for May 20, 2021. That conference was held and the 6 person jury trial was rescheduled from August 2021 to December 13-17, 2021, in Watford City.**

- On June 11, 2021, the Notice of Rescheduled trial was received setting deadlines for pretrial conference statement and dispositive motions. Also set the pretrial conference for December 3, 2021.
- On October 12, 2021, the Department of Water Resources filed a Notice of Agency Name Change.
- On October 14, 2021, Defendants filed their Motion for Summary Judgment.
- On November 3, 2021, a status conference hearing was scheduled for November 4, 2021 at 1 p.m.
- On November 15, 2021, Board and Department of Water Resources filed their Response Brief Opposing Plaintiff's Motion for Partial Summary Judgment; XTO filed responses to the Board's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment; and Plaintiff filed a Response to Defendants' Motions for Summary Judgment.
- On November 29, 2021, the following documents were filed: Board of University and School Lands and Dept. of Water Resources' Reply Brief in Support of Motion for Summary Judgment, XTO Energy, Inc.'s Reply Brief in Support of Motion for Summary Judgment; and the service documents.
- On November 30, 2021, the following documents were filed: Brief in Support of Partial Motion for Summary Judgment - Whitetail Wave LLC's Reply; Declaration of Joshua Swanson; and a Request to Appear Telephonically.
- Hearing held December 3, 2021.
- On December 17, 2021, the Order on Cross Motions for Summary Judgment was entered granting the State summary judgment quieting title in the acreage in Section 27 of Township 154 North, Range 96 West, and dismissing with prejudice the remaining claims against the State.

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;
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 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. Bringham 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 Bringham Oil and Statoil and the Board and State Engineer.

**Current
Status:**

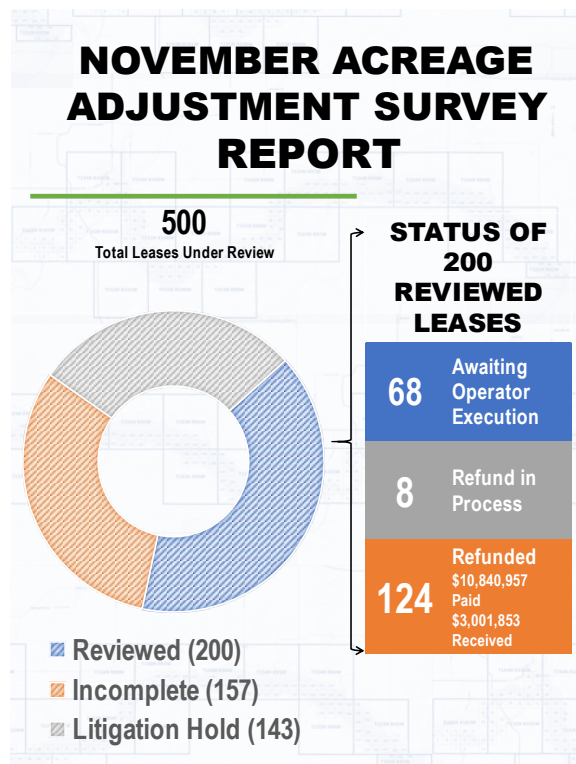
- **The parties shared various drafts of witness and exhibit lists prior to trial.**
- **On July 12, 2021, the State filed its Motion in Limine to Exclude Evidence Regarding Statutory Interest of 6.5% or 18% on Royalties and Motion in Limine to Exclude Evidence Regarding S&P Vanguard 500 Index Fund Investor 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.

MINERALS

Acreage Adjustment Report



NDDTL River Tracts map and outstanding requests for acreage adjustment stipulation and lease correction were presented to the Board and are available upon request.

Repayment of Unpaid Gas Royalties Update

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

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

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

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

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

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:

- **Acreage Adjustment Survey**
- **Royalty Offers**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **William S. Wilkinson et al. Case No. 53-2012-CV-00038**
- **Whitetail Wave LLC Case No. 27-2015-CV-00164**

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

The Board entered into executive session at 10:30 AM.

EXECUTIVE SESSION

Members Present:

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kate Schirado	Administrative Assistant
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
James Wald	Legal Counsel (via Teams)

Guests in Attendance:

Charles Carvell	Office of the Attorney General
Dave Garner	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor

The executive session adjourned at 11:50 AM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session meeting, the Board was provided information and no formal action was taken.

A D J O U R N

There being no further business, the meeting was adjourned at 11:52 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands