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Calendar No. 570

107TH CONGRESS
2d Session

SENATE

REPORT
107–253

BLUNT RESERVOIR AND PIERRE CANAL LAND CONVEYANCE ACT

SEPTEMBER 9, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1028]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1028) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Blunt Reservoir and Pierre Canal Land Conveyance Act of 2002".

SEC. 2. BLUNT RESERVOIR AND PIERRE CANAL.

(a) DEFINITIONS.—In this section:

(1) BLUNT RESERVOIR FEATURE.—The term "Blunt Reservoir feature" means the Blunt Reservoir feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(2) COMMISSION.—The term "Commission" means the Commission of Schools and Public Lands of the State.

(3) NONPREFERENTIAL LEASE PARCEL.—The term "nonpreferential lease parcel" means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a nonpreferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(4) PIERRE CANAL FEATURE.—The term "Pierre Canal feature" means the Pierre Canal feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(5) PREFERENTIAL LEASEHOLDER.—The term "preferential leaseholder" means a person or descendant of a person that held a lease on a preferential lease parcel as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(6) PREFERENTIAL LEASE PARCEL.—The term "preferential lease parcel" means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a preferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(8) STATE.—The term "State" means the State of South Dakota, including a successor in interest of the State.

(9) UNLEASED PARCEL.—The term "unleased parcel" means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) is not under lease as of the date of enactment of this Act.

(b) DEAUTHORIZATION.—The Blunt Reservoir feature is deauthorized.

(c) ACCEPTANCE OF LAND AND OBLIGATIONS.—

(1) IN GENERAL.—As a condition of each conveyance under subsections (d)(5) and (e), respectively, the State shall agree to accept—

(A) in "as is" condition, the portions of the Blunt Reservoir Feature and the Pierre Canal Feature that pass into State ownership;

(B) any liability accruing after the date of conveyance as a result of the ownership, operation, or maintenance of the features referred to in subparagraph (A), including liability associated with certain outstanding obligations associated with expired easements, or any other right granted in, on, over, or across either feature; and

(C) the responsibility that the Commission will act as the agent for the Secretary in administering the purchase option extended to preferential leaseholders under subsection (d).

(2) RESPONSIBILITIES OF THE STATE.—An outstanding obligation described in paragraph (1)(B) shall inure to the benefit of, and be binding upon, the State.

(3) OIL, GAS, MINERAL AND OTHER OUTSTANDING RIGHTS.—A conveyance to the State under subsection (d)(5) or (e) or a sale to a preferential leaseholder under subsection (d) shall be made subject to—

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

(B) any permit, license, lease, right-of-use, or right-of-way of record in, on, over, or across a feature referred to in paragraph (1)(A) that is outstanding as to a third party as of the date of enactment of this Act.

(4) ADDITIONAL CONDITIONS OF CONVEYANCE TO STATE.—A conveyance to the state under subsection (d)(5) or (e) shall be subject to the reservations by the United States and the conditions specified in section 1 of the Act of May 19, 1948 (chapter 310; 62 Stat. 240), as amended (16 U.S.C. 667b), for the transfer of property to state agencies for wildlife conservation purposes.

(d) PURCHASE OPTION.—

(1) IN GENERAL.—A preferential leaseholder shall have an option to purchase from the Commission, acting as an agent for the Secretary, the preferential lease parcel that is the subject of the lease.

(2) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a preferential leaseholder may elect to purchase a parcel on 1 of the following terms:

(i) Cash purchase for the amount that is equal to—

(I) the value of the parcel determined under paragraph (4);

(II) 10 percent of that value.

(ii) Installment purchase, with 10 percent of the value of the parcel determined under paragraph (4) to be paid on the date of purchase and the remainder to be paid over not more than 30 years at 3 percent annual interest.

(B) VALUE UNDER $10,000.—If the value of the parcel is under $10,000, the purchase shall be made on a cash basis in accordance with subparagraph (A)(i).

(3) OPTION EXERCISE PERIOD.—

(A) IN GENERAL.—A preferential leaseholder shall have until the date that is 5 years after enactment of this Act to exercise the option under paragraph (1).

(B) CONTINUATION OF LEASES.—Until the date specified in subparagraph (A), a preferential leaseholder shall be entitled to continue to lease from the Secretary the parcel leased by the preferential leaseholder under the same terms and conditions as under the lease, as in effect as of the date of enactment of this Act.

(4) VALUATION.—

(A) IN GENERAL.—The value of a preferential lease parcel shall be its fair market value for agricultural purposes determined by an independent appraisal, exclusive of the value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this Act, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.

(B) FAIR MARKET VALUE.—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.

(5) CONVEYANCE TO THE STATE.—

(A) IN GENERAL.—If a preferential leaseholder fails to purchase a parcel within the period specified in paragraph (3)(A), the Secretary shall convey the parcel to the State of South Dakota Department of Game, Fish, and Parks.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(6) USE OF PROCEEDS.—Proceeds of sales of land under this Act shall 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.

(e) CONVEYANCE OF NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(1) CONVEYANCE BY SECRETARY TO STATE.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the secretary shall convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(2) LAND EXCHANGES FOR NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(A) IN GENERAL.—With the concurrence of the South Dakota Department of Game, Fish, and Parks, the South Dakota Commission of Schools and Public Lands may allow a person to exchange land that the person owns elsewhere in the State for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal, as the case may be.

(B) PRIORITY.—The right to exchange nonpreferential lease parcels or unleased parcels shall be granted in the following order of priority:

(i) Exchanges with current lessees for nonpreferential lease parcels.

(ii) Exchanges with adjoining and adjacent landowners for unleased parcels and nonpreferential lease parcels not exchanged by current lessees.

(C) EASEMENT FOR WATER CONVEYANCE STRUCTURE.—As a condition of the exchange of land of the Pierre Canal Feature under this paragraph, the United States reserves a perpetual easement to the land to allow for the right to design, construct, operate, maintain, repair, and replace a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal Feature.

(f) RELEASE FROM LIABILITY.—

(1) IN GENERAL.—Effective on the date of conveyance of any parcel under this Act, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the parcel, except for damages for acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date of conveyance.

(2) NO ADDITIONAL LIABILITY.—Nothing in this section adds to any liability that the United States may have under chapter 171 of title 28, United States Code (commonly known as the 'Federal Tort Claims Act').

(g) REQUIREMENTS CONCERNING CONVEYANCE OF LEASE PARCELS.—

(1) INTERIM REQUIREMENTS.—During the period beginning on the date of enactment of this Act and ending on the date of conveyance of the parcel, the Secretary shall continue to lease each preferential lease parcel or nonpreferential lease parcel to be conveyed under this section under the terms and conditions applicable to the parcel on the date of enactment of this Act.

(2) PROVISION OF PARCEL DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $750,000 to reimburse the Secretary for expenses incurred in implementing this Act, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this Act, not to exceed 10 percent of the cost of each transaction conducted under this Act.

PURPOSE

The purpose of S. 1028 is to authorize the conveyance of approximately 17,000 acres of Federal land in South Dakota administered by the Bureau of Reclamation that were never used for the proposed Blunt Reservoir. The lands would be conveyed back to the original land owners or their descendants, or to the State of South Dakota for the mitigation of lost wildlife habitat.

BACKGROUND AND NEED

S. 1028 is the product of more than three years of discussion with local landowners, the South Dakota Water Congress, the Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups, and other affected citizens.

The Oahe Unit was originally approved as part of an overall plan or water development in the Missouri River Basin that was incorporated in the Floor Control Act of 1944. The initial stage of the project included a system of main canals, such as the Pierre Canal, running east from the Oahe Reservoir, and the establishment of regulating reservoirs, including the Blunt Dam and Reservoir, located approximately 35 miles east of Pierre, South Dakota.

A total of 17,878 acres of land was acquired from willing sellers for the proposed Blunt Reservoir feature during the 1970's. Additional land was acquired for the Pierre Canal feature.

After the growth of opposition to the project, construction on the Oahe unit was halted on September 30, 1977. Congress did not provide funds for the project in the fiscal year 1978.

In response to this situation, the Bureau of Reclamation gave to those persons who had willingly sold their lands to the project, and their descendants, the right to lease those lands and use them as they had in the past until they were needed by the Federal Government for project purposes. Since 1978, the Bureau of Reclamation has administered these lands on a preference lease basis for original landowners or their descendants and on a non-preferential

basis for lands under lease to persons who had not previously owned or controlled the land.

Currently, the Bureau of Reclamation administers approximately 13,000 acres as preferential leases and approximately 4,300 acres as non-preferential leases in Blunt Reservoir. The Bureau also administers approximately 1,100 acres of preferential leases and additional acreage of non-preferential leases in the Pierre Canal feature. The lands are not in their original condition. Various stockpiled materials, fences, access roads, road detours, and other items left by the Bureau remain on the land.

The Oahe project was a part of the overall Pick-Sloan Missouri Basin program, which included four major dams across the Missouri River that caused the loss of approximately 221,000 acres of fertile, wooded bottomland that was productive wildlife habitat.

Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat. The transfer of the 4,304 acres of non-preferential lease lands in the Blunt Reservoir feature to the South Dakota Department of Game, Fish and Parks would satisfy, in part, this habitat mitigation obligation.

LEGISLATIVE HISTORY

S. 1028 was introduced by Senators Daschle and Johnson on June 13, 2001. The Subcommittee on Public Lands and Forests held a hearing on S. 1028 on November 27, 2001. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered S. 1028, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 1028, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1028, the Committee adopted an amendment in the nature of a substitute which changes the structure of land conveyances in S. 1028 and removes direct spending provisions. As introduced, S. 1028 conveyed Federally owned land to the State of South Dakota for no consideration, on the condition that the State offer the land to preferential leaseholders. The State would have kept the proceeds from any such sales.

Under the substitute amendment, the Federal Government will keep the lands leased to preferential leaseholders while the State Schools Commission attempts to sell them as an agent for the Federal Government. If the lands are sold, the money will return to the U.S. Treasury. The amendment authorizes the State of South Dakota to establish a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish and Parks under the bill, subject to appropriation.

The amendment does not substantially change the provisions concerning lands leased to nonpreferential leaseholders, with one exception. The conveyance of these lands to the State shall be subject to the conditions specified in section 667b of title 16, United

States Code, for transfer of property to state agencies for wildlife conservation purposes.

The substitute amendment also makes a number of other changes, including removing the findings and ensuring that the land subject to sale is appraised at fair market value for agricultural purposes.

The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the Act the "Blunt Reservoir and Pierre Canal Land Conveyance Act of 2002."

Section 2 (a) defines key terms used in the Act.

Subsection (b) deauthorizes the Blunt Reservoir feature of the Oahe Irrigation Project.

Subsection (c) requires the State of South Dakota to accept land conveyed to it under the bill in "as in" condition, assume responsibility for any outstanding liabilities, and recognize any outstanding rights of third parties. The conveyances to the State shall also be subject to the reservations by the United States and the conditions specified in section 667b of title 16, United States Code, for transfer of property to State agencies for wildlife conservation purposes. The conveyances shall be subject to the reservation by the United States of all oil, gas, and mineral rights, to the condition that the property continue to be used for wildlife conservation and in the event it is no longer used for such purposes or in the event it is needed for national defense purposes title shall revert to the United States.

Subsection (d) allows the preferential leaseholders (original landowners or descendants, or operators of the land at the time of purchase) an option to purchase the land they lease within 5 years of enactment. Any purchases shall be from the South Dakota Commission of Schools and Public Lands ("Commission"), acting as an agent for the Secretary of the Interior. The leaseholders would have the option of paying cash and receiving a 10 percent discount on the land's value, or receiving a 30-year mortgage at 3 percent annual interest.

The value of a preferential lease parcel shall be its fair market value for agricultural purposes, as determined by an independent appraisal, exclusive of the value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this Act, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition. If the preferential leaseholder fails to purchase a parcel within the 5-year period, that parcel would be conveyed to the South Dakota Department of Game, Fish, and Parks to assist in the implementation of the wildlife habitat mitigation plan.

Proceeds of the sales shall be deposited as miscellaneous funds in the Treasury and made available, subject to appropriation, 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.

Subsection (e) directs the Secretary of the Interior to convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential leased parcels and unleased parcels of the Blunt Res-

ervoir and Pierre Canal to be used for mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project. The Commission would also be authorized, with the Department's concurrence, to allow a person to exchange other land in South Dakota for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal. This subsection also reserves to the United States a perpetual easement to the land to allow for a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal Feature.

Subsection (f) releases the United States from liability, except for damages from certain acts of negligence committed prior to the date of conveyance.

Subsection (g) provides that, during the interim period prior to the expiration of their purchase option after five years, the preferential leaseholders would be entitled to continue to lease from the Secretary of the Interior under the same terms and conditions applicable on the date of enactment. Within 180 days of enactment, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

Subsection (h) authorizes $750,000 to be appropriated to reimburse the Secretary for expenses incurred in implementing this Act, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this Act, not to exceed 10 percent of the cost of each transaction conducted under this Act.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1028. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1028, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 1028 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 8, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request for the views of the Department of the Interior on S. 1028, the "Blunt Reservoir and Pierre Canal Land Conveyance Act of 2001." This confirms testimony of Larry Todd, Director of Operations for the U.S. Bureau of Reclamation, on November 27, 2001 before the Subcommittee on Forests and Public Lands Management.

S. 1028 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 Commission of Schools and Public Lands of the State of South Dakota (Commission) for the purpose of mitigating lost wildlife habitat, on the condition that current preferential leaseholders (the original owners of the acquired lands or their descendants) have the option to purchase the parcels from the Commission.

The basic concept of S. 1028, 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 S. 1028 have addressed a number of the technical issues, related to liability, land descriptions, and reimbursement of Federal implementation costs, that were raised in the past. However, the Department has concerns with the bill, in particular that it fails to adequately protect taxpayers' interests, as it directs Reclamation to convey the lands to the State without any consideration of the initial taxpayer investment they represent, and cannot support the bill in its current form.

Background

In preparation for building the Blunt Reservoir and the Pierre Canal, Reclamation purchased approximately 19,200 acres of land between 1972 and 1977. In many cases, Reclamation leased the land back to the seller. Currently, Reclamation is leasing some 13,000 acres of Blunt Reservoir lands to 19 preferential leaseholders and about 1,100 acres of Pierre Canal lands to 29 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. Reclamation supports the conclusion that it is unlikely this project will be built, and, therefore, Reclamation no longer needs to hold title to the acquired lands. Under S. 1028, Reclamation's interest in the more than 14,000 acres currently leased by preferential leaseholders (the original landowners or their descendants) would be conveyed to the South Dakota Commission of Schools and Public Lands, on condition that the original landowners have the option to purchase it back. 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 other parties 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

S. 1028, as introduced, directs Reclamation to transfer land holdings worth up to $4–$6 million to the South Dakota State Commission of Schools and Public Lands without any payment from the State. The Administration opposes such transfers of significant Reclamation Project assets to non-Federal entities without compensation. In general, such transfers should be for fair market value of the property. S. 1028 would be subject to the Pay-As-You-Go requirements of the Omnibus Budget Act of 1990.

We would like to express our appreciation for the work done by the sponsors to address a number of technical issues that have been raised in the past. We are aware that an amended bill was presented to the Committee for mark up and we are optimistic that our concerns are being met.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN W. KEYS III,
Commissioner, Bureau of Reclamation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1028, as ordered reported.

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