

**STATEMENT OF TOM FRY**  
**DIRECTOR**  
**BUREAU OF LAND MANAGEMENT**  
**ON**  
**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**  
**BEFORE THE**  
**SENATE ENERGY & NATURAL RESOURCES COMMITTEE**  
**SUBCOMMITTEE ON FORESTS AND PUBLIC LANDS MANAGEMENT**

**September 13, 2000**

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to testify on 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. The Administration opposes this legislation. The bill seeks to accomplish the Federal government's long-awaited and much-desired acquisition of the last major block of private lands within the Washington County Habitat Conservation Plan (HCP) area near St. George, Utah. Specifically at issue is the area known as the Red Cliffs Desert Reserve which provides critical habitat for the threatened desert tortoise. There is no disagreement as to the important goal and desire to consummate the final, critical acquisitions in this unique and special place, yet we believe the objectives of

S. 2873 can be accomplished through the normal land acquisition process for which the Bureau of Land Management (BLM) has well-established procedures. I would like to point out that the Administration also opposed Mr. Hansen's companion bill on this issue, H.R. 4721, at the House Resources Committee hearing held on July 13, 2000. I will now briefly outline the legislation and our reasons for opposing it.

S. 2873 would provide for the acquisition by the BLM of all right, title and interest to 1,516 acres of private property within the Red Cliffs Desert Reserve and 34 acres of private property adjacent to the Reserve. The Red Cliffs Desert Reserve was established in 1996 as part of the Desert Tortoise HCP for Washington County, Utah. The County developed the HCP, with technical advice from the Fish and Wildlife Service, in order to receive a permit to allow for the incidental take of about 12,000 acres of privately-held desert tortoise habitat and to mitigate that take by developing the Reserve to ensure the protection and recovery of the threatened Desert Tortoise and other listed species in the area. S. 2873 provides compensation to the private landowner, Environmental Land Technology, Ltd. (ELT) as of the date of the approval of the HCP, with an initial payment of \$15 million and any remaining judgment backed by the full faith and credit of the United States. Compensation would also include interest, reasonable costs, expenses of holding the property and attorney fees from February 1996 to the date of final payment.

Since 1996, BLM has coordinated the acquisition of nearly 4,400 acres of Desert Tortoise Habitat within the Red Cliffs Desert Reserve worth approximately \$35 million. These state and private acquisitions have included land exchanges, direct purchases at fair market value and one donation. BLM has expended \$10.5 million in Land and Water Conservation Fund (LWCF) monies to date in completing land purchases and has an additional \$1.5 million available to purchase high value habitat in FY 2000. BLM has

completed five separate transactions with ELT, the private landowner at issue in S. 2873, for a total of approximately 383 acres, including both exchanges and LWCF purchases.

In addition, since 1997, the Fish and Wildlife Service has provided approximately \$4.7 million in grants to the State of Utah for land acquisitions associated with the Washington County HCP. These grants were provided through the Service's HCP Land Acquisition Program under the Endangered Species Act section 6 Cooperative Endangered Species Conservation Fund. The Washington County HCP is one of only two HCPs which have received funding through this program in each year since its inception in 1997. This program is based on a competitive proposal process. To date, the Fish and Wildlife Service has not received a proposal for grant assistance for acquisition of the 1,500 acre ELT property. If a proposal were submitted and included the required 25% non-Federal cost sharing, it would be eligible to compete for funding under the HCP Land Acquisition Program. However, the acquisition would have to satisfy all applicable Federal appraisal and other land acquisition requirements.

These transactions demonstrate a long-term record of successful accomplishments in meeting the goals and objectives of the HCP despite widely varying expectations by many landowners.

The Administration believes that S. 2873 is not in the public interest for several reasons:

- 1) S. 2873 provides preferential treatment to one land owner and provides for compensation above and beyond the benefits received by other landowners in previous acquisitions in this area. The amounts that S. 2873 directs the landowner be paid are not supported by the preliminary appraisal for this property and, in fact, are considerably in excess of the appraised values on other adjacent properties. We see no justification to add interest, reasonable costs, expenses of holding the property and attorney fees to any settlement with the private landowner. Given the early absence of clear title and other delays in final settlement, no such considerations are in the public interest.
- 2) The bill also legislates the acquisition of 34 acres adjacent to but not within the Reserve. This parcel abuts the Reserve on only one side and is surrounded on three sides by private land which has been developed. Access is available to the parcel through adjacent lands. The parcel has not been included in any agreement, it is not addressed in the HCP and because of its size and configuration, it has marginal potential for habitat management. We have no reason to believe that the public interest would be well served by this 34-acre acquisition.
- 3) The BLM has attempted to work with ELT over the last four years to reach agreement on a fair and reasonable process in conducting appraisals in reaching agreement on the value of the remaining 1,500 acres. After completing a number of previous transactions using approved and acceptable appraisal standards, the company has departed from the process and sought independent private appraisers who have used appraisal assumptions not consistent with BLM policies and procedures used on previous HCP acquisitions. All previous appraisal reports have complied with Public Law 104-333, the Omnibus Parks and Public Lands Management Act of 1996, which requires the BLM to disregard the listing of the Desert Tortoise in the appraisals and determination of value for other properties. Appraisals involving Federal acquisitions must carefully conform to established and accepted procedures to ensure a fair and an unbiased estimate of value. Laws and regulations pertaining to land exchanges provide reasonable administrative discretion for resolving disputes concerning property value.
- 4) S. 2873 would provide for the acquisition of all right, title and interest of the 1,516 acres of property within the Reserve and the additional 34 acres outside the Reserve. Title to the subject property was clouded by litigation for many years with the State of Utah and was not resolved until a settlement was signed between the parties in 1997. We are uncertain as to what rights, title and interest the land owner may possess at this time. The State of Utah may have also retained the mineral rights to these properties. There is also some concern that title may still be encumbered by other liens or financial obligations.

5) The legislation is premature because it circumvents the normal court considerations of a property owner's claims. The property owner has the right to bring a civil action in a court of law to seek indemnification for an alleged government taking of private property. The court would determine whether the property has been taken and the amount of just compensation. If S. 2873 is a legislative taking, Congress should determine the full amount of just compensation and leave it to the property owner to contest the payment.

6) The legislation requires the United States to take title immediately upon enactment but does not provide an adequate time frame to ensure clear title or remove encumbrances, potential liens, and satisfy property taxes that may be due on the property. Also, the bill does not address how or when to complete pre-acquisition site assessments, hazardous material investigations and follow through on findings to protect the interests of the United States.

In closing, Mr. Chairman, the acquisition of these lands within the Reserve is a high priority for the BLM and the Fish and Wildlife Service because there is no question this area is critical to the protection and recovery of the Desert Tortoise. The HCP has provided a mechanism to both protect listed species and allow for continued economic opportunities in Washington County, Utah. Completion of the land acquisition goals within the Reserve is supported by State and local officials, the Utah Congressional delegation and the Administration. We fully support the concept of transferring title to the land inside the reserve to the Bureau of Land Management in a manner that compensates the landowner in accordance with existing Federal law. We thank Mr. Bennett for his efforts to resolve this difficult issue. While we cannot support S. 2873 for the reasons set forth in this testimony, we are nevertheless committed to working with the land owner to finalize the acquisition of its lands within the Red Cliffs Desert Reserve. This concludes my statement. I would be pleased to answer any questions at this time.