

**Defenders of Wildlife
Desert Tortoise Council**

April 2, 2018

California State Parks Department
Off Highway Motor Vehicle Recreation (OHMVR) Division
1725 23rd Street, Sacramento, CA 95816
Attention: Sixto J. Fernandez, Grants Manager
Via email: Sixto.Fernandez@parks.ca.gov

Re: Comments on 2017/2018 Grant Applications

Dear Mr. Fernandez;

Defenders of Wildlife (Defenders) and the Desert Tortoise Council (Council) thank the Off Highway Motor Vehicle Recreation (OHMVR) Division for the opportunity to provide comments on the 2017/2018 Grant Applications. The Grants and Cooperative Agreements is intended to provide for well managed off-highway vehicle (OHV) recreation in the State of California by providing financial assistance to cities, counties, districts, federal agencies, state agencies, educational institutions, federally recognized Native American Tribes, and nonprofit entities.

Our comments are specific to Preliminary Grant Applications for Ground Operations and Law Enforcement and submitted by the Barstow and Ridgecrest Field Offices of the Bureau of Land Management (BLM), and the Grant Application for Restoration submitted by the Ridgecrest Field Office of the BLM.

Defenders is a non-profit national environmental organization with 1.2 million members and supporters nationally, including 170,000 in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

The 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.

Background information on Ground Operations, Law Enforcement and Restoration Grant Applications

Ground Operations for the BLM's Barstow and Ridgecrest Field Office jurisdictions provide and maintain off-highway vehicle use opportunities on approximately 5.3 million acres of public lands in the northern, central and western portions of the Mojave Desert region. It includes eight designated

Open Areas where unlimited off-highway vehicle use is allowed on approximately 259,000 acres; and over 4 million acres where off-road vehicle use is limited to designated open routes totaling approximately 5,000 miles.

Law Enforcement on public land jurisdictions under the BLM's Barstow and Ridgecrest Field Offices is performed by BLM Law Enforcement Rangers. Law Enforcement Rangers typically perform daily patrols on designated open routes within or adjacent to Limited Use Areas, Off-Highway Vehicle Open Areas, Wilderness Areas and Areas of Critical Environmental Concern (ACEC) to enforce OHV use restrictions on public lands. It is important to note that most of the acreage within ACECs is designated Critical Habitat for the desert tortoise (*Gopherus agassizii*), listed as a threatened species under federal and state endangered species laws. Much of the habitat affected by activities proposed in the grant applications is also inhabited by the Mohave ground squirrel, a state-listed threatened species.

The frequent and widespread damage to public land resources from illegal OHV use is described in the BLM Ridgecrest Field Office Law Enforcement Grant application:

Unlawful “off route” travel, trespass/incursion and resource damage within sensitive desert habitat such as wilderness areas, Areas of Critical Environmental Concern (ACEC) and onto private lands continues to occur frequently despite efforts to stop this illegal behavior such as signs, barriers, kiosks and maps which are widely distributed and available to the recreating public. Rehabilitated intrusions and structural improvements meant to educate and guide OHV travelers onto lawful routes of travel continue to be disregarded and destroyed by reckless OHV operation.

Although the BLM's Barstow Field Office Law Enforcement Grant Application lacked such information, we believe, based on familiarity with the area, that a similar amount of illegal OHV use and damage to public land resources occurs within its jurisdiction.

The BLM Ridgecrest Field Office has applied for a Restoration grant to fund 1) Restoration and masking of closed routes using vertical mulching, horizontal mulching, & seed pits, 2) Construction of erosion control structures (e.g., water bars and check dams on slopes of greater than 30 degrees and other areas as needed to prevent erosion damage to restored sites), 3) Seeding of disturbed sites, 4) Construction of barriers and installation of signs to prevent illegal OHV use and protect newly restored sites, 5) Monitoring and photo documentation to assess effectiveness of restoration projects, 6) and perform archaeological and biological resource inventories prior to site restoration. These activities will be performed by a combination of BLM staff and contracted field crews using motorized vehicles and equipment to access sites and perform restoration work.

Comments on Ground Operations, Law Enforcement and Restoration Grant Applications

Please consider and address the following comments and recommendations during the evaluation and response to grant applications. We also request a response so that we know to what extent the OHMVR Division has adopted our recommendations and addressed issues raised.

1. OHMVR Division compliance with the California Environmental Quality Act (CEQA).

According to current regulations [Sub article 1, Environmental Requirements, Section 4970.06.1(a)], the OHMVR Division is required to comply with CEQA before approving each grant. For federal agencies, such as the BLM, the OHMVR Division has 45 calendar days after submission of a final grant application to review all projects to determine what additional documentation is required to

comply with the provisions of CEQA and be able to certify that its CEQA document is legally adequate.

Federal agency applicants are also required to complete and submit an Environmental Review Data Sheet (ERDS) covering activities/projects proposed in the grant application; all applicants are required to submit a Habitat Management Program (HMP) for activities/projects involving ground disturbance; and all applicants are required to submit a Soil Conservation Plan for activities/projects involving ground disturbance. The Soil Conservation Plan include details of a protocol for assessment and maintenance; a protocol for monitoring; and a report detailing the results of monitoring and compliance with the soil conservation standards. The OHMVR Division has 45 calendar days to ensure that all the required components of the Soil Conservation Plan are complete.

Comment: We request that the OHMVR Division make available to the public all documents related to CEQA compliance, the ERDS, the HMP and Soil Conservation Plan for each grant application submitted by the BLM's Barstow and Ridgecrest Field Offices. The public should be provided a 30-day opportunity to review and comment on them and that the OHMVR Division should consider such comments before accepting the documents as final and meeting regulatory requirements.

2. OHMVR Division lacks Incidental Take Permits associated with grants to BLM that impact species listed under the California Endangered Species Act (CESA). According to information obtained by Defenders, the California Department of Fish and Wildlife (CDFW) has not issued an incidental take permit for impacts to state-listed species from OHV use on public lands managed by the BLM Field Offices in Barstow and Ridgecrest to either the BLM or the OHMVR Division.¹ (Rebecca Jones, personal communication). Furthermore, the CDFW did not adopt a consistency determination with Fish and Game Code Section 2081 for incidental take of the threatened desert tortoise authorized by the U.S. Fish and Wildlife Service in its biological opinion issued to BLM for its 2006 West Mojave Plan. The two state-listed species affected are the threatened desert tortoise (*Gopherus agassizii*) and Mohave ground squirrel (*Xerospermophilus mohavensis*). Grant applications involving activities/projects that may result in take of these species include the promotion/facilitation of OHV use on designated open routes; maintaining designated routes with mechanized equipment; installation of fences and barriers; law enforcement patrol; and restoration of disturbed areas caused by OHV use. All these activities involve the use of motorized vehicles for recreation as well as activities/projects performed by BLM staff, contractors and volunteers.

Section 2081(b) of the California Fish and Game Code requires that incidental take of listed species be minimized and fully mitigated. Incidental take permits are commonly issued by CDFW for construction, utility, transportation, and other infrastructure-related projects. OHV use and associated activities/projects on public land under BLM jurisdiction are included as a form of transportation associated with recreation. For detailed information on the CDFW's incidental take permits, see the following:

- <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits#50033467-applications>

¹ Rebecca Jones, personal communication. March 22, 2018.

- <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits#50033466-minimization-measures>
- <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits#50033468-full-mitigation>
- <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits#50033469-ceqa>

Comments: We recommend that the OHMVR Division resolve the issue of not having an incidental take permit for impacts to the desert tortoise and Mohave ground squirrel by contacting the CDFW's Habitat Conservation Planning Branch, 1700 9th Street, 2nd Floor, Sacramento, CA 95811 [telephone number (916) 653-4875].

BLM recently released for public review the Draft Supplemental Environmental Impact Statement (DSEIS) covering OHV use and livestock grazing in the West Mojave Planning Area. Impacts of motorized or OHV use on public lands on the desert tortoise and Mohave ground squirrel and their habitats is described in Chapter 4 of the DSEIS, which is available on the following website:

https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=93521¤tPageId=139661&documentId=137935

Below is a portion of the impact analysis included in Chapter 4 relative to the desert tortoise, which also generally applies to other species as well, including the threatened Mohave ground squirrel.

The general manner in which motorized vehicle use and grazing impacts wildlife is similar for many species, and therefore discussion of the effects of vehicle impacts, soil compaction, and many other impacts for each individual species would be redundant. The following discussion is focused on the desert tortoise because it has the most widespread habitat of any of the special status wildlife species in the planning area. However, the effects discussed are expected to be applicable to other wildlife species in the planning area. Additional discussions are presented for other species where specific data regarding impacts of motorized vehicle use and grazing are available, including the Mohave ground squirrel.

Motorized vehicle use can have both direct and indirect effects on desert tortoises and their habitat. The primary direct effect is vehicles striking desert tortoises while driving on routes of travel. As is usually the case, hatchling desert tortoises are the most difficult individuals to detect and may be inadvertently struck by vehicles. However, they may be at somewhat less risk than sub-adult and adult desert tortoises because their territories are presumably smaller, they may move around less and therefore are less likely to encounter a road. Their propensity to be more active during cooler times of the year may extend the periods during which they are at risk from vehicle strikes. Although larger individuals can be seen on roads more readily than the younger, smaller ones, vehicles can travel at speeds that reduce the ability of drivers to detect and avoid desert tortoises. Rises and turns in roads also decrease the ability of drivers to detect desert tortoises. The actual level of mortality that would occur along a specific road would be influenced by many variables and is difficult to predict; the level and type of use of the road by vehicles and the number of desert tortoises present during periods of heavy use are primary factors that are difficult to predict. Mortality associated with vehicle strikes would be greatest in the spring and fall, in areas where desert tortoises are most common. Along heavily used roads, the number of desert tortoises is depressed for some distance from the edge of the road; along lightly used roads, no Based on a review of the literature, the USGS (Ouren et al. 2007) concludes that an “important concern” regarding OHV effects on desert tortoise is the susceptibility of this species to mortality on all types of roads.

The desert tortoise population in the Western Mojave has been monitored systematically by the U.S. Fish and Wildlife Service's Desert Tortoise Recovery Office since 2004 and the results documented in annual reports.² The population of adults has declined by over 50% from 2004 to 2017, and the agency stated that the Western Mojave population is of particular concern due to the severe, ongoing decline, which now dropped below what they consider a minimum viable density of approximately 4 adults/km² or 10/mi².

Conclusion

Both OHV recreation and agency use of motorized vehicles and equipment being operated on public lands administered by BLM's Barstow and Ridgecrest Field Offices contribute to ongoing impacts to state-listed species and their habitats. We strongly recommend the OHMVR comply with both CEQA and CESA in considering and awarding grants to these BLM Field Offices, including applying for an incidental take permit from the CDFW for the desert tortoise and Mohave ground squirrel. Attached is an incidental take permit covering activities on federal and other lands within the California Desert that were determined to have the potential to affect these two species. We anticipate that many of the permit conditions would apply to the activities associated with the grants described in this letter, such as monitoring, reporting, vehicle speed limits and compensatory mitigation.

We appreciate this opportunity to provide input and trust that our comments will result in further protection of the desert tortoise and Mohave ground squirrel from grant-related activities and projects authorized or funded through the OHMVR Division grants program. We also request that Defenders and the Council be considered as Affected Interests for this and all other activities and projects authorized or funded by the OHMVR Division that may affect these two threatened species, and that any subsequent environmental documentation for this particular project or future projects is provided to us at the addresses listed below.

Sincerely,



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² https://www.fws.gov/nevada/desert_tortoise/dtro/dtro_monitor.html



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Attachment: CDFW Incidental Take Permit