

DESERT TORTOISE COUNCIL

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Via email only

27 September 2013

Ms. Beverly Gorny, Bureau of Land Management
TransWest Express Project
P.O. Box 20678
Cheyenne, WY 82003
TransWest_WYMail@blm.gov

RE: Public Input on the TransWest Express Transmission Project Draft Environmental Impact Statement

Dear Ms. Gorny,

The Desert Tortoise Council (Council) is a private, 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 1976 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.

Herein, the Council board of directors takes this opportunity to provide comments on the Draft Environmental Impact Statement (DEIS) for this project, which are due in your office by 30 September 2013.

Avoid Beaver Dam Area of Critical Environmental Concern

The Council would rather see an alternative transmission alignment that entirely avoids the Beaver Dam Slope Area of Critical Environmental Concern (ACEC) than one that bisects it, as the proponent-proposed alignment would. We understand that the proposed alternative would affect an area about nine miles long and 250 feet wide within an existing utility corridor through the Beaver Dam Slope ACEC (page 3.15-76, 2nd paragraph), and that realigning the right-of-way to the west would avoid this small critical habitat unit.

Whereas there are other alternatives to the west that would avoid impacts to the Beaver Dam Slope critical habitat unit altogether, we understand that every alternative in Region III would impact a substantial portion of tortoise critical habitat. The Council would like the proponent to construct an alternative alignment that avoids all impacts to designated desert tortoise critical habitat.

As reported in Table 3.15-3 on page 3.15-14, avoidance of the Beaver Dam Slope ACEC would also follow stipulations in the Bureau of Land Management's (BLM) St. George Resource Management Plan, which indicates "...new ROW and temporary use permits are strongly discouraged within the Beaver Dam Slope ACEC." As proposed, the proponent's alternative would affect desert tortoise critical habitats in several places, as outlined on pages 3.15-76 and 3.15-77, and would therefore occur "...within designated ROW exclusion areas" and "...would not be in conformance with area management." We view these disclosures as evidence why the BLM should only approve an alternative that does not violate its existing management plans.

Avoid Other Desert Tortoise Critical Habitat Areas

We note in Table 3.8-43 on page 3.8-118 that Alternative III-C, with the most anticipated impacts to critical habitat, would directly impact 587 acres of critical habitat and indirectly impact 63,104 acres of critical habitat and that Alternative III-B, with the lowest impact, would directly affect 328 acres and indirectly affect 27,525 acres. We cannot tell from the DEIS as written what these indirect impacts are, if they are judged to be significant, and how tortoises on between 27,525 and 63,104 acres of critical habitat, depending on the alternative chosen, may be indirectly affected. How will these indirect impacts to critical habitat be mitigated? We suggest complete avoidance by selecting an alternative alignment that avoids critical habitat altogether.

Other critical habitats would be affected outside BLM-designated corridors (described throughout Section 3.15) and therefore fall within "ROW avoidance areas." We see in the conclusion section for Region III where tortoise habitat is most common (page 3.15-86), that "All alternatives within Region III would result in impacts to SDAs [Special Designation Areas] designated by the BLM for the protection of desert tortoise," ranging from between 700 and 940 acres within ACECs among the three alternatives. Why was the project designed this way? Since avoidance areas are known and designated, the alignment should be designed within the constraints of existing management and should not ignore them.

Locate within Designated Utility Corridors

The Council recommends that the final alignment remain within existing designated utility corridors rather than be located outside them. There are several places where the proposed alignment leaves designated corridors and we assume no transmission lines currently exist.

The Council recommends a final corridor that impacts the least amount of desert tortoise habitat, avoids designated critical habitat, and is located on lands that are already degraded and therefore supporting fewer or no desert tortoises.

Concerns Regarding Data Adequacy

Were any field investigations completed during preparation of the DEIS? No biological studies or field data were provided to demonstrate which alternative may have the fewest impacts. The U.S. Fish and Wildlife Service (USFWS) has a tortoise survey protocol developed in 2010 that outlines how proposed linear projects such as this one are to be surveyed. Did USFWS waive the need for the proponent to perform these surveys? The Council feels that more field data are needed to fully document the potential impacts associated with each of the alternatives.

Recommendation to Minimize Impacts

The Council acknowledges that there is potential to minimize impacts to desert tortoises at the time of construction in the following mitigation measure (page 3.8-37 of the DEIS), “*SSWS-4: To avoid and minimize impacts to the desert tortoise and its habitat, TWE would conduct field surveys in identified desert tortoise habitat following approved USFWS protocols... [and] implement appropriate mitigation measures during construction, including but not limited to, fencing, preconstruction surveys, and relocating desert tortoises.*” However, we also encourage the proponent to identify, and the regulatory agencies to authorize, an alternative alignment based on existing surveys and other information that avoids tortoise critical habitat and known occupied tortoise habitats, as per the criteria given above.

Failure to Fully Identify and Analyze Direct and Indirect Impacts

Impacts to desert tortoise listed on page 3.8-117 identify three “potential” and “direct” impacts, but fail to identify *indirect* impacts and *cumulative* impacts. Although the third paragraph indicates, “*...impacts would be more pronounced within occupied habitat and USFWS critical habitat,*” and there is a more detailed discussion of impacts on page 3.8-123, there is no detailed analysis of how the proponent’s preferred alternative for the transmission line would predictably impact tortoise critical habitat on the Beaver Dam Slope and elsewhere (i.e., Mormon Mesa ACEC, Mormon Mesa – Ely ACEC, Kane Springs ACEC, and Coyote Springs Valley ACEC).

The National Environmental Policy Act (NEPA) requires consideration of indirect and cumulative effects (40 CFR §§1500-1508).

Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. (40 CFR § 1508.8)

Cumulative impact is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR § 1508.7)

As presented in the DEIS, the indirect and cumulative effects analyses relative to desert tortoise do not meet the requirements of NEPA.

Federal Assessment of the Preferred Alternative

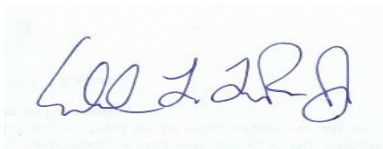
If in spite of these recommendations the preferred alternative is pursued, we expect that formal consultation with USFWS will be required and a biological opinion will be issued that will necessarily assess if the project may result in “adverse modification of critical habitat,” if the project may “jeopardize the continued existence of the species,” and determine what level of “take” of tortoises may be associated with the project. The TransWest line could severely compromise designated desert tortoise critical habitat, the intended focal area for recovery of the species.

Final Recommendation

The statement on page 3.8-138 under “Alternative Variations in Region III,” indicates that “*No ... desert tortoise habitat would be impacted by the alternative variations in Region III.*” As given above, the Council would encourage the proponent to select, and the regulatory agencies to adopt, one of the alternative variations that would minimize impacts to occupied tortoise habitats and completely avoid impacts to tortoise critical habitats.

Thank you for this opportunity to provide input.

Regards,

A handwritten signature in blue ink, appearing to read "Ed L. LaRue, Jr.", is centered on a light blue rectangular background.

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