

**Minutes of the Meeting of the
Board of University and School Lands
September 24, 2020**

The September 24, 2020 meeting of the Board of University and School Lands was called to order at 9:02 AM in the Peace Garden 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
Robert Dixon	Network Computer Specialist – via Microsoft Teams
Michael Humann	Surface Division Director
Kristie McCusker	Paralegal
Catelin Newell	Administrative Staff Officer
Adam Otteson	Revenue Compliance Division Director – via Microsoft Teams
Rick Owings	Grants Administrator EIIO – via Microsoft Teams
Mike Shackelford	Investment Division Director
David Shipman	Minerals Division Director
James Wald	Assistant Attorney General

Guests in Attendance:

Dave Garner	Office of the Attorney General
Leslie Bakken Oliver	Governor's Legal Counsel
Kirby Francis	Guest via Microsoft Teams
Jim Sakelaris	Guest via Microsoft Teams
Brady Pelton	NDPC Guest via Microsoft Teams
Nicholas Moller	Guest via Microsoft Teams
Brent Bogar	Guest via Microsoft Teams
Josh Kevan	RVK Guest via Microsoft Teams

APPROVAL OF MINUTES

A motion to approve the minutes of the amended June 25, 2020 regular meeting, the August 27, 2020 regular meeting and the September 9, 2020 special meeting was made by Treasurer Kelly Schmidt and seconded by Attorney General Wayne Stenehjem and the motion carried unanimously on a voice vote.

It should be noted for the record that the amended portion of the June 25, 2020 meeting was an update to correct the motion relating to the Commissioner's Performance Evaluation as stated: (1) The Board approves a salary increase of 2.5% as recommended by the 66th 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

(09/24/2020)

R E P O R T S

August Report of Encumbrances Issued by Land Commissioner

Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Road-Section Line Access Road
Right-of-Way Number:	RW0008640
Trust:	A – Common Schools
Legal Description:	WIL-154-96-16-NE4
Granted to:	XTO HOLDINGS, LLC, SPRING-TX
For the Purpose of:	Road-Section Line Access Road
Right-of-Way Number:	RW0008641
Trust:	A – Common Schools
Legal Description:	WIL-159-96-16-NW4
Granted to:	CONTINENTAL RESOURCES INC
For the Purpose of:	Road-Access Road
Right-of-Way Number:	RW0008648
Trust:	A – Common Schools
Legal Description:	MCK-152-97-36-NW4, SW4
Granted to:	MCKENZIE ELECTRIC COOP INC
For the Purpose of:	Release of Easement
Right-of-Way Number:	RW0008656
Trust:	A – Common Schools
Legal Description:	DUN-148-96-36-SW4
Granted to:	MOUNTRAIL-WILLIAMS ELECTRIC COOP
For the Purpose of:	Drop Line-Buried Electric Distribution Line
Right-of-Way Number:	RW0008687
Trust:	A – Common Schools
Legal Description:	MOU-153-92-16-NW4
Granted to:	ONEOK ROCKIES MIDSTREAM LLC, SIDNEY
For the Purpose of:	Release of Easement
Right-of-Way Number:	RW0008702
Trust:	A – Common Schools
Legal Description:	MCK-153-94-16-NW4, SW4
Granted to:	MOUNTRAIL-WILLIAMS ELEC. COOP
For the Purpose of:	Drop Line-Buried Electric Distribution Line
Right-of-Way Number:	RW0008731
Trust:	A – Common Schools
Legal Description:	MOU-152-92-23-NE4NW4
Granted to:	VERENDRYE ELEC COOP INC, VELVA-ND
For the Purpose of:	Electric-Buried Distribution Line
Right-of-Way Number:	RW0008755
Trust:	Z – Valley/Mayville
Legal Description:	MCH-156-76-22-E2SW4

Granted to:	OVINTIV USA INC, DENVER-CO
For the Purpose of:	Road-Access Road
Right-of-Way Number:	RW0008766
Trust:	A – Common Schools
Legal Description:	MCK-153-96-16-SE4
Granted to:	INTERSTATE ENGINEERING INC, MANDAN ND
For the Purpose of:	Planning & Preconstruction Survey
Right-of-Way Number:	RW0008768
Trust:	A – Common Schools
Legal Description:	N/A
Granted to:	MINNKOTA POWER COOPERATIVE INC
For the Purpose of:	Seismic
Right-of-Way Number:	RW0008769
Trust:	A – Common Schools
Legal Description:	OLI-141-83-16-NE4, SE4 OLI-142-84-36-SE4, SW4

August 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 July 2020, the Division received 153 holder reports with a property value of \$306,487 and paid 332 claims with a total value of \$558,932.

Energy Infrastructure and Impact Office

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

The Oil and Gas Impact Grant Fund currently has 22 grants with a balance of \$5,282,832.07 as of September 9, 2020. The following shows grant activity for the last seven months:

(09/24/2020)

Oil and Gas Impact Grant Fund	Grants with balances	Current Balance Obligated to Grants
2/13/2020	21	\$7,207,988.75
5/13/2020	28	\$7,049,556.08
9/9/2020	22	\$5,282,832.07

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 September 9, 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 seven months:

Energy Impact Fund	Grants with balances	Current Balance Obligated to Grants
2/13/2020	3	\$3,447,448.60
5/13/2020	3	\$2,394,929.22
9/9/2020	3	\$2,394,929.22

EIIO is currently managing 25 grants for a total of \$7,677,761.29. The following shows grant activity for the last seven 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
2/13/2020	21	\$7,207,988.75	2/13/2020	3	\$3,447,448.60	\$10,655,437.35
5/13/2020	28	\$7,049,556.08	5/13/2020	3	\$2,394,929.22	\$9,444,485.30
9/9/2020	22	\$5,282,832.07	9/9/2020	3	\$2,394,929.22	\$7,677,761.29

Investment Updates

Portfolio Rebalancing Updates

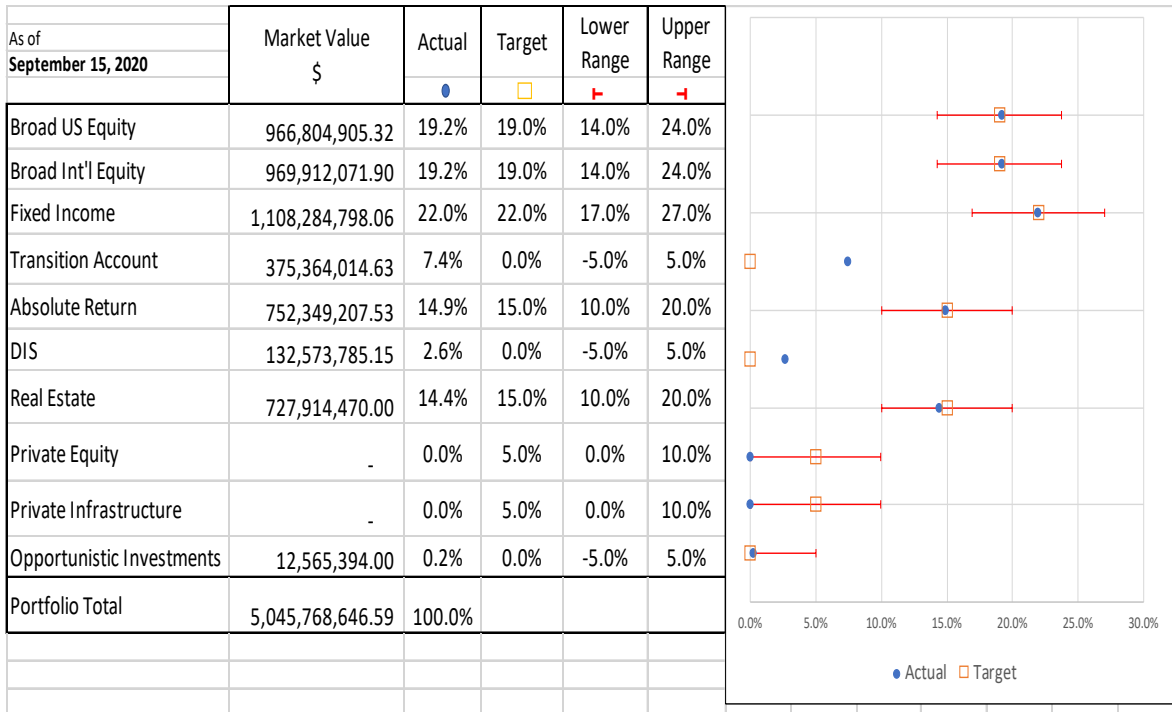
In April 2020, the Board of University and School Lands (Board) approved a new Strategic Asset Allocation. The Department of Trust Lands (Department) staff, along with RVK staff, developed a transition plan to liquidate the TIPS, Commodities, MLPs, and Natural Resource Equities' holdings in the Permanent Trust Funds (PTFs) in a manner that is consistent with the best interests of the PTFs and as market conditions allow. The Department staff and RVK continuously monitoring the trigger points set for these accounts and redemption of investments are completed when appropriate. As of September 15, 2020, Van Eck has approximately \$38M remaining while Harvest has approximately \$94M.

In July 2020, the Board approved \$100M new investment commitment to the Apollo Accord Fund IV, LP (Fund), for an Opportunistic Investment. The Fund has now called on an initial \$2,565,393.79 that was funded on September 15, 2020. The remaining unfunded commitment is now at \$97,434,606.21.

Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of Sept. 15, 2020. The figures provided are unaudited.

(09/24/2020)



Upcoming Investment Manager Meetings

There is no upcoming meeting scheduled.

Repayment of Unpaid Gas Royalties Report

Gas Royalty Payors Out of Compliance*		
Abraxas Petroleum	Hess	Resource Energy
Armstrong Operating	Hunt Oil	RIM Operating
BTA	Kraken Oil & Gas	Ritter, Laber & Associates
Citation Oil and gas LLC	Liberty Resources	Scout Energy Management
Condor Petroleum	Luff Exploration	Sinclair
Conoco Phillips	Marathon	Slawson
Continental Resources	Murex	Thunderbird Resources
Denbury	Newfield	Whiting
EOG	Oasis	Windridge Operating
Fidelity	Petro Hunt	XTO
Gadeco LLC	Rampart Energy	Zavanna

*Based upon improper deductions taken as discovered in completed audits. As of the time of the report, deductions have not yet been repaid.

Since the September 9, 2020, Board of University and School Lands meeting, one payor has come into compliance:

- Crescent Point

Note, the majority of payors issue payment with their monthly royalty payment made the last week of every month.

(09/24/2020)

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 system for Financial Management and Accounting was successfully launched.

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

During April, 2020 the Investment Division participated in three demonstrations by vendors to implement the Microsoft Dynamics 365 product. On April 27, 2020 the RFP was issued to all three vendors. The Department received responses from all three vendors and is in the process of awarding the contract. The Investments Division, Commissioner and Project Manager are working to determine a go-live for software estimated to be in December 2020.

On December 16, 2019, the Department issued the RFP for the Land Management system. The Executive Steering Committee approved the Department moving forward with a Microsoft Dynamics solution. The Project Sponsor, Commissioner and Project Manager are working on determining a kick-off date.

North Dakota Department of Trust Lands Deferred Production Analysis

North Dakota received \$1.25 billion from the Coronavirus Relief Fund as part of the \$2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. The North Dakota Budget Section voted last week to utilize more than half a billion dollars in federal funding for North Dakota's COVID-19 response and recovery efforts, with the majority of the money directed to support economic recovery.

The Department of Trust Lands received \$20,000 to complete an analysis of shut-in and deferred producing wells analysis based upon various economic scenarios to anticipate production and the resulting direct impact on cash flow for the Department. The analysis will allow the Department to better manage cash flows and disbursement obligations through cash deposits versus being required to sell investments. An analysis was presented at the May 28, 2020, Board of University and School Lands meeting. Attached is an updated analysis for review.

North Dakota Department of Trust Lands Deferred Production Analysis document was presented to the Board and is available at the Department upon request.

Board of University and School Lands Meeting Dates For 2021

North Dakota Century Code 15-01-03 states that the Board shall meet on the last Thursday of each month, unless it appears a quorum will not be present at which time it may be rescheduled. Special

(09/24/2020)

meetings of the Board may be held at any time at the written call of the chairman, the commissioner, or any two members of the Board.

The statutory meeting dates serve as the starting point in efforts to schedule meetings of the Board. The meetings are set at 9:00 AM in the Governor's Conference Room, unless otherwise noted. Board members should anticipate the meetings will last two hours each month except for meetings that include the Investment quarterly update which will last three hours as noted below.

The following dates will be shared with Board members' offices for scheduling purposes.

- January 28, 2021 9:00 AM – 11:00 AM
- February 25, 2021 9:00 AM – 12:00 PM
- March 25, 2021 9:00 AM – 11:00 AM
- April 29, 2021 9:00 AM – 11:00 AM
- May 27, 2021 9:00 AM – 12:00 PM
- June 24, 2021 9:00 AM – 11:00 AM
- July 29, 2021 9:00 AM – 11:00 AM
- August 26, 2021 9:00 AM – 12:00 PM
- September 30, 2021 9:00 AM – 11:00 AM
- October 28, 2021 9:00 AM – 11:00 AM
- November 23, 2021 9:00 AM – 12:00 PM Tuesday before Thanksgiving
- December 21, 2021 9:00 AM – 11:00 AM Tuesday before Christmas Eve

Approval of Additional FTE

On August 27, 2020, the Board of University and School Lands supported the Commissioner in requesting an additional FTE from the Emergency Commission and the Budget Section.

On September 8, 2020, the Emergency Commission approved the Department of Trust Lands (Department) request for an additional FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

On September 17, 2020 the North Dakota Legislative Budget Section approved the Department's request for one FTE for the Minerals Division to assist in the management of 2.6 million mineral acres.

The approval did not require additional funding be appropriated as Department currently has available funding in the salary and wages line item to support the FTE.

O P E R A T I O N S

Surface Land Management and Minerals Management Administrative Rules

In House Bill 1300, the Sixty-fifth Legislative Assembly directed the Board of University and School Lands (Board) no longer be exempt from the Administrative Agencies Practice Act (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.

(09/24/2020)

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.

The proposed Administrative Rules presented to the Board in June 2020 provided changes from the Board's Land Retention and Sales Policy as follows:

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 sale 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 provided to the trust from which the original grant land was sold.

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

- Requires any sale of acquired lands to be subject to public comment prior to Board review.
- 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):

- 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.

In June 2020, the Board authorized the Commissioner to proceed with a public comment period and the collection of comments. Additionally, the Board authorized the Commissioner to submit to Legislative Council the Administrative Rules.

The Department received comments relating to the Definitions, a significant number of comments pertaining Land Exchange and Sales, and one comment regarding the proposed Offset Well rules. The Department is recommending revising the originally proposed Administrative Rules, as shown in the attached red-line version (Attachment 2), prior to submitting to the Attorney General's Office for review. Attachment 3 is a summary of the comments received, the discussion and review by the Department, and the action taken concerning the proposed rules and changes made based on the comments and discussions.

The following is a summary of the changes provided in Attachment 2, the proposed Administrative Rules as revised after the public comment period. These rules do not promote the sale of trust lands but provide the Board the ability to sell in certain circumstances. Changes after comments include:

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

- Removed the definition of high value land and revised rules to reference residential, commercial and industrial zoning.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

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

- Added criteria for the sale of acquired lands.
- Rearranged language to fit with other revisions and to provide consistency through rules.
- Added requirements of sale to provide for no net loss in certain circumstances and for land to be provided in payment.
- Added additional requirements to the sale procedure and removed potential for sales without public comment.

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

- Added formal challenge to the criteria considered by the Department and removed significant controversy from the criteria.

Land Exchange:

- Revised language to provide consistency through rules.
- Concerning the Department’s consideration of features not reflected by the market price, language was changed to require mandatory rather than permissive consideration.

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 the 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. Changes were made after comments to reference application of the rule to vertical oil and gas wells only. A definition of vertical oil and gas well was also added.

It is not the intention of the Board to actively sell land. The proposed Administrative Rule is a reflection on the Board’s need to comply with NDCC Section 28-32; requiring the Board to amend necessary Board policies into Administrative Rules.

Motion: The Board approves the Commissioner to proceed in submitting the proposed revised Administrative Rules for Land Sales, Land Exchanges and Offset Wells with the amended language:

- **85-04-07.1 subsection 1. If the tract has been rezoned or has the high potential to be rezoned.**
- **85-04-08.1 subsection 2. If the If the tract has been rezoned or has the high potential to be rezoned**

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

The Board of University and School Lands History of Land Sale Policy, Administrative Rules General Administration (red-lined) and Summary of Comments were presented to the Board and are available at the Department upon request.

ENERGY INFRASTRUCTURE AND IMPACT OFFICE

Retirement of Grants

Pherrin Township in Williams County was awarded a grant in the amount of \$300,000.00 in Fiscal Year 2015 to assist in upgrades to the 54th street road project. The project included road cuts, culverts, road fills, grading roads and ditches, erosion control, and adding guard rails for the crossings to address safety concerns.

Political Sub	Grant	Awarded	Paid	Balance	Project
PHERRIN TOWNSHIP	G15230	\$300,000.00	\$288,520.80	\$11,479.20	54 TH STREET ROAD PROJECT
				\$11,479.20	

On February 29, 2016, this grant was put into suspension status due state revenue shortfalls. The Energy Infrastructure and Impact Office (EIO) contacted all political subdivisions which had a grant balance. Those that had not started their projects were told to discontinue their projects as their grants were going to be temporarily suspended until funds became available. Political subdivisions that had begun working on their projects could continue, with the funds being retained for those entities that were already receiving invoices.

On February 1, 2017, the suspension of this grant was lifted as funds became available to honor the grants awarded during the revenue shortfall.

On August 24, 2020, Pherrin Township was paid their final disbursement and the project was completed under budget. The remaining amount of \$11,479.20 can be reverted to the Oil and Gas Impact Grant Fund.

Motion: The Board retires the grant identified in the sum of \$11,479.20. Subsequently, the Board declares these funds within the Oil and Gas Impact Grant Fund as contingent for future unmet needs.

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

I N V E S T M E N T S

Private Infrastructure Investments

On April 8, 2020 the Board of University and School Lands' approved an asset allocation to Private Infrastructure within the broader Strategic Asset Allocation for the Permanent Trust Funds (PTFs).

For the PTFs initial investment in infrastructure, Department staff and RVK determined:

- Open-end fund structure which 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).

(09/24/2020)

- Core infrastructure strategy which 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 contributions.
- Geographically diverse, primarily in developed countries.

Department staff and RVK began the manager search by requesting RVK compile a list of the highest rated managers on their private infrastructure research list. The top six managers on the list were sent a request for proposal (RFP). After reviewing the six RFP responses and holding discussions with RVK, the list of managers was reduced to three managers based upon their experience, performance track record, investment process, etc. Department staff and RVK conducted interviews with the three managers. This due diligence process has resulted in the team recommending JP Morgan's Infrastructure Investments Fund (IIF) to the Board.

JP Morgan's IIF was founded in 2006 and headquartered in New York and London. They have over \$12.5 billion in assets under management with 16 portfolio companies and over 500 assets in 25 countries. JP Morgan has over 50 infrastructure investment professionals in addition to portfolio company board of director appointments.

Motion: The Board approves up to a \$130 Million investment in J.P. Morgan Investment Management Inc.'s Infrastructure Investments Fund as a currency hedged limited partner (IIF Hedged LP) as part of the Permanent Trust Fund's Private Infrastructure allocation, 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		
Treasurer Schmidt	X		X		
Attorney General Stenejem		X	X		
Governor Burgum			X		

RVK Infrastructure Recommendation Memo and JP Morgan Infrastructure Presentation were presented to the Board and are available at the Department upon request.

Investment Fee Report – FY 2020

Attached is a report of the Board of University and School Land's (Board) investment fees paid for the twelve months ending June 31, 2020 (Fiscal Year 2020).

Summary:

- During fiscal year 2020 the Permanent Trust Funds (PTFs) paid \$22,335,336 in investment fees (including investment manager fees, custodial expenses, general consultant fees, and specialty consultant fees); this is a decrease of -1.7% from the \$22,711,405 in fees paid in FY 2019. The PTFs' average asset balance increased by 4.76% during the same period (including contributions and withdrawals), from \$4.63 billion in FY 2019 to \$4.85 billion in FY 2020. The primary driver of the decrease in fees is a result of lower incentive fees paid during the year.
- Incentive fees totaling \$898,695 were paid by the PTFs during FY 2020 due to outperformance in the Morgan Stanley Prime Property Fund, Prologis U.S. Logistics Fund and the Angelo Gordon Direct Lending Fund III; this equals 1.4 basis points on the average value of total trust assets during FY 2020, or 4.0% of the total fees of managing the PTF's investment program. Incentive fees totaled \$1,810,455 during FY 2019, the equivalent of 3.9 basis points and 8.0% of the total cost to manage the program.

(09/24/2020)

- The pooled investments of the Strategic Investment and Improvements Fund, Coal Development Trust Fund, and Capitol Building Trust Fund paid \$437,862 in investment management expenses during FY 2020, up from \$274,497 in management fees paid in FY 2019. The increase in management fees is due to the increase in the average assets under management from \$609.8 million in FY 2019 to \$718.0 million in FY 2020.
- The fee consultant Novarca was able to negotiate a fee reduction for the Payden & Rygel Aggregate Bond fund in which fees were lowered from 20 basis points to 17.5 basis points on the first \$250 million and 15 basis points on every dollar above \$250 million. Novarca is paid 27.5% of realized fee savings for 3 years.
- The PTFs entered a fee reduction agreement with JP Morgan based on the total amount of fees paid to JP Morgan each year. The agreement will reduce fees from 10% to 25% depending on fees paid each year.

The Investment Fee Report was presented to the Board and are available at the Department upon request.

LITIGATION

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
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

(09/24/2020)

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 Plaintiff's proposed Judgment within 14 days. On March 19, 2019, Defendants filed an Objection to Plaintiff's Proposed Judgment. Thereafter, Plaintiff's filed a letter asking the Court not to rule on Defendants' Objection until Plaintiff's have had the opportunity to be heard and further, that Plaintiff's intend to bring a Motion for Clarification concerning retroactive royalty refunds within 14 days. Plaintiff's 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 Plaintiff's Proposed Order and Judgment (Plaintiff's Amended Proposed) and Reply to Plaintiff's 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. Plaintiff's filed a Notice of Motion for Attorney Fees, Costs, and Service Award to Plaintiff's 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, Plaintiff's filed their Motion for Attorney Fees, Costs and Service Award to Plaintiff's and the Memorandum in Support of Motion, together with supporting documents. On May 20, 2019, Plaintiff's filed their Amended Motion for Attorneys Fees, Costs and Service Award to Plaintiff's. Defendants filed an Expedited Motion for Extension of Time to Respond to Plaintiff's Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's and requested the June 10, 2019 hearing be postponed. Defendants filed, with the District Court, its Response to Plaintiff's Memorandum in Support of Motion for Attorneys Fees, Costs and Service Award to Plaintiff's on June 12, 2019. Plaintiff's filed their Reply Memorandum in Support of Motion for Attorney Fees, Costs and Service Award to Plaintiff's 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 Plaintiff's Motion for Attorney Fees, Costs and Service Award to Plaintiff's. 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 Plaintiff's Motion for Attorney Fees, awarding attorney fees to Plaintiff's attorneys and service awards to Plaintiff's. 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, 2020 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.

Current Status:

- **On September 22, 2020, the North Dakota Supreme Court entered an order denying the petition for rehearing.**

(09/24/2020)

S U R F A C E

Fall Surface Lease Auctions

The Department of Trust Lands (Department) Surface Management Division manages more than 706,000 surface acres owned by the various trust funds under the Board of University and School Land's (Board) control. One of the major sources of income from these lands comes from agricultural leases (grassland, crop and hay land uses).

On Monday, September 28, 2020, 1,051 surface tracts are scheduled to become available to bid on at public auction using the online auction platform EnergyNet. The auctions will be open for bidding until 5:00 p.m. on Friday, October 9, 2020.

On April 8, 2020, Governor Burgum issued Executive Order 2020-25 (Executive Order) in response to the public health crisis resulting from COVID-19. The Executive Order suspended the requirement in N.D.C.C. § 15-04-10 that requires the Commissioner of University and School Lands to hold public auctions for public land leasing in the county seat. This provided the Commissioner with flexibility for holding public land auctions in a manner to facilitate social distancing and utilize best management practices to mitigate the spread of COVID-19.

In November of 2019, the Department contracted with EnergyNet to host and facilitate online auctions. EnergyNet is a provider of oil, gas, and other commodity auction and sealed bid transaction services. EnergyNet was the sole responder to the Department's Request for Proposal. At the time, it was not anticipated EnergyNet's services would need to be used for surface lease auctions.

After the issuance of the Executive Order, the Department worked with EnergyNet to modify their mineral auction platform to allow it to host surface lease auctions in the spring of 2020. In August of 2020, the Department announced that the fall surface lease auctions would also be hosted online by EnergyNet due to the continuing concerns associated with the public health crisis and hosting auctions that congregate large gatherings of people. Beginning in September of 2020, the Department received feedback from lessees as well as the North Dakota Stockman's Association, the Little Missouri Grazing Association, and the McKenzie Grazing Association. In response, the Department worked with the Governor's staff and the associations on modifications to the auction process, produced guidance for the public to become familiar with the online process, and published a Frequently Asked Questions (FAQ) document, available on the Department's website.

The Executive Order suspended the Department's requirement to hold public actions at a set date and time in the county seat, but it did not change other notice requirements in N.D.C.C. § 15-04-09 or requirements governing leasing by auction under N.D.C.C. § 15-04-10.

Under N.D.C.C. § 15-04-09:

All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.

The Department has published notice of its fall surface lease auction in the official county newspapers where all tracts are located; however, a list of lands offered for leasing in each county has not been submitted to the county treasurers. Historically, the Department considers an auction to be finalized when the Commissioner approves the lease. This typically occurs several days after an auction is complete and the payment has been received.

(09/24/2020)

Under N.D.C.C. § 15-04-10, when the land is offered for lease, the Department is required to give notice that all bids are subject to approval by the Board. This notice was not stated in the advertisement submitted for publication.

In 2005, former Land Commissioner Gary Preszler obtained an Attorney General's opinion concerning the validity of an Adams County lease after the fall auction. N.D.A.G. 2005-L-44. After the auction, the Board learned that notice of the auction was only run twice in the official county newspaper, rather than three times as required by statute. Commissioner Preszler inquired whether the Department could approve the lease even though the auction was not advertised in full compliance with the notice requirements set forth in the constitution and Century Code.

The Attorney General's opinion confirmed the statute must be followed. "The statute's plain meaning mandated publication of the notice. 'The word "shall" is unambiguous . . . it means "must."' It creates a mandatory duty, 'absent any legislative intent to the contrary. . . . This is particularly so when the statute is addressed to public officials.'" *Id.* at 3 (footnote omitted) (citations omitted).

Here, N.D.C.C. § 15-04-10 requires: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board."

The last paragraph of N.D.A.G. 2005-L-44 states: "Failure to comply with a mandatory duty has serious consequences: 'it invalidate[s] subsequent proceedings.' The Land Board must correct the non-compliance with the notice requirement before it can enter leases for its Adams County school lands." *Id.* at 4.

N.D.C.C. § 15-04-12 allows the Board to adjourn the auction for leasing if the interests of the state will be subserved.

The following is a summary of the comments received and the Department's response:

- Opposition to EnergyNet's anonymous bidding platform, in particular due to the grazing associations bylaws prohibiting members from bidding against each other
 - Although the anonymous bidding platform isn't able to be changed in time for the fall surface auctions beginning on September 28th, Department staff suggested that grazing association members could share their bidder numbers with each other prior to the auction so that members knew the grazing associations' bidder number and not bid against the association.
- Opposition to EnergyNet communications requesting financial information from the registered bidders
 - This resulted from bidders who erroneously registered under the business category
 - In response, the Department published a how-to guide directing registrants to the Government category
- Opposition to the online auction host procurement process
 - The Request for Proposal was issued in November 2019, and EnergyNet was the only bidder
 - A 5-year contract was issued and included all Department auctions
- Opposition to the ACH payment process
 - In response, the Department modified the payment process to allow bidders the option to pay by check
- Opposition to the length of time the auctions are open

(09/24/2020)

- Public notice has been sent out for the fall auctions
- The length of time auctions are open can be reduced if future online auctions are needed
- Opposition to the indemnity clause for bidding and concern with slow internet connections
 - EnergyNet cannot guarantee that bids placed too close to the auction closing time will be received prior to closing
 - EnergyNet recommends bidders place their bids in advance of the auction closing time
- Opposition to convenience fees for bidders
 - The Department has covered the convenience fees for the fall auctions using CARES Act appropriations
 - Continuing authority can cover costs if future online auctions are needed
- Concern that bidders may not have access to computers or internet
 - Similar concerns are occasionally expressed for unclaimed property claims and access to Department records
 - Public libraries may be a resource for bidders without internet access. In addition, Department staff and EnergyNet representatives will be available to answer any technical questions
- Concern for ease-of-access for out-of-state bidders
 - The Department does not discriminate, the only requirement is for bidders to be of 18 years-of-age or older
 - Out-of-state bidders have always had access to surface auctions and many hire local agents to bid on their behalf for in-person auctions
- Concerns that hunters will increase the bids on certain tracts
 - All Trust Lands are open to the public for hunting
 - Lessees cannot close leased lands for their exclusive hunting privileges

The Attorney General Stenehjem noted the 2020 spring Surface Lease Auctions were held online and the time has passed to raise any issue or concerns regarding the public notification and posting of these tracts.

The Board discussed the online surface lease auction process and concurred that it is appropriate to have the auctions held online at this time.

Motion: The Board requests the fall surface lease auction be postponed allowing for 1) proper public notice pursuant to N.D.C.C. § 15-04-10 requiring: "Notice must be given when the land is offered for lease that all bids are subject to approval by the board." And 2) N.D.C.C. § 15-04-09: All lands to be leased or offered for lease within the respective counties must be advertised for lease by the board by publication once each week for a period of three weeks prior to the day of leasing in the official county newspaper where said land is situated and in such other newspapers as the board deems appropriate. A list of the lands to be offered for leasing must be filed with the county treasurer of the county wherein such lands are situated at least ten days prior to the day of leasing.

Action Record	Motion	Second	Aye	Nay	Absent
Secretary Jaeger			X		
Superintendent Baesler			X		
Treasurer Schmidt		X	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 10:43 AM.

Doug Burgum, Chairman
Board of University and School Lands

Jodi Smith, Secretary
Board of University and School Lands