

# NORTH DAKOTA DEPARTMENT OF TRUST LANDS

Funding Public Education Through Stewardship of Natural Resources

## HOT TOPICS UPDATE

*Joseph A. Heringer, Commissioner*

North Dakota Department of Trust Lands

North Dakota Petroleum Council Presentation September 22, 2022

# BOARD OF UNIVERSITY & SCHOOL LANDS



The management of School Trust Lands in North Dakota is entrusted to the ND Department of Trust Lands, under the direction of the Board of University and School Lands (Board).

The Board is made up of five elected officials: Chairman Governor Doug Burgum, Vice Chairman Secretary Al Jaeger, Superintendent of Public Instruction Kirsten Baesler, Treasurer Tom Beadle and Attorney General Drew Wrigley.



# ACREAGE ADJUSTMENT PROJECT

- At statehood, North Dakota was granted ownership of all lands (including minerals) under navigable waters up to the “historical ordinary high-water mark.” (OHWM) This grant is under the legal doctrine called “equal footing”.
- By statute, the Department is authorized to manage all state-owned minerals under such navigable waters.
- Over the years there have been numerous disputes about the exact location of the OHWM at various points along the Missouri River.
- In 2017, the legislature commissioned a new study to determine the OHWM from the northern boundary of the Fort Berthold Indian Reservation to the southern border of Sections 33 and 34, Township 153 North, Range 102 West.
- The same statute required the Department and oil & gas operators to adjust all affected leases to the acreage determined by the study and to make corrective bonus and royalty payments/refunds accordingly.





# ACREAGE ADJUSTMENT PROJECT

- 508 total leases
- Covering 39,507 acres
- 8,577 acres net State ownership reduction
- 5 leases are held in litigation
- \$120,000,000 has been paid back to operators
  - \$39 million bonus
  - \$32 million royalties
  - \$49 million escrowed funds released
- Operators are responsible to refund mineral owners
- Good industry collaboration



# ACREAGE ADJUSTMENT PROJECT

## PART I –East of Hwy 85

- Project Complete - June 25, 2022 Deadline
- 463 leases
- \$116 million paid back to operators
  - \$35 million bonus
  - \$32 million royalties
  - \$49 million escrowed funds released

## PART II – West of Hwy 85

- In Progress – November 1, 2023 Deadline
- 18 of 45 leases completed
- \$4 million bonus refunded to operators



# LEGAL UPDATE - CONTINENTAL INTERPLEADER

December 23, 2016 - Continental interpleaded the North Dakota Board of University and School Lands and the United States to determine the historical ordinary high-water mark of the Missouri Riverbed where federal lands abut the state established line; that line is now the Wenck survey line





# PUBLIC DOMAIN LANDS

(LANDS THE UNITED STATES HAS ALWAYS OWNED)

Does the state established Wenck line  
override federal boundary determinations?

North Dakota Federal District Court held  
that state law applies, but due to language  
of N.D.C.C. § 61-33.1-06, federal surveys  
control.

“... the ordinary high-water mark of the  
historical Missouri riverbed channel  
abutting nonpatented public domain lands  
owned by the United States must be  
determined by the branch of cadastral  
study of the United States Bureau of Land  
Management in accordance with federal  
law.”



# ACQUIRED LANDS

(LANDS THE UNITED STATES ACQUIRED FROM PRIVATE OWNERS FOR GARRISON DAM FLOODING OF UPLANDS)

Does the state established Wenck line override federal boundary determinations?

This question has been briefed and awaiting decision from court.

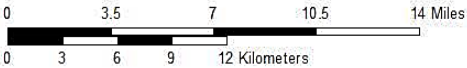
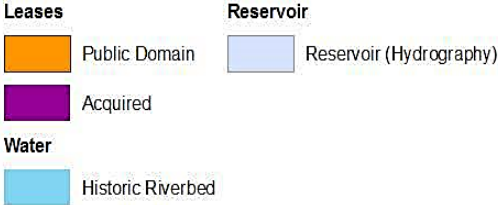
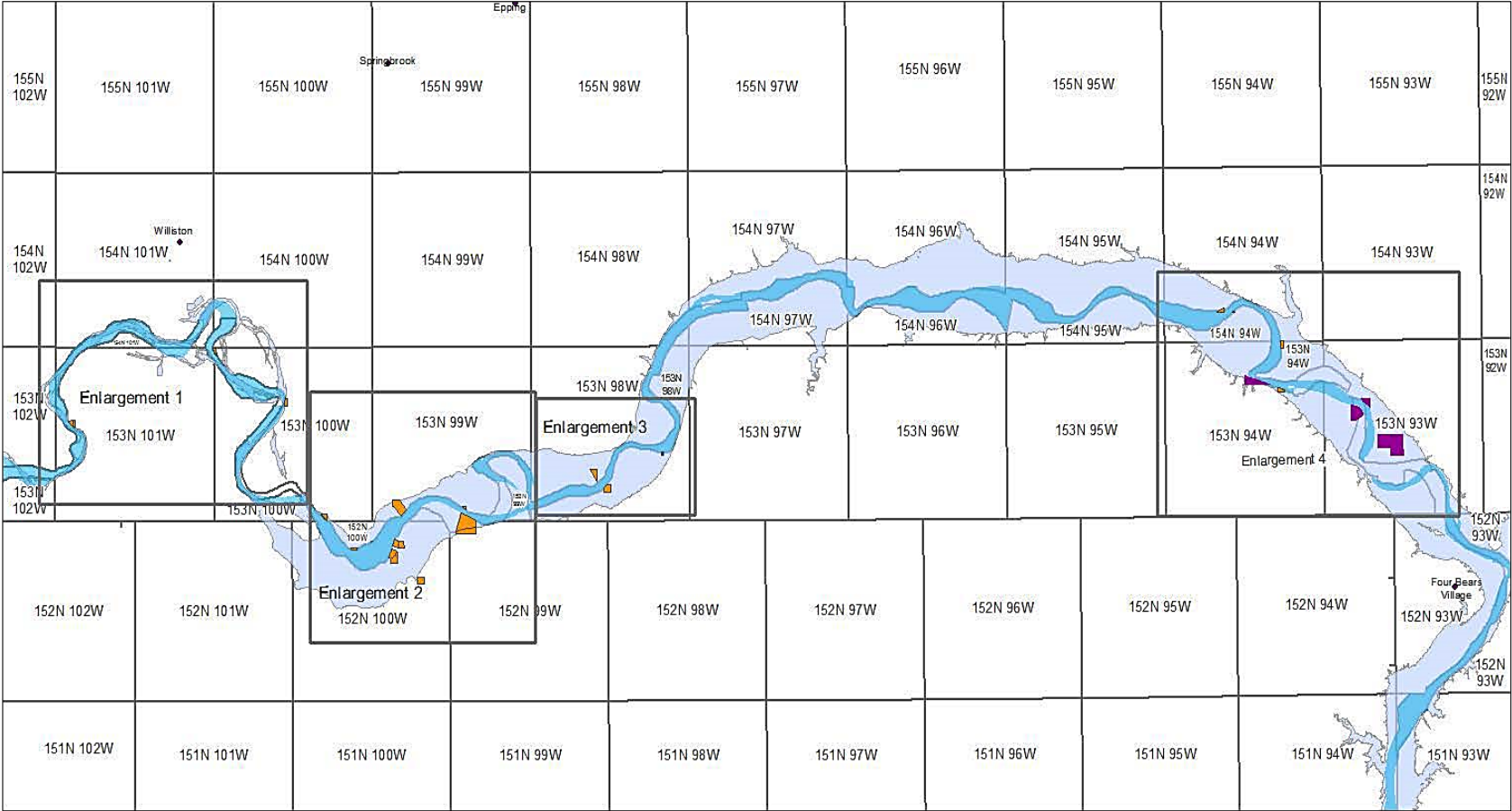
North Dakota believes this issue is distinguishable from public domain lands both on a statutory and ownership basis.

N.D.C.C. § 61-33.1-06 only applies to public domain lands, thus the more general framework of N.D.C.C. Chapter 61-33.1 applies to acquired lands.

The United States has a greater interest in lands that has never left federal title and the lands were privately owned when the historical OHWM was set by state law prior to inundation by Lake Sakakawea.



# CONTINENTAL INTERPLEADER SPECIFIC TRACTS



Map prepared by:  
U.S. Department of the Interior  
Bureau of Land Management  
Montana/Dakotas State Office  
5001 Southgate Drive  
Billings, MT 59101

Date: 5/4/2020

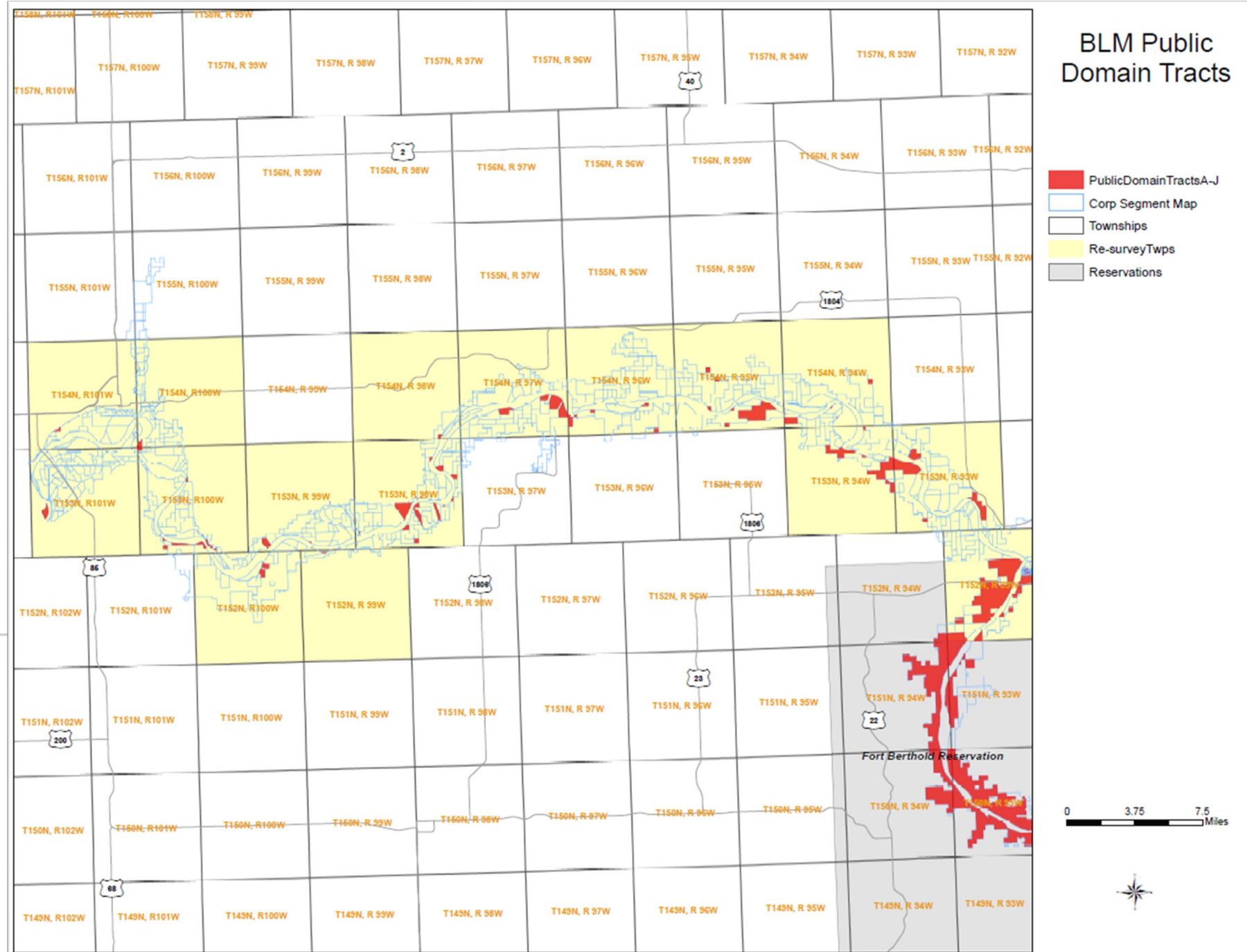


No warranty is made by the BLM as to the accuracy, reliability, or completeness of this data for individual use or aggregate use with other data.



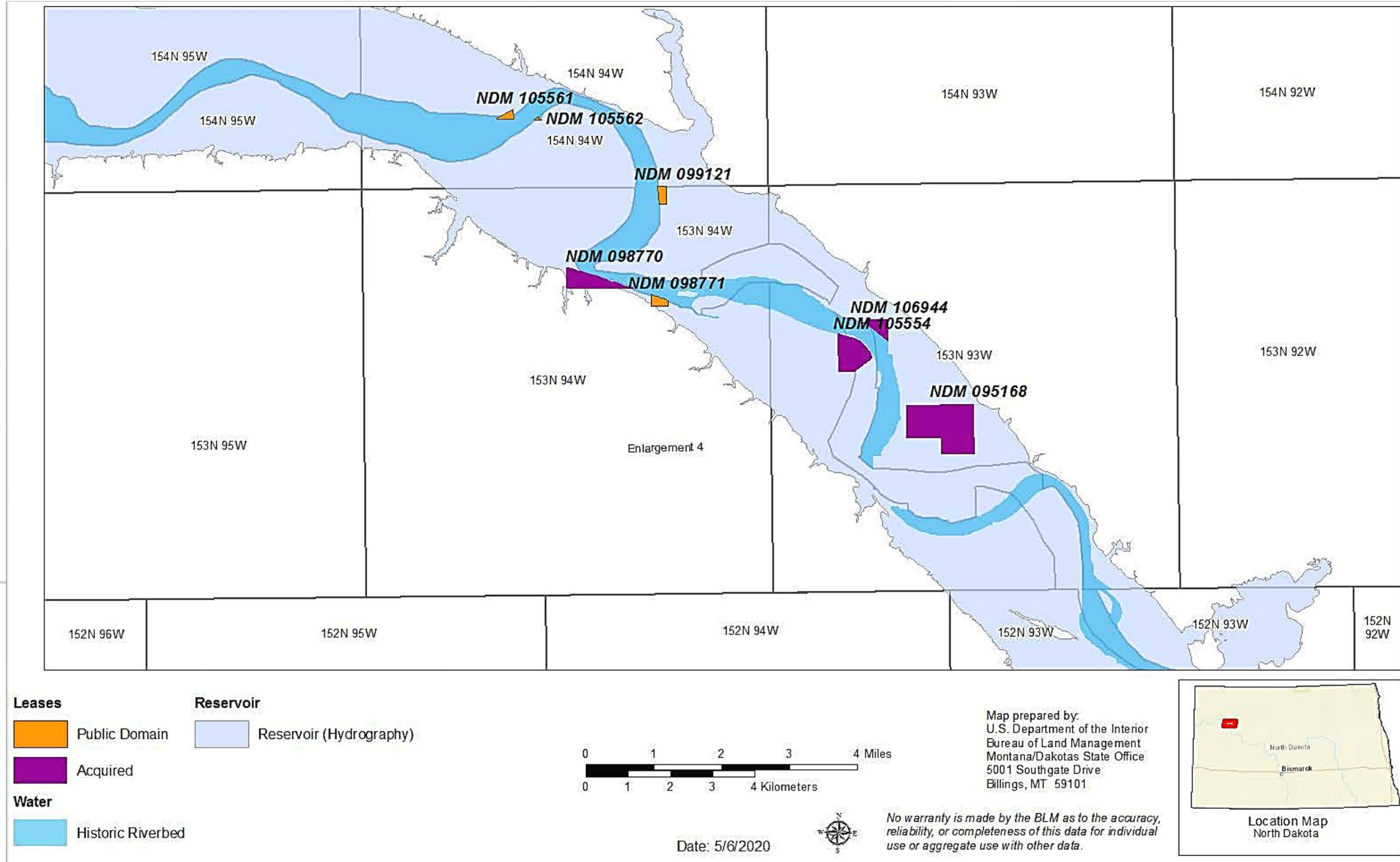


# ALL RIVER TRACTS





# EXAMPLE OF FEDERALLY ACQUIRED TRACTS





[illegible]

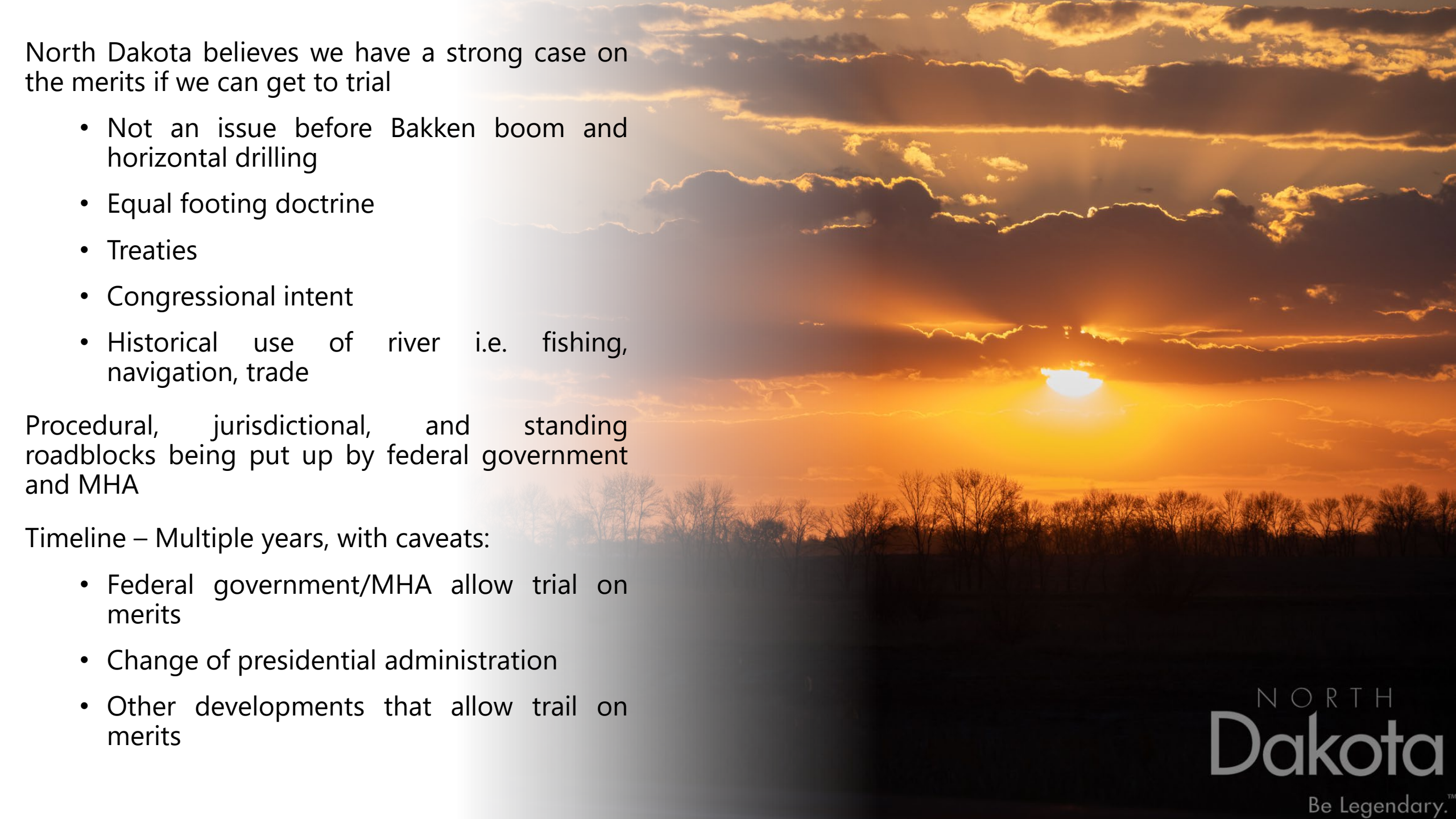


# LEGAL UPDATE - MANDAN, HIDATSA AND ARIKARA NATION V. U.S. DEPARTMENT OF THE INTERIOR (M OPINION)

- July 16, 2020 - MHA sued challenging Solicitor Opinion M-37056 issued May 26, 2020, which concluded North Dakota owns the lands beneath the Missouri Riverbed within the Fort Berthold Reservation. That opinion had reversed a prior M opinion.
- February 4, 2022 – Solicitor Opinion M-37073 issued reversing May 2020 opinion, concluding MHA owns the riverbed.
- April 29, 2022 – North Dakota moved to intervene so a trial on the merits could be held; MHA opposed and North Dakota's motion was denied.
- June 28, 2022 - North Dakota appealed and that issue is now before D.C. Circuit Court of Appeals.





A sunset scene with a bright sun low on the horizon, casting a golden glow across a sky filled with dark, textured clouds. The foreground shows the dark silhouettes of a line of trees against the bright sky.

North Dakota believes we have a strong case on the merits if we can get to trial

- Not an issue before Bakken boom and horizontal drilling
- Equal footing doctrine
- Treaties
- Congressional intent
- Historical use of river i.e. fishing, navigation, trade

Procedural, jurisdictional, and standing roadblocks being put up by federal government and MHA

Timeline – Multiple years, with caveats:

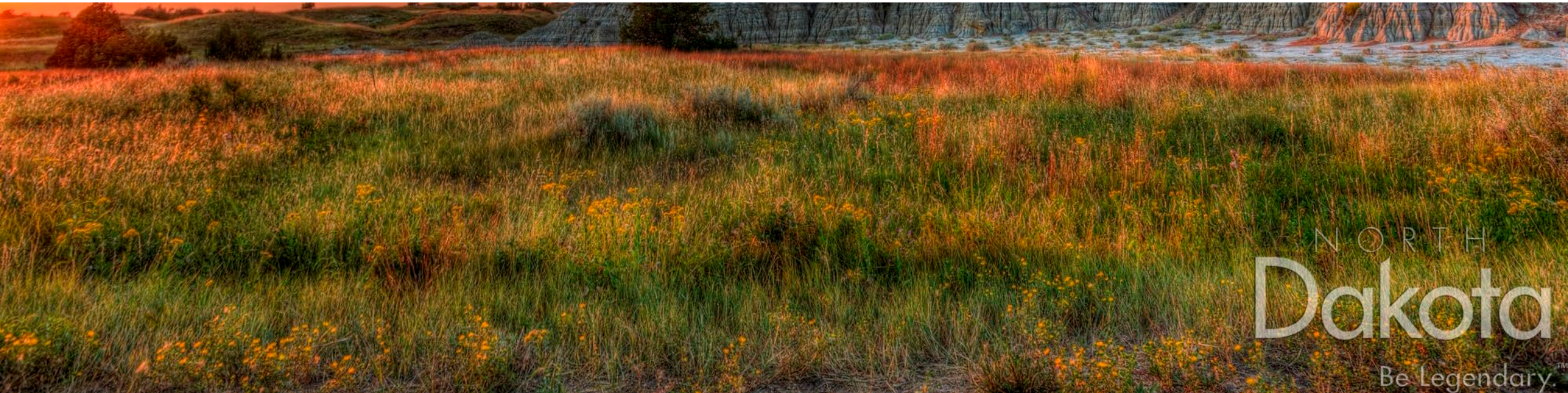
- Federal government/MHA allow trial on merits
- Change of presidential administration
- Other developments that allow trial on merits



# LEGAL UPDATE – NEWFIELD V. NORTH DAKOTA

September 1, 2022 – Newfield #2 decision released by ND Supreme Court

1. Reiterated that Land Board's post-1979 oil & gas leases do not allow operators to deduct post-production costs or expenses from royalties owed to the state.
2. Recognized statutory obligation under N.D.C.C. § 47-16-39.1 for operators to pay royalties according to the lease and that operators are an appropriate party for mineral owners to pursue for royalty underpayments.





## TAKE AWAYS

1. This was a good faith legal disagreement.
2. Now that there is legal clarity, this is a great opportunity settle all remaining claims and move forward together.
3. The Land Board and Department value the North Dakota oil & gas industry as our largest business partner, helping to provide hundreds of millions of dollars in revenue each year to the Commons Schools Trust Fund that supports North Dakota K-12 public education. We want to settle these claims and move forward in our partnership, working together to benefit the state.

NORTH  
Dakota

Be Legendary.



# THANK YOU!

*Joseph A. Heringer, Commissioner*

North Dakota Department of Trust Lands

[land.nd.gov](http://land.nd.gov)

701.328.2800

NORTH  
**Dakota** | Trust Lands  
Be Legendary.