



**TESTIMONY OF JOSEPH STEGMILLER
SURFACE DIRECTOR
North Dakota Department of Trust Lands**

House Bill 1175

House Energy and Natural Resources Committee
January 20, 2023

Chairman Porter and members of the House Energy and Natural Resources Committee, I am Joseph Stegmiller, the Surface Director with the North Dakota Department of Trust Lands (Department). I am here to testify in opposition of HB 1175.

The Board of University and School Lands (Board), as established by the North Dakota Constitution, is charged with overseeing the management of state trust lands and investing the revenue generated therefrom to grow as a source of long-term income for the support of certain trust beneficiaries. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department is the administrative arm of the Board, serving under the direction and authority of the Board. The Department is a special fund agency, operating off its own revenues and investments, and as such does not receive state general funds.

The Department manages approximately 2.6 million mineral acres with their roughly 8,300 associated oil & gas leases, and over 700,000 surface acres with their roughly 4,400 associated agricultural leases. Revenues generated from these leases, along with payments received from other income sources such as oil & gas lease bonus payments and easements granted for pipelines, roads, and well pads, are deposited into 13 permanent trust funds and invested to provide long-term income for trust beneficiaries. Beneficiaries of these trust funds include public K-12 education, various colleges and universities, and other institutions throughout North Dakota. The largest trust fund is the Common Schools Trust Fund (CSTF) which had a balance of approximately \$5.65 billion as of June 30, 2022.

HB 1175 intends to limit the management authority of the Board of University and School Lands. The ability to restrict access to certain tracts of land to ensure public safety or to honor a lessee's rights is an essential tool for all land management, whether private or public. It is true that Trust Lands are lands that are owned by the state. However, title to Trust Lands, including the grant lands implicated by HB 1175, was granted to the state for the support of common schools and other state institutions. The state, through the Board of University and School Lands and its agent, the Department of Trust Lands, has a trustee obligation to manage grant lands in a way that serves the best interest of the state institution beneficiaries. Directly restricting land management tools such as public access closure could affect the Boards directive to ensure the management of Trust Lands aligns with the North Dakota Constitution.

Up until 1982, lessees of Trust Land were allowed to control public access. In 1982, the Board decided that the right to control access to these lands should be reserved to the Board. Beginning in 1983, agricultural leases of Trust Land included a "Public Access" clause that restricted closing to being approved by the Department. The Department has been operating under these guidelines from the

Board since 1983. Within this testimony, the following issues will be discussed to further expand on why the Department is opposed:

1. The proposed language will add to confusion and fails to address already-existing statutes.
2. The Department utilizes public access closures to effectively manage Trust Land to carry out fiduciary responsibilities to the Trusts and for public safety.

Issues with the Bill's Language

The first concern with HB1175 is that it adds a new section to N.D.C.C. ch. 15-04 regarding public access on original grant land without addressing the already existing law in N.D.C.C. ch. 15-08 that address public access on Trust Lands. Having two statutes with conflicting language will lead to confusion for the Department, lessees, and the general public.

Additionally, the proposed language in HB 1175 only references "grant land". The Department manages both "grant land", which is land that was granted to the state from the United States through the enabling act, and "acquired land", which is land that was typically acquired through foreclosures, or less commonly, donations. Approximately 93% of the land managed by the Department is "grant land", the remaining 7% (approximately 49,000 acres) would not be subject to the bill as written, which would lead to additional confusion.

Management of Trust Lands

Trust Lands are typically leased to farmers and ranchers for pasture and meadow purposes. Since Trust Lands are managed for the benefit of specific trust beneficiaries, and not managed for the benefit of the general public, the Department has been given statutory authority to close public access as needed in specific circumstances for public safety. The current statute also allows lessees to request that their leased land be closed to public access and allows lessees to request to close Trust Land to public access because the lessee is paying for a lease which grants exclusive privileges to utilize that property.

In many situations public access and livestock can coexist in harmony. However, in certain circumstances the public accessing Trust Land can be a detriment to the lessee. Every year, the Department receives numerous complaints from lessees about issues with public access. These complaints involve gates being left open, unauthorized vehicular access, littering, target shooting, etc. Below is an example of a complaint about public access from a lessee in the fall of 2022:

"Several times I have went up to check cows and guys have been out with hunting dogs and our cattle are scared and running around. There's at least 20 shooting targets set out all over the entire section that I have found. There have been a couple times where I've found big areas where there have been clay pigeons. So people are out shooting clay pigeons and leaving the broken ones all over. I have picked up what I've found. There are also hunting blinds set up that have been left for weeks. I have also found vehicle and ranger tracks throughout the pasture. My big concern is my cattle are very spokey from people target practicing and going all over with dogs. And now there are hunting blinds being left out. I have picked up lots of garbage that has been thrown out while people are driving off road. My cattle are a concern and with people not respecting the land or my cattle. I would appreciate people staying off the land until my cattle are off. Thanks"

N.D.C.C. § 15-08-19.2 outlines public access on Trust Lands “if in the best interests of the trusts”. However, public access is limited to nonvehicular walking access only. This statute allows two avenues to close Trust Land to public access. The first avenue is initiated by the Department, through the Commissioner, and is typically used to close tracts of land that are deemed a public hazard. This is an incredibly useful tool for land management to mitigate potential liability for public safety concerns. Currently, the Department has land closed to the public under this provision. Some of the tracts are closed due to sinkholes from underground coal mining. These particular tracts are leased for pasture and meadow purposes with a special lease amendment acknowledging the potential issues. Under HB 1175, these tracts would be required to be open to public access which could pose a threat to the public.

The second avenue for Trust Lands to be closed is through a request from a lessee. A lessee may apply for three different types of signs from the Department. The three types of signs include “Closed to Public”, “Notify the Lessee”, and “Walking Access Only”.

“Walking Access Only” signs are distributed freely upon request to lessees. These signs act as a reminder that Trust Lands are open to nonvehicular public access only.

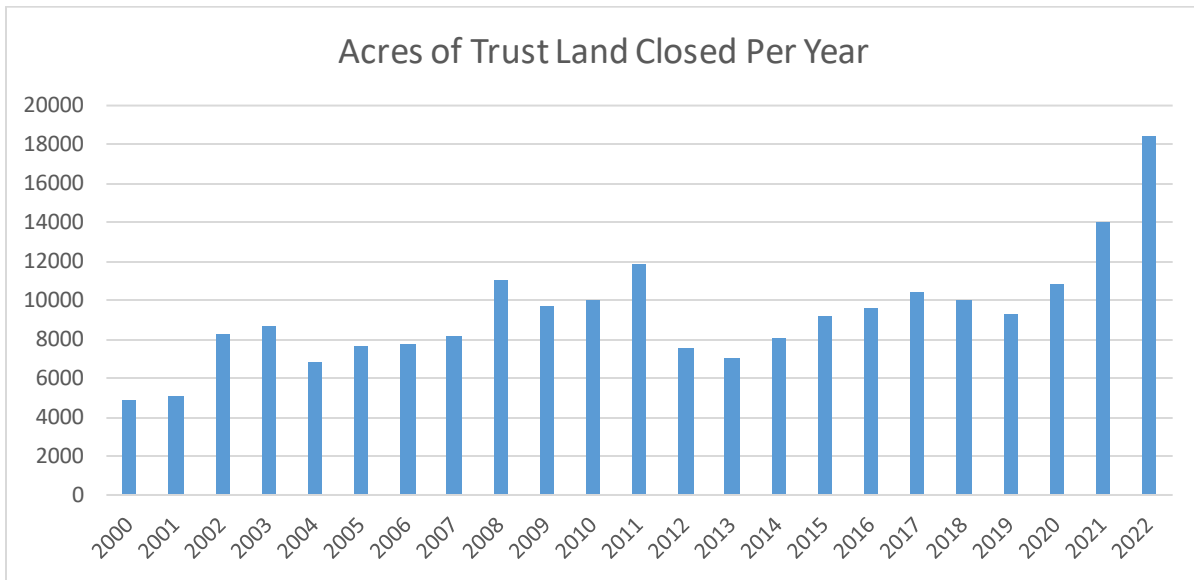
“Notify the Lessee” signs do not close the tract to public access but require anyone accessing the land to notify the lessee. This allows lessees to be informed about the “who”, “what”, and “where” of anyone accessing the tract. It also is a chance to warn anyone accessing the land about any concerns or issues, such as “watch out for the angus bull”. However, the lessee does not have the right to deny access to the tracts. The intent of this sign is to open lines of communication between lessees and the public. With these signs the Department verifies the contact information for the lessee and the lessee knows they need to make a good faith effort to answer phone calls. The Department does occasionally receive concerns from the public about lessees not answering phone calls, and we try to address those as quickly as possible.

“Closed to Public” signs close the tract to public access. The signs are only valid for the designated time frame which is both on the actual sign and on the Department’s website. These applications are reviewed by the Department to determine if closed signs are warranted. The Department verifies dates the livestock will be grazing on the property and the class of livestock. It should also be noted that if a tract is “Closed to Public”, that also includes the lessee. A lessee that leases and closes a tract would not be able to hunt that tract either.

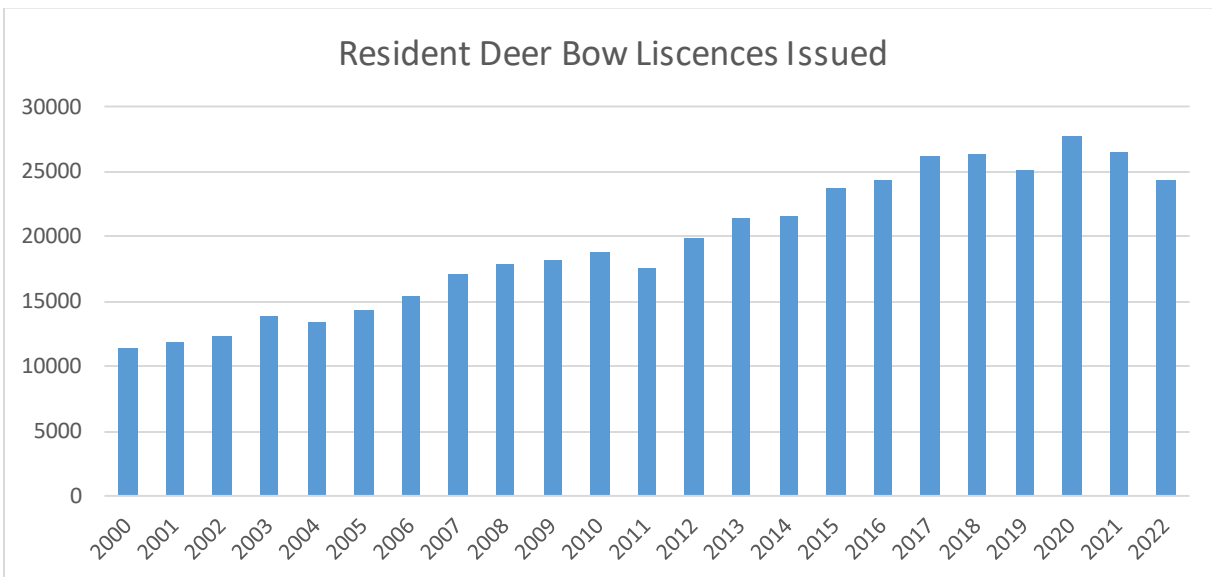
The Department also verifies how the Trust Land is managed with other private, federal, or state land. In order for closed signs to be justified, the livestock must be spending the majority of the time on Trust Land. For example, if the Department gets an application to close a quarter of Trust Land (160 acres) that is fenced in with 1000 acres of the lessee’s private land, the livestock would only be spending a limited amount of time on the Trust Lands and closed signs would not be warranted and the application would be denied. It should be noted that in these particular cases, the Department may deny “Closed to Public” signs but may issue “Notify the Lessee” signs instead. Closed signs that are approved by the Department are only valid during the time stated. A random selection of the CLOSED tracts are selected each November to be inspected for compliance.

During 2022, the Department issued closed signs for approximately 19,230 acres of which is roughly 2.6% of the total acres managed. During the 2022 deer gun season, 687,627 acres were open to public access. In addition, the Department issued “Notify the Lessee” signs for 9,750 acres which is roughly 1.3% of total acres. It should be noted again that “Notify the Lessee” signs do not close tracts to public access but instead requires the public to notify the lessee before entering.

Over the past 10 years, the Department has seen an increase in applications from lessee to close Trust Land as the included graph shows:



However, this also corresponds with the population growth of North Dakota and the increase of sportsmen and women in North Dakota as depicted in the numbers of deer bow licenses issued by the North Dakota Game and Fish.

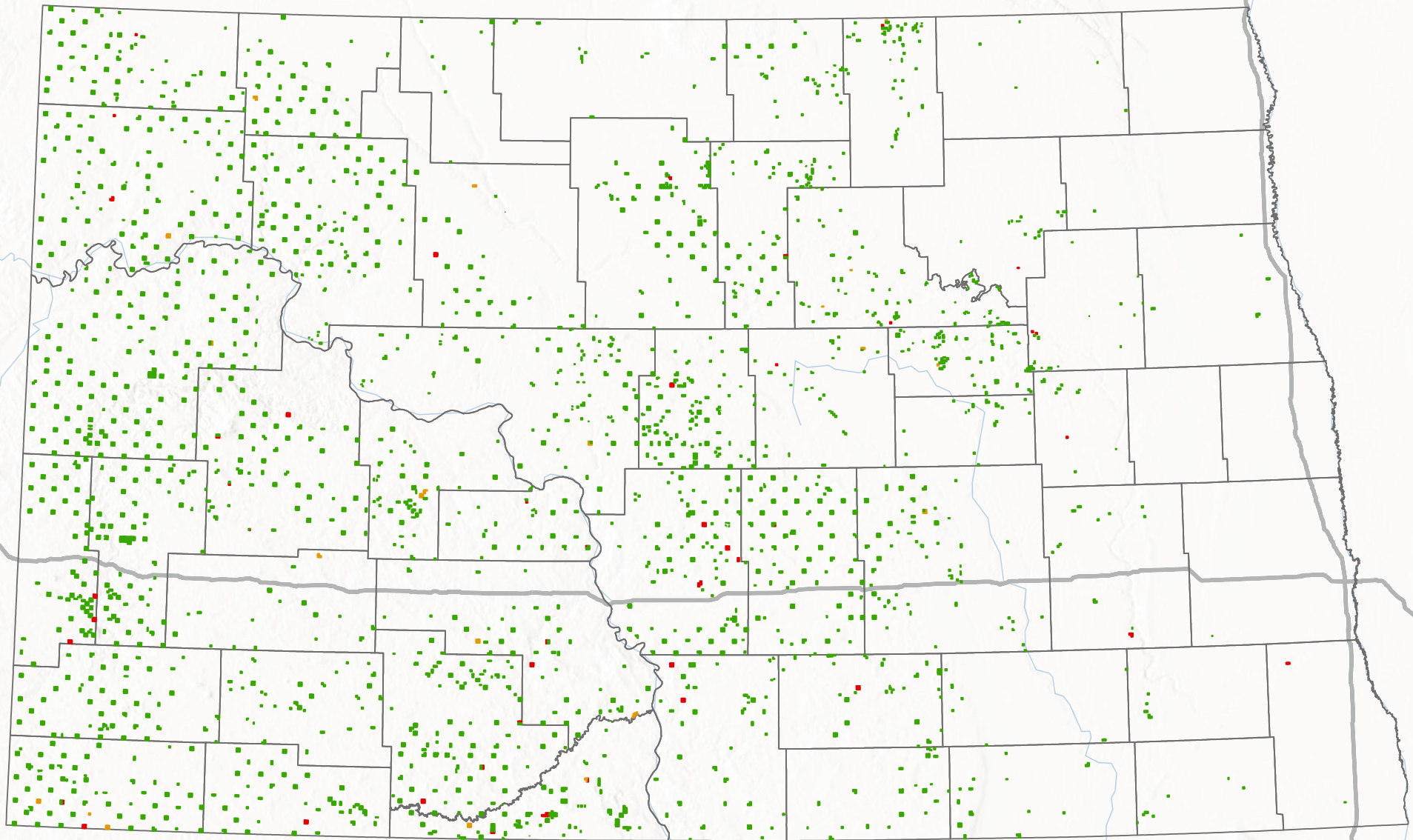





Data provided by ND Game and Fish

The Department’s opinion is that the current rules and guidelines in regard to public access are working. A very small percentage of Trust Lands are closed throughout the year, but the vast majority of Trust Lands continue to be open to public access. In situations where restricted access is necessary, it is critical for the Department to have the ability to close lands to ensure continued safety of the public and protection of the rights of lessees of Trust Lands. The current rules and guidelines allow a substantial amount of Trust Lands to be open to the public while allowing the Department the necessary option to close Trust Land for public safety or lessee rights.

Thank you for your time and consideration, I look forward to answering any questions you may have.

Public Access on Trust Land on Nov. 5 2022



-  Open to Non-Vehicular Access
-  Closed
-  Notify the Lessee