



DESERT TORTOISE COUNCIL

4654 East Avenue S #257B
Palmdale, California 93552

www.deserttortoise.org
eac@deserttortoise.org

Via email only

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Miriam Liberatore, Project Manager
Bureau of Land Management
3040 Biddle Road
Medford, OR 97504

Email: blm_ca_crimsonsolar@blm.gov

Magdalena Rodriguez, Project Manager
California Department of Fish and Wildlife
3602 Inland Empire Boulevard, Ste C220
Ontario, CA 91764

Email: Magdalena.rodriguez@wildlife.ca.gov

RE: Scoping Comments on Joint Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the RE Crimson Solar Project and Input on Potential Plan Amendments to the California Desert Conservation Area Plan

Dear Ms. Liberatore and Ms. Rodriguez,

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 desert tortoise 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 desert tortoises within their geographic ranges.

Scoping Comments for Crimson Solar Project

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats occupied by Agassiz's desert tortoise (*Gopherus agassizii*), our comments pertain to enhancing protection of this species during activities authorized by Bureau of Land Management (BLM) and California Department of Fish and Wildlife (CDFW). We would also like to thank Ms. Liberatore for providing us with baseline information and maps showing the proposed solar facilities.

1. The Council supports alternatives to reduce the need for additional solar energy projects in the Mojave Desert. That alternative is rooftop solar. The City of Los Angeles has implemented a rooftop solar Feed-in Tariff (FiT) program, the largest of its kind in America. The FiT program enables the owners of large buildings to install solar panels on their roofs, and sell the power they generate back to utilities for distribution into the power grid. This approach puts the generation of electricity where the demand is greatest, in populated areas. It may also reduce transmission costs, the number of affected resources that must be analyzed under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), and mitigation costs. The Draft EIS/EIR should include an analysis of where the energy generated by this project would be sent and the needs for energy in those targeted areas that may be satisfied by rooftop solar.

2. We request that an alternative be analyzed in the Draft EIS/EIR where electricity generation via solar energy is located much closer to the areas where the energy use has the greatest demand, including urban/suburban areas. Additionally, BLM's purpose and need statement in the Draft EIS/EIR should be broad enough to encourage solar energy development through the feasible alternatives of rooftop solar as well as better solar farm locations, and not so narrow that it precludes these alternatives.

3. We are very concerned with the placement of this 2,500-acre solar facility in a relatively narrow, five-to-six mile wide corridor located between the Mule Mountains to the south and Interstate 10 to the north. While the footprint of the proposed facility may occupy about half of this corridor that is used by the tortoise and other species of wildlife for connectivity between populations, its placement in the center fragments this corridor and may substantially reduce or destroy its function in the future as a wildlife corridor. We strongly request that the environmental consequences section of the Draft EIS/EIR include a thorough analysis of this indirect effect (40 Code of Federal Regulations 1502.16) and appropriate mitigation to maintain the function of population connectivity for the Agassiz's desert tortoise and other wildlife species.

4. The U.S. Fish and Wildlife Service (USFWS) defines "action area" in 50 Code of Federal Regulations 402.2 and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)." To facilitate compliance with the Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA), it is imperative that project proponent coordinate early with the USFWS and CDFW to determine what the action area is for this project. We believe the action area must include areas located east and west of the connectivity corridor that would be cut in half if the project is developed as currently proposed. It is necessary that the project proponent perform protocol level surveys (USFWS 2017) that determine tortoise densities and distribution in the USFWS-identified action area. CDFW may require similar or more detailed surveys. The results of this consultation should be included in the Draft EIS/EIR.

5. Given the above concerns, we expect that the Draft EIS/EIR will assess a range of alternative sites including other locations than the one depicted in Figure 1 of the notice. Too often proponents present only one intended location for a particular project, which undermines the

intent of selecting sites that may have minimal environmental impacts compared to the subject property. Please see our comment above about including an alternative that locates energy development in locations close to where it will be used.

6. Although the proposed site is located within a Development Focus Area (DFA) as defined by the Desert Renewable Energy Conservation Plan (DRECP) and Solar Energy Zone (SEZ) as defined by the Programmatic Solar Energy Development Plan (PSEDP), we are nevertheless concerned that the proposed location given in Figure 1 is five to six miles south of Interstate 10 in habitats that are very likely occupied by tortoises and in relatively pristine condition. The Draft EIS/EIR should include: (1) current data on and analysis of the presence and densities of special status species, particularly Agassiz's desert tortoise; (2) habitat quantity and quality in the action area; (3) the functions/viability of the populations in the action area with respect to current conditions and future development scenarios including viability of and connection with adjacent populations; and (4) appropriate actions to fully mitigate these effects to population viability, connectivity, and habitat loss/degradation.

7. There are specific survey protocols for Agassiz's desert tortoise (USFWS 2017), special status plant species (BLM 2009, CDFG 2009), and burrowing owl (CDFW 2012a), among others, that must be implemented to ensure that the Draft EIS/EIR is using reports employing the latest standards from qualified consultants for proposed energy projects that may affect these and other rare species. The literature review for rare species must provide current data including a review of the most recent version of the California Natural Diversity Data Base (CNDDDB; CDFW 2018) and an assessment for each species as to their potential occurrence on the subject property.

8. The Draft EIS/EIR, based on the results of the tortoise protocol surveys, must discuss the displacement of tortoises from the impact area. Will these tortoises be relocated into adjacent areas or are they to be translocated into distant areas? The Draft EIS/EIR should present the intended approach to relocating/translocating displaced tortoises. Additionally, there should be an analysis of previous translocation efforts, such as at Fort Irwin National Training Center and more recently at Twentynine Palms Marine Corps Base, to ensure that translocation standards are up-to-date and acceptable to both USFWS and CDFW.

9. It is essential that qualified biologists address the likelihood of occurrence of all special status plant and animal species included in the Northern and Eastern Colorado Desert Coordinated Management Plan (NECO Plan; BLM 2002). Following the literature review, field surveys during appropriate seasons for detection of identified plants and animals must be performed. The Draft EIS/EIR must address how this project fits within the management structure of the NECO Plan, and provide maps of Agassiz's desert tortoise Critical Habitat (USFWS 1994a), Areas of Critical Environmental Concern (ACECs), and other protective management areas designated in the DRECP, such as National Conservation Lands (NCLs).

10. We note that the DRECP (BLM 2016) considers 11 criteria for siting renewable energy facilities. These criteria include selecting lands with (1) disturbed or contaminated lands; (2) less ecologically intact lands; (3) non-critical habitat or non-crucial habitat linkage area; (4) not legislatively or legally protected lands; (5) few focal or covered species dependent upon lands; (6) more fragmented ownership; (7) proximity to transmission lines/grid/local communities needing electricity; (8) not immediately adjacent to residential areas; (9) away from crucial

military or commercial flight areas; (10) not previously acquired for the protection of imperiled species, benefit of military training, or long-term conservation; and (11) minimal impact to currently permitted or authorized uses. The Draft EIS/EIR must evaluate this project for each criterion particularly for Agassiz's desert tortoise and if a majority of the criteria is not met, reject this location for the project.

11. There are a dozen existing, approved, and pending renewable energy projects in the area between Blythe and Desert Center that must be included in the cumulative effects analysis of the Draft EIS/EIR. We also expect that the environmental documents will provide a detailed analysis of the "heat sink" effects of solar development on adjacent desert areas and particularly Agassiz's desert tortoise in addition to climate change. The document should also consider recently developed solar fields where soils have been bladed versus those facilities where the vegetation has been mowed and allowed to revegetate the area. In the latter case, it may be appropriate to allow tortoises to enter into the facilities and re-establish residency under the solar panels as vegetation recolonizes the area. This option should be designed as an experiment to add to the limited data on this approach to determine the extent of effects on Agassiz's desert tortoise populations and movements/connectivity.

12. The Mojave Desert Land Trust (MDLT) has acquired more than 200 parcels in the region that are managed for Agassiz's desert tortoise and other special status species. The management of these parcels is outlined in CDFG (2012b). When Frazier Haney, MDLT's Director of Land Conservation responded to our email on 3/29/2018, he stated, "Although Crimson solar would not directly impact our [MDLT] lands, since it is not directly adjacent or even within a few miles, I do believe there would be indirect effects from additional disturbance causing weeds, predator subsidy, and air quality problems, among the most pressing." As such, the Council expects that the Draft EIS/EIR will address these potential indirect impacts to the management of mitigation parcels by MDLT.

Input on Potential Plan Amendments to the California Desert Conservation Area Plan

In BLM's Notice of Intent for this project, BLM stated that it is seeking public input on any potential plan amendments to the CDCA Plan. We offer the following information in response to that request.

Brief History of Major CDCA Plan Amendments

In 2002, the BLM in California adopted the NECO Plan and the Northern and Eastern Mojave (NEMO) Plan, and in 2006, the West Mojave (WEMO) Plan. These three Plan Amendments to the California Desert Conservation Area (CDCA) Plan (BLM 1980) contained limited on-the-ground management actions for the Mojave desert tortoise. They identified public lands that were similar in size and location to designated Critical Habitat Units (CHUs). BLM's intent for these identified lands, called Desert Wildlife Management Areas (DWMAs) was to maintain much of the existing quantity of habitat for the Mojave desert tortoise while making the DWMAs available for other uses under BLM's multiple use mandate in the Federal Land Policy Management Act (FLPMA). The concept in these Plan Amendments was to reduce the amount of future human activities that resulted in new areas of surface disturbance for new discrete authorized projects that directly or indirectly contributed to tortoise mortality. This concept, while well intended, was without scientific support, and the Plan did not propose to use science to determine if this concept would be successful.

Status of the Populations of the Mojave Desert Tortoise

BLM’s implementation of a conservation strategy for the Mojave desert tortoise in the CDCA through implementation of its previous Plan Amendments through 2014 has resulted in the following changes in the status for the tortoise throughout its range and in California from 2004 to 2014 (Table 1; USFWS 2015). There are 17 populations of Mojave desert tortoise described below that occur in the CHUs and Tortoise Conservation Areas (TCAs); 14 are on lands managed by the BLM; 8 of these are in the CDCA.

Table 1. Summary of 10-year trend data for 5 Recovery Units and 17 CHUs/TCAs for Agassiz’s desert tortoise (= Mojave desert tortoise). The table includes the area of each Recovery Unit and CHU/TCA, percent of total habitat for each Recovery Unit and CHU/TCA, density (number of breeding adults/km² and standard errors = SE), and the percent change in population density between 2004 and 2014. Populations below the viable level of 3.9 breeding individuals/km² (10 breeding individuals per mi²) (assumes a 1:1 sex ratio) and showing a decline from 2004 to 2014 are in red.

Recovery Unit Designated Critical Habitat Unit/Tortoise Conservation Area	Surveyed area (km ²)	% of total habitat area in Recovery Unit & CHU/TCA	2014 density/km ² (SE)	% 10-year change (2004–2014)
Western Mojave, CA	6,294	24.51	2.8 (1.0)	–50.7 decline
Fremont-Kramer	2,347	9.14	2.6 (1.0)	–50.6 decline
Ord-Rodman	852	3.32	3.6 (1.4)	–56.5 decline
Superior-Cronese	3,094	12.05	2.4 (0.9)	–61.5 decline
Colorado Desert, CA	11,663	45.42	4.0 (1.4)	–36.25 decline
Chocolate Mtn AGR, CA	713	2.78	7.2 (2.8)	–29.77 decline
Chuckwalla, CA	2,818	10.97	3.3 (1.3)	–37.43 decline
Chemehuevi, CA	3,763	14.65	2.8 (1.1)	–64.70 decline
Fenner, CA	1,782	6.94	4.8 (1.9)	–52.86 decline
Joshua Tree, CA	1,152	4.49	3.7 (1.5)	+178.62 increase
Pinto Mtn, CA	508	1.98	2.4 (1.0)	–60.30 decline
Piute Valley, NV	927	3.61	5.3 (2.1)	+162.36 increase
Northeastern Mojave	4,160	16.2	4.5 (1.9)	+325.62 increase
Beaver Dam Slope, NV, UT, AZ	750	2.92	6.2 (2.4)	+370.33 increase
Coyote Spring, NV	960	3.74	4.0 (1.6)	+ 265.06 increase
Gold Butte, NV & AZ	1,607	6.26	2.7 (1.0)	+ 384.37 increase
Mormon Mesa, NV	844	3.29	6.4 (2.5)	+ 217.80 increase
Eastern Mojave, NV & CA	3,446	13.42	1.9 (0.7)	–67.26 decline
El Dorado Valley, NV	999	3.89	1.5 (0.6)	–61.14 decline
Ivanpah Valley, CA	2,447	9.53	2.3 (0.9)	–56.05 decline
Upper Virgin River	115	0.45	15.3 (6.0)	–26.57 decline
Red Cliffs Desert	115	0.45	15.3 (6.0)	–26.57 decline
Range-wide Area of CHUs - TCAs/Range-wide Change in Population Status	25,678	100.00		–32.18 decline

Important points from this table include the following:

Change in Status for the Mojave Desert Tortoise Range-wide

- Ten of 17 populations of the Mojave desert tortoise declined from 2004 to 2014.
- Eleven of 17 populations of the Mojave desert tortoise are no longer viable. These 11 populations represent 89.7 percent of the range-wide habitat in CHUs/TCAs.

Change in Status for the Mojave Desert Tortoise in California

- Eight of 10 populations of the Mojave desert tortoise in California declined from 29 to 64 percent from 2004 to 2014 with implementation of tortoise conservation measures in the NECO, NEMO, and WEMO Plans.
- Eight of 10 populations of the Mojave desert tortoise in California are no longer viable. These eight populations represent 87.45 percent of the habitat in California that is in CHU/TCAs.
- The two viable population of the Mojave desert tortoise in California are declining. If their rates of decline from 2004 to 2014 continue, these two populations will no longer be viable in about 2020 and 2031.

Change in Status for the Mojave Desert Tortoise on BLM Land in California

- Eight of eight populations of Mojave desert tortoise on lands managed by the BLM in California declined from 2004 to 2014.
- Seven of eight populations of Mojave desert tortoise on lands managed by the BLM in California are no longer viable.

Change in Status for Mojave Desert Tortoise Populations in California that Are Moving toward Meeting Recovery Criteria

- The only population of Mojave desert tortoise in California that is not declining is on land managed by the National Park Service. It increased 178 percent in 10 years.

DRECP Plan Amendment

In 2016, the BLM adopted the DRECP, which is another Plan Amendment, to allow for large-scale renewable energy development in the CDCA. The DRECP had several objectives regarding the management of desert tortoise conservation areas (TCAs, formerly called DWMA's); however, the focus of habitat management was no additional net loss of habitat quantity in the TCAs from the existing conditions. Thus, management actions to improve the status of the Mojave desert tortoise in the 2016 Plan Amendment were similar to those in the 2002 and 2006 CDCA Plan Amendments even though the USFWS' 2015 report documented continuing substantial declines in Mojave desert tortoise population densities in California from applying these management actions.

The Endangered Mojave Desert Tortoise

The Council believes that the Mojave desert tortoise meets the definition of an endangered species. In the FESA, Congress defined an “endangered species” as “any species which is in danger of extinction throughout all or a significant portion of its range...” In the CESA, the California legislature defined an “endangered species” as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant, which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes (California Fish and Game Code § 2062). Because most of the populations of the Mojave desert tortoise were non-viable in 2014, most are declining, and the threats to the Mojave desert tortoise are numerous and have not been substantially reduced throughout the species’ range, the Council believes the Mojave desert tortoise should be designated as an endangered species by the USFWS and CDFW.

Agassiz’s desert tortoise is now on the list of the world’s most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature’s (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Agassiz’s desert tortoise to be Critically Endangered (Turtle Conservation Coalition 2018). It is one of three turtle and tortoise species in the United States to be critically endangered.

The summary of data above indicates that BLM’s current management actions for the Mojave desert tortoise are inadequate to help recover the desert tortoise. BLM has been ineffective in halting population declines, which has resulted in non-viable populations. The Council believes that these management actions are inadequate in preventing the extirpation of the Mojave desert tortoise in California.

Federal Land Policy and Management Act

In 1976, Congress passed the FLPMA and established the CDCA Plan “to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple uses and sustained yield, and the maintenance of environmental quality.” Congress further declared “the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed; the use of all California desert resources [including rare and endangered species of wildlife, plants, and fishes] can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations...”

Congress wrote a lengthy definition of “multiple use” for the management of public lands and their various resource values. The definition included “... the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”

Congress defined “sustained yield” as the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. The Mojave desert tortoise and its habitats are renewable resources.

The definition of “environmental quality” is a set of properties and characteristics of the environment, either generalized or local, as they impinge on human beings and other organisms. It is a measure of the condition of an environment relative to the requirements of one or more species and or to any human need or purpose. Thus, BLM must consider the quality or condition of the environment of the Mojave desert tortoise with respect to the species’ requirements for persistence and must maintain this habitat quality.

The Council believes that BLM’s management of the Mojave desert tortoise and its habitats in California is not in compliance with FLPMA or the purposes for establishing the CDCA. The large number of non-viable populations and downward trend in population densities for the Mojave desert tortoise in the CDCA are the data that confirm non-compliance with the “immediate and future protection of public lands,” “conserving resources for future generations,” and definitions of multiple use, sustained yield, and environmental quality.

Section 7(a)(1) of the Endangered Species Act

Section 7(a)(1) of the Endangered Species Act states that all federal agencies “...shall... utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act.” In Section 3 of the ESA, “conserve,” “conserving,” and “conservation” mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition...”

The Council believes that the data above demonstrate that BLM’s management of the Mojave desert tortoise and its habitat under the CDCA Plan and Plan Amendments has not been effective in meeting BLM’s Section 7(a)(1) mandate of carrying out programs for its conservation. To meet its Section 7(a)(1) responsibilities, the BLM needs to adopt and implement the management actions of the one population of the Mojave desert tortoise in California that is increasing. This population is managed by the National Park Service. The NPS’ land management practices are closer to managing areas of land as reserves, which is what the 1994 Recovery Plan (USFWS 1994b) described as part of the recovery strategy for the Mojave desert tortoise. While BLM designated DWMA as one part of the recovery strategy, it did not implement the other parts of the recovery strategy. According to the Recovery Plan, DWMA were to be managed as reserves; that is, they were areas of land to keep, save, preserve, or protect. BLM did not identify and implement needed recovery actions within each DWMA to manage the DWMA as protected areas for the Mojave desert tortoise.

Request for Plan Amendment

The Council believes that the BLM should prepare, adopt, and implement a Plan Amendment to revise the management of the Mojave desert tortoise and desert tortoise habitat in the CHUs/TCAs for the following reasons:

- Most or all of the Mojave desert tortoise populations in the CDCA are below the level of viable populations and are declining;
- the Mojave desert tortoise in the CDCA represents a significant portion of the range of the species;
- the Mojave desert tortoise meets the definition of endangered under both FESA and CESA and should be managed as an endangered species even though the USFWS and CDFW's have not officially updated its status;
- the declining numbers and densities and large percentage of non-viable populations of Mojave desert tortoise in California indicate that planning and management actions by the BLM have been ineffective in halting the decline of the tortoise and degradation of its habitat;
- BLM has responsibilities under FLPMA regarding the CDCA and its management for "immediate and future protection of public lands," "conserving resources for future generations," and definitions of multiple use, sustained yield, and environmental quality; and
- BLM has section 7(a)(1) responsibilities under FESA and needs to comply with these under the FESA.

For these reasons, the Council formally requests that BLM propose a Plan Amendment to the CDCA Plan that will result in increases in population densities and quickly reverse the non-viable status of tortoise populations in the CDCA. Such a Plan Amendment must be scientifically based in its determination of appropriate and effective management actions, implementation of these management actions, monitoring of their effectiveness and compliance, and implementing adaptive management. This action must be implemented as soon as possible to prevent the extirpation of the Mojave desert tortoise in California. The Council is available to help the BLM in its development of such a Plan Amendment.

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 species of 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

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