

Vanessa Hickman, Arizona State Land Commissioner

Legal & Policy Matters

February 20, 2015

ESA

- ▣ Citizen Suit Provision – grants individuals and groups standing
- ▣ Plaintiff can be awarded attorneys fees--- taxpayer dollars
- ▣ Deadline litigation
- ▣ 2009 – 2010 WildEarth filed numerous lawsuits against the Secretary of Interior & US Fish & Wildlife
- ▣ Over 700 Petitions – list as T&E

ESA

- ▣ Guardians filed 10 complaints against Service – missing deadlines
- ▣ June 2010 – Actions consolidated
- ▣ Service & Guardians Settlement – submit either a proposed listing rule or a non-warranted finding for hundreds of species by 9/30/16
- ▣ On top of the hundreds of species already in front of USF&W from a CBD mega-petition prior to the MDL
- ▣ Guardians agreed to refrain from filing similar suits until 3/31/17
- ▣ While Wildearth Agreed to refrain from filing more than 10 petitions per year, CBD did not.

ESA

- ▣ In 2012 CBD petitioned for listing of 53 species
- ▣ Over 640 actions before USF&W currently
- ▣ Litigation estimated to have cost taxpayers 206 million to process paperwork – not including attorneys fees
- ▣ In AZ alone 42 proposed actions – either listings or critical habitat
- ▣ Recent win – shovel nosed snake – challenge??
- ▣ Roundtail – thousands of acres of streams

State Trust Land in Arizona

USFWS Threatened & Endangered Species In Arizona

- Kearney's Blue-star
- Arizona Hedgehog Cactus
- Brady Pincushion Cactus
- Cochise Pincushion Cactus
- Nichol's Turk's Head Cactus
- Peebles Navajo Cactus
- Pima Pineapple Cactus
- Siler Pincushion Cactus
- Arizona Cliff Rose
- Jones Cycladenia
- Canelo Hills Ladies' -tresses
- Holmgren Milk-vetch
- Sentry Milk-vetch
- Welsh's Milkweed
- San Francisco Peaks Ragwort
- Navajo Sedge
- Huachuca Water-umbel
- Fickeisen Plains Cactus
- New Mexican Ridge-Nosed Rattlesnake
- Northern Mexican Gartersnake
- Narrow Headed Gartersnake
- Masked Bobwhite Quail
- California Condor
- Black-Footed Ferret
- Southwestern Willow Flycatcher
- Mexican Spotted Owl
- California least tern
- Yuma Clipper Rail
- Lesser Long-Nosed Bat
- Sonoran Pronghorn Antelope
- Jaguar
- Ocelot
- Mt. Graham Red Squirrel
- Hualapai Mexican Vole
- Kanab Ambersnail
- San Bernardino Springsnail
- Three Forks Springsnail

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State Trust Land in Arizona

Arizona Threatened, Endangered and Candidate Species

Maricopa – Pinal – Pima Counties

- Acuna Cactus
- Kearney's Blue-star
- Arizona Hedgehog Cactus
- Northern Mexican Gartersnake
- Nichol's Turk's Head Cactus
- Pima Pineapple Cactus
- Arizona Cliff Rose
- Huachuca Water-umbel
- Masked Bobwhite Quail
- Southwestern Willow Flycatcher
- Mexican Spotted Owl
- Yuma Clipper Rail
- Lesser Long-Nosed Bat
- Sonoran Pronghorn Antelope
- Jaguar
- Ocelot

Statewide Candidate Species

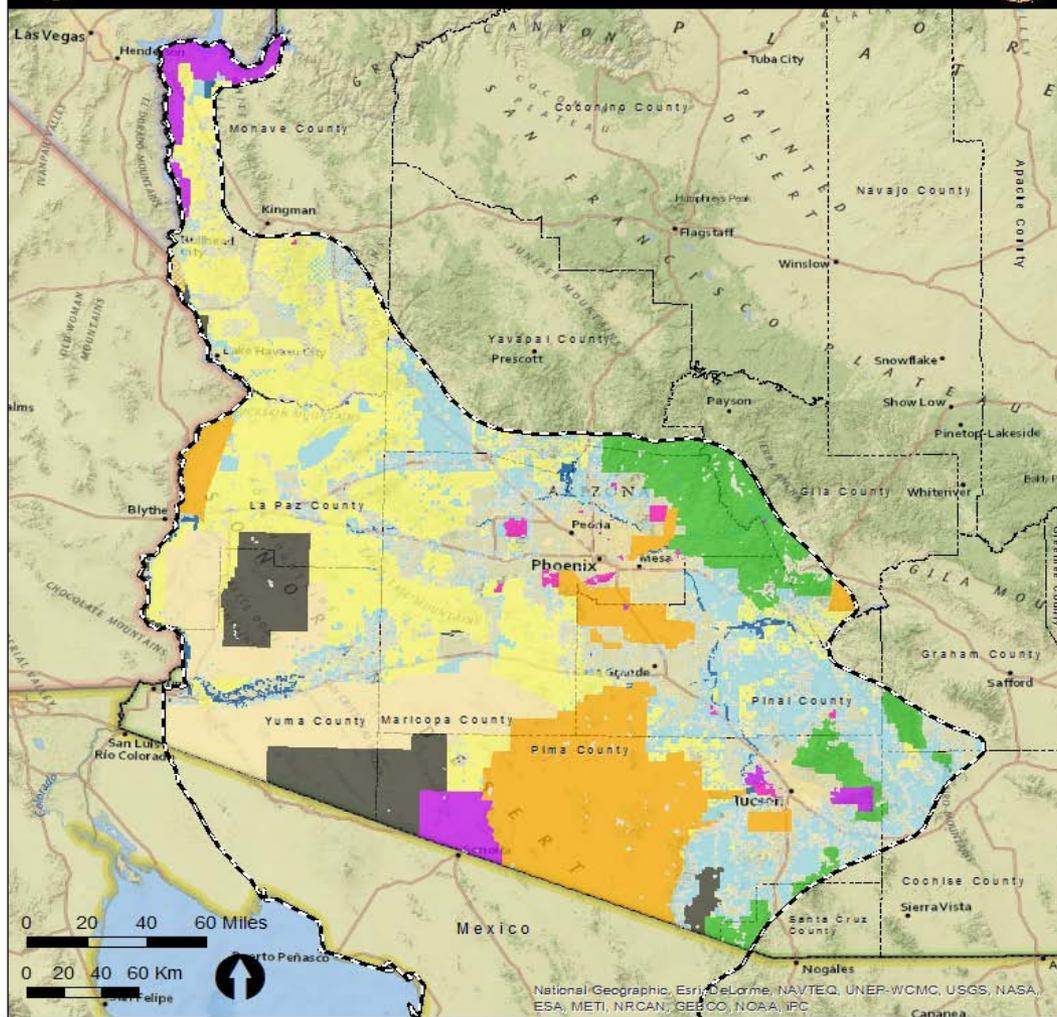
- Headwater Chub
- Roundtail Chub
- Stephan's Riffle beetle
- Tucson Shovel Nosed Snake
- Huachuca Springsnail
- Page Springsnail
- Wright's Marsh Thistle
- Sonoran Desert Tortoise
- Arizona Treefrog
- Sonoyta Mud Turtle



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Land Ownership within the U.S. range of Sonoran Desert Tortoise

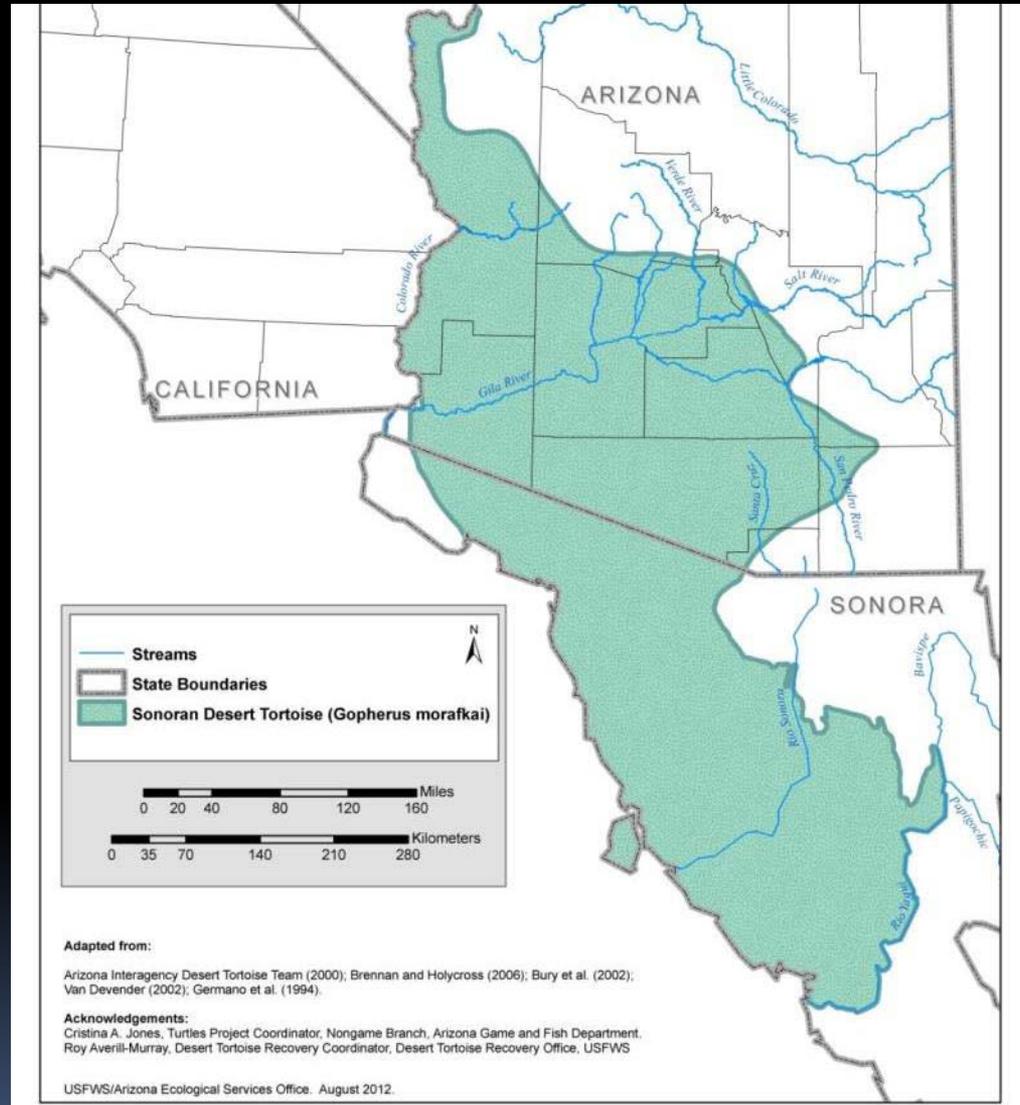


Enlarged Area

- | | | |
|----------------------------|--------------------------------|-------------------------------------|
| Range of SDT (27M acres) | State Trust - 4.1M acres (15%) | BOR - 145K acres (<1%) |
| County Boundary | Tribal - 3.5M acres (14%) | Local/State Parks -134K acres (<1%) |
| Land ownership | Military - 2.6M acres (10%) | County - 12K acres (<0.1%) |
| (% of SDT U.S. range) | Forest - 2.0M acres (7%) | AGFD - 9K acres (<0.1%) |
| BLM - 6.9M acres (26%) | Wildlife - 1.7M acres (6%) | Other - 516 acres (<0.1%) |
| Private - 4.8M acres (18%) | Natl. Parks - 814K acres (3%) | |

National Geographic, Esri, DeLorme, NAVTEQ, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, IPC

State Trust Land in Arizona

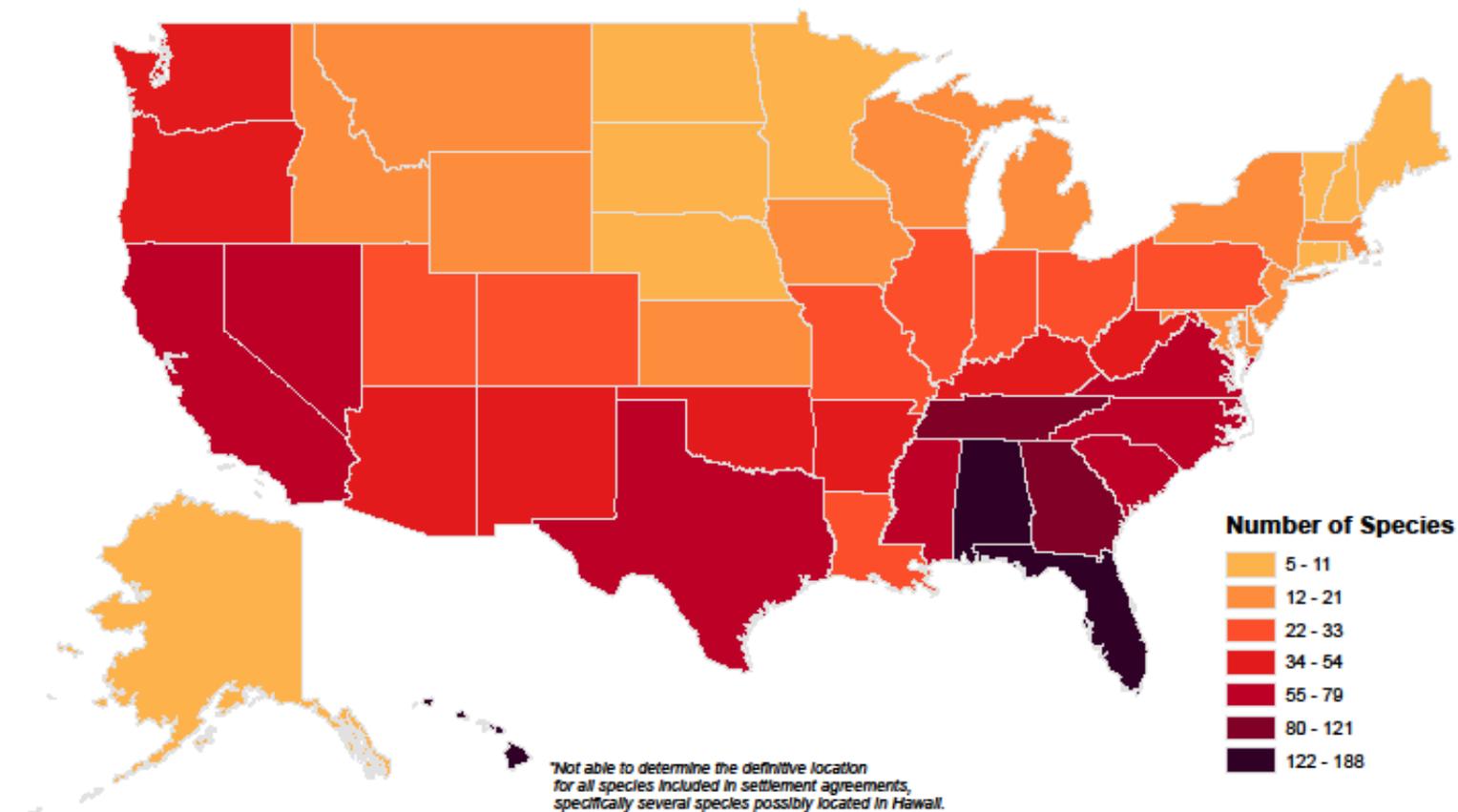


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ESA

OBJECTID	CATEGORY	Acres	Hectares	% Total
2	BLM	6,945,463	2,810,729	25.92
11	Private	4,798,332	1,941,816	17.91
12	State Trust	4,052,242	1,639,884	15.12
6	Indian Res.	3,622,563	1,465,999	13.52
8	Military	2,615,555	1,058,478	9.76
5	Forest	1,961,078	793,620	7.32
13	Wildlife	1,698,763	687,465	6.34
9	Natl. Parks	813,511	329,216	3.04
3	BOR	134,515	54,436	0.50
7	Local or State Parks	134,466	54,417	0.50
4	County	11,913	4,821	0.04
1	AGFD	9,487	3,839	0.04
10	Other	516	209	0.00
sum		26,798,405		100

Distribution of Species in 2011 Multi-District Litigation Settlement Agreements (1001 species)



Source: Compiled by the Texas Comptroller of Public Accounts based on information from the U.S. Fish and Wildlife Service, NatureServe and species petitions.

Note: The map includes species in the settlements that were petitioned for listing, revisions to critical habitat designation or designation as distinct population segments. This represents only a fraction of the species under review for potential listing or changes to listing status. Species included in this count include only species from the 2011 Multi-District Litigation Settlement Agreements finalized Sept. 9, 2011.* There is no single, definitive list of all species under review for potential listing under the ESA.

CCAA

- ▣ If species listed landowner will not have to agree to additional conservation measures
- ▣ Certainty
- ▣ 36 CCAA's nationwide
- ▣ Not only certainty, but can it help preclude the listing??
- ▣ Gray area – degrading some habitat and replacing or restoring for an over all positive species impact – becomes more of a challenge for heavier intensity uses

CCAA—Legal Questions

- ▣ Can they be used post listing? More onerous requirements
- ▣ If CCAA standards are less than post-listing, how far can these standards go to assuring there is no need to list?
- ▣ What happens to the CCAA after a decision is made not to list?
- ▣ Financial Resources – Expensive to Draft, Monitoring?

Texas Conservation Plan

- ▣ Chose not to list the Desert Sagebrush Lizard in June 2012 largely because of a voluntary landowner program
- ▣ 10 months to forge plan – Texas Comptroller, Southwest Region of FWS & many stakeholders
- ▣ 190,000 acres of habitat lie in the Permian Basin
- ▣ Includes provision to roll CCAA into HCP if listed – one of the first times they were linked
- ▣ With support of local universities, task force surveyed lizard's historic sites
- ▣ Private party examined 27 sites in 2007-lizard only found in easternmost sites
- ▣ 2011 – 50 sites surveyed – lizard actually occupying a significant portion of the basin

Texas Conservation Plan

- ▣ Defenders of Wildlife and Center for Biological Diversity challenged the withdrawal of the listing rule, claiming that the FWS failed to consider all of the five statutory listing factors and did not rely on the best available science.
- ▣ challenged the agency's reliance on the three conservation mechanisms summarized above to protect and improve the lizard's habitat, asserting that the agency's withdrawal decision was driven by political pressure.
- ▣ The court rejected these arguments, holding that the FWS adequately considered all of the listing factors and relied on the best scientific data

Texas Conservation Plan

- ▣ The court also rejected the environmental groups' attack on the Texas CCAA, which was unusual in that certificates of inclusion, which set forth the specific conservation measures adopted by each landowner-participant, are confidential.
- ▣ The court found that the CCAA would obligate most participants to avoid impacts to the lizard's habitat and, where avoidance is not possible, to mitigate impacts.
- ▣ Texas Comptroller must submit monthly and annual reports to the FWS regarding implementation of CCAA, allowing the FWS to monitor impacts on habitat and compliance with the CCAA.
- ▣ The court found that implementation of the various conservation efforts is sufficiently certain to occur.

4FRI

- ▣ Four forests in Arizona: Apache-Sitgraves, Coconino, Kaibab, and the Tonto. 2.4 Million Acres
- ▣ Past efforts to improve forest health have not been sufficient to significantly reduce the threat of large-scale forest fires.
- ▣ There is an increasing understanding among forest managers and the public that dense, over stocked forests are not a natural condition and lead to insect and disease outbreaks, and large scale catastrophic wildfires.

4FRI

- ▣ The Statewide Strategy for Restoring Arizona's Forests and the creation of the Arizona Forest Health Council came about to address forest health issues.
- ▣ The goal of the four forest effort is to create landscape-scale restoration approaches.
- ▣ More than 20 organizations signed the MOU.
- ▣ Final EIS draft became available in November of 2014.