

**Minutes of the Meeting of the
Board of University and School Lands
October 28, 2021**

The October 28, 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 (Via Teams)
Thomas Beadle	State Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Christopher Dingwall	Mineral Title Specialist
Dennis Chua	Investments
Rick Owings	Administrative Staff Officer
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Shackelford	Investments Director
Lynn Spencer	Minerals Title Specialist
Susan Dollinger	Unclaimed Property
James Wald	Legal Council
Scott Giere	Revenue Compliance
Peggy Gudvangen	Finance Division Director
Kayla Spangelo	Surface Range Soils Management Specialist
Rob Dixon	ITD
Shari Duppong	Administrative Support

Guests in Attendance:

Dave Garner	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Hillary Ripley	First Sentier Investors
John DiMarro	First Sentier Investors
Kirby Frances	First Sentier Investors
John Ma	First Sentier Investors
Mark Dunn	Millennium
Ron Ness	NDPC
Brady Pelton	NDPC
Michael Kelly	Pine Bridge
Brian Conry	Pine Bridge
Reed Harmon	Pine Bridge
Alexander Leiken	Millennium
Josh Kevan	RVK
Amy Sisk	Bismarck Tribune
Cyril Espanol	Journalist
David Mackie	
Gary Hagen	
Kristen Hamman	
Andrea Pfennig	
Randy Paas	

C. Rajala
 Craig Smith
 Ron Rauschenberger
 Shelly Shelby
 Lawrence Bender

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 September 30, 2021 regular meeting and October 15, 2021 Special meeting, was made by Secretary of State Alvin Jaeger and seconded by Superintendent Baesler and the motion carried unanimously on a voice vote.

R E P O R T S

September 2021 Report of Encumbrances Issued by Land Commissioner

Granted to:	OVINTIV USA INC, THE WOODLANDS-TX
For the Purpose of:	Easement: Well-Subsurface Well Bore
Right-of-Way Number:	RW0008884
Trust:	A - Common Schools
Legal Description:	MCK-153-96-16: NE4, NW4
Granted to:	MARATHON OIL COMPANY INC, DICKINSON-ND
For the Purpose of:	Easement: Well-Subsurface Well Bore
Right-of-Way Number:	RW0008940
Trust:	A - Common Schools
Legal Description:	DUN-146-93-16-NE4
Granted to:	HESS TIOGA GAS PLANT LLC, MINOT-ND
For the Purpose of:	Easement: Air Monitoring Station
Right-of-Way Number:	RW0008952
Trust:	A - Common Schools
Legal Description:	WIL-158-95-36-SE4
Granted to:	STREAMLINE WATER SERVICES LLC, WATFORD CITY-ND
For the Purpose of:	Permit: Temporary Water Layflat Line
Right-of-Way Number:	RW0008957
Trust:	A - Common Schools
Legal Description:	MCK-149-96-16: NW4, SW4
Granted to:	TESORO HIGH PLAINS PIPELINE COMPANY LLC, BISMARCK-ND
For the Purpose of:	Permit: Temporary Construction
Right-of-Way Number:	RW0008960
Trust:	A - Common Schools
Legal Description:	WIL-154-95-16-SE4
Granted to:	OASIS PETROLEUM NORTH AMERICA LLC, HOUSTON-TX
For the Purpose of:	Permit-Amend: Temporary Layflat Line
Right-of-Way Number:	RW0008951
Trust:	A - Common Schools
Legal Description:	WIL-153-100-36: NE4, SE4, SW4

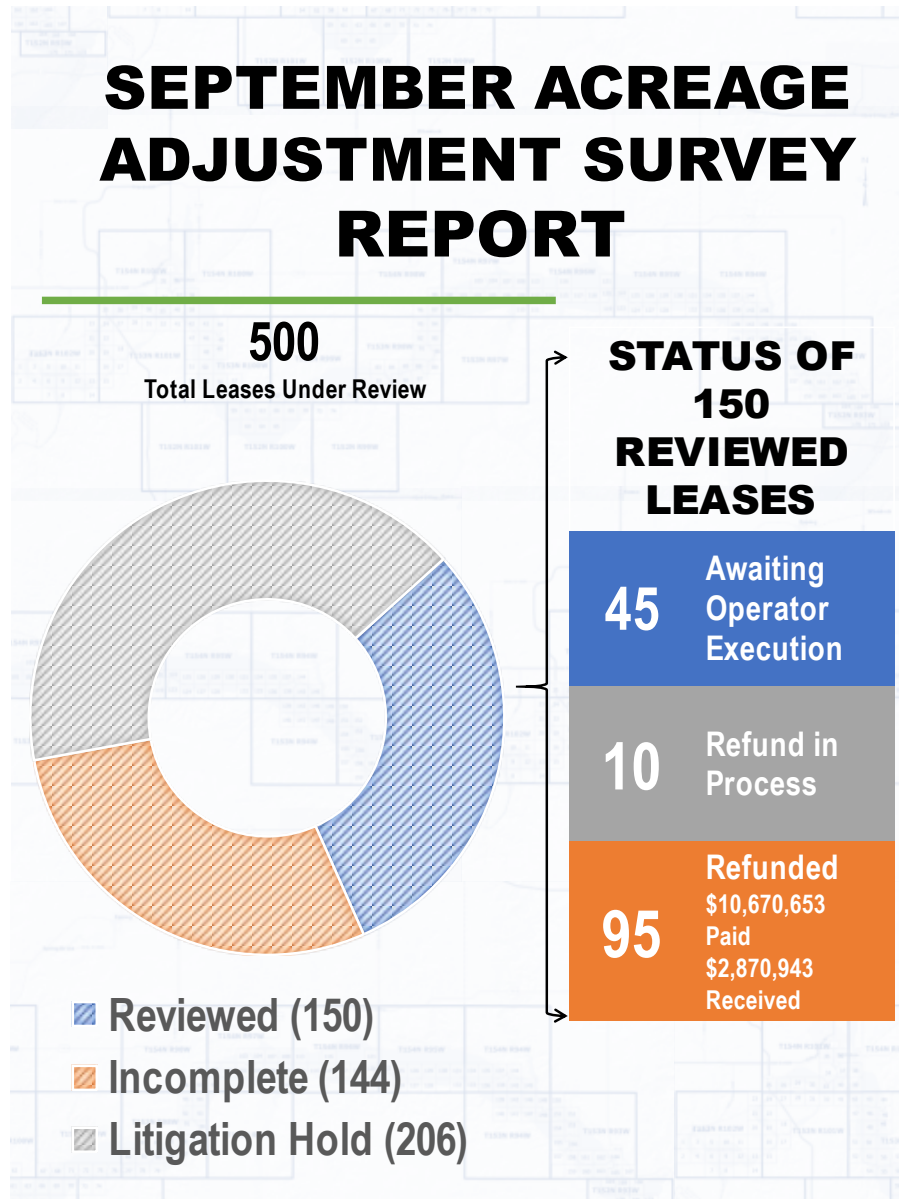
September 2021 Consideration Total: \$45,500.00

(10/28/21)

September 2021 Report of Shut-Ins Approved by Land Commissioner

Granted to:	XTO Energy Inc.
For the Purpose of:	Operations
Date Issued:	09/08/2021
Application Fee:	\$100.00
Trust:	A - Common Schools
Lease:	OG-04-00436, OG-04-00437, OG-04-00438, OG-04-00439

Acreage Adjustment Report



NDDTL River Tracts map was also presented to the Board and is available upon request.

September 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 September 2021, the Division received 261 holder reports with a property value of \$613,300 and paid 431 claims with a total value of \$733,069.

Investment Updates

Portfolio Rebalancing Updates

Staff is reviewing Agreements of recently approved investments namely: Arrowstreet EM Fund, Northern EM Index Fund, Acadian, Int'l Small Cap Fund, SSGA Int'l Small Cap Index Fund.

GCM Secondary Opportunities Fund and Owl Rock Diversified Lending Fund agreements were finalized and executed. These two new funds added \$250M to unfunded commitments. Owl Rock Diversified lending has already made its initial capital call amounting to \$43.5M on October 18, 2021. Additionally, Varde Dislocation made a \$7.5M capital call on October 6, 2021, and Angelo Gordon DL IV will be making a capital call of \$15M scheduled for October 27, 2021. Therefore, with the addition of two new commitments and the capital calls in October, total unfunded commitments as of October 28, 2021, stands at approximately \$825.9M. These are as follows:

1. Apollo Accord Fund, \$84.8M
2. Varde Dislocation Fund, \$42.5M
3. GCM Private Equity, \$115.1M
4. ARES Pathfinder Fund, \$74.5M
5. Angelo Gordon DL IV, \$42.5M
6. Owl Rock Diversified Lending, \$56.5M
7. GCM Secondary Opportunities Fund, \$150M
8. JPM Infrastructure Fund, \$130M
9. Harrison Street Core Property Fund LP, \$130M

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of October 20, 2021. The figures provided are unaudited.

As of October 20, 2021	Market Value \$	Actual	Target	Lower Range	Upper Range
		●	□	└	┘
Broad US Equity	1,213,809,610.33	19.9%	19.0%	14.0%	24.0%
Broad Int'l Equity	1,134,536,245.10	18.6%	19.0%	14.0%	24.0%
Fixed Income	1,391,915,979.16	22.9%	22.0%	17.0%	27.0%
Transition Account	586,201,379.31	9.6%	0.0%	-5.0%	5.0%
Absolute Return	879,560,223.35	14.4%	15.0%	10.0%	20.0%
DIS	-	0.0%	0.0%	-5.0%	5.0%
Real Estate	783,770,403.00	12.9%	15.0%	10.0%	20.0%
Private Equity (Grosvenor)	15,029,716.00	0.2%	5.0%	0.0%	10.0%
Private Infrastructure (JPM-Infra)	-	0.0%	5.0%	0.0%	10.0%
Opportunistic Investments (Varde & Apollo)	82,422,427.00	1.4%	0.0%	-5.0%	5.0%
Portfolio Total	6,087,245,983.25	100.0%			

OPERATIONS

Information Technology Project Status Update

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

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

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

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

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

The Surface Land Management System is scheduled to go-live on November 8, 2021. The Department will eliminate the ability for web forms to be completed and submitted online at 5:00 on October 28, 2021. The web portal is currently scheduled to go-live on November 29, 2021. The Department will not allow for information to be input into the old IT system (Surfviewer) after 5:00 on October 29, 2021. On November 1, 2021, the Financial Management and Accounting will be shut-down until go-live is complete to allow for final migration of data into the Land Management System; no new vendors or invoices will be allowed to be created for 10 days.

Communications to assist the Department have been prepared and are being deployed via:

- [Facebook](#)
- [County Newspapers](#)
- [Letters to State Agencies](#)
- [Department website](#)
- [NDPC newsletter](#)
- [Enewsletter](#)

Additional capital funding was approved through Senate Bill 2013 to support the implementation of software for the Minerals Division. The Department will work with our vendor to determine an appropriate schedule for the building and implementation of a Minerals Management system.

S U R F A C E

Outdoor Heritage Fund Grant Application

At the April 29, 2021 Board of University and School Lands (Board) meeting, the Board authorized the Commissioner to submit a grant application to the Outdoor Heritage Fund (OHF) to support the Department of Trust Lands (Department) acquiring accurate geospatial data on school trust lands.

The Department submitted a grant to the OHF to leverage current efforts to improve management of the 706,600 acres of Trust Lands that will improve boundary identification and access while enhancing the geospatial information available to state agencies and the public.

Agricultural lessees in North Dakota are eligible for various assistance programs to aid in the implementation of conservation practices; many of these important conservation programs are supported by the OHF. The grant would have been used to provide accurate information and clarity over tract boundaries. Uncertainty over tract boundaries has resulted in lost opportunities to better manage Trust Lands for economic and environmental goals. This uncertainty has also led to instances of conflict and confusion regarding leasing and appropriate access in the state. Advances in technology and policy changes regarding land access have allowed the Department to begin addressing these issues. However, the benefits of this project warranted a state investment larger than what the Department can fund alone.

The OHF denied the Board's grant application for the following reasons:

- It was unclear how helpful this would be for the public.
- It should be the responsibility of the landowner to identify property lines.
- It doesn't seem like an appropriate use of OHF money.

Having an accurate geospatial representation of Trust Lands managed by the Department will improve the economic, ecological, and recreational management of these tracts. Thus, the Department will move forward with the project on a smaller scale.

I N V E S T M E N T S

Absolute Return Allocation

In November 2013, the Board of University and School Lands' (Board) approved the implementation of a new strategic asset allocation (SAA) for the Permanent Trust Funds (PTFs), including the addition of Absolute Return strategies. In April 2014, the Board approved an equal investment in the Absolute Return asset class divided amongst three managers: GMO, Westwood and PIMCO.

As a result of consistent underperformance over the past seven years, Department Staff and RVK recommend terminating GMO's Benchmark-Free Allocation Fund (~\$400 Million). The GMO mandate has underperformed both in its benchmark and with its peers. RVK's research shows the GMO mandate has a worse risk/return performance than its index and peer group.

Staff and RVK recommend moving to two new active managers, which should decrease portfolio risk while increasing returns. Staff and RVK began the manager search by compiling a list of the top performing managers within RVK's database. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process. Staff and RVK selected and interviewed top managers to review their investment strategies and process.

After conducting a thorough due diligence of each manager it was determined that Staff and RVK would recommend the Board approve new mandates with Millennium and PineBridge:

Millennium Management LLC manages multi-strategy hedge funds with over \$54 Billion in assets under management, and has over 2,000 investment personnel managing assets in relative value fundamental equity, equity arbitrage, quantitative strategies, and fixed income strategies across the Americas, Europe and Asia. Millennium has an outstanding performance track record. Millennium manages these assets within a strong risk culture that closely measures and tracks investment performance and risk.

PineBridge Investments manages the PineBridge Dynamic Asset Allocation Fund an open-end mutual fund. PineBridge has a strong investment process and portfolio characteristics that Staff and RVK felt would well suit the PTFs. PineBridge is an investment manager spun out of AIG in 2010 and headquartered in New York, with 24 offices worldwide. They have over \$141 Billion in assets under management and over 200 investment professionals.

Staff and RVK are currently satisfied with the performance of PIMCO's All Asset All Authority mutual fund (~\$480 Million) within the Absolute Return asset class. However, Staff and RVK recommend reallocating the Absolute Return's 15% allocation evenly amongst PIMCO, Millennium and PineBridge.

Motion: The Board approve terminating investment with GMO and reallocating the Absolute Return assets (~\$880 Million) evenly to maintain investment with PIMCO at a reduced amount, and to add investments with Millennium and PineBridge (~\$290 Million each). 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			X		
Governor Burgum			X		

RVK Absolute Return Millennium Memo and Presentation; RVK Absolute Return PineBridge Memo and Presentation were presented to the Board and are available upon request.

Private Infrastructure Investments

In April 2020, the Board of University and School Lands' (Board) approved an asset allocation to Private Infrastructure within the broader Strategic Asset Allocation (SAA) for the Permanent Trust Funds (PTFs). In September 2020, the Board approved JPMorgan as the inaugural infrastructure manager with an investment that represented about half the 5% allocation within the new SAA.

Department Staff and RVK believe it is time to complete the initial 5% allocation to Private Infrastructure. Staff and RVK agreed upon certain goals for the PTFs initial investments in infrastructure:

- Open-end fund structure – Allows for reinvestment potential without conducting a new RFP or waiting for a new fund to open. Ability to withdraw investment under partnership terms. Provides greater manager flexibility to hold and trade assets, and generally have greater diversity of assets (both sector and geography).
- Core infrastructure strategy – Core infrastructure has higher expected yields and lower risk versus non-core which has higher expected total return and a higher risk profile.
- Low exposure to fossil fuels to reduce correlation to PTF revenues.
- Geographically diverse, primarily in developed countries.

Staff began the manager search by requesting RVK compile a list of the highest rated managers within their private infrastructure manager database. Staff and RVK interviewed three of the top managers on the list. Staff and RVK reviewed the return performance and risk history of each manager, along with fees, investment staff, operations, and process.

This due diligence process has resulted in Staff and RVK recommending First Sentier Investors' (FSI) Global Diversified Infrastructure Fund to the Board. FSI has over 25 years of infrastructure investment experience. They have a globally diversified portfolio with low exposure to revenue sources that mirror the PTFs' revenues. FSI has nearly \$13 Billion in assets under management, managed by 54 investment professionals located out of three offices: Sydney, New York and London. Their fund consists of 25 portfolio companies in 11 countries.

Motion: The Board approve up to a \$150 Million initial investment in First Sentier Investors' Global Diversified Infrastructure 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		
Superintendent Baesler	X		X		
Treasurer Beadle		X	X		
Attorney General Stenehjem			X		
Governor Burgum			X		

RVK Infrastructure Recommendation Memo, First Sentier Investors Presentation were presented to the Board and are available upon request.

Commercial Real Estate – UBS Redemption

In July 2014, the Board of University and School Lands’ (Board) approved an investment with UBS’ Trumbull Property Fund (TPF) as part of the commercial real estate asset allocation.

Due to continued underperformance Department Staff and RVK believe it is time to enter TPF’s redemption queue. TPF’s performance has been hampered by over allocation to retail, hospitality and office, and under allocation to apartments and industrial versus their peer group.

RVK’s real estate research team has outlined three items of primary concern:

1. Loss of confidence in UBS’ ability to manage the Fund’s competing issues.
2. Extended period of underperformance.
3. Growing redemption pool despite incentive programs to boost support.

Staff concurs with RVK’s concerns and recommendation.

Motion: The Board approve notification to UBS of full redemption on or before November 2, 2021.

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		

RVK Recommendation Memo was presented to the Board and is available upon request.

LITIGATION

Newfield Litigation

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

Date Filed: March 7, 2018
 Court: District Court/McKenzie County
 Attorneys: David Garner
 Opposing Counsel: Lawrence Bender - Fredrikson & Byron, P.A. and Michelle P. Scheffler – Haynes and Boone, LLP
 Judge: Robin Schmidt

Issues: Plaintiff is seeking a Declaratory Judgment that it is currently paying gas royalties properly under the Board’s lease. Specifically, Plaintiff is asking the Court to order that gas royalty payments made by the Plaintiff be based on the gross amount

received by the Plaintiff from an unaffiliated third-party purchaser, not upon the gross amount paid to a third party by a downstream purchaser, and that Plaintiff does not owe the Defendants any additional gas royalty payments based on previous payments.

History:

A Complaint and Answer with Counterclaims have been filed. Newfield filed an Answer to Counterclaims. A Scheduling conference was held July 27, 2018. Plaintiffs' filed a Motion for Summary Judgment on August 13, 2018 and Defendants filed a Cross-Motion for Summary Judgment. Plaintiffs' Response was filed October 19, 2018 and Defendants' Reply was filed November 9, 2018. A hearing on the Motions for Summary Judgment was held on January 4, 2019 at 1:30 p.m., McKenzie County. An Order on Cross Motions for Summary Judgment was issued on February 14, 2019, granting Plaintiff's motion for summary judgment and denying Defendants' motion for summary judgment. The Judgment was entered March 1, 2019, and the Notice of Entry of Judgment was filed March 4, 2019. Defendants have filed a Notice of Appeal to the North Dakota Supreme Court (Supreme Court). The trial scheduled in McKenzie County District Court for September 10 and 11, 2019 has been cancelled. Defendants/Appellants' Brief to the Supreme Court was filed April 29, 2019. Plaintiffs/Appellees filed their Brief of Appellees and Appendix of Appellees on June 7, 2019. Defendants/Appellants filed a reply brief on June 18, 2019. Oral Argument before the Supreme Court was held on June 20, 2019. On July 11, 2019, the Supreme Court entered its Judgment reversing the Judgment of the McKenzie County District Court. On July 25, 2019 Newfield filed Appellee's Petition for Rehearing. Also on July 25, 2019, a Motion for Leave to File Amicus Curiae Brief by Western Energy Alliance in Support of Newfield was filed with the Supreme Court. On July 26, 2019, a Motion for Leave to File Amicus Curiae Brief by North Dakota Petroleum Council in Support of Newfield was filed with the Supreme Court. On August 20, 2019, the North Dakota Supreme Court requested Defendants file a Response to the Petition for Rehearing and the two Amicus Curiae Briefs no later than September 4, 2019. Defendants/Appellants filed their Response to Petition for Rehearing on September 4, 2019. A Corrected Opinion was filed by the North Dakota Supreme Court on September 9, 2019, changing the page number of a citation. On September 12, 2019, the North Dakota Supreme Court entered an order denying Newfield's Petition for Rehearing. On September 20, 2019, the opinion and mandate of the Supreme Court was filed with McKenzie County District Court. A Telephonic Status Conference was held October 8, 2019. On October 9, 2019, the District Court issued an Order Setting Briefing Schedule which ordered "the parties to file a brief regarding how they suggest the case proceed after the Supreme Court's decision." The parties filed briefs with the District Court on November 6, 2019. Notice of Appearance for Michelle P. Scheffler of Hayes and Boone, LLP on behalf of Plaintiffs was filed November 7, 2019. Telephonic Status Conference scheduled for March 17, 2020 before the District Court. On May 14, 2020, the Court scheduled a five-day Court Trial to start on October 4, 2021, McKenzie County Courthouse. On July 28, 2020, a Stipulated Scheduling Order was entered, setting dates for various deadlines. On April 1, 2021, the State served Defendants State of North Dakota, ex re. the North Dakota Board of University and School Lands, and the Office of the Commissioner of University and School Lands, a/k/a the North Dakota Department of Trust Lands' Interrogatories, Requests for Production of Documents, and Requests for Admissions to Plaintiff. On April 1, 2021, the Plaintiffs served the following on the State: Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of a Representative of the North Dakota Department of Trust Lands; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Lance Gaebe; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Taylor K. Lee; Plaintiffs' Notice of Intention to Take Oral and Videotaped Deposition of Jodi Smith; and Plaintiffs' First Set of Interrogatories, Requests for Production,

and Requests for Admission to all Defendants. On July 1, 2021, Defendants filed their Motion for Summary Judgment and Plaintiffs filed their Motion for Partial Summary Judgment. On August 2, 2021, Plaintiffs filed a Motion to Admit Garrett S. Martin Pro Hac Vice and their Response Brief in Opposition to Motion for Summary Judgment. Also on August 2, 2021, Defendants filed their Brief in Response to Plaintiffs' Motion for Partial Summary Judgment. On August 4, 2021, the parties filed an Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to Motions for Summary Judgment and the Joint Motion to Exceed Volume Limitations. On August 5, 2021, the Court issued its Order Granting Expedited Joint Motion for Extension of Time to Reply to Briefs in Opposition/Response to motions for Summary Judgment and the Order Granting Joint Motion to Exceed Volume Limitations. The parties now have until August 30, 2021 to file their opposition/response briefs and the page limit was extended from 12 pages to 30 pages for both parties. On August 9, 2021, Plaintiffs requested a hearing on Plaintiff's Motion for Partial Summary Judgment and Defendants Motion for Summary Judgment and scheduled that hearing for September 16, 2021, at 10 a.m. Also on August 9, 2021, a Pretrial Conference was scheduled for 10 a.m. on October 1, 2021. Mediation was held September 2, 2021. The Deposition of Adam Otteson was held August 31, 2021; Jodi Smith's deposition was held September 14, 2021; the deposition of Kelly Vandamme was held September 22, 2021; and the deposition of John Kemmerer was held for September 23, 2021. On September 3, 2021, Plaintiffs filed a Motion to Compel which was later withdrawn on September 16, 2021. On September 8, 2021, Plaintiffs submitted a Motion to Admit Ryan Pitts Pro Hac Vice. The Order of Admission was signed September 9, 2021. On September 10, 2021, Plaintiffs filed a Motion to Exclude Evidence Attached to Defendants Summary Judgment Brief. They also filed an Emergency Motion for Expedited Briefing Schedule and a request for the hearing on both of these motions be held with the motions for summary judgment. Judge Schmidt sent an email to the parties on September 10, 2021 regarding the status. On September 14, 2021, the Order Extending Deadline to Submit Motions in Limine and Pretrial Statements to be due September 20, 2021 was signed. On September 15, 2021, Defendants filed a Motion to Exclude Evidence and Response to Plaintiffs' Motion to Exclude. The parties attending the oral argument on September 16, 2021 and an Order on Cross Motions for Summary Judgment was issued that date. On September 17, 2021, the parties filed a Stipulation regarding Trial Witnesses and the Order Adopting the Stipulation was signed on September 20, 2021. On September 20, 2021, the Defendants filed an Expedited Motion to Supplement Exhibits and Plaintiffs filed a Motion in Limine or to Exclude and Limit Anticipated Testimony. The parties also filed their Pretrial Statements and a Combined Exhibit list.

**Current
Status:**

- **On September 23, 2021, Plaintiffs filed their Response in Opposition to Defendants' Expedited Motion to Supplement Exhibits and the Court entered the Order Granting Expedited Motion to Supplement Exhibits filed by Defendants.**
- **On September 24, 2021, Plaintiffs filed their Response in Opposition to Defendants' Motion to Exclude Evidence, an Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means, and a Special Motion to Exclude and Motion in Limine. Defendants filed a Supplemented Exhibit List.**
- **On September 27, 2021, the Court entered its order Granting Plaintiffs' Expedited Motion to Take Joy Barnett's Testimony by Reliable Electronic Means. Defendants filed a Second Supplemented Exhibit List and their response to Plaintiff's Special Motion to Exclude and Motion in Limine.**

- On September 28, 2021, Defendants filed their response to Plaintiff's Motion in Limine or to Exclude and Limit Anticipated Testimony.
- A pretrial conference was held on October 1, 2021.
- The trial was held on October 4, 5 & 6.
- The Court issued its Memorandum Opinion, Findings of Fact, Conclusions of Law and Order for Judgment on October 13, 2021.
- On October 22, 2021, Plaintiffs filed their Statement of Costs and Disbursements of Lawrence Bender, Statement of Costs and Disbursements of Michelle P. Scheffler, and proposed Judgment.

M I N E R A L S

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.

S U R F A C E

Request for Carbon Dioxide Storage Easement Agreement – Minnkota Power Cooperative, Inc. – Project Tundra

As companies look at a carbon constrained future, sequestration and geologic storage of carbon is being explored on a national and global level as an alternative to reduce the amount of and (10/28/21)

mitigate impacts from anthropogenic carbon. This process is known as carbon capture and storage (“CCS”) or geologic sequestration. CCS operations capture carbon dioxide (CO₂) from a large industrial source (such as a power plant), compresses it, and injects the CO₂ into the pore space in an underground geologic formation. While large scale carbon sequestration technology is new, carbon injection technology has been used for enhanced oil recovery (EOR) operations in many areas. Geologic storage of CO₂ requires the correct form of CO₂, the correct underground conditions, and the correct geologic layers for storage (porous and permeable) and cap rock/seals (non-porous and non-permeable) of the storage layer to be successful.

Project Tundra will capture carbon at the Milton R. Young Station and inject it into the Broom Creek and the Deadwood formations. According to the proponents of Project Tundra, the project will capture 90% of CO₂ emissions from the flue gas which equates to 4 million tons per year of carbon capture. Project Tundra will utilize the federal tax credit, 45Q, which pays per ton for CO₂ stored underground. The 45Q tax credit provides \$50 per ton of CO₂ that is permanently stored underground over a 12-year period. North Dakota-based Minnkota Power Cooperative, Inc. (Minnkota) is leading the project, along with research support from the Energy & Environmental Research Center at the University of North Dakota. Minnkota will need to establish relationships with financing parties in order to monetize the credits, as Minnkota is a not-for-profit cooperative. Once Minnkota has received a Certificate of Completion from the NDIC, the State of North Dakota is expected to become the owner of the injected CO₂ and all associated liabilities.

Minnkota is requesting an agreement allowing for the injection and permanent storage of CO₂ into Trust pore space. Under North Dakota law, title to pore space and all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate. The applicable laws taken into consideration of this agreement include Article IX “Trust Lands” of the North Dakota State Constitution, title 15 “Education”, chapter 47-31 “Subsurface Pore Space Policy”, and chapter 38-22 “Carbon Dioxide Underground Storage” of the North Dakota Century Code, and Articles 43-05 “Geological Storage of Carbon Dioxide” and 85-04 “Board of University and School Lands” of the North Dakota Administrative Code.

EXECUTIVE SESSION

Under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2, the Board close the meeting to the public and go into executive session for purposes of attorney consultation relating to:

- **Royalty Offers**
- **Newfield Exploration Company et al Civ. No. 27-2018-CV-00143**
- **Continental Resources, Inc. et al Case No. 1:17-CV-00014**
- **Carbon Storage Agreement**

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 11:06 AM.

EXECUTIVE SESSION**Members Present:**

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

Department of Trust Lands Personnel present:

Jodi Smith	Commissioner
Rick Owings	Administrative Staff Officer
Kristie McCusker	Paralegal
Adam Otteson	Revenue Compliance Director
Michael Humann	Surface Division Director
James Wald	Legal Council

Guests in Attendance:

Dave Garner	Office of the Attorney General
Troy Seibel	Office of the Attorney General
Reice Haase	Office of the Governor
Leslie Bakken Oliver	Office of the Governor
Charles Carvell	Office of the Attorney General - Newfield and Continental

The executive session adjourned at 1:19 PM 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.

Post executive session, the Board took the following formal action relating to the Carbon Storage Agreement.

Motion: The Board supports alignment with the state legislature, other state agencies and organizations in the creation of the Project Tundra initiative. The Board approved the issuance of the Carbon Capture Easement 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
Attorney General Stenehjem	X		X		
Governor Burgum			X		

A D J O U R N

There being no further business, the meeting was adjourned at 1:20 PM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands

(10/28/21)