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SENATE

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### LAKE BISTINEAU LAND TITLE STABILITY ACT

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DECEMBER 4, 2018.—Ordered to be printed

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

### R E P O R T

[To accompany S. 1219]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1219) to provide for stability of title to certain land in the State of Louisiana, 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.

The amendment is as follows:

1. Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Lake Bistineau Land Title Stability Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) CLAIMANT.—The term “claimant” means any individual, group, or corporation authorized to hold title to land or mineral interests in land in the State of Louisiana with a valid claim to the omitted land, including any mineral interests.

(2) MAP.—The term “Map” means the map entitled “Lands as Delineated by Original Survey December 18, 1842 showing the 1969 Meander Line at the 148.6 Elevation Line” and dated January 30, 2018.

(3) OMITTED LAND.—

(A) IN GENERAL.—The term “omitted land” means the land in lots 6, 7, 8, 9, 10, 11, 12, and 13 of sec. 30, T. 16 N., R. 10 W., Louisiana Meridian, comprising a total of approximately 229.72 acres, as depicted on the Map, that—

- (i) was in place during the Original Survey; but
- (ii) was not included in the Original Survey.

(B) INCLUSION.—The term “omitted land” includes—

- (i) Peggy’s Island in lot 1 of sec. 17, T. 16 N., R. 10 W., Louisiana Meridian; and

(ii) Hog Island in lot 1 of sec. 29 , T. 16 N., R. 10 W., Louisiana Meridian.

(4) ORIGINAL SURVEY.—The term “Original Survey” means the survey of land surrounding Lake Bistineau, Louisiana, conducted by the General Land Office in 1838 and approved by the Surveyor General on December 8, 1842.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

**SEC. 3. CONVEYANCES.**

(a) IN GENERAL.—Consistent with the first section of the Act of December 22, 1928 (commonly known as the “Color of Title Act”) (45 Stat. 1069, chapter 47; 43 U.S.C. 1068), except as provided by this Act, the Secretary shall convey to the claimant the omitted land, including any mineral interests, that has been held in good faith and in peaceful, adverse possession by a claimant or an ancestor or grantor of the claimant, under claim or color of title, based on the Original Survey.

(b) CONFIRMATION OF TITLE.—The conveyance or patent of omitted land to a claimant under subsection (a) shall have the effect of confirming title to the surface and minerals in the claimant and shall not serve as any admission by a claimant.

**SEC. 4. PAYMENT OF COSTS.**

(a) IN GENERAL.—Except as provided in subsection (b), the conveyance required under section 3 shall be without consideration.

(b) EXCEPTION.—Before the conveyance of the omitted land under section 3, the claimant shall pay to the Secretary any costs incurred by the Secretary relating to any survey, platting, legal description, or associated activities required to prepare and issue a patent under that section.

**SEC. 5. MAP AND LEGAL DESCRIPTION.**

As soon as practicable after the date of enactment of this Act, the Secretary shall file, and make available for public inspection in the appropriate offices of the Bureau of Land and Management, the Map and legal descriptions of the omitted land to be conveyed under section 3.

**PURPOSE**

The purpose of S. 1219 is to provide for stability of title to certain land in the State of Louisiana.

**BACKGROUND AND NEED**

In 1842, the U.S. government completed a survey of lands in the State of Louisiana that included the area surrounding Lake Bistineau. Using the survey’s results, Louisiana delineated its ownership of lands under the Equal Footing Doctrine and transferred 7,000 acres of land around Lake Bistineau to the Commissioners of the Bossier Levee District in 1901. Three years later, the Commissioners of the Bossier Levee District conveyed this land to private ownership.

In September 1967, the Bureau of Land Management (BLM) re-surveyed this land and two additional islands in the Lake. This survey presented a new boundary-line based on what the BLM believed was the size of Lake Bistineau when Louisiana was admitted to the Union in 1812. Although BLM published a notice in the Federal Register two years later stating that this new survey occurred, many affected landowners were unaware of the new survey and their resulting clouded title.

Almost 50 years later, in September 2013, BLM notified landowners that their property appeared “to be still vested in the United States” based on the results of the 1967 survey. Since then, the Federal government and over 100 private landowners, with over 50 homes, have been in a dispute over the ownership of roughly 200 acres of land. S. 1219 seeks to remove the cloud from the landowners’ title.

## LEGISLATIVE HISTORY

S. 1219 was introduced by Senator Cassidy on May 24, 2017. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 1219 on August 22, 2018.

A companion measure, H.R. 3392, was introduced in the House of Representatives by Congressman Johnson on July 25, 2017. H.R. 3392 was ordered reported by the Natural Resources Committee, as amended, on April 11, 2018 (H. Rept. 115–768). The measure passed the House of Representatives by voice vote on June 25, 2018.

In the 114th Congress, Congressman Fleming introduced a similar measure, H.R. 3342, in the House of Representatives on July 29, 2015. The Natural Resources Committee's Subcommittee on Federal Lands held a hearing on H.R. 3342 on November 11, 2015. The Natural Resources Committee favorably reported H.R. 3342 on September 6, 2016 (H. Rept. 114–716).

The Senate Committee on Energy and Natural Resources met in open business session on October 2, 2018, and ordered S. 1219 favorable reported, as amended.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1219, if amended as described herein.

## COMMITTEE AMENDMENT

During its consideration of S. 1219, the Committee adopted an amendment in the nature of a substitute. The substitute amendment strikes the findings and modifies the method to clarify the clouded title by directing the Secretary of the Interior (Secretary) to use the Color-of-Title Act (43 U.S.C. 1068) to convey the surface and mineral estate to the affected claimants.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 provides a short title.

*Section 2. Definitions*

Section 2 defines key terms.

*Section 3. Conveyances*

Section 3 directs the Secretary to convey omitted land, including any mineral interests, to claimants pursuant to the Color-of-Title Act based on the Original Survey. This section further makes clear that conveyance of omitted land shall confirm the title to the surface and minerals and does not serve as an admission by the claimant.

*Section 4. Payment of costs*

Section 4 directs the Secretary to make the conveyance to the claimants without consideration but requires a claimant to pay any patent-related costs to the Secretary prior to the conveyance.

*Section 5. Map and legal description*

Section 5 directs the Secretary to file and make publically available the map and legal description of the omitted land to be conveyed.

COST AND BUDGETARY CONSIDERATIONS

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

S. 1219 would require the Secretary of the Interior to convey, without consideration, roughly 230 acres of land and associated minerals near Lake Bistineau in northwest Louisiana. Using information from the Bureau of Land Management (BLM), the Energy Information Administration (EIA), the oil and gas industry, the state of Louisiana, and other interested parties, CBO estimates that enacting the bill would reduce offsetting receipts, which are treated as reductions in direct spending, by about \$1 million over the 2019–2028 period.

Because enacting S. 1219 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting S. 1219 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

S. 1219 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

*Background*

The affected lands were omitted from a federal land survey in 1842. The state of Louisiana subsequently deeded those lands to the Bossier Levee District, which transferred them to private individuals. Following a resurvey of the area published in 1969, BLM determined that the lands, which were then held privately, fell under federal jurisdiction. In recent years, BLM and private titleholders have each claimed ownership of the affected lands and the subsurface mineral estate; however, the private titleholders are not currently pursuing any remedy other than legislation similar to S. 1219.

*Royalties from ongoing gas production*

The affected lands contain one active natural gas well. The well's operator has suspended royalty payments because of the perceived uncertainty about ownership of the royalty interest. Using information from Louisiana, CBO estimates that the royalties due to the federal government for gas produced from that land total less than \$500,000. In addition, CBO estimates that any royalties generated from future production of gas from the existing well would total less than \$10,000 over the next 10 years. Under the Mineral Leasing Act, 49 percent of those amounts would be paid to Louisiana. Because of the uncertainty regarding when the lease operator will deem the ownership of the affected minerals resolved and make royalty payments to the federal government, CBO estimates that there is a 50 percent probability that those payments will be made over the next 10 years. Thus, enacting S. 1219, which would result in BLM's disclaiming ownership of the royalty interest, would re-

duce expected offsetting receipts by less than \$125,000 over the 2019–2028 period.

*Royalties from new gas production*

The affected lands make up about one-third of a production unit, which consists of one square mile of land and the associated minerals. Based on information regarding the average number of wells drilled on production units in northwest Louisiana, CBO expects that between three and five additional wells could be drilled on the unit and that each would produce about 4 billion cubic feet of gas, nearly all within the first 10 years. That additional production would only occur if gas prices are high enough to make new production economical.

Using information provided by EIA and individuals working in the oil and gas industry, CBO expects that new drilling will not occur on the affected lands unless gas prices at the wellhead exceed \$3.50 per thousand cubic feet (mcf). Under CBO's April 2018 baseline, gas prices are not expected to exceed that amount at any point over the next 10 years. However, CBO's baseline projections of gas prices in each year represent the midpoint of a range of possible prices. CBO estimates that the probability that prices will be high enough to spur new production on the affected lands over the next 10 years ranges from 18 percent to 27 percent in each year and that the average wellhead price under those scenarios would range from \$5/mcf to \$6/mcf.

Because of the perceived uncertainty concerning the ownership of associated resources, CBO estimates that there is a 50 percent probability that the federal government will receive no royalty payments from new wells over the next 10 years, either because operators would choose not to drill new wells or because they would suspend royalty payments on new production. After accounting for a range of scenarios with different prices and production volumes, CBO estimates that the expected gross federal royalties from new wells on the affected lands would range from \$1 million to \$2 million over the next 10 years. Of those amounts, 49 percent would be paid to Louisiana. On that basis, CBO estimates that, on net, enacting S. 1219 would reduce offsetting receipts from royalties paid on production from new wells by between \$500,000 and \$1 million over the 2019–2028 period.

*Uncertainty*

CBO aims to produce estimates that generally reflect the middle of a range of the most likely budgetary outcomes that would result if the legislation was enacted. In estimating the effects of S. 1219, CBO had to account for two major sources of uncertainty. CBO cannot predict if or when the leaseholder on the affected lands will deem the dispute over ownership of those lands settled, which will determine whether any payments are made to the federal government. CBO also cannot foresee future gas prices with certainty. The price of gas will determine whether additional gas is produced from the affected lands and when that production may occur, which will affect the amount and timing of any royalty payments the leaseholder would make to the federal government. Because of those uncertainties, the budgetary effects of enacting S. 1219 could differ from those provided in CBO's analysis.

*Previous estimate*

On June 13, 2018, CBO transmitted a cost estimate for H.R. 3392, the Lake Bistineau Land Title Stability Act, as ordered reported by the House Committee on Natural Resources on April 11, 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 Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, 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. 1219. 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. 1219, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

S. 1219, 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 7, 2018, hearing on S. 1219 follows:

STATEMENT OF BRIAN STEED, DEPUTY DIRECTOR FOR POLICY & PROGRAMS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

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 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 bound-

ary 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 equi-

table 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.

#### 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.

