

117TH CONGRESS
1ST SESSION

S. 3200

To authorize the relinquishment and in lieu selection of land and minerals in the State of North Dakota, to restore land and minerals to Indian Tribes within the State of North Dakota, to conserve the Little Missouri National Grasslands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. HOEVEN (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the relinquishment and in lieu selection of land and minerals in the State of North Dakota, to restore land and minerals to Indian Tribes within the State of North Dakota, to conserve the Little Missouri National Grasslands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “North Dakota Trust
5 Lands Completion Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) in 1889, Congress enacted the North Da-
2 kota Enabling Act “to provide for the division of
3 Dakota into two States and to enable the people of
4 North Dakota, South Dakota, Montana, and Wash-
5 ington to form constitutions and State governments
6 and to be admitted into the Union on an equal foot-
7 ing with the original States, and to make donations
8 of public lands to such States”;

9 (2) section 10 of the North Dakota Enabling
10 Act (25 Stat. 679, chapter 180)—

11 (A) with certain exceptions, granted sec-
12 tions 16 and 36 in every township to the new
13 States of North Dakota, South Dakota, Mon-
14 tana, and Washington “for the support of com-
15 mon schools”; and

16 (B) in cases where portions of sections 16
17 and 36 had been reserved, granted, or sold
18 prior to those States attaining statehood, au-
19 thorized indemnity or “in lieu” selections;

20 (3) the State of North Dakota was granted
21 land and minerals totaling more than 2,500,000
22 acres under the North Dakota Enabling Act;

23 (4) the North Dakota Enabling Act provided
24 further land grants to the State of North Dakota for

1 the support of colleges, universities, the State cap-
2 itol, and other public institutions;

3 (5) prior to the enactment of the North Dakota
4 Enabling Act, the United States, through treaties
5 and Executive orders, including the Treaty between
6 the United States of America and the Mandan,
7 Hidatsa, Arikara, and other Tribal Nations, made
8 and concluded at Fort Laramie September 17, 1851
9 (11 Stat. 749), the Treaty between the United
10 States of America and the Sisseton and Wahpeton
11 Bands of Dakota or Sioux Indians, made and con-
12 cluded at Washington February 19, 1867 (15 Stat.
13 505), the Treaty between the United States of
14 America and different Tribes of Sioux Indians, made
15 and concluded at Fort Laramie April 29, 1868 (15
16 Stat. 635), and the Executive order of April 12,
17 1870, established several reservations of land for
18 multiple Indian Tribes located in the State of North
19 Dakota;

20 (6) established in 1960, the Little Missouri Na-
21 tional Grasslands—

22 (A) occupies more than 1,028,000 acres of
23 land in western North Dakota; and

1 (B) encompasses approximately 108,840
2 surface acres and 149,073 mineral acres of
3 State land grant parcels within its boundaries;
4 (7) authorizing the State to relinquish the State
5 land grant parcels located within the reservations
6 and the Grasslands and to select other Federal land
7 or minerals in lieu of the relinquished State land
8 grant parcels will—

9 (A) fulfill the promise of land and minerals
10 to the State;

11 (B) provide to Indian Tribes greater Tribal
12 sovereignty and control of land and minerals
13 within the reservations; and

14 (C) provide for greater conservation and
15 preservation of the Grasslands; and

16 (8) Congress should authorize the State—

17 (A) to relinquish the land and minerals lo-
18 cated within the reservations and the Grass-
19 lands; and

20 (B) to select in lieu of the relinquished
21 land other Federal land or minerals in the
22 State of North Dakota of equal value.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) FEDERAL LAND.—The term “Federal land”
2 means public land and minerals located within the
3 State of North Dakota, including public land that is
4 mineral in character.

5 (2) GRASSLANDS.—The term “Grasslands”
6 means the Little Missouri National Grasslands lo-
7 cated within the State of North Dakota.

8 (3) NORTH DAKOTA ENABLING ACT.—The term
9 “North Dakota Enabling Act” means the Act of
10 February 22, 1889 (25 Stat. 676, chapter 180).

11 (4) PUBLIC LAND.—The term “public land”
12 has the meaning given the term “public lands” in
13 section 103 of the Federal Land Policy and Manage-
14 ment Act of 1976 (43 U.S.C. 1702).

15 (5) RESERVATION.—The term “reservation”
16 means any Indian reservation located wholly or par-
17 tially within the State of North Dakota and recog-
18 nized under United States treaty, Executive order,
19 or Act of Congress.

20 (6) SECRETARY.—The term “Secretary” means
21 the Secretary of the Interior.

22 (7) STATE.—The term “State” means the State
23 of North Dakota, acting through the North Dakota
24 Board of University and School Lands and its agent,
25 the Department of Trust Lands.

1 (8) STATE LAND GRANT PARCEL.—The term
 2 “State land grant parcel” means—

3 (A) a parcel of land granted to the State
 4 of North Dakota by Congress—

5 (i) on statehood; or

6 (ii) through a grant pursuant to the
 7 North Dakota Enabling Act;

8 (B) a section of land numbered 16 or 36
 9 granted to the State of North Dakota by Con-
 10 gress for school purposes;

11 (C) a parcel of land selected by the State
 12 of North Dakota as indemnity for any section
 13 of land numbered 16 or 36; and

14 (D) a parcel of land other than a parcel of
 15 land described in subparagraph (A), (B), or (C)
 16 obtained by the State after statehood.

17 (9) UNAPPROPRIATED FEDERAL LAND.—

18 (A) IN GENERAL.—The term “unappropri-
 19 ated Federal land” means Federal land under
 20 the management and control of the Bureau of
 21 Land Management and located within the State
 22 of North Dakota.

23 (B) EXCLUSIONS.—The term “unappropri-
 24 ated Federal land” does not include—

- 1 (i) surface interests acquired by the
- 2 Bureau of Land Management;
- 3 (ii) any area of critical environmental
- 4 concern established pursuant to section
- 5 202(c)(3) of the Federal Land Policy and
- 6 Management Act of 1976 (43 U.S.C.
- 7 1712(c)(3)); or
- 8 (iii) land that is—
- 9 (I) withdrawn from public entry;
- 10 (II) located within a unit of the
- 11 National Park System;
- 12 (III) located within any reserva-
- 13 tion;
- 14 (IV) located within—
- 15 (aa) T. 147 N., R. 95 W.;
- 16 (bb) T. 148 N., R. 95 W.;
- 17 (cc) T. 148 N., R. 96 W.; or
- 18 (dd) T. 149 N., R. 95 W.;
- 19 (V) located within a United
- 20 States military reservation; or
- 21 (VI) designated by Congress or
- 22 the President for conservation pur-
- 23 poses.

24 **SEC. 4. RELINQUISHMENT AND SELECTION; CONVEYANCE.**

- 25 (a) RELINQUISHMENT AND SELECTION.—

1 (1) IN GENERAL.—If the State elects to relin-
 2 quish all right, title, and interest of the State in and
 3 to a State land grant parcel located wholly or par-
 4 tially within the boundaries of any reservation or the
 5 Grasslands, the Secretary shall authorize the State
 6 to select in accordance with this Act 1 or more par-
 7 cels of unappropriated Federal land of substantially
 8 equivalent value within the State of North Dakota.

9 (2) APPROVAL.—Not later than 90 days after
 10 the date on which the State makes a selection under
 11 paragraph (1), the Secretary shall approve or reject,
 12 in whole or in part, the selection.

13 (b) CONVEYANCE.—

14 (1) CONVEYANCE BY SECRETARY.—

15 (A) IN GENERAL.—Not later than 60 days
 16 after the date on which Secretary approves a
 17 State selection of unappropriated Federal land
 18 under subsection (a)(2), the Secretary shall ini-
 19 tiate the actions necessary to convey to the
 20 State the unappropriated Federal land.

21 (B) REQUIREMENTS.—Conveyance of Fed-
 22 eral land by the Secretary under this Act—

23 (i) shall be by clear list, patent, or
 24 deed acceptable to the State; and

(ii) shall not be considered a sale, exchange, or conveyance under section 203, 205, 206, or 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1715, 1716, 1719).

(2) RELINQUISHMENT AND CONVEYANCE BY STATE.—

(A) IN GENERAL.—As consideration for the conveyance of Federal land under paragraph (1), on the date on which the Federal land is conveyed to the State, the State—

(i) shall concurrently relinquish and convey to the Secretary all right, title, and interest of the State in and to the State land grant parcel identified for relinquishment under subsection (a)(1); or

(ii) in the case of a State land grant parcel identified for relinquishment under subsection (a)(1) that is located wholly or partially within the boundaries of the Grasslands, shall relinquish and convey to the Secretary of Agriculture all right, title, and interest of the State in and to the State land grant parcel.

1 (B) CLEAR TITLE.—The State shall convey
2 to the Secretary clear title to all parcels relin-
3 quished under subparagraph (A).

4 (C) LIMITATION.—Relinquishment and
5 conveyance by the State of a State land grant
6 parcel under this Act shall not be considered an
7 exchange or acquisition for purposes of section
8 205 or 206 of the Federal Land Policy and
9 Management Act of 1976 (43 U.S.C. 1715,
10 1716).

11 (c) SUCCESSION TO RIGHTS AND OBLIGATIONS.—
12 Each party to which land is conveyed under this Act shall
13 succeed to the rights and obligations of the conveying
14 party with respect to any lease, right-of-way, permit, or
15 other valid existing right to which the land is subject.

16 (d) MANAGEMENT AFTER RELINQUISHMENT.—

17 (1) GRASSLANDS.—All State land grant parcels
18 relinquished by the State and conveyed to the Sec-
19 retary of Agriculture under this Act and located
20 within the Grasslands shall become part of, and be
21 managed as part of, the Grasslands.

22 (2) RESERVATION.—If a State land grant par-
23 cel relinquished by the State and conveyed to the
24 Secretary under this Act is located wholly or par-
25 tially within the boundaries of any reservation, on

1 request of the applicable Indian Tribe, the portion of
 2 the State land grant parcel located within the
 3 boundaries of the reservation shall be—

4 (A) taken into trust by the Secretary on
 5 behalf of, and for the benefit of, the Indian
 6 Tribe on the date of the conveyance; and

7 (B) considered to be a part of the reserva-
 8 tion of the Indian Tribe.

9 (3) CONSULTATION REQUIRED.—Prior to the
 10 conveyance of a State land grant parcel located
 11 wholly or partially within the boundaries of any res-
 12 ervation, the State and the Secretary shall consult
 13 with the Indian Tribe the land of which is subject
 14 to conveyance in accordance with Executive Order
 15 13175 (25 U.S.C. 5301 note; relating to consulta-
 16 tion and coordination with Indian tribal govern-
 17 ments).

18 (e) SPECIAL RULES FOR MINERAL LAND.—

19 (1) DEFINITION OF UNAPPROPRIATED FEDERAL
 20 LAND SUBJECT TO A LEASE OR PERMIT.—In this
 21 subsection, the term “unappropriated Federal land
 22 subject to a lease or permit” means unappropriated
 23 Federal land subject to a mineral lease or permit
 24 that is—

1 (A) issued under the Mineral Leasing Act
 2 (30 U.S.C. 181 et seq.); and

3 (B) in a producing or producible status
 4 during the 10-year period following the date of
 5 enactment of this Act.

6 (2) SELECTION OF MINERAL LAND.—The State
 7 may select, and the Secretary may convey, unappro-
 8 priated Federal land that is mineral in character
 9 under subsection (b) on the condition that, except as
 10 provided in paragraph (3)(A), if the selected land is
 11 unappropriated Federal land subject to a lease or
 12 permit—

13 (A) the Secretary shall reserve an over-
 14 riding interest in the portion of the mineral es-
 15 tate that is comprised of minerals subject to
 16 leasing under the Mineral Leasing Act (30
 17 U.S.C. 181 et seq.); and

18 (B) such a selection shall not include any
 19 portion of the mineral lease or permit.

20 (3) CONVEYANCE OF MINERAL ESTATE.—

21 (A) IN GENERAL.—If the State selects un-
 22 appropriated Federal land subject to a lease or
 23 permit under paragraph (2), on the option of
 24 the State—

1 (i) the Secretary may convey with the
2 surface interest in the land the interest in
3 the mineral estate that is comprised of
4 minerals subject to leasing under the Min-
5 eral Leasing Act (30 U.S.C. 181 et seq.);
6 and

7 (ii) all Federal mining claims over the
8 land shall be converted to State leases in
9 accordance with this paragraph.

10 (B) MINING CLAIMS.—To facilitate the
11 conversion of Federal mining claims to State
12 leases under subparagraph (A), a Federal min-
13 ing claimant may file with the Secretary a vol-
14 untary relinquishment of the Federal mining
15 claim conditioned on—

16 (i) conveyance of the land to the
17 State; and

18 (ii) the conversion of the Federal min-
19 ing claim to a State lease.

20 (C) OBLIGATIONS UNDER FEDERAL
21 LAW.—Until the date on which the land is con-
22 veyed to the State under subparagraph (A), a
23 Federal mining claimant shall be subject to any
24 obligations relating to the land under Federal
25 law.

1 (D) NO RELINQUISHMENT.—If the land
2 previously encumbered by the relinquished Fed-
3 eral mining claim is not conveyed to the State
4 under subparagraph (A), the relinquishment of
5 land under subparagraph (B) shall have no ef-
6 fect.

7 (E) RIGHTS-OF-WAY; OTHER INTEREST.—
8 On conveyance to the State of land encumbered
9 by a relinquished Federal mining claim under
10 this paragraph, the State shall assume author-
11 ity over any leases, licenses, permits, rights-of-
12 way, operating plans, other land use authoriza-
13 tions, or reclamation obligations applicable to
14 the relinquished Federal mining claim on the
15 date of conveyance.

16 (F) VALUATION.—If a Federal mining
17 claimant does not voluntarily relinquish under
18 subparagraph (B) a Federal mining claim on
19 land conveyed to the State, the Secretary shall
20 take into account the encumbrance represented
21 by the claim in determining the value of the
22 land under section 5(b).

23 (f) WITHDRAWAL.—

24 (1) IN GENERAL.—Subject to valid rights in ex-
25 istence on the date of enactment of this Act, all Fed-

1 eral land selected by the State for conveyance under
2 this Act, effective beginning on the date on which
3 the State makes the selection and ending on the
4 date described in paragraph (2), is withdrawn from
5 all forms of—

6 (A) entry, appropriation, or disposal under
7 the public land laws;

8 (B) location, entry, and patent under the
9 mining laws; and

10 (C) disposition under all laws pertaining to
11 mineral and geothermal leasing or mineral ma-
12 terials.

13 (2) DATE DESCRIBED.—The date referred to in
14 paragraph (1) is the date on which, as applicable—

15 (A) the Federal land is conveyed by the
16 Secretary to the State;

17 (B) the Secretary rejects the selection
18 under subsection (a)(2); or

19 (C) the State withdraws the selection.

20 **SEC. 5. VALUATION.**

21 (a) EQUAL VALUE.—With respect to a State land
22 grant parcel conveyed under this Act in consideration for
23 a parcel of Federal land selected in accordance with this
24 Act—

1 (1) the overall value of the State land grant
 2 parcel and the overall value of the parcel of Federal
 3 land shall be substantially equal; or

4 (2) subject to subsection (c), if the overall value
 5 of the parcels is not equal, the party conveying the
 6 parcel of lesser value shall—

7 (A) equalize the value by the payment of
 8 funds to the other party; or

9 (B) enter the imbalance in value on a ledg-
 10 er account in accordance with subsection (e).

11 (b) APPRAISAL REQUIRED.—Except as provided in
 12 subsection (d), the Secretary shall determine the value of
 13 a State land grant parcel and a parcel of Federal land
 14 to be conveyed under this Act through an appraisal com-
 15 pleted in accordance with—

16 (1) the Uniform Appraisal Standards for Fed-
 17 eral Land Acquisitions; or

18 (2) subject to subsection (d)(1), the Uniform
 19 Standards for Professional Appraisal Practice.

20 (c) EQUALIZATION.—With respect to a conveyance to
 21 the Secretary or the Secretary of Agriculture of a State
 22 land grant parcel of lesser value than the parcel of Federal
 23 land to be conveyed to the State under this Act, the total
 24 value of the equalization payment described in subsection
 25 (a)(2)(A) or the ledger entry described in subsection (e),

1 as applicable, may not exceed 25 percent of the total value
2 of the parcel of Federal land.

3 (d) LOW VALUE PARCELS.—

4 (1) IN GENERAL.—The Secretary, with the con-
5 sent of the State, may use mass appraisals, a sum-
6 mary appraisal, or a statement of value made by a
7 qualified appraiser carried out in accordance with
8 the Uniform Standards for Professional Appraisal
9 Practice to determine the value of a State land
10 grant parcel or a parcel of Federal land to be con-
11 veyed under this Act instead of an appraisal that
12 complies with the Uniform Appraisal Standards for
13 Federal Land Acquisitions if the State and the Sec-
14 retary agree that market value of the State land
15 grant parcel or parcel of Federal land, as applicable,
16 is—

17 (A) less than \$500,000; and

18 (B) less than \$500 per acre.

19 (2) DIVISION.—A State land grant parcel or a
20 parcel of Federal land may not be artificially divided
21 in order to qualify for a summary appraisal, mass
22 appraisal, or statement of value under paragraph
23 (1).

24 (e) LEDGER ACCOUNTS.—

1 (1) IN GENERAL.—With respect to a State land
 2 grant parcel conveyed under this Act in consider-
 3 ation for a parcel of Federal land, if the overall
 4 value of the parcels is not equal, the Secretary and
 5 the State may agree to use a ledger account to make
 6 equal the value.

7 (2) IMBALANCES.—A ledger account described
 8 in paragraph (1) shall reflect imbalances in value to
 9 be reconciled in a subsequent transaction.

10 (3) ACCOUNT BALANCING.—Each ledger ac-
 11 count described in paragraph (1) shall be—

12 (A) balanced not later than 3 years after
 13 the date on which the ledger account is estab-
 14 lished; and

15 (B) closed not later than 5 years after the
 16 date of the last conveyance of land under this
 17 Act.

18 (4) COSTS.—

19 (A) IN GENERAL.—The Secretary or the
 20 State may assume costs or other responsibilities
 21 or requirements for conveying land under this
 22 Act that ordinarily are borne by the other
 23 party.

24 (B) ADJUSTMENT.—If the Secretary or the
 25 State assume costs or other responsibilities

1 under subparagraph (A), the Secretary or the
2 State shall make adjustments to the value of
3 the Federal land conveyed to the State to com-
4 pensate the Secretary or the State, as applica-
5 ble, for assuming the costs or other responsibil-
6 ities.

7 (5) MINERAL LAND.—If value is attributed to
8 any parcel of Federal land that has been selected by
9 the State because of the presence of minerals under
10 a lease entered into under the Mineral Leasing Act
11 (30 U.S.C. 181 et seq.) that is in a producing or
12 producible status, and the lease is to be conveyed
13 under this Act, the value of the parcel shall be re-
14 duced by the amount that represents the likely Fed-
15 eral revenue sharing obligation under the Mineral
16 Leasing Act (30 U.S.C. 181 et seq.) with the State,
17 but the adjustment shall not be considered as re-
18 flecting a property right of the State.

19 **SEC. 6. MISCELLANEOUS.**

20 (a) IN GENERAL.—Land or minerals conveyed under
21 this Act shall be subject to all applicable Federal, State,
22 and Tribal law.

23 (b) PROTECTION OF INDIAN RIGHTS.—

24 (1) TREATY RIGHTS.—Nothing in this Act
25 modifies, limits, expands, or otherwise affects any

1 treaty-reserved right or other right of any Indian
 2 Tribe recognized by any other means, including trea-
 3 ties or agreements with the United States, Executive
 4 orders, statutes, regulations, or case law.

5 (2) LAND OR MINERALS HELD IN TRUST.—

6 Nothing in this Act affects—

7 (A) land or minerals held in trust by the
 8 United States as of the date of enactment of
 9 this Act on behalf of, and for the benefit of, any
 10 Indian Tribe; or

11 (B) any individual Indian allotment.

12 (c) HAZARDOUS MATERIALS.—

13 (1) IN GENERAL.—The Secretary and the State
 14 shall make available for review and inspection any
 15 record relating to hazardous materials on land to be
 16 conveyed under this Act.

17 (2) CERTIFICATION.—

18 (A) IN GENERAL.—Prior to completing a
 19 conveyance of Federal land under this Act, the
 20 Secretary shall complete an inspection and a
 21 hazardous materials certification of the land to
 22 be conveyed.

23 (B) STATE LAND GRANT PARCELS.—Prior
 24 to completing a conveyance of a State land
 25 grant parcel under this Act, the State shall

1 complete an inspection and a hazardous mate-
2 rials certification of the land to be conveyed.

3 (d) GRAZING PERMITS.—

4 (1) IN GENERAL.—If land conveyed under this
5 Act is subject to a lease, permit, or contract for the
6 grazing of domestic livestock in effect on the date of
7 the conveyance, the Secretary or the Secretary of
8 Agriculture, or the State, as applicable, shall allow
9 the grazing to continue for the remainder of the
10 term of the lease, permit, or contract, subject to the
11 related terms and conditions of the user agreements,
12 including permitted stocking rates, grazing fee lev-
13 els, access, and ownership and use of range improve-
14 ments.

15 (2) CANCELLATION.—

16 (A) IN GENERAL.—Nothing in this Act
17 prevents the Secretary or the Secretary of Agri-
18 culture, or the State, from canceling or modi-
19 fying a grazing permit, lease, or contract if the
20 land subject to the permit, lease, or contract is
21 sold, conveyed, transferred, or leased for non-
22 grazing purposes.

23 (B) BASE PROPERTIES.—If land conveyed
24 by the State under this Act is used by a grazing
25 permittee or lessee to meet the base property

1 requirements for a Federal grazing permit or
2 lease, the land shall continue to qualify as a
3 base property for the remaining term of the
4 lease or permit and the term of any renewal or
5 extension of the lease or permit.

6 (C) RANGE IMPROVEMENTS.—Nothing in
7 this Act prohibits a holder of a grazing lease,
8 permit, or contract from being compensated for
9 range improvements pursuant to the terms of
10 the lease, permit, or contract under existing
11 Federal or State laws.

12 **SEC. 7. SAVINGS CLAUSE.**

13 Nothing in this Act applies to or impacts the owner-
14 ship of any land or mineral resources.

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