

**Minutes of the Meeting of the
Board of University and School Lands
November 30, 2023**

The December 18, 2023, meeting of the Board of University and School Lands was called to order at 9:07 AM by Chairman Doug Burgum and roll call was taken.

Members Present:

Doug Burgum	Governor
Michael Howe	Secretary of State
Drew Wrigley	Attorney General
Thomas Beadle	Treasurer
Kirsten Baesler	Superintendent of Public Instruction

Department of Trust Lands Personnel Present:

Joseph Heringer	Commissioner
Catelin Newell	Administrative Staff Officer
Kate Schirado	Executive Assistant
Frank Mihail	Chief Investment Officer
Teresa Hettinger	Investments Officer
Maria Garcia	Finance
Susan Dollinger	Unclaimed Property Director
Peggy Gudvangen	Finance Director
Adam Otteson	Revenue Compliance Division Director
Lynn Spencer	Minerals Title Specialist
James Wald	Legal Council
Matthew Reile	IT
Pam Reile	Revenue Compliance
Rick Owings	Administrative Staff Officer
Garret Hecker	Surface Range Soils Management Specialist
Anning Tang	Investments
Jacob Lardy	Land Management Specialist
Emily Bosch	Unclaimed Property
Kisha Mitchell	Unclaimed Property
Elvedina Papalichev	Paralegal
Jessica Sanchez	Minerals Management Officer
Joseph Stegmiller	Surface Division Director
Jessica Fretty	Unclaimed Property
Jessica Sanchez	Minerals Management Officer
Amanda Parent Dufour	Minerals Management Officer
Ryan Kobilansky	Surface Range Soils Management Specialist
Scott Giere	Revenue Compliance

Guests in Attendance:

Ryan Norrell	Office of the Governor
John Reiten	Office of the Governor
Mike Nowatski	Office of the Governor
Josh Kevan	RVK
Geoff Simon	Western Dakota Energy Association
Kevin Balaod	WithIntelligence (Journalist)
Nathan Paulsen	
Paige Hall	
Brooks Burgum	
Matt Lien	

(11/30/23)

APPROVAL OF MINUTES

A motion to approve the minutes of the November 30, 2023 meeting was made by Secretary Howe and the motion was seconded by Treasurer Beadle and the motion carried unanimously on a voice vote.

OPERATIONS

Commissioner's Report

- Oil Royalty Deductions Settlements - In discussions with two major Bakken operators; anticipating agreements can be reached Q1 2024
- Agency biennial report completed and submitted by December 1, 2023, deadline
- Beginning strategic planning process – first submission due January 15
- Numerous meetings as member of statewide Cash Management Study Committee; goal of having consultant hired by year-end 2023
- Dakota Access Pipeline Draft EIS – coordinated North Dakota comments submitted by December 13 deadline; very impressive and impactful document
- Our team continues to be involved helping to provide coordinated statewide agency responses to various other proposed federal rules (oil & gas, environmental, land & travel management plans, etc.)
- December 5 & 8 – chaired State Investment Board – Securities Litigation Committee
- December 8 – attended State Investment Board - Investment Committee meeting as a voting member
- December 12 – state agency fees study presentation given to Government Finance Committee by Joseph Stegmiller (Surface Director) & Chris Suelzle (Minerals Director)

HR Update

- Reviewed annual Gallup Employee Engagement Survey results with team; good overall results above statewide mean; developing improvement plan for two identified areas
- Conducting mid-year check-in reviews to evaluate progress towards goals

The Department of Trust Lands Biennial Report 2021-2023

The Department of Trust Lands Biennial Report was provided to the Board. The report is available at the Department upon request.


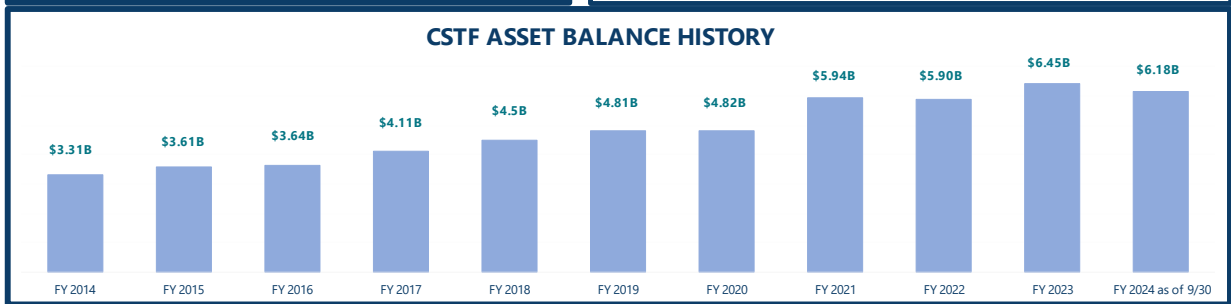
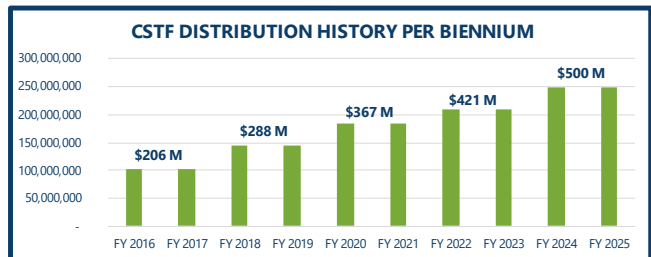
Financial Dashboard First Look

COMMON SCHOOLS TRUST FUND (CSTF) OVERVIEW



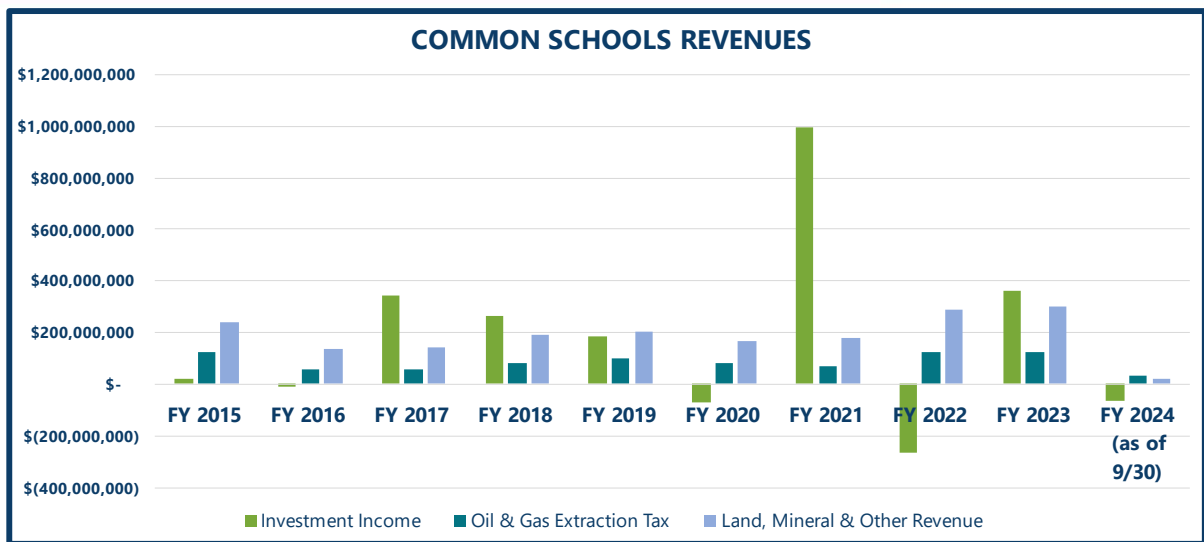
CSTF ASSET BALANCE as of 9/30/2023
 (unaudited)
\$6,179,365,270

+\$670 million from 9/30/22
 balance of \$5.5 billion

COMMON SCHOOLS TRUST FUND (CSTF) OVERVIEW

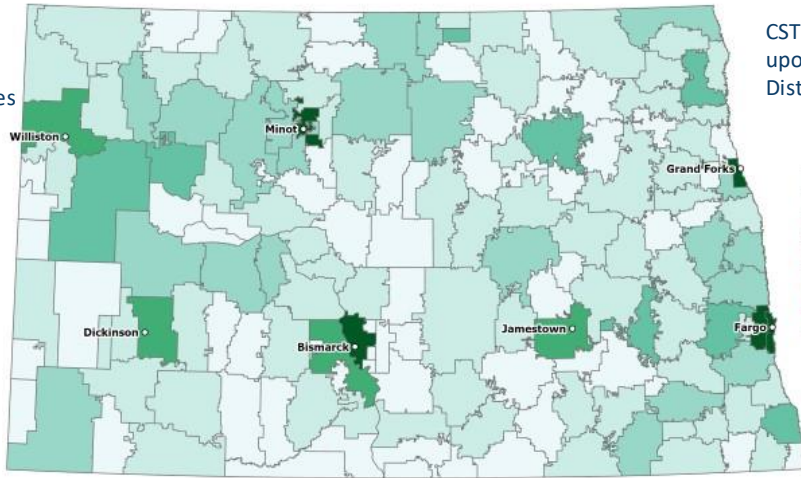




COMMON SCHOOLS TRUST FUND DISTRIBUTIONS BY SCHOOL DISTRICT



While much of the income generated for the CSTF is generated from oil and gas royalties in the west, all North Dakota K-12 school districts benefits from the nearly \$500 million in distributions in the 2023-25 biennium.



STRATEGIC INVESTMENT & IMPROVEMENT FUND (SIIF) OVERVIEW

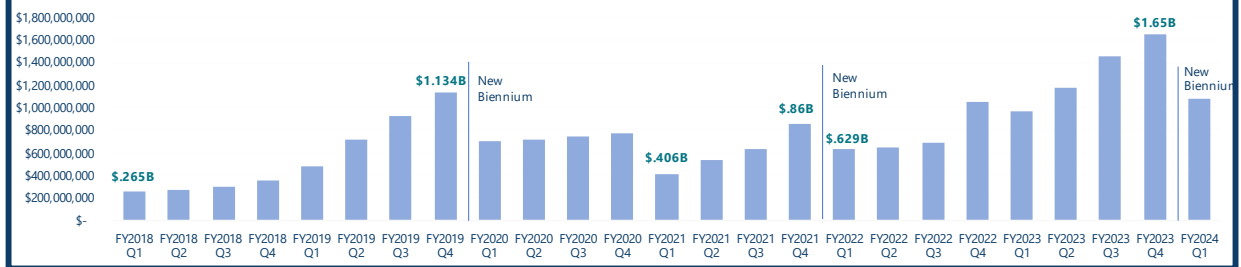


SIIF BALANCE as of 9/30/2023 (unaudited)

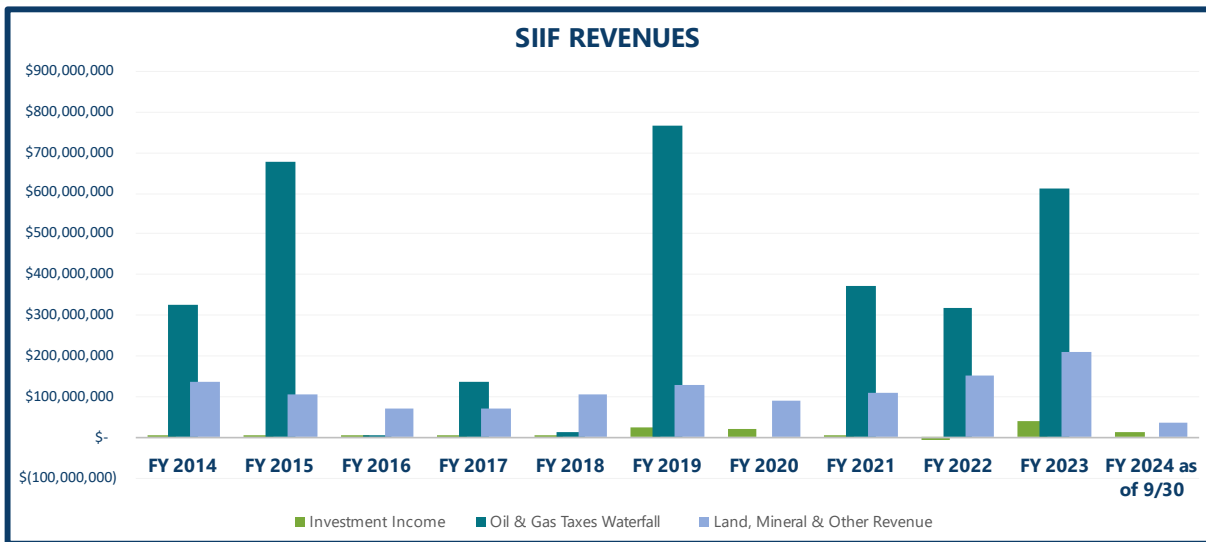
- Total Balance - \$1,077,793,639
- Uncommitted Balance - \$397,522,216



SIIF QUARTERLY BALANCE HISTORY (UNAUDITED)

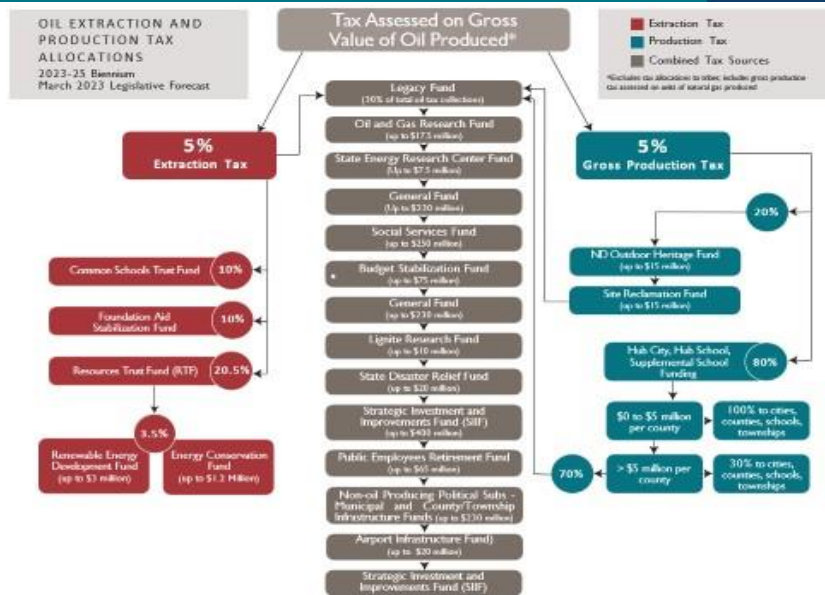


STRATEGIC INVESTMENT & IMPROVEMENT FUND (SIIF) HIGHLIGHTS



TAX ASSESSED ON GROSS VALUE OF OIL PRODUCED

Provided by the Governor's office and Office of Management & Budget



DIVISION REPORTS

SURFACE

SURFACE DIVISION



Encumbrances issued by Commissioner during November 2023: 12 Right of Way Agreements generating \$236,883 in income for the Trusts.



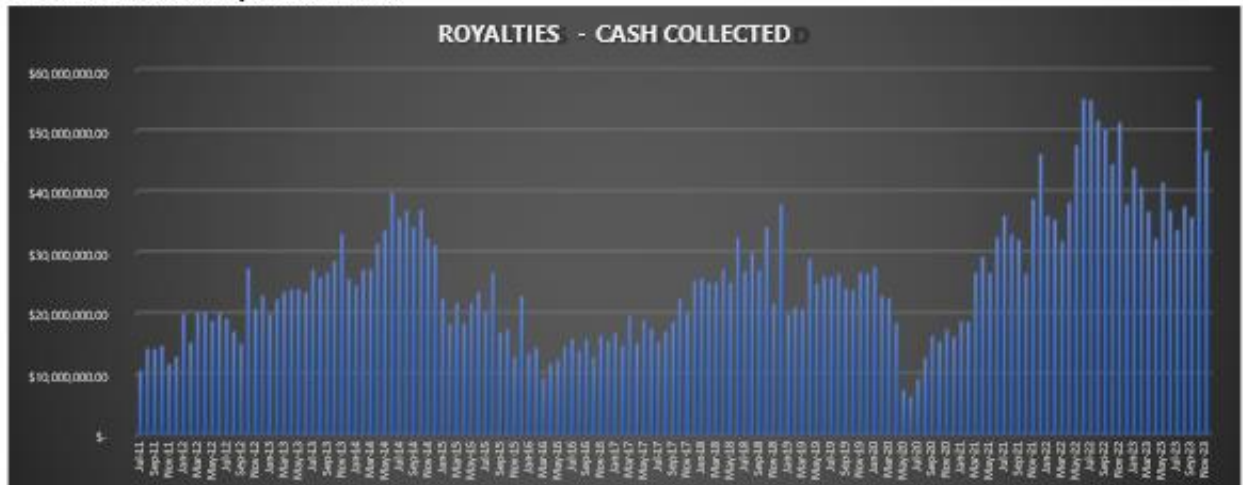
An oxbow of the Sheyenne River in Richland County on 136-52-36 taken in Mid November 2023. Credit: Jacob Lardy

MINERALS

MINERALS DIVISION
FISCAL YTD O/G ROYALTIES



As of November 30, 2023*, for fiscal year 2023-24 the Department has received \$208,771,719 in royalties as compared to \$252,738,267 last fiscal year at this time.

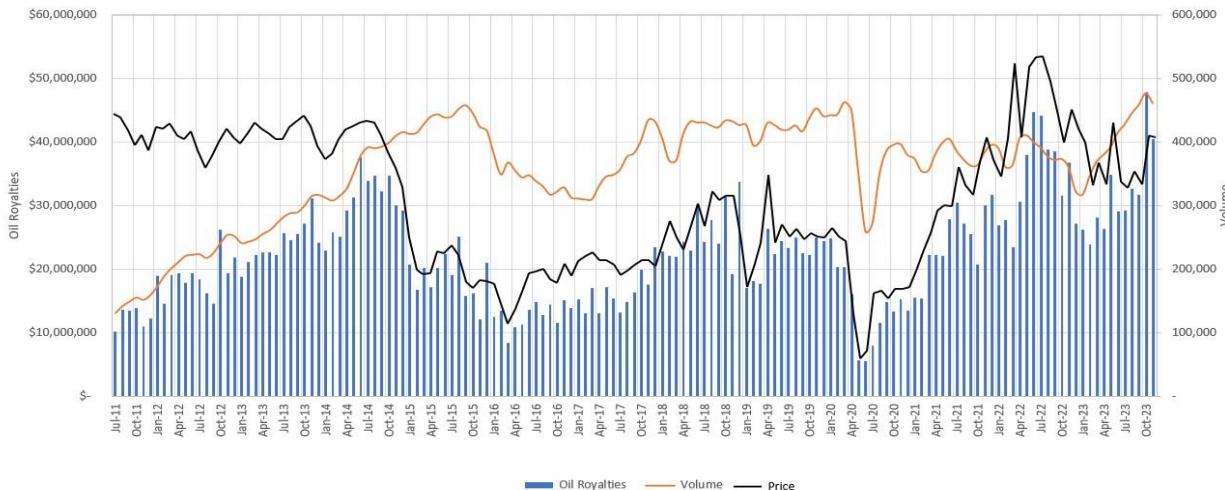


*November royalty revenue is from September gas production and October oil production.

PRICE MAIN DRIVER OF O/G ROYALTIES



In the early years production growth was the driver of the Department's royalty increases. Now that our net monthly production has been more stable, averaging around 450,000 barrels per month this biennium, the price of oil & gas is the main driver of monthly royalty variations.



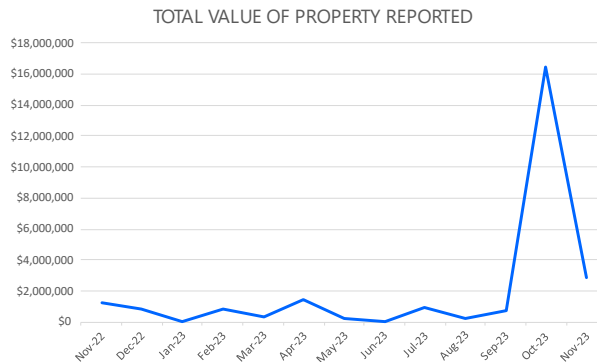
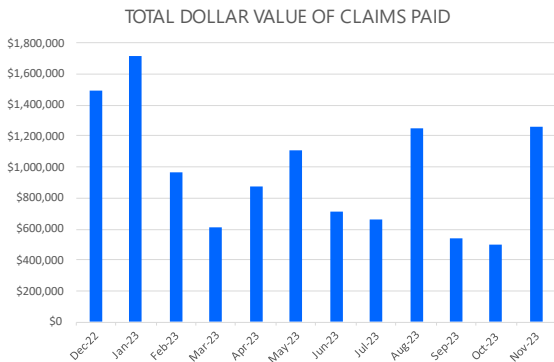
UNCLAIMED PROPERTY

UNCLAIMED PROPERTY DIVISION

<https://unclaimedproperty.nd.gov>



For the month of November 2023, the Division paid 638 claims with \$1,255,989 returned to rightful owners/heirs. The Division also received 157 holder reports with a dollar value of \$2,866,658.



2023 PRIDE OF DAKOTA  NORTH Dakota | Trust Lands
Be Legendary.™



Dickinson – Jessica and Emily



Minot – Emily and Kisha

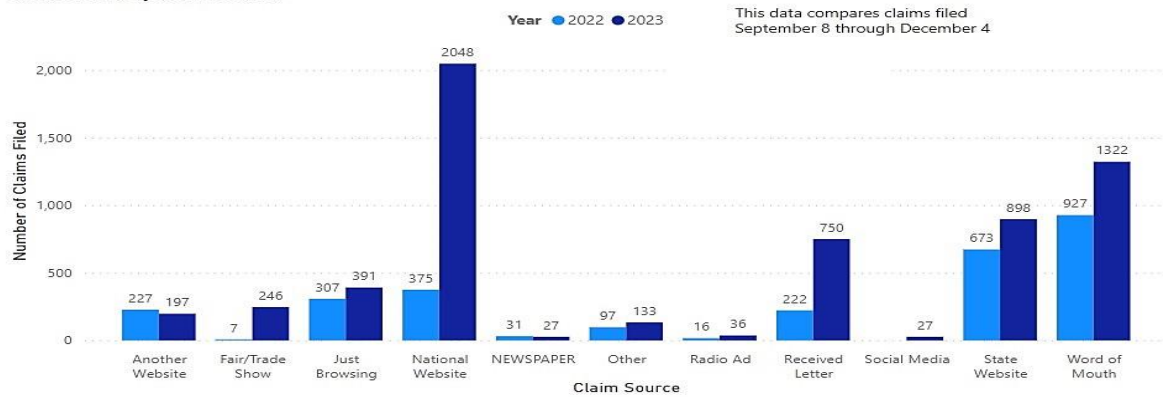


Bismarck – Jessica and Susan

2023 PRIDE OF DAKOTA  NORTH Dakota | Trust Lands
Be Legendary.™

The Division attended the Pride of Dakota Shows in Dickinson, Minot, Grand Forks, Fargo, and Bismarck. From early September to current it received a total of 6,075 claims compared to 2,882 during the same time frame in 2022.

Claims Filed by Claim Source



2023 SOCIAL MEDIA PILOT PROJECT

ND Unclaimed Property Facebook



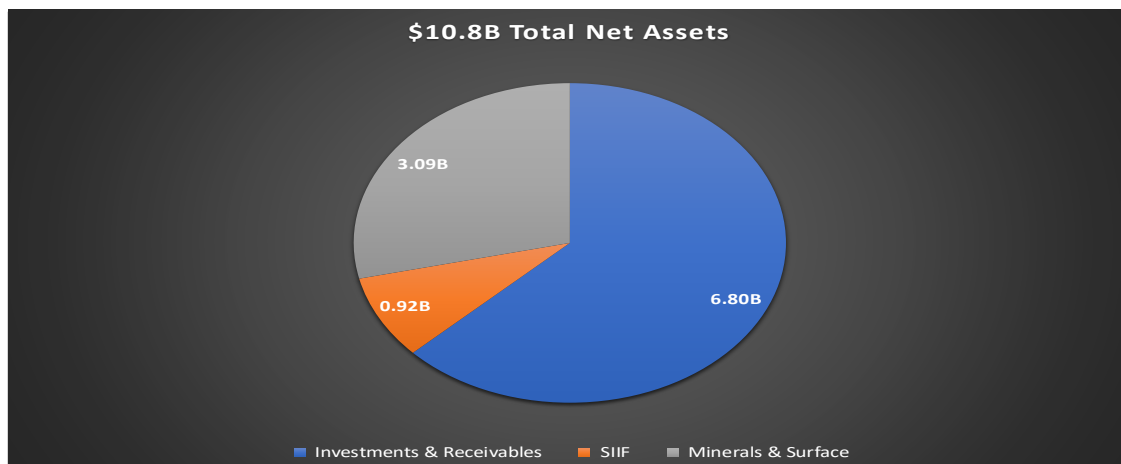
FACEBOOK ADVERTISING PERFORMANCE NOV 13-20, 2023



Executive Estimate of Board Assets

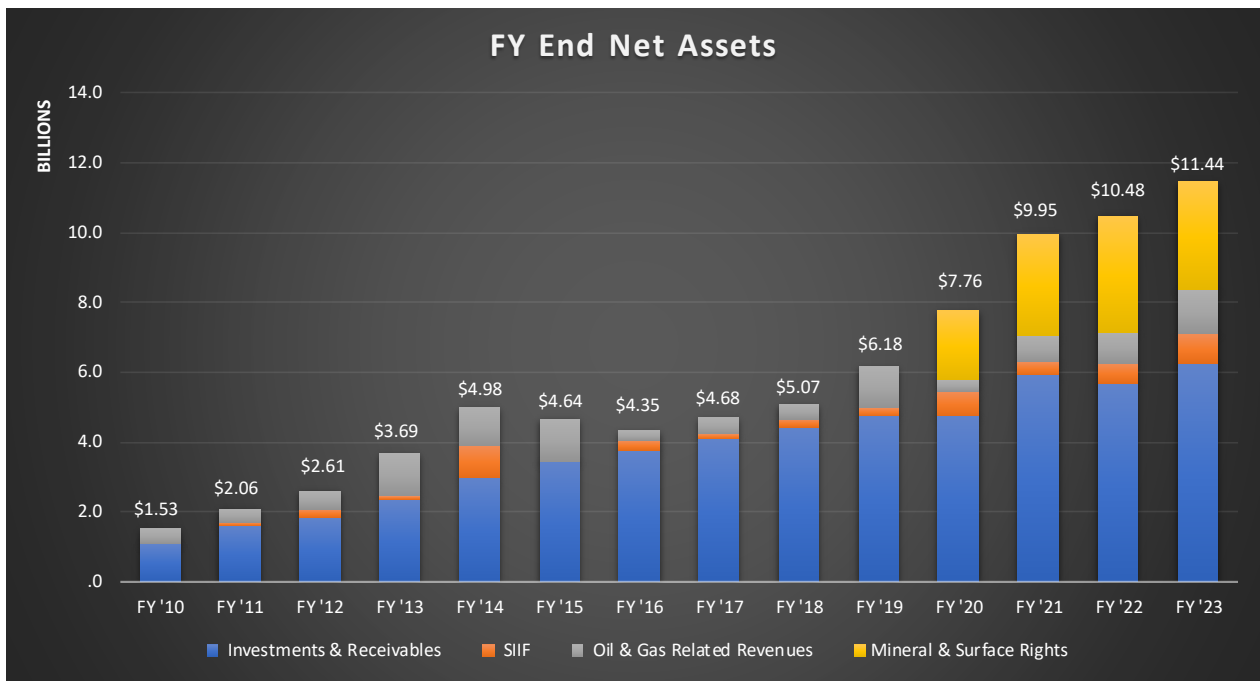
EXECUTIVE ESTIMATE OF ASSETS
NORTH DAKOTA DEPARTMENT OF TRUST LANDS
As of November 30, 2023

	11/30/2023 Value	MOM\$ 10/31/2023 Value	MOM% Change	YOY\$ 11/30/2022 Value	YOY% Change
Cash	224,120,045	203,811,935		149,223,973	
Investments ⁽¹⁾	6,520,197,187	6,306,462,080		6,122,246,173	
SIIF ⁽²⁾	915,599,874	938,446,019		1,009,606,451	
Loans ⁽³⁾	41,895,343	37,814,668		40,251,666	
Receivables ⁽⁴⁾	11,008,267	9,207,142		6,857,816	
Sub-Total Net Assets	\$7,712,820,716	7,495,741,843	2.90%	\$7,328,186,079	5.25%
Mineral Rights ⁽⁵⁾	2,568,614,367	2,568,614,367		2,813,480,347	
Surface Rights ⁽⁶⁾	518,077,274	518,077,274		511,088,869	
Building Value ⁽⁷⁾	1,015,196	1,015,196		1,015,196	
Total Net Assets	\$10,800,527,553	\$10,583,448,680	2.05%	\$10,653,770,491	1.38%

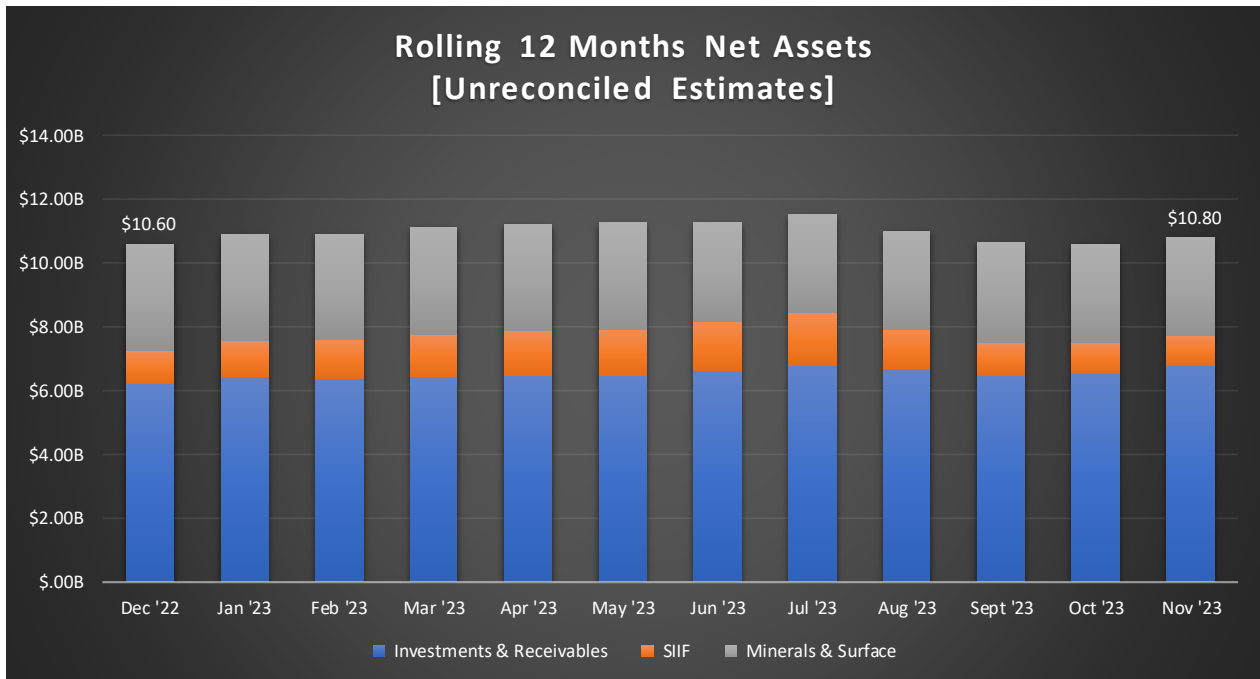


- [1] Approximately 40% publicly traded with daily marks and 60% private markets with monthly or quarterly marks.
- [2] Strategic Investment and Improvements Fund subject to biennial appropriations.
- [3] Various loan programs funded with trust assets.
- [4] Loans and investments interest accrued, but not yet paid.
- [5] Valued annually via contract with Mineral Tracker. Valuation as of June 30, 2023.
- [6] Valued annually via Department fair market value policy. Valuation as of March 2023, based off agricultural values.
- [7] Updated every other year via broker price opinion. Listed valuation is as of Sept. 15, 2022.

(11/30/23)



[1] FY 2023 includes mineral rights value of \$2,568,614,367, appraised building value of \$1,015,196 and surface rights value of \$518,077,274



- [1] Jun 2023 includes mineral rights value of \$2,568,614,367
- [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

Q4-Q1 Pipeline

Private Credit: diversified private credit recommendation

Public Credit: core fixed income recommendation

Private Equity: venture capital recommendation

Capital Calls Funded and Pending:

2023 Q1 \$15.9M

2023 Q2 \$19.1M

2023 Q3 \$24.0M

2023 Q4 \$9.6M

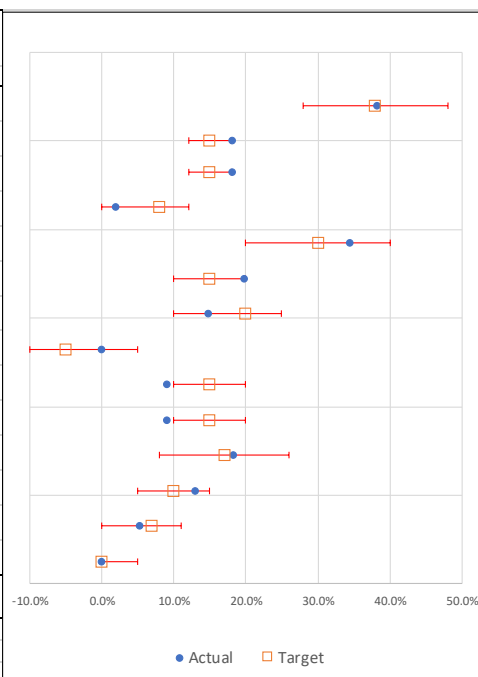
2023 YTD \$68.6M

Total Unfunded Commitments Remaining \$460.5M (as of November 30, 2023):

1. Private Credit, \$71.8M
 - i. Ares Pathfinder Fund, \$26.8M
 - ii. Owl Rock Diversified Lending, \$45M
2. Private Equity, \$232.7M
 - i. GCM Grosvenor Private Equity, \$90M
 - ii. GCM Grosvenor Secondary Opportunities Fund III, \$98M
 - iii. Morgan Stanley Ashbridge TS Fund II, \$11.5M
 - iv. Khosla Ventures, \$33.2M
3. Real Assets, \$6M
 - i. Hamilton Lane Infrastructure Opportunities Fund, \$6M
4. Absolute Return, \$150M
 - i. Millennium USA, \$150M

Current Asset Allocation (unaudited)

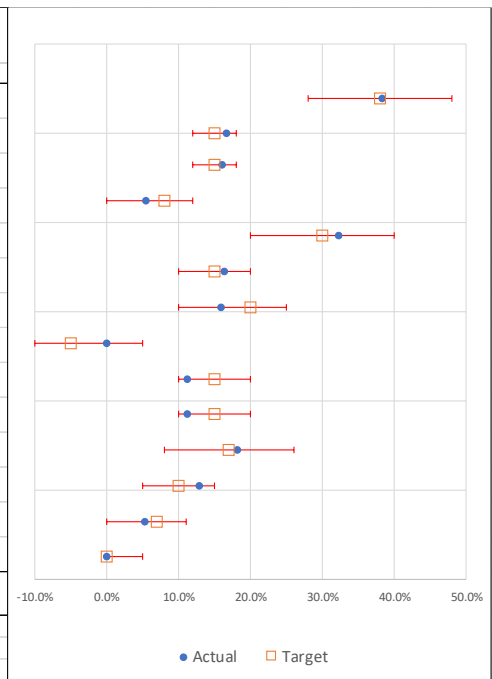
As of November 30, 2023	Market Value \$	Actual ●	Target □	Lower Range └─	Upper Range ─┘
Equity	2,494,941,742	38.3%	38.0%	28.0%	48.0%
Broad US Equity	1,182,387,280	18.1%	15.0%	12.0%	18.0%
Broad Int'l Equity	1,184,024,631	18.2%	15.0%	12.0%	18.0%
Private Equity	128,529,831	2.0%	8.0%	0.0%	12.0%
Fixed Income	2,250,535,717	34.5%	30.0%	20.0%	40.0%
Public Credit	1,287,203,912	19.7%	15.0%	10.0%	20.0%
Private Credit	963,331,805	14.8%	20.0%	10.0%	25.0%
Cash / (Implied Leverage)	-	0.0%	-5.0%	-10.0%	5.0%
Absolute Return	585,452,430	9.0%	15.0%	10.0%	20.0%
Multi-Strategy Hedge Fund	585,452,430	9.0%	15.0%	10.0%	20.0%
Real Assets	1,187,453,024	18.2%	17.0%	8.0%	26.0%
Real Estate	847,332,466	13.0%	10.0%	5.0%	15.0%
Private Infrastructure	340,120,558	5.2%	7.0%	0.0%	11.0%
Opportunistic Investments	-	0.0%	0.0%	0.0%	5.0%
Portfolio Total	6,518,382,913	100.0%			



Hypothetical Asset Allocation (after funding all commitments)

(11/30/23)

As of November 30, 2023	Market Value \$	Actual	Target	Lower Range	Upper Range
Equity	2,494,941,742	38.3%	38.0%	28.0%	48.0%
Broad US Equity	1,084,387,280	16.6%	15.0%	12.0%	18.0%
Broad Int'l Equity	1,049,324,631	16.1%	15.0%	12.0%	18.0%
Private Equity	361,229,831	5.5%	8.0%	0.0%	12.0%
Fixed Income	2,100,535,717	32.2%	30.0%	20.0%	40.0%
Public Credit	1,065,403,912	16.3%	15.0%	10.0%	20.0%
Private Credit	1,035,131,805	15.9%	20.0%	10.0%	25.0%
Cash / (Implied Leverage)	-	0.0%	-5.0%	-10.0%	5.0%
Absolute Return	735,452,430	11.3%	15.0%	10.0%	20.0%
Multi-Strategy Hedge Fund	735,452,430	11.3%	15.0%	10.0%	20.0%
Real Assets	1,187,453,024	18.2%	17.0%	8.0%	26.0%
Real Estate	841,332,466	12.9%	10.0%	5.0%	15.0%
Private Infrastructure	346,120,558	5.3%	7.0%	0.0%	11.0%
Opportunistic Investments	-	0.0%	0.0%	0.0%	5.0%
Portfolio Total	6,518,382,913	100.0%			



Assumptions: No other new cash is expected to fund calls. No redemption proceeds or distributions were received. All capital calls came in at the same time.

3rd Quarter Performance Report

3rd Quarter Investment Performance Analysis was presented to the Board and is available at the Department upon request.

LITIGATION

Litigation Update

- **EEE Minerals, LLC v. State of North Dakota, the Board of University and School Lands**
 - **Case Summary:** (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 8th Circuit; on August 30, 2023, the 8th Circuit three judge panel issued its opinion in our favor affirming the trial court’s dismissal on all counts; on September 12, 2023, Plaintiffs requested a rehearing in front of the full 8th Circuit Court which was denied on October 27, 2023; Plaintiffs have 90 days to petition the U.S. Supreme Court for certiorari.

Commencement: December 2020

ND Assigned Attorney(s): Philip Axt, ND Solicitor General

Counsel For EEE: Joshua Swanson (Vogel Law Firm, Fargo ND)

Court: United States District Court, District of North Dakota

Judge: Magistrate Judge Clare R. Hochhalter

Win = Takings claim dismissed resulting in no liability to state

Lose = Plaintiff's case can proceed resulting in trial to determine validity of claims

- **Whitetail Wave LLC v. XTO Energy, Inc.: the Board of University and School Lands**

- **Case Summary:** OHWM title dispute / takings claim – On August 22, 2023, Whitetail Wave appealed the trial court's rulings for the state (takings, Wenck Line, quiet title) and the award of attorney fees to co-defendant XTO Energy. Briefings and oral arguments before the North Dakota Supreme Court to follow.

Commencement: June 2015

ND Assigned Attorney(s): David Garner, Assistant Attorney General

Counsel for Whitetail Wave: Christopher Sweeney (Moulton Bellingham PC, Billings, MT)
Joshua Swanson (Vogel Law Firm, Fargo, ND)

Counsel for XTO: Lawrence Bender (Fredrikson & Byron P.A., Bismarck, ND)

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = Takings claim dismissed resulting in no liability to state

Lose = Plaintiff's case can proceed resulting in trial to determine validity of claims

- **Continental Resources, Inc. v. North Dakota Board of University & School Lands and North Dakota Department of Trust Lands**

- **Case Summary:** Continental Oil Royalty Deductions – Now that the Newfield gas royalty deductions case has been resolved, this has come off stay and the parties have filed a joint scheduling order laying out the discovery and preparation timeline for trial that is currently scheduled for August 4-8, 2025, in McKenzie County.

Commencement: December 2017

ND Assigned Attorney(s): David Garner, Assistant Attorney General

Counsel for
Continental Resources, Inc.: Jamie Bryan, (K&L Gates, Fort Worth, TX)
Mark Barron (Baker & Hostetler, LLP, Denver, CO)

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = Clarity that Land Board oil & gas lease does not allow for deductions from oil royalties resulting in tens of millions of dollars in deductions being repaid to the state.

Lose = Deductions from oil royalties are allowed under the lease, requiring additional administrative rules/case law to clarify extent

- **Mandan, Hidatsa, and Arikara Nation v. United States Department of the Interior**

- **Case Summary:** Missouri riverbed ownership – On July 7, 2023, the United States filed a motion to amend its pleading to add a quiet title crossclaim against North Dakota as a new Intervenor in the case. We filed a motion requesting a change of venue to North Dakota that the Court is now considering.

Commencement: July 2020

ND Assigned Attorneys: James Auslander, Kathryn Tipple, Peter Schaumberg, and Nessa Coppinger (Beveridge & Diamond, Washington, D.C.)
Charles Carvell, Special Assistant Attorney General (Pearce Durick PLLC, Bismarck ND)
Matthew Sagsveen, AG Dir. of Natural Resources and Native American Affairs

Counsel for MHA: Steven D. Gordon (Holland & Knight's Washington, D.C.)
Philip Merle Baker-Shenk (Holland & Knight's Washington, D.C.)
Timothy Purdon (Robins Kaplan, Bismarck, ND)
Timothy Billion (Robins Kaplan, Minneapolis, MN)

Counsel for United States Department of Interior: Reuben S. Schiffman (Washington, D.C.)

Court: United States District Court for the District of Columbia

Judge: Honorable Amy Berman Jackson

Win = North Dakota owns historical Missouri Riverbed (mineral rights) through Fort Berthold Indian Reservation resulting in release to state of tens of millions of dollars in withheld oil & gas royalties.

Lose = U.S. owns the riverbed in trust for MHA Nation so royalties are released to the tribe

- **Continental Resources, Inc. v. North Dakota Board of University and School Lands and the United States of America (Interpleader)**

- **Case Summary:** OHWM fed/state dispute – ND Federal District Court issued opinion March 21, 2023, 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"; federal government appealed and we filed cross appeal; final brief is due January 12, 2024, with oral arguments to be scheduled thereafter.

Commencement: December 2016

ND Assigned Attorneys: Charles Carvell, Special Assistant Attorney General (Pearce Durick PLLC, Bismarck ND)
Philip Axt, ND Solicitor General

Counsel for XTO: Lawrence Bender (Fredrikson & Byron P.A., Bismarck, ND)
Spencer Ptacek (Fredrikson & Byron P.A., Bismarck, ND)

Counsel for USA: Shaun Pettigrew (Environment and Natural Resources Division (ENRD) of the U.S. Department of Justice)

Court: United States District Court, District of North Dakota

Judge: Magistrate Judge Clare R. Hochhalter

Win = State survey controls where U.S. lands abut the Wenck line resulting in retention of 2,500 mineral acres

Lose = Federal surveys control resulting in loss of approximately 2,500 mineral acres

- **State of North Dakota, ex. rel. v Virginia Leland, et.al.**

- **Case Summary:** OHWM river island ownership, trial was held on September 12-16, 2022; post-trial briefing completed December 2023; awaiting Judge Schmidt's ruling.

Commencement: January 2016

ND Assigned Attorneys: Matthew Sagsveen, AG Dir. of Natural Resources and Native American Affairs
James Wald, DTL General Counsel

Counsel for Whiting Oil and Gas Corp: Paul Forster (Crowley Fleck, PLLP, Bismarck, ND)
Shane Hanson (Crowley Fleck, PLLP, Bismarck, ND)

Counsel for Defendant(s): Kevin Chapman (Chapman Law Firm, P.C., Williston, ND)
Ariston Johnson (Johnson & Sundeen, Watford City, ND)
and Others

Court: State District Court, McKenzie County

Judge: Honorable Robin Schmidt

Win = State owns at issue Yellowstone River islands and related mineral interests

Lose = Plaintiffs owns at issue Yellowstone River islands and related mineral interests

A D J O U R N

There being no further business, the meeting was adjourned at 11:05 AM.

Doug Burgum, Chairman
Board of University and School Lands

Joseph Heringer, Secretary
Board of University and School Lands

(11/30/23)