

**Statement for the Record
Bureau of Land Management
U.S. Department of the Interior**

**House Committee on Natural Resources
Subcommittee on Federal Lands**

H.R. 2405, North Dakota Trust Lands Completion Act

July 24, 2024

Thank you for the opportunity to provide this Statement for the Record on H.R. 2405, the North Dakota Trust Lands Completion Act. H.R. 2405 authorizes the relinquishment of certain surface lands and mineral estate currently owned by the State of North Dakota that are wholly or partially within specified Tribal reservations to the Secretary of the Interior (Secretary) and the selection by the State of North Dakota of other surface lands and mineral estate managed by the Bureau of Land Management (BLM) within the state after such relinquishment. The bill also directs the Secretary to take any relinquished lands into trust for the benefit of the applicable Tribes, upon their request.

The BLM generally supports the conveyance of public lands when such conveyances are in the public interest and consistent with publicly approved land use plans. In addition, the BLM is committed to managing public lands and minerals in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of Federally recognized Tribes, consistent with the BLM's mission and applicable law. By placing lands into trust status through the Department, Tribes are able to reacquire lands within or near their reservations, establish a land base for Tribal communities, and clarify jurisdiction over their lands.

The BLM supports the Sponsor's goal of addressing the patchwork of inholdings within existing reservation boundaries. The BLM would like to work with the Sponsor to clarify the intent of several of the bill's provisions and the mechanisms outlined in the bill for effectuating the proposed conveyances.

The BLM defers to the U.S. Department of Agriculture (USDA) regarding any impacts to lands managed by the USDA Forest Service.

Background

The North Dakota Enabling Act, enacted in 1889, provided for the division of what was then known as Dakota into two states – North Dakota and South Dakota. It also enabled the people of North Dakota and South Dakota, as well as the states of Montana and Washington, to form constitutions and state governments. The Act granted, with certain exceptions, sections 16 and 36

in every township to the new states to support schools. Under the Act, the State of North Dakota was granted lands and minerals totaling more than 2.5 million acres.

Many of the land grant parcels are located within Tribal reservation boundaries. Specifically, 3,612 surface acres and 74,888 total subsurface acres are located within the Fort Berthold Indian Reservation; 24,179 surface acres and 74,717 total subsurface acres are located within the Standing Rock Indian Reservation; 9,379 surface acres and 36,338 total subsurface acres are located within the Fort Totten Indian Reservation; and 72 surface acres and 639 total subsurface acres are located within the Sisseton-Wahpeton Indian Reservation. There are no state land grant parcels located within the Turtle Mountain Indian Reservation. In total, there are approximately 37,000 surface acres and 186,000 total mineral acres located within the boundaries of the five Tribal reservations in the state.

H.R. 2405

H.R. 2405 would authorize the State of North Dakota to relinquish to the Secretary of the Interior certain lands and mineral estates that are located partially or wholly within the boundaries of four Tribal reservations in the state, to the extent such lands or mineral estates were conveyed to the state at statehood. The bill would apply to up to approximately 37,000 surface acres and approximately 186,000 total mineral acres. If the State elects to relinquish a parcel, the bill authorizes the State to select one or more parcels of BLM-managed public land or mineral estate of substantially equivalent value within the State of North Dakota. The bill further directs the Secretary to, upon request of a Tribe, take into trust relinquished lands or mineral estates within the boundaries of a reservation.

The BLM notes that it manages only approximately 58,000 surface acres in North Dakota, which would constrain the agency's ability under the bill to convey surface acres if the State selects surface acres in exchange for relinquishing state land grant parcels. Should the State focus on obtaining Federal minerals via selection of subsurface lands, the BLM notes that a large majority of the Federal oil and gas minerals in North Dakota are leased, and thus are encumbered by valid existing rights. We would like to work with the Sponsor to clarify which Federal mineral estate would be eligible for transfer and whether any additional exclusions should be included in the bill. We also recommend further coordination with the USDA, particularly if surface management of the National Forest System lands might be affected.

Parcel Selection Process

H.R. 2405 authorizes the State of North Dakota to select one or more parcels of BLM-managed public land of substantially equivalent value within the State in exchange for relinquishing to the Department all right, title, and interest of a state land grant parcel located wholly or partially within the boundaries of any Tribal reservation. Under the bill, the Secretary must approve or reject the State's selection within 90 days, and if approved, must initiate the process of conveying the selected parcel to the State within 60 days. The bill stipulates that the conveyance shall not be considered a sale, exchange, or conveyance under sections 203, 205, 206, or 209 of FLPMA.

After selection and approval, the bill requires that relinquished state land grant parcels located within the boundaries of a Tribal reservation be taken into trust by the Secretary for the benefit of that Tribe, upon the request of the Tribe. Prior to the conveyance of such a parcel, the State and the Secretary are required to consult with the Tribe that has the subject land grant parcel within its reservation boundaries.

The BLM notes that although the bill stipulates that the conveyances would not be considered a sale, exchange, or conveyance under FLPMA, there are necessary procedures and compliance actions required to convey ownership. While the BLM recognizes the Sponsor's intent to simplify the conveyance process for the purposes of the bill, we would like to work with the Sponsor to ensure that any lands selected by North Dakota go through an appropriate review process. In addition, the BLM would like to work with the Sponsor to include all affected Tribes in the Tribal consultation process, and not limit consultation to only the Tribe with the state land grant inholding to be conveyed, as Tribal consultation is an important process that should involve Tribes impacted by a Federal action, consistent with applicable law and regulation.

Existing Uses

The bill permits the State to select, and the Secretary to convey, BLM-managed public lands that are subject to a mineral lease or permit issued under the Mineral Leasing Act or in a producing or producible status during the 10-year period following enactment. The State would also be authorized to select BLM-managed land that is "mineral in character," on the condition that, if subject to an existing lease or permit, the Secretary shall reserve an overriding interest in the portion of the mineral estate that is subject to a mineral lease, and such a selection shall not include any portion of the mineral lease or permit. The bill allows the conveyance of the Federal surface interest of land subject to a mineral lease but requires all Federal mining claims to be converted to State leases and provides that the State will assume all authority over any authorizations or obligations applicable to a relinquished Federal mining claim. Under the bill, all BLM-managed parcels selected by the State for conveyance would be withdrawn from operation of the public land laws, mining laws, and mineral leasing laws, with the withdrawal ending on the date the land is conveyed to the State or the date that the selection is rejected.

Regarding all existing uses, section 4(c) of the bill states that each party to an exchange shall, to the fullest extent allowable under Federal and state law, assume the rights and obligations of the conveying party with respect to any lease, right-of-way, permit, or other valid existing rights. The bill specifically provides for continuance of Federal grazing permits by requiring the Secretary and the State to allow the grazing to continue for the remainder of the permit or lease term. Further, the bill stipulates that if a parcel conveyed by the State is used to meet the base property requirements for a Federal grazing permit or lease, the land shall continue to qualify as a base property for the remainder of the term of the permit or lease, as well as for the term of any renewal or extension.

The BLM notes that while several of the bill's provisions refer to "Federal mining claims," there are currently no Federal locatable mining claims in North Dakota. The BLM recommends the

Sponsor clarify the intent of these provisions. In addition, it is unclear what would constitute the “overriding interest” reserved by the Secretary in mineral estate subject to a lease. The BLM recommends that the Sponsor further define what is considered an overriding interest, as well as the mechanism for its reservation. Additionally, the BLM recommends the Sponsor clarify whether the overriding interest reserved by the Secretary would supersede the bill’s direction that each party is to succeed to the rights and obligations of the conveying party with respect to any lease, right-of-way, permit, or other valid existing right to which the land is subject – particularly given other provisions directing conversion of all Federal mining claims to state leases.

The BLM appreciates the Sponsor’s attention to the disposition of existing grazing operations in the bill. The BLM notes that it may still be required to comply with regulations requiring two years notice of lease cancellation, and cooperative range improvements may also require refunds based on valuation and depreciation schedules. The Department also recommends that the Sponsor work with the Bureau of Indian Affairs to clarify future management of state grazing leases on the lands to be held in trust for the benefit of a Tribe.

Lastly, the BLM notes that the savings clause in section 7 of the bill states that “nothing in this Act applies to or impacts the ownership of any land or mineral resources.” The BLM recommends that the Sponsor clarify the intent of the savings clause, given the conveyances of ownership of land and mineral resources directed by the bill.

Valuation of Parcels

Under the bill, state land grant parcels conveyed for a parcel of Federal land must be “substantially equal in value.” The bill requires the Secretary to determine the values of both the state land grant parcel and the BLM-managed parcel to be conveyed through an appraisal completed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions. The bill further authorizes the Secretary, with the consent of the State, to use mass appraisals, a summary appraisal, or a statement of value made by a qualified appraiser to determine the value of a parcel using the Uniform Standards for Professional Appraisal Practice, if both parties agree that the market value of the parcel is less than \$500,000 and less than \$500 per acre.

For the value of a Federal parcel that is attributed to the existence of a mineral lease and the lease is to be conveyed, the bill requires that the value of the parcel be reduced by the amount that represents the likely Federal revenue sharing obligation under the Mineral Leasing Act. The bill stipulates that such an adjustment is not to be considered as a property right of the State.

If the overall value of the parcels to be conveyed is not equal, the bill requires the party conveying the parcel of lesser value to equalize the value by payment of funds to the other party. The bill also allows the party conveying the parcel of lesser value to enter the imbalance in value in a ledger account established by the bill. The ledger account must reflect imbalances in value to be reconciled in a subsequent transaction, balanced not later than three years after the date on which the ledger account is established, and closed not later than five years after the date of the last conveyance of land under the bill. Regarding costs and other requirements of conveyance,

the bill authorizes the State or the Secretary to assume costs, responsibilities, or requirements for conveying land under the bill that are ordinarily borne by the other party. The parties are directed to make adjustments to the value of the Federal parcel to be conveyed to compensate the State or the Secretary, as applicable.

The BLM notes that the bill does not include any mechanism for protesting or appealing land valuations by any party. The BLM recommends that the Sponsor consider their intent as to how such protests or appeals would be addressed. In addition, the BLM notes that it is typical for the party requesting the purchase to cover the costs of conveyance outright and recommends amending the provisions requiring adjustments to the value of the Federal land to be conveyed to the State accordingly.

Conclusion

Thank you again for the opportunity to provide this Statement for the Record.