



**Statement Of
Robert Lovingood
First District Supervisor, San Bernardino County, CA**

**Before the
Subcommittee on Federal Lands
Committee on Natural Resources
U.S. House of Representatives
April 15, 2015**

**Federal Land Acquisition and Its Impacts on Communities
and the Environment**

Good morning. Thank you Chairman McClintock, Ranking Member Tsongas and members of the committee for the opportunity to testify on federal land acquisition and its impacts on community and the environment. I am pleased to be here to share our experience and recommendations for change in Federal policies.

My name is Robert Lovingood and I am an elected County Supervisor representing the First District in San Bernardino County. I represent approximately 450,000 constituents, and my district encompasses over 15,000 square miles.

San Bernardino County, at more than 20,000 square miles, is the largest county in the Lower 48. We are bordered by Los Angeles, Orange and Riverside counties as well as the Arizona and Nevada state lines. You could comfortably fit New Hampshire, Connecticut, and Delaware within our boundaries. And just for good measure, you could drop in Rhode Island and Washington, D.C., and you will still have room to spare. We have all or part of three National Park units, and all or part of five military bases, representing all four services. Located within our county, we have the two premier, state-of-the-art training facilities for soldiers who deploy overseas, at approximately 1,000 square miles each. Those are the National Training Centers at Fort Irwin, and the Marine Corps Air Ground Combat Center, Twentynine Palms.

Much of the Mojave Desert lies within our county, and more than 80 percent of our land mass is owned and administered by the Federal Government. That is the crux of the issue I am here to discuss today. The federal holdings keep expanding, and that expansion has impacts on our residents, economy and local government.

In the past 15 years, San Bernardino County has lost 585,000 private acres to Bureau of Land Management (BLM) acquisitions and has lost more than 204,000 private acres to National Park Service (NPS) acquisitions in that time. This totals nearly 789,000 acres, and may not reflect the actual total since we understand the Army has acquired another 130,000 acres to compensate and mitigate for the expansion of Ft. Irwin. That is nearly one million acres lost. We know of no other county, parish or borough which has been as impacted. But while these numbers may be large, our experience is not unique. Other western counties have had, and continue to have, similar experiences. Many of those counties are small and with limited resources, so any erosion of their tax base, or loss of development potential, or loss of access to public lands for economic activities, is genuinely harmful. For example, our neighbor to the north, Inyo County, along the eastern side of the Sierra Nevada, has 98 percent of its land in Federal ownership. With a small population, any project that requires private land mitigation further erodes their already very modest tax base.

Over the past 15 years, we estimate that San Bernardino County has likely lost \$15 to \$20 million in property tax revenue for lands lost to federal ownership. This results in loss of economic development opportunities to counties and states, and for counties, loss of tax base and revenue required to support an expanding population, mandated programs and local initiatives to serve our citizens.

San Bernardino County has been so impacted by land acquisition, that in 1999 it joined with other counties in four western states to form a Joint Powers Authority (JPA) to address these issues. It currently has nine counties, all with significant federal land holdings, as members. The JPA, QuadState Local Governments Authority, passed a resolution asking federal agencies to find other means of mitigating for projects than land acquisition. The resolution was subsequently adopted by the National Association of Counties, which has added it to its platform after consideration by its Public Lands Steering Committee. There has been unanimous support in that organization for identifying the problem and urging other means of mitigation.

How did we get here? Historical actions, both legislative and administrative, have had a significant impact on private lands and multiple uses on public lands.

Designations of new wilderness areas and expansions of national parks, such as the California Desert Protection Act (CDPA), have made adjacent private lands or inholdings prime targets for acquisition. The CDPA was passed in 1994, affecting a broad area of Southern California, but with profound effects on San Bernardino County simply because of the county's size and geographic placement, as well as varied physiography and ecosystems. The CDPA also created the Mojave National Preserve transferring almost 1.5 million acres from Bureau of Land Management multiple use management to the National Park Service, and expanded both Death Valley and Joshua Tree National Parks.

The designation of critical habitat for the desert tortoise in 1994 and subsequent Recovery Plans made acquisition of private land a principal recovery action. Of seven critical habitat units in California, six lie entirely or partially within San Bernardino County. The recovery plan listed land acquisitions of habitat as a very high priority and many of the units contain a mix of up to a 50-50 split between existing public and private land. As part of moving forward and gaining improved commitment, Fish and Wildlife Services organized Recovery Implementation Teams and work groups. They were composed of biologists, a few user representatives, and a single local government representative. Those groups, of which there were three in California (all or part in San Bernardino County) continued to press for land acquisition as being a top priority action item.

The largest single transfer of private to public land in our area occurred in 1999, with the commencement of an acquisition of the former railroad checkerboard land across San Bernardino County from the Catellus Development Corporation. Approximately 500,000 acres were transferred.

Currently, new solar projects, spurred by federal law, executive order and state mandates, also created a rush for private land to meet mitigation requirements of the wildlife agencies, not only for the desert tortoise, but for a variety of other species. You may be familiar with a large renewable project, located in our county near the Nevada State Line. The solar plant covers six square miles of public land on what had been quality habitat for the desert tortoise. To mitigate the impacts to the tortoise, the

developer had to acquire private land that was of comparable habitat value at a ratio of “only” 2-to-1. Mitigation ratios of 3-to-1, even 5-to-1 are not uncommon. That means the developer had to locate and purchase more than 7,000 acres or 12 square miles of private land. That land comes off the tax rolls, and any potential future economic activity on that land is lost – forever.

Land trusts continue to acquire land in the county and the desert. One such trust is active in the Joshua Tree-Twenty-nine Palms area. The goals are quite specific, the land, at least in the Highway 62 corridor, will be directed toward further expansion of Joshua Tree National Park. This is in addition to the Department of Defense’s Readiness and Environmental Protection Integration, which has been active in seeking land acquisition.

It is fair to estimate that since 2000, San Bernardino County, on the basis of acreages and assessed valuations, has lost anywhere between \$1 million to \$1.5 million per year in tax revenue, totaling \$15 to \$20 million for lands lost to federal ownership. This loss is in perpetuity, not counting the foregoing of any future economic use or activity.

Additionally, for the land acquired by BLM, the agency faces management mandates that work against its multiple-use management mission and basic Congressional direction. When land is acquired for mitigation, the wildlife agencies expect it to be conserved. In practice, rather than multiple-use, it translates to non-use. Public lands are a major economic asset to this and other western counties. In our area, the Mojave Desert attracts many off-highway vehicle enthusiasts as well as hikers, campers and others. However the mining industry is a key component of our local economy, providing several thousand good-paying mining and mining-support jobs in our county. The more land that is closed to exploration harms our economy. Federal acquisition of more lands results in further unfunded mandates that hinder multiple-use access on thousands of square miles of the public’s land. While the federal government is responsible for the Mojave National Park, the federal government didn’t take responsibility for maintaining public roads within those lands. Many of those roads are so deteriorated that they are nearly impassable.

And then, there’s just the practical issue of the shrinking resources federal agencies have to manage the lands they already have. As more federal lands in our county are acquired, we have seen firsthand how resources to maintain and protect the existing federal lands have been spread too thin and result in very serious consequences for our constituents. For example, with the backlog of maintenance from lack of federal funding, there are not enough resources to protect those lands and the people who live nearby from wildfires and the resurgence of the bark beetle. In other words, new federal lands simply dilute those precious resources that are much needed now to safeguard people and the environment.

So, the spiral is we lose our private lands, and any development opportunity they may possess, and we lose tax base that supports services that are still required in the region. The focus on conservation of the acquired lands means the loss of access for the public to their public lands, for both recreational and economic activities.

Finally, with the additional acquisitions, we receive no offsetting benefit from the Payment in Lieu of Taxes (PILT) program. With some \$8 million acres in federal entitlement acres in the county we are capped out and receive no more than the payment due for any county that exceeds 50,000 in population. For example, in 2014, San Bernardino County received approximately \$3.3 million which is near the maximum that any county can receive, but amounting to only \$0.39 per federal acre, against a PILT allowable base payment in 2014 of \$2.58 per acre.

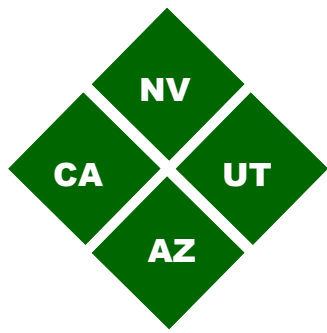
For large federal holding counties, such as San Bernardino, the transfer of private land to the federal estate, with one exception, results in no more PILT payment to offset the loss. The one exception is that under Section 6904 acquisitions in NPS administered areas continue to pay property taxes, but only for five years. San Bernardino County has received an average of around \$20,000 per year from these payments, indicating the continued aggressive acquisitions in the Mojave National Park, though specific parcel's payments terminate in five years. The 2013 payment was \$19,033 and \$22,254 in 2014. When PILT was written in 1976, there was an underlying assumption that private lands acquired in the national forests or BLM areas would produce a revenue stream to the agencies and potentially the economic activity would yield benefits to local government. The times have changed, and this outlook is no longer viable, certainly as far as San Bernardino County is concerned.

Based on our experience we recommend the Committee consider the following:

- That further federal land acquisition become a minimal program, and open ended funding not be provided to the agencies except for cases of extreme justification.
- Establish a system that requires all proposed federal land acquisitions to receive prior concurrence from the local government entity within whose jurisdiction the targeted land lies.
- When the federal government does acquire private land, it should be required to pay the equivalent of the previous annual property taxes in perpetuity to the local jurisdiction. This is especially critical in those counties like San Bernardino that remain capped and PILT formulas remain unchanged. This funding is necessary for the mitigation of unmaintained federal lands and to protect the people and property of the area, especially during times of wildfires or flooding.
- Eliminate or minimize federal land acquisition under the concept of "compensation" as a mitigation measure for development projects, in favor of management actions that actually help the affected species. Such acquisitions occur without congressional oversight, and are being made in a manner which virtually creates new de facto wilderness areas among lands that should be managed under the multiple use programs envisioned by Congress in the National Forests and on BLM administered land.

To be clear, we value our Public Lands in San Bernardino County. They are an environmental and economic asset of incomparable value. I live in the desert and like the vast majority of my fellow residents, I live there by choice. I also believe in expanding economic opportunities along with improving the quality of life for our residents, while maintaining the resources for effective and responsive local government. Our ultimate goal is to strike a balance between economic growth and protection of our natural resources. Endless expansion of the federal estate does not foster that goal.

Thank you for the opportunity to speak today. I welcome questions and comments, and offer our assistance in developing a program or policies which reduce the effects of federal land acquisitions, and assures that counties retain sufficient land to provide viable economic development opportunities.



QUADSTATE LOCAL GOVERNMENTS AUTHORITY

An Interstate Joint Powers Authority Established in 1999

**Attachment to Testimony of Robert Lovingood
To Subcommittee on Federal Lands
April 15, 2015**

State of Arizona
County of La Paz
County of Mohave

State of California
County of Imperial
County of Kern
County of San Bernardino

State of Nevada
County of Lincoln
County of Nye

State of Utah
County of Washington

Associate Members
City of Ridgecrest, CA

Resolution on Acquisition of Private Land for Wildlife Mitigation, Associated with Renewable Energy Development, with Subsequent Transfer to Federal Agencies

Issue: Wildlife agencies (State and Federal) have required the purchase of private land and its transfer to government agencies or non-governmental organizations (NGOs) as mitigation for projects that will occupy habitat or impact species with status under Federal or State law or regulation. Such acquisitions remove private land from tax rolls. When the land becomes federal or state, many counties not only lose the property tax revenue, they fall outside the limits of Payment in Lieu of Taxes (PILT) accounting. Large renewable energy development projects have exacerbated the situation.

Proposed Policy: NACo requests the land and wildlife management agencies adopt procedures that provide for project mitigation other than through land transfer from private to public ownership. When such transfers are deemed the only appropriate mitigation, and offsetting PILT will not occur, then agencies must provide that project developer would continue to pay the property tax on the transferred land, or fees in lieu of taxes, in perpetuity, unless the land is restored to private ownership at a future date.

Background: The land and wildlife management agencies have sought land mitigation for impacted habitat for a variety of species, mostly those with listed status under the Endangered Species Act. Such mitigation often is required at a multiplied factor, e.g. 3:1, in which the project developer must “donate” a multiple of private land to the permitting agency or designated entity as mitigation. Such land is removed from the tax rolls. Further, land is placed in “conservation” status under which it has limited use and no revenue generation.

Many projects are located in counties in which PILT payments are capped because of already large Federal estates; thus transfers may add to the federal estate and counties do not receive additional PILT payment reflecting the expansion. Further, since the acquiring agencies are usually BLM or the Forest Service, counties cannot receive PILT under Sections 6904 or 6905.

Most projects utilize significant parts of local government infrastructure, including county roads for project development, operation and maintenance. In addition development may use other county services, including solid waste disposal, law enforcement, public health, and fire and emergency medical response during the life of the project.

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Offsetting the loss of tax base must become an essential part of renewable project mitigation, even when mitigation land is transferred to a state agency or NGO. Mitigation should be accomplished by project developers depositing funds for use to provide other kinds of mitigation investment equivalent to the amount that might otherwise be invested in land acquisition.

Policy options: Expand current PILT requirement that only additions to the Federal estate by NPS or in National Forest wilderness can receive payment under Section 6904 by adding all federal agencies to law. Further, remove the 5-year limit on such payments.

Fiscal Urban/Rural Impact: While development may provide some positives to local economies, local governments should not be left with losses and costs associated with the project. The policy will assure a steady revenue stream regardless of mitigation requirements as well as funding for county infrastructure and services.

Sponsor: Brad Mitzelfelt, Supervisor, San Bernardino County, California

History:

Resolution set up in format with statements as required by National Association of Counties (NACo).

Originally passed by QuadState Board of Directors, June 11, 2010, with specific direction it be carried forward to NACo to get national attention and coverage.

Adopted by NACo Public Lands Steering Committee, July 17, 2010, Reno NV, and by Board.

Resolution was re-adopted by the NACo Public Lands Steering Committee July 16, 2011, Portland OR.

Resolution was re-adopted by the NACo Public Lands Steering Committee July 14, 2012, Pittsburgh PA, and by the Board.

Recommendation to continue resolution from QuadState Local Governments Authority passed by Board of Directors January 25, 2013.

Resolution re-adopted by NACo Public Lands Steering Committee, July 19, 2013, Ft. Worth TX, and by the Board, and placed in NACo Platform.