

## DESERT TORTOISE COUNCIL

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### Via email only

31 October 2020

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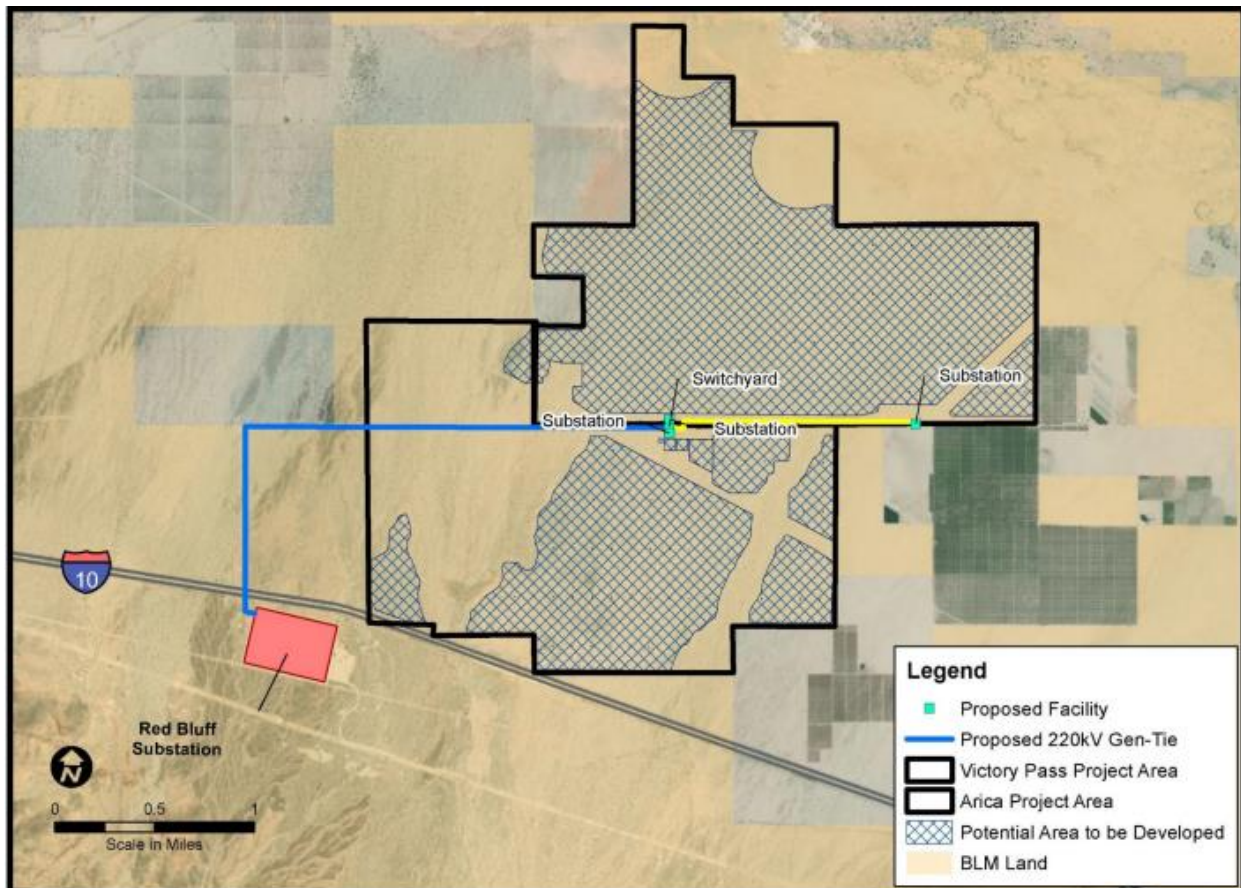
RE: Scoping Comments for Arica Solar (DOI-BLM-CA-D060-2020-0009-EIS) and Victory Pass (DOI-BLM-CA-D060-2020-0010-EIS) Solar Projects

Dear Ms. Liberatore, Van Der Linden, and 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 and other forms of assistance 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. Given the location of the proposed project in habitats potentially occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with "Agassiz's desert tortoise"), our comments pertain to enhancing protection of this species during activities authorized by the Bureau of Land Management (BLM) and California Department of Fish and Wildlife (CDFW). Please accept, carefully review, and include in the relevant project file the Council's following scoping comments for the proposed projects. Additionally, we ask that BLM and CDFW respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for these two projects.

Given that BLM and CDFW are actively soliciting scoping comments, and the two projects are contiguous and therefore likely to affect similar biological resources (see following map), our comments herein relate to both projects, even though the facilities would be developed by two different proponents, including Arica Solar, LLC and Victory Pass I, LLC. Therefore, our recommendations pertain to each of the proponents, BLM, and CDFW. We note that the comment period has been extended from November 1 to November 2, 2020 so that it may close on a business day.



The following project information is taken from the BLM’s National NEPA [National Environmental Policy Act] Register, using the following link: <https://www.blm.gov/press-release/blm-initiates-environmental-review-two-proposed-solar-projects-public-lands-riverside>

Both Arica Solar, LLC and Victory Pass I, LLC (Proponents) have applied to the BLM for separate right-of-way grants to construct, operate, and eventually decommission two 200 MW photovoltaic solar systems with energy storage on approximately 4,000 acres (e.g., 2,000 acres for each project) of public lands in Riverside County, California. Part of the project would include an approximately 3.2 mile 230 kV gen-tie from switchyard to existing Southern California Edison Red Bluff Substation (blue line in the above figure). The BLM intends to analyze the environmental effects of the proposed project in an Environmental Impact Statement (EIS) and the CDFW in an Environmental Impact Report (EIR), and both are seeking input from the public on potential issues of concern related to the proposals.

## **Surveys**

Located approximately eight miles east of the junction of I-10 and SR 177 and several miles southeast of the Desert Center Airport, we suspect that there may be desert tortoises and rare plant and animal species on the subject properties. As such, we fully expect the agencies to require and Proponents to fund focused surveys intended to locate (at a minimum) the following rare plant and animal species reported from the region [e.g., the following species, supplemented by personal knowledge, have been reported from the 7.5' USGS Corn Springs quadrangle as reported in the October 2020 version of the California Natural Diversity Data Base (CDFW 2020)], using the cited methodologies following the list:

### Reptiles

Desert tortoise (*Gopherus agassizii*)

### Birds

Bendire's thrasher (*Toxostoma bendirei*)

Elf owl (*Micrathene whitneyi*)

LeConte's thrasher (*Toxostoma lecontei*)

Western burrowing owl (*Athene cunicularia*)

### Mammals

American badger (*Taxidea taxus*)

Colorado Valley woodrat (*Neotoma albigula venusta*)

Desert bighorn sheep (*Ovis canadensis nelsoni*)

Kit fox (*Vulpes macrotis*)

Pallid bat (*Antrozous pallidus*)

Western mastiff bat (*Eumops perotis californicus*)

### Invertebrates

Crotch bumble bee (*Bombus crotchii*)

### Plant Communities

Desert Fan Palm Oasis Woodland

### Plants [with CDFW, USFWS, and/or CNPS (2020) statuses]

Alverson's foxtail cactus (*Coryphantha alversonii*)

California ditaxis (*Ditaxis serrata* var. *californica*)

Cove's cassia (*Senna covesii*)

Desert beardtongue (*Penstemon pseudospectabilis* ssp. *pseudospectabilis*)

Desert spike-moss (*Selaginella eremophila*)

Emory's crucifixion thorn (*Castela emoryi*)

Glandular ditaxis (*Ditaxis claryana*)

Harwood's milk-vetch (*Astragalus insularis* var. *harwoodii*)

Las animas colubrina (*Colubrina californica*)

Palmer's jackass clover (*Wislizenia refracta* ssp. *palmeri*)

Spear-leaf matelea (*Matelea parvifolia*)

Triple-ribbed milk-vetch (*Astragalus tricarinatus*)

Plants [to be in compliance with the California Desert Native Plants Act]

At the State level, the 1998 Food and Agricultural Code, Division 23: California Desert Native Plants, Chapter 3: Regulated Native Plants, Section 80073 states: The following native plants, or any parts thereof, may not be harvested except under a permit issued by the commissioner or the sheriff of the county in which the native plants are growing:

- (a) All species of the family Agavaceae (century plants, nolin, yuccas).
- (b) All species of the family Cactaceae (cacti), except for the plants listed in subdivisions (b) and (c) of Section 80072 (i.e., saguaro and barrel cacti), which may be harvested under a permit obtained pursuant to that section.
- (c) All species of the family Fouquieriaceae (ocotillo, candlewood).
- (d) All species of the genus *Prosopis* (mesquites).
- (e) All species of the genus *Cercidium* (palo verdes).
- (f) *Senegalia (Acacia) greggii* (catclaw acacia).
- (g) *Atriplex hymenelytra* (desert holly).
- (h) *Dalea (Psoralea) spinosa* (smoke tree).
- (i) *Olneya tesota* (desert ironwood), including both dead and live desert ironwood.

The appropriate methodologies for surveys for specific taxa and biological resources are given in the following documents:

Desert tortoise (USFWS 2019)  
Burrowing owl (CDFG 2012)  
Rare plants (CDFG 2009) and (BLM 2009)

**Environmental Analyses**

We fully expect the EIS and EIR to document the results of these focused surveys using, at least, the above survey protocols, performed by knowledgeable biologists for respective taxa (e.g., rare plant surveys should be performed by botanists), and to assess the likelihood of occurrence for each rare species or resource (e.g., plant community) that has been reported from the immediate region. Focused plant surveys should occur only if there has been sufficient winter rainfall to promote germination of annual plants in the spring. Alternatively, the environmental documents may assess the likelihood of occurrence with a commitment by the Proponents to perform subsequent focused plant surveys prior to ground disturbance, assuming conditions are favorable for germination.

The EIS and EIR should include thorough analyses and discussion of the status and trend of the tortoise in the action area, tortoise conservation area, recovery unit, and range wide. Tied to this analysis should be a discussion of all likely sources of mortality for the tortoise and degradation and loss of habitat from implementation of leasing the area for solar development including construction, operation and maintenance, decommissioning, and restoration of the leased lands.

Environmental documents should analyze if this new use would result in an increase of common ravens and other predators of the desert tortoise in the region. Future operations should include provisions for monitoring and managing raven predation on tortoises as a result of the proposed action. The monitoring and management plan should include reducing human subsidies for food, water, and sites for nesting, roosting, and perching to address local impacts. The Proponents

must contribute to the National Fish and Wildlife Foundation's Raven Management Fund for regional and cumulative impacts. It is very important that for any of the gen-tie options the Project should use transmission towers that prevent raven nesting. For example, the tubular design with insulators on horizontal cross arms is preferable to lattice towers, which should not be used.

According to Appendix A of Common Raven Predation on the Desert Tortoise (USFWS 2010), "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 environmental documents, including developing a raven management plan for this specific project. USFWS (2010) provides a template for a project-specific management plan for common ravens. This template includes sections on construction, operation, maintenance, and decommissioning (including restoration) with monitoring and adaptive management during each project phase (USFWS 2010).

### **Alternatives Analyses**

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, greenhouse gas emissions from constructing energy projects far from the sources of power demand and materials for construction, the number of affected resources in the desert that must be analyzed under the California Environmental Quality Act (CEQA), and mitigation costs. The EIS and EIR should include analyses 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. We contend that rooftop solar should be analyzed as one of the action alternatives.

The document should 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. The environmental documents should document recent successes and failures with this approach at other solar facilities in the desert. This option, which should be analyzed as an action alternative, could 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.

### **Mitigation and Minimization Programs**

Based on the survey results, the environmental documents should present specified programs intended to minimize and fully mitigate (required for issuance a section 2081 permit) impacts to rare species. Following are a few examples, all of which must be accompanied by agency-acceptable monitoring programs, that would be applicable if the indicated species/resources are determined to be present or otherwise impacted:

Desert tortoise – If not covered by a programmatic permit issued to the BLM, a project-specific biological opinion must be completed by the U.S. Fish and Wildlife Service (USFWS). Since the tortoise is also listed as a state-Threatened species, a project-specific 2081 incidental take permit must also be acquired before any tortoises can be handled, translocated, or otherwise adversely affected.

Burrowing owl – Forced displacement and/or relocation of non-breeding birds

Kit fox – Forced displacement and/or relocation of non-breeding foxes

Rare plants – Program to avoid, salvage, and or propagate/translocate rare plants

Assuming tortoises are present or will otherwise be adversely affected, environmental documents should include appropriate mitigation for all direct, indirect, and cumulative effects to the tortoise and its habitats; the mitigation should use the best available science with a commitment to implement the mitigation commensurate to impacts to the tortoise and its habitats. Mitigation should include a fully-developed desert tortoise translocation plan; raven management plan; weed management plan; fire management plan; compensation plan for the degradation and loss of tortoise habitat that includes protection of the acquired, improved, and restored habitat in perpetuity for the tortoise from future development and human use; a plan to protect tortoise translocation area(s) from future development and human use in perpetuity; and habitat restoration plan when the lease is terminated and the proposed project is decommissioned.

These mitigation plans should include an implementation schedule that is tied to key actions of the construction, operation, maintenance, decommissioning, and restoration phases of the project so that mitigation occurs concurrently with or in advance of the impacts. The plans should specify success criteria, include a monitoring plan to collect data to determine whether success criteria have been met, and identify actions that would be required if the mitigation measures do not meet the success criteria.

We appreciate that the subject properties are located within a Development Focused Area (DFAs) identified in the Desert Renewable Energy Conservation Plan (DRECP) (BLM 2015), and expect that the environmental documents will describe the relationship of these two projects to this programmatic plan. There needs to be an analysis of how all aspects of project development, from initial ground-clearing through decommissioning, conform to the mitigation and minimization measures identified in the DRECP.

Although the DRECP substantially modified protective measures identified in the Northern and Eastern Colorado Desert Coordinated Management Plan (BLM 2002), we also expect the environmental documents, particularly the EIS, to summarize the projects relative to this plan both in terms of regionally important resources and any prescriptive measures that may enhance protections of rare biological resources. Finally, we believe that best management practices developed by the Council in 2017 (Desert Tortoise Council 2017, available in the link in the Literature Cited section of this letter) may provide for enhanced protection of tortoises as the Proponents develop their respective minimization and mitigation plans.

## **Cumulative Effects Analysis**

With regards to cumulative effects, the EIR must list and discuss all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands. In particular, we ask that the relationship between these proposed projects and the DRECP be analyzed. 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.

In the cumulative effects analysis of the EIS, please ensure that the Council on Environmental Quality’s (CEQ) “Considering Cumulative Effects under the National Environmental Policy Act” (1997) is followed, including the eight principles, when analyzing cumulative effects of the proposed action to the tortoise and its habitats. CEQ states, “Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects.” The analysis “must describe the response of the resource to this environmental change.” Cumulative impact analysis should “address the sustainability of resources, ecosystems, and human communities.” For example, the EIS should include data on the estimated number of acres of tortoise habitats and the numbers of tortoises that may be lost to growth-inducing impacts in the affected region.

We understand that the cumulative impacts analysis in the EIS must follow CEQ guidance on how to analyze cumulative environmental consequences, which contains eight principles listed below:

### **1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.**

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

### **2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.**

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

### **3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.**

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

**4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.**

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

**5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.**

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

**6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.**

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

**7. Cumulative effects may last for many years beyond the life of the action that caused the effects.**

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis need to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

**8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.**

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during any authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM and CDFW projects that may affect species of desert tortoises, and that any subsequent environmental documentation for these particular projects is provided to us at the contact information listed above. We also note that in spite of repeated requests to the BLM to be considered an Affected Interest, we learned about the projects from a third party, not from the BLM. We ask that you acknowledge receipt of this letter as soon as possible so we can be sure our concerns have been received by the appropriate parties.



Regards,



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

cc: California State Clearinghouse, [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

### **Literature Cited**

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