

**Minutes of the Meeting of the  
Board of University and School Lands  
April 27, 2023**

The April 27, 2023, meeting of the Board of University and School Lands was called to order at 9:03 AM by Chairman Doug Burgum.

**Members Present:**

Doug Burgum	Governor
Michael Howe	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	State Treasurer
<b>Member(s) Absent:</b>	Superintendent Baesler

**Department of Trust Lands Personnel Present:**

Joseph Heringer	Commissioner
Catelin Newell	Administrative Staff Officer
Rick Owings	Administrative Staff Officer
James Wald	Legal Council
Frank Mihail	Chief Investment Officer
Teresa Hettinger	Investments Officer
Chris Suelzle	Minerals Division Director
Emily Bosch	Unclaimed Property
Maria Garcia	Finance Division
Susan Dollinger	Unclaimed Property
Elvedina Papalichev	Paralegal
Peggy Gudvangen	Finance Division Director
Joseph Stegmiller	Surface Division Director
Lynn Spencer	Minerals Title Specialist
Scott Giere	Revenue Compliance
Jessica Fretty	Unclaimed Property

**Guests in Attendance:**

Ryan Norrell	Office of the Governor
John Reiten	Office of the Governor
Suzie Weigel	Office of the Attorney General
Josh Kevan	RVK
Peter Masset	
C. Rajala	

## 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 March 30, 2023 meeting was made by Treasurer Beadle and the motion was seconded by Secretary Howe and the motion carried unanimously on a voice vote.

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

**Commissioner's Report**

- April 3<sup>rd</sup> – traveled to Standing Rock Indian Reservation for meeting with tribal leaders regarding the North Dakota Trust Lands Completion Act
- New minerals system phased roll out continues to progress well; next major step end of April

(04/27/23)

- Continuing to spend much time monitoring, collaborating, and testifying on legislative bills that pertain to Board and Department business
- Chaired April 10<sup>th</sup> special meeting of the State Investment Board Securities Litigation Committee
- Attended April 21<sup>st</sup> State Investment Board Investment Committee meeting as voting member
- Will be attending April 28<sup>th</sup> full State Investment Board meeting as voting member

#### **HR Update**

- Investment Operations Officer – strong pool of applicants; offer accepted with May 1st start date
- All positions filled!

#### **Legislative Update**

**HB 1013** – Department budget bill; referred out of conference committee with 1) additional minerals position; 2) additional unclaimed property claims processor; 3) additional investment officer; and 4) \$4.9 million to complete our IT project; [passed House on April 25<sup>th</sup> by vote of 89-4; passed Senate on April 26<sup>th</sup> by vote of 45-2; on to governor for signature](#)

**HB 1400** – amends NDCC § 15-01-02 to replace “full control of the investments” to “investment authority over” and specifies Land Board may contract investment management to State Investment Board; amends NDCC § 21-10-06 to specify State Investment Board may manage funds of Common Schools Trust Fund under a written contract with the Land Board; House Industry, Business, and Labor Committee recommended DO NOT PASS 14-0; [failed in House by a vote of 80-13 on February 1st](#)

**HB 1175** – would require all leased surface acres to be open to public access; Department prefers current statute that allows collaborative approach based on specific circumstances of each tract; Commissioner can close tracts at discretion or tenants can request CLOSED or NOTIFY signs from Department; historically only 1% - 3% of all acreage has been closed and even then, only for specific date ranges, usually when cattle are expected to be grazing; health and safety of the public is also a concern for tracts that have oil wells, pipelines, or other industrial operations on them; [amended to “shall consider” legislative management study and passed House by a vote of 89-2 on February 14<sup>th</sup>; failed in Senate by vote of 42-5 on March 6th](#)

**HB 1360** – Department filed bill to amend Unclaimed Property statutes: 1) increase holder record retention period to 10 years from date notified of an exam; 2) increase statute of limitations to enforce holder duties from five years after holder files report to seven; [passed House by a vote of 93-0 on January 31<sup>st</sup>; passed Senate by a vote of 44-0 on March 31<sup>st</sup>; signed by Governor on April 10<sup>th</sup>!](#)

**SB 2049** – Department filed bill to clarify/clean-up surface management statutes regarding notifying county treasurers of surface auctions, timber harvesting on trust lands, granting authority for organized events on trust lands, and the permitting of beehives on trust lands; [passed Senate by a vote of 45-1 on January 12th; passed House by a vote of 91-3 on March 16<sup>th</sup>; SIGNED BY GOVERNOR ON MARCH MARCH 22<sup>ND</sup>!](#)

**HB 1185** – created grant program from the Coal Development Trust Fund for school construction projects affected by “unanticipated construction inflation”; Department testified against at January 17<sup>th</sup> House Education Committee hearing due to its unconstitutionality; the Coal Development Trust Fund is established in Sec. 21, Art. X of the North Dakota Constitution which only provides for loans from the fund, not grants; allowing grants would also alter the “permanent” nature of the fund as provided in Art. X; Committee amended to remove grant language and instead expanded the loan program for school construction projects with unanticipated inflation if bid after January 1, 2021 and before June 30, 2024; loans may be up to \$5 million per district at a rate not to exceed (04/27/23)

1.50%; passed House by a vote of 90-0 on February 10<sup>th</sup>; failed in Senate by a vote of 3-43 on March 9th

## DIVISION REPORTS

### SURFACE

SURFACE DIVISION




Encumbrances issued by Commissioner during March 2023: 16 Right of Way Agreements generating \$60,885 in income for the Trusts.

Photo Credit: Kayla Spangelo  
Williams County 159-100-36



SURFACE DIVISION



The Division also conducted its spring surface lease auctions in March. The following summary shows results in comparison to the previous two spring auction seasons. Tracts offered at auction in the spring are unleased from fall auctions or associated with dropped leases.

DEPARTMENT OF TRUST LANDS SPRING SURFACE AUCTION SUMMARY	2021	2022	2023
Number of counties	19	19	23
Total tracts offered	66	73	70
Number of tracts leased	56 (85%)	58 (79%)	62 (89%)
Number of bid tracts bid-up	15 (27%)	17 (23%)	16 (23%)
Total amount of minimum advertised bids	\$98,815	\$115,482	\$155,891
Total amount received	\$121,605	\$167,970	\$174,858

MINERALS

MINERALS DIVISION – WELL SUMMARY NORTH Dakota | Trust Lands  
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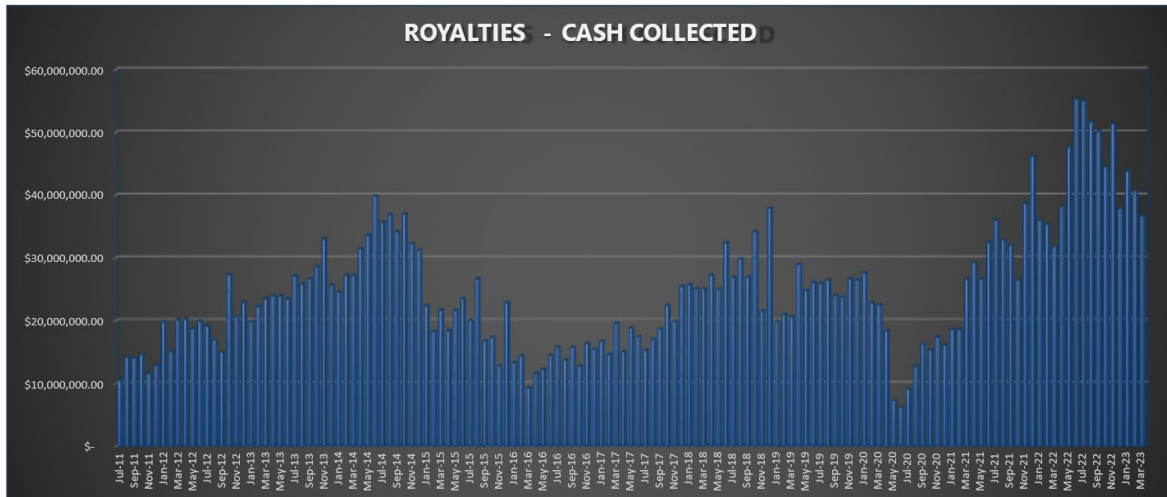
TIMELINE	*FEB-2023			*FEB-2022		
DEPARTMENT OF TRUST LANDS (DTL) VS. NORTH DAKOTA WELL TOTALS	ND TOTAL	DTL TOTAL	%	ND TOTAL	DTL TOTAL	%
PRODUCING WELLS IN WHICH STATE-DTL HAS AN INTEREST	17,209	8,486	49.31%	16,543	8,189	49.50%
OIL PRODUCTION (IN BARRELS) IN WHICH STATE-DTL HAS AN INTEREST (GROSS)	30,989,715	14,404,466	46.48%	30,263,377	15,336,010	50.68%
STATE-DTL'S INTEREST IN OIL PRODUCTION (NET) (IN BARRELS)	30,989,715	418,940	1.35%	30,263,377	422,539	1.40%
WELLS LOCATED ON STATE-DTL SURFACE	20,407	644	3.16%	19,390	619	3.19%

\*APRIL 2023: BASED ON NDIC 02/2023 WELL DATA OBTAINED BY MINERAL TRACKER AS OF APRIL 17, 2023, SOME CONFIDENTIAL INFORMATION NOT AVAILABLE

\*FEBRUARY 2022: BASED ON NDIC 02/2022 WELL DATA OBTAINED BY MINERAL TRACKER ON APRIL 17, 2023

RECORD FISCAL YTD O/G ROYALTIES NORTH Dakota | Trust Lands  
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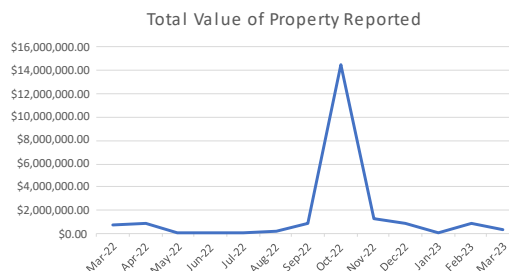
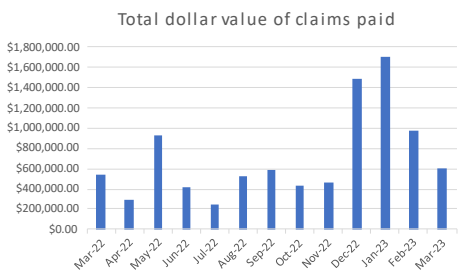
As of March 2023, for fiscal year 2022-23 the Department has received **\$411,881,474** in royalties as compared to **\$315,734,344** last fiscal year at this time. That is an all time record and **30%** year-over-year increase!



## UNCLAIMED PROPERTY



For the month of March 2023, the Division paid 611 claims with \$609,125.27 returned to rightful owners/heirs. It received 61 holder reports with a dollar value of \$295,252.63.



TRUE or FALSE

**Third-party services may contract with owners to help them collect their unclaimed property in exchange for a percentage of what they recover.**

True – The industry term is “Heirfinder” or “Finder”. However, in North Dakota an heirfinder must hold a private investigator’s license AND they cannot charge more than 10%.

## FINANCIALS

### Financial Statements Position Report (Unaudited) for period ended January 31, 2023

The following statements represent the unaudited financial position for the various trusts and funds managed by the Department of Trust Lands. The unaudited financial positions are two months delayed as a significant portion of the revenue for Commons Schools Trust, Strategic Investment and Improvements Fund, and Coal Development Trust includes gross production tax, oil extraction tax and coal severance tax distributions which are received two months after production date.

**The Financial Report (Unaudited) for period ending January 31, 2023, was presented to the Board for review and is available at the Department upon request.**

EXECUTIVE ESTIMATE OF ASSETS  
NORTH DAKOTA DEPARTMENT OF TRUST LANDS

As of March 31, 2023

	3/31/2023 Value	MOM\$ 2/28/2023 Value	MOM% Change	YOY\$ 3/31/2022 Value	YOY% Change
Cash	452,470,509	353,007,846		397,580,738	
Investments <sup>[1]</sup>	7,270,429,898	7,198,132,397		6,540,494,042	
Tax Receivables <sup>[2]</sup>	-	-		43,802,799	
Loans <sup>[3]</sup>	39,657,643	39,731,341		43,433,551	
Receivables <sup>[4]</sup>	8,108,229	8,965,598		7,776,058	
<b>Sub-Total Net Assets</b>	<b>\$7,770,666,278</b>	<b>\$7,599,837,182</b>	<b>2.25%</b>	<b>\$7,033,087,188</b>	<b>10.49%</b>
Mineral Rights <sup>[5]</sup>	2,813,480,347	2,813,480,347		2,813,480,347	
Surface Rights <sup>[6]</sup>	518,077,274	511,088,869		511,088,869	
Building Value <sup>[7]</sup>	1,015,196	1,015,196		264,332	
<b>Total Net Assets</b>	<b>\$11,103,239,095</b>	<b>\$10,925,421,594</b>	<b>1.63%</b>	<b>\$10,357,920,736</b>	<b>7.20%</b>

[1] Approximately 60% of the portfolio is publicly traded for which values are current to the as of date. The remaining 40% is private assets, the values of which are updated as the managers provide them, typically 30-60 days after the end of each quarter.

[2] Estimated value of production, extraction, and severance tax payments not yet received by the Department because they are not distributed until two months after production date.

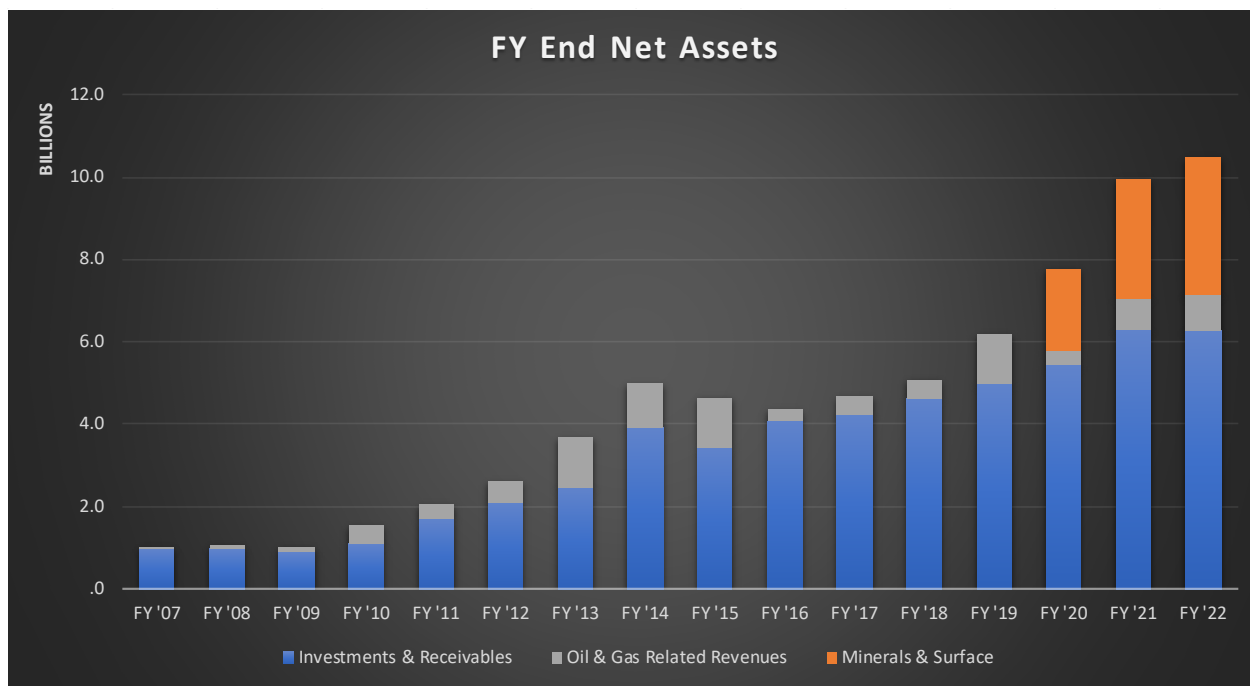
[3] Various loan programs funded with trust assets.

[4] Loans and investments interest accrued, but not yet paid.

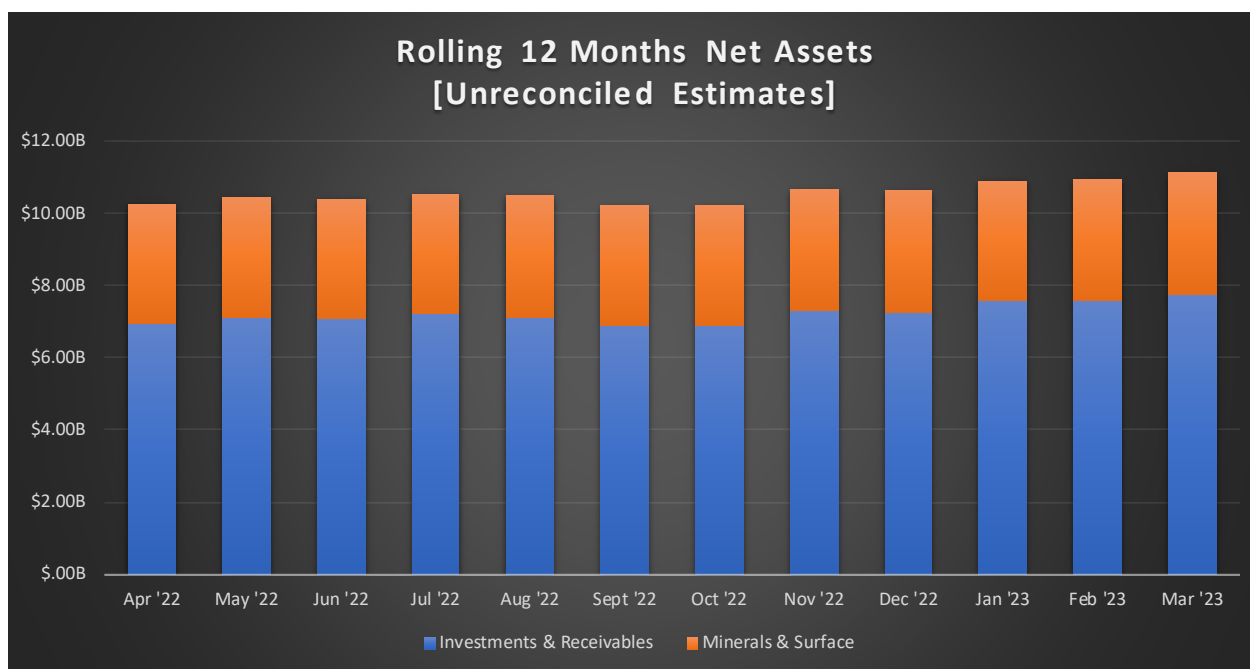
[5] Valued annually via contract with Mineral Tracker. Valuation as of December 31, 2021.

[6] Valued annually via Department fair market value policy. Valuation as of March 2023, based off agricultural values.

[7] Updated annually via broker price opinion. Valuation as of Sept. 15, 2022.



- [1] FY End 2020 - included initial Mineral valuations as of 12/31/19 amounting to \$1,449,002,408 and surface fair market value as of 12/31/19 amounting to \$538,179,773.
- [2] FY End 2021 - included new Mineral valuations as of 12/31/20 amounting to \$2,391,439,503. and surface fair market value as of 12/31/20 amounting to \$523,938,730.
- [3] FY End 2022 - included most recent Mineral valuations as of 12/31/21 amounting to \$2,813,480,347 and surface fair market value as of 12/31/21 amounting to \$511,088,869.



- [1] Dec 2021 includes mineral rights value of \$2,813,480,347
- [2] Sep 2022 includes appraised building value of \$1,015,196
- [3] Mar 2023 includes surface rights value of \$518,077,274

## INVESTMENTS



## Investment Updates

### Pipeline

Two Sigma Absolute Return Enhanced Fund (quant equity market neutral hedge fund) has been approved, pending legal review.

### Portfolio Rebalancing Updates

Funded capital calls in March include: \$562k to Hamilton Lane Infrastructure Opportunities Fund.

Unfunded commitments remaining total \$555.7M as follows:

1. Private Credit, \$172M
  - i. ARES Pathfinder Fund, \$39M
  - ii. Owl Rock Diversified Lending, \$52.5M
  - iii. Angelo Gordon Direct Lending (AGDL) IV, \$10M
  - iv. AGDL-BUSL Fund, \$50M
  - v. Varde Dislocation Fund, \$20.5M
2. Private Equity, \$223.8M
  - i. Grosvenor Capital Management (GCM) Private Equity, \$97.9M
  - ii. GCM Secondary Opportunities Fund, \$114.4M
  - iii. Morgan Stanley Ashbridge TS Fund II, \$11.5M
3. Private Infrastructure, \$9.9M
  - i. Hamilton Lane Infrastructure Opportunities Fund, \$9.9M
4. Absolute Return, \$150M  
Millennium USA LP (Hedge Fund), \$150M

### Asset Allocation

The table below shows the status of the permanent trusts' asset allocation as of March 31, 2023 (unaudited).

As of March 31, 2023	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	1,081,837,504	17.1%	15.0%	12.0%	18.0%
Broad Int'l Equity	1,165,267,988	18.4%	15.0%	12.0%	18.0%
Fixed Income	1,739,205,305	27.4%	25.0%	20.0%	30.0%
Public Credit	866,955,404	13.7%	5.0%	0.0%	10.0%
Private Credit	872,249,901	13.8%	20.0%	15.0%	25.0%
Absolute Return	873,896,911	13.8%	15.0%	10.0%	20.0%
Global Tactical Asset Allocation	417,240,077	6.6%	5.0%	0.0%	10.0%
Multi-Strategy Hedge Fund	456,656,834	7.2%	10.0%	5.0%	15.0%
Real Estate	1,077,000,692	17.0%	15.0%	10.0%	20.0%
Private Equity	86,167,010	1.4%	8.0%	0.0%	12.0%
Private Infrastructure	318,368,967	5.0%	7.0%	0.0%	11.0%
Opportunistic Investments	-	0.0%	0.0%	0.0%	5.0%
Portfolio Total	6,341,744,376	100.0%			

(04/27/23)



**Hypothetical Funding of All Unfunded Commitments:**

**Asset Allocation After Funding:**

As of March 31, 2023	Market Value \$	Actual	Target	Lower Range	Upper Range
Broad US Equity	983,937,504	15.5%	15.0%	12.0%	18.0%
Broad Int'l Equity	1,039,367,988	16.4%	15.0%	12.0%	18.0%
Fixed Income	1,739,205,305	27.4%	25.0%	20.0%	30.0%
<i>Public Credit</i>	694,955,404	11.0%	5.0%	0.0%	10.0%
<i>Private Credit</i>	1,044,249,901	16.5%	20.0%	15.0%	25.0%
Absolute Return	873,896,911	13.8%	15.0%	10.0%	20.0%
<i>Global Tactical Asset Allocation</i>	267,240,077	4.2%	5.0%	0.0%	10.0%
<i>Multi-Strategy Hedge Fund</i>	606,656,834	9.6%	10.0%	5.0%	15.0%
Real Estate	1,067,100,692	16.8%	15.0%	10.0%	20.0%
Private Equity	309,967,010	4.9%	8.0%	0.0%	12.0%
Private Infrastructure	328,268,967	5.2%	7.0%	0.0%	11.0%
Opportunistic Investments	-	0.0%	0.0%	0.0%	5.0%
Portfolio Total	6,341,744,376	100.0%			

**Assumptions:**

- i. **No other new cash is expected to fund calls.**
- ii. **No redemption proceeds or distributions were received.**
- iii. **All capital calls came in at the same time.**

Quarter 1 2023 Performance Report presented to the Board and is available at the Department upon request.

International Exposure Report presented to the Board and is available at the Department upon request.

**SPECIAL PROJECTS**

Trust Funds Overview Presentation was presented to the Board and is available at the Department upon request.

**LITIGATION**

**Litigation Update**

- Wilkinson (OHWM title dispute / takings claim) – ND Supreme Court issued November 10<sup>th</sup> opinion in our favor affirming trial court’s dismissal of all Plaintiff’s claims (conversion, conspiracy, physical taking, regulatory taking, escrow taking, unjust enrichment, costs & attorney fees from violation of constitutional rights); received notice February 8th that Plaintiffs have petitioned United States Supreme Court for certiorari on 5th Amendment takings grounds; certiorari was denied by the U.S. Supreme Court on April 17th

- Newfield (royalty deductions) – ND Supreme Court reversed and remanded in our favor for a second time in September 2022; trial court issued February 22, 2023 order in our favor awarding \$4,389,449 in underpaid royalties, \$2,265,043 in interest, and \$1,684,588 in penalties, totaling \$8,339,079; Newfield has 60 days to appeal; Newfield filed separate Motion to Amend Findings/Judgment to reduce interest/penalties; hearing held April 25<sup>th</sup>; awaiting court decision
- MHA (Missouri riverbed ownership) – Appealed D.C. Federal District Court denial of Board’s motion to intervene; oral arguments were held February 1st; D.C. Circuit Court of Appeals issued judgment in Board’s favor April 21st reversing trial court and allowing Board to intervene
- EEE (OHWM title dispute / takings claim) – ND Federal District Court issued order May 31, 2022 granting Board’s motion to dismiss on all counts: federal preemption, sovereign immunity, takings; Plaintiffs appealed to 8<sup>th</sup> Circuit; briefing complete and oral arguments were held March 16<sup>th</sup>; awaiting court decision
- Leland/Whiting (OHWM river island ownership) – Watford City trial September 12-16, 2022; currently in post-trial briefing stage
- Continental Interpleader (OHWM fed/state dispute) – ND Federal District Court issued opinion March 21st granting Board’s motion for partial summary judgment on “Acquired Federal Lands” issue; this means the Wenck survey controls for establishing the historical ordinary high-water mark of the Missouri River in areas where the uplands were acquired by the federal government, and not original “public domain lands”
- Whitetail Wave (OHWM title dispute / takings claim) – ND Supreme Court issued opinion on September 29<sup>th</sup> dismissing appeal and sending back to trial court for further quiet title actions on at issue parcels; district court signed stipulated order and judgment on remaining claims February 1st; currently waiting for appeal status pending resolution of attorney fees issues between the other parties

#### 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 consultations regarding:**

- **Continental Resources, Inc. v. North Dakota Board of University and School Lands and the United States of America – Case No. 1:17-cv-014**
- **Mandan, Hidatsa, and Arikara Nation v. United States Department of Interior Case No. 20-1928**

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

**The Board entered into executive session at 11:14 AM.**

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

Doug Burgum	Governor
Michael Howe	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	Treasurer

**Department of Trust Lands Personnel present:**

Joseph Heringer	Commissioner
Catelin Newell	Administrative Staff Officer
James Wald	Legal Council
Chris Suelzle	Minerals Division Director
Elvedina Papalichev	Paralegal

**Guests in Attendance:**

Ryan Norrell	Office of the Governor
John Reiten	Office of the Governor
Charles Carvell	Office of the Attorney General
Dave Garner	Office of the Attorney General
Jennifer Verleger	Office of the Attorney General

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The executive session adjourned at 11:44 AM and the Board returned to the open session and Teams meeting to rejoin the public. During the executive session, the Board discussed the Continental Resources case and MHA case with its attorneys. No formal action was taken.

**A D J O U R N**

There being no further business, the meeting was adjourned at 11:45 AM.

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Doug Burgum, Chairman  
Board of University and School Lands

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Joseph Heringer, Secretary  
Board of University and School Lands