



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

**House Bill 1175**

Senate Energy and Natural Resources  
March 2, 2023

Chairman Patten and members of the Senate 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 of School Land (Board), as established by the North Dakota Constitution, is charged with overseeing the management of state trust lands and mineral rights and investing the revenue generated therefrom to grow as a source of long-term income for the state. 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 revenues and investments, and as such does not receive state general funds.

The Department manages approximately 2.6 million mineral acres with their 8,300 associated oil & gas leases, and over 700,000 surface acres with their 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 by far is the Common Schools Trust Fund (CSTF) which had a June 30, 2022, balance of \$5.65 billion.

First, HB 1175 may infringe upon the Board's fiduciary duty to manage Trust Lands in a way that is in the best interest of trust beneficiaries. Trust Lands are lands that are technically owned by the state. However, the Enabling Act of 1889 and the ND State Constitution established a clear purpose of Trust Lands to be for the support and maintenance of the public institutions to which the lands are assigned. Therefore, the State must manage Trust Lands for the exclusive benefit of these trust beneficiaries, even if at the detriment of the general public. Closing certain tracts of land to public access is an essential tool for land management, whether for public safety or for ensuring a lessee's legal rights.

Second, the Department feels that the current procedures governing public access on Trust Lands are working well and the study proposed by HB 1175 is not necessary. To further explain why the study is not warranted, I'll walk through how the Department currently manages public access.

Trust Lands are leased to farmers and ranchers for pasture and meadow purposes. These agricultural leases run for 5 years and are offered at public auction in the county seat. Since Trust Lands are managed for the benefit of the trust beneficiaries and not managed for the benefit of the general public, the Department may close certain parcels to public access for public safety reasons or permit lessees to request to close certain Trust Land tracts to public access.

For example, in many situations, public access and livestock can coexist in harmony. However, in certain circumstances, public access to certain Trust Land can pose a safety risk or be detrimental to a lessee's operations. 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 permits certain public access on Trust Lands “if in the best interests of the trusts”. This statute also 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 essential tool for land management to mitigate potential liability for public safety concerns. Some examples of tracts of Trust Land that are closed include active coal mining or sinkholes from past mining activities.

The second avenue for Trust Lands to be closed is through a request from a lessee. A lessee may apply for 3 different types of signs from the Department. These types of signs include “Closed to Public”, “Notify the Lessee”, and “Walking Access Only”.

“Walking Access Only” signs are freely distributed to lessees upon request. These signs act has 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 requires anyone accessing the land to notify the lessee. This allows lessees to be more informed about the “who”, “what”, and “where” of anyone accessing the tract. It also allows the lessee an opportunity to warn anyone accessing the land about any concerns or issues. For example, “watch out for the angus bull”. However, “Notify the Lessee” signs do not provide the lessee the right to deny anyone from access to the tracts. The intent of this sign is to establish the line of communication with the lessee and the public. When “Notify the Lessee” signs are issued, the Department verifies the contact information for the lessee and confirms that the lessee knows that they need to make a good faith effort to answer phone calls.

“Closed to Public” signs close the tract to public access. These signs are only valid for the designated time frame which is displayed both on the actual sign and on the Department’s website. These applications are thoroughly reviewed by the Department in order to determine if closed signs are warranted. The Department verifies that dates the livestock will be grazed 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.

The Department also verifies how the Trust Land is managed with other private, federal, or other state land. In order for closed signs for grazing operations 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 down a quarter of Trust Land (160 acres) that is fenced in with 1,000 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. In this case, the application would be denied. It should be noted that in these particular situations 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 inspected each November to ensure compliance.

During 2022, the Department issued closed signs for approximately 19,300 acres, which is roughly 2.6% of the total acres managed by the Department. During the 2022 deer gun season, 687,627 acres, or approximately 97.4% of total surface 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.

The Department’s opinion is that the current rules and guidelines in regard to public access are working. A small percentage of Trust Lands are closed throughout the year, but the vast majority of Trust Lands are open to public access. 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.

The Department also understands that while the procedures are working, procedures are not 100% perfect. That is why the Department plans on meeting with certain outdoor recreation groups later this year to listen to their concerns and will work together to try to resolve any issues.

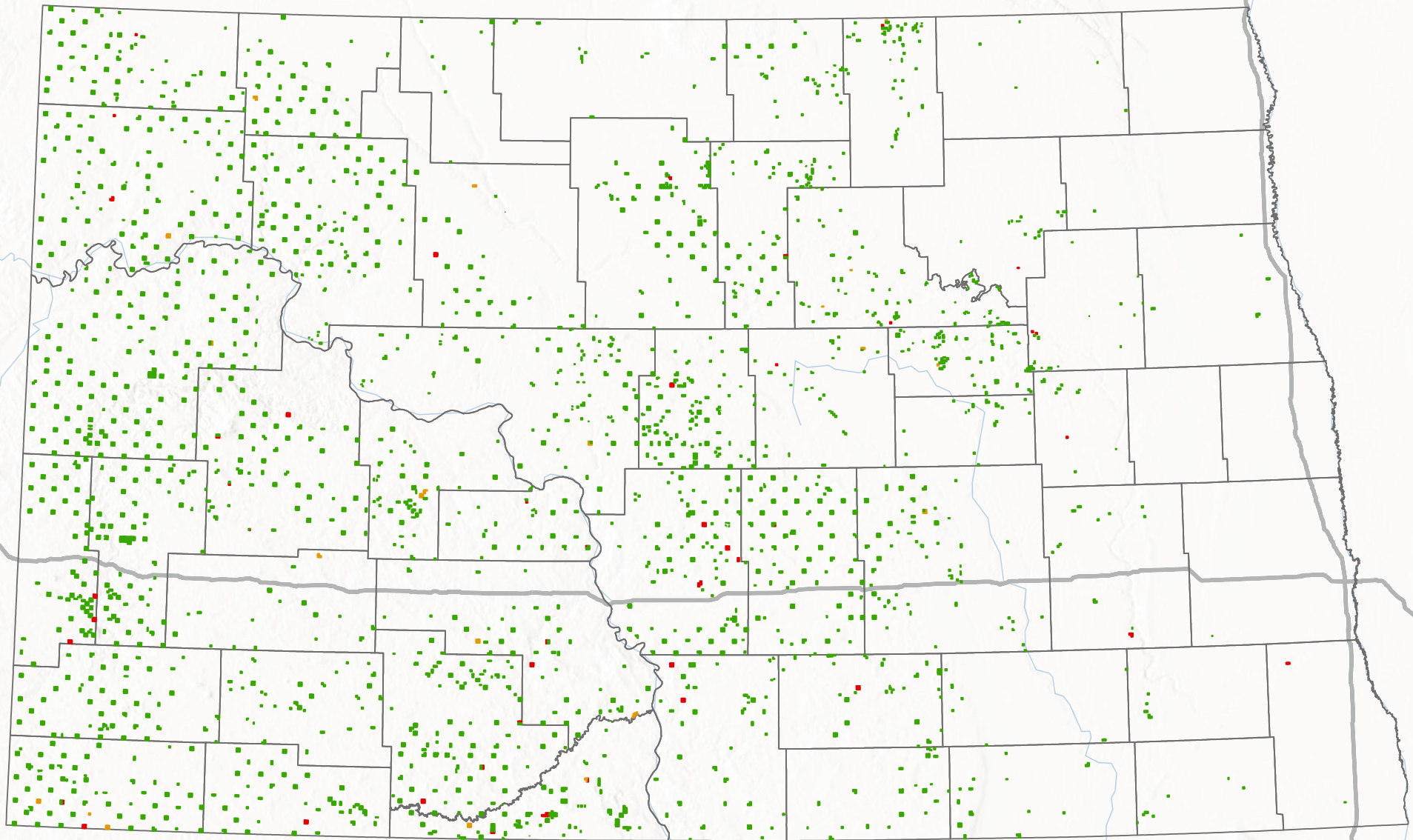
Thank you for your time and consideration, I look forward to answering any questions you may have.

North Dakota Century Code Related to Public Access on Trust Lands:

**15-08-19.2. Public access.**

1. Nonvehicular public access to leased and unleased trust lands is allowed if in the best interests of the trusts, unless:
  - a. Specifically prohibited by the commissioner; or
  - b. A lessee of any lands under the control of the board of university and school lands posts the land with signage issued by the department, which:
    - (1) Requires notification to the lessee before entry by the public; or
    - (2) Closes the trust lands to all public access.
2. A lessee of any lands under the control of the board may not lease, sell, or otherwise be compensated for access to, on, across, or over leased trust lands.

# Public Access on Trust Land on Nov. 5 2022



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