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115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-314

TO ESTABLISH A PROCEDURE FOR THE CONVEYANCE OF CERTAIN FEDERAL PROPERTY AROUND THE JAMES- TOWN RESERVOIR

AUGUST 1, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 2074]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2074) to establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. DEFINITIONS.

In this Act:

(1) BOARD.—The term “Board” means the Stutsman County Park Board in Jamestown, North Dakota.

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

(3) JAMESTOWN RESERVOIR.—The term “Jamestown Reservoir” means the Jamestown Reservoir constructed as a unit of the Missouri-Souris 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).

(4) MANAGEMENT AGREEMENT.—The term “Management Agreement” means the management agreement entitled “Management Agreement between the United States of America and Stutsman County Park Board for the Manage-

ment, Development, Operation and Maintenance of Recreation and Related Improvements and Facilities at Jamestown Reservoir Stutsman County, North Dakota”, numbered 15–LM–60–2255, and dated February 17, 2015.

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

(6) PERMITTED CABIN LAND.—The term “permitted cabin land” means the land depicted as “Permitted Cabin Lands” 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 STUTSMAN COUNTY PARK BOARD.—

(a) CONVEYANCES TO STUTSMAN COUNTY PARK BOARD.—

(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 Board 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 Board 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 Board 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 Board 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 Board may continue to permit haying and grazing in a manner that is permissible under the 1 or more haying or grazing contracts in effect as of the date of enactment of this Act.

(b) REVERSION.—If a parcel of land conveyed under subparagraph (A) or (B) of subsection (a)(1) is used in a manner that is inconsistent with the requirements described in subparagraph (A) or (B), respectively, of subsection (a)(3), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

(c) SALE OF PERMITTED CABIN LAND BY BOARD.—

(1) IN GENERAL.—If the Board 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 a permit holder shall not be included in the appraised value of the land.

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

(d) 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 Jamestown Dam and Reservoir.

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

(a) CONVEYANCE OF GAME AND FISH HEADQUARTERS.—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.

(b) REVERSION.—If land conveyed under subsection (a) is used in a manner that is inconsistent with the requirements described in that subsection, the land shall, at the discretion of the Secretary, revert to the United States.

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

(a) IN GENERAL.—Each conveyance to the Board 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 Jamestown Reservoir;

(3) any flowage easement reserved by the United States to allow full operation of the Jamestown 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 1,454 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 Board, or the State, or for damages arising out of any act, omission, or occurrence relating to a permit holder, the Board, 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 Board, 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

The purpose of S. 2074 is to establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota.

BACKGROUND AND NEED

Jamestown Dam and Reservoir is a component of the Bureau of Reclamation’s (BOR) Garrison Diversion Unit in the State of North Dakota and was authorized by the Flood Control Act of 1944 (58 Stat. 891) for the purposes of irrigation, municipal and industrial

water supply, flood control, and recreation. Federal lands were acquired to construct the project. Currently, the Dam and Reservoir services one water service contract for irrigation above the reservoir and periodic annual water service contracts.

BOR lands surrounding Jamestown Reservoir include recreational lands, wildlife habitat, grazing and haying lands, and 71 lots with permitted cabins. All of these Federal lands are managed by the Stutsman County Park (Board) under an agreement with the BOR and are not necessary to fulfill authorized project purposes. In addition, the North Dakota Game and Fish Department leases approximately six acres for use as a District Headquarters directly from the BOR.

As part of its management of the BOR lands, the Board issues permits for the 71 cabin lots. Some of the permittees now use these cabins year-round as primary residences and have made improvements to cabin lots at their own expense. In order to have certainty about the management of these lands, to secure the ability to obtain financing for home purchases and improvements, and to address increasing permit fees, permittees would like to purchase the lots they currently occupy. Additionally, the North Dakota Fish and Game Department has expressed interest in assuming ownership of the lands they currently lease from BOR.

LEGISLATIVE HISTORY

S. 2074 was introduced by Senator Hoeven on November 2, 2017. The Subcommittee on Water and Power held a hearing on S. 2074 on February 28, 2018.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered S. 2074 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2018, by a majority voice vote of a quorum present recommends that the Senate pass S. 2074, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2074, the Committee adopted an amendment in the nature of a substitute. The amendment authorizes the Secretary of the Interior (Secretary) to convey recreation land and permitted land to the Board, instead of providing the permittee of the property with the first option to purchase. The amendment also adds restrictions on the future uses of the property and makes numerous clarifications, technical corrections, and conforming changes. The amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Definitions

Section 1 contains definitions applicable to the Act.

Section 2. Conveyances to Stutsman County Park Board

Subsection (a) directs the Secretary to convey recreation and permitted cabin land surrounding the Jamestown Reservoir to the Board within five years of the Act's enactment. The conveyances by the Secretary are to be made at no cost, but the Board is required to pay for survey and administrative-related costs. The Board is directed to manage conveyed recreation land for recreation and public purposes consistent with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.); public access; fish and wildlife habitat; or to preserve the land's natural character. Additionally, if conveyed recreation land is authorized for haying and grazing by the Management Agreement as of the date of the Act's enactment, the Board may continue to permit those activities. The Board is directed to manage conveyed permitted cabin lands for any of the specified recreation land management purposes or for cabins or recreational residences in existence as of the date of the Act's enactment.

Subsection (b) provides that the conveyed lands will revert to the United States, at the discretion of the Secretary, if they are used in a manner that is inconsistent with the Act's authorized uses.

Subsection (c) requires the Board to charge fair market value for the sale of any parcel of permitted cabin land, and specifies improvements made by the permittee shall not be included in the valuation. This subsection also requires the Board to pay the Secretary the amount of any sale proceeds that exceed the costs of preparing the sale.

Subsection (d) makes any amount paid to the Secretary for conveyed land available to the Secretary, without further appropriation, for operation of the Jamestown Dam and Reservoir.

Section 3. Conveyance of game and fish headquarters to the State

Section 3 directs the Secretary to convey all right, title, and interest in the game and fish headquarters currently leased to the North Dakota Game and Fish Department to the State of North Dakota for continued use as a headquarters or substantially similar purposes, and provides the Secretary with a reversionary interest in the event the land is used in an inconsistent manner with these requirements.

Section 4. Reservations, easements, and other outstanding rights

Subsection (a) specifies that conveyances made pursuant to this Act are subject to valid existing rights; operational requirements of the Pick-Sloan Missouri River Basin Program, including the Jamestown Reservoir; reserved flowage easements; Management Agreement reservations; reserved oil, gas and other mineral rights; any existing permit, license, lease, right-of-use, flowage easement, or right-of-way; deed restrictions prohibiting any permanent structures below the reservoir elevation of 1,454 feet; and the granting of easements for access to the property and associated facilities.

Subsection (b) shields the United States from liability for property damage, other than damages caused by an act or omission of the United States or an employee, agent, or contractor of the United States prior to the Act's enactment. This subsection further states that any temporary flooding or flood damage to the property shall not be considered a taking by the United States.

Section 5. Interim requirements

Section 5 applies the Management Agreement provisions as interim requirements during the time period starting from the date of the Act's enactment and ending on the date of the land or property conveyance.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

S. 2074 would direct the Bureau of Reclamation (BOR) to convey certain federal land and facilities located near the Jamestown Reservoir in North Dakota to the Stutsman County Park Board. After the property is conveyed, the board could sell the property to 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 S. 2074 would increase 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 S. 2074 would not affect revenues.

Under S. 2074, BOR would convey specified federal property to the Stutsman County Park Board within 5 years after enactment. Using information from BOR, CBO estimates that 71 cabin permit holders would purchase lots from the board for an estimated \$100,000 per lot. CBO estimates that the board would transfer the net proceeds of about \$7 million to the federal government, and those offsetting receipts would be spent for annual operations costs and deferred maintenance projects at the Jamestown Dam and Reservoir in North Dakota.

CBO estimates that enacting S. 2074 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2074 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2074. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2074, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2074, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the February 28, 2018, hearing on S. 2074 follows:

STATEMENT OF ALAN MIKKELSEN, SENIOR ADVISOR TO THE
SECRETARY FOR WATER AND WESTERN RESOURCE ISSUES,
U.S. DEPARTMENT OF THE INTERIOR

Chairman Flake, Ranking Member King, and Members of the Subcommittee, I am Alan Mikkelsen, Senior Advisor to the Secretary of Interior for Water and Western Resource Issues, and former Deputy Commissioner of the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 2074, a bill to establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota. The intent of the legislation is to provide a path for current permitted cabin owners and the Stutsman County Park Board to take ownership of certain Federal lands, allowing flexible management of the lands to meet local needs and alleviate the Department's administrative oversight and management of the land.

Before I discuss the Department's views on S. 2074, I wanted to reiterate that during the Secretary Zinke's confirmation hearing, he stated to this Committee that he does not support the wide-scale sale or transfer of Federal lands. Reclamation has technical modifications to recommend to provide additional clarity and protections. We look forward to working with the sponsor and the Committee to ensure proposals of this nature preserve access and recreation for future generations to come. The Flood Control Act of 1944 authorized construction of Jamestown Dam and Reservoir (Project) as part of the Garrison Diversion Unit, Missouri-Souris Division, Pick-Sloan Missouri Basin Program. Federal lands were acquired for Project purposes which include municipal water supply, irrigation with flood control, and recreation benefits. The Project provided extensive flood control benefits for Jamestown and downstream areas. There are currently two water service contracts associated with the project, one with an individual and one with an irrigation district downstream of the reservoir.

The current management agreement between Reclamation and Stutsman County Park Board for operation and maintenance of the majority of lands around the reservoir includes the area for 71 permitted exclusive use cabins—30 occupied year-round, and 41 occupied seasonally (approximately 73 acres), as well as additional lands dedi-

cated to recreation and wildlife management (approximately 4,421 acres). In addition to lands managed by Stutsman County Park Board, Reclamation leases a 6-acre parcel to the North Dakota Game and Fish Department (NDG&F) for their Regional Headquarters. In 2013, Reclamation's Dakotas Area Office (DKAO) requested a fair market appraisal of the rates for the exclusive use cabins be conducted pursuant to the Code of Federal Regulations related to Use of Bureau of Reclamation Land, Facilities, and Waterbodies (43 CFR 429). As required by Department policy, the appraisals were conducted by the Department of the Interior's Office of Valuation Services for all reservoirs with exclusive use under the administration of DKAO, resulting in the need to raise rates at all areas to recover fair market value. The results of the appraisal were presented to the respective managing partners in 2016.

Title transfer can be an important tool to ensure that management of lands and other real property is carried out by the entities that are best equipped to most effectively manage such property. The Administration recently submitted a legislative proposal which would address this issue more comprehensively which would facilitate title transfer of certain Reclamation facilities to non-Federal entities when such transfers are beneficial.

Section 1(b)(2)(A) of S. 2074 provides for the fair market value of a property to be determined by a local, third party appraiser, valuing the property as unimproved residential property, excluding all improvements. The Department believes that the property should be valued as-is, inclusive of improvements. The Department also recommends clarification of this language to ensure the cost for the third-party appraisal shall be the responsibility of the permittee(s). The permittees should also be made aware that a third-party appraisal would have to comply with federal appraisal standards and procedures as determined by the Office of Valuation Services.

Section 1(c)(3) provides conveyance subject to reversion to the United States of non-recreation lands managed by the Board if no longer used for public access or recreation. As worded in S. 2074, this language warrants clarification to ensure the Department's interpretation is consistent with the author's intent. We suggest simply revising this language to state that the lands conveyed (other than those in the cabin permit area and the North Dakota State Game and Fish Department headquarters area) are to remain available for public use in the future, and if it is determined that these areas are no longer needed for public access or recreation, then the land is subject to reversion to the United States. Given the Secretary's commitment to protecting public lands, the Department encourages what we believe is a shared intention for Stutsman County Park Board to continue to manage the parcels with recreational and public interests in mind.

Section 1(f) of S. 2074 provides that any revenues from a sale of Federal land pursuant to this section shall be made available to the Secretary, without further appropriation, for the costs to the Secretary of carrying out this section, and to conduct deferred maintenance activities relating to the dam in the Jamestown Reservoir. The Department believes that any such revenues should be remitted to the Reclamation fund. In addition, because revenues would not be generated until the properties are transferred to the permittee, as proposed in the bill, Reclamation would need appropriations to complete the surveys and appraisals and other pre-sale activities. In previous legislation to transfer cabin properties, as well as Reclamation's process for Use Authorization requests, it is the responsibility of the permittees/requestor to pay for the required pre-sale work, including all administrative costs to convey Federal property to private individuals/beneficiaries rather than placing this burden on the United States. As written it appears the United States is responsible for the administrative costs and therefore in "net" it receives less than market value for the land. In accord with our prior recommendation to clarify that permittees/requestor pay for required pre-sale work, we recommend revising this section to clarify that revenues shall be remitted to the Reclamation fund.

Section 1(d)(1) provides liability protection for flood damage to the property of a permittee, the Board, or the State arising out of any act, omission, or occurrence relating to a lot to which a permit applies. As worded, this language does not cover the liability for all property, depending on whether or not it is related to a lot. We suggest replacing the language "a lot to which a permit applies" with "the property of a permittee, the Board, or the State" in order to more clearly cover the liability to the United States.

The Department would be happy to work with the sponsor and the Committee to revise the language based on these recommendations. In addition, we would urge enactment of the Department's title transfer legislative proposal to address Reclamation title transfer. Our title transfer legislative proposal will streamline the title transfer process, potentially allowing appropriate transfers to take place without subsequent legislation. This concludes my written statement. I am pleased to answer questions at the appropriate time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill as ordered reported.