

Testimony of David Kelly – Harris Neck Land Trust

**David M Kelly
Project Coordinator
Harris Neck Land Trust
Testimony on Oversight Hearing on the Harris Neck
National Wildlife Refuge before the
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs of the
Committee on Natural Resources of the
U.S. House of Representatives
December 15, 2011**

Honorable members of this subcommittee and others who may be in attendance at this hearing, we thank you for your invitation to testify before you on December 15, 2011. We would also like to thank our Representative, Congressman Jack Kingston, for all the support and advice he has provided us during the six years of the Harris Neck Justice Movement.

I will speak to the following issues that we were asked to address in your December 7, 2011 letter of invitation.

1. A brief history of how the Federal government obtained Harris Neck.
2. How were the owners compensated?
3. Whether assurances were given that the community could reclaim the property.
4. What steps have been taken by the Federal government and community to address this issue during the past 70 years?
5. Has the Federal government offered to compensate anyone represented by the Harris Neck Land Trust?

I am sure we have all heard the expression “Speak truth to power”. Well, we from Harris Neck, wish to speak truth to misinformation, misconception, inaccurate statements, rumor, and outright lies that have been, and continue being, spread about the Harris Neck Land Trust and our plans for a new Harris Neck community. We, respectfully, come before this subcommittee to set the record straight about Harris Neck. In that regard I will address five issues listed in your December 7th letter, one by one, and make some additional relevant comments.

1. The history of the taking of Harris Neck: The taking of Harris Neck – located in northeast McIntosh County, on the coast of Georgia some 40 miles south of Savannah – in 1942 occurred because of a conspiracy among McIntosh County officials who intentionally led representatives of the Federal government to Harris Neck, right past more than 3,500 acres of virtually uninhabited land, just a good stones throw from the southwest border of the community. This other available property had been owned by E. M. Thorpe, one of the largest landowners, at that time, in McIntosh County. According to many families in Harris Neck, E. M. Thorpe had acquired much of his property in Harris Neck by underhanded and unethical practices, and by the time of the taking in 1942, he was the largest landowner in Harris Neck – white or black.

The original taking via Eminent Domain was highly illegal, with the people’s Fifth Amendment rights to Due Process being violated in a number of ways through its hurried and carelessly

Testimony of David Kelly – Harris Neck Land Trust – page 2

executed implementation of Eminent Domain. A list of these violations is being submitted with this testimony.

2. Compensation: The key word in the law, regarding compensation, is that it be “just”. The taking of Harris Neck was not just, not by a long measure, because first, not everyone was paid. Second, white families, who owned property but did not live on Harris Neck and had not made any improvements to their property (with the exception of the two single white women who lived in the community), were paid 40 percent more than the African American families who, over the decades since the end of the Civil War, had created a thriving community with houses, barns, other out-buildings, seafood processing buildings, general store, churches and more. Third, not a single African American family was paid for anything but their property; there were no payments for any “improvements” as required under Eminent Domain. Fourth, payments from the Federal government did not go directly to the African American families; they went through E. M. Thorpe, who may or may not have disbursed monies correctly and fairly.

E.M. Thorpe may have been designated as an agent for these Harris Neck transactions by the government, but he was no friend of the people from Harris Neck. Rev. Thorpe and Wilson Moran will speak better and more personally to this.

3. Assurances to the community about reclaiming its property: Reverend Thorpe will speak more personally to this. However, regarding assurances or a promise made to return the property after World War II, I would like to site the 1934 decision of *Olson v. United States*. In this case it was rightly stated that the owner of condemned property should be placed “*in as good a position pecuniarily as if his property had not been taken. He must be made whole, but is not entitled to more. It is the property and not the cost of it that is safeguarded by state and federal constitutions.*” The community was destroyed. Their entire way of life – their livelihood – was destroyed. People died heartbroken months later. The people were greatly harmed and left in a much-worse-off position than they were before the taking.

It was the Federal government’s responsibility after World War II to contact members of the former Harris Neck community, whether or not there was a promise to return the land, which all the living elders will swear to the fact that there was, indeed, such a promise made. Many families from Harris Neck were then (after the war) living within two miles of their homeland; they stayed close by because of what they had been told by the government: *Don’t go far; the land will be returned to you after the war.* However, after the war the government talked only with McIntosh County officials, and even though the county commission did some good public talking, at that time, about reacquiring the land on behalf of the former community members, the county got the land for itself in 1947.

Over the next 14 years, county officials used Harris Neck for a number of illegal ventures – including prostitution, gambling and drug smuggling – while the contract with the War Assets Administration said the land was to be used only for a county airport. But this was how things went in the 1940s in McIntosh and neighboring counties. This section of Georgia was run by what was referred to as the “Big Four”, a small group of corrupt and very powerful men that included the infamous McIntosh County Sheriff Tom Poppell. To deny the reality of life for

Testimony of David Kelly – Harris Neck Land Trust – page 3

African Americans in this region in 1942 or not to consider it in this matter creates an opening for continuing injustice.

Because of all the county's abuses of its contract, the Federal government took the land back in 1961. It then had another chance to bring justice to Harris Neck, but instead it once again did not contact anyone from Harris Neck and chose, instead, to transfer title to the Department of Interior. Since 1962, the United States Fish and Wildlife Service (FWS) has used Harris Neck as a National Wildlife Refuge.

In both instances (after the war and in 1961-62) no one from Harris Neck knew anything about official proceedings regarding their property until well after the deals were done and the property was in the hands of McIntosh County and FWS, respectively.

It does not matter how FWS came to be titleholder of Harris Neck or that, as personnel from FWS have told us, they are just carrying out their mission as mandated by law. What matters is that the original taking was wrong and it was illegal, and, therefore, we contend, each transfer of title since the original taking has been invalid and, therefore the property still belongs to the original families.

4. Steps taken over the past 70 years to address this issue: The government has not initiated any such steps. The community has made them, starting in the late 1970's, and the government has responded. To speak briefly about the lawsuit that was filed on behalf of the people of Harris Neck and the decision rendered by Judge Avant Edenfield in 1980, both are irrelevant today, since there was never any legal remedy available to Harris Neck; justice (equity) lies only with Congress. And as Congress showed in 2005, when it legislated the return of more than 15,000 acres to the Colorado River Indian Tribes (CRIT), there is no statute of limitations on justice, thus speaking to Judge Edenfield's main point in his decision – that, by 1980, too much time had passed on this issue. (CRIT's land was taken before Harris Neck was taken – during Woodrow Wilson's presidency.) And on the issue of equity, I would like to state that everyone from Judge Edenfield to Secretary of Interior James Watt has said that the equity with regard to Harris Neck belongs with the community, not the government. There was also legislation drafted in this time period, but due to lack of support, H.R. 4018 never made it out of committee.

Nothing much happened, regarding the property, from the early 1980s until 2006, when community representatives first met with Congressman Jack Kingston to speak about the issue of Eminent Domain and other concerns. Since then, representatives of the Harris Neck Land Trust, which was formed in 2006, have been working with Mr. Kingston and several other members of Congress. In December 2009 we met with Mr. Kingston, Congressman John Lewis, legislative staff of other congressmen, and high-ranking officials of FWS. At that meeting, everyone in Congressman Kingston's office agreed to find what Mr. Kingston called for – an “equitable solution” to this issue. In March of 2010 we had a follow-up meeting, with most of the same parties in attendance, at the Savannah regional headquarters office of FWS. A few months later Board Chair, Rev. Robert Thorpe received a letter from FWS, offering us 1) a homecoming day and 2) a kiosk. This is FWS's idea of an equitable solution.

We have dealt honestly and openly with everyone involved during the past six years of the Harris Neck Justice Movement, but we do not feel FWS has acted honestly or professionally. For

Testimony of David Kelly – Harris Neck Land Trust – page 4

example, at the March 2010 meeting a FWS archeologist said that another reason the land could not be returned to the people is that Harris Neck is “wall-to-wall” archeological/cultural sites. The scientific literature shows that there are only a handful of such sites. (Please see our map, being submitted, of these sites – north of Harris Neck Road.) We have met with one of the premier archeological/cultural resource management firms in the southeast, and we plan to have them conduct the first-ever, comprehensive, acre-by-acre site analysis. We will protect and preserve whatever is found, as well as the few presently identified sites, and we plan to sign these sites and make them part of one of our many educational programs in the new Harris Neck.

5. The government’s offer to compensate anyone represented by the Trust: Aside from the kiosk and homecoming day that FWS has offered (mentioned above), the Federal government has not made any offer of compensation to any individual represented by the Harris Neck Land Trust. Regarding compensation, the Trust does not want any financial compensation; the Trust wants the land of Harris Neck (all 2,687 acres) to be returned to the rightful owners – the white and black families/individuals that owned property on Harris Neck in 1942.

Additionally, I wish to make the following comments:

The Harris Neck Land Trust is comprised solely of the previous rightful and legal owners, black and white, of property in Harris Neck. It represents all living members of the original community and their legal descendants. Each family has appointed a family representative to the Trust, and most of the original families have been located and are represented. This is a democratic, grassroots and bipartisan movement. Although perhaps the majority of those in the movement are Democrats, the Chair and Co-chair of the Trust’s Board of Directors, as well as many other members of the Trust, are Republican. The members of the Board of Directors are all from Harris Neck. The Trust’s membership has been meeting monthly for the past six years to think about, discuss, research, and vote on all the key issues involved in Harris Neck and our plans for a new community.

We have a scientifically based community development plan, put together after more than two years of thoughtful dialogue and careful planning. In developing this plan we had the assistance of a natural and cultural resources consulting firm and an architectural design company. We feel our plan is not only environmentally and culturally sensitive but that the new Harris Neck could very well become a model of sustainable community living for rural America. We have reached out to a large number of individuals, organizations, academic institutions, and government agencies, and we have formed partnerships with many of these. Our community plan includes the maximum possible use of wind and solar energy and other renewable energy sources as well as the comprehensive analysis of cultural/archeological sites on Harris Neck. Regarding this analysis and the issue of protecting the cultural sites and the wildlife, land and waters of Harris Neck, Harris Neck was a Gullah community where many people also had Native American ancestry. Therefore, the ethic of cultural and environmental preservation and stewardship could not be stronger, and the Trust has made the strongest possible commitment to have this ethic be the guiding force in the new Harris Neck.

Regarding the wood stork and the other migratory birds that come to Harris Neck seasonally, there are many successful rookeries close, and in some cases extremely close, to human

Testimony of David Kelly – Harris Neck Land Trust – page 5

settlements/activities in the southeast. The claim by FWS that the wood stork, ibis, herons and egrets cannot coexist with human beings is completely unfounded and disingenuous. FWS's claim contradicts the experience of former community members, who lived harmoniously with the wood stork and all the wildlife in Harris Neck, our research, and that of ornithologists who study these birds.

Our community plan will protect and preserve the wildlife, land and waters of Harris Neck. It sets aside, for permanent protection, all the ponds created by FWS and puts a buffer zone around Woody Pond, the main bird nesting pond, that is twice the setback distance recommended by the scientific studies. This pond is also surrounded by dense forest, providing even greater protection for the birds during their critical nesting season.

Our plan will also place more than half the total acreage in permanent conservation easements. People will be able to return to the organic farming that it once did in a community that was sustainable and ecologically sound long before such terms became a common part of our lexicon.

We feel that FWS's stated opposition to the return of Harris Neck to its rightful owners has little or nothing to do with the wood stork and other birds or the alligator or any of the other wildlife or their habitat or the cultural sites. This issue, in our experience, is about FWS's refusal to give up a single acre in its 150 million-acre national system, of which the Harris Neck National Wildlife Refuge represents less than .0001 percent of that total. We fully recognize the need for this refuge, but there is no substantiated reason and no scientific evidence to say that the birds and other wildlife in Harris Neck cannot coexist with people and the human activities we anticipate via our community plan.

Furthermore, it is our desire to have FWS continue its presence in Harris Neck and to have its staff continue doing the work they have been doing on the refuge. Our vision of the future in Harris Neck is one of a good working partnership with FWS. We have approached FWS about this, but to my knowledge they have not responded. Nor have they responded to our community development plan, except to say it lacks specificity. Also, we do not want any FWS personnel to lose their jobs, and with our plan there is no reason they should.

Regarding the idea or contention that by returning Harris Neck a precedent may be set that would result in efforts by communities around the country to reclaim other property, now in one form of Federal or State protection or another, we think the Harris Neck case is unique – from the 1942 taking to the present. The return of Harris Neck to the Trust will not displace or adversely affect anything in the present wildlife refuge. In addition, the economic stimulus and job creation (from professional to semi- and low-skilled positions) that should result with the implementation of our community development plan will help a county, which is one of the poorest in Georgia. While fully protecting and preserving what is now in the refuge, the return of Harris Neck and the implementation of our plan will also put this valuable property back on the tax rolls for the first time in decades, and this may all be accomplished without any Federal funding. Also, public access to Harris Neck will not only be maintained, but our plan calls for creating many educational and other related programs that will greatly enhance the public's experience in Harris Neck.

Testimony of David Kelly – Harris Neck Land Trust – page 6

We respectfully urge this subcommittee to do all in its power to begin, and move forward, the congressional process that, hopefully, will lead to justice being done for the people of Harris Neck.

Note: Our Eminent Domain attorney is unable to be with us at this hearing, due to the short notice we received. Perhaps this subcommittee would consider submitting questions to our attorney and he could respond to them.