



May 4, 2021

California Department of Parks and Recreation
OHMVR Division
1725 23rd Street
Sacramento, CA 95816
Attention: Sixto J. Fernandez, Grants Manager
Sent via email to: Sixto.Fernandez@parks.ca.gov

Re: Preliminary applications for 2021 OHMVR Division grant funding submitted by the Bureau of Land Management

Dear Mr. Fernandez:

Thank you for the opportunity to submit comments on preliminary applications for grant funding received by the Off-Highway Motorized Vehicle Recreation (OHMVR) Division of the California Department of Parks and Recreation. Comments in this letter are submitted by Defenders of Wildlife (Defenders) and the Desert Tortoise Council (Council), and are specific to grant funding applications submitted by the Barstow and Ridgecrest Field Offices of the Bureau of Land Management (BLM) for the 2021 funding cycle.

Defenders is a national conservation organization with 2.2 million members and supporters in the U.S., including 323,000 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 tortoises and their habitats. Established in 1975 to promote conservation of tortoises and their habitats 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.

Background

The OHMVR Division administers the Grants and Cooperative Agreement Program (Program) established by California's Off-Highway Motor Vehicle Recreation Act of 2003, as amended; and implemented under California Code of Regulations Title 14. Natural Resources Chapter 15. According to the Regulations, *The purpose of the Grants program is to provide for well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well-managed, high-quality, OHV Recreation areas, roads, and trails, and to responsibly maintain the wildlife, soils, and habitat of Project Areas in a manner that will sustain long-term OHV Recreation in accordance with the legislative provisions and intent of the Act commencing at PRC Section 5090.01."*

The regulatory requirement that wildlife, soils and habitat of project areas be maintained is equal to that of providing for well-managed, high quality off-highway vehicle (OHV) recreation, and sustainable long-term OHV recreation, which by regulatory definition, is commensurate with maintaining wildlife, soils and habitats. In addition, the Program requirements include the Habitat Management Program (HMP) that must be developed and implemented by grantees to ensure that areas in which OHV recreation occurs continue to sustain viable populations of plants and animals.

The Program provides grants to qualified entities for the purpose of providing funding in support of OHV recreation including operations and maintenance, planning, development, law enforcement, etc.

Comments and Recommendations

Defenders and the Council provide the following comments and recommendations to assist BLM in preparing preliminary grant applications for the California Desert District in general, and specifically for the Barstow and Ridgecrest field offices.

1. Status of the desert tortoise and its habitat in the Western Mojave Desert: The Mojave desert tortoise or Agassiz's desert tortoise is listed as Threatened under the Endangered Species Act (ESA) and California Endangered Species Act (CESA), and is a candidate for listing as Endangered under CESA. Since its listing under the ESA in 1990, the desert tortoise continues to decline throughout much of its range in California, with dramatic declines (over 90 percent) documented in the Western Mojave Recovery Unit,

including a decline of approximately 51 percent between 2004 and 2014¹. The U.S. Fish and Wildlife Service (USFWS) determined that a viable tortoise population has a minimum of 3.9 adults/km² (equal to 10 adults/mi²).²

Density of adult desert tortoises in all designated Critical Habitat Units in the Western Mojave are below minimum viable density. In 2019, the USFWS Desert Tortoise Recovery Office reported the following densities of adult tortoises in the Western Mojave based on annual line distance sampling:³

Critical Habitat Unit	Adult desert tortoise density/km ² in 2019	Percent of minimum viable density
Fremont-Kramer	2.7	69
Superior-Cronese	1.9	48
Ord-Rodman	2.1	54
Pinto Mountains	1.7	44

Allison and McLuckie (2018)⁴ analyzed adult desert tortoise trend data based on USFWS line-distance sampling surveys and concluded, “*Declining adult densities through 2014 have left the Western Mojave [Recovery Unit] adult numbers at 49% and in the Eastern Mojave at 33% of their 2004 levels. Such steep declines in the density of adults are only sustainable if there were suitably large improvements in reproduction and juvenile growth and survival. However, the proportion of juveniles has not increased anywhere since 2007, and in these two recovery units the proportion of juveniles in 2014 has declined to 91% and 77% of their representation in 2004, respectively.*” And, “*The negative population trends in most of the TCAs [Tortoise Conservation Areas] for Mojave Desert Tortoises indicate that this species is on the path to extinction under current conditions. This may reflect inadequate recovery action implementation, slow response by tortoises and their habitat to implemented actions, or new and ongoing human activities in the desert that have not been mitigated appropriately. It may also be a result of stochastic or directional climatic events that impact large expanses of tortoise habitat (e.g., drought, fire, climate change) and are largely beyond the realm of local land management activities. Our results are a call to action to remove ongoing threats to tortoises from TCAs, and possibly to contemplate the role of human activities outside TCAs and their impact on tortoise populations inside them.*”

The reduction in the density and numbers of tortoise in the west Mojave Desert is an indicator of the loss, degradation, and fragmentation of tortoise habitat that is contributed to

¹ http://www.herpconbio.org/Volume_13/Issue_2/Allison_McLuckie_2018.pdf

² http://ecos.fws.gov/docs/recovery_plans/1994/940628.pdf

³ https://www.fws.gov/nevada/desert_tortoise/dtro/dtro_monitor.html

⁴ http://www.herpconbio.org/Volume_13/Issue_2/Allison_McLuckie_2018.pdf

by OHV activities. The scientific literature has documented the long-term adverse impacts of OHV activities to the hydrology, soils, and vegetation in the Mojave Desert yet there is little monitoring to quantify these ongoing impacts and their resulting loss of tortoises and other species of wildlife.

2. Desert tortoise mortality due to OHV use: Biological Opinions issued to BLM by the USFWS for the West Mojave Plan amendments to the California Desert Conservation Area (CDCA) Plan include an annual reporting requirement for desert tortoises killed or injured as a result of casual (unpermitted) OHV use on the designated open route network. BLM has not implemented nor required under the terms and conditions of the Biological Opinions to systematically monitor for desert tortoise mortality or injuries occurring on the designated open route network; the requirements are simply to report them based on opportunistic observations.

In its report on the status of the desert tortoise dated December 4, 2019⁵, the USFWS stated, *“Because carcasses on roads are quickly removed by scavengers or destroyed by other vehicles, we expect that far more desert tortoises are killed on roads than are reported.”*

Defenders obtained desert tortoise mortality information from the BLM Desert District Office that was reported to the USFWS in late 2020. The mortality information was collected on an opportunistic basis by agency field biologists and utility company employees inspecting their facilities located within rights of way on public land. The report covered opportunistic observation of desert tortoise mortalities in the CDCA, but for purposes of this letter we are limiting our comments to those that were found within the Western Mojave Recovery Unit for the desert tortoise. Below is a table summarizing desert tortoise mortalities within the Western Mojave reported to the USFWS by BLM in 2020. In the table, CHU=Critical Habitat Unit, WEMO=Western Mojave outside Critical Habitat.

Date	Tortoise Age Class	Location	Cause of Mortality	Source of Observation
4/26/2016	Subadult*	Ord-Rodman CHU	Roadkill on BLM open route (casual use)	USFWS Raven Monitoring Crew
3/20/2017	Juvenile	Fremont-Kramer CHU	Roadkill on BLM open route (casual use)	USFWS Raven Monitoring Crew
10/14/2017	Adult	El Mirage OHV Area	Within OHV Open Area	Not specified

⁵ https://www.fws.gov/nevada/desert_tortoise/documents/misc/Status-of-the-Desert-Tortoise-20191204.pdf

Date	Tortoise Age Class	Location	Cause of Mortality	Source of Observation
3/26/2018	Juvenile	Fremont-Kramer CHU	Roadkill on BLM open route (casual use)	USFWS Raven Monitoring Crew
3/30/2018	Adult	Fremont-Kramer CHU	Roadkill on BLM open route (casual use)	USFWS Raven Monitoring Crew
4/29/2019	Adult	Ord-Rodman CHU	Roadkill on BLM open route (casual use)	Not specified
8/26/2019	Adult	Ord-Rodman CHU	Roadkill on BLM open route (casual use)	So. Calif. Edison employee
9/5/2019	Adult	Ord-Rodman CHU	Roadkill on BLM open route (casual use)	Not specified
3/9/2020	Adult	WEMO	Roadkill on BLM open route (casual use)	BLM biologist
4/3/2020	Adult	WEMO	Roadkill on BLM open route (casual use)	So. Calif. Edison employee
4/20/2020	Juvenile	WEMO	Roadkill on BLM open route (casual use)	BLM employee
4/26/2020	Sub-adult	Ord-Rodman CHU	Roadkill on BLM open route (casual use)	USFWS Raven Monitoring Crew
5/5/2020	Juvenile	WEMO	Roadkill on BLM open route (casual use)	LADWP** employee
8/8/2020	Adult	WEMO	Roadkill on BLM open route (casual use) in recently expanded Spangler Hills Open Area.	BLM employee

*Adults are larger than 180 mm mid-carapace length (MCL), subadults are smaller than 180 mm, and juveniles are about 100 mm or less MCL.

**LADWP – Los Angeles Department of Water and Power

As noted above, the USFWS expects that a far greater number of desert tortoises are killed on roads than are being reported, and roads in this context are dirt routes comprising the BLM designated open route network in the West Mojave Plan area. Thus, a key unknown is what constitutes “a far greater number” if simple, opportunistic observations in the Western Mojave resulted in 14 desert tortoises observed killed on the open route network from 2016-2020. Also, of concern is that eight were adults, which are considered to be essential for rebuilding the population and preventing it from becoming extirpated. Given heightened visibility, adult tortoises should be more easily avoided by motorists than subadult tortoises.

Indirect impacts to tortoises from vehicle operation in the desert have been well documented in the scientific literature and include increased predation, the road effect zone,

noise affecting hearing and behavior, increased occurrence of mortality from disease caused by environmental stress from vehicle operation and its impacts on vegetation and soils, and increased population fragmentation (i.e., reduced population connectivity). Yet BLM is not required to monitor any of these forms of mortality/take in the Biological Opinion.

As stated by Allison and McLuckie (2018), desert tortoise populations in most TCAs in general, and those in the Western Mojave Recovery Unit specifically, are “...*on the path to extinction under current conditions.*” The desert tortoise population in the Western Mojave Recovery Unit was recognized as being imperiled in the Desert Tortoise Recovery Plan Assessment in 2004.⁶

In addition, the 1994 Recovery Plan for the Desert Tortoise (Mojave Population), whose conservation plan was adopted by the 2011 Revised Recovery Plan, included a population viability analysis (PVA) for the tortoise, that considered the time frame (e.g., for long-lived species a longer analysis time is used), population size, population density, spatial connectivity/fragmentation of populations, and stochastic and deterministic factors (e.g., genetic and demographic stochasticity and extrinsic forces). The PVA results and information on the biology and ecology of the tortoise were used to calculate a minimum reserve size and architecture following these tenets (USFWS 1994):

- reserves should be well distributed across a species’ native range
- reserves should contain large blocks of habitat with large populations of the target species
- there should be more than one reserve in each Recovery Unit
- reserves should be close together
- reserves should contain contiguous rather than fragmented habitat and minimal edge to area ratios (e.g. a circular shaped reserve is better than a linear reserve)
- reserves should be interconnected by corridors or linkages containing protected, preferred habitat for the target species
- ***reserves should-be roadless or otherwise inaccessible to humans*** (emphasis added).

3. Existing OHV use is inconsistent with purposes of the OHMVR Division grants program: There is ample, undisputed evidence that desert tortoise populations in the four Critical Habitat Units within the Western Mojave Recovery Unit are not being sustained; they are on a path toward extinction and OHV use of BLM-managed public lands administered by the Barstow and Ridgecrest field offices is contributing to the demise of the species due to documented mortality including crushing tortoises on the BLM-designated

⁶ https://www.fws.gov/nevada/desert_tortoise/documents/dtrpac/dtrpac_report.pdf

OHV route network. Thus, current extent and intensity of OHV use on public lands under the jurisdiction of these two field offices is inconsistent with the legislative and regulatory requirements of the OHMVR Division grants program because desert tortoise populations and their habitats are not being maintained.

4. Recommendations: Given that desert tortoise populations within four Critical Habitat Units within the Western Mojave Recovery Unit are below viable density and continue to decline due to a variety of threats, including mortality caused by OHV use, Defenders and the Council recommend that the OHMVR Division request that BLM develop applications for OHMVR Division grant funds that will support the following actions:

- A. Develop and implement a science-based monitoring and reporting plan to document the location and extent of desert tortoise injury, mortality and habitat destruction, degradation, and fragmentation caused by both authorized and unauthorized OHV use on public lands under the jurisdiction of the BLM's Barstow and Ridgecrest field offices.
- B. Increase law enforcement officer staff in the field sufficient to enforce OHV use restrictions throughout desert tortoise habitats in the Fremont-Kramer, Superior-Cronese, Ord-Rodman and Pinto Mountains Critical Habitat Units.
- C. Maximize the use of aerial surveillance technologies, including manned and unmanned aircraft, to enhance effectiveness of BLM law enforcement of OHV rules and regulations in all Critical Habitat Units, particularly on popular OHV-use weekends like President's Day, Thanksgiving, Easter, and New Year's Day; and minimize the use of conventional law enforcement vehicles in all Critical Habitat Units.
- D. Develop and implement a plan to manage casual OHV use in all Critical Habitat Units that will halt desert tortoise mortality and adverse habitat impacts associated with OHV use, and reverse the desert tortoise's path toward extinction. Examples of management actions are seasonal use restrictions during desert tortoise above-ground activity periods and limiting the number of OHVs allowed within Critical Habitat Units.
- E. Restrict the use of non-street licensed off-highway vehicles to areas designated for unlimited use of off-highway vehicles within the Western Mojave Desert, as follows: 1) Dove Springs, 5,000 acres; 2) El Mirage, 24,000 acres; 2) Jawbone Canyon, 7,500 acres; 3) Johnson Valley, 73,000 acres; 4) Olancho Dunes, 1,000 acres; 5) Spangler Hills, 96,000 acres; and 6) Stoddard Valley, 53,000 acres.
- F. Develop a more efficacious means of implementing terms and conditions in the Biological Opinion that require BLM to monitor and determine realistic levels of

mortality from direct and indirect impacts of vehicle use in Critical Habitat Units occurring alongside designated open routes.

We also recommend that the OHMVR Division staff consult with appropriate staff from the California Department of Fish and Wildlife to determine what actions or measures are needed to ensure OHV grants comply with the California Endangered Species Act.

5. Conclusion: Our comments on BLM's OHV grant applications are intended to align off-road vehicle recreation use on BLM-managed lands in the Western Mojave Desert consistent with California laws and regulations. The current situation in the Western Mojave relative to the desert tortoise is bleak, and recovery of this imperiled species is in doubt – formal surveys conducted from 2004 through 2014 show that the adult population has declined by 51% during this 10-year period, and is below viable density and headed for extinction.

We ask that BLM's grant applications be given further scrutiny for compliance with California laws and regulations governing OHV recreation use. If the OHMVR Division staff find the preliminary applications inconsistent with the grants and cooperative agreements regulations, we recommend that the OHMVR Division contact the BLM field offices and recommend their final applications be revised to the extent needed to comply with the regulations. Absent such revisions, we recommend that BLM's grant funding applications be denied.

Sincerely,



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