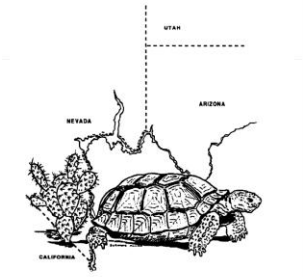

DESERT TORTOISE COUNCIL
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Via email only

2 February 2014

To: Ms. Lorelei Oviatt, AICP, Director
Kern County Planning Department
2700 M. Street, Suite 100
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loreleio@co.kern.ca.us

RE: Fremont Valley Preservation Project by AquaHelio Resources, LLC. Formal Comments

The Desert Tortoise Council (Council) is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

Council Board members, Ed LaRue and Peter Woodman, attended the public workshop sponsored by Kern County Planning Department (County) on 1/20/2014. Herein are some persisting concerns with the proposed project. Our main information sources are the Draft EIR, dated November 2012, County's Staff Report, dated 1/23/2014, and the consultant's Biota Report (M.H. Wolfe and Associates 2013). With a few exceptions, these concerns were verbally expressed by LaRue near the end of the meeting, were recorded by the County's stenographer, and are herein given as a written record.

We understand that this is an on-going, iterative process. Although both the Draft and Final EIRs have been completed and the Kern County Planning Commission adopted the AquaHelio Final EIR by a 3 to 2 vote on 1/23/2013, we understand that Kern County Board of Supervisors will not formally accept or reject the project until 18 March 2014, and that the County is still seeking public comments until the Supervisors make their ruling.

1. We note in the Draft EIR that there were several alternative transmission lines, and that the one running along Garlock Road, eastward through Fremont Valley was no longer being considered at the time of the workshop, which we fully support. Given the undeveloped nature of the area, we would also strongly discourage use of the transmission line along Twenty Mule Team Road, between California City and Highway 395. We prefer the transmission line alternative that is shortest and has the fewest impacts to desert tortoises. Given its length, and assuming that it either parallels Highway 14 or is within an existing utility corridor, the Council would prefer the transmission line alternative that runs southwest towards the communities of Mojave and Rosamond.

2. We were told by project proponents during the workshop that all transmission alternatives cross Bureau of Land Management (BLM) land, and that the County does not have a letter from the BLM indicating that an EIS is not required for this project. We ask that the County formally contact the Moreno Valley office of the BLM, provide them with the Final EIR, and ascertain that an EIS is not applicable for this project. Since the proponent may need to secure right-of-way grants from the BLM to construct transmission lines across public lands, an EIS may not be discretionary; instead, an EIS may be required.

3. Although the regional setting described on page 34 of the Draft EIR is comprehensive, it fails to report that all four proposed sites are contiguous to and surrounded by the Mojave Ground Squirrel Conservation Area, which was formally designated by the BLM in its Record of Decision for the West Mojave Plan (BLM 2005). Please be sure that any future environmental documents and planning decisions acknowledge this conservation area. Although, as you stated at the workshop, this designation only applies to public lands managed by the BLM, there is still the possibility that contiguous public lands within this conservation area may be adversely affected through both direct and indirect impacts. Additionally, California Department of Fish and Wildlife (CDFW) will likely consider the proximity of the four sites to this conservation area in determining the compensation ratios for impacts to Mojave ground squirrels.

4. As per Figure 5 on page 35 of the Biota Report (M.H. Wolfe and Associates 2013), the Randsburg/Saltdale Property is bounded to the south, east, and north by an Area of Critical Environmental Concern (ACEC) and desert tortoise critical habitat. The project would be more acceptable if the Randsburg/Saltdale Property was excluded from the proposal. If it must be developed, we strongly recommend that the northeastern "panhandle" of the site, which contained most of the tortoise sign (see Figure 22 in the Biota Report), and the southern half of that site, which is not so heavily impacted by previous agriculture, be excluded from solar development. We feel this reconfiguration would avoid the best tortoise habitat on any of the sites and minimize indirect impacts to adjacent critical habitat areas, particularly to the south.

5. Similarly, we strongly recommend that the larger of the two Homes properties, given as 644 acres on page xiii of the Biota Report, be excluded from development. The reasons for this recommendation is that it is the nearest of all the sites to the Desert Tortoise Research Natural Area (DTRNA), which is arguably one of the most important tortoise conservation areas in the region. Secondly, as shown in Figures 21 and 25 of the Biota Report, tortoise sign is found throughout this site, which signifies that all of it is occupied habitat. Finally, based on Figure 36 of the Biota Report and the distribution of tortoise sign throughout, we disagree that this site is ruderal saltbush scrub; it looks intact, and given the presence of tortoise sign, should not be dismissed as degraded habitat.

6. The information given on page 68 of the Biota Report (see also page 143) fails to recognize extensive, recent camera work by Mary Logan and other Desert Tortoise Preserve Committee (DTPC) subcontractors that document numerous Mojave ground squirrel records within the DTRNA. That information emphasizes the importance of the DTRNA for Mojave ground squirrel conservation and may be requested from DTPC at dtpc@pacbell.net.

7. Please note on page 79 that the Biota Report fails to indicate that Townsend's big-eared bat is now designated as a CDFW candidate for listing. As a candidate species, it may warrant more protection than provided for in the Draft EIR on page 175.

8. Contrary to the conclusion given on page 84 of the Biota Report, and additional descriptions given on pages 147 and 148, that Swainson's hawks are not known from the area (nearest location cited as Lancaster), Dr. William Boarman has documented at least one breeding pair attempting to nest in a Joshua tree at the DTRNA. Please confer with CDFW to see if additional mitigation measures may be required.

9. We have recently reviewed inappropriate, reconnaissance survey methodologies being employed on the nearby Springbok and Oryx proposed solar sites. It is commendable that the Biota Report stated "The dates, types of surveys, surveyors and report preparers, as well as a summary of their qualifications can be found in Appendix C. The general surveys covered the spring season, enabling the observation of a wide variety of plant and wildlife species. The proposed project sites were evaluated to determine if habitat existed for listed and special status species, as well as the presence of any special habitats that may be present on the proposed project sites."

10. We note on page 93 of the Biota Report there would be additional tortoise surveys in September 2012 if there was more rain. Were additional surveys performed? And if so, can they be made available?

11. On page 166 of the Biota Report, loss of habitats is reported as 2,717 acres of fallow agriculture, 1,163 acres of successional saltbush scrub, and 993 acres of intact saltbush, creosote bush, rabbitbrush (which may be equally as successional as saltbush), and needlegrass. Although this is an appropriate generalization, we appreciate that the proponents are not using these figures to determine compensable and non-compensable habitats. Since surveyors found tortoise burrows in the middle of crop circles (Figure 22) and on 430 acres of successional saltbush on the Homes property (Figure 25), these areas still comprise suitable tortoise habitat. As given in the mitigation section on page 189, we appreciate that the regulatory agencies will determine final compensation levels. Too often, environmental documents claim compensation ratios without consulting the regulatory agencies. The paragraph given on page 189 that clearly states all habitats – not just those judged to be suitable, marginal, or unsuitable – may be compensated, depending on additional field studies and agency consultation, is entirely appropriate. Good job!

12. Similarly, impacts to Mojave ground squirrels described on page 168 of the Draft EIR must consider both intact and ruderal communities. Although only 830 acres are identified as suitable, all of the 993 acres of intact habitat and the 430 acres of saltbush scrub on the Homes site must be compensable for impacts to Mohave ground squirrels because tortoises occur there.

13. Compared to some projects in the area, the consultant did an admirable job in implementing required survey protocols for tortoise, burrowing owl, and rare plants. However, since tortoise surveys were performed in April-May 2012 following USFWS 2010 protocol, the Biota Report should use the 2010 formula to determine the number of adult tortoises that may be affected. Even if only one tortoise was observed on the Cantil site, that should enable the consultant to estimate the number of adult tortoises that may be impacted. Burrow sizes on both the larger Homes site and Randsburg site also allow some discussion on the approximate number of tortoises that would be affected on those two sites and elsewhere. As is, the Final EIR fails to estimate how many tortoises may be affected. We strongly recommend that these estimates be determined when applying for incidental take permits from both the USFWS and CDFW.

14. With recent monitoring results at the BrightSource solar plant in Ivanpah Valley indicating avian mortality from collisions with mirrors and burn injuries from solar flux, the impacts discussion on page 178 of the Biota Report for golden eagles may underestimate potential impacts. Mitigation measures on pages 190 and 191 may need to be expanded to deal with this foreseeable impact. Similarly, new information suggests that solar fields are resulting in substantial heat increases in adjacent areas. So, when solar projects such as this one are pursued on mostly fallow agriculture, it is important that impacts to adjacent, ideal habitat areas are considered.

15. Similarly, new information suggests that solar fields may result in substantial heat increases in adjacent areas. This, combined with the points above (especially Point #14), indicates that it is important that impacts to adjacent, ideal habitat areas are considered when solar projects such as this one are pursued, even if they are pursued on mostly fallow agricultural land.

We trust that our comments will be considered by the County and Board of Supervisors when they make their final decision on 18 March 2014.

Thanks,

Edward L., LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Literature Cited

M.H. Wolfe and Associates. 2013. Biota report for the Fremont Valley Preservation Project in Kern County, California. Unpublished report prepared on behalf of AquaHelio Resources, LLC. Bakersfield, CA.

U.S. Bureau of Land Management. 2005. Final Environmental Impact Report and Statement for the West Mojave Plan, a Habitat Conservation Plan and California Desert Conservation Area Plan Amendment. Dated January 2005. Moreno Valley, CA.

U.S. Fish and Wildlife Service. 2010. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.