

Calendar No. 899

106TH CONGRESS
2^D SESSION**S. 2873****[Report No. 106-453]**

To provide for all right, title, and interest in and to certain property in Washington County, Utah, to be vested in the United States.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2000

Mr. BENNETT introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

OCTOBER 2 (legislative day, SEPTEMBER 22), 2000

Reported by Mr. MURKOWSKI, without amendment

A BILL

To provide for all right, title, and interest in and to certain property in Washington County, Utah, to be vested in the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) In 1983, Environmental Land Technology,
6 Ltd. (hereafter in this Act referred to as “ELT”)

1 acquired from the State of Utah 2,440 acres of
2 school trust lands in Washington County, Utah,
3 north of the city of St. George, for residential and
4 recreational development purposes and over the next
5 several years completed appraisals, cost estimates,
6 engineering studies, site plans, surveys, utility lay-
7 outs, and right-of-way negotiations with the city,
8 and obtained water rights for the land.

9 (2) With the issuance by the United States
10 Fish and Wildlife Service of a permit under section
11 10 of the Endangered Species Act of 1973 to Wash-
12 ington County, Utah, and the adoption of the Habi-
13 tat Conservation Plan and Implementation Agree-
14 ment of February of 1996 (hereafter in the Act re-
15 ferred to as “HCP and Agreement”), the Bureau of
16 Land Management assumed an obligation to acquire
17 from willing sellers approximately 12,600 acres of
18 non-Federal land, including the ELT development
19 land, to create the Red Cliffs Reserve for the protec-
20 tion of the desert tortoise.

21 (3) Since 1996, the Bureau of Land Manage-
22 ment has acquired, through exchange or purchase,
23 nearly all of the privately owned property within the
24 Federal portion of the Reserve, except for 1,516
25 acres of the ELT development land.

1 (4) With the creation of the Grand Staircase
2 National Monument in 1996 in the State of Utah
3 and the subsequent land exchanges for the consoli-
4 dation of lands necessary for the Monument, there
5 are no longer sufficient comparable lands within the
6 State of Utah to conduct intrastate exchanges for
7 the remaining desert tortoise lands.

8 (5) Under the Uniform Appraisal Standards for
9 Federal Land Acquisitions, ELT is entitled to have
10 its lands appraised at fair market value, highest and
11 best use.

12 (6) The United States Fish and Wildlife Service
13 is charged with protecting endangered species and
14 administering the cooperative Endangered Species
15 Conservation Fund which may be used for the acqui-
16 sition of private lands, and the Bureau of Land
17 Management is responsible for acquiring the private
18 lands within the Red Cliffs Reserve.

19 (7) The bifurcation of responsibility between
20 the United States Fish and Wildlife Service and the
21 Bureau of Land Management has relegated ELT to
22 a bureaucratic “no-man’s-land”.

23 (8) The Secretary of the Interior and other de-
24 partment officials have characterized the acquisition

1 of the ELT lands to be administered under the HCP
2 and Agreement as a high priority.

3 (9) The Department of the Interior did not re-
4 quest any funds in the budget for fiscal year 2001
5 to purchase the remaining privately held lands with-
6 in the boundaries of the land to be administered by
7 the Bureau of Land Management under the HCP
8 and Agreement.

9 (10) The listing of the desert tortoise and the
10 failure of the Department of the Interior to identify
11 comparable land suitable for exchange within the
12 State of Utah or to fund the purchase of the ELT
13 development land have effectively taken this property
14 from the remaining private land owner, denying it
15 the right to develop or otherwise dispose of the prop-
16 erty.

17 (11) With the creation of the Red Cliffs Re-
18 serve, ELT has been unable to develop its property,
19 which has resulted in extreme financial hardship to
20 the owner, requiring the liquidation of substantial
21 ELT assets.

22 (12) It is in the public interest to complete this
23 land acquisition at the earliest practicable date so
24 that the desert tortoise habitat lands can be ac-
25 quired and preserved by the United States for per-

1 manent public management, use, and enjoyment and
2 the private land owner may be fairly compensated
3 for its lands.

4 **SEC. 2. ACQUISITION OF CERTAIN PROPERTY IN WASH-**
5 **INGTON COUNTY, UTAH.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law, effective on the date of the enactment of this
8 Act, all right, title, and interest in and to, and the right
9 to immediate possession of, the 1,516 acres of real prop-
10 erty owned by ELT, within the Red Cliffs Reserve in
11 Washington County, Utah, and the 34 acres of real prop-
12 erty owned by ELT which is adjacent to the land within
13 the Reserve but is landlocked as a result of the creation
14 of the Reserve, is hereby vested in the United States.

15 (b) COMPENSATION FOR PROPERTY.—Subject to sec-
16 tion 309(f) of the Omnibus Parks and Public Lands Man-
17 agement Act of 1996 (Public Law 104–333), the United
18 States shall pay just compensation to the owners of any
19 real property taken pursuant to this section, determined
20 as of the date of taking. An initial payment of
21 \$15,000,000 shall be made to the owners of such real
22 property not later than 30 days after the date of taking.
23 The remainder shall be paid in cash or, at the option of
24 the land owner, as provided in subsection (e). The full
25 faith and credit of the United States is hereby pledged

1 to the payment of any judgment entered against the
2 United States with respect to the taking of such property.
3 Payment shall be in the amount of the agreed appraised
4 value of such real property plus interest and reasonable
5 costs and expenses of holding such property from Feb-
6 ruary 1990 to the date of final payment or the valuation
7 of such real property awarded by judgment plus interest,
8 reasonable costs and expenses of holding such property
9 from February 1990 to the date of final payment, and
10 reasonable costs and attorney fees. Payment shall be made
11 from the permanent judgment appropriation established
12 pursuant to section 1304 of title 31, United States Code,
13 or from another appropriate Federal Government fund.
14 Interest shall accrue from the date of taking to the date
15 of payment. Interest shall be compounded quarterly and
16 computed at the rate applicable for the period involved,
17 as determined by the Secretary of the Treasury on the
18 basis of the current average market yield on outstanding
19 marketable obligations of the United States of comparable
20 maturities from the date of enactment of this section to
21 the last day of the month preceding the date on which
22 payment is made.

23 (c) DETERMINATION BY COURT IN LIEU OF NEGO-
24 TIATED SETTLEMENT.—In the absence of a negotiated
25 settlement, or an action by the owner, within 90 days after

1 the date of enactment of this section, the Secretary of the
2 Interior shall initiate a proceeding in the United States
3 Federal District Court for the District of Utah, seeking
4 a determination, subject to section 309(f) of the Omnibus
5 Parks and Public Lands Management Act of 1996 (Public
6 Law 104–333), of just compensation with respect to the
7 taking of such property.

8 (d) UNAUTHORIZED USE OF LANDS PROHIBITED.—

9 The Secretary of the Interior shall not allow any unau-
10 thorized use of the lands to be acquired under this sub-
11 section, except that the Secretary of the Interior shall per-
12 mit the orderly termination of all current activities and
13 the removal of any equipment, facilities, or personal prop-
14 erty.

15 (e) SURPLUS PROPERTY ACCOUNT.—If requested by
16 the land owner, the Secretary of the Interior shall credit
17 a surplus property account, to be established in the name
18 of the land owner, in the amount of (1) the agreed ap-
19 praised value of such real property plus interest and rea-
20 sonable costs and expenses of holding such property from
21 February 1996 to the date that surplus property credits
22 become available for use under this subsection, or (2) the
23 valuation of such real property awarded by judgment plus
24 interest, reasonable costs and expenses of holding such
25 property from February 1996 to the date that surplus

1 property credits become available for use under this sub-
2 section, and reasonable costs and attorney fees. The land
3 owner may, using the credit in the surplus property ac-
4 count established pursuant to this section, bid, as any
5 other bidder for surplus property, wherever located, in ac-
6 cordance with the Federal Property and Administrative
7 Act of 1949. The Administrator of General Services shall
8 establish the land owner's surplus property account and
9 shall adjust the credit in the account to reflect successful
10 bids under this subsection. Credit in the surplus property
11 account may be transferred or sold in whole or in part
12 at any time by the land owner to any other party, thereby
13 vesting such party with all the rights of the land owner,
14 and not later than 60 days after such transfer, the land
15 owner shall notify the Administrator of the transfer.

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