Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1221
(Representatives Keiser, Sukut)

AN ACT to amend and reenact section 59-04.2-19 of the North Dakota Century Code, relating to a trustee's allocation of receipts from interests in minerals and other natural resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-04.2-19 of the North Dakota Century Code is amended and reenacted as follows:

59-04.2-19. (411) Minerals, water, and other natural resources.

1. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

   a. If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

   b. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

   c. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ~~ninety~~fifteen percent must be allocated to principal and the balance to income.

   d. If an amount is received from a working interest or any other interest not provided for in subdivision a, b, or c, ~~ninety~~fifteen percent of the net amount received must be allocated to principal and the balance to income.

2. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

3. This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

4. If a trust ~~owns~~ has not received receipts from an interest in minerals, water, or other natural resources ~~on August 1, 1999,~~ before August 1, 2015, the trustee ~~may~~shall allocate receipts from ~~the interest~~interests in minerals, water, or other natural resources as provided in this ~~chapter or in the manner used by the trustee before August 1, 1999. If the trust acquires an interest in minerals, water, or other natural resources after August 1, 1999, the trustee shall allocate receipts from the interest as provided in this chapter~~section.

5. If a trust has received receipts from an interest in minerals, water, or other natural resources before August 1, 2015, the trustee shall allocate receipts from interests in minerals, water, or other natural resources as follows:

   a. If the trust acquired an interest in minerals, water, or other natural resources before August 1, 1999, the trustee may allocate receipts in the manner used by the trustee before August 1, 1999, or as required by law in effect on August 1, 1999.

b. If the trust acquired an interest in minerals, water, or other natural resources after August 1, 1999, and before August 1, 2015, the trustee shall allocate receipts in the manner required by law in effect on August 1, 1999.

6. The trustee may petition the court to permanently modify the manner used to allocate receipts under this section. In deciding whether and to what extent to modify the manner used to allocate receipts, the court may consider any factors relevant to the trust and its beneficiaries; including the following factors to the extent they are relevant:

a. The nature, purpose, and expected duration of the trust;

b. The intent of the settlor;

c. The identity and circumstances of the beneficiaries;

d. The need for liquidity, regularity of income, and preservation and appreciation of capital;

e. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

f. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets;

g. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

h. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

i. The anticipated tax consequences of a modification.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1221.

House Vote:	Yeas 92	Nays 1	Absent 1
Senate Vote:	Yeas 47	Nays 0	Absent 0

Chief Clerk of the House

Received by the Governor at 10:44 A M. on April 8, 2015.

Approved at 2:05 P.M. on April 9, 2015.

Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State