



DESERT TORTOISE COUNCIL

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Via email only

29 April 2018

Mr. William Webster
U.S. Bureau of Land Management, Needles Field Office
1303 S. Highway 95
Needles, California 92363
wwebster@blm.gov

RE: Halloran Springs Communication Site Lease (DOI-BLM-CA-D090-2018-0011-EA,
CACA-053336) Environmental Assessment

Dear Mr. Webster,

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.

We appreciate this opportunity to provide comments on the above-referenced project. We note that the location of the proposed project is in habitats potentially occupied by Agassiz's desert tortoise (*Gopherus agassizii*), and that it occurs in the Ivanpah Critical Habitat Unit (USFWS 1994b). Therefore our comments pertain to enhancing protection of populations of tortoises contained within this area (= Ivanpah population) and occupied habitats/linkages during activities authorized by the Bureau of Land Management (BLM). First, having reviewed numerous environmental assessments, we acknowledge and appreciate the quality and thoroughness of information presented in the Halloran Springs Communication Site (Project) Environmental Assessment (EA), dated February 2018 (U.S. Bureau of Land Management 2018) for this particular site.

Conducting Clearance Surveys: The EA indicates that the protocol-level survey for the proposed Project was completed in October 2013 (AECOM 2014), following the then-current methodology given in U.S. Fish and Wildlife Service (USFWS 2010a). Please note that the older survey protocol has been updated as of August 2017 (USFWS 2017). Since the results of protocol surveys are valid for one year and because this Project would be authorized by the USFWS (1997) Programmatic Biological Opinion on Small Disturbances in Desert Tortoise Habitat (1-8-97-F-17) issued to the BLM, the proponent should ensure that the action area is resurveyed prior to ground disturbance using *clearance* survey protocols described by USFWS (2009).

Unlike USFWS (2010a and 2017) *presence-absence* surveys that recommend a single coverage at 10-meter intervals, *clearance* surveys require coverage of the site a minimum of two times at 5-meter intervals (see Chapter 6 in USFWS 2009). This recommendation is given to clarify measure DT-7 on page A-5, which only requires a “thorough survey” without providing the details given above and in USFWS (2009). This and other pertinent protocols given in USFWS (2009) should be implemented during all phases of Project construction, operations, maintenance, decommissioning, and restoration of the affected areas (e.g., “After the desert tortoise exclusion fence has been installed, the fencing should be checked several times a day to ensure a tortoise has not been trapped within the fence and may be exposed to lethal temperatures”).

Need for a Permit under the California Endangered Species Act: The EA identifies several measures that if implemented would be illegal unless the proponent obtains a state incidental take permit (i.e., Section 2081 permit) from the California Department of Fish and Wildlife (CDFW). Although the BLM has identified the following measures as being acceptable, in the absence of California Endangered Species Act (CESA) permitting, none of the following measures can be implemented: Handling desert tortoises as per measure DT-3 on page A-4; relocating tortoises as in measures D-7, DT-9, and DT-10 on pages A-5 and A-6; excavating tortoise burrows as per measure DT-8 on page A-5; marking tortoises as per measure DT-9 on page A-6, among others. In the absence of state authorization, none of these measures can be legally implemented; complete avoidance is essential lest mandatory state requirements are violated.

CDFW Requirements: Similarly, in addition to submitting the names of prospective Authorized Biologists to the BLM and USFWS 30 days prior to ground disturbance (DT-3 on page A-4), biologists must also be approved by CDFW prior to handling, marking, or relocating tortoises. Although BLM and USFWS allow Authorized Biologists to choose Biological Monitors with no additional federal agency approval, CDFW requires that résumés and USFWS qualification forms be submitted and approved prior to using Biological Monitors on *all* permitted project sites, including federally-authorized projects. As given above, handling tortoises, excavating burrows, blading occupied desert tortoise habitat, etc. in the absence of pertinent state authorizations is in violation of CESA.

Given these concerns, the following sentence in measure DT-9 at the bottom of page A-5 should be amended to include CDFW, as given in the bold italics we added to the end of the sentence: “Potential handling of desert tortoise for active relocation would not occur until an authorized biologist is approved by USFWS ***and CDFW.***”

Protocols for Handling Desert Tortoises: With regards to the following sentence in measure DT-9 on page A-6, the BLM in this and future environmental documents should no longer refer to the Council's revised 1999 handling guidelines, as they have been replaced by updated handling guidelines in the USFWS' (2009) Desert Tortoise Field Manual: "In handling desert tortoises, the authorized biologist would follow the techniques for handling desert tortoises in ~~Guidelines for Handling Desert Tortoises during Construction Projects (Desert Tortoise Council 1994, revised 1999)~~ *Desert Tortoise (Mojave Population) Field Manual (USFWS 2009) or latest version* (strike-through and italics added)." Please be sure that biologists for this and future BLM projects are using the latest acceptable handling methodologies. This includes monitoring tortoises after their release.

Transport of Tortoises: With regards to the following subsection in measure DT-13 on page 7, particularly given the proximity of the Project to the Nevada state line, please be aware that any tortoises injured on this site, which is in California, must not be transported across state lines into Nevada: "An injured animal would be transported to a qualified veterinarian for treatment at the expense of the applicant." The California Turtle and Tortoise Club list the Apple Valley Animal Hospital in Apple Valley and the Desert Care Animal Hospital in Hesperia as having veterinarians capable to treat desert tortoises.

Environmental Consequences: In the Environmental Consequences section of the EA, the analysis of effects from the proposed Project to tortoises in the Ivanpah population and their habitats focuses on the construction phase, and to a lesser extent on the operations and maintenance phases. We found little analysis of effects to the tortoise and its critical habitat from implementation of the decommissioning and restoration phases. The analysis of effects to the tortoise should include all phases of the proposed Project. In addition, the National Environmental Policy Act (NEPA) document should describe appropriate mitigation for all adverse effects to the tortoise and critical habitat for all phases of the proposed Project (see the Mitigation section below for more comments).

Common Ravens: We were unable to locate the complete suite of standard mitigation measures implemented to reduce predator (e.g., common raven, coyote, etc.) subsidies of food, water, and sites for nesting, roosting, and perching. This includes use of water for dust suppression or during any phase of the proposed Project. For example, Measure DT-1 says, "To minimize attraction of foraging common ravens that may prey on young desert tortoise in the Action Area, new power poles and overhead powerlines, which provide nest and perch sites for the species, would not be constructed as part of the proposed Project. Photovoltaic solar panels and generators would be utilized to provide primary and backup electrical power for the communication site." But this measure, alone, in our estimation is insufficient.

We commend the Project proponent for including this mitigation measure, but note that many of the proposed types of facilities at the Project site (e.g., communication tower, building, fences, etc.) have been documented as being used by ravens at other locations, and therefore may be used at the proposed Project site for nesting, roosting, or perching. We recommend that the Project proponent amend this mitigation measure to design the structures at the proposed Project so that their use by ravens for nesting, roosting, or perching is excluded to the maximum extent practicable.

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010b), “The BLM’s biological assessments and the USFWS’ biological opinions for the California Desert Conservation Area (CDCA) plan amendments reiterate the need to address the common raven and its potential impacts on desert tortoise populations.” Please ensure that all standard measures to mitigate the local, regional, and cumulative impacts of raven predation on the tortoise are included in this EA, including developing a raven management plan for this specific Project. USFWS (2010b) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation and maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each Project phase (USFWS 2010b).

We applaud the applicant’s willingness to contribute to the regional raven management plan (USFWS 2010b) to address the indirect and cumulative impacts associated with this Project and other land uses in the desert to reduce the expansion of raven populations in the range of the tortoise.

Climate Change: We were unable to find an analysis of the effects of the proposed Project on climate change or the effects of climate change on the proposed Project. BLM states in the document, “A number of these issue areas are not evaluated in detail in this EA, generally because the identified resource is not present within or around the Project area, or because implementation of any of the alternatives would clearly have no effect with respect to the topic being evaluated.” In Table 3-1, p. 25 of the EA, BLM reports that implementation of Alternative 2 (Preferred Alternative) and 3 would have “no adverse effect” on climate change. We found no other mention of climate change after this point in the document.

The Council believes that BLM has not presented evidence to support their conclusion of “no adverse effect” concerning the effects of the proposed Project(s) (see Cumulative Effects below about other communication projects) on climate change (e.g., greenhouse gas emissions on-site during all phases of the Project including travel to and from the site, using propane rather than a renewable form of energy, etc.). We request that BLM provide information to: 1) support this conclusion of “no adverse effect,” and 2) provide analysis of how climate change will affect the proposed Project during its lifetime (e.g., need for increased weed management, increased fire danger, effect on the tortoise, etc.). Included with this analysis, we request that as a mitigation measure for this Project, weeds are abated in the Project area for life of the Project.

Cumulative Effects and Significant Effect on the Environment: “Cumulative effects analysis should be the tool for federal agencies to evaluate the implications of even project-level environmental assessments (EAs) on regional resources” [Council on Environmental Quality (CEQ) 1997]. “EAs focus on whether effects are significant; they tend to underestimate the cumulative effects of their projects. Given that so many more EAs are prepared than EISs, adequate consideration of cumulative effects requires that EAs address them fully” (CEQ 1997). Given these statements, the Council found little analysis of cumulative effects to the tortoise or critical habitat in the EA. In the Biological Resources section, there is one statement on page 51 “Under the implementation of these mitigation measures [referring to Appendix A], the Applicant-Preferred Alternative would have negligible cumulative effects to biological

resources.” We believe that BLM has not presented evidence to support their conclusions concerning cumulative effects and significance.

We note that in Appendix B of the EA, the Halloran Springs communication tower is not the only communication tower facility that is proposed for construction in this current planning /regulatory compliance phase. Other communication sites are planned for development in the CDCA. Why are these proposed projects and their effects not analyzed in the EA?

When viewed as an isolated Project, the proposed communication tower facility may have a minor adverse effect on the tortoise and its critical habitat. However, we note that tortoises in the Ivanpah population have experienced a 56.05 percent decline in population size between 2004 and 2014 and their densities have declined to 2.3 breeding tortoises/km² (USFWS 2015). As of 2015, the Ivanpah population is considered non-viable as its density is below the viable level of 3.9 breeding tortoises/km² (10 breeding individuals per mi²) (assumes a 1:1 sex ratio) (USFWS 1994a). Of the other seven tortoise populations on BLM land in California, six are considered non-viable and all are declining. The Affected Environment section of the EA included no information on the status and trend of the Ivanpah tortoise population or other tortoise populations in the CDCA. The Council believes this information should be included in the EA to accurately determine the effects of the proposed Project on the tortoise.

The data above support the Council’s belief that there should be an analysis of the effects to the tortoise and critical habitat for the Ivanpah population, including past, present, and future actions. This analysis should include baseline information on amount/configuration of critical habitat when designated in 1994 with primary constituent elements, current amount/configuration, and amount/configuration based on future actions. The status of the Ivanpah population and other tortoise populations in the CDCA indicates that BLM’s management actions and mitigation for the tortoise since 2004 have been ineffective at halting population declines and managing for viable populations. Therefore, the Council concludes that any new action, authorized or not, within the Ivanpah population, whose intent is not to conserve the tortoise and contains the standard tortoise minimization measures is likely contributing to the tortoise’s non-viability and extirpation. We request that BLM conduct an appropriate cumulative effects analysis for the tortoise using population data. If the analysis shows that the proposed Project meets or exceeds the level of significance with respect to effects to the tortoise or critical habitat, then an environmental impact statement would be required.

Mitigation: The Council believes that the data above demonstrate that BLM’s management of the Ivanpah population of the tortoise and its habitat under the CDCA Plan and Plan Amendments has not been effective in meeting BLM’s mandate under section 7(a)(1) of the Federal Endangered Species Act (FESA) of carrying out programs for its conservation. Because the Ivanpah population is a non-viable population, we believe the BLM should require conservation measures in addition to the mitigation measures presented in the EA. These measures should do more than reduce the level of impacts to below significance. We believe it is imperative that BLM and its Project proponents implement conservation measures that will improve the status of the tortoise including contributing to the viability of this population. This would include improving quality of tortoise habitat as soon as possible by implementing scientifically supported measures to restore the functions and values of the habitat, especially concerning forage for adequate nutrition for the tortoise.

Considering cumulative effects is also essential to develop appropriate mitigation and monitor its effectiveness (CEQ 1997). Until BLM completes its cumulative effects analysis, the mitigation measures in this EA cannot be fully analyzed to determine whether they are appropriate or effective. The Council requests that the NEPA document on this proposed Project be redistributed for public review after adding the cumulative effects analysis and developing appropriate mitigation using that analysis.

The applicant proposes to mitigate the loss of habitat of the tortoise through restoration of undesignated off-highway vehicle (OHV) routes (i.e., unauthorized disturbance areas) (p. 54 of EA). The applicant would work closely with BLM in selecting lands most beneficial to the conservation and recovery efforts. "Restoration would be conducted through one or more of the following techniques. These techniques are intended to help reduce the occurrences of inappropriate route use by restoring and camouflaging undesignated routes." The techniques include: removing litter, vertical mulching, soil decompaction, mechanical ripping, soil/vertical pitting, raking, seeding, and planting vegetation.

We are unsure how using one or more of these techniques would ensure the restoration of the functions and values of lost/degraded desert tortoise habitat, would restore the primary constituent elements of critical habitat that are lost from Project implementation, would result in an immediate benefit to the tortoise or a benefit that is commensurate with the timing of the impacts of the proposed Project, or would guarantee the benefit in perpetuity. How would the applicant/BLM monitor the mitigation to ensure that it is providing a measureable benefit to the tortoise? These issues should be discussed in the EA. How will the applicant mitigate for its access road that will likely be used by the public to create new unauthorized roads (indirect effect)? We suggest that the new access road be designed so that the public cannot access it.

Compliance with Programmatic Biological Opinion: In Appendix B of the EA, correspondence between BLM and USFWS notes that to use the programmatic biological opinion for small projects (USFWS 1997), total ground disturbance for the proposed Project must be less than two acres and the total disturbance limit for the Eastern Mojave Critical Habitat Unit may not exceed 40 acres. The Council requests that BLM provide information on the past projects in the Eastern Mojave Critical Habitat Unit that have been implemented under the programmatic biological opinion and their corresponding areas of disturbance. If that number reveals that more than 40 acres have been disturbed by BLM-authorized activities, this and future project impacts need to be reconsidered.

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 Agassiz's desert tortoise, 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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