

TO ESTABLISH A PROCEDURE FOR THE CONVEYANCE OF
CERTAIN FEDERAL PROPERTY AROUND THE DICKIN-
SON RESERVOIR IN THE STATE OF NORTH DAKOTA

AUGUST 14, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6038]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6038) to establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—The term “Department” means Dickinson Parks & Recreation in Dickinson, North Dakota.

(2) DICKINSON RESERVOIR.—The term “Dickinson Reservoir” means the Dickinson Reservoir constructed as part of the Dickinson Unit, Heart Division, Pick-Sloan Missouri Basin Program, as authorized by section 9 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 891, chapter 665).

(3) GAME AND FISH HEADQUARTERS.—The term “game and fish headquarters” means the approximately 10 acres of land depicted as “Game and Fish Headquarters” on the Map.

(4) MANAGEMENT AGREEMENT.—The term “Management Agreement” means the management agreement entitled “Management Agreement between the Bu-

reau of Reclamation, et al., for the Development, Management, Operation, and Maintenance of Lands and Recreation Facilities at Dickinson Reservoir”, MA No. 07AG602222, Modification No. 1 and dated March 15, 2017.

(5) MAP.—The term “Map” means the map prepared by the Bureau of Reclamation, entitled “Dickinson Reservoir”, and dated May 2018.

(6) PERMITTED CABIN LAND.—The term “permitted cabin land” means the land depicted as “Permitted Cabin Land” on the Map.

(7) PROPERTY.—The term “property” means any cabin site located on permitted cabin land for which a permit is in effect on the date of enactment of this Act.

(8) RECREATION LAND.—The term “recreation land” means the land depicted as “Recreation and Public Purpose Lands” on the Map.

(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(10) STATE.—The term “State” means the State of North Dakota, acting through the North Dakota Game and Fish Department.

SEC. 2. CONVEYANCES TO DICKINSON DEPARTMENT OF PARKS AND RECREATION.

(a) CONVEYANCES TO DICKINSON DEPARTMENT OF PARKS AND RECREATION.—

(1) IN GENERAL.—Subject to the management requirements of paragraph (3) and the easements and reservations under section 4, not later than 5 years after the date of enactment of this Act, the Secretary shall convey to the Department all right, title, and interest of the United States in and to—

- (A) the recreation land; and
- (B) the permitted cabin land.

(2) COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall convey the land described in paragraph (1) at no cost.

(B) TITLE TRANSFER; LAND SURVEYS.—As a condition of the conveyances under paragraph (1), the Department shall agree to pay all survey and other administrative costs necessary for the preparation and completion of any patents for, and transfers of title to, the land described in paragraph (1).

(3) MANAGEMENT.—

(A) RECREATION LAND.—The Department shall manage the recreation land conveyed under paragraph (1)—

- (i) for recreation and public purposes consistent with the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (44 Stat. 741, chapter 578; 43 U.S.C. 869 et seq.);
- (ii) for public access;
- (iii) for fish and wildlife habitat; or
- (iv) to preserve the natural character of the recreation land.

(B) PERMITTED CABIN LAND.—The Department shall manage the permitted cabin land conveyed under paragraph (1)—

- (i) for cabins or recreational residences in existence as of the date of enactment of this Act; or
- (ii) for any of the recreation land management purposes described in subparagraph (A).

(4) HAYING AND GRAZING.—With respect to recreation land conveyed under paragraph (1) that is used for haying or grazing authorized by the Management Agreement as of the date of enactment of this Act, the Department may continue to permit haying and grazing in a manner that is permissible under the one or more haying or grazing contracts in effect as of the date of enactment of this Act.

(b) SALE OF PERMITTED CABIN LAND BY DEPARTMENT.—

(1) IN GENERAL.—If the Department sells any parcel of permitted cabin land conveyed under subsection (a)(1)(B), the parcel shall be sold at fair market value, as determined by a third-party appraiser in accordance with the Uniform Standards of Professional Appraisal Practice, subject to paragraph (2).

(2) IMPROVEMENTS.—For purposes of an appraisal conducted under paragraph (1), any improvements on the permitted cabin land made by the permit holder shall not be included in the appraised value of the land.

(3) PROCEEDS FROM THE SALE OF LAND BY THE DEPARTMENT.—If the Department sells a parcel of permitted cabin land conveyed under subsection (a)(1)(B), the Department shall pay to the Secretary the amount of any proceeds of the sale that exceed the costs of preparing the sale by the Department.

(c) AVAILABILITY OF FUNDS TO THE SECRETARY.—Any amounts paid to the Secretary for land conveyed by the Secretary under this Act shall be made available

to the Secretary, without further appropriation, for activities relating to the operation of the Dickinson Dam and Reservoir.

SEC. 3. CONVEYANCE OF GAME AND FISH HEADQUARTERS TO THE STATE.

Not later than 5 years after the date of enactment of this Act, the Secretary shall convey to the State all right, title, and interest of the United States in and to the game and fish headquarters, on the condition that the game and fish headquarters continue to be used as a game and fish headquarters or substantially similar purposes.

SEC. 4. RESERVATIONS, EASEMENTS, AND OTHER OUTSTANDING RIGHTS.

(a) **IN GENERAL.**—Each conveyance to the Department or the State pursuant to this Act shall be made subject to—

- (1) valid existing rights;
- (2) operational requirements of the Pick-Sloan Missouri River Basin Program, as authorized by section 9 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58 Stat. 891, chapter 665), including the Dickinson Reservoir;
- (3) any flowage easement reserved by the United States to allow full operation of Dickinson Reservoir for authorized purposes;
- (4) reservations described in the Management Agreement;
- (5) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by, or in favor of, the United States or a third party;
- (6) any permit, license, lease, right-of-use, flowage easement, or right-of-way of record in, on, over, or across the applicable property or Federal land, whether owned by the United States or a third party, as of the date of enactment of this Act;
- (7) a deed restriction that prohibits building any new permanent structure on property below an elevation of 2,430.6 feet; and
- (8) the granting of applicable easements for—
 - (A) vehicular access to the property; and
 - (B) access to, and use of, all docks, boathouses, ramps, retaining walls, and other improvements for which access is provided in the permit for use of the property as of the date of enactment of this Act.

(b) **LIABILITY; TAKING.**—

(1) **LIABILITY.**—The United States shall not be liable for flood damage to a property subject to a permit, the Department, or the State, or for damages arising out of any act, omission, or occurrence relating to a permit holder, the Department, or the State, other than for damages caused by an act or omission of the United States or an employee, agent, or contractor of the United States before the date of enactment of this Act.

(2) **TAKING.**—Any temporary flooding or flood damage to the property of a permit holder, the Department, or the State, shall not be considered to be a taking by the United States.

SEC. 5. INTERIM REQUIREMENTS.

During the period beginning on the date of enactment of this Act and ending on the date of conveyance of a property or parcel of land under this Act, the provisions of the Management Agreement that are applicable to the property or land, or to leases between the State and the Secretary, and any applicable permits, shall remain in force and effect.

PURPOSE OF THE BILL

The purpose of H.R. 6038 is to establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota.

BACKGROUND AND NEED FOR LEGISLATION

Constructed in 1950 by the Bureau of Reclamation, the Dickinson Unit consists of the Dickinson Dam and Reservoir (known as Edward Arthur Patterson Lake). It also includes over 1,200 land acres, many of which are used for recreational activities, including swimming, boating, picnicking, and overnight camping.¹ H.R. 6038

¹ <https://www.usbr.gov/projects/index.php?id=450>.

would transfer ownership of recreation land and structures from the Bureau of Reclamation to local ownership. However, the Dickinson Dam and Reservoir will remain under the ownership of Reclamation.

Reclamation holds title to the individual water, power supply and delivery, and recreational facilities it has constructed over the last century. The federal government provided the initial capital contribution to build the vast majority of these early projects; however, the water, power, and recreational customers who benefitted from the facilities entered into long-term contracts with the federal government to repay their part of the initial taxpayer investment. Under the Reclamation Act of 1902,² Reclamation may transfer day-to-day operational and maintenance responsibilities to project beneficiaries; however, the title or ownership of any facility must remain in federal ownership until Congress enacts legislation specifically authorizing such a conveyance.

Dickinson Dam and Reservoir were originally constructed to supply the city of Dickinson with a municipal water source. However, in 1991, the City began getting its water from Lake Sakakawea through the Southwest Pipeline Project, and Edward Arthur Patterson Lake is now primarily used for recreation.³ Around this lake, many people are permitted to own homes on federal land. Unfortunately, not owning the land under their homes has resulted in many complications and financial uncertainty to the residents. According to the President of the Patterson Lake Homeowners Association, homeowners have not been able to access things such as home improvement loans or other sources of equity because of this situation.⁴ H.R. 6038 will give homeowners the option to buy the land under their permanent homes from the Dickinson Department of Parks and Recreation, allowing them to leverage the land and improvements they have made.⁵

At a July 2018 Subcommittee on Water, Power and Oceans hearing, Mr. Tom Fisher from the Patterson Lake Homeowners Association spoke to the benefits that title transfer will have on the local environment and for the community that depends on the Lake. Mr. Fisher testified that the community conducted public meetings throughout this process, and that the title transfer would result in “additional property taxes to the county and school, which will further benefit the community” by investing that increased revenue in the upkeep of the Lake.⁶ Representative Paul A. Gosar (R-AZ) noted this increased incentive to preserve the local environment, and Mr. Fisher stated that, as a result, “none of those [reversionary clauses in H.R. 6038] are necessary; they would not help.”⁷

² Act of June 17, 1920, ch. 1093, 32 Stat. 388.

³ Submitted Testimony of Mr. Tom Fisher, President, Patterson Lake Homeowners Association, before the Senate Water and Power Subcommittee, June 14, 2017, p. 1.

⁴ Submitted testimony of Mr. Tom Fisher, President of the Patterson Lake Homeowners Association, to the Senate Committee on energy and Natural Resources legislative hearing, June 14, 2017.

⁵ *Id.* at 6, p. 2.

⁶ *Legislative Hearing on H.R. 5556, H.R. 6038, H.R. 6039, and H.R. 6040 Before H. Comm. on Natural Resources, Subcomm. on Water, Power and Oceans*, 115th Cong., 2, (2018) (Statement of Mr. Tom Fisher), available at https://naturalresources.house.gov/uploadedfiles/7.11_testimony_fisher.pdf, p. 2.

⁷ *Legislative Hearing on H.R. 5556, H.R. 6038, H.R. 6039, and H.R. 6040 Before H. Comm. on Natural Resources, Subcomm. on Water, Power and Oceans*, 115th Cong., 2, (2018) (Oral Statement of Mr. Tom Fisher), available at <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405249>, starting at 1:42:32.

COMMITTEE ACTION

H.R. 6038 was introduced on June 7, 2018, by Congressman Kevin Cramer (R-ND). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On July 11, 2018, the Subcommittee held a hearing on the bill. On July 18, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Natural Resources Committee Chairman Rob Bishop (R-UT) offered an amendment designated #1; it was adopted by a roll call vote of 18 yeas to 14 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 07.18.18

Recorded Vote #:4

Meeting on / Amendment on: FC Markup Bishop [#1] HR 6038 (Rep. Kevin Cramer)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>				<i>Mr. Clay, MO</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Gomez, CA</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Ms. Velázquez, NY</i>			
Mr. McClintock, CA	X			Mr. Webster, FL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Bergman, MI	X		
Mr. Pearce, NM				Ms. Cheney, WY	X		
<i>Mr. Huffman, CA</i>		X		Mr. Johnson, LA			
Mr. Thompson, PA	X			Ms. González-Colón, PR			
<i>Mr. Lowenthal, CA</i>		X		Mr. Gianforte, MT	X		
Mr. Gosar, AZ	X			Mr. Curtis, UT			
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. Tipton, CO	X						
<i>Ms. Hanabusa, HI</i>							
Mr. LaMalfa, CA	X						
<i>Ms. Barragán, CA</i>		X					
Mr. Denham, CA	X						
<i>Mr. Soto, FL</i>		X		TOTAL:	18	14	

No additional amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6038, a bill to establish a procedure for the conveyance of certain Federal property around Dickinson Reservoir in the State of North Dakota.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 6038—A bill to establish a procedure for the conveyance of certain Federal property around Dickinson Reservoir in the State of North Dakota

H.R. 6038 would direct the Bureau of Reclamation (BOR) to convey certain federal land located near the Dickinson Reservoir in North Dakota to the Dickinson Parks and Recreation department. Under the bill, after the property is conveyed, the department could sell the property to certain existing cabin permit holders and the net proceeds of those transactions would be paid to the federal government. Those proceeds would be classified as offsetting receipts, which are treated as reductions in direct spending, and could subsequently be spent by BOR without further appropriation.

Enacting H.R. 6038 would increase offsetting receipts and the associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on the budget would be negligible. Enacting H.R. 6038 would not affect revenues.

Under H.R. 6038, BOR would convey specified federal property to the Dickinson Parks and Recreation department within 5 years

after enactment. Using information from BOR, CBO expects that 41 cabin permit holders would purchase lots from the department for about \$100,000 per lot. CBO estimates that the department would transfer the net proceeds of about \$4 million to the federal government and those offsetting receipts would be spent for annual operations costs and deferred maintenance projects at the Dickinson Dam and Reservoir in North Dakota.

CBO estimates that enacting H.R. 6038 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6038 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On July 9, 2018, CBO transmitted a cost estimate for S. 440, a bill to establish a procedure for the conveyance of certain Federal property around Dickinson Reservoir in the State of North Dakota, as ordered reported by the Senate Committee on Energy and Natural Resources on May 17, 2018. The two pieces of legislation are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 6038 authorizes the conveyance of public lands located around the Dickinson Reservoir in western North Dakota. Because H.R. 6038 fails to include standard safeguards that protect taxpayers and preserve public access to public lands, we oppose H.R. 6038 as reported.

Congress has a long tradition of supporting public land conveyances that promote genuine public purposes. However, Congress has typically required some form of compensation to the American taxpayer. Compensation could mean that conveyed land is sold at fair market value or conveyed with a reversionary interest that requires the land to be used for a specific public purpose or ownership returns to the United States. Reversionary interests protect taxpayer interests by preventing the future sale or inconsistent use of a property traded away for a specific public purpose.

As introduced, H.R. 6038 contained standard, essential reversionary clauses that would have ensured that the land conveyance authorized by the bill preserves public access to conveyed lands. The language in the introduced version of H.R. 6038 had broad support and passed the Senate Energy and Natural Resources Committee by voice vote.

Unfortunately, during the House markup of H.R. 6038, Chairman Bishop offered a poison pill amendment that eliminated the essential reversionary clauses from the underlying bill. The amendment passed with a strict party-line vote. By removing the bill's reversionary clauses, what had previously been a bill scheduled to pass the Committee by unanimous consent became a bill that fails to garner broad, bipartisan support.

Whenever Congress conveys public lands, it is essential that public access be preserved or taxpayers be compensated for the full value of the lands that are lost. H.R. 6038 fails to meet either of these requirements. For these reasons, we oppose H.R. 6038 as reported.

RAÚL M. GRIJALVA,
Ranking Member,
House Natural Resources
Committee.

JARED HUFFMAN.

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