



DESERT TORTOISE COUNCIL

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Via email only

7 March 2018

Attn: Raymond Castro
BLM Yuma Field Office
7341 East 30th Street, Suite A,
Yuma, AZ, 85365
blm_az_ym_trails@blm.gov

RE: Scoping Comments for the Lower Colorado River Travel Management Plan

Dear Mr. Castro:

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 the location of the proposed project in habitats likely occupied by both the Agassiz's desert tortoise (*Gopherus agassizii*) in California and by Morafka desert tortoise (*Gopherus morafkai*) in Arizona, our comments pertain to enhancing protection of both of these species during Bureau of Land Management- (BLM) planning for this management plan. We'd also like to personally thank pertinent BLM representatives for the informative open house in Blythe, California that we were able to attend on 13 February 2018.

Although relative acreages of the Travel Management Plan (TMP) area were not available during the open house, it appears that about a third of the TMP area is in California managed by the Needles Field Office of the BLM and two-thirds is in Arizona managed by the Yuma Field Office. We expect that the Draft Environmental Assessment (Draft EA) will document the acreages of lands both in California and Arizona.

Importantly, the Draft EA must document BLM (and other jurisdiction's) planning documents and decisions relative to tortoise conservation in both states. For example, decisions resulting from the California Desert Conservation Area Plan (CDCA Plan) of 1980 (BLM 1980), as amended, particularly by the Northern and Eastern Colorado Management Plan (NECO Plan, BLM 2002), must be summarized both as part of current management and the cumulative effects analysis for tortoise conservation in California. Similarly, the September 2016 Record of Decision for the Desert Renewable Energy Conservation Plan (DRECP) (BLM 2016) must be considered in the cumulative effects analysis. The Draft EA must document how certain DRECP designations, like Extensive Recreation Management Areas (ERMAs) and Special Recreation Management Areas (SRMAs), affected route designation decisions. Although these examples pertain to California, we expect equal consideration to be given to analogous Arizona planning documents.

It is important that the Draft EA documents how the TMP will differentially protect Agassiz's desert tortoise in California, which is federally-listed as Threatened, compared to Morafka desert tortoise in Arizona, which is BLM-designated as a Sensitive Species. For example, we expect that closing routes on lands within the listed population in California should be relatively more aggressive compared to Arizona. And, if not, the Draft EA must indicate why not.

We were told at the open house that designation of routes would depend on "resource conflicts." Specifically, one of the BLM representatives said that if no resource conflicts were identified, Field Manager, John MacDonald has instructed Yuma BLM staff to designate such routes as "open." The Council maintains that the formal, federal designation of the Agassiz's desert tortoise as a Threatened species elevates the likelihood that designation of open routes in occupied tortoise habitats in California (particularly in washes) may conflict with conservation of this sensitive, protected resource. Recent work in the Ivanpah Valley has shown juvenile tortoises use washes extensively for travel.

Given these observations, we do not expect that the BLM will close all routes where Agassiz's desert tortoise occurs; rather we expect that route designation will be based on available scientific data, and in the absence of those data, on anecdotal data. For example, in California where USFWS (2017) protocol surveys are required for Agassiz's desert tortoise on proposed project sites, both Riverside County and the City of Blythe require surveys and very likely have copies of consultants' presence-absence survey reports. These are publically-available documents that must be included in the Draft EA. The Draft EA must include all BLM and USFWS population studies that document the densities and distributions of tortoises in both states, and particularly California where line distance sampling studies have occurred since 2000 (see USFWS 2014). We recognize that none of the TMP area is in tortoise critical habitat where these studies have been conducted, but given the distances recreationists are likely to travel to access this TMP area, we believe that even critical habitats on the Chuckwalla Bench could be adversely affected. Therefore the Draft EA should analyze potential impacts to regionally-proximate tortoise critical habitats among the selected alternative route networks.

The Draft EA must necessarily document how minimization measures required under 43 CFR 8342.1 were considered in the selection of each route. Specifically, we expect the Draft EA to document how each trail would minimize (a) damage to soil, watershed, vegetation, air, or other

resources; (b) minimize harassment of wildlife or significant disruption of wildlife habitats, with special emphasis on threatened species; and (c) trails shall not be located in officially designated wilderness areas or primitive areas, which we maintain includes trails adjacent to wilderness areas that would promote off-road vehicle activity in the wilderness area.

We understand that these minimization criteria are applied to each route before any particular route alternative is selected. We recommend that all routes within high to moderate density tortoise habitats be designated as closed. For routes in low density or marginal tortoise habitats, it may be advisable to recommend them for limited designation (i.e., these routes would only be used from July to August and November to February). Even routes in low or marginal tortoise density habitats that could block necessary tortoise migration or connectivity between high density areas should be recommended for closure.

We appreciate that the Yuma Field Office is taking the lead on this planning effort but maintain that since a third of the TMP area is in California, knowledgeable biologists with the Needles Field Office must also be involved. Given that his responsibilities include the eastern portions of California, California Desert Conservation Area (CDCA) biologist, Mark Massar, should also be contacted for his input. BLM biologists from both the Needles and Yuma field offices, using aerial photography, available data, and personal knowledge must determine, at a minimum, suitable versus unsuitable tortoise habitats. For example, at this level of regional planning, we can assume (with a few exceptions of individual animals) that barren lands and active agricultural fields are devoid of tortoises, and that the Draft EA includes maps showing such areas as “unoccupied.”

With regards to the information provided during the open house in Blythe, we were told that the available route data comprising the inventory were first collected in 2005 with some subsequent field visits in 2010. As such, the data being used for this planning effort are between 7 and 12 years old. This issue of outdated data is particularly important relative to washes, where evidence of prior vehicle use is routinely used by BLM planners to identify washes as routes. The Council maintains that relying on these older data to determine vehicle use of washes is inappropriate. Those washes that have been identified as routes in the BLM’s route inventory must be ground-truthed for evidence of vehicle use, and if no use is observed, remove such “routes” from the inventory.

We understand that the TMP was foreseen in the Yuma Resource Management Plan (Yuma RMP) (BLM 2010), which allows BLM to consider this planning process in an EA rather than in an Environmental Impact Statement (EIS). The Yuma RMP states (page 2-1): “Desired Future Conditions (Goals and Objectives) provide overarching direction for BLM actions in meeting the agency’s legal, regulatory, policy, and strategic requirements.”

These Desired Future Conditions (DFCs) are then given in the Yuma RMP beginning on page 2-71. In the following outline, the DFCs are italicized, followed by our recommended treatment in the Draft EA:

● *TE-001: Terrestrial and aquatic habitats for the survival and recovery of species listed under the ESA [Endangered Species Act] are maintained, enhanced, and restored, and help keep proposed or candidate species from becoming listed as endangered or threatened under the ESA. Management actions included in the Approved RMP either contribute to or do not prevent recovery or delisting of species listed under the ESA.*

We interpret TE-001 to obligate the BLM to:

1. Ensure that Agassiz's desert tortoise habitats in California are “*maintained, enhanced, or restored*” as a result of implementing the preferred inventory. We interpret the “restored” aspect of TE-001 to mean that the BLM will, following approval of the open route network, be obligated to eliminate closed routes through vertical or horizontal mulching and other proved methods. Additionally, BLM should commit to increasing law enforcement or having existing enforcement personnel target the TMP area immediately after the network of open routes is publicized to interface with recreationists and to begin to enforce use of open routes. As such, we ask that the Draft EA describe how the BLM will establish and implement the approved network, particularly with regards to eliminating closed routes.

2. Ensure that the adopted route network “*help[s] keep proposed or candidate species [i.e., Morafka desert tortoises] from becoming listed as endangered or threatened*” in Arizona.

And, the Draft EA must specifically analyze how these DFCs are facilitated by the final approved route network.

● *TE-002: Applicable species- or habitat-specific goals and objectives addressed in established and approved recovery plans, conservation strategies and agreements, and MOUs (including the LCR MSCP) are achieved within the planning area.*

1. Given this DFC, the Draft EA must specifically list the goals and objectives of the USFWS recovery plan (USFWS 2011), pertinent conservation strategies and agreements [particularly in NECO Plan (BLM 2002)], memoranda of understanding, and Lower Colorado River Multi-species Conservation Plan (LCR MSCP). The Draft EA then must document how the various alternative routes, and particularly the preferred alternative route network, supports the goals and objectives of each of these (and other pertinent) established planning documents.

● *TE-003: Habitat historically or currently supporting special status species and existing habitat capable of supporting special status species in the future are maintained, enhanced, and restored. Ecological restoration actions will address long-term threats to special status species and the short-term need to protect special status species and their habitats.*

1. The comments given above for TE-001 also apply to this DFC, including ecological restoration of routes that are designated as “closed.”

● *TE-004: There is no net loss or fragmentation of habitat for major life history requirements (i.e., breeding, feeding, or resting cover) for special status species.*

1. The Draft EA must demonstrate how the approved route network would not result in “*fragmentation of habitat*” for both Agassiz’s and Morafka’s desert tortoises. Although the Council necessarily focuses on conservation of desert tortoises to meet our mission statement given in the introductory paragraph of this letter, we note that this DFC extends beyond tortoises to dozens of special status reptile, bird, and mammal species, all of which must be considered in the Draft EA relative to potential habitat fragmentation.

Without restating them here (except italicized excerpts), we incorporate by reference and now refer to the six specific Management Actions listed on pages 2-72 and 2-73 (i.e., TE-005 through TE-010) of the Yuma RMP.

1. With regards to TE-005, the Draft EA must indicate how the tortoise protective measures given in Appendix C of the Yuma RMP will be implemented during establishment of the approved route network, particularly during route closure. TE-005 also requires that the Draft EA demonstrates how each alternative route network will or will not “*enhance known habitat for threatened and endangered species and assist in the recovery of listed species,*” including Agassiz’s desert tortoise.

2. With regards to TE-006, the Draft EA must analyze how each route alternative does or does not “*contribute to the need to list special status species as threatened or endangered,*” particularly Morafka’s desert tortoise.

3. *TE-007: Avoid or minimize negative behavioral impacts to special status species resulting from human caused disturbances by either prohibiting or constraining human activities during breeding or migratory seasons, on a case-by-case basis.* In order to realize this Management Action, the BLM must consider closure of those routes that are most likely to impact Agassiz’s desert tortoise, particularly between February and May and again during September and October. We also cite this specific Management Action as justification for our recommendation above that routes in washes, including all those without evidence of vehicle use, be closed.

4. As required by TE-008, the Draft EA must describe how BLM will mitigate impacts of the authorized route network to “*minimize adverse impacts to [all] special status species [not only the two tortoise species].*”

5. When the Yuma RMP was finalized in 2010, it was before the USFWS distance sampling data statistically demonstrated downward trends in tortoise populations in all but the northeastern portion of the range of Agassiz’s desert tortoise (USFWS 2014). The latter two parts of TE-009 referring to downward trends in species populations, require that BLM “*Avoid or minimize the following situations for special status species and associated habitat management on BLM-administered public lands.*” So, the Draft EA must analyze how each route alternative would avoid or minimize downward trends of many special status species, and particularly Agassiz’s desert tortoise.

6. *TE-010: Minimize or avoid human-caused habitat destruction, degradation, and fragmentation to protect special status species. Habitat modifications from land and resource uses will be at levels that do not threaten the persistence of threatened, endangered, proposed, or candidate species populations.* It is important that the Draft EA analyze how each of the route alternatives may contribute (or avoid) habitat impacts for numerous special status species, including both tortoise species. Given this required Management Action, the Draft EA must define and implement a monitoring program that will effectively determine if habitat destruction, degradation, and fragmentation results from the final, approved route network, including an adaptive management discussion to remedy impacts resulting from implementing this TMP. It is imperative that BLM develop and implement a monitoring program that evaluates the effectiveness of achieving all DFCs (e.g., TE 001 through 010).

In addition to the Desired Future Conditions and Management Actions described above, the Yuma RMP describes four Administrative Actions on page 2-73. These refer to “*practices and facilities that will affect special status species or their habitats*” (AA-123); “*to provide suitable ecological conditions that constitute well-distributed habitats and connective corridors*” (AA-124); to “[c]ooperate with USFWS, AGFD, and CDFG [now CDFW] for management of species listed under the ESA, and with the AGFD and CDFG for species of special concern or State-listed species (AA-125); and “[e]nhance scientific knowledge and public awareness on special status species through research, and interpretive and outreach programs” (AA-126). Given that these Administrative Actions became requirements with the signed Record of Decision on 29 January 2010, the Council expects the Draft EA to address how each of the alternatives will support or detract from these Administrative Actions.

We appreciate this opportunity to provide input and trust that our comments will help the BLM produce Draft and Final EA’s that address our concerns and meet standards established in previous planning documents. 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

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