

106TH CONGRESS
2D SESSION

S. 2873

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

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”)
7 acquired from the State of Utah 2,440 acres of
8 school trust lands in Washington County, Utah,
9 north of the city of St. George, for residential and
10 recreational development purposes and over the next

1 several years completed appraisals, cost estimates,
2 engineering studies, site plans, surveys, utility lay-
3 outs, and right-of-way negotiations with the city,
4 and obtained water rights for the land.

5 (2) With the issuance by the United States
6 Fish and Wildlife Service of a permit under section
7 10 of the Endangered Species Act of 1973 to Wash-
8 ington County, Utah, and the adoption of the Habi-
9 tat Conservation Plan and Implementation Agree-
10 ment of February of 1996 (hereafter in the Act re-
11 ferred to as “HCP and Agreement”), the Bureau of
12 Land Management assumed an obligation to acquire
13 from willing sellers approximately 12,600 acres of
14 non-Federal land, including the ELT development
15 land, to create the Red Cliffs Reserve for the protec-
16 tion of the desert tortoise.

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

22 (4) With the creation of the Grand Staircase
23 National Monument in 1996 in the State of Utah
24 and the subsequent land exchanges for the consoli-
25 dation of lands necessary for the Monument, there

1 are no longer sufficient comparable lands within the
2 State of Utah to conduct intrastate exchanges for
3 the remaining desert tortoise lands.

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

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

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

19 (8) The Secretary of the Interior and other de-
20 partment officials have characterized the acquisition
21 of the ELT lands to be administered under the HCP
22 and Agreement as a high priority.

23 (9) The Department of the Interior did not re-
24 quest any funds in the budget for fiscal year 2001
25 to purchase the remaining privately held lands with-

1 in the boundaries of the land to be administered by
2 the Bureau of Land Management under the HCP
3 and Agreement.

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

12 (11) With the creation of the Red Cliffs Re-
13 serve, ELT has been unable to develop its property,
14 which has resulted in extreme financial hardship to
15 the owner, requiring the liquidation of substantial
16 ELT assets.

17 (12) It is in the public interest to complete this
18 land acquisition at the earliest practicable date so
19 that the desert tortoise habitat lands can be ac-
20 quired and preserved by the United States for per-
21 manent public management, use, and enjoyment and
22 the private land owner may be fairly compensated
23 for its lands.

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

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

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

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

19 (c) DETERMINATION BY COURT IN LIEU OF NEGO-
20 TIATED SETTLEMENT.—In the absence of a negotiated
21 settlement, or an action by the owner, within 90 days after
22 the date of enactment of this section, the Secretary of the
23 Interior shall initiate a proceeding in the United States
24 Federal District Court for the District of Utah, seeking
25 a determination, subject to section 309(f) of the Omnibus

1 Parks and Public Lands Management Act of 1996 (Public
2 Law 104–333), of just compensation with respect to the
3 taking of such property.

4 (d) UNAUTHORIZED USE OF LANDS PROHIBITED.—
5 The Secretary of the Interior shall not allow any unau-
6 thorized use of the lands to be acquired under this sub-
7 section, except that the Secretary of the Interior shall per-
8 mit the orderly termination of all current activities and
9 the removal of any equipment, facilities, or personal prop-
10 erty.

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

1 other bidder for surplus property, wherever located, in ac-
2 cordance with the Federal Property and Administrative
3 Act of 1949. The Administrator of General Services shall
4 establish the land owner's surplus property account and
5 shall adjust the credit in the account to reflect successful
6 bids under this subsection. Credit in the surplus property
7 account may be transferred or sold in whole or in part
8 at any time by the land owner to any other party, thereby
9 vesting such party with all the rights of the land owner,
10 and not later than 60 days after such transfer, the land
11 owner shall notify the Administrator of the transfer.

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