Committee on Resources
Subcommittee on National Parks & Public Lands

Witness Statement

Testimony of James Doyle
General Partner
Environmental Land Technology, Ltd.
before the
Subcommittee on Natural Parks and Public Lands
of the
Committee on Resources
U.S. House of Representatives
in support of
H.R. 4721

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to appear before you today to testify on behalf of H.R. 4721, 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. My name is James Doyle. I am a resident of Sun Valley, Idaho. Through my family's limited partnership known as Environmental Land Technology, Ltd. (ELT), I own the largest parcel of private property located within the Red Cliffs Reserve, which is part of the Washington County Habitat Conservation Plan, established to preserve critical habitat for the desert tortoise in southern Utah. It is in connection with my property in Utah that I appear before you today.

Simply stated, H.R. 4721 is what is commonly referred to as a legislative taking or legislative condemnation bill. This legislation is a measure of last resort. It is a measure appropriately reserved for enactment in only the most extreme cases. I believe, for reasons which I would like to discuss with you today, that this is such a case.

H.R. 4721 provides a fair resolution to what has been a costly and protracted process which, absent this legislation, will not be resolved by itself. It is a resolution to a process that the government originally estimated would take no more than one year to complete. That one year has now stretched into ten. This protracted process has cost me my business. To cover the costs of holding the property and getting the government to meet its obligations, I have had to sell my business assets, including my airplane and my office building in St. George, Utah. I have also had to sell my home in St. George, and just recently, I had to sell my family home in Idaho. Ironically, the Department of the Interior has from the outset characterized the acquisition of my land in Utah as a high priority acquisition, but the Department has yet to include the necessary funding to complete the acquisition in any of its budget requests.

Upon enactment, H.R. 4721 will immediately vest all of my rights in my Washington County property in the United States government. Thereafter, the Department of the Interior and I will have 90 days to reach a negotiated agreement on fair compensation for this land. If we are unable to reach an agreement, the

Secretary of the Interior is required to initiate a proceeding in the Federal District Court for the District of Utah for a judicial determination of just compensation.

Whether or not the compensation is determined through negotiations or by the Federal Court, this bill provides a choice of payments in cash or credits in a surplus property account that can be used to bid on surplus U.S. property. This provision, for which there is congressional precedence, is included to afford greater payment flexibility than a cash outlay only. H.R. 4721 also provides an up front payment in the amount of $15 million which will enable me to forestall forfeiture of any more of my property to creditors. This amount is well below all of the valuation estimates of my property and will be credited against final payment.

This legislation does not address the value of the land. It is not a legislative end run around the government's appraisal process. On the contrary, this legislation allows for the determination of fair market value according to the standards set forth in the Uniform Appraisal Standards for Federal Land Acquisitions prepared by the Department of Justice and the Uniform Standards of Professional Appraisal Practice (USPAP).

I believe it is important to draw a distinction between the determination of fair market value for property included within a habitat conservation plan and the biological value of that property as critical habitat for an endangered or threatened species. In other words, the question about whether the government should pay a certain price to preserve a critical habitat is very different from the determination of fair market value of that property. Fair market value, highest and best use, is determined pursuant to established law, including section 309(f) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333), and generally accepted appraisal standards. On the other hand, the value of property as critical habitat is far more illusive and rooted more in public policy than appraisal standards.

In recent years, there has been considerable controversy surrounding certain land purchases by the Department of the Interior. Critics have argued that the government has paid too much for the land it has acquired. Admittedly, appraising land is not a fine science. There are, however, safeguards which protect the public. One such safeguard is included in this legislation which provides for a judicial determination of value if an agreement cannot be reached with the Department of the Interior.

I believe that appraisal controversies involving lands to be acquired by the Federal government are created by an inherent conflict of interest which exists whenever an agency of the government, no matter how well intentioned it may be, is charged with the dual responsibility of acquiring land, on the one hand, at fair market value, highest and best use, and on the other hand, getting the best deal for the Federal taxpayer. Obviously, what might be thought to be a good deal for the taxpayer is not necessarily fair market value, highest and best use.

Since 1990, when the desert tortoise was first listed as endangered and the time when the land that now lies within the Red Cliffs Reserve was identified as critical habitat, every attempt to resolve this matter has been unsuccessful. I have exhausted both my personal and company resources trying to obtain fair compensation for my property. I have run out of money and can no longer hold this land. After reviewing alternatives with officials in the Department of the Interior and with members of the Utah delegation, we have concluded that this legislation is the only viable option. I am grateful for the assistance I have received from you, Mr. Chairman. I would also like to express my appreciation to the Subcommittee, Senator Bennett and the other members of the Utah delegation, Senator Craig, Congressional staff, Governor Leavitt, and Mr. Ray Brady, Director of the Lands and Realty Division within the Bureau of Land Management.

I would like to briefly summarize the events and circumstances which have led me to this position. Time will not permit a detailed review, but I would be pleased to provide whatever additional background information you may desire.

I am by profession a land developer. I have developed lands throughout the United States and in several foreign countries. In 1981, I began to focus on potential development property north of the City of St. George, Utah, as part of a logical growth pattern for the City. This property is one of the last remaining prime developable properties in the Southwest. The State of Utah owned the land, which it had acquired as part of its in lieu selection and which was administered by the State and Institutional Trust Lands Administration on behalf of the State school system. Over the next few years, 2,440 acres of this land was approved for a pre-development lease, and in1985, my business acquired the lease for this property. Thereafter, I worked closely with the Washington County Commission, as well as the cities of St. George and Washington, in preparation for the development of what was intended to be the largest single real estate project ever developed in that part of the State. We regularly met with government officials, financial backers, and engineering firms and prepared initial engineering studies, proposals for transportation quarters, multiple golf course layouts, bubble diagrams for the various development units, and a major transportation artery that would traverse the development property. All of these efforts are fully documented and can be easily confirmed by public records.

My company performed considerable onsite work in surveying and staking the roadways, golf courses, and developments. Utility layouts for water, sewer, and power were established. Extensive rights of way were negotiated and agreements were reached with the City of St. George in anticipation of annexation by the City of various parts of the project and the location of a debris basin and water storage tanks on the property. From 1985 though 1989, I also spent considerable time and money in converting the development lease into a fee title and obtaining additional water rights for the property. I also applied for an additional 9,560 acres of State lands which was being considered as part of the master plan development project. By the end of 1989, I had lined up financial partners and was anticipating a ground breaking for the initial phase of the project in the summer of 1990.

Then, in March 1990, the U.S. Fish and Wildlife Service listed the desert tortoise as an endangered species. Initially, neither I nor the local city and county officials understood the impact of this decision. We were informed that the land could not be developed until such time as the Fish and Wildlife Service completed a considerable biological assessment and field work necessary to determine the critical habitat for the tortoise. In effect, a large portion of the County was placed off limits to development until the government could determine which parts of the land were needed to protect the tortoise.

Although all on-site work had ceased with the listing of the desert tortoise, and because no one was certain which lands would be needed, over the next few years we continued forward with our planning work under the assumption that at some point we would be allowed to proceed with our development subject to some reasonable restrictions for protecting the tortoise. By 1994, it became apparent that the Federal government intended to designate a 60,000 acre tract of land immediately north of St. George, including our 2,440 acres, as the desert tortoise preserve. In 1996, the Habitat Conservation Plan went into effect, the Bureau of Land Management created the Red Cliffs Reserve, and a fence was placed around my land, further enforcing the on-site work prohibition that went into effect in 1990. The HCP also destroyed the option agreement I had signed for the additional 9,560 acres.

As soon as it was clear that the Federal government intended to prohibit the development of my land,

officials within the Department of the Interior assured me that a quick and equitable solution could be reached. They represented that the process of acquiring my land would take no longer than a year. The time to complete the acquisition was very important because conventional financing needed to hold the property was not available. Even with a high loan to value ratio, bankers were unwilling to lend money against the land without a clear payoff schedule, due to the fact there was no consistency or certainty in payment of funds from the Federal government upon which the banks could rely. Today, virtually all of my net worth is tied to this land. I have no other income producing property, investments, or businesses. To simply sustain this effort to get the government to discharge its obligation to me, I have had to borrow substantial amounts of money, sometimes at interest rates as high as 100 percent. Representations were made that Federal money would be available to help defer the acquisition costs. Unfortunately, those representations never materialized and I have since run into one dead end after another.

The other private land owners within the HCP boundaries and I originally proposed that Section 10 permits be issued to allow us to develop our land consistent with a plan to protect the tortoise habitat. The HCP Steering Committee concurred and voted favorably on that recommendation. However, the Federal government did not approve this approach and determined all of the land within the HCP would be off limits to development. BLM proposed instead an interstate land exchange involving an exchange of all of the private lands within the Reserve for lands of comparable value in southern Nevada. Although we pursued this solution for the better part of a year and a half, for various reasons that did not involve the private land owners in Utah, it failed.

Within the boundaries of the 60,000 acres of the Reserve, there were approximately 21 private and non-federal government land owners. The use of this large tract of land varied from grazing to development. My property was identified by the Department as biologically significant for gene pool exchange among different populations of the tortoise, and as such was originally slated as a high priority acquisition among the land holdings within the HCP. Despite this priority designation, the Department of the Interior nevertheless proceeded to acquire, by purchase or exchange, the lands of all of the other private land owners. I was told that the rationale behind this acquisition sequence was the government's desire to first acquire the smaller holdings. Ironically, many of these smaller holdings were held by interests with far greater staying power than I. The Department of the Interior has spent in excess of $24 million in direct purchases, cash equalization payments, and costs. To date, the government has acquired approximately one third of my land.

After the Nevada exchange fell through, I was encouraged by BLM to enter into an Assembled Land Exchange Agreement with BLM whereby we would choose comparable lands within the State of Utah to be exchanged for my lands. I signed the Agreement and spent nearly a year looking for comparable lands within the State. By late 1997 and early 1998, it appeared we were moving toward possible exchanges.

In 1998, however, I had reached a point where I could no longer hold the land without receiving some compensation to pay off creditors. Under protest, I agreed to a series of sales in which approximately $5.3 million was paid by the BLM in exchange for 349 acres of my land. This was done based on a flawed appraisal promoting a clear downward bias as to value, which had been provided by appraisers recommended by BLM. My creditors were demanding payment, and the government knew it. At closing, the Federal officials, knowing of my financial situation, reduced the amount on which we had previously agreed. Reluctantly, I agreed to a closing where over $10 million worth of my real estate was sold to the Federal government for less than half of its value. Of the proceeds that I received, I had to pay 30% off the top to the State of Utah, based on my original purchase agreement for the acquisition of the State Trust Lands. Most of the rest went to creditors who had lent me money to cover development and holding costs.

On another occasion, BLM and I identified a 550 acre parcel near Leeds, Utah for an exchange. I borrowed a substantial amount of money and proceeded to resolve several closing issues, which included clearing the property with the Washington County Water Conservancy District, obtaining engineering evaluations of the property, spending $250,000 to obtain water rights, and other related work. Then, after ten months of effort, and shortly before the planned closing date, I received a letter from BLM which indicated that for archeological reasons the 550 acres was being withdrawn from consideration.

Discouraged and heavily in debt, I began to look for comparable lands outside of Washington County for possible intrastate land exchanges. In 1996, President Clinton created the Grand Staircase National Monument. Though it was not anticipated at the time of its creation, by 1998, the Monument had a significant adverse impact on my ability to complete an intrastate exchange. Because lands within the designated area of the Grand Staircase included both Federal and non-federal land, the Department of the Interior and the State of Utah commenced a massive exchange to consolidate Federal holdings within the Monument.

In September 1998, the then Acting Director of the Utah office of BLM concluded that because of the large Federal/State exchange for the Monument, there were no longer sufficient comparable lands within the State of Utah to complete the exchange for my lands within the HCP. At that time, the Acting Director recommended a direct purchase by the Department of the Interior of my land as the most feasible approach to acquisition. Without the possibility of an intrastate exchange, my only remaining options were a direct Federal purchase, congressionally approved interstate land exchanges, or legislative condemnation.

Since 1998, I have unsuccessfully pursued both interstate land exchanges and a small intrastate exchange. I have traveled to various sites around the Country from California to Florida looking for interstate exchange sites that might meet with Congressional approval. I have met with literally dozens of BLM, Forest Service, county, and municipal officials in the States of Idaho, Utah, Nevada, New Mexico, and Arizona.

Because of the difficulties inherent in an interstate land exchange, officials at the Department of the Interior continued to encourage a direct purchase. Based on preliminary value estimates, BLM requested $30 million in the FY2000 budget cycle for the purchase of land within the Washington County HCP. In discussions with Department officials, I understood that most or all of this money was to be made available to acquire a significant portion of my lands.

The FY2000 monies were initiated by and included in the BLM land acquisition account and, along with the entire BLM budget request, were forwarded to the Office of Management and Budget for approval. Even though the land within the Red Cliffs Reserve is acquired and owned by BLM, and BLM officials had been involved with all the prior acquisitions within the Reserve, OMB arbitrarily redirected BLM's request to the land acquisition account of the Fish and Wildlife Service Cooperative Endangered Species Conservation Fund. Presumably OMB transferred the funds to the Fish and Wildlife Service account because it involved the purchase of lands within an existing HCP. Not surprisingly, the Fish and Wildlife Service felt no compelling interest to purchase property for BLM. This bifurcation of responsibility within the Department effectively left me in a bureaucratic "no-man's-land." I received none of the money originally requested by BLM for the partial acquisition of my land.

My efforts and the efforts of others to resolve this bureaucratic snafu have been totally unavailing. The government has repeatedly acknowledged its obligation to acquire my land, and in recent correspondence from Secretary Babbitt to Chairman Hansen and Senator Bennett, the Secretary has again characterized the

acquisition as a high priority. Incredibly, however, the Department failed to request any monies for this acquisition in the FY2001 budget request.

I have reluctantly concluded that although this property has been designated as a high priority acquisition, it is clear there is no real incentive for the Department of the Interior to timely complete this transaction. The Federal government has effectively "owned" my land for the last ten years. The land is fenced off and I have no access to it. Without having to actually purchase it, the Department of the Interior enjoys all of the benefits of ownership. Still, I have had to bear all of the holding costs, including the payment of taxes and the considerable cost of getting the government to discharge its obligation. To get to this sorry point, I have had to sell virtually all of my business assets, even my home. I am here today on borrowed money.

There have been promises upon unfulfilled promises from the Department of the Interior that a solution was just around the next corner. But just as I reach that illusive corner, I discover it leads to yet another dead end.

H.R. 4721 is now the only feasible solution to this problem. I have already forfeited a portion of my interest in the property and I can not afford to sustain this costly effort any longer. I respectfully urge the Committee to support H.R. 4721. I appreciate this opportunity to appear before you, and I am ready to answer any questions or provide any information that you require for your consideration of this bill.

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