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Via email only

Date: March 25, 2024

Director (210), Attention: Senior NEPA Lead
Heather Bernier, Division Chief
Decision Support, Planning, and NEPA
Bureau of Land Management
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Megan Gilbert
U.S. Bureau of Land Management
Washington, D.C. 20245
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Re: National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11) (DOI-BLM-HQ-2100-2024-0001-OTHER_NEPA) – Removal & Addition of Categorical Exclusions

Dear Director Stone-Manning, Ms. Bernier, and Ms. Gilbert,

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 northern 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.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the above-referenced proposed action. Given that the proposed action is likely to affect habitats occupied by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise) and Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise), our comments include recommendations intended to enhance protection of these species and their habitat during activities authorized by the Bureau of Land Management (BLM), which we recommend be added to the authorizing document for this proposed action, as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed action.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "… based on population reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024) stated: "At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department's [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission's decision initiated this status review to inform the Commission's decision on whether the change in status is warranted."

Importantly, in their February 2024 status review, CDFW concluded: **"The Department's recommendation is that uplisting the Mojave Desert Tortoise is warranted.** Receipt of this [status review] report is to be placed on the agenda for the next available meeting [expected in April 2024] of the Commission after delivery [at the February meeting]. At that time, the report will be made available to the public for a 30-day public comment period prior to the Commission taking any action on the petition."

The IUCN now considers the Sonoran desert tortoise, located in Arizona and Sonora, Mexico, to be Vulnerable at this time, but nearly qualifies as Endangered (Averill-Murray et al. 2023). "Steep declines of approximately 54% have occurred in recent years in several formally monitored local subpopulations in Arizona." "Despite evidence that several subpopulations have stabilized or increased, survival rates are predicted to decline with future drought conditions, which are expected to intensify with global climate change." In Mexico, "patterns of rainfall and drought across Sonora mirror those in Arizona and suggest that Sonoran subpopulations likely increased and decreased similarly over time." According to the IUCN, this designation of Vulnerable means that the species is "considered to be facing a high rate of extinction in the wild" and is just one step above Endangered.

The IUCN identified several threats to the survival of the Sonoran desert tortoise including residential, commercial, and industrial development; ranching and farming; roads and railroads; hunting and trapping; recreational activities; wildfires and fire suppression activities; invasive non-native plant species; and drought/temperature extremes from climate change.

Description of the Proposed Action

Some of the available information concerning this proposed action was given as follows in the BLM's National NEPA [National Environmental Policy Act] Register, eplanning website: https://eplanning.blm.gov/eplanning-ui/project/2031329/510. "The BLM proposes to remove four administrative CXs [Categorical Exclusions] from its NEPA procedures. Given the complexity of land management, legal frameworks, and other factors, the BLM is considering the removal of the CXs described in 516 DM 11.9C(10) regarding the [1] salvaging of dead and dying trees; [2] 516 DM 11.9D(10) regarding vegetation management activities; [3] 516 DM 11.9D(11) regarding issuance of livestock grazing permits or leases; and [4] 516 DM 11.9J(1) regarding certain activities within sagebrush and sagebrush-steppe plant communities to manage pinyon pine and juniper trees for the benefit of mule deer or sage-grouse habitats."

In addition, BLM is proposing to add two CXs that are prescribed by law:

- Section 11318 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) enacted a categorical exclusion as defined in 40 CFR Part 1508 for sundry notices or rights-of-way for gathering lines and associated field compression or pumping units on Federal land servicing oil and gas wells under certain conditions.
- Section 40806 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) excludes forest management activities for the establishment of fuel breaks in forests and other wildland vegetation from preparation of an EA [environmental assessment] or EIS [environmental impact statement] under NEPA. Per the statue, BLM must apply the U.S. Forest Service's extraordinary circumstances when reviewing this CX.

The BLM's current procedures can be found on the Department of the Interior's (DOI) Electronic Library of Interior Policies (ELIPS) at: https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-11_0.pdf.

Removed Categorical Exclusions

Given the above information and the contents of the linked document, the Council believes that, among the four CXs BLM is considering for removal, the CXs on vegetation management activities and issuance of livestock grazing permits/leases would affect the Mojave and Sonoran desert tortoises when these activities are implemented in their habitats. By removing these activities from the list of CXs, BLM is requiring their offices to develop a site specific activity and describe and analyze the impacts to the affected resources from its implementation in EA or EIS.

This process allows the public to participate in the development, analysis, and review of these activities and would provide an opportunity for public input on how to lessen the impacts from the proposed action, implement effective mitigation, and monitor the action and mitigation to ensure they are implemented correctly for tortoises in occupied habitats. This assumes that removal of the CX would require the BLM to produce either an EA or an EIS, as their applicability is described on pages 6 and 7 of the linked document. The Council supports the removal of both of these CXs.

The following excerpts are taken from pages 13 and 14 of the 12/20/2020, linked document on livestock grazing. The convention we use is to list the CX action cited in the document in regular font followed by rationale in italics as to why the replacement of the CX with either an EA or an EIS would provide for better protection for the tortoise. Without repetitively stating it for each example, the italicized wording provides rational for why an EA or EIS, rather than a CX, would be appropriate for each identified action.

D. Rangeland Management.

(1) Approval of transfers of grazing preference. *In the absence of clarifying remarks, we assume that these actions may refer to both cattle and sheep grazing on BLM-administered public lands. It is not clear to us what "grazing preference" entails, but we know of many examples where grazing by cattle has been relinquished as proactive management for the conservation of tortoises. If this is a pertinent example of "grazing preference," we would be very concerned about the reversal of such uses, whereby cattle were proposed to be reintroduced onto lands that are being managed for conservation.*

(2) Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed. *Even without new road construction, the placement of corrals and water troughs in areas occupied by tortoises may concentrate grazing pressures in areas (i.e., "piospheres") that both degrade habitats and lead to trampling of tortoises.*

(3) Temporary emergency feeding of livestock or wild horses and burros during periods of extreme adverse weather conditions. *Same rationale as for (2) above.*

(4) Removal of wild horses or burros from private lands at the request of the landowner. *Regardless of land ownership, the removal of large animals would necessarily involve heavy equipment, such as trucks, horse trailers, etc. and may also enlist corrals as given above, all of which may result in significant impacts to tortoises and their habitats.*

(5) Processing (transporting, sorting, providing veterinary care, vaccinating, testing for communicable diseases, training, gelding, marketing, maintaining, feeding, and trimming of hooves of excess wild horses and burros. *Same rationale as for (4) above.*

(6) Approval of the adoption of healthy, excess wild horses and burros.

(7) Actions required to ensure compliance with the terms of Private Maintenance and Care agreements.

(8) Issuance of title to adopted wild horses and burros.

(9) Destroying old, sick, and lame wild horses and burros as an act of mercy. *We are unaware of BLM's practices with regards to destroying livestock, but if the carcasses are not promptly removed, they would likely result in subsidies for known tortoise predators, particularly the common raven and coyote. If the destroyed animals are removed, as we suspect, the same concern expressed for (4) and (5) above would apply to this action.*

(10) Vegetation management activities, such as seeding, planting, invasive plant removal, installation of erosion control devices (e.g., mats/straw/chips), and mechanical treatments, such as crushing, piling, thinning, pruning, cutting, chipping, mulching, mowing, and prescribed fire when the activity is necessary for the management of vegetation on public lands. *Same rationale as for (4) and (5) above.*

Such activities:

(a) Shall not exceed 4,500 acres per prescribed fire project and 1,000 acres for other vegetation management projects; *Native vegetation in the Mojave and Sonoran deserts is not fire adapted. Fires in the Mojave and Sonoran deserts are known to degrade habitats by eliminating protective plant used for forage and cover from predators and thermal extremes, providing conditions favorable to establishing non-native invasive plants, and killing tortoises, among other impacts. We are unaware of any reasons why prescribed fires should occur in suitable, tortoise-occupied*

(b) Shall not be conducted in Wilderness areas or Wilderness Study Areas;

(c) Shall not include the use of herbicides, pesticides, biological treatments or the construction of new permanent roads or other new permanent infrastructure; *It represents current management for the application of herbicides, pesticides, and biological treatments, the construction of new permanent roads, and miscellaneous infrastructure to be assessed, usually in an EA, and possibly in an EIS, depending on the scope of the action.*

(d) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BLM transportation system and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and *Depending on their locations, temporary roads, particularly in areas devoid of roads, may significantly impact tortoises and degrade habitats, which should be analyzed, likely in an EA.*

(e) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract. *Whereas vertical mulching can often be implemented by hand, mechanical ripping of soils accompanied by introduced seed mixtures would require mechanical treatments that should not be authorized by a CX.*

(11) Issuance of livestock grazing permits/leases where:

(a) The new grazing permit/lease is consistent with the use specified on the previous permit/lease, such that

(i) the same kind of livestock is grazed,

(ii) the active use previously authorized is not exceeded, and

(iii) grazing does not occur more than 14 days earlier or later than as specified on the previous permit/lease, and

(b) The grazing allotment(s) has been assessed and evaluated and the Responsible Official has documented in a determination that the allotment(s) is

(i) meeting land health standards, or

(ii) not meeting land health standards due to factors that do not include existing livestock grazing. *For many reasons, including those given in Appendix A, we consider both cattle and sheep grazing to be incompatible with proactive tortoise conservation. Too often, grazing is permitted in out-of-date environmental documents that fail to consider new information concerning impacts and current trends in tortoise populations, nutritional forage needs, among other factors. As such, we believe the BLM should take each opportunity for new grazing proposals to review existing documents and update them as needed to reflect current science-based knowledge, which should be analyzed in EAs or EISs, depending on the scope of the proposal.*

Added Categorical Exclusions

We are unsure about the meaning of the second categorical exclusion that BLM is proposing to add to the list of CXs. The title is "Establishment of fuel breaks in forests and other wildland vegetation." The wording of the CX is it "excludes forest management activities for the establishment of fuel breaks in forests and other wildland vegetation from preparation of an EA or EIS under NEPA." Its primary purpose "is to establish and maintain linear fuel breaks that are:

(A) up to 1,000 feet in width contiguous with or incorporating existing linear features, such as roads, water infrastructure, transmission and distribution lines, and pipelines of any length on Federal land; and

(B) intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community.

Treatments of vegetation in linear fuel breaks covered by the categorical exclusion include:

(1) may not contain treatment units in excess of 3,000 acres;

(2) shall be located primarily in:

(a) the wildland-urban interface or a public drinking water source area;

(b) if located outside the wildland-urban interface or a public drinking water source area, an area within Condition Class 2 or 3 in Fire Regime Group I, II, or III that contains very high wildfire hazard potential.

The Council's concern is that the term "other wildland vegetation" could mean lands managed by the BLM in the Mojave and Sonoran deserts including national monuments, national conservation areas, areas of critical environmental concern, and critical habitat. These areas are to be managed for their natural and/or cultural resources. Establishing and maintaining linear fuel breaks up to 1,000 feet in width would further fragment wildlife habitats for numerous species including the tortoise. It would remove native plants needed by the tortoise for food with adequate nutrition and cover from predators and thermal extremes. Further, this surface disturbance would promote the establishment, growth, and spread of non-native invasive plants both within the fuel break and to adjacent areas. These non-native invasive plants are the fuel source that carries destructive wildfires in these deserts. Without these non-native invasive plants, there would be no high wildfire danger in the Mojave and Sonoran deserts.

Because "wildland vegetation" is not defined in the information provided by BLM and we assume in the legislation, we believe that BLM has some discretion in defining other wildland vegetation. The Council recommends that this CX be rewritten to clarify that it does not apply to the Mojave and Sonoran deserts because it would increase the fuel load and exacerbate the wildfire occurrence, size, and intensity in these deserts.

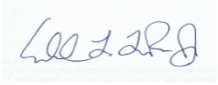
The Council contends that it is crucial that BLM implement management actions that are effective at minimizing the likelihood of large wildfires in the Mojave and Sonoran deserts. These native desert plants did not evolve with fire, so most species are not fire adapted.

We recommend that all BLM Resource Management Plans for areas in the Mojave or Sonoran deserts have a suite of management actions – physical, mechanical, biological, directed energy, and chemical methods – and types and locations of access that have been developed, analyzed for the specific areas and resources present in the management area, and adopted under NEPA, the Federal Endangered Species Act, and National Historic Preservation Act so that a CX is not necessary. Management to minimize the likelihood of large wildfires in the Mojave and Sonoran deserts means managing for three things: (1) avoid surface disturbance, (2) remove non-native invasive plants before they set seed and add seeds to the seed bank (i.e., break the annual plant growth cycle), and (3) establish biological soil crusts and native plants so non-natives will not return.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we ask that the Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BLM that may affect desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you notify the Desert Tortoise Council at eac@deserttortoise.org of any proposed projects that BLM may authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*, *G. flavomarginatus*) so we may comment on it to ensure BLM fully considers actions to conserve these tortoises as part of its directive to conserve biodiversity on public lands managed by BLM.

Please 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 this Project.

Respectfully,



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

Attachment: Appendix A. Impacts Associated with Grazing

Cc: Nada Culver, Deputy Director of Policy and Programs, Bureau of Land Management, nculver@blm.gov

Literature Cited

Averill-Murray, R.C., P.C. Rosen, C.A. Jones, T.R. Jones, R.A. Lara-Resendiz, T. Edwards, A. Karl, and K.H. Berry. 2023. Gopherus morafkai. The IUCN Red List of Threatened Species 2023: e.T97246109A97246177. https://dx.doi.org/10.2305/IUCN.UK.2023-1.RLTS.T97246109A97246177.en

Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en

[CDFW] California Department of Fish and Wildlife. 2024. Status Review for Mojave Desert Tortoise (*Gopherus agassizii*). Report to the California Fish and Game Commission. California Department of Fish and Wildlife, 715 P Street, Sacramento, CA 95814. 228 pp. with appendices. https://fgc.ca.gov/CESA#adt

Defenders of Wildlife, Desert Tortoise Preserve Committee, and Desert Tortoise Council. 2020. A Petition to the State of California Fish And Game Commission to move the Mojave desert tortoise from listed as threatened to endangered. Formal petition submitted 11 March 2020. https://defenders.org/sites/default/files/2020-03/Desert%20Tortoise%20Petition%203_20_2020%20Final_0.pdf

Appendix A. Impacts Associated with Grazing

Source: U.S. Fish and Wildlife Service. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. 222 pp. (References given below are included in the 2011 revised recovery plan[1] and not reiterated herein).

Effects of Grazing: PP. 136-137. Impacts of grazing on arid lands are well documented (Fleischner 1994; Jones 2000). Recovery from these impacts is variable, but can take decades, will likely require significant management effort beyond excluding livestock, and will be affected by other factors such as drought (GAO 1991; Friedel 1991; Laycock 1991). Livestock grazing (sheep and cattle as well as horses and burros) is known to have direct and indirect impacts on desert tortoises and their habitats through trampling that results in direct mortality, either while above ground or in burrows, and degradation of vegetation and soils, including the spread of non-native plants or the displacement of native plants (Brooks 1995; Avery 1998; Boarman 2002). The magnitude of the threat on desert tortoise populations remains unclear, and the degree of impact depends on a number of factors including, but not limited to, resiliency of soil and vegetation types, type of livestock, stocking rates, season of use, and years of use with and without rest (USFWS 1994b). Other factors can interact with livestock grazing and can affect the degree and extent of impacts to desert tortoises (e.g., introduction and spread of weeds [Brooks 2009], changes in vegetation due to grazing, fire, drought, and other land uses [USFWS 1994b]).

Oldemeyer (1994) suggests that the primary evidence that grazing adversely affects desert tortoises relates to an overlap in food habits of livestock and tortoises. Grazing is thought to reduce cover of shrubs and annual forbs. Studies in the eastern Mojave Desert on foraging behavior and food preferences of range cattle and desert tortoises showed that a dietary overlap (spatial and temporal) exists and that this overlap is greatest in the spring when fresh annual plants preferred by both desert tortoises and livestock are at their peak biomass and densities. Competition for these food plants is expected to be greatest when annual plants start to dry in the spring, before cattle and tortoises switch to other forage plants (Avery and Neibergs 1997).

Avery and Neibergs (1997) observed direct and indirect interactions between cattle and tortoises. Their study indicates that grazing during winter may destroy a large percentage of active tortoise burrows. They noted that tortoises outside an ungrazed cattle exclosure spent more nights outside of burrows than tortoises within the exclusion area, because more burrows were destroyed in the grazed area than in the ungrazed area. Almost 200 tortoise burrows were recorded as trampled during a survey of the 2.6-square-kilometer (1-square-mile) East Bajada (of the Black Mountains), Arizona, study plot in 1997 (Woodman *et al.* 1998). The presence of cattle dung, tracks, and trails suggested that most trampled burrows were caused by livestock, but some may have been due to horses or burros. In a study on translocated tortoises in the northwest Mojave Desert, one tortoise was found alive in its hibernation burrow even though the burrow had been crushed by cattle. It had skin lesions and had been parasitized by fly larvae. The tortoise was removed from the study because it was assumed that it would have died if it had been left in the crushed burrow (Nussear 2004). Tortoises with home ranges located in areas of poorly-managed cattle grazing may experience increased risk of mortality, increased energetic costs, and changes in activity time budgets (caused by additional time and effort required to build new burrows).

[1] https://www.fws.gov/sites/default/files/documents/USFWS.2011.RRP%20for%20the%20Mojave%20Desert%20Tortoise.pdf

Comparative studies of historically grazed and never-grazed grasslands in southeast Utah (Neff *et al.* 2005) showed that grazing can continue to impact soil biogeochemical characteristics three decades after grazing had been removed. Reduced soil nutrient levels in the historically grazed site compared to the never-grazed site were attributed to erosion of nutrient-rich fine soil materials due to disturbance caused by grazing practices. Soil organic matter, carbon and nitrogen content, and microbial biomass were also lower in the grazed site. The decline of organic matter content may be attributed to the destruction of biological soil crusts or long-term changes in vegetation cover/composition resulting from grazing. This study illustrates the sensitivity of arid land biogeochemical processes to land use change and the need for a better understanding of potential long-term impacts from grazing practices in the southwestern United States. Furthermore, wind erosion may contribute significantly to loss of soil nutrient content and should be considered in management of arid land ecosystems (Neff *et al.* 2005).

Unmanaged livestock grazing, especially where plants are not adapted to large herbivorous mammals or where the non-native species are less palatable than the natives, can preferentially remove native vegetation, leaving non-native plants to grow under reduced competition (Wittenberg and Cock 2005:228). Studies at the Desert Tortoise Natural Area showed that both abundance and diversity of native plants and animals is higher inside than outside of the protected desert tortoise habitat (Brooks 2000). It should be noted that the Desert Tortoise Natural Area has received limited protection since 1973, but has been effectively protected from sheep grazing and off-highway vehicle use through the installation of exclusion fencing for the last 10 years (Brooks 2000). Similarly, grazing (and simulated grazing treatments) negatively impacted native plant species, while non-native species were unaffected and demonstrated superior competitive abilities, at Carrizo Plain National Monument, California (Kimball and Schiffman 2003).