

PROVIDING FOR ALL RIGHT, TITLE, AND INTEREST IN AND
TO CERTAIN PROPERTY IN WASHINGTON COUNTY, UTAH,
TO BE VESTED IN THE UNITED STATES

OCTOBER 3, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4721]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4721) to provide for all right, title, and interest in and to certain property in Washington County, Utah, to be vested in the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. ACQUISITION OF CERTAIN PROPERTY IN WASHINGTON COUNTY, UTAH.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, effective 30 days after the date of the enactment of this Act, all right, title, and interest in and to, and the right to immediate possession of, the 1,516 acres of real property owned by the Environmental Land Technology, Ltd. (ELT) within the Red Cliffs Reserve in Washington County, Utah, and the 34 acres of real property owned by ELT which is adjacent to the land within the Reserve but is landlocked as a result of the creation of the Reserve, is hereby vested in the United States.

(b) **COMPENSATION FOR PROPERTY.**—Subject to section 309(f) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333), the United States shall pay just compensation to the owner of any real property taken pursuant to this section, determined as of the date of the enactment of this Act. An initial payment of \$15,000,000 shall be made to the owner of such real property not later than 30 days after the date of taking. The full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of—

(1) the appraised value of such real property as agreed to by the land owner and the United States, plus interest from the date of the enactment of this Act; or

(2) the valuation of such real property awarded by judgment, plus interest from the date of the enactment of this Act, reasonable costs and expenses of holding such property from February 1990 to the date of final payment, including damages, if any, and reasonable costs and attorneys fees, as determined by the court. Payment shall be made from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code, or from another appropriate Federal Government fund.

Interest under this subsection shall be compounded in the same manner as provided for in section 1(b)(2)(B) of the Act of April 17, 1954, (Chapter 153; 16 U.S.C. 429b(b)(2)(B)) except that the reference in that provision to “the date of the enactment of the Manassas National Battlefield Park Amendments of 1988” shall be deemed to be a reference to the date of the enactment of this Act.

(c) DETERMINATION BY COURT IN LIEU OF NEGOTIATED SETTLEMENT.—In the absence of a negotiated settlement, or an action by the owner, the Secretary of the Interior shall initiate within 90 days after the date of the enactment of this section a proceeding in the United States Federal District Court for the District of Utah, seeking a determination, subject to section 309(f) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333), of the value of the real property, reasonable costs and expenses of holding such property from February 1990 to the date of final payment, including damages, if any, and reasonable costs and attorneys fees.

PURPOSE OF THE BILL

The purpose of H.R. 4721 is to provide for all right, title, and interest in and to certain property in Washington County, Utah, to be vested in the United States.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4721 would provide that all right, title, and interest in a piece of property, located in Washington County, Utah, be transferred to the federal government. In 1983, Environmental Land Technology, Ltd. (ELT) acquired from the State of Utah 2,440 acres of school trust lands located just north of St. George, Utah, for residential and recreational development. ELT began to develop the property by purchasing water rights, and conducting a series of appraisals, cost estimates, surveys, etc. However, in 1990, the desert tortoise was listed as an endangered species under the Endangered Species Act, and, in 1996, following the issuance of the Habitat Conservation Plan and Implementation Agreement, the Bureau of Land Management (BLM) of the Department of the Interior assumed an obligation to acquire from willing sellers approximately 12,600 acres of non-federal land, including the ELT lands, to create the Red Cliffs Reserve for the protection of the desert tortoise. Since that time, the BLM has been able to acquire, through exchanges or direct purchases, nearly all of the privately-owned property in the area except for the 1,516 acres owned by ELT. From the outset, the Department of the Interior has characterized the acquisition of the ELT lands as a high priority. However, BLM no longer has sufficient comparable lands within the State of Utah to conduct an intrastate land exchange with ELT and the resulting delay in purchasing these lands has imposed an extreme financial hardship on the owner. This legislative taking would include the 1,516 acres located within the Reserve and 34 acres adjacent to the Reserve, which is land-locked because of the creation of the Reserve. All of this property is owned by ELT. H.R. 4721 would authorize the United States to acquire the title to this property, thereby elimi-

nating the last major private inholding within the Red Cliffs Reserve.

Under H.R. 4721, thirty days after enactment, an initial payment of \$15 million would be given to the land owners for compensation of the land, and title would be transferred to the federal government. The remaining balance owed by the government would be paid in cash after a determination of that amount either through negotiations between the land owners and the federal government or by the Federal District Court of Utah if the parties cannot reach an agreement within 90 days. If the fair market value of the lands is determined by the Court, the Court may also consider the cost and expenses of holding the land and damages, if any. Payment shall be made from the permanent judgment appropriation fund (31 U.S. Code 1304) or other appropriate federal government funds.

During consideration of the measure, an amendment was adopted which addressed the issues raised by the Department of the Interior in its testimony before the Subcommittee on National Parks and Public Lands.

COMMITTEE ACTION

H.R. 4721 was introduced by Congressman James Hansen (R-UT) on June 22, 2000. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands. On July 13, 2000, the Subcommittee held a hearing on the bill. On September 20, 2000, the full Resources Committee met to consider the bill. The Subcommittee on National Parks and Public Lands was discharged from further consideration of the bill by unanimous consent. Congressman Hansen offered an amendment in the nature of a substitute which was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. A cost estimate was requested but not received at the time this report is filed. The

Committee believes that the costs involved if this bill is enacted will have an insignificant effect on the federal budget.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Enactment of this bill would require at a minimum the transfer of funds from the Judgment Fund established under 31 U.S.C. 1304, or from another appropriate government fund.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt State, local, or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

H.R. 4721 is a highly unusual measure which raises a number of serious issues. The bill is a legislative taking that provide that upon enactment, all right, title, and interest in 1550 acres of private lands will vest in the United States. This is an extraordinary procedure. Only a few times in the past quarter century has a legislative taking been used by the Congress. Further, the language of the legislation is substantially different from that used in other cases.

There is considerable controversy associated with the land identified by the legislation. Several news articles in Utah have called into question actions by the landowner with regards to this property. Title has been clouded to this land and it is unclear what interests the landowner has and what interests other parties have to the property in question.

As the Administration noted in its testimony opposing H.R. 4721, the bill provides preferential treatment to one landowner and provides compensation above and beyond that received by other landowners. Further, the bill forces the Federal Government to acquire an adjacent 34-acre parcel that it has neither sought to acquire nor does it need.

Bill supporters have accused the Bureau of Land Management of foot-dragging on this acquisition. However, these same supporters failed to get Congressional appropriations earmarked for this acquisition. Despite this BLM has negotiated with the landowner. These negotiations have been hampered by the landowner's insistence on using appraisal assumptions that are inconsistent with Federal standards and that were not used in other transactions, including those done previously with the landowner.

Before we take the extraordinary step of a legislative taking, we should know who benefits and how. Further if we take such a step it should be consistent with what has been done in the past and not create new legal precedents or provide special benefits.

GEORGE MILLER.

