

DESERT TORTOISE COUNCIL

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21 January 2014

RE: Fremont Valley Preservation Project by AquaHelio Resources, LLC: Public Workshop of 1/20/2014

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.

Council Board members, Ed LaRue and Peter Woodman, attended the public workshop sponsored by Kern County Planning Department on 1/20/2014. Herein are some concerns with the proposed project, with the major information source being the Draft EIR, dated November 2012. Information given in the Draft EIR is given parenthetically, *followed by our comments in italics*. As such, this memorandum serves the purpose of documenting the available information followed by our concerns. In other places, particularly near the end, only our comments are given.

1. *A total of 4,086 acres of private lands, mostly fallow agriculture and "undeveloped" would be affected on four separate sites in the vicinity of Cantil. There would also be 75 miles of transmission lines.* "The project sites are located less than one mile from the Desert Tortoise Natural Area and Project Site 4 is directly adjacent to the Western Rand Mountain Area of Critical Environmental Concern. Red Rock Canyon State Park is located 2.5 miles to the north of Project Site 3, and Koehn Lake is located 1.25 miles to the east of Project Site 3 and 0.5 mile southwest of Project Site 4."

2. "Interconnection at the SCE Randsburg Substation – This interconnect option is near Randsburg and approximately 20 miles northeast of the project sites. Interconnection at this location would require two parallel transmission lines approximately 30-miles long of 230 kV double-circuit construction on tubular-steel poles. ... Additionally, interconnection could occur from California City, northeasterly along the 20 Mule Team Parkway to intersect with the transmission lines along SR395 north to Randsburg. Interconnection at this location would require two parallel transmission lines approximately 35-miles long of 230-kV double-circuit construction on tubular steel poles." *Assuming the first option runs along Garlock Road and may parallel critical habitat, we recommend the second option, which avoids critical habitat. • Considering Figure 4 in the Biota Report, we recommend the alternative(s) that run(s) south*

towards California City then east to Kramer Junction. • Based on Figure 31 in the Biota Report, these southern routes do appear to have fewer tortoise sign. • Considering that the transmission lines would presumably cross BLM lands, it's not clear why this is an EIR and not an EIR-EIS.

3. “Interconnection at the SCE Kramer Substation – This interconnect option is five miles east of Boron and approximately 30 miles southeast of the project sites. Interconnection at this location would require two parallel transmission lines approximately 40-miles long of 230 kV double circuit construction on tubular-steel poles.” *This seems to be the least impacting alternative, running south to California City, then east along Highway 58.*

Unless otherwise noted, the remaining observations are relative to the Biota Report, dated August 2012, revised December 2013, prepared by M.H. Wolfe and Associates, Bakersfield, CA., and published as Appendix F in the September 2013 Draft EIR.

4. *According to this report, the project would affect 4,881 acres and 126 miles of alternate transmission lines (page xiii). “The proposed project sites all have been farmed for alfalfa and a few other crops either partially or in their entirety for about 40 years. ... Although farming has ended, over 55 percent of the acreage remains largely void of vegetation or in a ruderal condition. Some early successional desert saltbush is in the process of invading the open lands on parts of most of the parcels (page xiii).”*

5. Page xiii: “During 2012, biological field surveys were conducted to help identify the presence of species of concern that may occur on the parcels. The parcels have habitat that may be used by the Mojave ground squirrel and a number of desert tortoise burrows were identified on several parcels, with none on one. No threatened or endangered plants species were identified to occur on the properties surveyed.” “A Habitat Conservation Plan from the U.S. Fish and Wildlife Service and an Incidental Take Permit under Section 2081 from the California Department of Fish and Game are being pursued.”

6. *As per Figure 1, page 5 in the Biota Report, the “Brothers and Cantil Properties” border Red Rock Canyon State Park and the “Randsburg/Saltdale Property” is immediately adjacent to Fremont-Kramer Critical Habitat and Area of Critical Environmental Concern.*

7. *As per page 34 of the Biota Report with regards to adjacent land designations: “Red Rock Canyon State Park is also north of Cantil and the Brothers Properties on the north side of Highway 14. BLM lands designated as limited use areas are north of the Saltdale and Randsburg Properties, while BLM ACEC (Area of Critical Environmental Concern) are located to the southwest, south, east and north of the east half of the Randsburg property. ... The Desert Tortoise Natural Area is located one mile east of the Homes property in Section 11, but is several miles to the southeast and southwest of all the remaining proposed project sites.” *The Draft EIR fails to mention the Mojave Ground Squirrel Conservation Area adopted with the West Mojave Plan Record of Decision. Although it may only apply to BLM lands, it may still affect the compensation ratios on the sites.**

8. *As per Figure 5 on page 35 of the Biota Report, the Randsburg/Saltdale Property is bounded to the south, east, and north by either ACEC or critical habitats. The project would be much*

more palatable if the Randsburg/Saltdale Property were excluded from the project, although it is at least refreshing that public lands are not being targeted. • As per Figure 12, page 57 of the Biota Report, excluding development of the northeastern panhandle (see especially Figures 21 and 22 on pages 97 and 99, where it is interesting that tortoise burrows were found in crop circles) and the non-agricultural southern areas may reduce the loss of intact creosote bush scrub and adjacent ACEC/CHU habitats. • The above statements also supported by the following conclusion on page 68: “The proposed project sites, particularly Randsburg and Cantil, do provide potential habitat for endangered, threatened and wildlife species of special concern. Some of the “special status” species that have potential to occur on the sites include, but are not limited to, the Mojave desert tortoise, Mohave ground squirrel, western burrowing owl, and American badger.” And, on page 68: “The Critical Habitat area is found in the Mojave Desert in California and Nevada and abuts the east side of the Randsburg property.” The Homes Property, located west of DTNA, also seems to be tortoise habitat throughout (see Figure 25).

9. *As per page 40 of the Biota Report, the 476-acre Cantil property has “substantial natural habitat is present on this parcel as it does not appear to have been cultivated, at least in recent historical times.”*

10. *As per page 41 of the Biota Report, the 2,014 acres comprising the two sites are described as: “Historically, large portions, if not almost all, of Saltdale property was mined for salt. Successional desert saltbush is now present on much of it, as the salt mining was terminated over 50 years ago. Apparently, large areas of Randsburg property also were mined for salt, but it also has been cultivated with several types of crops. With the exception of about 30-40 acres on the western side of Section 27, the easternmost half section of the property is comprised of creosote bush scrub. The western edge of this half section appears to have simply been eroded away from blowing sands, which have cut into the natural vegetation, removing most of it, with smaller areas of unknown disturbance.”*

11. *As per page 66 of the Biota Report, “About 3,881 acres of the 4,881 acres on the proposed project sites have been cultivated. Over half of the acreage remains disturbed, barren and windblown or supports only sparse densities of ruderal plants, not consisting of a specific vegetation or habitat type. Another 1,163 acres of formerly cultivated and disturbed lands have invading desert saltbush growing on them in early successional stages, with large open barren areas and little understory or vegetative diversity.”*

12. *As per page 66 of the Biota Report, “While few if any species inhabit the 2,700 acres of open, windblown barren formerly cultivated lands, the invading shrubs on cultivated lands provide habitat suitable for some birds (Twisselmann 1967) and invading wildlife species. ... The barren, windblown cultivated areas contain few small mammal burrows or refuge for wildlife and little forage at this time. Consequently, even for birds foraging over these areas, especially raptors, little prey base is supported on these open barren formerly cultivated areas.”*

13. *The following information given on page 68 (see also description on page 143) fails to recognize all the recent camera work of Mary Logan and other DTPC subcontractors that document numerous MGS records within the DTRNA, though I cannot quote specific results:*

“There are 13 records of Mojave ground squirrels around the border of the DTNA; however, no trapping has been conducted for them inside the DTNA.”

14. *On page 79, consultant has failed to indicate that Townsend’s big-eared bat is now a CDFW candidate for listing.*

15. *Contrary to the conclusion given on page 84, and additional descriptions given on pages 147 and 148, that Swainson’s hawks are not known from the area (nearest location cited as Lancaster), Bill Boarman documented at least one breeding pair attempting to nest in a Joshua tree at the DTNA.*

16. *On pages 72 through 87, the Biota Report tabulates all special status species that may or may not occur. Ed LaRue did a similar literature review for the same area in 2011; results are given in a document entitled “Fremont Valley Preservation Project CMBC Gabrych Lit Rev.”*

17. *Survey information alluded to on page 91 looks great, “The dates, types of surveys, surveyors and report preparers, as well as a summary of their qualifications can be found in Appendix C. The general surveys covered the spring season, enabling the observation of a wide variety of plant and wildlife species. The proposed project sites were evaluated to determine if habitat existed for listed and special status species, as well as the presence of any special habitats that may be present on the proposed project sites.”*

18. *We note on page 93 that if there was additional rain, there would be additional tortoise surveys in September 2012. Were these performed?*

19. *It would appear the distribution of cacti in Figures 26, 27, and 28, in particular, is the best way to differentiate what are and are not intact versus fallow agricultural lands. Figures 32, 33, 34, and 35 are good at showing habitat and non-habitat areas.*

20. *Based on Figure 36 on page 130, this should not be considered ruderal saltbush scrub; it looks intact, and given the presence of tortoise sign, should not be de-emphasized as it appears to be native habitat.*

21. *The burrow shown on page 145, Figure 43 described as “potential” is clearly not tortoise.*

22. *On page 166 where loss of habitats is grossly segregated into 2,717 acres of fallow agriculture, 1,163 acres of successional saltbush scrub, and 993 acres of intact saltbush, creosote bush, rabbitbrush (which may be equally as successional as saltbush), and needlegrass is a good generalization but cannot be equated to what is compensable and non-compensable habitat. Especially when the surveyors found tortoise burrows in the middle of crop circles (Figure 22) and throughout the larger Home property (Figure 25), which is described as 430 acres of successional saltbush. Fortunately in the mitigation section on page 189 leaves final compensation levels up to the regulatory agencies.*

23. *Compared to some projects in the area, the consultant did an admirable job in implementing required survey protocols for tortoise, burrowing owl, and rare plants. Since tortoise surveys*

were performed in April-May 2012 following USFWS 2010 protocol, why doesn't the Biota Report use the 2010 formula to determine the number of adult tortoises that may be affected? Even if only one tortoise was observed, on the Cantil site, that should enable the consultant to estimate the number of adult tortoises that may be impacted. Burrow sizes on both the larger Homes site and Randsburg site also allow some discussion on the approximate number of tortoises that would be affected on those two sites and elsewhere. As is, the Draft EIR fails to estimate how many tortoises may be affected.

24. The same comment as given above applies to discussions of impacts to Mohave ground squirrels on page 168, where the Draft EIR states that only 830 acres of MGS habitat may be lost. Surely all of the 993 acres of intact habitat and the 430 acres of ruderal saltbush scrub on the Homes site are potentially suitable habitat.

25. Discussions on page 175 of the Biota Report may not be enough now that the candidate status for Townsend's big-eared bat has been revealed.

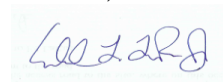
26. With recent monitoring results indicating that solar panels are resulting in avian mortality from incineration, the impacts discussion on page 178 for golden eagles likely needs to be expanded. • Similarly, mitigation measures on pages 190 and 191 may need to be expanded to deal with this foreseeable impact. • On a related note, new information suggests that solar fields are resulting in substantial heat increases in adjacent areas. So, when solar projects such as this one are pursued on mostly fallow agriculture, it is important that impacts to adjacent, ideal habitat areas are considered.

27. Too often, environmental documents claim compensation ratios without consulting the regulatory agencies. The paragraph given on page 189 that clearly states all habitats – not just those judged to be suitable, marginal, or unsuitable – may be compensated, depending on additional field studies and agency consultation is entirely appropriate. Good job!

28. On pages 188 through 190, the absence of a long list of protective measures is not to be construed as deficient, when in fact, the habitat conservation plan and associated federal and state incidental take permits will detail all such measures.

The above comments reflect review by at least three other board members, will serve as the basis for verbal comments, and may be turned in as written comments if the Kern County Planners in attendance are receptive to them.

Thanks,



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