

**Minutes of the Meeting of the  
Board of University and School Lands  
June 25, 2020**

The June 25, 2020 meeting of the Board of University and School Lands was called to order at 8:05 AM in the Coteau Meeting 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

**Department of Trust Lands Personnel present:**

Jodi Smith	Commissioner
Dennis Chua	Investment Analyst – via Microsoft Teams
Susan Dollinger	Unclaimed Property Administrator – via Microsoft Teams
Bradley Fettig	Mineral Title Specialist – via Microsoft Teams
Michael Humann	Surface Division Director
Beverly Jacobson	Revenue Compliance Division
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Division Director
Rick Owings	Administrative Officer – via Microsoft Teams
Mike Shackelford	Investment Division Director
David Shipman	Minerals Division Director – via Microsoft Teams
Kayla Spangelo	Range Management Specialist – via Microsoft Teams

**Guests in Attendance:**

Brady Pelton	ND Petroleum Council
Emily Johnson	Kadrmass, Lee & Jackson (KLJ)
Quentin Obrigewitsch	Kadrmass, Lee & Jackson (KLJ)
Gary Hagen	Constituent
Dave Garner	Office of the Attorney General
Charles Carvell	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel – via Microsoft Teams
Reice Haase	Governor's Policy Advisor – via Microsoft Teams
Steve Mahanay	Novarca - via Microsoft Teams
Thomas Welsh	Novarca - via Microsoft Teams
Lynn D. Helms	Department of Mineral Resources – via Microsoft Teams
Geoff Simon	Western Dakota Energy Association - via Microsoft Teams
Jack Dura	Bismarck Tribune – via Microsoft Teams
Joel Brown	Mineral Tracker – via Microsoft Teams
Craig C. Smith	Guest via Microsoft Teams
Dave Thompson	Guest via Microsoft Teams
Dee Alexander	Guest via Microsoft Teams
Josh J Demorrett	Guest via Microsoft Teams
Dennis Blank	Guest via Microsoft Teams
Eric Ocwieja	Guest via Microsoft Teams
Ernst	Guest via Microsoft Teams
Kari S Gibson	Guest via Microsoft Teams

(06/25/2020)

Gloria Cash	Guest via Microsoft Teams
Jacob Notermann	Guest via Microsoft Teams
James Alexander	Guest via Microsoft Teams
Jeremy Turley	Guest via Microsoft Teams
Kevin Thies	Guest via Microsoft Teams
Marcel Staub	Guest via Microsoft Teams
Mary	Guest via Microsoft Teams
Mike Lee	Guest via Microsoft Teams
Peter	Guest via Microsoft Teams
Andrea H. Pfennig	Guest via Microsoft Teams

## APPROVAL OF MINUTES

A motion to approve the minutes of the May 28, 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

### May Shut-In Report

<b>Granted to:</b>	<b>Luff Exploration Company</b>
For the Purpose of:	COVID-19
Date Issued:	05/14/2020
Trust:	L– Bank of North Dakota
Lease:	OG-12-01019;OG-12-01020;OG-12-01021

<b>Granted to:</b>	<b>Luff Exploration Company</b>
For the Purpose of:	COVID-19
Date Issued:	05/14/2020
Trust:	A – Common Schools
Lease:	OG-13-00008

<b>Granted to:</b>	<b>Marathon Oil Company</b>
For the Purpose of:	COVID-19
Date Issued:	05/14/2020
Trust:	R – Sovereign Lands
Lease:	OG-09-00949; OG-05-00905;OG-00906; OG-10-00747; OG-10-00748

<b>Granted to:</b>	<b>Prima Exploration</b>
For the Purpose of:	COVID-19
Date Issued:	05/14/2020
Trust:	A – Common Schools
Lease:	OG -12-00866; OG- 12-00867; OG- 12-00868

<b>Granted to:</b>	<b>Prima Exploration</b>
For the Purpose of:	COVID-19
Date Issued:	05/14/2020
Application Fee:	\$10.00
Trust:	A – Common Schools
Lease:	OG- 12-00869
	(06/25/2020)

### May Encumbrances Report

<b>Granted to:</b>	<b>EQUINOR PIPELINES LLC, WILLISTON-ND</b>
For the Purpose of:	Pipeline-Multiple Pipelines
Right-of-Way Number:	RW0008466
Trust:	A – Common Schools
Legal Description:	WIL-155-100-36-NW4
<b>Granted to:</b>	<b>LOWER YELLOWSTONE RURAL ELECTRIC INC, SIDNEY-MT</b>
For the Purpose of:	Electric-Transmission Line
Right-of-Way Number:	RW0008633
Trust:	A – Common Schools
Legal Description:	WIL-154-104-36-SE4, SW4
<b>Granted to:</b>	<b>OE2 NORTH LLC, DENVER-CO</b>
For the Purpose of:	Pipeline-Gas Gathering Pipeline
Right-of-Way Number:	RW0008664
Trust:	A – Common Schools
Legal Description:	WIL-156-97-36-SE4
<b>Granted to:</b>	<b>CATES EARTH SCIENCE TECHNOLOGIES INC, BISMARCK-ND</b>
For the Purpose of:	Temporary Water Layflat Line
Right-of-Way Number:	RW0008700
Trust:	A – Common Schools
Legal Description:	MOU-150-92-10-S2SW4
Legal Description:	MOU-151-92-36-W2NE4SW4, NW4SW4, S2SW4

### May 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 May 2020, the Division received 55 holder reports with a property value of \$527,441 and paid 501 claims with a total value of \$364,778.

### Energy Infrastructure and Impact Office 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 \$624 million in funding.

(06/25/2020)

The Oil and Gas Impact Grant Fund currently has 28 grants with a balance of \$6,846,538.19 as of June 5, 2020. The following shows grant activity for the last five months:

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
12/31/2019	30	\$14,388,087.28
2/13/2020	21	\$7,207,988.75
5/13/2020	28	\$7,049,556.08
6/5/2020	28	\$6,846,538.19

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 \$2,394,929.22 as of June 5, 2020. House Bill 1013 of the Sixty-sixth Legislative Assembly requires the 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 five months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
12/31/2019	4	\$4,108,325.39
2/13/2020	3	\$3,447,448.60
5/13/2020	3	\$2,394,929.22
6/5/2020	3	\$2,394,929.22

The Energy Infrastructure and Impact Office is currently managing 31 grants for a total of \$9,241,467.41. The following shows grant activity for the last four 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
12/31/2019	30	\$14,388,087.28	12/31/2019	4	\$4,108,325.39	\$18,496,412.67
2/13/2020	21	\$7,207,988.75	2/13/2020	3	\$3,447,448.60	\$10,655,437.35
5/13/2020	31	\$7,049,556.08	5/13/2020	3	\$2,394,929.22	\$9,444,485.30
6/5/2020	31	\$6,846,538.19	6/5/2020	3	\$2,394,929.22	\$9,241,467.41

EIIO emailed grantees with a current balance reminding them to submit their biannual progress report due on June 20, 2020 per N.D.C.C. § 85-02-03-06.

**Progress report.**

1. The grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.

2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status

(06/25/2020)

visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.

3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

History: Effective January 1, 2019.  
 General Authority: NDCC 28-32-02  
 Law Implemented: NDCC 57-62-05

**The Financial Report (Unaudited) for period ending March 31, 2020 was presented to the Board for review and is available at the Department upon request.**

**Investment Updates**

**Portfolio Rebalancing Updates**

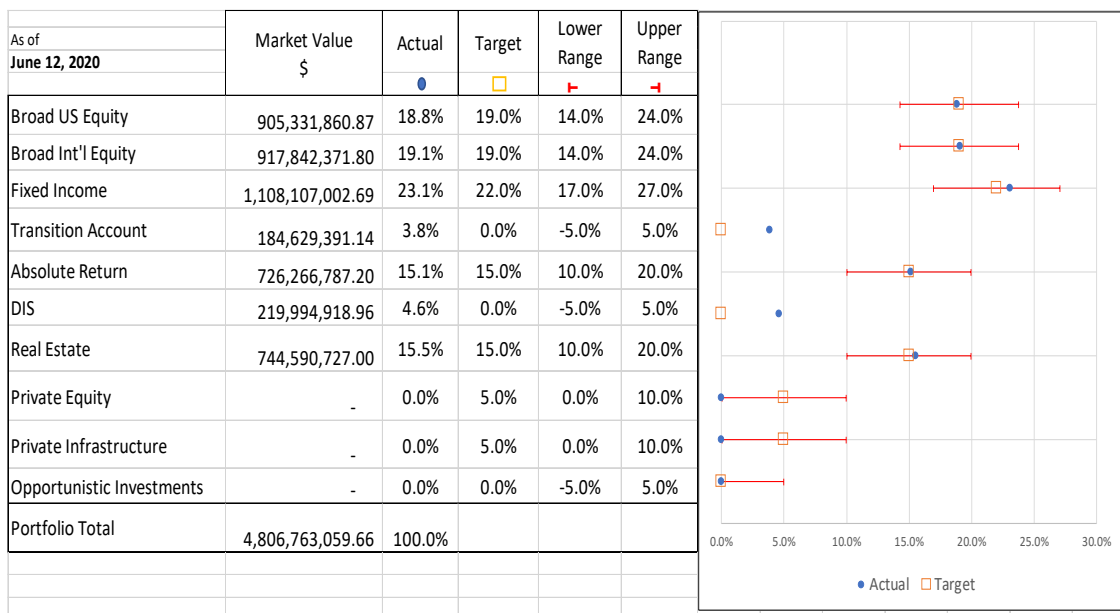
On May 8, 2020, the Treasury Inflation-Protected Securities (TIPS) Fund was liquidated and the proceeds were transferred to an actively managed “Transition Account”. This new account is similar to the SIIF-UltraShort Bonds account and is designed to hold all cash proceeds as we continue to do a disciplined liquidation of all the Diversified Inflation Strategy (DIS) investments.

As of June 12, 2020, \$30M has been withdrawn from Gresham. Additionally, Van Eck liquidations have reached a total of \$52M. Thus far, \$184.5M has been withdrawn from DIS and transferred to the Transition Account. Future liquidations will depend on the market situation with the end of June as the target of full redemption.

All legal documents had been reviewed and submitted for the \$100M commitment to the Varde Dislocation Fund LP and the Department of Trust Lands staff is waiting for the initial capital call.

**Asset Allocation**

The table below shows the status of the permanent trusts’ asset allocation as of June 12, 2020. The figures provided are unaudited.



(06/25/2020)

**Upcoming Investment Manager Meetings**

There are no upcoming meetings scheduled.

**I N V E S T M E N T S****Novarca - Investment Fees and Costs Analysis Services Consultant Update**

On March 28, 2019, the Board directed the Commissioner to engage Novarca to review the investment fees of the assets under the Board's authority. Novarca's general approach involved a detailed look at costs experienced by a given investment mandate, with a focus on identifying and reducing fees and expenses related to managing, transacting, and holding assets. The firm reviewed expenses and identified options that serve as a basis to renegotiate fee arrangements with investment managers.

The Commissioner entered into an agreement with Novarca on June 13, 2019, under which Novarca would conduct a study of the fees of the Board's various investment mandates and negotiate with investment managers to reduce fees paid by the Board's trust funds. Novarca is compensated solely through a contingency fee in which they are only paid a portion of realized savings in the amount of 27.5% of any fee savings the Board's trust funds realized by Novarca's efforts.

Novarca began a study of the investment fees of the Board's various investment mandates in June 2019 and completed the study in December 2019. Generally, Novarca found that the fees paid by the Board's trust funds were competitive with the industry. Nevertheless, Novarca believed there was opportunity for further fee savings with certain managers. In January 2020, Novarca began negotiating with several investment managers to reduce management fees paid by the Board's trust funds.

Result: Novarca was able to successfully negotiate a lower fee with Payden & Rygel on the Long-Term Bond mandate. The new fee terms are in line with the fees paid on the JP Morgan Intermediate Bond mandate, which had been lowered just prior to engaging Novarca. The net fee savings are approximately \$83,400 for the first year and may be higher if the mandate grows over time. This represents 0.024% savings on the mandate and 0.002% for the permanent trust funds.

Novarca has not been successful on any other mandates, which would indicate the Board's trust funds' fees remain industry competitive.

**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 for the proposed Theodore Roosevelt Presidential Library and Museum. The state-funded endowment will be created if \$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.

Attached is the proposed Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement (Agreement) by and between the Office of the North Dakota Governor, the Board of University and School Lands (Board), and the Theodore Roosevelt Presidential Library Foundation to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund.

(06/25/2020)

The Agreement provides for the establishment of an investment account maintained by the Board. It provides for the investment of assets as a permanent trust fund to be managed under the prudent investor rule, pursuant to N.D.C.C. §15-03-04.

The Agreement further provides for the distribution of investment returns for the uses specified in N.D.C.C. § 54-07-12:

There is created in the state treasury the Theodore Roosevelt presidential library and museum endowment fund. The governor may provide for the fund to be invested under the supervision of the board of university and school lands. The interest and earnings of the fund are appropriated to the governor on a continuing basis to pay interest expenses on a loan from the Bank of North Dakota and to provide grants pursuant to this section.

The Agreement will replace the Agreement executed in September 2019 and provides additional guidance regarding the distribution of funds and a mechanism for the Department of Trust Lands to cover expenses associated with the management of the endowment. This final version is available at the Department upon request.

**Motion: The Board enter into the Theodore Roosevelt Presidential Library and Museum Endowment Fund Asset Management Agreement with the Office of the North Dakota Governor and the Theodore Roosevelt Presidential Library Foundation to manage the assets of the Theodore Roosevelt Presidential Library and Museum Endowment Fund with the prudent investment of the fund assets as a permanent trust fund.**

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		

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

### **Acreage Adjustment Survey**

Under North Dakota law, the Board of University and School Lands (Board) is vested with the authority to manage state-owned minerals including the oil, gas, and related hydrocarbons within the beds of the State's navigable waters. On behalf of the State, the Board oversees the Strategic Investment and Improvements Fund (SIIF) which collects the revenues from these sovereign minerals.

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 (Historical OHWM) subject to inundation by Pick-Sloan Missouri basin project dams." The bill directed the North Dakota Department of Mineral Resources (DMR) to procure a qualified engineering and surveying firm to conduct a review of the US Army Corp of Engineers (USACE) survey segments limited only to the corps survey segments from the northern boundary of the Fort Berthold Indian reservation to the southern border of sections 33 and 34, township 153 north, range 102 west  
(06/25/2020)

The Historical OHWM review as prepared by Wenck Associates, Inc. (Review) was presented to the North Dakota Industrial Commission (NDIC) on April 17, 2018. Thereafter, the NDIC issued its September 27, 2018 Order of the Commission, Order No. 29129, approving the Review. Information concerning the Review can be found on DMR's website.

In response to comments, NDIC Order No. 29129 found, among other things, that:

1. "[T]he Wenck Study was not intended to provide accurate acreage allocations for property transfer which is outside the scope of the legislation; the data sets provided to Wenck for use in calculating acreages represent the most efficient method for determination of areas necessary for decisions by the [NDIC]; no land surveying was done nor contracted to be done in the course of [the Wenck] study." Order at 4.
2. "[T]he cost to complete the necessary research and surveys to apportion property significantly exceeds the appropriated funds." Id.
3. "[A]dequate documentation and data for parties to determine how interests might be impacted were provided in the Wenck Study and subsequent communications." Id.

Senate Bill 2211 of the Sixty-Sixth Legislative Assembly amended N.D.C.C. ch. 61-33.1 relating to the ownership of mineral rights of land subject to inundation by Pick-Sloan Missouri basin project dams. Under N.D.C.C. § 61-33.1-03(8), the Board contracted with Kadmas, Lee & Jackson, Inc. (KLJ) "to analyze the final review findings and determine the acreage on a quarter-quarter basis or government lot basis above and below the [Historical OHWM] as delineated by the final review findings of the industrial commission." The contract's scope of work concluded twelve months from the date of execution, May 30, 2019, at a total cost of \$1,088,635. KLJ dedicated 35 team members and over 7,000 hours to completing the project.

The project utilized all available data, records, and resources including the Review, the PLSS, Bureau of Land Management (BLM) General Land Office (GLO) updated Master Title Plats (available at the BLM), original GLO Survey Plats (available at the North Dakota State Water Commission), BLM field notes, and any other relevant data, records and resources. Where previous survey data was not available, lacking, or otherwise unusable, the KLJ project was required to conduct the field work necessary to supply the necessary data to complete and/or verify accurate boundaries within the Project Area.

KLJ is available to review the methodology they used to calculate the acreage adjustments and answer any questions the Board may have regarding the acreage adjustment results. KLJ has provided the Department of Trust Lands (Department) with a Final Report for Acreage Determination along the Ordinary High Water Mark as adopted by the North Dakota Industrial Commission Order No. 29129 which will be available on the Department's website.

The Department will not be recommending approval of the south half of T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36. will be necessary (Attachment 1). Additionally, the Department will not be recommending approval of T152N R93W Section 11 Lot 2 and Section 10 Lot 6 (Attachment 2).

Upon the Board's adoption of the Acreage Adjustment Survey as prepared by KLJ, the Department will promptly begin updating records to satisfy the Board's duty under N.D.C.C. § 61-33.1-04(2)(a). This process will be extensive and will require a review of each parcel within each spacing unit located within the Project Area. Each parcel will be reviewed for changes to the database, Correction of Oil and Gas Leases will be prepared for execution, requests for refunds of bonus and royalties will be prepared, each well will need a new royalty management unit to ensure future royalties will be (06/25/2020)



allocated to the correct trust, the Department’s shapefiles will be updated, and the Department will need to track the documentation for each lease correction. Within the 83 miles reviewed by Wenck, the Department has approximately 600 active leases covering 44,700 acres.

Prior to any issuance of refunds, appropriate documentation for each parcel requiring adjustment must be reviewed by the Department’s Director of Minerals Management and the Director of Revenue Compliance Division. Following final review by the Commissioner, a refund authorization will be submitted to the Accounting Division. Once refunds are issued, Correction of Oil and Gas Lease documentation will be mailed to the operator and current lessee of record based on the records of the Department. If the lessee fails to return an executed copy or cash the check, the Department will need to take additional steps.

Due to the failure of lessees to submit assignments to the Department for approval as required by Department policies and the Board’s lease, the Department’s records do not always accurately reflect the current lessee of any given lease. This could impact the timeliness of refunds. Refunds of bonus will be issued to the current lessee, based on the records of the Department, and royalty payments will be returned to the current operator of each applicable spacing unit.

Barring delays due to legal challenges or unresponsive lessees, it is anticipated the Department could complete approximately 25 lease corrections each month, resulting in completion of 600 lease corrections within two years of the Board’s adoption of KLJ’s acreage adjustment calculations.

Motion:

- (1) The Board adopts the acreage adjustment survey on a quarter-quarter basis or government lot basis above and below the ordinary high water mark as delineated by the final review findings of the North Dakota Industrial Commission except T152N R93W Section 10 Lot 6 ,Section 11 Lot 2 and T153N, R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, and 36.**
- (2) The Board formally requests the North Dakota Industrial Commission complete further review of T152N R93W Section 11 Lot 2 and Section 10 Lot 6.**
- (3) The Board formally requests the North Dakota Industrial Commission complete further review of T153N, R102W Sections 33 and 34 until a zero accretion point can be determined.**

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		

KLJ presented maps of T153N R102W Sections 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 33, 34, 36 and T152N R93W Section 10 and Section 11. All presented materials are available at the Department upon request.

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

### Commissioner Annual Review

Motion: **(1) The Board approves a salary increase of 2.5% as recommended by the 66<sup>th</sup> Legislative Assembly for the Commissioner. (2) The State Treasurer and Governor's Office will work collaboratively to create an annual review process for the Commissioner's position.**

(06/25/2020)

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

The Commissioner's Phased Strategic Plan for the Department was provided to the Board and is available at the Department upon request.

### Fee Policy – Second Reading

The Board of University and School Land's (Board) current fee schedule was established on July 25, 1985 and was last reviewed by the Board on June 26, 2014. The recommended action will revise the 2014 fee schedule.

"Fees" in the context of the Study are those payments which are not specific to any trust fund or tract of land but are deposited in the maintenance fund, which serves as the Department of Trust Land's (Department) operating fund.

Attached is the proposed Fee Policy. Fees were revised based upon the Department's expenditures related to the purposes for which the fee is imposed and if the fee is determined by the Board or the Commissioner.

The substantive changes include the following:

- A unified fee for certified copies has been established.
- Application and certain assignment, extension, and amendment fees have been established for leasing based upon the internal expenses associated with processing the application.
- Fees that are determined by the Commissioner have been removed from the Board's Fee Policy and placed in a Department's Fee Policy.
  - Coal Amendment, renewal request fee
  - Coal Extension request fee
  - Oil and Gas Application and Nomination fee
  - Oil and Gas Application Shut-In Application Fee per Unit
  - Subsurface Mineral Lease Assignment Filing Fee
  - Salt-Water Disposal Site Application, Extension and Renewal Fee

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

### Motion: The Board adopt the proposed North Dakota Board of University and School Lands Fee Policy – Chapter 2, General.

Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger			X		
Superintendent Baesler			X		

(06/25/2020)

Treasurer Schmidt	X		X		
Attorney General Stenehjem		X	X		
Governor Burgum			X		

Board of University and School Lands Fee Policy is available at the Department upon request.

### **Continuing Appropriation Authority Policy – Second Reading**

The following North Dakota Century Code pronounces continuing authority:

- N.D.C.C. § 15-03-16
- N.D.C.C. § 15-04-23
- N.D.C.C. § 15-04-24
- N.D.C.C. § 15-05-19
- N.D.C.C. § 15-06-22
- N.D.C.C. § 15-07-22
- N.D.C.C. § 15-08-04
- N.D.C.C. § 15-68-06
- N.D.C.C. § 47-30.1-23
- N.D.C.C. § 57-02.3-07

In 2016, the Board provided clarification on certain expenses allowed through continuing appropriation as outlined below:

#### **Board of University and School Lands Continuing Appropriation Authority Policy**

Continuing appropriation authority is provided in state law for certain operating expenditures.

#### **A. Unclaimed Property - Continuing Authority.**

Unclaimed property expenses as outlined in NDCC Section 47-30.1-23 may be paid under continuing appropriation authority including, but not limited to: payments of claims, service charges for address verification and updates, advertising costs, audit services, legal costs and outreach efforts.

#### **B. Grant Land, Non-Grant Land and Mineral Leases - Continuing Authority.**

NDCC Sections 15-04-24, 15-07-22 and 15-05-19 permit expenditures to be considered as continuing appropriation expenditures. These sections appropriate annually the expenses determined by the Board as necessary to manage, preserve, and enhance the value of the trust land and mineral assets.

Specifically authorized by the Board as continuing appropriation authority:

1. Salaries and travel expenses for temporary field men who conduct inspections to ensure rangeland integrity and surface reclamation.
2. Advertising surface and mineral lease auctions. Section 15-04-09 of the NDCC requires the Board to publish multiple notices of surface and mineral leases auctions. Advertising of the lease auctions are done to ensure the trusts receive competitive bids to enhance the trusts' value.
3. Legal expenditures that are incurred by a specific trust or trusts to maintain their value and integrity.

4. Costs of hiring independent contract firms to perform accounting, audit, compliance review or collection efforts to ensure the proper payment of oil, gas, coal or other mineral royalty.

The Commissioner has reviewed, in conjunction with the Attorney General's Office, the Continuing Appropriation Authority Policy and is recommending changes based upon statutory changes and to accommodate the consideration of technology as a continuing appropriation.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

**Recommendation: The Board adopt the proposed North Dakota Board of University and School Lands Continuing Appropriation Authority Policy – Chapter 2, General.**

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

With changes made to the Continuing Appropriation Authority Policy the Board considers June 25, 2020 the first reading and no formal action was taken.

The Continuing Appropriation Authority Policy is available at the Department upon request.

#### **Mineral Valuation Policy – Second Reading**

Senate Bill 1013 of the Sixty-Sixth Legislative Assembly approved one-time funding for a mineral valuation study.

The Department of Trust Lands (Department) has been tasked with conducting a study to determine the estimated value of the mineral assets, 2.6 million acres, held in trust by the Board of University and School Lands (Board).

The oil and gas mineral estate assessment (Assessment) will reflect the estimated value of oil and gas mineral assets managed by the Board. This Assessment is complicated by the mineral assets' sheer size, variance in geological aspects, and topography. MineralTracker, LLC was awarded the project and is working with the Department to complete the Assessment.

As a part of the Assessment, MineralTracker needs three variables to be approved by the Board: (1) the commodity effective date, (2) commodity price schedule, and (3) the discount rate.

The Department consulted with MineralTracker and the US Department of the Interior's Division of Minerals Evaluation during the process of drafting the proposed policy.

The first reading of the policy was held at the May 28, 2020 meeting. The Commissioner requested the Board provide input on the proposed policy. Additionally, an open comment period was held and no comments were received.

(06/25/2020)

**Motion: The Board adopts the proposed North Dakota Board of University and School Lands Minerals Valuation Policy – Chapter 5 - Minerals.**

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

The Minerals Valuation Policy is available at the Department upon request.

**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 no longer be exempt from the Administrative Agencies Practice Act (“the Act”). In Senate Bill 2264, the Sixty-sixth Legislative Assembly directed the Board of University and School Lands be exempt from the adjudicative proceeding requirements and procedures under North Dakota Century Code §§ 28-32-21 through 28-32-51 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. The Board’s rules are included in Title 85 of the North Dakota Administrative Code. As the Department determines additional rules are needed, those are drafted and presented to the Board for review.

Land Sale and Land Exchange Administrative Rules

By the 1970s, approximately 80% of the original 3.2 million acres of the land granted to trusts had been sold, and the Board began an informal policy of not selling surface lands. While often encouraged to sell trust lands to private citizens to put it on the tax rolls, the Board has historically experienced opposition to land sales from the Game and Fish Department, Wildlife Federation, Medora Grazing Association, ND Farmers Union, sportsmen, and other outside entities. The Board formalized its policy of not selling land in 1981 when it limited land sales to smaller and isolated tracts, and to parcels that caused management problems. The Board has had a limited land sale policy ever since. The history of the land sale policy is attached as Attachment 1.

In the 1990s, the Department evaluated the historic return on investment of land in North Dakota and the impact on the value of trust lands to the permanent trust funds. The initial study encompassed land rents and values from 1960 through the 1990s; it was later updated through 2001. The results of this study indicated that land is similar to and should be treated like other asset classes in which the Board invests. In October 1998, the Board formally designated surface lands as an asset class to be managed within the Board’s overall investment portfolio.

Considering land as an investment is central to its management for the long-term best interests of the trusts. Land as an asset class means that it is recognized for its characteristics of value, income, stability and liquidity that are inherent in investments. It also means that investment principles, such as risk versus reward, should be applied to land just as to any other investment asset class.

The study led to a proposal that certain lands with an income return of less than 0% be considered for sale. However, due in large part to public opposition to the sale of trust lands, these tracts were not sold to private owners. Nonetheless, the work done in this area helped demonstrate that the

consistent cash flows generated by trust land and its inherent nature as a store of value, make it a stabilizer in the Board's overall asset portfolio.

On March 26, 2015 the Board revised its land sale policy to:

1. Clarify the general policy to sell land only if certain conditions are met;
2. Add language requiring that sales of larger tracts be coupled with a "no net loss" of acres provision;
3. Remove language specifically related to rates of return and low potential for development as reasons for consideration of a sale of trust lands; and
4. Add a provision to consider selling land in higher value urban locations.

The provision of no net loss of "leasable trust land" was adopted to provide an option to consider tracts that are larger than 80 grassland acres and 40 crop acres being offered for sale without reducing the trust's leasable real estate holdings. It allows for a sale of trust land and a donation of land to the trust from which the original land was sold. To date, the no net loss policy has not been used and no procedures have been developed to implement the policy. See Attachment 1.

On September 28, 2017, the Board directed the Commissioner to investigate and explore procedural options to implement the Board's no net loss of "leasable trust land" policy through land exchanges of like or equal acres and value. Attachment 2 are the proposed Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, which take into consideration the requirements of the North Dakota Century Code and the North Dakota Constitution. It provides the Board the ability to sell under-utilized or difficult to manage acquired tracts of land.

The following is a brief review of the Land Exchange and Land Sales (under N.D.C.C. ch. 15-06, 15-07, and 15-09) Administrative Rules, compared to the Board's Land Retention and Sales Policy:

Grant Land Sales (N.D.C.C. ch. 15-06):

- Unchanged from the Board's Land Retention and Sales Policy with the exception that any letter of application received will be subject to public comment prior to Board review of the application.
- Maintains the provision of no net loss of leasable original grant land through public sale and subsequent land donation to the trust from which the original grant land was sold.
- Maintains the small acreage requirement (land tracts totaling less than 80 acres in size, more or less, for grassland and less than 40 acres in size, more or less, for cropland) as a sales requirement, with such sales not subject to the no net loss of leasable grant land provision.

Acquired Land Sales (N.D.C.C. ch. 15-07):

- Requires any letter of application received for the purchase of acquired lands to be subject to public comment prior to Board review.
- Removes the no net loss of leasable land requirement from land acquired prior to 1980 (these lands were private lands acquired through foreclosure or deed in-lieu of foreclosure and were at one time on the County tax rolls).
- Acquired land sales would not be subject to any acreage restrictions.

Sales of Lands for Public or Quasi-Public Purpose (N.D.C.C. ch. 15-09):

(06/25/2020)

- Sales for this chapter were not subject to the Land Retention and Sales Policy.
- Requires any application received for a public purpose or quasi-public purpose be subject to public comment prior to Board review.

#### Land Exchange:

- No previous policy.
- Establishes an evaluation process for land exchanges.
- Currently the Constitution and Statutes only allow for exchanges of Federal and State Land and does not allow for exchanges of private and tribal lands.

#### Offset Well Administrative Rule

The current Policy of the Board and University and School Lands for the Enforcement of 1979 Oil and Gas Lease Form Provisions Relating to Offset Wells has been administered since 1987. It provides a procedure to administer the provisions in the Board's oil and gas lease which requires our lessee to exercise an option in order to protect the state-owned interest from drainage due to wells drilled on adjacent acreage. The proposed Administrative Rule moves the policy into the rule format with minimal substantial changes. See Attachment 2.

**Motion: The Board authorizes the Commissioner to proceed with the next steps in the review of the initial draft of the proposed Administrative Rules for Land Sale, Land Exchange and Offset Wells, including formal review by the Office of Attorney General, preparation for public hearings and collection of comments, and submittal to Legislative Council.**

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		

The following items were provided to the Board and are available at the Department upon request: The Board of University and School Lands History of Land Sale Policy and Administrative Rules General Administration (red-lined) Surface Land Management, and Minerals Management.

#### **Repayment of Unpaid Gas Royalties Update**

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.

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.

The Board recently received comments asserting that the Department's website provides guidance that deductions can be taken from gas royalties. At the February 27, 2020 Board meeting the Board requested additional information regarding the Department's website, specifically the instructions provided to payors on how to calculate deductions and payments.

In 2014, the Department began the process of developing a required royalty reporting form. The Department consulted with other states, industry partners, and software developers when developing its royalty reporting form. During this process several questions were consistently raised. To address these questions, frequently asked questions (FAQ's) were posted on the Departments website in conjunction with the new royalty reporting form and instructions. Two of the FAQ's address deductions and what is allowed. On June 25<sup>th</sup>, 2015 an email and letter were sent to royalty payors notifying them of the new royalty reporting form to be used starting October 2015.

The North Dakota Supreme Court has recently stated, however, that deductions are not allowed to be taken from royalty payments thereby addressing the questions the Department received following publication of its website. The Court stated “[t]he Department of Land Trust’s website contains guidance regarding the payment of royalties from oil and gas leases. The Department’s guidance is consistent with our decision in *West* and provides as follows: ‘gross proceeds of sale means income before deduction of expenses. Basically, it means the price you sell the oil for, regardless of what expenses go into arriving at that price.’” *Newfield Expl. Co. vs. State ex rel. N.D. Bd. of Univ. & Sch. Lands*, 2019 ND 193, ¶ 8, 931 N.W.2d 478.

Below are the FAQ's that related to deductions that are currently on the Departments website. This guidance has been on the Departments website since 2015. Although the format and location of the website have changed, the guidance has remained the same. Consistent with the Supreme Court's interpretation of the Board's lease and the website instructions, the guidance contained in the FAQ's is consistent with the Boards position on deductions.

#### [What deductions are allowed on oil?](#)

Royalty on oil is calculated based on the greater of 1) the highest posted price for the field where produced and when run, 2) the highest market price paid for the area where produced and when run, or 3) the gross proceeds of sale.

Gross proceeds of sale means income before deduction of expenses. Basically it means the price you sell the oil for, regardless of what expenses go into arriving at that price. For example, if you transport the oil to an off-lease location for sale and delivery, the royalty is calculated based on the gross price you receive at the ultimate point of sale and delivery. In this example you may NOT deduct or “net out” the expenses incurred in transporting the oil to the ultimate point of sale and delivery.

#### [What deductions are allowed on gas?](#)

Royalty on gas is calculated based on the gross proceeds of sale, where the sale constitutes an arm's length transaction. For a description of what gross proceeds of sale means see “What deductions are allowed on oil.” If a sale of gas does not constitute an arm's length transaction, Board of University and School Lands Oil & Gas Rule 85-06-06-08 governs calculation of royalties.

## LITIGATION

### 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:**

- United States Department of Interior M - 37056



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		

At 10:35 PM the Board entered executive session for the purposes outlined in its adopted motion.

---

### EXECUTIVE SESSION

#### Members Present:

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

#### Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer

#### Guests in Attendance:

Charles Carvell	Attorney General's Office
Dave Garner	Attorney General's Office
Leslie Bakken Oliver	Governor's Legal Counsel – via Microsoft Teams
Reice Haase	Governor's Office – via Microsoft Teams

---

During the executive session, the Board was provided information from its attorney.

The executive session adjourned at 11:10 AM and the Board reconvened in open session.

No formal action was taken.

### A D J O U R N

There being no further business, the meeting was adjourned at 11:10 AM.

---

Doug Burgum, Chairman  
Board of University and School Lands

---

Jodi Smith, Secretary  
Board of University and School Lands

(06/25/2020)