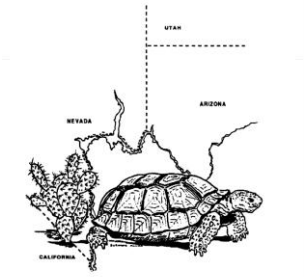

DESERT TORTOISE COUNCIL
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Via email only

20 March 2014

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RE: Moapa Solar Energy Center, Final Environmental Impact Statement

Dear Mr. Schlafly, Mr. Lewis,

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 provided comments on the Draft Environmental Impact Statement (DEIS) for this proposed project on 11 October 2013. We appreciate that most of our concerns were addressed in the Final Environmental Impact Statement (FEIS), as summarized in the Comment/Response Matrix portion of Appendix Q (Matrix). For example, the Matrix clarifies that both the proposed pipeline and two transmission lines would follow existing access roads and transmission corridors, which should help minimize impacts, and that mitigation fees would be used, as necessary, to minimize raven predation.

Another of our concerns with the DEIS was that a formal translocation plan was missing from the analysis. On page 4-57 of Volume 1 of the FEIS, you indicate the following: "Based on draft USFWS (or Service) guidance (USFWS 2012), the USFWS is not requiring the development of a desert tortoise translocation plan for this project." When we checked the References section on pages 8-5 and 8-6 of Volume 1 of the FEIS to review this guidance, we found that the reference is missing. Was this project-specific guidance from USFWS presented directly to the project proponent or is this a generalized policy statement that applies to both this and other projects? In the absence of this reference, we are not sure why a translocation plan is not required.

Following are a few recommendations with regards to the FEIS.

1. You indicate on page 4-54 of Volume 1 of the FEIS that, "Capturing, handling, and relocating desert tortoises from the Proposed Project after installation of the fencing would result in take and may also result in death or injury. This is particularly true if relocation methods are performed improperly, such as during extreme temperatures, or if tortoises void their bladders due to handling stress, leaving them susceptible to severe dehydration. Displaced tortoises that do not shelter from extreme temperatures may die from exposure." One other concern we have is displacing tortoises during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions persist immediately prior to or during the time of project development, we suggest that you confer with the USFWS immediately prior to displacing tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought.

2. It is not clear from the information presented on page 4-57 of Volume 1 of the FEIS how long you intend to monitor translocated tortoises. We assume that displaced tortoises will be fitted with radio transmitters and that you will track them, but the FEIS does not indicate for how long. We suggest that the individual tortoise disposition plans discussed in several places in Volume 1 (particularly on pages 4-57 and 5-12) identify how long tortoises are to be monitored. There should also be an adaptive management component to address mortality of displaced tortoises.

3. It is important that these tortoises be tracked a sufficient amount of time to assess health, allow them to establish a new home range, and document mortality. If a translocated tortoise does die, an evaluation must be performed as to the cause. It is important to determine whether they should be considered part of the authorized mortality limits given in Table 3, pages 43 and 44 of USFWS' biological opinion, which is included in Appendix R of Volume 2 of the FEIS. Although USFWS identifies Incidental Take Thresholds for tortoises inside and outside the fenced areas, they do not identify how these Thresholds would apply to translocated tortoises that die after they are displaced. Perhaps that can be clarified in the new matrix addressing comments on the FEIS and/or disposition plans?

4. Pages 4-58 and 5-11 of Volume 1 of the FEIS indicate, "Exclusionary fencing would be checked monthly and after any substantial rain event to ensure that they are effective barriers for desert tortoise." We strongly suggest that for at least the first year after installation the fences be checked more often, perhaps weekly, until the proponent determines that they are secure and not being undermined by canids, for example.

5. Page 5-10: 2.f. of Volume 1 of the FEIS states, "Desert tortoises that are determined to be sick or injured, will be transferred to an appropriate facility as directed by the Service. The Applicant is responsible for paying for care of desert tortoises taken to the Desert Tortoise Conservation Center [DTCC] or other facility." Note that the DTCC should not be considered as an option as it is due to close later this year.

6. Page 5-10: 3.a. of Volume 1 of the FEIS indicates, "A desert tortoise education program will be prepared and presented by an authorized desert tortoise biologist to all personnel onsite during construction activities." It is an industry standard to present annual refresher courses for

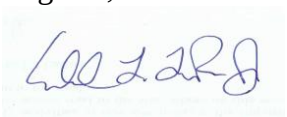
employees accessing project sites to minimize the likelihood of crushing tortoises along access roads and to discuss rescue measures for tortoises that are subsequently found inside tortoise-exclusionary fences once biological monitors vacate the sites. Will this standard be implemented for this project?

7. Page 5-11: 3.c. of Volume 1 of the FEIS indicates, "Authorized desert tortoise biologists, potentially assisted by project monitors, shall conduct a clearance survey." We highly recommend that only authorized desert tortoise biologists be allowed to conduct clearance surveys. Rarely would a biological monitor have the experience necessary to assist with a clearance survey. In order to gain experience, a biological monitor may be placed between two authorized biologists at a distance of five meters (rather than the protocol 10 meters) from each authorized biologist.

8. Page 5-11: 3.c. of Volume 1 of the FEIS indicates, "Burrows occupied by adult females will be examined thoroughly for nests and eggs during the months of May through October." We believe that **all** desert tortoise burrows should be thoroughly examined for nests and eggs from May through October. Male and female tortoises use multiple burrows each year and conceivably any of those burrows she uses may contain a nest, not just the burrow she happens to be using on a given day.

Again, we appreciate that our comments on the DEIS were addressed. We believe that impacts to tortoises and their habitats will be further minimized if the measures given above are implemented in a conscientious manner.

Regards,



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

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