

**Minutes of the Meeting of the  
Board of University and School Lands  
February 25, 2021**

The February 25, 2021 meeting of the Board of University and School Lands was called to order at 9:03 AM via Microsoft Teams by Chairman Doug Burgum. All meeting attendees were via Microsoft Teams.

**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
Dennis Chua	Investment Analyst
Christopher Dingwall	Mineral Title Specialist
Susan Dollinger	Unclaimed Property
Scott Giere	Revenue Compliance Auditor
Peggy Gudvangen	Accounting Division Director
Roman Knudsvig	Department Intern
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Director
Rick Owings	EIIO Grants Administrator
Michael Shackelford	Investments Director
David Shipman	Minerals Division Director
Lynn Spencer	Mineral Title Specialist
James Wald	Legal Council

**Guests in Attendance:**

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Reice Haase	Office of the Governor

**Additional Guests in Attendance:**

Brady Pelton (NDPC)  
 Josh Kevan (RVK)  
 Louis Bennett  
 Robert Lukens  
 Ron Nesslies  
 Shane Goettle  
 Adam Willis

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

A motion to approve the minutes of the January 28, 2021 regular meeting and the February 2, 2021 special meeting was made by Secretary Alvin Jaeger and seconded by Treasurer Thomas Beadle and the motion carried unanimously on a voice vote.

## R E P O R T S

### Extension Report

In January 2020, North Dakota Administrative Code § 85-06-01-06 was enacted. It provides the petroleum industry the option to request an extension of their lease.

Northern Oil and Gas, Inc. of Minnetonka, Minnesota received a six-month extension on four leases in Section 28-154N-96W, McKenzie County. They have a permit to drill the Kestrel 154-96-33-28-1H Well.

Ninepoint Energy, LLC of Denver, Colorado received a six-month extension on two leases in Section 4-152N-103W, Williams County. They have a permit to drill the Missouri W 152-103-4-8-13H Well.

### Summary of Oil and Gas Lease Auction

On behalf of the Board of University and School Lands (Board), the Department of Trust Lands conducted an oil and gas lease auction on [www.energynet.com](http://www.energynet.com) which concluded on February 2, 2021.

There were 6 tracts offered, and all received competitive bids (if the Board does not receive a competitive bid, the lease is awarded to the nominator). The highest bid per acre was \$130.00 (\$10,272.60 for 79.02 acres) in Burke County. Half of the tracts offered benefit the Common Schools Trust Fund, and the other half benefit the Strategic Investment and Improvements Fund (SIIF).

County	Tracts/County	Net Mineral Acres	Total Bonus	Average Bonus/Acre
Burke	3	239.02	\$27,472.60	\$115.00
McKenzie	3	480.00	\$13,280.00	\$27.67
<b>GRAND TOTAL</b>	<b>6</b>	<b>719.02</b>	<b>\$ 40,752.60</b>	<b>\$71.33</b>

There was a total of 7 bidders who submitted 50 bids on the 6 tracts. The bidders were from 6 states (ND, CO, MN, MT, TX and WY).

A total of \$40,752.60 of bonus was collected from the auction.

### January 2021 Report of Encumbrances Issued by Land Commissioner

**Granted to:** ONEOK ROCKIES MIDSTREAM LLC, SIDNEY-MT  
 For the Purpose of: Easement: Drop Line-Gas Gathering Pipeline  
 Right-of-Way Number: RW0008793  
 Trust: A – Common Schools  
 Legal Description: MCK-150-98-36-SW4

**Granted to:** SELECT ENERGY SERVICES LLC, WILLISTON-ND  
 For the Purpose of: Permit: Temporary Water Layflat Line  
 Right-of-Way Number: RW0008814  
 Trust: A – Common Schools  
 Legal Description: MCK-152-95-16-NE4

(02/25/21)

<b>Granted to:</b>	<b>ND GAME &amp; FISH DEPT, BISMARCK-ND</b>
For the Purpose of:	Aggr. Lease: Borrow
Right-of-Way Number:	RW0008802
Trust:	I – Youth Correctional Center
Legal Description:	LOG-136-71-4-LOT 2

### **January 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 January 2021, the Division received 29 holder reports with a property value of \$432,770 and paid 510 claims with a total value of \$626,691.

Since inception in 1975, the Board has received \$183,571,178 and paid \$76,445,164 in claims. Currently, there is \$107,126,013 maintained by the Board of University and School Lands from Unclaimed Property, the revenue earned from these funds benefits the Common Schools Trust Fund.

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

### **Investment Updates**

#### **Portfolio Rebalancing Updates**

The Department of Trust Lands (Department) staff and RVK continue to monitor the trigger points set for the remaining Harvest MLP in the Diversified Inflation Strategies (DIS) and will complete the liquidation when appropriate.

ARES Pathfinder Fund LP made an initial capital call on February 3, 2021, for \$6.2M of the \$100M commitment.

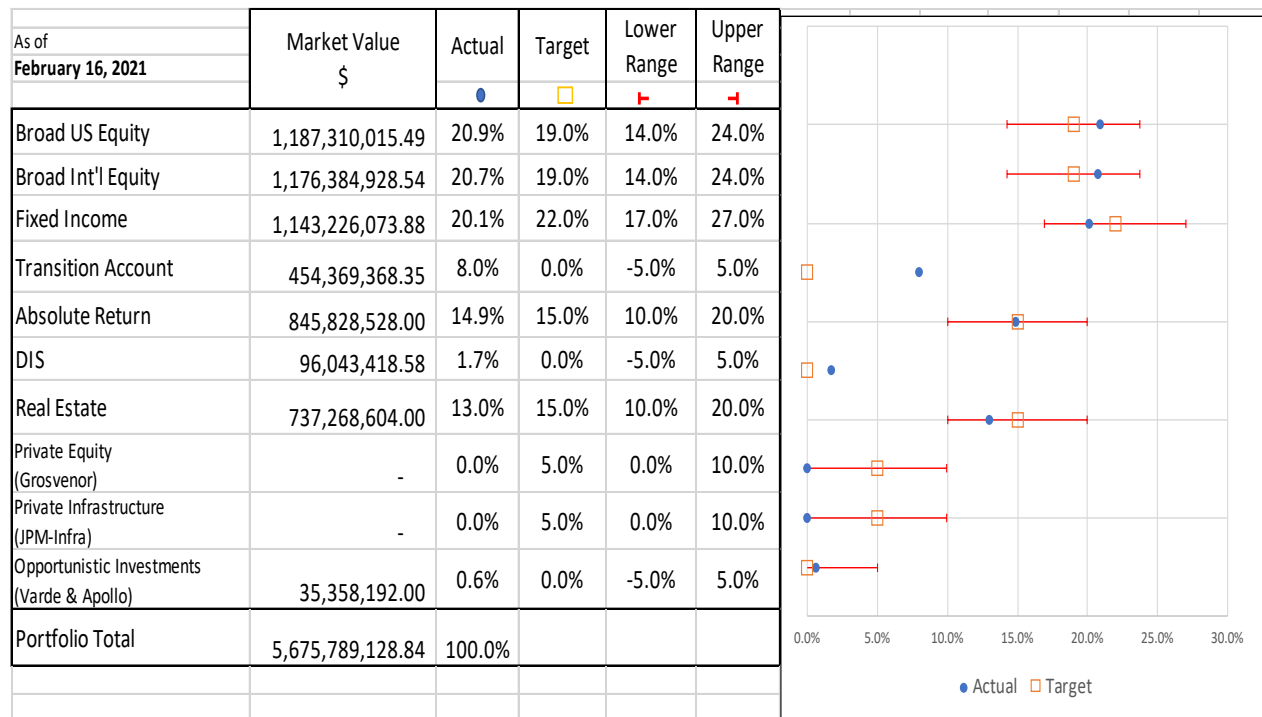
Varde Dislocation Fund IV LP, Opportunistic Investment, made a capital call on February 17, 2021, for \$12.5M. With the funding this brings the cumulative capital drawn to \$37.5M with remaining unfunded commitment is now at \$62.5M.

Apollo Accord Fund IV LP (Fund), Opportunistic Investment, has a remaining unfunded commitment totaling \$94.5M.

The Department staff have executed the agreements for GCM Grosvenor (Private Equity Manager), JP Morgan (Private Infrastructure Manager), ARES Pathfinder Fund LP (Asset-Focused Credit), Angelo Gordon, and JPM Core Bond. Still under review is the Loomis & Sayles Multi-Sector agreement.

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Feb. 16, 2021. The figures provided are unaudited.



### Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

### Legislative Update

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">HB 1031</a>	Relating to legislative management studies of state agency fees.	Legislative Management	Gov't & Veterans Affairs	PASSED	Introduced 02-12-2021 10:00 AM	
<a href="#">HB 1080</a>	Relating to the obligation to pay oil and gas royalties on leases owned and managed by the board of university and school lands.	Rep. Dockter	Finance & Taxation	PASSED	Introduced Ref – Eng and Nat Resources	

(02/25/21)

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">HB 1081</a>	Relating to access to and activities on trust lands; and to provide a penalty.	Rep. Zubke	Energy & Natural Resources	PASSED		
<a href="#">HB 1322</a>	Relating to the attorney general's review of proposed administrative rules and the authority of the administrative rules committee to object to or void an administrative rule.	Rep. B. Koppelman, K. Koppelman, Pyle, D. Ruby, Steiner  Sen. Burckhard, Clemens, Lemm, Meyer, J. Roers	Judiciary	DEFEATED		
<a href="#">HB 1340</a>	Relating to prohibiting entry onto private land without permission	Rep. Simons, Ertelt, Hoverson, Jones, Kempenich, Magrum, Skroch  Sen. Heitkamp, Hogue	Judiciary	DEFEATED		
<a href="#">HB 1349</a>	Relating to open record and meeting laws	Rep. Devlin, Karls  Sen. Dwyer, Lee, Oban	Political Subdivisions	PASSED		
<a href="#">HB 1358</a>	Relating to oil and gas tax revenue hedging	Rep. Kempenich, Christensen, Mock, Steiner, Trottier  Sen. Bekkedahl, Dwyer, Schaible	Finance & Taxation	PASSED		
<a href="#">HB 1392</a>	Relating to the duration of school and public land leases.	Rep. Schatz, Brandenburg, Christensen, D. Johnson, Kempenich, Longmuir, Monson, Simons  Sen. Anderson, Elkin, Erbele	Government & Veterans Affairs	DEFEATED		

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">SB 2013</a>	A BILL for an Act to provide an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for distributions from permanent funds.	Appropriations	Appropriations	Appropriations – 03/05	PASSED	
<a href="#">SB 2036</a>	A BILL for an Act to provide for a legislative management study regarding access to lands and electronic posting.	Legislative Management	Energy & Natural Resources	Received - 01/19	PASSED	
<a href="#">SB 2048</a>	Revised Uniform Unclaimed Property Act	Industry, Business and Labor	Industry, Business & Labor	Judiciary – 03/03	PASSED	
<a href="#">SB 2065</a>	Relating to the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil and gas.	Energy & Natural Resources	Energy & Natural Resources	Received - 02/09	PASSED	
<a href="#">SB 2070</a>	Relating to the regulated substance response; to amend and reenact sections 11-33-01, 40-47-01, and 58-03-11 of the North Dakota Century Code, relating to the regulated substance response; and to repeal sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code, relating to contaminated properties.	Energy & Natural Resources	Energy & Natural Resources	Received - 02/12	PASSED	

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
<a href="#">SB 2144</a>	Relating to criminal trespass and electronic posting; and to provide a penalty.	Sen. Erbele, Patten, Bell  Rep. Damschen, Dobervich, Tveit	Finance & Taxation	Received - 01/19	PASSED	
<a href="#">SB 2191</a>	Relating to the disposal of abandoned personal property	Sen. Holmberg	Political Subdivisions	Received - 02/02	PASSED	
<a href="#">SB 2217</a>	Relating to oil and gas royalty leases, negative royalties, and arm's length transactions; and to provide a penalty	Sen. Bekkedahl, Dwyer, Kannianen  Rep. Brandenburg, Kempenich, Zubke	Finance & Taxation	Received - 02/22	PASSED	
<a href="#">SB 2282</a>	Relating to membership of the board of university and school lands	Sen. Schaible, Klein, Luick  Rep. D. Johnson, Schmidt	Government & Veterans Affairs	Received - 02/18	PASSED	
<a href="#">SB 2291</a>	Relating to social investments made by the state investment board and the boycott of energy or commodities companies	Sen. Bell	Energy & Natural Resources	Received - 02/18	PASSED	
<a href="#">SB 2317</a>	Relating to a coal mine performance bonding pilot program and the authority of the Bank of North Dakota; and to provide for an energy development and transmission committee report	Sen. Bell  Rep. Porter	Energy & Natural Resources	Received - 02/17	PASSED	
<a href="#">SB 2319</a>	Relating to oil and gas agreements; and to provide an effective date	Sen. Kannianen	Finance & Taxation	Received = 02/23	PASSED	
<a href="#">HCR 3016</a>	Relating to the membership of the board of university and school lands	Rep. Schmidt, D. Anderson, Brandenburg, D. Johnson,	Government & Veterans Affairs	DEFEATED		

BILL	TITLE	SPONSORS	COMMITTEE	STATUS		
				House Date of Hearing	Senate Date of Hearing	Governor
		Kempenich, Schatz, Weisz  Sen. Klein, Luick, Myrdal, Vedaa				
<a href="#">SCR 4007</a>	Relating to the membership of the board of university and school lands	Sen. Schaible, Klein, Luick  Rep. D. Johnson, Schmidt	Government & Veterans Affairs	Received – 02/18	PASSED	
<a href="#">SCR 4013</a>	A concurrent resolution urging Congress to pass the North Dakota Trust Lands Completion Act.	Sen Marcellais, Heckaman, Kannianen, Schaible  Rep. Trottier	Energy & Natural Resources	Received – 02/23	PASSED	

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

### March Investment Reports – 4th Quarter 2020

Josh Kevan from RVK reviewed the performance of the Board of University and School Land's (Board) investment program for the period ending December 31, 2020 and discuss current market conditions.

The first report 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 presented 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.

The following items were presented to the Board and are available at the Department upon request: RVK Permanent Trust Fund Performance Analysis Report and RVK Ultra-short Performance Report.

## L I T I G A T I O N

### Sorum Litigation

**Case:** Paul Sorum, et. al. v. State of North Dakota, et. al. – Civ. No. 09-2018-CV-00089  
**Tribunal:** Cass County District Court  
**Judge:** John C. Irby  
(02/25/21)



**Attorney:** Mark Hanson, Nilles Law Firm  
**Opposing Counsel:** Terrance W. Moore, Fintan L. Dooley

**Issues:** The Board was named as a defendant in the above reference case which was served on January 10, 2018. Plaintiffs have filed this action to challenge the Constitutionality of S.B. 2134 passed during the last legislative session and codified as N.D.C.C. ch. 61-33.1. Under the new legislation, “[t]he state sovereign land mineral ownership of the riverbed segments inundated by Pick-Sloan Missouri basin project dams extends only to the historical Missouri riverbed channel up to the ordinary high water mark.” N.D.C.C. § 61-33.1-02. S.B. 2134 established a process by which the Department of Mineral Resources is directed to procure a “qualified engineering and surveying firm” to “review the delineation of the ordinary high water mark of the corps survey segments” for the portion of the Missouri River designated as the “historical Missouri riverbed channel.” N.D.C.C. § 61-33.1-03(2), (3). Following a review process, which includes a public hearing and public comments, the North Dakota Industrial Commission must adopt final review findings which “will determine the delineation of the ordinary high water mark for the segment of the river addressed by the findings.” N.D.C.C. § 61-33.1-03(7). Plaintiffs’ complaint requests from the court a declaratory judgment finding that N.D.C.C. ch. 61-33.1 violates the Public Trust Doctrine and the Anti-Gift, Privileges and Immunities, and Local and Special Law Clauses of the North Dakota Constitution. Plaintiffs are also requesting the Court issue an injunction to prevent all state officials from further implementing and enforcing N.D.C.C. ch. 61-33.1.

**History:** An Answer was filed. Defendants filed a Motion to Dismiss, which was denied in April 2018. Petition for Supervisory Writ and Exercise of Original Jurisdiction was filed by Defendants and denied in May 2018. A Motion for Preliminary Injunction was brought by Plaintiffs and a hearing was held on May 21, 2018. An Order for Preliminary Injunction was filed June 26, 2018. A Scheduling Conference was held on September 6, 2018 and the following briefing deadlines were set: Summary Judgment Motions were filed October 22, 2018. Response Briefs were filed December 10, 2018. Reply Briefs were due December 21, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019. The Order on Cross-Motions for Summary Judgment was issued on February 27, 2019, and Defendants were directed to prepare the proposed Judgment. On March 6, 2019, Defendants filed their proposed Judgment. Plaintiff’s filed a letter on March 7, 2019, advising the Court that they felt Defendants’ proposed Judgment was deficient and that they would also be submitting a proposed Judgment. Plaintiff’s proposed Judgment was filed March 8, 2019. Defendants filed a letter on March 8, 2019 advising the Court that they intended to submit a response to Plaintiffs’ proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiffs’ Proposed Judgment. Thereafter, Plaintiffs filed a letter asking the Court not to rule on Defendants’ Objection until Plaintiffs have had the opportunity to be heard and further, that Plaintiffs’ intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiffs filed their Response to Defendants’ Objection to Proposed Judgment and Request for Clarification and their Amended Proposed Order and Judgment on March 29, 2019. Defendants filed their Objection to Plaintiffs’ Proposed Order and Judgment (Plaintiffs’ Amended Proposed) and Reply to Plaintiffs’ Response to Defendants’ Objection to Proposed Judgment and Request for Clarification on April 8, 2019. On April 25, 2019, Judge Irby entered an Order for Entry of Judgment ordering the Clerk to enter Defendants’ Proposed Order as the Judgment of the Court. Judgment was entered on April 26, 2019. Plaintiffs’ filed a Notice of Motion for Attorney Fees, Costs,

and Service Award to Plaintiffs scheduling a hearing for 1:30 p.m. June 10, 2019 in Fargo. The Notice of Entry of Order on Cross-Motions for Summary Judgment, Order for Entry of Judgment, and Judgment was filed by Defendants on May 3, 2019. On May 15, 2019, Plaintiffs filed their Motion for Attorney Fees, Costs and Service Award to Plaintiffs and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiffs filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiffs. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiffs' Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiffs' Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiffs on June 12, 2019. Plaintiffs' filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiffs on June 19, 2019. A hearing on the motion for attorneys fees was held before the District Court on July 18, 2019. The State Defendants/Appellants filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court) on June 27, 2019. Plaintiff/Appellees/Cross-Appellants filed a Notice of Cross-Appeal dated July 10, 2019. Appellants' Briefs were due to the Supreme Court on August 6, 2019. On July 18, 2019, the parties filed a Stipulation and Joint Motion for Appellate Briefing Schedule with the Supreme Court to allow for a decision to be rendered in the District Court on the issue of attorneys fees prior to the briefs being due to the Supreme Court. On July 19, 2019, the Joint Motion for Appellate Briefing Schedule was denied and an Order of Remand was entered by the Supreme Court temporarily remanding the case to the trial court for the limited purpose of consideration and disposition of Plaintiffs' Motion for Attorney Fees, Costs and Service Award to Plaintiffs. The briefing schedule for briefs before the Supreme Court is stayed pending the District Court's disposition of the attorneys fees issue. On July 24, 2019, the District Court issued its Order on Plaintiffs' Motion for Attorney Fees, awarding attorney fees to Plaintiffs' attorneys and service awards to Plaintiffs. An Amended Judgment was entered in the District Court on July 31, 2019. On August 1, 2019, State Defendants filed an Amended Notice of Appeal and the Order and Request for Transcript. Also on August 1, 2019, the Supreme Court provided its Notice of Filing Notice of Appeal. On August 7, 2019, the Amended Notice of Cross-Appeal was filed by Plaintiffs. The transcripts requested by the State Defendants of the January 4, 2019 summary judgment hearing and the July 18, 2019 hearing on attorney fees/costs/service award were filed with the North Dakota Supreme Court on October 4, 2019. In light of the filing of those transcripts, the Supreme Court's clerk has advised that the State Defendants' initial appellant brief is to be filed on November 13, 2019. Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota was filed with the Supreme Court on November 13, 2019. A Motion for Leave to File *Amicus Curiae* Brief by the North Dakota Petroleum Council in Support of the Constitutionality of N.D.C.C. ch. 61-33.1 was filed with the Supreme Court on November 13, 2019. The Supreme Court granted the North Dakota Petroleum Council's Motion for Leave to File *Amicus Curiae* Brief on November 14, 2019. Plaintiffs' brief was due to the Supreme Court on or before December 13, 2019. On December 9, 2019, Plaintiff Paul Sorum made a request to the Supreme Court for an extension to file his brief until January 29, 2020. The Supreme Court granted Plaintiff Paul Sorum's request for an extension, giving him until January 21, 2019 to file his brief. On January 29, 2020, Defendants requested an extension of time to file the reply brief until February 14, 2020, due to the amount of information that

was filed in the separate briefs and appendixes. On January 30, 2020, an initial letter was issued in which the Supreme Court granted Defendants’ request for an extension to file the Reply Brief until February 24, 2020. Thereafter, the Court issued a corrective letter advising reply briefs are due February 14, 2020. On February 13, 2020, Paul Sorum filed the Reply to Appellant Brief of Defense. Defendants filed the Reply Brief of Defendants, Appellants and Cross-Appellees the State of North Dakota, the Board of University and School Lands of the State of North Dakota, the North Dakota Industrial Commission, the Hon. Douglas Burgum, in his Official Capacity as Governor of the State of North Dakota, and the Hon. Wayne Stenehjem, in his Official Capacity as Attorney General of North Dakota on February 14, 2020. Oral Argument before the Supreme Court is scheduled for 1:30 p.m. on March 4, 2020. Terry Moore filed letter with the District Court on July 28, 2020, concerning issue of injunction and release of funds. On July 29, 2020, the District Court issued a Notice of Hearing scheduling a hearing on Terry Moore’s July 28, 2020 letter for August 17 at 1:30 p.m. On July 30, 2020, the North Dakota Supreme Court issued its Opinion. On July 31, 2020, Mark Hanson filed a letter with the District Court advising of the issuance of the North Dakota Supreme Court Opinion and requesting cancellation of the August 17 hearing. That hearing was cancelled. The Supreme Court’s Opinion was amended on August 4, 2020, and on August 18, 2020. Neither amendment was substantive. Terrance Moore filed with the Supreme Court the Plaintiffs, Appellees, and Cross-Appellants Marvin Nelson, Michael Coachman, Charles Tuttle and Lisa Omlid’s Petition for Rehearing on August 12, 2020. On September 22, 2020, the North Dakota Supreme Court entered an order denying the petition for rehearing. On January 5, 2021, Plaintiffs’ Petition for a Writ of Certiorari was docketed with the United States Supreme Court.

**Current Status:**

- **On February 22, 2021, Plaintiffs’ Petition for a Writ of Certiorari was denied.**

**Continental Resources, Inc. - Interpleader**

**Case:** **Continental Resources, Inc. v. North Dakota Board of University and School Lands, et al., Case No. 1:17-cv-00014**

**Date Filed:** **December 23, 2016**

**Court:** **Federal District Court, 8<sup>th</sup> Circuit**

**Judge:** **Honorable 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.

**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 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 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.
- Notice of Interlocutory Appeal as to the Order on Motion for Partial Summary Judgment filed by the North Dakota Board of University and School Lands on February 5, 2021. Transmittal of the Notice of Appeal Supplement to the 8<sup>th</sup> Circuit Court of Appeals was also on February 5, 2021.

**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:**

- **Continental Resources Case No. 1:17-cv-00014**

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

**The Board entered into executive session in a separate Microsoft Teams meeting at 10:05 AM with members of the public remaining in the open session Microsoft Teams meeting.**

**EXECUTIVE SESSION****Members Present:**

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

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Catelin Newell	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance
David Shipman	Minerals Division Director
Christopher Dingwall	Mineral Title Specialist

**Guests in Attendance:**

Leslie Bakken Oliver	Governor's Legal Counsel
Dave Garner	Office of the Attorney General
Charles Carvell	Office of the Attorney General
Reice Haase	Governor's Policy Advisor

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The executive session adjourned at 10:25 AM and the Board returned to the open session Teams meeting to rejoin the public. During the executive session Teams 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 10:26 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Jodi Smith, Secretary  
Board of University and School Lands