

Committee on Resources

Subcommittee on National Parks & Public Lands

Testimony

Statement of Eluid L. Martinez
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on

H.R. 3963, legislation to establish terms and conditions under which the Secretary of the Interior shall convey leaseholds in certain properties around the Canyon Ferry Reservoir before the House Resources Subcommittee on Parks and Public Lands
July 28, 1998

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide the Administration's views on H.R. 3963, legislation to establish terms and conditions under which the Secretary of the Interior shall convey leaseholds in certain properties around the Canyon Ferry Reservoir in Montana. The Bureau of Reclamation supports efforts to improve public access to rivers and lakes throughout the west. However, H.R. 3963 would grant exclusive private use of lake front property at Canyon Ferry Reservoir to a few beneficiaries, would foreclose future use of the land for project or other purposes, and could lead to a loss in future Federal receipts. The bill also would make management of the land at Canyon Ferry more difficult, without reducing the need for future Federal expenditures. In addition, H.R. 3963 is unclear on several critical questions of intent and procedure. Moreover, we do not believe there is a need for this legislation given that Reclamation and the Canyon Ferry Recreation Association (CFRA) recently agreed on a key issue concerning rental fees. For these reasons, the Administration strongly opposes H.R. 3963.

H.R. 3963 would direct the Secretary of the Interior to sell at fair market value all right, title and interest of the United States to leaseholds for the 265 cabin sites at Canyon Ferry Reservoir in Montana, along with easements for vehicular access to the leaseholds, docks, and boathouses. The leaseholds and easements would be sold by auction, with the minimum bid established by the Secretary and based on a fair market appraisal, excluding the value of improvements made to a site. As drafted, it is unclear whether H.R. 3963 contemplates individual auctions for each leasehold or intends that all 265 be sold to a single purchaser.

Under H.R. 3963, the Canyon Ferry Recreation Association, a Montana corporation, would have the right to match any bid received and purchase the leaseholds. Any purchaser would be required to offer to sell to existing leaseholders the leasehold for fair market value. It is important for the Committee to understand that CFRA is a relatively small group of beneficiaries of this project that does not represent all taxpayers, all beneficiaries of the project, or even all existing lessees at Canyon Ferry Reservoir.

Mr. Chairman, the Canyon Ferry Unit was authorized and constructed by the Bureau of Reclamation as a part of the Pick-Sloan Missouri Basin Program as a multiple purpose project for irrigation, recreation, and hydroelectric power and it is Reclamation's role to balance these competing demands for the resources. Canyon Ferry Reservoir was formed when the Canyon Ferry Dam was completed in 1954. Reclamation and

the State of Montana were land managing partners for 37 years until 1994, when the State terminated its role. Most of the cabin site permits were originally issued in the late 1950's, and lessees were given the option to renew the leases every 10 years.

Reclamation and the Bureau of Land Management now share the land management responsibility, except for the task of administering the cabin site leasing program which is exclusively Reclamation's responsibility. The 265 cabin sites occupy scenic lakeshore areas around the northern end of the reservoir. The lot sizes vary from .2 acre to 1.4 acres, with the average size about ½ acre. These sites are unconsolidated scattered tracts within the reservoir lands. There is no large block of consolidated sites.

In the last few years, there has been controversy surrounding the rental fees at Canyon Ferry. The controversy centers on attempts to determine and charge fair market value for rental fees. Under 43 CFR Part 429.6(f), Reclamation is required to collect fair market value for the right to use Reclamation project lands. In 1986, the State raised the rental fees to approximately 1/3 of the then fair market value. The fees remained unchanged until 1995 when Reclamation raised the fees based on an increase in the Consumer Price Index. Reclamation also initiated an independent appraisal in 1995 to determine a new fair market value. Presently the cabin lessees are paying an average of about \$1,000 per site per year, significantly less than the fair market value of \$2,701 determined in the 1995 appraisal.

Reclamation committed to phase in a rate increase over a five year period beginning in 1997. However, the CFRA challenged the 1995 appraisal through the Department of the Interior's Office of Hearing and Appeals. CFRA had conducted a second appraisal which showed the value of the leases to be about 60 percent of that indicated in Reclamation's appraisal. That appraisal amount is still about 1.5 times the amount which had been collected prior to 1997. While Reclamation believes that the 1995 appraisal was properly conducted and accurately reflected the current market price, Reclamation, for the sake of goodwill and improving relations, recently agreed to a settlement with CFRA whereby Reclamation and CFRA would collaborate and conduct a third appraisal. It was agreed that the findings in the third appraisal will be the new basis for the fee increase. With this settlement, Reclamation and the cabin site lessees are working together to set fair and acceptable rental fees. As such, no current controversy exists that requires legislation.

Not only is the legislation unnecessary, it is not clearly drafted. As mentioned above, the bill is ambiguous as to whether the sites will be sold individually or in one bundle. In addition, H.R. 3963 is very unclear as to exactly what the Secretary is directed to sell and what, if anything, might remain in the hands of Reclamation. H.R. 3963 provides for the sale of the "leasehold" for these sites. While the bill fails to provide a definition of leasehold, it appears to be something less than fee simple title.

Canyon Ferry Reservoir, one of the most scenic and popular flat water recreation areas in Montana, is located within two hours of the four largest cities in Montana. The area is already overcrowded during peak visitation periods at several campgrounds and day-use areas. This legislation could exacerbate this situation by reducing the public access to additional areas of this reservoir in the future.

We are concerned that if the intent of H.R. 3963 is to sell the leaseholds only, Reclamation's role would shift from that of a public agency managing public land, to that of a public agency managing private leaseholdings. If it is the intent of H.R. 3963 to sell the cabin sites on a fee simple basis, then Reclamation's role changes to that of a public agency managing private inholdings in public lands.

Further, actual or effective private fee simple ownership of these lands would complicate administration and management of the Canyon Ferry Project. The legislation would likely exacerbate existing difficulties

around such issues as lake fluctuations, land use, and water quality concerns related to septic systems. In the past, lessees of cabin sites have complained about degradation of scenic qualities when the lake level declined due to operational constraints. Given that Canyon Ferry is a multipurpose project, we are concerned that this legislation could lead to an increase in disputes and hamper Reclamation's ability to balance operations at Canyon Ferry reservoir for all the authorized project purposes, especially in dry years.

The bidding process proposed in H.R. 3963 is inequitable and is unlikely to result in a bid that is higher than the minimum required. Section 4(c)(3) would give to the Canyon Ferry Recreation Association a preference over anyone else. If someone other than the CFRA is the highest bidder, CFRA would have the right to match the highest bidder and purchase the leasehold, thereby providing little incentive for anyone but CFRA to submit a bid.

In addition, Section 4(d)(1)(A) would reduce any incentive to bid up the price above the minimum appraised price by requiring the successful bidder if it is other than CFRA to offer each of the existing lessees an option to purchase their leaseholds at the fair market value, which is the minimum bid required under this Section. Any bidder offering more than the minimum would lose money if the individual lessees take the option to purchase the leasehold.

Furthermore, Section 4(c)(2) provides that a minimum bid will be set "in consultation with interested bidders." It is unclear why interested parties should be invited into the process of making an objective determination of fair market value by a third party appraiser. This appears designed to skew the process.

Reclamation plans to seek a non-Federal managing partner to manage the recreation opportunities and lands at Canyon Ferry. Reclamation law provides for such managing partners to be able to utilize user fees and other receipts from the use of the public lands that they manage to operate and maintain existing facilities, and to enhance public recreation or fish and wildlife benefits. Without the revenues generated by the cabin site leases, the ability to attract a managing partner would be significantly diminished. This will result in the need for continued Federal appropriations for recreational management.

In addition to those issues raised above, Reclamation has a number of technical concerns I would like to briefly highlight:

- 1) The legislation fails to address who will pay for maintenance activities that Reclamation is currently paying for such as road maintenance and law enforcement once the leaseholds are granted or the fee simple titles to the lands are sold. The County should bear some responsibility for these costs, especially if the County is able to secure tax revenues as the result of the lands becoming subject to local taxes. It is unclear how local tax revenues would be generated from the leaseholds if the United States will continue to own the lands at Canyon Ferry.
- 2) Under the existing arrangement at Canyon Ferry, licenses for boat docks are currently issued to cabin site lessees, but not to private landholders on other areas of the lake. If the cabin sites were sold, the question of whether to issue licenses would have to be addressed. H.R. 3963 is silent on the issue of boat dock licenses.
- 3) Section 1(1) presents as a finding that it is in the interest of the Secretary to reduce the Pick-Sloan project debt for the Canyon Ferry Unit. Yet, the bill does not provide for any debt reduction.
- 4) Section 1(3) says the sale of leaseholds will reduce Federal payments in lieu of taxes. If fee simple

title is not granted to the purchasers, payments in lieu of taxes (PILT) may continue to be required. If it is fee simple title that is to be auctioned, then the legislation should explicitly state that PILT payments will be discontinued. If it is only the leases that are to be sold, then absent legislative language, PILT payments would likely continue to be paid by the United States. In either case, it is not clear why PILT should continue.

5) Section 1(2) presents a finding that the legislation would "provide a permanent source of funding for projects that develop and maintain public recreation and that conserve and enhance fish and wildlife opportunities in the State of Montana." As drafted, H.R. 3963 includes no such provisions.

6) Section 3(2) would extend the benefits of the legislation to parties who do not hold a current lease and may not have legal claim to the use of the cabins.

7) Section 3(4) exclude the CFRA from the provisions applying to the "Purchaser." However H.R. 2963 otherwise considers the CFRA as the entity that is most likely to purchase the leaseholds. This creates significant ambiguities and needs clarification.

8) The issue of liability is not addressed. If H.R. 3963 proposes that it is fee simple title that is to be auctioned, then all liability for this land should be conveyed to the purchasers. If only the lease is to be auctioned, as we believe the bill to currently read, then unless otherwise stated, the liability remains with the United States -- thereby eroding whatever benefit is to be gained for the United States in this legislation.

9) Section 4(c)(2) requires an appraisal in order to establish the minimum bid. However, it does not state whether it would appraise the properties as a block or separately; nor whether it would include contiguous parcels.

10) Section 4(b)(1)(B) calls for small parcels contiguous to the leaseholds to be conveyed in order to eliminate inholdings and facilitate administration of surrounding land remaining in Federal ownership. The bill assumes that the Secretary and the purchasers will be able to agree on each of these parcels. A public process should be undertaken to determine the size and shape of these parcels. Also, the fair market value of these areas should be determined.

11) Section 4(d)(1)(B)(ii) says that the purchaser shall compensate the lessee for the "full" market value of the improvements. It is not apparent whether the term "fair" should be substituted for "full" as occurs throughout the bill.

12) H.R. 3963 should be clarified to ensure that it does not intend to convey the subsurface (mineral) rights.

Again, Mr. Chairman, while we appreciate the interest of this subcommittee and the Montana delegation, we strongly oppose H.R. 3963 and do not believe this legislation is necessary.

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