

HOUSE ENERGY & NATRUAL RESOURCES COMMITTEE HB 1081



January 15, 2021

ND Department of Trust Lands Testimony
Commissioner Jodi Smith

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Testimony of Commissioner Jodi Smith

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of House Bill 1081.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program.

The Surface Management Division (Division) manages more than 706,000 surface acres owned by the various trust funds under the Board's control. The major source of income from these lands comes from agricultural leases (grassland, crop and hay land uses), with significant revenue generated from rights-of-way, surface damage agreements, and construction aggregate mining. The objective of the Division is to obtain a "fair market" return from the trust lands while maintaining or improving the condition of the land.

Professional staff work day-to-day on land management projects that result in the generation of surface revenue and land improvement on trust lands. These projects include:

- Linear easements.
- Oil well pad, saltwater disposal sites, pipeline and road siting, and reclamation.
- Developing water wells, pipelines, dams and dugouts for livestock water, and wildlife enhancement.
- Grazing management plans for improving range condition and productivity.
- Cooperative trash site clean-up and abandoned water well sealing.
- Gravel and scoria mine site reclamation.
- Noxious weed chemical and biological control.
- Coal mine reclamation.
- Monitoring flood affected tracts.
- Seismic permitting.
- Lessee and right-of-way contracts and public inquiries.

The trust lands have been leased by generations of North Dakotans for agricultural purposes. The land is leased in a series of auctions held each fall and spring. All auctions are open to the public and the lease goes to the highest bidder. The minimum bid is set by the Commissioner based upon the Board's Fair Market Value Minimum Rent Policy. The Department currently manages approximately 4,800 active surface land leases. Leasing interest continues to be high with over 99 percent of the tracts offered being successfully leased. The Department generated \$17.4 million in rental income during the previous biennium through the surface lease program, an increase of \$1.5 million over the prior biennium.

The surface inspection program generates approximately 1,500 tract inspections on an annual basis. These inspections are generally fall integrity inspections, reclamation inspections, livestock grazing, noxious weed, unleased tract, and posting

inspections. Trained field staff inspect the surface acres managed by the Department at least once during the five-year lease period by to help with early detection of noxious and invasive weed species and to monitor land integrity. Reclamation inspections are conducted which results assist in determining whether a right-of-way having surface disturbance is meeting agreement vegetation standards, noxious and invasive weed control, and erosion.

Effective January 1, 2020, the Board adopted Chapter 85-04-05 of the North Dakota Administrative Code (Chapter 85-04-05), see <https://www.legis.nd.gov/information/acdata/pdf/85-04-05.pdf>, relating to public access and use of lands owned and managed by the Board. In August 2019, prior to enactment of those rules, the Department held a public comment period regarding all proposed rules, including those addressing Public Access and Use. Comments were received from North Dakota Game and Fish Department (NDGF) seeking clarification under what statutory/jurisdictional authority the Department would enforce and provide a penalty for the new rules. The Department provided a response that we would use all available resources to enforce those rules. The Department recognizes there are limited resources and is now seeking the assistance of NDGF as a resource tool to better manage our assets.

The Department is seeking to modify N.D.C.C. § 20.1-02-15.1 regarding additional powers of the NDGF director, deputy director, chief game wardens, or district game wardens. The addition of “and on state owned lands managed by the board of university and school lands as defined by sections 15-06-01 and 15-07-01” will allow the Board to partner with Game and Fish to enforce Chapter 85-04-05, regarding public access and use on trust lands and assess a penalty fee when an activity is observed that violates those rules.

Some of the most common violations are illegal posting, off easement or permit vehicular access by persons other than the surface lessee or Department personnel, baiting, camping, unattended tree stands and hunting blinds, guiding and outfitting, and target shooting. If modification N.D.C.C. § 20.1-02-15.1 is passed, the Department will update the Board’s public access and use administrative rules to provide for an appropriate penalty and establish a Memorandum of Understanding with North Dakota Game and Fish to outline their authority to enforce our Administrative Rules and statutes. The Department would like to emphasize this bill will not allow for NDGF to enforce or regulate grazing, as this will continue to be monitored by the Department

By allowing NDGF the authority to assess penalties, the Department will be able to more effectively manage the trust assets. Currently, the Department does not have the staffing or expertise necessary to patrol trust lands. When individuals call asking the Department for assistance on land they are leasing or on other trust lands, the Department has been unable to assist them in resolving the issues. The Department has received calls concerning cars being blown up, trust lands being used as a location for AK-47 target practice, vehicles being driven on leased land, hunters or other individuals trespassing, tree stands being erected, and the list continues.

HB 1081 will allow the Department the ability to enforce our Administrative Rules and statutes. Further, it would allow our lessees a tool to resolve these issues by reporting the issue to NDGF and requesting their assistance in resolution.

We look forward to working with the Committee on these issues and would be happy to answer any questions.