

WRITTEN TESTIMONY
OF
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ATTORNEY REPRESENTING
PREFERENTIAL LEASEHOLDERS
WITHIN THE BLUNT RESERVOIR AND PIERRE CANAL

SUBMITTED TO:
THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON WATER AND POWER

ON H. R. 4301

To direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the State of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes.

February 6, 2006

Washington, D.C.

Members of the Subcommittee, my name is Darla Pollman Rogers. I am an attorney in private practice in Pierre, South Dakota, and I represent preferential leaseholders in the Blunt Reservoir and Pierre Canal areas. Thank you for the opportunity to present testimony to you on behalf of the preferential leaseholders.

The preferential leaseholders strongly support H.R. 4301. Since becoming aware of legislative proposals concerning the Pierre Canal and Blunt Reservoir lands, as a group, the preferential leaseholders have spent many hours negotiating for and providing input into H.R. 4301 and its predecessors. Please allow me to give you a brief background of the history surrounding the long struggle this small group of landowners has had in attempting to regain ownership of their land.

The Blunt Reservoir land and the Pierre Canal land were originally part of the Oahe Unit, James Division, of the Oahe Irrigation Project (hereinafter called the "Oahe Project"), which was authorized as a component of the Pick-Sloan Plan to provide multi-purpose use of the Missouri River water in South Dakota. The Oahe Project was authorized and funded by Congress nearly 30 years ago, but the project never materialized. The government did, however, acquire approximately 18,000 acres of land in Hughes and Sully Counties for construction of the Pierre Canal and Blunt Reservoir. All of these acres have been removed from county property tax rolls since 1977, as the land has literally been in federal "limbo." Of the 18,000 acres, approximately 13,700 acres are preferential lease acres (approximately 16 original landowners or descendants who still operate the land as preferential leaseholders) and 4,700 are nonpreferential lease acres (original landowners subsequently relinquished their rights to lease the land, which is now operated by approximately 9 nonpreferential leaseholders).

I used the word "acquire" deliberately, because the circumstances of the acquisitions were, at best, misleading. The landowners did not want to give up land that was an integral part of their operations. (See Exhibit 1, map.) The original landowners were in fact "enticed to sell their land." (See Exhibit 2, May 27, 2005, letter of Governor Rounds.) They

were told that they could sell their land to the Government voluntarily, or it would be condemned. If they sold voluntarily, they could lease the land back from the Bureau of Reclamation (which administered and managed the land), at a lease rate that would not increase, until the project was completed (thus the term "preferential" leaseholders). These landowners were also told that if for some reason the project was not completed, they would be able to purchase their land back at the same price they were paid for it.

You may ask how I know what representations were made to the original landowners. I know because they have told me, and I know because I was personally involved. My father, Leonard Pollman, was an original landowner, and we are preferential leaseholders today. In fact, my father's case is a good example of the unfulfilled promises made to the original landowners at the time they gave up their land. My father did not want to go through costly condemnation litigation, so he reluctantly agreed to sell his land to the government, after he was told he could lease it back at the same lease rate until his land was needed for the project. (See Exhibit 3.) In the event the land was not used, he was told he could buy it back for the same price for which he sold it. He asked the representative from the Bureau to please put that assurance in writing. See Exhibit 4, which is a copy of the written "assurance" of the Bureau representative, Arthur E. Mischke, that the lease rate would remain the same. The original lease, dated December 19, 1973, was for \$3,700.00. The "maximum rate" of \$3,700.00 has steadily increased over the years, and today is nearly double that amount. (See Exhibits 5 and 6.)

Similar representations were made to other landowners at the time of sale. See Exhibit 7, which is another "assurance" made by a Bureau representative to Duane and Barb Winkler, landowners in the Blunt Reservoir area. As in the case of Mr. Pollman, the annual leaseback rate has more than doubled over the years, yet their Land Purchase Contract has not become null and void.

It is important to know the sincere and honest intentions of these landowners. They did not wish to be uncooperative, but they wanted to protect their interests, for as long as possible, in the land they were in essence being forced to sell. (See Exhibit 8, letter of preferential leaseholder Aubrey R. Smith.)

That is still the intent of these same landowners today. After all these years, they are still trying to reacquire their land. While most of them have leased the land since the government acquired it, the lease rates have not remained the same, but have increased dramatically over the years. And to date, these landowners have still not had the opportunity to buy back their land, as promised.

As early as 1981, deauthorization of the Oahe Project was considered, and these same landowners testified at a hearing in front of the Subcommittee on Water and Power of the Committee on Energy and Natural Resources, United States Senate, as follows:

Their (the original landowners') position is that they should have the first chance to buy back their land . . . This dispositional scheme must be written into the deauthorization legislation itself.

The landowners were supported in their position by the South Dakota Legislature, which passed a Concurrent Resolution in 1980 favoring disposing of the land acquired for the Oahe Project by first offering it to the original landowners. Unfortunately, the matter was not resolved in 1981.

The issue of deauthorization of the Oahe Project resurfaced again in January of 1998, in the form of S. 1341. In that bill, all the land was to have been transferred to the State of South Dakota for wildlife habitat mitigation (See Exhibit 9). John Cooper, the Secretary of the South Dakota Department of Game, Fish and Parks, sent a letter to the preferential leaseholders (among others) concerning deauthorization of the Pierre Canal and Blunt Reservoir features of the Oahe Project and transferring those lands in Fee Title to the State of South Dakota for wildlife mitigation. (See Exhibits 10 and 11.) The landowners were invited to a public hearing in late January of 1998, and many landowners attended the meeting. They were told, in essence, that acquisition of the Pierre Canal and Blunt Reservoir by South Dakota Game, Fish and Parks was part of a much larger effort to restore wildlife habitat that was destroyed by the construction of the Missouri River Dam. The ultimate effect of S. 1341 would have been that these preferential leaseholders would have lost their land, probably within a ten-year period. Preferential leaseholders expressed their strong opposition to S. 1341, as did then Representative John Thune. (See Exhibits 12 through 16.)

So the struggle began all over again. The preferential leaseholders had numerous meetings with each other, with Game, Fish

and Parks, and with their South Dakota Congressional delegates. Senator Daschle understood the long struggle of these landowners and their unique situation and agreed to champion their cause. S. 1178 was the result of said meetings, and it was introduced to you in October of 1999. We supported S. 1178, but unfortunately, it did not survive the political process.

Since the defeat of S. 1178, the meetings have continued among landowners, Game Fish and Parks, South Dakota Congressional delegates, the Commissioner of School and Public Lands, and the Bureau of Reclamation. With Secretary John Cooper acting as facilitator, we stayed in touch intermittently in 2000, and then held a series of working sessions in 2001. The result of these efforts was S. 1028. Under S. 1028, the Blunt Reservoir feature of the Oahe Project would have been deauthorized. The preferential lease land was to have been transferred to the South Dakota Commission of School and Public Lands, and the preferential leaseholders in the Blunt Reservoir and Pierre Canal areas would have had the opportunity to buy back the land that was acquired from them for a project that never materialized. Non-preferential lease parcels, unleased parcels, and preferential lease parcels that were not repurchased by the original landowner (or his or her descendants) were to have been conveyed to Game, Fish and Parks for the purposes of wildlife habitat mitigation.

S. 1028, however, was a better bill than its predecessors, because in this round of negotiations, the interested parties tried to resolve all concerns and questions that were articulated with the introduction of S. 1178. For example, the terms "nonpreferential leaseholder" and "preferential leaseholder" were redefined to make sure there were no arguments or questions about who fit into the categories. The issue of liability was addressed in S. 1028, in response to concerns raised by the Bureau. The Bureau participated in the working sessions and submitted the liability language included in the bill. Revisions were made in response to concerns of county officials. Funding clarifications were made in response to concerns of the Commissioner of School and Public Lands. A perpetual easement along the Pierre Canal land for future water development was added to appease water development concerns.

Unfortunately, S. 1028 did not pass. What you have before you today, however, is H.R. 4301, which is in essence identical to S. 1028. Preferential leaseholders have the option to buy back their land. Long-term funding mechanisms are included to make this a viable option for the landowners. Non-preferential leaseholders also have a "trade" opportunity, if the land they currently lease is an integral part of their home or business.

Game, Fish and Parks wanted all the land for wildlife mitigation; leaseholders wanted all the land returned to private ownership. This compromise is the end result of countless hours of drafting and redrafting, which has come about as the result of input, negotiations, and compromise of all parties directly affected by deauthorization of the Blunt Reservoir feature of the Oahe Project. A true consensus has been reached in this bill. My clients, this small group of preferential leaseholders who have struggled all these years to have the opportunity to repurchase their land, are in full support of H.R. 4301. It is an appropriate resolution of a long-standing situation.

I will add this. My father is now 83 years old. He is still actively involved in our family farming operation. While he has had many promises made to him and broken, his dream is to reacquire his land during his lifetime.

On behalf of my father and the other preferential leaseholders of the Blunt Reservoir and Pierre Canal, I urge your support and passage of H.R. 4301.

Thank you for the opportunity to present this testimony. I am happy to try to answer any questions you may have.