



## DESERT TORTOISE COUNCIL

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**Via email only**

19 October 2013

Attn: Brenda Hudgens-Williams  
P.O. Box 71383  
Washington, D.C. 20024-1383  
[Brenda\\_Hudgens-Williams@blm.gov](mailto:Brenda_Hudgens-Williams@blm.gov)

RE: Final Supplemental Environmental Impact Statement (FSEIS) for the Silver State Solar South Project

Dear Ms. Hudgens-Williams,

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.

The Council understands that the publication of the Final Supplemental EIS (FSEIS) in the 20 September 2013 *Federal Register* initiated a 30-day protest period ending 21 October 2013. Herein we provide our concerns, many of which persist from our earlier comments on the Draft Supplemental EIS (Desert Tortoise Council 2011). Though this is not a formal protest, we provide rationale for adopting the No Action Alternative, strongly recommend that an Area of Critical Environmental Concern (ACEC) be established as a separate action from the proposed project, discuss the need to provide an effective habitat corridor in Ivanpah Valley, discuss issues concerning the proposed modifications to the Large Scale Translocation Site, and identify deficiencies in the FSEIS that must be addressed.

### **Council's Endorsement of the No Action Alternative**

The Council concurs with the USFWS' (2012) conclusion on the DSEIS that, "We [USFWS] are concerned about habitat fragmentation and demographic and genetic isolation of desert tortoise populations within the Ivanpah Valley and recommend that BLM select the 'No Action' alternative. Maintaining a robust population of desert tortoises within the Ivanpah Valley area is of particular importance because the habitat is already highly fragmented."

The Council believes that Table ES-2 on page ES-18 is remiss in indicating that the No Action Alternative would result in “No effects.” In fact, adopting the No Action Alternative would have the “Beneficial effect” of dismissing the threat of this solar project to regional tortoise populations. Additionally, as given below, the Council believes that the establishment of an ACEC has been inappropriately linked to Alternative D, when in fact, establishing the ACEC can and should still be pursued under the No Action Alternative. This same comment applies to Table ES-2 on page ES-24 for Special Management Areas.

In our comment letter of 31 October 2011 (Desert Tortoise Council 2011), we expressed our concern that the cumulative impacts of now-existing solar facilities (i.e., Silver State North and BrightSource) and proposed solar facilities such as this one threaten the survival of the Mojave desert tortoise as a viable population in the Ivanpah Valley. Our concerns persist, and we encourage the BLM to adopt the No Action Alternative for this project.

The Council feels that the FSEIS has failed to provide new data that would counteract the USFWS’ recommendation that the No Action Alternative be adopted. The BLM has failed to provide any new data in the FSEIS that would demonstrate that the proposed alternative will not seriously fragment critical habitats. In the absence of supporting new data, the Council contends that the BLM is obligated to accept USFWS’ recommendation, reject the proposal to allow construction of this project, and formally adopt the No Action Alternative.

### **Designation of a New Area of Critical Environmental Concern**

As part of the FSEIS, BLM now proposes to establish a 31,859-acre ACEC to protect tortoise habitat and establish a mile-and-a-half migratory corridor that will allow tortoises to move between prime habitat in Nevada and adjacent California habitats. This is not a new proposal. In October 2011, the Council joined Basin and Range Watch (2011) and the Desert Protective Council in nominating an ACEC in Ivanpah Valley to protect unique biological, cultural, and visual resources. The nomination was submitted to both California and Nevada BLM District Field Managers in recognition of the overlapping responsibilities of their respective offices. We still believe that establishing an ACEC would provide an initiative around which BLM California and BLM Nevada may proactively plan regional conservation of tortoises and other important resources.

We believe that the public is being misled to believe that creation of the ACEC is a new idea that is associated with this project. The FSEIS indicates that adopting Alternative D, which would result in creation of this new ACEC, would be a positive result of the proposed solar facility being authorized and constructed. The Council feels strongly that the new ACEC should be established by the BLM as a separate project, not at all associated with the proposed solar project, and not touted as mitigation to offset impacts for its construction. The BLM Las Vegas Field Office is currently in the process of revising their resource management plan and specifically addressing the designation of ACECs across their resource area. This is the appropriate forum for designation of ACECs. What happens, for example, if this project is not developed for lack of funds or as a result of a successful lawsuit that prevents its development? Would that mean that the ACEC is not established in the absence of the project? Again, the Council believes that establishing the new ACEC should be a separate, stand-alone project and not be associated in any manner with the proposed solar project.

We note that the No Action Alternative given on page ES-8 fails to divulge that the proposed ACEC may still be pursued even if the project is not. A third bullet should be added that indicates the ACEC may still be established as part of a separate, independent project in the absence of authorizing the proposed project.

### **Compromised Habitat Linkage Corridors**

In our collective experience, the number of tortoises occurring throughout the Study Area, shown as yellow dots in Figure 3.6-3, is exceptional. There appear to be no portions of the Study Area that are devoid of tortoises. As such, this area must be considered very important as both occupied habitat for resident tortoises and as a connector to other tortoises occurring north and south of the Study Area.

Although the Council appreciates that the original proposal, for a 350-megawatt facility on 3,881 acres, has been reduced in the BLM Preferred Alternative to a 250-megawatt facility with a permanent footprint of 2,427 acres, we concur with comments from Defenders of Wildlife, Natural Resources Defense Council, and Sierra Club (Defenders *et al.* 2013) that all of the alternatives to the proposed action, other than the no action alternative, would cause significant adverse impacts to the desert tortoise through habitat loss, and especially habitat loss in the largest and most important remaining habitat linkage in the Ivanpah Valley. This linkage is the area between the base of the Lucy Grey Mountains and Ivanpah and Roach Dry Lakes.

Defenders *et al.* (2013) further pointed out that none of the alternatives conforms to the USFWS recommendation for minimum width of linkage habitat that provides for gene flow among desert tortoise populations. In its letter on the SEIS, the USFWS (2012) recommended that linkage habitat width to sustain populations and gene flow should need to support multiple lifetime home ranges, which are currently estimated to be 1.4 miles for a single adult male. Therefore, based on the USFWS' recommendation, the minimum corridor width between the Lucy Grey Mountains and Ivanpah Dry Lake needs to be approximately 2.8 miles to sustain a minimum population and provide for gene flow among the populations in Nevada and California.

We note that none of the development alternatives for Silver State South come close to providing a minimum 2.8 mile-wide habitat linkage. In fact, the maximum linkage width that would exist under the No Action Alternative is only 2.0 miles because of the constriction imposed by the now-operational Silver State North solar project. Based on the USFWS' recommendations that minimum linkages need to be at least two home-range widths, the Council advocates that the No Action Alternative should be chosen and that the area should be designated as a permanent habitat protection zone in an amendment to the Las Vegas Resource Management Plan.

The Council reiterates its previous position (Desert Tortoise Council 2011) that newly-proposed Alternative D will still fragment and disrupt the habitat connectivity required to maintain genetic flow that is essential to ensuring self-sustaining populations of desert tortoises located north and south of the proposed project. Tortoises, particularly subadults, will travel great distances if we protect their habitats and allow them to move freely. Tortoises by themselves will maintain the natural connectivity among population units if we permit them to live and reproduce without human interference. But the proposed Silver State South project would disrupt connectivity with

the South Las Vegas subpopulation to the north in Nevada and the subpopulation to the south that extends into the Mojave National Preserve in California. Project construction will very likely isolate desert tortoises in the southern Ivanpah Valley from population segments in adjacent regions. Leaving a narrow corridor between the proposed project site and the Lucy Gray Mountains is likely to leave the population to the south isolated and vulnerable.

### **Measures Associated with the Large Scale Translocation Site (LSTS)**

When the LSTS was established near Jean, Nevada under the Clark County Multispecies Habitat Conservation Plan (MSHCP) in about 1996, several thousand tortoises from the Desert Tortoise Conservation Center (DTCC) were translocated not knowing how many may have been carrying the *Mycoplasma* spp. pathogen. Given this, the proposed mitigation measure to have First Solar perform a disease and genetics study of the tortoises within the LSTS to determine if they can be allowed to freely roam in the valley by removing portions of the existing barrier fence is troubling. This measure is intended to expand available linkage habitat through Ivanpah Valley, but we're doubtful it would actually expand the linkage because Interstate 15 acts as a barrier. Given the requirement for a minimum 2.8-mile-wide habitat corridor, we also do not believe there is enough habitat between Whiskey Pete's and the toe of the Stateline Hills to allow tortoises in California adequately support connectivity with the LSTS area in Nevada.

The Council has continuously voiced its concern that there have been no rigorous scientific studies that adequately assess the efficacy of releasing as many as 9,000 desert tortoises, including many captive tortoises, into the LSTS, which has reached its carrying capacity (Table 4.19-1 of the FSEIS). In the absence of such studies, we find it problematic that these animals may be allowed to intermingle with wild populations of tortoises in adjacent areas.

In the final EIS, the BLM described working with the various federal, state and local agencies to enhance connectivity under Interstate 15 and the existing railroad through culvert and bridge modification and clearing. The Council finds that the FSEIS is unclear where new fences may be erected, or if removing existing fences from around portions of the LSTS will put resident and translocated tortoises in harm's way on Interstate 15.

### **Deficiencies in the FSEIS**

The Council finds that the FSEIS is deficient in not providing a detailed translocation plan that can be reviewed and commented on at this time. It is not enough to state on page ES-13 that a translocation plan will be developed and approved by the BLM and USFWS. Since the translocation plan is an integral part of how displaced tortoises will be affected, it should have been part of the FSEIS, which is deficient in its absence.

The Council does not believe that the studies described MM Bio-19 on page 2-32 comprise real mitigation because no remedial measures or adaptive management prescriptions are identified should those studies determine that the project has had an adverse effect on tortoise populations in the Ivanpah Valley. We believe that a requirement should be added that identifies the project proponent as being responsible for implementing remedial actions should their funded studies show they have adversely affected the regional tortoise population and habitat connectivity.

We note that there are no mitigation measures given in Table 2-4 that are intended to minimize or mitigate impacts associated with increases in common ravens as a result of construction of the facilities. Are we to assume that such measures included in the final EIS would be implemented and just not reiterated in the FSEIS? Has the proponent considered providing funds to the National Fish and Wildlife Foundation to implement regional management actions controlling common raven populations? We are not sure if this program is available in Nevada, but it is being implemented throughout California Deserts as mitigation for projects that may subsidize ravens, and may provide another opportunity for the proponent to mitigate impacts.

Regards,



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

### **Literature Cited**

- Basin and Range Watch. 2011. A Nomination to the U. S. Bureau of Land Management (Needles Field Office) for Area of Critical Environmental Concern (ACEC) Status, Ivanpah Valley, California and Nevada. Submitted by Basin and Range Watch on 23 October 2011, and formally endorsed by the Council on 28 October 2011. Beatty, Nevada.
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- Desert Tortoise Council. 2011. Notice of Intent to Prepare a Supplemental Environmental Impact Statement and a Resource Management Plan Amendment for the Proposed First Solar South Project near Primm in Clark County, Nevada. Comments from Dr. Sidney Silliman of the Council to Renewable Energy Project Manager, Bureau of Land Management Las Vegas Field Office, Las Vegas, Nevada. Ridgecrest, CA.
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