



**DESERT TORTOISE COUNCIL**

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RE: Rand Historic Mining Complex Operable Unit 1 contamination remediation

The Desert Tortoise Council (Council) is a 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 1975 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 appreciates this opportunity to provide comments to the Bureau of Land Management (BLM) on the proposed action. It is unfortunate that no electronic versions of the more detailed analysis were made available to the public. Given travel constraints, our review was necessarily restricted to the 12-page summary provided by the BLM in pdf format. Perhaps some of the following questions have been answered in environmental documents that were not readily available for our review. But in the absence of those documents for review, we feel compelled to ask you to be sure they are part of the public record.

1. We note on page 1 in the third introductory paragraph that "The BLM will select a final cleanup remedy for OUI after reviewing and considering all information submitted during the 30-day public comment period." However, the document fails to reveal how these decisions will be published. Are these final decisions to be documented in an Environmental Assessment? Will there be additional opportunities to provide input into remediation activities, and what is the mechanism for allowing additional input?

2. What are the environmental baseline documents addressing the three mine areas considered in the OU1 remediation? Were there any Environmental Assessments (EAs), Environmental Impact Reports (EIRs), or Environmental Impact Statements (EISs) for these mining projects? Did the BLM issue a right-of-way grant or other environmental authorization? If so, do any of the responsibilities of the mining proponents outlined in those documents commit them to site remediation?

3. Are any of the activities authorized by U.S. Fish and Wildlife Service (USFWS) or California Department of Fish and Wildlife (CDFW) in federal and state permits, respectively? If they exist, are the responsibilities of mining proponents outlined in these documents? Are there implementing agreements or other legal documents that require site remediation by the proponents?

4. Were any of the mining activities authorized by Kern County? If so, did they require remediation and revegetation plans of the mining proponents?

5. Relative to the above questions, who is responsible for paying the multi-million dollar remediation cost for this project? Will any of the mine proponents be responsible for paying remediation costs or will the cost be solely incurred by the BLM (i.e., by the tax-paying public)? Which environmental authorizations, if any, would be violated by requiring BLM to pay remediation costs that should be paid by the proponents?

6. We note that Alternative 3 would use waste rock materials that presumably would not result in any appreciable revegetation of the sites, and that only Alternative 4 may facilitate revegetation. The document fails to reveal the location or acreage of the BLM lands that would be sacrificed to salvage the topsoil. Where would these lands be located, what acreage is required to be disturbed, and do they comprise suitable or occupied desert tortoise habitats? The Council contends that remediation without restoration and revegetation fails to return the site to pre-disturbance conditions, which we understand is the goal. Assuming the salvaged topsoil would not further impact suitable or occupied tortoise habitats, the Council supports Alternative 4.

7. Figure 1 on page 5 shows that contamination seems to be contained in two distinct areas, including an area of existing consolidation and new areas of excavation and consolidation. We note a number of drainages leaving the site. Was any of the sampling within these washes? Have any of the contaminants been washed into areas that were not sampled and would not be included in the remediation? In any case, the Council contends that successful remediation must also include adjacent contamination areas that are located outside the brown and pink polygons shown in Figure 1. Any impacts to washes must be authorized by CDFW, which would likely require a Streambed Alteration Agreement.

8. The table on page 9 and text on page 10 indicate that the fourth of the nine Evaluation Criteria for Remedial Alternatives is “Reduction of Toxicity, Mobility, or Volume of Contaminants through Treatment.” The text then indicates that “none of the alternatives include treatment as a primary component.” Is this because there are no treatments available? Please explain if there are any available treatments and, if so, why they are not being pursued.

9. The Council has recently completed Best Management Practices (BMPs) that would facilitate remediation, and especially revegetation, of the sites (see Best Management Practices Fact Sheets at [deserttortoise.org](http://deserttortoise.org)). We recommend that BLM consider these BMPs for site revegetation, regardless of the alternative adopted and implemented.

10. We are pleased to see that four of the five alternatives would require tortoise surveys; only Alternative 1 – the No Action Alternative – would not require tortoise surveys. Be aware that there are two types of tortoise surveys: a “presence-absence” survey versus a “clearance survey,” as described in the USFWS Field Manual (USFWS 2009). Since the intent of these surveys is to ensure that no tortoises are harmed, please be sure that the requisite *clearance surveys* are performed rather than the less-rigorous presence-absence surveys. It may also be prudent to fence those boundaries of the site where tortoises may enter remediation areas from adjacent occupied habitats.

11. The consultant(s) enlisted to perform tortoise surveys will presumably need to have the authority to move tortoises out of harm’s way. How will this authority be granted? For example, assuming tortoises may be affected, would BLM be required to consult with USFWS and CDFW for proper authorization (Section 7 and Section 2081, respectively) to move tortoises out of harm’s way or allow for incidental mortality take?

12. Regardless of the alternative adopted, please be sure that there is a monitoring component in the final plan to ensure that the contaminants are effectively contained and not leaching or being blown into adjacent habitats. The monitoring plan must include a component whereby any additional contamination is also contained and cleaned up, preferably by the mine proponent, not by the BLM using taxpayers’ money.

Thank you for this opportunity to provide input. Please consider us an Affected Interest for this and any other projects on BLM lands that may affect the desert tortoise.

Regards,



Edward L., LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

### **Literature Cited**

U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.