

**Statement of Alan Mikkelsen**  
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**U.S. Department of the Interior**  
**Before the**  
**Committee on Energy and Natural Resources**  
**Water and Power Subcommittee**  
**U.S. Senate**

**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.**  
**February 28, 2018**

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 dedicated 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.