



DESERT TORTOISE COUNCIL

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Via email only

28 February 2020

Mr. Chip Lewis
Bureau of Indian Affairs, Western Regional Office
2600 North Central Avenue, 4th Floor Mailroom
Phoenix, AZ 80004
Chip.Lewis@bia.gov

RE: Arrow Canyon Solar Project on the Mojave River Indian Reservation, Clark County, Nevada

Dear Mr. Lewis,

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 scoping comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Agassiz's desert tortoise (*Gopherus agassizii*) (synonymous with "Mojave desert tortoise"), our comments pertain to enhancing protection of this species during authorized activities.

In March 2014, the Council commented on the Final Environmental Impact Statement (Final EIS) for the Moapa Solar Energy Center (BIA 2014), which we recognize as the environmental document for the earlier project for which scoping comments are now being solicited for this interrelated project to be analyzed in the Supplemental EIS. Since the current proposal is expansion of the 850-acre existing project onto an additional 1,350 acres, to enable us to understand previous impacts and anticipated impacts associated with this expansion, we expect that the Supplemental EIS will include the following components:

1. In order to understand anticipated impacts, the Supplemental EIS must document the impacts of the 850-acre project on tortoises and occupied habitats, including the following information: (a) How many tortoises were displaced by the original project? (b) Assuming these tortoises were displaced into adjacent areas or distant translocation areas, please report on the results of those displacements. How long were translocated tortoises monitored? How many of those tortoises lived and died after translocation? (c) Were those translocation areas sufficiently isolated that displaced tortoises were protected by existing or enhanced land management? Here, we assume that if the tortoises were translocated to areas within the Moapa River Indian Reservation (Reservation) that they were more proactively protected compared to less-regulated adjacent areas where, for example, off-highway vehicles and other proposed development may occur.

2. We urge the BIA to include in the translocation plan, legal safeguards to protect the translocation areas from future development or disturbance. Because the translocation of tortoises to other sites is mitigation for the proposed action, the translocation sites should be protected, at a minimum, for as long as the action area is no longer able to support tortoises at the pre-project population level. Additionally, it is important to enlist qualified botanists or ecologists to determine whether sufficient low-potassium plants are present within the translocation area, such that existing or displaced tortoises would have better odds of surviving prolonged drought periods.

3. Pursuant to Section 1508.25 of the Council on Environmental Quality's (CEQ) regulations (40 CFR 1508.25), any environmental impact statement must cover the entire scope of a proposed action, considering all connected, cumulative, and similar actions in one document. Since some readers may not have access to or familiarity with the related Final EIS, we believe the Supplemental EIS needs to summarize previous findings. Pursuant to Section 1506.1(a) of these regulations, an agency action cannot "[l]imit the choice of reasonable alternatives" before reaching a final decision in a published [Record of Decision] (ROD). These regulations ensure agencies will prepare a complete environmental analysis providing a "hard look" at the environmental consequences of all proposed actions instead of segmenting environmental reviews (Novack 2015).

4. It is important that United States Fish and Wildlife Service (USFWS 2019) protocol-level surveys be performed throughout the 1,350-acre expansion area *and alternative areas*. These surveys, results of which would be published in the Supplemental EIS, must provide density estimates *for each alternative assessed in the Supplemental EIS*. This statement implies, as required by the National Environmental Policy Act (NEPA), that alternative sites will be assessed for the project. In fact, we believe it is incumbent on the BIA to perform an inventory of existing disturbed areas within a minimum radius around the proposed expansion location to identify where solar panels could be placed without destroying relatively pristine habitats.

5. To determine the full extent of impacts to tortoises and to facilitate compliance with the Federal Endangered Species Act (FESA), qualified biologist(s) should consult with the Las Vegas office of the USFWS to determine the action area for this project. The USFWS defines "action area" in 50 Code of Federal Regulations 402.2 and their Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02)."

6. We note that a federal appellate court has previously ruled that in its EIS a federal agency must evaluate a reasonable range of alternatives to the project including other sites, and must give adequate consideration to the public's needs and objectives in balancing ecological protection with the purpose of the proposed project, along with adequately addressing the proposed project's impacts on the desert's sensitive ecological system [National Parks & Conservation Association v. Bureau of Land Management, Ninth Cir. Dkt Nos. 05-56814 et seq. (11/10/09)].

7. It is our understanding that the BIA's description of its purpose and need should be broad enough to fairly evaluate reasonable solar energy alternatives, and not so arbitrarily narrow that the NEPA analysis is improperly limited. Therefore, the Council expects that the BIA will fully describe the purpose and need for this project and develop and analyze other viable alternatives, such as rooftop solar, which we contend constitutes "other reasonable courses of actions" (40 CFR 1508.25).

8. Too often, a single impact footprint is identified, all surveys are restricted to that site, and no alternative sites are assessed, as required by NEPA. We are concerned that this project has already pre-determined the project footprint and that, if protocol-level surveys reveal that there are areas of lower tortoise densities adjacent to the 850-acre existing site where impacts could be minimized, those areas would not be considered if the project footprint is predetermined before survey data are available. As such, we expect alternative sites to be surveyed and analyzed in the Supplemental EIS, and that the alternative with the fewest impacts to tortoises be adopted for development.

9. Based on the concerns given above and the expectation that tortoises will be displaced from 1,350 acres, please document how methods may need to be modified for this expansion compared to the existing 850-acre project. Specifically, will new tortoises be displaced into the same areas as the previous tortoises? How long will these new tortoises be monitored? Based on lessons learned from the project approved in 2014, is there any need to manage translocation areas differently to protect newly displaced tortoises?

10. Please fully document the current conditions of the proposed translocation area for this project. This includes, at a minimum, the quality of the habitat into which tortoises will be displaced. Are there any degraded habitats or barren areas that may impair success of the translocation? Are there incompatible human uses in the new translocation area that need to be eliminated or managed to protect newly-translocated tortoises?

11. Given the above concerns, we expect that in its alternatives analysis the Supplemental EIS will identify a range of alternatives for various translocation areas. Importantly, protocol-level surveys must be conducted, with planning input from the USFWS, that will result in density estimates for tortoises in the alternative translocation sites. Based on these comparisons and resulting field data that must be published in the Supplemental EIS, we expect that the environmental document(s) will identify a preferred alternative for the one translocation area that will facilitate successful translocation.

12. Based on these surveys and analyses, we expect that there will be a formal translocation plan developed for and attached to the Supplemental EIS. Even if the proponent plans to rely on USFWS guidance as it did for the first project [see page 4-57 in the original Final EIS (BIA 2014)], we fully expect that the proponent will develop a project-specific translocation plan based on current data that is responsive to lessons learned from the earlier translocation effort, and that the translocation plan will be available for review as part of the Supplemental EIS.

13. With recent tortoise translocation efforts from military bases (e.g., Fort Irwin and Twentynine Palms Marine Corps Base in California) and throughout southern Nevada by USFWS, we expect the Supplemental EIS to summarize the successes and failures of these translocation efforts and demonstrate how the current project will be planned to enhance translocation success. Specifically, how will the proponent minimize predation of translocated tortoises and avoid adverse climatic conditions, such as low winter rainfall conditions, that may exacerbate translocation success? We expect the Supplemental EIS to include a USFWS-approved monitoring plan that will accurately address these and other issues to minimize losses of translocated tortoises. Is it possible that given the proximity of these two projects that tortoises translocated the first time may need to be translocated again? It is our understanding that USFWS wants to avoid this exercise.

14. To reiterate our comments of 2014, we remain concerned that the health of tortoises may be jeopardized if tortoises are displaced during drought conditions, which is known to undermine translocation successes (Esque et al. 2010). If drought conditions are present at the time of project development, we request that the proponent confer with the USFWS immediately prior to displacing tortoises and seek input on ways to avoid loss of tortoises due to stressors associated with drought. One viable alternative if such adverse conditions exist is to postpone site development until which time conditions are favorable to enhance translocation success.

15. We request that the Supplemental EIR address the possible spread of weeds as a result of implementing the proposed action. As such, we recommend including an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge the proponent to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the project area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire management and fire response.

16. With regards to cumulative effects, the Supplemental EIS must list and discuss all project impacts within the region since development of the 2014 project and include future state, federal, and private actions affecting listed species on state, federal, and private lands. 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 Supplemental 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 resulting from the proposed project in the affected region.

17. 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. Although we have not been provided maps that show how the existing footprint will be expanded, we fully expect the proponent to describe how this project will or will not impact the movement of tortoises relative to linkage corridors. Similarly, please document how this project may impact proximate conservation areas, such as Bureau of Land Management (BLM) designated Areas of Critical Environmental Concern (ACECs).

18. Finally, given that this project expansion is interrelated with the previous 850-acre project for which we provided comments on October 11, 2013 on the Draft EIS and March 20, 2014 on the Final EIS, we believe that the concerns expressed in those two previous letters also apply to the current project. As such, herein we resubmit those letters as new scoping comments addressing persisting concerns that we expect will be address for the current project expansion.

We appreciate this opportunity to provide our scoping comments and trust that our input 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 BIA projects that may affect species of desert tortoises, and that the Supplemental EIS and related environmental documentation for this particular project (e.g., results of tortoise surveys) are 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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