



DESERT TORTOISE COUNCIL

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Via email only

To: Ms. Katrina Symons
Bureau of Land Management
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
ksymons@blm.gov

12 February 2018

RE: DOI-BLM-CA-D080-2018-003, CalNev Pipeline Dig JT-34440 and JT-38470

Dear Ms. Symons,

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 routinely provides information to individuals, organizations, and regulatory agencies on matters potentially affecting the desert tortoise within its geographic range.

We appreciate this opportunity to provide comments on the above-referenced project. Given their locations in habitats likely occupied by the desert tortoise (*Gopherus agassizii*), our comments pertain to the JT 34440 and JT 38470 sites and access routes along Afton Road and Arrowhead Trail.

1. The EA indicates that only 0.066 acres would be affected by several excavations in previously disturbed areas, so it is potential impacts along access roads that most concern us. Although the EA (page 13) indicates that no tortoise sign was found during the September 2016 surveys, the extent of those surveys is not revealed, although referred to as "reconnaissance field surveys" on page 12. In particular, we do not know if areas adjacent to the 3.5- and 6.5-mile access roads to the excavation sites were surveyed for tortoises. In any case, we expect that tortoises occur along the entire lengths of the access roads, and that the most likely impacts would harm tortoises crossing those roads as construction crews enter and leave the sites.

Although the protective measures identified in Section 4.1.2 (pages 15 through 20) of the EA are comprehensive and commendable, we note that a speed limit is not identified for travel to and from the sites. To avoid mortality or injury to tortoises crossing the road, we recommend the following measures be implemented in addition to those identified in Section 4.1.2: (1) Construction-related vehicles shall not exceed a speed limit of 20 miles per hour. (2) If activities occur during the tortoise activity period (identified as March 1 through October 31 in the EA), an Authorized Biologist or Biological Monitor shall escort crews to and from the excavation sites. And, (3) the project biologists shall record Universal Transverse Mercator (UTM) coordinates of any tortoises observed and share this location information on maps with construction crews.

2. We also recommend that the following standard protective measure be required by the BLM and conveyed to Kinder Morgan construction personnel. Prior to initiating any ground-disturbing activities, all project-related personnel shall attend a worker education awareness program to familiarize them with tortoise survey results and applicable protective measures given by the BLM and USFWS guidance (<http://www.fws.gov/carlsbad/PalmSprings/DesertTortoise.html>). Additionally, it is important that either the Authorized Biologist and/or Biological Monitor attend daily tailboard meetings to inform construction personnel of any tortoises and their signs that have been encountered. Construction workers should be informed that they must report all tortoise observations to pertinent biological personnel.

3. We note the following sentence on page 13: "...JT 34440 is within USFWS designated Critical Habitat for desert tortoise and the Superior-Cronese **Desert Wildlife Management Area (DWMA)** [emphasis added]." It is our understanding that with the passage of the Record of Decision for the Desert Renewable Energy Conservation Plan (DRECP) (BLM 2016) that DWMA designations were removed from the CDCA Plan as amended (BLM 1980), and the title is no longer being used. Rather, shouldn't the EA read that the site is in the "Superior-Cronese *Area of Critical Environmental Concern*?" We want to be clear about this, mainly so we can go forward referring to the latest acceptable titles. Also, is either of the sites found within California Desert National Conservation Lands (CNDCL) as designated by the DRECP? And if so, are there any additional protective measures, reporting requirements, or compensation factors?

4. Please clarify to Kinder Morgan that the fence referred to in measure DETO 6c on page 18 of the EA is referring to tortoise exclusionary fencing, as specifically described in Chapter 8 of the USFWS' 2009 Field Manual (USFWS 2009).

5. The EA identifies several measures that if implemented would be illegal as the proponent does not have a state incidental take permit (i.e., Section 2081 permit). Although the BLM has identified the following measures as being acceptable, in the absence of California Endangered Species Act (CESA) permitting, none of the following measures can be implemented: Excavating occupied burrows and handling eggs (DETO 3 on page 16), handling tortoises (DETO 4 on pages 16 and 17), and penning occupied burrows or free-ranging tortoises (DETO 5 on page 17). In the absence of state authorization, none of these measures may be implemented; complete avoidance is essential lest mandatory state requirements are violated.

6. Although the EA references a weed management plan (IWMP) and restoration plan (HRRP), our attempts failed to find either document on available BLM websites and other internet locations. We ask that BLM, perhaps in its final revised EA, indicate how the proponent will implement and monitor these plans. We also advise the BLM to have the proponent visit our website (deserttortoise.org) and consider both our Construction Site Best Management Practices (BMPs) and Habitat Restoration BMPs to implement weed management and habitat restoration as envisioned by the EA.

We appreciate this opportunity to provide input and trust that our comments will further protect tortoises during authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM projects that may affect desert tortoises, and that any subsequent environmental documentation for this particular project is provided to us at the contact information listed above.

Regards,



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

Literature Cited

U.S. Bureau of Land Management (BLM). 1980. California Desert Conservation Area Plan. Prepared by the Desert District, Riverside, CA.

U.S. Bureau of Land Management. 2016. Record of Decision for the Land Use Plan Amendment to the California Desert Conservation Plan, Bishop Resource Management Plan, and Bakersfield Resource Management Plan for the Desert Renewable Energy Conservation Plan (DRECP). Dated September 2016. Sacramento, CA.

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