(2) IMPROVEMENTS.—For purposes of an appraisal conducted under paragraph (1), any improvements on the permitted cabin land made by a permit holder shall not be included in the appraised value of the land.

(3) PROCEEDS FROM THE SALE OF LAND BY THE BOARD.—If the Board sells a parcel of permitted cabin land conveyed under subsection (a)(1)(B), the Board shall pay to the Secretary the amount of any proceeds of the sale that exceed the costs of preparing the sale by the Board.

(d) AVAILABILITY OF FUNDS TO THE SECRETARY.—Any amounts paid to the Secretary for land conveyed by the Secretary under this Act shall be made available to the Secretary, without further appropriation, for activities relating to the operation of the Jamestown Dam and Reservoir.

SEC. 3. CONVEYANCE OF GAME AND FISH HEADQUARTERS TO THE STATE.

(a) CONVEYANCE OF GAME AND FISH HEADQUARTERS.—Not later than 5 years after the date of enactment of this Act, the Secretary shall convey to the State all right, title, and interest of the United States in and to the game and fish headquarters, on the condition that the game and fish headquarters continue to be used as a game and fish headquarters or substantially similar purposes.

(b) REVERSION.—If land conveyed under subsection (a) is used in a manner that is inconsistent with the requirements described in that subsection, the land shall, at the discretion of the Secretary, revert to the United States.

SEC. 4. RESERVATIONS, EASEMENTS, AND OTHER OUTSTANDING RIGHTS.

(a) IN GENERAL.—Each conveyance to the Board or the State pursuant to this Act shall be made subject to—

(1) valid existing rights;

(2) operational requirements of the Pick-Sloan Missouri River Basin Program, as authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 891, chapter 665), including the Jamestown Reservoir;

(3) any flowage easement reserved by the United States to allow full operation of the Jamestown Reservoir for authorized purposes;

(4) reservations described in the Management Agreement;

(5) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by, or in favor of, the United States or a third party;

(6) any permit, license, lease, right-of-use, flowage easement, or right-of-way of record in, on, over, or across the applicable property or Federal land, whether owned by the United States or a third party, as of the date of enactment of this Act;

(7) a deed restriction that prohibits building any new permanent structure on property below an elevation of 1,454 feet; and

(8) the granting of applicable easements for—

(A) vehicular access to the property; and

(B) access to, and use of, all docks, boathouses, ramps, retaining walls, and other improvements for which access is provided in the permit for use of the property as of the date of enactment of this Act.

(b) LIABILITY; TAKING.—

(1) LIABILITY.—The United States shall not be liable for flood damage to a property subject to a permit, the Board, or the State, or for damages arising out of any act, omission, or occurrence relating to a permit holder, the Board, or the State, other than for damages caused by an act or omission of the United States or an employee, agent, or contractor of the United States before the date of enactment of this Act.

(2) TAKING.—Any temporary flooding or flood damage to the property of a permit holder, the Board, or the State, shall not be considered to be a taking by the United States.

SEC. 5. INTERIM REQUIREMENTS.

During the period beginning on the date of enactment of this Act and ending on the date of conveyance of a property or parcel of land under this Act, the provisions of the Management Agreement that are applicable to the property or land, or to leases between the State and the Secretary, and any applicable permits, shall remain in force and effect.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the committee-reported substitute amendment be agreed to and that the bill, as amended, be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The committee-reported amendment in the nature of a substitute was agreed to.

The bill (S. 2074), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

ORDERS FOR FRIDAY, OCTOBER 5, 2018

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, October 5; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; finally, that following leader remarks, the Senate proceed to executive session to resume consideration of the Kavanaugh nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask that it stand adjourned following the remarks of Senators MERKLEY, BENNET, and PORTMAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon.

NOMINATION OF BRETT KAVANAUGH

Mr. MERKLEY. Mr. President, moments ago, I was outside at a rally on the lawn of the Capitol, looking at the Supreme Court of the United States of America. When you look at that beautiful building, you see the phrase ''equal justice under law'' above the big, beautiful doors of entry—equal justice under law. That is the concept behind the Supreme Court. Every other court can make decisions, but they can be appealed—the final determination, balancing the parts of the Constitution against each other, understanding and exercising the fundamental vision contained in this beautiful ''We the People'' document. That is what those nine Justices are all about.

For an individual to become a Justice, it takes two steps. The first is, it is considered by the President as to whom to nominate. Having nominated, it comes over to the Senate. This is the confirmation process.

The Founders, when they wrote the Constitution, wrestled with, how do you appoint individuals to these key positions? They said: Well, we could give the power to the assembly, so that would be a check on the executive or a check on the judiciary getting out of control. But they worried that Senators might trade favors: You put my friend in this position; I will put your friend in that position.

They said that the nominating power needed to rest with one individual—that being, of course, the President of the United States of America.

Then they said: What happens if a President goes off track? Alexander Hamilton spoke to this and called it favoritism—favoritism of a variety of types. What if the President goes off track and starts nominating friends when they are qualified for particular positions? What if he only nominates people from his home State, ignoring the qualities of many people who might be better qualified? What if there comes a situation where perhaps favors are done for the President in exchange for a position? The Founders said that there needs to be a check; that is, the Senate confirmation process. It is a pretty good design. I can't think of any one better.

Essentially, the confirmation process is like a job interview: Is this individual fit to serve in the executive branch? Is this person fit to be a judge? Is this person fit to be a Justice of the Supreme Court of the United States of America? That term, ''fit,'' is the term that Alexander Hamilton used when he was writing about the fundamental goal of the Founders to decide if an individual by experience and character was fit or unfit.

That is our job here. Throughout our history, it is a clear separation of powers. The Senate cannot intervene in terms of whom the President nominates, and the President cannot intervene in terms of the review process of that nominee.

Now we have something that has happened in an extraordinary fashion. It has never happened in the United States before, as far as we are aware; that is, the President of the United States, President Trump, has violated that separation of powers, and he has done so in three fundamental ways.

After nominating, he did not leave the Senate to review the record. He instead had his team call up Senators who lead the Judiciary Committee and say: Don't let the Senate get their hands on any of the records for the 3 years in which the nominee served as Staff Secretary.

That is a direct intervention, a violation of the separation of powers. When I say ''he,'' I am referring to his team. That intervention was unacceptable.

Then the Senate requested the records for the time he served on the White House Counsel. In this case, the President assigned an individual and gave him a stamp labeled ''Presidential