

**Statement of
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**Senate Committee on Energy & Natural Resources
Subcommittee on Public Lands, Forests, & Mining
S. 1219, Lake Bistineau Land Title Stability Act
February 7, 2018**

The Department of the Interior (DOI) appreciates the opportunity to provide testimony on S.1219, which, as drafted, would direct the Secretary of the Interior to convey, through a formal Disclaimer of Interest, any Federal Interest in lands adjacent to Lake Bistineau in Section 30, Township 16 North, Range 10 West (Section 30) Louisiana, including Peggys and Hog Islands. S.1219 would eliminate the legal effect on the ownership of these lands of the Federal survey approved by the Bureau of Land Management (BLM) in 1969 and reaffirm the original survey approved by the General Land Office (GLO) in 1842.

The Department of the Interior supports the goal of providing stability to current residents in Section 30 near Lake Bistineau by resolving their land title conflicts, and recognizes the Sponsor's commitment to working with the Department on a fair and equitable resolution. As a general matter, Secretary Zinke is opposed to the wide-scale sale or transfer of Federal lands. However, the Secretary will work with Congress on proposals of this nature that are unique to local communities and would help resolve longstanding title conflicts.

Federal Survey Authority

The Land Ordinance of 1785 provided original authority for the federal government to conduct public land surveys and provided the mechanism for the sale and transfer of public domain lands. This authority was historically exercised by the GLO under the Department of Treasury and under the Department of the Interior, later becoming part of the BLM's mission. In addition to being the official surveyor of our nation's public lands, the BLM has the authority to examine the accuracy of surveys of Federal interest land and to execute supplemental surveys of areas within the public domain which may have been "omitted" from an original survey. When appropriate, the BLM is responsible for correcting previous surveys of public lands. Surveys requiring corrections frequently involve cases with land that borders bodies of water.

Given this enormous responsibility, the DOI is acutely aware that the decisions we make and the actions we take can have long-lasting impacts on communities all across the country. As such, the Department is committed to being a good steward of the public land which requires us to be a good neighbor who is responsive and adaptive to local voices.

Lake Bistineau Boundary

Lake Bistineau is located in Bienville, Bossier, and Webster Parishes in Louisiana and was formed when the Red River became blocked by an accumulation of trees and other debris prior to Louisiana statehood in 1812. The debris was largely removed in 1845, causing Lake Bistineau to reach its normal level. Beginning in 1935, a dam was built which recreated an

artificial lake over much of the original (1812) lake bed. This lake is in place today.

Boundaries along water bodies are called riparian boundaries, which typically extend to the actual water and change with the water level. However, in the case of Lake Bistineau, the boundary line does not move with the water, because many of the changes that occurred over time occurred unnaturally, such as the physical removal of debris in 1845. Under the Equal Footing Doctrine, the states assume title, including mineral rights, to beds of navigable water bodies, in their natural condition, up to the Ordinary High Water Mark (OHWM). All parties agree that the Lake is navigable.

The State of Louisiana and the United States have managed the boundary of Lake Bistineau at the 148.6 contour line.

A Complicated History

In 1838, the GLO conducted the original subdivision survey of the township which includes a portion of the boundary of Lake Bistineau. This survey was officially approved in 1842. In 1967, the BLM received a Color-of-Title Application (process described in detail below) for lands that were omitted from the original 1838 survey in Section 30. In response, the BLM issued special instructions calling for the examination and survey of lands bordering Lake Bistineau in Section 30. After this review, the BLM determined that an area of land had been erroneously omitted from the original survey in 1838. These “omitted lands,” which accounted for nearly 230 acres, were identified, surveyed, and platted as public lands, pending completion of a public comment period and official approval by the BLM of the changes.

On February 26, 1969, the BLM provided an opportunity for public engagement by publishing a notice of the plat filing from the 1967 resurvey in the *Federal Register*. The BLM also sent notice letters to several local and State entities and to individuals, including the original claimant, which are maintained in the BLM Eastern States Office. The BLM did not receive any protests or comments during the 30-day public notification period. On March 31, 1969, the resurvey and extension to the 1838 survey line was officially filed.

A continuing title conflict between the current residents and the United States was created in 1901 when the state of Louisiana mistakenly conveyed the omitted public lands to Bossier Levee District, which subsequently conveyed the lands to private individuals. In recent years, local residents have raised concerns about this situation. The title conflict is further complicated by active oil and gas production in the Section 30 omitted lands.

In 2013, the BLM responded to a request for information regarding the status of the lands in this area from several of the individuals holding a title derived from the 1901 deed from the State. The BLM responded with an informational letter containing a brief summary of general laws and information contained in the BLM records. Three land holders filed an appeal with the Interior Board of Land Appeals (IBLA) based on the letter. On September 9, 2014, the IBLA dismissed the appeal on the basis that the letter was not a formal decision but rather a summary of the information contained in the BLM records. The appellants filed for reconsideration, and the IBLA issued an order upholding the dismissal on February 4, 2015.

Public Land Disposal Authority

Federal Land Policy and Management Act of 1976 (FLPMA)

A variety of statutes provide the BLM the authorities necessary to address issues and disputes in land ownership. Under FLPMA, the BLM is authorized to transfer or dispose of lands that have been identified as potentially suitable for disposal in an approved land use plan or through an amendment to an existing plan. Under FLPMA, lands may only be disposed of for no less than their appraised fair market value. Through these authorities, the BLM has been able to effectively manage and resolve many land use conflicts.

In limited cases, the DOI has the authority to issue a Recordable Disclaimer of Interest (RDI) to resolve title uncertainty. In these instance, the Department provides an official statement that the United States has no interest in the lands or mineral estate. A RDI does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in the lands, nor does a disclaimer release or discharge any tax, mortgage, deed of trust, or other security interest in lands that are held by or for the benefit of the United States. Further, this administrative process is used where lands have not been surveyed by the BLM, and it cannot be used in areas where there is an existing Federal interest. The approval of the survey in 1969 formally identified the Federal interest in these lands; therefore, this process is not applicable to this case in the absence of specific legislation directing the Secretary to issue an RDI.

Color-of-Title Act

The Color-of-Title Act provides a statutory mechanism for the BLM to resolve certain private party claims on public land. Any individual, group, or corporation who presents evidence of having color of title – for example an instrument from a non-Federal source which erroneously purports to convey title to public lands – may file a color-of-title claim with the BLM. Accepted filings grant the applicant a patent conveying clear title to the lands upon payment of a fair and reasonable sale price which reflects the current market value of the lands, but may be discounted to account for improvements made on the land or previous property taxes paid.

The obligation to establish a valid color-of-title claim is upon the claimant and the BLM has encouraged the residents in the Lake Bistineau area to pursue color-of-title opportunities. The BLM has previously expressed interest in further discussions with those who hold title derived from the State to identify ways to streamline the color-of-title process wherever possible to minimize time and cost.

S.1219

S.1219 eliminates the legal effect on the ownership of the land described in the Federal resurvey approved in 1969, which identified omitted public lands near Lake Bistineau. S.1219 reaffirms the boundaries identified in the original survey that was approved in 1842. Finally, S.1219 directs the Secretary of the Interior to disclaim any Federal interest for those omitted lands.

The DOI shares the goal of providing legal certainty to those who hold title through the State in the approximately 230 acres outlined in S.1219. However, the Department is concerned that the bill transfers Federal lands and mineral estate out of Federal ownership without equitable compensation to U.S. Taxpayers. We are mindful that legislated transfers of land and interests in land often promote varied public interest considerations. In these instances, the balancing of

important public policy considerations, including ensuring a fair return for the American taxpayer, ultimately rests with Congress. The Department acknowledges the historical complexities associated with these lands and recognizes Congress' authority to resolve title conflicts unique to local communities where the public benefit may outweigh financial considerations.

We would also like to work with the sponsor on language to simplify the proposal in order to achieve the sponsor's goals.

Conclusion

Thank you for the opportunity to testify on S.1219. I will be glad to answer any questions.