

QUADSTATE COUNTY GOVERNMENT COALITION

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PRESS RELEASE

**QuadState Coalition asks Department of Interior for relief from
desert tortoise land use restrictions**

FOR IMMEDIATE RELEASE

June 27, 2003

The QuadState County Government Coalition, an organization of six county governments within four states in the Mojave desert region and the six counties each on their own behalf, announced today their intention to file a lawsuit against the United States Department of the Interior and two of its agencies (U.S. Fish and Wildlife Service and Bureau of Land Management) in order to correct violations of the federal Endangered Species Act (ESA) concerning the desert tortoise (*Gopherus agassizii*) and its population in the Mojave desert. In 1990, the Mojave desert tortoise population was listed as a "threatened species" under the ESA. The federal government designated over 6.4 million acres as "critical habitat" for the tortoise population in 1994. The U.S. Fish and Wildlife Service followed the critical habitat designation with the adoption of the Desert Tortoise Recovery Plan in June 1994.

Today, the QuadState Coalition and its member counties submitted a 60 day Notice of Intent to file an Endangered Species Act citizen suit. The reasons for pursuing this step, which is preparatory to filing litigation, include: 1) the failure of the Fish and Wildlife Service to conduct the monitoring and reassessments required by the Desert Tortoise Recovery Plan; 2) arbitrary decision-making by Fish and Wildlife Service and Bureau of Land Management related to federal land management decisions; 3) failure to minimize adverse socio-economic effects as part of the Desert Tortoise Recovery Plan; 4) failure to use the best available science in rendering numerous federal agency decisions; and 5) other technical and

procedural reasons outlined in the 60-day notification letter. In addition to challenging violations of the ESA, the notification also asserts claims under the Administrative Procedures Act, Federal Land Policy and Management Act, National Environmental Policy Act and other laws.

The QuadState County Government Coalition is a Joint Powers Agency formed in 1998 to provide a multi-county voice on federal natural resource management and public lands issues in the Mojave Desert region. The Coalition's intent is to ensure that federal land management regulations and programs related to the desert tortoise and other species protected under ESA are based on sound science and do not unreasonably preclude multiple-use concepts in the management of such lands. The QuadState members include Kern, Imperial and San Bernardino Counties, in California; Washington County, Utah; Lincoln County Nevada; and Mohave County, Arizona.

Crowell & Moring LLP is providing legal representation in the pursuit of the lawsuit. The federal government's failure to ensure that recovery planning and management efforts are based on sound science and rational management decisions left the QuadState Coalition and its member counties no choice but to exert its rights to seek a legal remedy to ensure that ESA is being administered in the manner intended by Congress.

Further information can be obtained by contacting Gerald Hillier, Executive Director, QuadState County Government Coalition at (909) 683-5725 or Ted James, Kern County Planning Director at (661) 862-8616.

QUADSTATE COALITION ASKS DEPARTMENT OF THE INTERIOR FOR RELIEF FROM DESERT TORTOISE LAND USE RESTRICTIONS

ADDITIONAL INFORMATION

For release: Friday June 27, 2003

The underlying purpose of the 60-day notice of intent filed today is to seek full formal review by the Department of Interior (Department) of the desert tortoise recovery plan, which has governed, since 1994, federal land management and other federal agency actions, and which to date has not had measurable or measured effects upon desert tortoise populations. The recovery plan, according to the notice, has primarily restricted historic and managed land uses and activity, while ignoring the Department's own data indicating the primary cause of population decline has been from a variety of diseases and predation. It also asks for review and reconsideration of land use plans adopted under the umbrella of the existing recovery plan.

The Government's General Accounting Office (GAO), a watchdog agency which oversees and audits Federal programs, issued a report in December 2002 that confirmed that the agencies had spent approximately \$100,000,000 of Federal funds on tortoise management in the past decade, yet they could not show, and had not even attempted to measure, whether such expenditures had had any beneficial effect on the desert tortoise. All indications were that the expenditures had resulted in little or no action on the admitted primary cause of tortoise decline. Most recently these declines have been attributed to diseases and predation by ravens, feral dogs and other causes.

The 60-day notice also covers the specific costs and damages to local governments and their constituents. The Bureau of Land Management (BLM) and National Park Service (NPS) have developed and implemented land use plans throughout the Mojave Desert region over the past eight years, following the recommendations contained in the Fish and Wildlife Service (FWS) recovery plan.

Even though county governments have fully participated in developing those land use plans, most suggestions and proposals to adopt modifications and alternative management strategies have been rebuffed by both the BLM and the Park Service. Both land management agencies, part of the Interior Department, along with the FWS, have felt compelled to impose draconian restrictions on historic land use and public access throughout the region based on the recovery plan.

Imperial County Supervisor Wally Leimgruber, the Coalition's chairman said that tortoise management has had a profound effect on the county's economic activity, placing huge costs on mining and access in the region. "The \$100,000,000 expenditure cited by the General Accounting Office for tortoise recovery does not even begin to capture the costs

which have been borne for mitigation by private investors in Imperial County and elsewhere. Combined with the impacts from land closures as a result of the California Desert Protection Act, (CDPA) BLM does not seem to care or even monitor whether all this has done any good. Congress passed the CDPA in 1994, after the recovery plan was adopted. After creating almost 9,000,000 acres of Wilderness, and establishing new National Park areas, the agencies just seem to want more land closure and restriction. Part of the justification for the Wilderness was to protect tortoises. They have yet to tell us what the effect of all the CDPA closure has been before they want to add more."

Kern County Supervisors, Jon McQuiston and Don Maben, have similar experiences. McQuiston states, "We have worked closely with BLM over the years on all aspects of land use planning, and when it comes to decisions, they simply fall back on the recovery plan, despite all the evidence that says that in the last decade and a half, it has been the respiratory disease and raven predation that have been having the greatest effects." Citing tortoise declines in the Desert Tortoise Natural Area near California City, an area protected since 1975, Maben added, "Even where they apply full and complete closure, it doesn't help. Why do they need to add more?" Fish and Wildlife promised to update the recovery plan; they broke that promise. Despite five years of our exhaustive efforts working through the public process; the GAO report; the BLM Desert District Advisory Council requesting the review and Congress directing the review, we are still developing and implementing faulty land management plans based on the un-reviewed recovery plan. We have no other recourse.

San Bernardino Supervisor Bill Postmus whose District and County encompass the largest area of tortoise habitat and population has been particularly concerned over the loss of tax base within the county, as well as the imposition of so many land use restrictions. "BLM totally rejected all of our input in both the Northern and Eastern Colorado plans adopted last year. While our communication with BLM has recently improved, they seem stuck in the same rut that the recovery plan is the do-all and end-all of land management." He added, "it took a special legislative amendment from Congressman Lewis to get just the small expansion to Fort Irwin approved to better train our troops. BLM and FWS had held the Army in a vise for years over tortoise management, and I cannot tell you how much the Army has spent on research related to disease and translocation, yet the agencies continue to reject even modest proposals which would completely mitigate the lost acreage."

Postmus, whose District has perhaps been the most negatively affected, continued on, "BLM has tried to drive our remaining ranchers out of business in spite of data that shows some of the best remaining tortoise populations are in the cattle allotments. It has no regard for the costs to private companies and local government for mitigation. Our county, to acquire its landfills that were developed on BLM land under a special Federal program was requested by BLM to assume title and all liability, and then BLM proposed the county pay it almost \$3 million to offset the 'lost habitat.' While the County was able to negotiate the figure downward, it still had to 'donate' almost 1,200 acres of land to BLM for part of the mitigation."

Lincoln County Commissioner Tim Perkins cited the Caliente Land use plan, which eliminated grazing on several allotments and severely restricted even extraction of sand and gravel for highway maintenance. "The plan said our tortoise populations were stable, we protested on this inconsistency, and they summarily rejected our input." He added, "Lincoln County has only 2 percent private land."

Washington County has had a habitat conservation plan on a portion of its county for several years. It has permitted community expansion in St. George through the elimination of uses from the Red Cliffs and City Creek areas and land acquisition by the State and BLM. Commissioner Alan Gardner said, "Our concern has been in the Beaver Dam Slope area to the south. BLM decisions removed spring use from the region, basically eliminating its value. All indications were that the highway and historic collection and perhaps even the open-air atomic testing in the 1960's had affected populations. Yet BLM insisted that cattle had to go, despite lack of any data on adverse impacts."

Mohave County Supervisor Buster Johnson indicated that his county has been affected as a spillover from the Washington County effects. "Most of our cattle operations came out of the St. George area. BLM adopted a land use plan that closed two allotments without even compensating the ranchers for their loss, and so greatly restricted the other allotments that their use has become uneconomic." He further stated, "Another one of our County's biggest concerns is in closing down desert access to private citizens." He added that BLM had also imposed restrictions on use of materials sites for county road maintenance.

The recovery plan for desert tortoise, the focus of the 60-day notice, provided for a formal review within three to five years of adoption. While it should have occurred by 1999 at the latest, the FWS has failed to commence such formal review. BLM, in the meantime, has pressed ahead with continued planning decisions, land acquisition and requirements for high-cost mitigation.

QuadState County Government Coalition is a Joint Powers Authority created under the laws of Arizona, California, Nevada and Utah. It joins six counties in those States - - Mohave, Imperial, Kern, San Bernardino, Lincoln and Washington Counties - - in a coordinated program related to items of mutual concern regarding public lands and natural resource issues in the region. Its initial efforts have been related to management actions associated with the Federal Endangered Species Act. The Coalition's activity also includes providing a clearinghouse on all matters affecting public land management, regulations and land use planning. In addition, it represents local governments on the Lower Colorado River Multi-Species Conservation Plan program.