

Statement of Larry Todd
Deputy Commissioner, Bureau of Reclamation

Before the
Subcommittee on Water and Power
Committee on Resources

U.S. House of Representatives

On

H.R. 4080

**“To extend the contract for the Glendo Unit of the
Missouri River Basin Project in the State of Wyoming”**

February 8, 2006

Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. Thank you for the opportunity to testify on H.R. 4080. The Department supports the goals of H.R. 4080.

On July 1, 1997, the State of Wyoming, Nebraska, and Colorado, and the United States Department of the Interior entered into a cooperative agreement for Platte River research and other efforts relating to endangered species habitats along the Central Platte River in Nebraska. The purpose of the cooperative agreement is to jointly undertake a basin-wide effort to improve the habitat of four threatened and endangered species along the Platte River. The cooperative study is designed to help develop a basin-wide program to be the reasonable and prudent alternative to minimize the effects of existing and new water related activities in the Platte River Basin.

Glendo Dam and Reservoir is one of several Bureau of Reclamation dams and reservoirs on the North Platte River that operate as an integrated system. The Bureau of Reclamation is required to consult under the Endangered Species Act (ESA) on the operations of the entire reservoir system.

Successful consultation completion will be dependent upon achieving a Recovery Implementation Program (Program) that will serve as a reasonable and prudent alternative for the ESA consultation. A final programmatic environmental impact statement which leads to a Program is scheduled to be completed in March 2006, with a record of decision to follow in April 2006. We anticipate the Governors of the States of Colorado, Nebraska, and Wyoming and Secretary of the Interior will enter into such a Program following the record of decision. H.R. 4080 will allow Reclamation to renew the Glendo contracts when the Program is in place.

The intent of H.R. 4080 is to amend the Irrigation Project Contract Extension Act of 1998 to require the Secretary of the Interior to extend each of the water service or repayment contracts for the Glendo Unit of the Missouri River Basin Project for a period of 2 years until December 31, 2007, or for the term of the cooperative agreement entered into by the State of Wyoming, Nebraska, Colorado, and the Secretary of the Interior.

To ensure that the intent of this bill to amend the Irrigation Project Contract Extension Act of 1998 is clearly identified, the Department recommends the long title of the bill read as follows:

“To amend the Irrigation Project Contract Extension Act of 1998 to extend certain contracts between the Bureau of Reclamation and certain irrigation water contractors in the States of Wyoming and Nebraska.”

With this clarification, the Department supports H.R. 4080. Thank you for the opportunity to appear before you today.

Statement of Larry Todd
Deputy Commissioner, Bureau of Reclamation

Before the
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On

H.R. 4301

Addressing

Conveyance of Certain Parcels of Land Acquired for the Blunt Reservoir and Pierre Canal to the State
of South Dakota for the Purpose of Mitigating Lost Wildlife Habitat

February 8, 2006

Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. Thank you for the opportunity to testify on H.R. 4301.

H.R. 4301 directs the Secretary of the Interior (Secretary) to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal – features of the Oahe Irrigation Project in South Dakota – to the State of South Dakota for the purpose of mitigating lost wildlife habitat, or to the original land owners of the acquired lands or their descendants (preferential leaseholders).

The bill directs that the proceeds of sales of preferential lease lands be deposited as miscellaneous funds in the treasury and that such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

The Administration supports the intent of the bill but has some concern with its content, as I will discuss later.

The basic concept of H.R. 4301-- to allow original landowners to regain title to lands that Reclamation purchased in anticipation of a project that was never built -- is straightforward and equitable. Further, the sponsors of H.R. 4301 have addressed, in whole or in part, a number of the technical issues that were raised in the past related to liability, land descriptions, return of land sale proceeds back to the Federal treasury, and reimbursement of Federal implementation costs. However, the Department still finds that the bill fails to adequately protect taxpayers' interests for four reasons. First, the bill directs Reclamation to sell the land to preferential leaseholders for less than fair market value. Second, it directs Reclamation to convey to the State the non-preferential lease parcels and the preferential lease parcels that current lessees choose not to purchase without compensation for the initial taxpayer investment in those lands. Third, after conveyance Reclamation would still be responsible for administrative costs associated with the acquisition of those lands, such as curation of project archeological collections. Finally, the bill provides that parcels may be swapped for other land elsewhere in the State, which may alter the potential environmental mitigation benefits of the land, potentially undermining one of the purposes of the Act.

Background

As background, Reclamation purchased approximately 19,292 acres of land between 1972 and 1977 in preparation for building the Blunt Reservoir and the Pierre Canal. In many cases, Reclamation leased the land back to the seller. Currently, Reclamation is leasing some 13,000 acres of Blunt Reservoir lands to 18 preferential leaseholders and about 1,100 acres of Pierre Canal lands to 11 preferential leaseholders. Although not reflected in title documents, the sellers expected they would be able to purchase their lands back if they were not needed for the project.

Nearly three decades later, construction has not commenced for the Blunt Reservoir, although some earth-moving has been done for the Pierre Canal. Because it is unlikely this project will be built, Reclamation no longer needs to hold title to the

acquired lands. Under H.R. 4301, the preferential leaseholders (the original landowners or their descendants) would be offered an option to purchase the land they currently lease within 5 years of enactment. Section 2(d) of the bill provides that the land could be sold to preferential leaseholders for 10% less than fair market value for agricultural purposes of the land. Purchases would be from the South Dakota Commission of Schools and Public Lands, acting as an agent for the Secretary of the Interior. If a preferential leaseholder declines to purchase the land, the Commission is to convey the parcel to the South Dakota Department of Game, Fish, and Parks for wildlife habitat mitigation. Reclamation's interest in the 5,000 acres currently unleased or leased to parties who are not preferential leaseholders would be conveyed to the State of South Dakota Department of Game, Fish, and Parks to be used in mitigation of wildlife habitat lost as a result of Pick-Sloan development.

Valuation and Payment

H.R. 4301 directs that proceeds of sales of land under the Act be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill. While this partially addresses the Administration's previous concerns (stated in testimony provided on S. 1028 in the 107th Congress) about recovering the taxpayer investment in these lands, the Administration remains opposed to the transfer of unleased or non-preferential leased lands to the State without compensation to Treasury. Furthermore, the Administration believes that all lands conveyed under this bill should be sold for no less than fair market value. In this situation we agree that equitable considerations support offering preferential leaseholders the right of first refusal to purchase these lands, which their families have been using for many years, at appraised fair market value. We do not agree with the provisions of the bill effectively subsidizing this sale. Moreover, we note that the best practice for determining market value and ensuring that the lands are used for their highest and best use is to sell the parcels at an auction, and this would be our preferred way to dispose of Federal lands in situations that do not present the circumstances that exist here.

Constitutional Concern

We have an additional concern about the constitutionality of the bill as currently written. The bill contains mandatory language stating that South Dakota "shall agree to accept" specified lands and "act as an agent for the Secretary." Provisions of Federal law that require States to take actions to administer Federal regulatory programs are unconstitutional. This could be addressed by amending the bill to clarify that South Dakota may voluntarily choose to accept or reject the land conveyance and associated responsibilities.

Conclusion

We appreciate work done by the sponsors to address several technical issues that have been raised in the past. We look forward to working with the sponsors and the Committee to address any outstanding issues that remain.

I would be pleased to answer any questions.