



**DESERT TORTOISE COUNCIL**

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**Via email only**

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RE: Programmatic Environmental Assessment for Small Mining Operations in Ridgecrest Resource Area

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.

**Background**

Thank you for recognizing our Affected Party status, and sending an email on 8/26/2015 soliciting scoping comments from the Council. We appreciate this opportunity to provide the Bureau of Land Management (BLM) with comments during the 30-day scoping period, which ends on 20 September 2015. We understand that our comments, in part, will help the BLM (1) determine if this mining proposal merits a formal Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA) and (2) help BLM managers decide what performance standards should be stipulated as a condition of approval. Further, we understand that our concerns will help the BLM determine those issues that should be assessed in the draft environmental document, to determine the anticipated impacts associated with the programmatic proposal, and identify pertinent mitigation measures to ensure impacts are minimized and fully mitigated.

The desert tortoise has been in steep decline in the West Mojave since the early 1980s, and since 2004 has continued to decline at a rate of about 7 percent per year – or 50% cumulatively - the highest rate of decline across all recovery units (USFWS 2014). Now, after decades of population decline, the average number of tortoises in the best remaining habitats in the West Mojave is a mere seven individuals per square mile, and getting lower every year. Regulatory and land management agencies need to recognize that their approaches have been insufficient to stem declines; and that declines are largely or predominantly due to human activities. The BLM is the one agency with responsibility to make the substantial changes necessary to stem the decline.

Given the documented 50% decline of tortoise populations in the West Mojave Recovery unit since 2004 (USFWS 2014), BLM must act *now* to minimize declines associated with human activity, including mining. The rapid decline is due to human impacts, including dirt and paved roads, fragmenting the habitat with lost habitat, disturbed lands and cleared areas, and loss of critical foods and replacement with alien annual grasses. The effects of cleared and disturbed lands extend far beyond the disturbance itself.

### **Rationale for completing an EIS rather than EA**

It is premature to refer to the intended document as an “EA,” as one of the functions of scoping comments is to determine if an EIS is warranted. In fact, the Council asserts that an EIS is required rather than an EA for the following reasons:

1. Given documented tortoise declines in the West Mojave, BLM must assess its current management regarding mine operations, other authorized activities, and cumulative effects to determine if the proposed action for small mining would further contribute to population declines and significantly exacerbate tortoise conservation and recovery in the West Mojave. An EA is insufficient to provide the necessary analysis; an EIS is required.
2. The potential for increased mining within the Red Rock Canyon State Park and potentially in the Desert Tortoise Research Natural Area (DTRNA) as a result of the proposed action would constitute a significant effect, and warrants more analysis than would be provided for in an EA.
3. The intent to reverse and/or undermine prescriptions given in the U.S. Fish and Wildlife Service’s (USFWS) existing 1992 biological opinion (1-6-92-F-28) that, among other potential changes, would no longer require compensation fees for small mines, including those in designated tortoise critical habitat areas, is sufficiently controversial that it requires EIS-level analysis.

### **Specific issues that must be addressed in the draft environmental document**

Whether an EA or EIS is drafted, the Council expects that BLM’s draft environmental document will address the following issues and concerns, and include specific components identified below.

1. We obtained an undated document referred to as “Scoping notice for programmatic environmental assessment of small mining operations,” attributed to Carl Symons, Ridgecrest Field Manager, which further describes the intent of the proposed programmatic EA. The next few subsections refer to this scoping notice:

a. We see that there is the No Action alternative and two others, including one where less than one acre of new disturbance would result and a second where less than five acres of new disturbance would be authorized. Does BLM have a preferred alternative between these two action alternatives? In either case, it is important that all alternatives be fully analyzed and that comparisons among the alternatives are assessed. For example, how many acres would be lost under the No Action alternative versus the one-acre alternative versus the five-acre alternative? How much tortoise critical habitat would be affected by programmatic authorization resulting from the action alternatives?

b. The Preferred Alternative should be sufficiently strong to prevent further loss of desert tortoises and tortoise habitat, thereby contributing to recovery rather than decline.

c. Assuming the five-acre standard is preferred, the draft environmental document should discuss the issue of a new five-acre mine site versus expansion of an existing mine site onto five acres in adjacent areas. Would the proposal, for example, allow a 100-acre existing mine to become operational by authorizing a five-acre expansion into adjacent areas? We expect that the programmatic authorization would allow creation of a new mine on five acres but are concerned that it may be misused to reactivate a larger site by claiming new expansion into five acres.

d. The draft environmental document needs to clearly indicate that the one- or five-acre minimum includes impacts associated with the access road to the site. For example, if a proponent intends to open a five-acre mine site that would result in the loss of an additional two acres along an existing access road, we understand that this seven-acre impact could not be authorized. The additive impact of the mine site and the access road must be less than five acres.

e. We recommend that the Preferred Alternative require use of existing access roads and prohibit creation of new access roads. We refer BLM to the existing biological opinion for small mines (USFWS 1992, measure f on page 5), “Where practical, no access road shall be bladed for exploratory work.” We recommend that the words, “Where practical” be eliminated, and the prescription in the draft environmental document read: “No access roads shall be bladed for exploratory work.”

f. Bullet two near the middle of the page indicates the draft environmental document would briefly discuss factors including the “Influence & importance of Multiple Use Classifications (MUC) in BLM land-use plans.” Given that the Draft EIR/EIS for the Desert Renewable Energy Conservation Plan (DRECP) intends to eliminate MUC classes, and it appears that this recommendation would also be included in the DRECP Final EIR/EIS, the BLM must address this foreseeable programmatic change resulting from implementing the final DRECP decisions in its draft environmental document.

g. The third bullet in the same section reads, “Mineral management of unclassified public lands in Red Rock Canyon State Park.” The draft environmental document must fully disclose if this proposal could result in increased mining in this State Park, which the Council strongly opposes. As part of current management, please provide an accurate description of existing mining activities on both private and public lands within Red Rock Canyon State Park and indicate how the proposal may influence future mining therein. How many acres of public lands managed by BLM would be available under this proposal in Red Rock Canyon State Park? Since this could have significant effects to Park management and visitors, would State Parks and the interested public have opportunities to review plans of operation proposed within State Park boundaries?

h. If there is any chance that this proposal will increase mining operations in Red Rock Canyon State Park, the Council contends that an EIS rather than an EA must be completed for this proposed action.

i. We also note that the BLM did not renew withdrawal of mining from within the Desert Tortoise Research Natural Area (DTRNA) in 2000 as promised to the Desert Tortoise Preserve Committee (DTPC), so now there is no protection from mining within the DTRNA. The Council insists that the draft environmental document stipulate that the programmatic authorization will not result in any new mining within the DTRNA or conservation management area to the east, which is the focus of land acquisition and subsequent tortoise management by the DTPC. These two areas must be identified as exclusion zones from any new small mining that may result from the proposed programmatic authorization.

j. The final bullet states, “Exemption from tortoise habitat compensation fees for small mining operations.” The Council strongly opposes eliminating any current management prescription that proactively benefits tortoise conservation, which includes collecting compensation fees for impacts to and loss of tortoise habitats. Besides, mine sites on public lands that affect State-listed species, including desert tortoises and Mohave ground squirrels, still have county requirements under the Surface Mining and Reclamation Act (SMARA) and will require incidental take permitting under Section 2081 of the California Endangered Species Act. California Department of Fish and Wildlife (CDFW) unerringly requires habitat compensation, usually at a ratio of 3:1 outside Desert Wildlife Management Areas (DWMAs) and 5:1 inside DWMAs. Given declines in tortoise densities up to 50% in the West Mojave (USFWS 2014), BLM should not promote programs that increase impacts and loss of habitat with less accountability and compensation than required under current management.

k. We note in the existing biological opinion for small mining (USFWS 1992), that measure “u” on page 8 specifically requires “Compensation for loss of habitat shall be required according to BLM requirements.” To be in compliance with the existing biological opinion, BLM does not have the discretion to eliminate habitat compensation requirements unless USFWS formally modifies the existing biological opinion that requires exemption or writes a new biological opinion modifying its previous decision. In any case, the BLM is obligated to analyze this proposal in its draft environmental document and justify why habitat compensation is no longer warranted.

1. The Council opposes exemption of compensation fees for small mine operations. If this opposition is ignored, the draft environmental document must provide convincing rationale how this exemption will result in better conservation for the imperiled tortoise and will contribute to recovery. We further contend that adopting this inferior provision compared to current management would trigger the need to produce an EIS rather than an EA for this proposed action.

m. The final sentence in the next to last paragraph reads, “This programmatic environmental assessment will exclude operations determined to have significant resource impacts.” Given that the tortoise is federally-listed as Threatened, we understand that any impacts to federally-listed species are considered significant under the National Environmental Policy Act (NEPA). Given that the proposed action occurs entirely within the range of the federally-listed desert tortoise, we understand that this proposal “may affect” the listed species and therefore require formal consultation. If the sentence at the beginning of this paragraph is correct, the environmental document must indicate that a given mine site must be abandoned if evidence of tortoises is found during protocol-level surveys (USFWS 2010).

2. We expect that the draft environmental document will contain maps and assessments of existing impacts and cumulative impacts from both mining and all other uses. This information should be part of the Affected Environment in either an EA or EIS if the agency is serious about stemming declines and promoting recovery. The amount of information needed to address this concern is more appropriate in an EIS than an EA.

3. We require that the draft environmental document identify BLM stipulations that will curtail indirect impacts of new mines authorized by the proposed action. Insofar as possible, all impacts must be restricted to the mining footprint. As such, the document must require monitoring to detect indirect impacts and identify remedial measures if monitoring reveals impacts in adjacent areas are occurring.

4. Please explain how this new programmatic proposal would relate to and interact with existing regulations governing small mining in the Ridgecrest Resource Area. We note that the USFWS issued a biological opinion (1-6-92-F-28) in 1992 entitled, “Biological opinion for small mining and Exploration Operations in the California Desert” (USFWS 1992). Formal consultation was reinitiated in 1994 resulting in a second biological opinion (1-8-94-F-28R), entitled, “Reinitiation of formal consultation for small mining and exploration operations” (USFWS 1994), which reconsidered small mining in light of the then-new designation of desert tortoise critical habitat. The Council is not in favor of programmatic biological opinions or EAs in tortoise critical habitat, particularly given the persisting declines occurring in these essential habitats located in the West Mojave. Following are a few questions related to existing and future biological opinions we expect to see answered in the BLM’s draft environmental document:

a. Would the record of decision associated with this new proposal result in a new or amended biological opinion that would replace or augment existing ones? It is our understanding that since the proposal certainly “may affect” the tortoise, which is a federally-listed species, the draft environmental document must disclose that a new programmatic biological opinion would be required for implementation of this proposal; if not, an explanation needs to be provided.

b. Similarly, since the two biological opinions authorizing small mines were written in 1992 and 1994, long before distance sampling surveys were implemented and severe declines documented (USFWS 2014), it is essential that the USFWS write a new biological opinion to assess potential jeopardy of BLM's proposed action. Also, both the BLM and USFW documents must address how the proposed action would benefit or undermine implementation of the revised tortoise recovery plan issued in 2011 (USFWS 2011).

c. How will the terms and conditions identified in the 1992 biological opinion continue to be applied to small mining operations assessed in the current programmatic environmental document? The Preferred Alternative must include the terms and conditions included in the 1992 biological opinion, at a minimum, and identify any other stipulated measures that would enhance resource protection, particularly for tortoises.

d. We note that the following statement is made in the programmatic EA for hard rock mining in the Ridgecrest Resource Area (see page 26 in BLM 2013), "Mitigation for the desert tortoise **may include** [emphasis added] the terms and conditions contained within the USF&WS programmatic biological opinion for Small Mining and Explorations Operations (1-6-92), but is not limited to those terms and conditions." In the proposed environmental document, the Council expects the BLM to state that the referenced mitigation measures **shall be included** and that the BLM stipulate any new measures identified since 1992.

e. Further, we see on in Appendix I, page 30 of BLM (2013) that, "The provisions [terms and conditions in the 1992 biological opinion] are reproduced in their entirety **but will be modified and adapted to suit specific locations and operations** [emphasis added]." It is our understanding that USFWS terms and conditions are nondiscretionary actions that must be implemented for the authorization to remain effective and to avoid violating the Federal Endangered Species Act. For example, if the USFWS stipulates that speed limits in the project area are 20 miles per hour and a tortoise is accidentally killed by a project-related worker traveling 30 miles per hour, that take would not be authorized under the biological opinion. We require that the draft environmental document stipulate that formal terms and conditions in USFWS biological opinions be implemented as written unless USFWS authorizes a modified approach.

f. As part of the Affected Environment section of the draft environmental document, indicate how many acres of tortoise critical habitat and non-critical habitat have been authorized and mined under these two existing programmatic small mine biological opinions in the Ridgecrest Resource Area.

g. Under the Environmental Consequences section of the draft environmental document, please indicate how many acres (both in tortoise critical habitats and nondesignated habitats) over what time period would be lost due to implementation of this proposed action.

5. We understand that a programmatic EA was produced in May 2013, entitled, "Programmatic environmental assessment of small-scale hard rock mining and exploration in the Ridgecrest Resource Area, Environmental Assessment 96-53" (BLM 2013). How does the current proposal differ from this existing one? Will any of the measures identified for EA 96-53 be applied to the current programmatic environmental document?

6. The proposed action must require that appropriate biological surveys and habitat assessments are performed for federally-listed, state-listed, and BLM-sensitive animal species (BLM 2010). These include the following species at a minimum (where available, references are given for the protocol survey methodologies, and should be identified in the BLM's draft environmental document), Agassiz's desert tortoise (*Gopherus agassizii*) (USFWS 2010), Panamint alligator lizard (*Gerrhonotus (=Elgaria) panamintinus*), Mohave fringe-toed lizard (*Uma scoparia*), chuckwalla (*Sauromalus obesus*), golden eagle (*Aquila chrysaetos*), southwestern willow flycatcher (*Empidonax traillii extimus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), least Bell's vireo (*Vireo bellii pusillus*), Swainson's hawk (*Buteo swainsoni*), Bendire's thrasher (*Toxostoma bendirei*), burrowing owl (*Athene cunicularia*) (CDFW 2012), Mohave ground squirrel (*Xerospermophilus mohavensis*) [CDFG 2003 (revised 2010)], American badger (*Taxidea taxus*), ringtail (*Bassariscus astutus*), desert bighorn sheep (*Ovis canadensis nelsoni*), and numerous bat species (see list on page 23 and 24 of BLM 2013).

7. The proposed action must require that appropriate biological surveys and habitat assessments are performed for federally-listed, state-listed, and BLM-sensitive plant species, including the 28 BLM-sensitive plant species listed in BLM (2013) for the hard rock mining programmatic EA and the 44 species listed in BLM's (2008) document, entitled "Plant checklist for the Ridgecrest Field Office REV 08-2008."

8. Unlike the following statement in BLM (2013), "A field investigation for threatened or endangered wildlife or 'species at risk'/BLM Sensitive Species will be conducted **at the discretion of the BLM wildlife specialist** (emphasis added)," the Council believes that field surveys for rare animals must be completed in the appropriate season for all actions under the proposal, and that it not be at the discretion of BLM staff, unless an existing inventory and technical report exist.

9. Focused plant surveys must also conform to BLM's policy to conduct inventories to determine the occurrence and status of all special status plant species on lands managed by BLM or affected by BLM actions in its document entitled, "Survey Protocols Required for NEPA/ESA Compliance for BLM Special Status Plant Species" (BLM 2009).

10. As in the BLM's programmatic EA for hard rock mining (BLM 2013), we recommend that the BLM also adopt the following prescription: "No adverse & direct impacts to special status plant species" (see measure 12 on page 13 of BLM 2013) will be authorized under the proposed action.

11. Unlike the following statement in BLM (2013), "A field survey will be done, **if deemed necessary by the BLM resource specialist** (emphasis added)," the Council believes that field surveys for rare plants must be completed in the appropriate season for all actions under the proposal, and that it not be at the discretion of BLM staff, unless an existing inventory and technical report exist. Otherwise, there is no way to ensure that no adverse and direct impacts would occur to special status plants, as stipulated in measure 12 above.

12. It is also essential that BLM in its draft environmental document require consultants surveying for tortoises and monitoring mine construction and operation follow the latest guidelines required by the USFWS in their 2009 Field Manual (USFWS 2009).

13. We recommend that higher level standards be applied to any small mine site proposed within desert tortoise critical habitat compared to sites outside critical habitat. These higher standards may include seasonal restrictions on mining operations including use of access roads to the site(s), higher compensation requirements than for mine sites occurring outside critical habitat, and assessing alternative sites that provide the same function and occur outside critical habitat. We contend that any small mine operation in tortoise critical habitat must have plan-level operations rather than notice-level, as noted in Symons' scoping notice. These are only a few examples that we expect BLM to consider in tortoise critical habitats, along with others it identifies, in the draft environmental document.

14. The draft environmental document must include discussion of both the temporal and spatial aspects of the proposal. For example, for how many years will this programmatic record of decision be in effect? Or, will it function in perpetuity until conditions reveal a new assessment is warranted? How many acres does BLM estimate may be authorized for mining under this proposal? Will there be a cap at which the record of decision will no longer apply, or will the acreage of impacts be unlimited? We expect that the draft environmental document will answer these questions for both tortoise critical habitat areas and areas outside designated critical habitat.

15. The Council does not believe that the "analysis" given in the Affected Environment section of the programmatic EA for hard rock mining (see pages 21 and 22 in BLM 2013) was sufficient; the Affected Environment section must be significantly expanded in the draft environmental document for this proposed action to adequately report population trends, threats, and recovery actions implemented by the BLM (which is another reason we believe that an EIS rather than an EA is prudent for this proposed action). We note that there is no discussion whatsoever about documented declining trends in tortoise populations, which in the West Mojave have declined more than 50% since 2004 (USFWS 2014).

16. Similarly, there are only two paragraphs in the hard rock mining programmatic EA (see page 25 in BLM 2013) describing direct and indirect impacts to the desert tortoise, which is inadequate and must be expanded upon in the draft environmental document for this proposed action. An EIS-level analysis is warranted for a meaningful analysis of impacts to tortoises and other resources.

17. And again, the Council contends that the two paragraphs presented in the programmatic EA for hard rock mining (see pages 28 and 29 in BLM 2013) are woefully inadequate to accurately report the cumulative effects of existing, proposed and reasonably foreseeable future activities, including mining and other projects. At the very least, there should be an accounting of acreages developed under the existing small mine biological opinion issued in 1992 (USFWS 1992), other recent mine developments larger than 10 acres, renewable energy projects, etc.



18. We note that the following statement is made in the programmatic EA for hard rock mining (BLM 2013, page 27) with regards to impacts to Mohave ground squirrel: “A 2081 permit issued by CDF&G [now CDFW] is required for the incidental take of MGS for projects on public land **over five acres** [emphasis added]. Projects cumulatively totaling five acres or more, [sic] may require permitting or compensation.” Unless there is a Memorandum of Understanding between BLM and CDFW specifying this agreement (and, if there is, please provide a reference), we believe that this statement is in error. Similar to tortoise where impacts to a single animal constitute take, we understand that take of a single individual Mohave ground squirrel would trigger the need for a CDFW 2081 incidental take permit; it is not habitat-based and definitely not restricted to projects impacting more than five acres. Please do not perpetuate this error in the draft environmental document.

19. The draft document must identify provisions for keeping track of the loss of habitats and tortoises resulting from implementing this proposed action. At a minimum, the BLM must provide affected parties, including the Council, an accounting of how many sites have been authorized, how many acres lost, the number of tortoises displaced (if any, and assuming occupied sites are not abandoned), and any other pertinent information, which may be assessed in the draft environmental document.

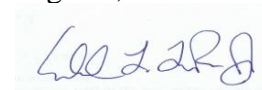
20. The proposed action must define a monitoring component to ensure that all direct and indirect impacts are restricted to the one- or five-acre mine sites. If these monitoring data reveal that impacts extend beyond the specified acreage, the proposed action must identify measures that would allow the BLM to withdraw the right-of-way grant or other authorization extended to the proponent.

21. The proposed action must identify specific habitat restoration measures to be implemented when the site is no longer actively being mined. These measures should also outline success criteria and monitoring methodologies to ensure that habitat restoration meets BLM standards.

22. The Council refers the BLM to our website at [deserttortoise.org](http://deserttortoise.org) where there is a link (“Best Management Practices Fact Sheets”) that includes the following five fact sheets for habitat restoration: Restoring perennial plants, enhancing forage, salvaging topsoil, rehabilitating severe disturbance, and reducing impacts of roads. Herein, we extend our permission to BLM to include these Best Management Practices in the draft environmental document to facilitate habitat restoration of small mines authorized under this proposed action.

Again, thank you for alerting us to this important proposal. We understand that our scoping comments given above will be used by the BLM to develop a draft environmental document. We expect that the Desert Tortoise Council will continue to be identified as an affected party for this action and that we receive an electronic copy of the draft environmental document so that we may continue to provide input and also see how the BLM used the recommendations given herein to complete that document.

Regards,



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

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

## Literature Cited

- California Department of Fish and Game. 2003 (revised 2010). Mohave ground squirrel survey guidelines. Unpublished guidelines produced by CDFG (currently CDFW = California Department of Fish and Wildlife). Sacramento, CA.
- California Department of Fish and Wildlife. 2012. Staff report on burrowing owl mitigation. 7 March 2012 memo replacing 1995 staff report, State of California Natural resources Agency, Department of Fish and Wildlife. Sacramento, CA.
- U.S. Bureau of Land Management (BLM). 2008. Plant checklist for the Ridgecrest Field Office (REV 08-2008). Unpublished checklist prepared by Glenn Harris of the BLM Ridgecrest Field Office. Ridgecrest, CA.
- U.S. Bureau of Land Management. 2009. Survey protocols required for NEPA/ESA compliance for BLM special status plant species. Unpublished protocols produced by BLM. Sacramento, CA.
- U.S. Bureau of Land Management. 2010. Special status animals in California, including BLM designated sensitive species. Unpublished list dated February 2010. Sacramento, CA.
- U.S. Bureau of Land Management. 2013. Programmatic environmental assessment of small-scale hard rock mining and exploration in the Ridgecrest Resource Area, Environmental Assessment 96-53. Unpublished EA produced by BLM Ridgecrest Resource Area. Ridgecrest, CA.
- U.S. Fish and Wildlife Service (USFWS). 1992. Biological opinion for small mining and Exploration Operations in the California Desert [3809 6840 CA-063.50 (CA-932.5)] (1-6-92-F-28). Memorandum to BLM State Director, Sacramento, CA from USFWS Field Supervisor, Carlsbad, CA.
- U.S. Fish and Wildlife Service. 1994. Reinitiation of formal consultation for small mining and exploration operations in the California desert (6840 CA-063.50) (1-8-94-F-28R). Memorandum to BLM State Director, Sacramento, CA from USFWS Field Supervisor, Ventura, CA.
- U.S. Fish and Wildlife Service. 2009. Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*). Region 8, Sacramento, California.
- 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.
- U.S. Fish and Wildlife Service. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. 222 pp.
- U.S. Fish and Wildlife Service. 2014. Update of Mojave desert tortoise population trends (dated 10 March 2014). Unpublished report prepared by the Desert Tortoise Recovery Office of the USFWS. Reno, NV. 2 pages.