



DESERT TORTOISE COUNCIL

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Via email only

April 22, 2026

Assistant Field Manager, Division of Lands

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RE: Nevada Division of State Lands Jean Prison Reversionary Interest Purchase Environmental Assessment (DOI-BLM-NV-S010-2023-0031-EA), Finding of No Significant Impact, and Decision Record

Dear Field Manager Sillitoe, Assistant Field Manager, and Mr. Benavides,

The Desert Tortoise Council (Council) is a non-profit organization comprising 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 the location of the proposed action in habitats potentially occupied by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include

recommendations intended to enhance protection of this species and its habitat during activities that may be authorized by the Bureau of Land Management (BLM), which we recommend be added to terms and conditions in the decision document and, if issued, authorizing document as appropriate. Please accept, carefully review, and include in the relevant project file the following comments by the Council for the proposed action.

The Mojave desert tortoise (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 the Desert Tortoise Preserve Committee (DTPC) to petition the California Fish and Game Commission (Commission) in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered under the California Endangered Species Act (CESA) (Defenders of Wildlife et al. 2020). Importantly, following California Department of Fish and Wildlife's (CDFW) (2024a) status review, in their April 2024 meeting the California Fish and Game Commission voted unanimously to accept the CDFW's petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the CESA based on the scientific data provided on the species' status, declining trend, numerous threats, and lack of effective recovery implementation and land management (CDFW 2024b). On July 15, 2025, the tortoise was officially uplisted to endangered status under the CESA (Commission 2025).

Description of Proposed Action

Background

On December 13, 1979, The BLM issued a 480-acre Recreation and Public Purposes (R&PP) patent, patent # 27-08-0056, for the construction, operation, and maintenance of the Jean Prison Facility pursuant to the Recreation and Public Purposes Act (R&PP Act). Identified improvements to the public lands included a correctional facility, medium security facility, wastewater treatment facility, and the development of a buffer zone for a controllable area between the fenced in areas and the public. The majority of the State of Nevada's (State) buildings and infrastructure are located on property owned by the State adjacent to the BLM R&PP patented lands (Figure 1). The R&PP patented lands are mostly undeveloped with the exception of approximately 47.6 acres — some prison infrastructure adjacent to privately owned lands and rapid infiltration ponds. The remaining 433.3 acres are undisturbed and have been utilized as a buffer zone restricting public access to the lands around the Jean Prison Facilities. The 500-bed prison was closed in 2016. A

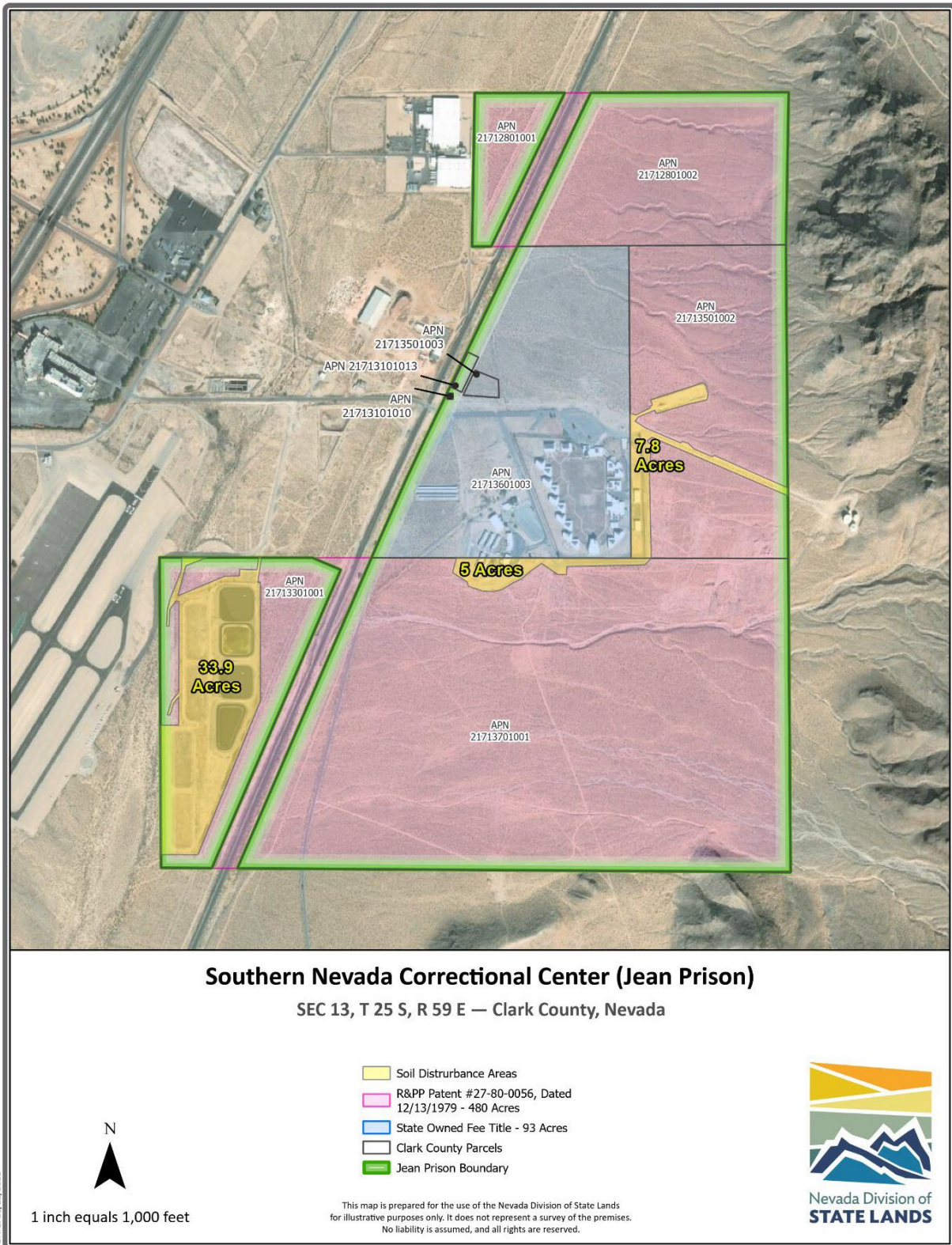


Figure 1. Location of State-owned lands and BLM Recreation & Public Purposes patent lands, Northern Ivanpah Valley, Jean, Clark County, NV.

women's conservation camp managed by the Nevada Division of Forestry is also onsite, which remains active.

Proposed Action

Under the National Environmental Policy Act (NEPA) BLM prepared the Nevada Division of State Lands Jean Prison Reversionary Interest Purchase Environmental Assessment (EA) for the proposed conveyance of the reversionary interest held by the United States in Recreation and Public Purposes patent 27-08-0056, to the Nevada Division of State Lands (NDSL). The subject lands are located near Jean in unincorporated Clark County, Nevada. BLM is responding to NDSL's request to sell the land to them through a non-competitive direct sale. In the Record of Decision for the Las Vegas Resource Management Plan (BLM 1998), BLM identified in the Record of Decision (BLM 1998), "approximately 173,593 acres of public lands within the disposal areas" . . . "are potentially available for disposal through sale, exchange, or Recreation and Public Purpose patent to provide for the orderly expansion and development of southern Nevada." Consistent with the Federal Land Policy and Management Act (FLPMA), the BLM has determined that the public interest would be best served by a direct sale of the Federal reversionary interest to the State of Nevada pursuant to 43 CFR 2711.3-3.

BLM identified and analyzed two alternatives in this EA:

- No Action Alternative: BLM would not convey the reversionary interest held by the United States in the R&PP patent. The R&PP patent would continue to be held by NDSL subject to the provisions of the R&PP Act.
- Proposed Action Alternative: BLM would sell the 480 acres directly to NDSL to repurpose the lands for economic development through lease of the lands and the construction of commercial uses. The proposed use of the land for commercial applications is not in conformance with the conveyance authority for the existing R&PP patent. Thus, development of the land would require relinquishment of the patent which would occur through a sale of the land.

BLM did not identify whether it considered other alternatives and, if so, why they were dismissed.

The proposed action is located in southern Clark County on the east side of Interstate-15 in the northern Ivanpah Valley. The property is located south of the current southern boundary of the City of Las Vegas, a boundary that continues to move south, and is near the I-15 freeway, Jean municipal airport, a rail line, and a planned commercial airport (i.e., the Southern Nevada Supplemental Airport). It is bordered by Sheep Mountain on the east side.

Comments on the Proposed Action

The Council contacted BLM management in southern Nevada offices requesting to be identified as an affected interest (i.e., a certified letter sent on November 7, 2019 to Tim Smith, District Manager, Southern Nevada District, Las Vegas, NV and to Shane DeForest, Acting District Manager, Ely District, Ely, NV). Subsequent to this request, the Council has sent numerous comment letters to the Las Vegas Field Office and Southern Nevada District Office of BLM requesting/reiterating that the Council be identified as an affected interest. Despite these numerous

efforts to communicate with BLM, it was a third party, not the BLM, that contacted the Council on march 10, 2026 about this proposed action.

We remind BLM of its obligation to engage the public when conducting NEPA. Congress' 2023 amendments to NEPA §107(g) in the Fiscal Responsibility Act legislatively reinforced the idea that public engagement would continue under NEPA. BLM's implementation of a weakened public engagement process (i.e., not notifying and involving the public and interested parties in proposed actions or conducting public scoping) does not implement the intent of Congress, and it does not produce faster or fairer outcomes. It produces more conflict, less trust, and worse results for all involved.

Because BLM has notified the Council in the past of proposed actions in southern Nevada that may affect the tortoise/tortoise habitat, we were surprised that BLM neglected to do so for this proposed action and the lack of availability and notification of this EA for public review. If the Council had been notified about the opportunity to be involved in the preparation of the EA, we would have participated. Once again we request that BLM comply with the 516 DM 11 and the NEPA statute and notify the Council as an identified interest of all proposed actions that may affect the tortoise and/or tortoise habitat.

Chapter I Introduction

Page 1, Conformance Summary: BLM says, “the Proposed Action is in conformance with the Las Vegas Resource Management Plan (RMP), October 1998. The emphasis of the 1998 Las Vegas RMP is to protect unique habitats for threatened, endangered, and special status species while providing areas for community growth, recreation, mineral exploration and development, and other resource uses.”

This may be the emphasis of the 1998 RMP. It is not being accomplished by BLM, especially with respect to the tortoise and the quality, quantity, and configuration of tortoise habitat needed to support tortoise populations given the ongoing documented declines in tortoise densities and numbers (USFWS 2015, 2016, 2018, 2019, 2020, 2022, 2025) in the areas of critical environmental concern that were designated under the 1998 RMP to be managed “to achieve the recovery criteria defined in the Tortoise Recovery Plan” (BLM 1998, page 11).

In 43 Code of Federal Regulations (CFR) 1610.4-9 for implementing FLPMA, BLM is directed under “Monitoring and Evaluation” as follows: “The proposed [resource management] plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory . . . or whether there is new data of significance to the plan.”

Please explain in the revised EA (1) the intervals and standards of monitoring for the 1998 Las Vegas Resource Management Plan for the tortoise and tortoise habitat; (2) the results of BLM's implementation of this monitoring; (3) BLM's evaluation of these results to determine whether mitigation measures are resulting in a satisfactory outcome, that is improving the survival and successfully working toward achieving the recovery of the tortoise; and (4) whether there are new

data of significance to this RMP especially with respect to achieving the objectives, management directions, and criteria for the tortoise listed in the Record of Decision for the 1998 RMP.

In 43 CFR 1610.5-5, “A resource management plan may be changed through amendment. An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan.”

Since the Las Vegas RMP was finalized in 1998 there has been an abundance of data collected, analyzed, and published on the tortoise and its habitat in southern Nevada. These new data are significant additions since the adoption of the RMP 28 years ago. They demonstrate that implementation of the RMP is not working with respect to managing for the survival and recovery of the tortoise. Data and analyses on adult tortoise densities and numbers show the tortoise has and is experiencing substantial declines and that habitat is no longer supporting viable populations of tortoises in the Eastern Mojave Recovery Unit. The Las Vegas RMP encompasses the Eastern Mojave Recovery Unit in Nevada.

In 2015, the U.S. Fish and Wildlife Service (USFWS) released a scientific report analyzing demographic data on the tortoise from 2004 through 2014. USFWS reported substantial declines in tortoise abundance and densities throughout most of the range of the tortoise. In 2018, Allison and McLuckie published a scientific paper that further analyzed these data and reported that in addition to declines in adult tortoise numbers and densities, the odds of encountering a juvenile tortoise in all recovery units have declined since 2007, especially in the Eastern Mojave Recovery Unit. These data indicate that recruitment to the adult population is declining as is the number of adult tortoises.

In addition, Averill-Murray et al. (2021) released a scientific publication on the importance and locations of remaining linkage habitats needed for population connectivity and survival of the tortoise and provided maps with these linkage habitats (Figure 2). These linkage habitats include habitat along Interstate 15 south of Las Vegas. Several papers have been published on impacts to the tortoise demographics in the Eastern Mojave Recovery Unit indicating that the tortoise is in trouble with respect to recovery and survival, and specifically the Ivanpah Valley where the proposed sale of land, including tortoise habitat, is located (for example Dutcher et al. 2026, Hromada et al. 2020, Nussear et al. 2026, Vandergast et al. 2026).

The data and analyses in these papers indicate the need for substantial changes regarding the management of BLM lands in the Ivanpah Valley and Eastern Mojave Recovery Unit for the survival and recovery of the tortoise. With the USFWS 2015 publication of information on the declining status and trend of the tortoise rangewide but especially in southern and western Nevada, BLM should have initiated action shortly thereafter to revise or amend the Las Vegas RMP. Tjisiwoud have been the appropriate action for BLM to implement if BLM were complying with its regulations in 43 CFR 1610.5-5 on amending resource management plans. The data and conclusions regarding the declining demographic status and trend of the tortoise and increasing threats continue to mount since the USFWS’s 2015 publication, yet BLM has not amended the RMP to address its failing management of the tortoise.

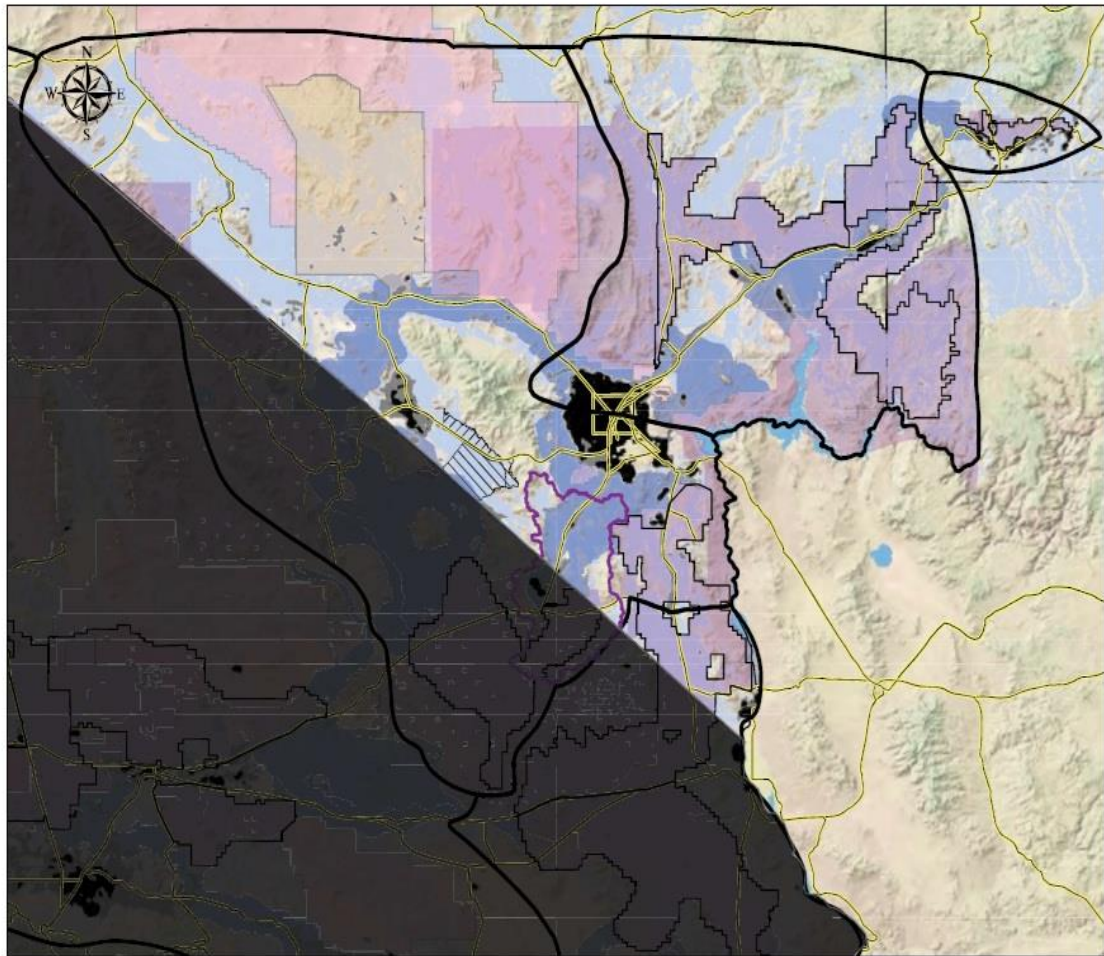
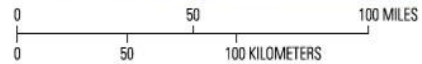


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EXPLANATION

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|---------------------------------|--|
| Recovery units | Ivanpah Valley Watershed |
| Critical habitat | Omnidirectional connectivity model (5%) |
| Tortoise conservation areas | <5th percentile |
| USFWS linkage model | Top 5th percentile |
| Trout Canyon Translocation area | Terrestrial development index (>5%) |
| Stump Springs Augmentation Site | ≤5 |
| Department of Defense | ≤20 |
| Nevada National Security Site | 20.1–100 |
| | Highways |

Figure 5. Tortoise conservation areas, linkages, and other habitat managed for desert tortoise population connectivity in Nevada, Utah, and Arizona.

Figure 2. Tortoise Conservation Areas, linkage habitat, and other habitat managed for tortoise population connectivity (from Averill-Murray et al. 2021).

In comment letters to BLM on proposed projects in southern Nevada, the Council has repeatedly provided BLM with information on the substantially declining demographic status and trend of the tortoise in southern Nevada. In these comment letters, the Council has requested that the decades-old Las Vegas RMP be changed to implement effective management to change the declining status and trend of the tortoise through implementation of new management actions to facilitate its survival and recovery. These letters included (among others):

- March 3, 2022 Proposed Implementation Plan for Management of Gold Butte National Monument
- December 1, 2022 Gold Butte National Monument Implementation Plan
- January 13, 2023 Copper Rays Solar Project (DOI-BLM-NV-S030-2022-0009-EIS)
- May 10, 2023 Muddy Mountains Travel Management Plan (DOI-BLM-NV-S010-2023-0040-EA)
- September 12, 2023 GridLiance West Core Upgrades Project – Scoping (DOI-BLM-NVS030-2023-0008-RMP-EIS)
- February 17, 2024 Dry Lake East Energy Center Solar Project Environmental Assessment (DOI-BLM-NV-S010-2023-0027-EA)
- August 16, 2024 Muddy Mountains Special Recreation Management Area Travel Management Plan and Environmental Assessment (DOI-BLM-NV-S010-2024-0087-EA)
- November 27, 2024 Variance for Larrea Solar, Mosey Solar, and Rock Valley Solar Projects, Clark County & Nye Counties, NV
- December 5, 2024 Bonanza Solar Project Draft Environmental Impact Statement/ Resource Management Plan Amendments (DOI-BLM-NV-S000-2022-0002-EIS)
- February 13, 2025 – Purple Sage Energy Center Draft Environmental Impact Statement and Draft Resource Management Plan Amendment (DOI-BLM-NV-S010-2022-0094-EIS)
- May 8, 2025 – Carey to Pabco 69kV Transmission Line Rebuild (DOI-BLM-NV-S010-2025-0028-EA)
- September 5, 2025 – Southern Nevada Supplemental Airport Resource Management Plan Amendment & Environmental Impact Statement – Public Scoping (DOI-BLM-NV-S010-2025-0035-RMP-EIS).

Again, the Council strongly requests that BLM revise or amend the Las Vegas RMP as soon as possible and use all relevant data regarding the tortoise in developing and implementing effective management so that BLM is managing “desert tortoise habitat to achieve the recovery criteria defined in the Tortoise Recovery Plan” (BLM 1998, page 11).

Page 2, Applicable Laws, Regulations, and Policies: BLM says, “this EA has been prepared in accordance with the following statutes, regulations, policies, and procedures.” However, only statutes are listed (e.g., NEPA, Federal Land Policy and Management Act, and Federal Endangered Species Act (FESA)).

In reviewing the EA, we were unable to find the list of relevant BLM policies and procedures that BLM complied with or how those policies and procedures were implemented in the analysis of the proposed action. For example, we did not find information in the EA on how BLM is complying with “Advancing Science in the BLM: An Implementation Strategy IB 2015-040” or “Special

Status Species Management – Manual 6840.” With respect to “Advancing Science,” we did not find information in the EA on how BLM:

- “Use[d] the best available scientific knowledge relevant to the problem or decision being addressed, relying on peer-reviewed literature when it exists”
- “Acknowledge[d], describe[d], and document[ed] assumptions and uncertainties”
- “Use[d] transparent and collaborative methods that consider diverse perspectives” including those with “academia and the public”

This policy is supported in NEPA, with Congress declaring that federal agencies shall “[u]tilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences . . . in planning and in decisionmaking.”

With respect to the “Special Status Species Management – Manual 6840,” we found no analysis of effects to special status species. Additional comments on the absence of including this resource issue and an analysis of effects in the EA are provided below.

With respect to FLPMA, BLM should describe in the EA how the action alternative “will serve important public objectives, including but not limited to, expansion of communities and economic development, which *cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership*” (emphasis added). In addition to recreation and scenic values, please add special status species and their habitats to the public objectives and values analyzed in the revised EA and in this decision-making process, especially with respect to population connectivity and linkage habitats for the tortoise.

FLPMA directs BLM to manage public lands that consider the long-term needs of future generations for renewable and non-renewable resources, and to take any action necessary to prevent unnecessary or undue degradation of the lands. By selling the lands to NDSL for development, BLM will substantially impede and possibly eliminate the currently existing linkage habitat for the tortoise population in the Northern Ivanpah Valley along the east side (Averill-Murray et al. 2021). This effect should be analyzed in the revised EA, and BLM should: 1) implement actions that would minimize this undue degradation (i.e., implementation of the alternative suggested below by the Council with an appropriate conservation easement or other durable legal designation that would not allow for additional surface disturbance in the area east of the current prison), 2) use the funds derived from the sale of these lands to purchase non-federal lands in the Ivanpah Valley that USFWS has identified as crucial for population survival and/or connectivity of the tortoise in the Ivanpah Valley and manage these land for this purpose, or, 3) in coordination with the California Desert District Office of BLM, use the funds to restore tortoise habitat in the soon-to-be decommissioned Ivanpah Solar Energy Generating System (ISEGS) solar facilities near the California-Nevada border and designate this area and adjacent BLM lands as an ACEC necessary for tortoise population connectivity for tortoise survival in the Ivanpah Valley with a conservation easement overlay or other durable designation.

Chapter 2 Proposed Action and Alternatives

Page 3: BLM describes two alternatives — to retain all the lands or to sell all the lands. We strongly recommend that BLM analyze a third alternative, to sell the BLM lands currently developed (46.7

acres) and the lands west of the railroad tracks and retaining the remaining lands as public lands. Because the State of Nevada did not use the land for the construction and use of the prison, BLM should pursue returning these lands to public ownership. This alternative should be analyzed with respect to requirements under R&PP Act and FLPMA.

Chapter 3 Affected Environment, Resource Evaluation

BLM does not describe or analyze any natural resource issues. The resource issues analyzed are limited to socioeconomics and environmental justice.

Page 6, Fish and Wildlife Excluding Federally Listed Species: BLM says, “Fish and wildlife excluding federally listed species will not be directly impacted by the Proposed Action. After finalizing the Proposed Action, any direct effects from potential development or habitat modification will be minimized and mitigated under the purview of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and associated Section 10(a)(1)(B) permit.” This resource issue is “not impacted.”

We remind BLM that it should not be limiting its analysis of effects or impacts to direct effects from implementation of the proposed action. In 91 *Federal Register* 36 (8753), the Office of the Secretary of the Interior said, “Instead of formulating the evaluation of environmental effects of bureau action using the artificial devices of “direct,” “indirect,” and “cumulative” effects that do not appear in the statute, DOI’s NEPA procedures focus on the underlying principle of what constitutes an “effect.” “Both before and after the updates to DOI’s NEPA procedures, DOI bureaus were and are required to consider effects that are both reasonably foreseeable and have a reasonably close causal relationship to their proposed actions, each including a reasonable range of action alternatives.” Consequently, we request that BLM revise the EA to include all likely effects to fish and wildlife from the proposed sale and development of the subject 480 acres, not just direct effects.

In addition, we remind BLM that the Clark County MSHCP addresses the conservation and management of certain species that the applicants for the incidental take permit (ITP) identified. These species are usually included in an HCP because the applicant(s) believe these species are likely to become listed under the Federal Endangered Species Act (FESA) in the foreseeable future. The applicant(s) desire incidental take coverage for them if future listing occurs. Thus, the Clark County MSHCP does not address management, minimization, or mitigation of fish and wildlife impacts, but a small subset of fish and wildlife species in the plan area of the MSHCP.

Page 8, Invasive Species/Noxious Weeds: BLM says “The area is currently managed as a 480-acre R&PP patent for the Jean Prison Facility. As the Proposed Action is for the purchase of the reversionary interest held by the United States within the R&PP patent area, current and future invasive species and noxious weeds management and compliance is and would be subject to applicable municipal, county, and state regulatory requirements.” This resource issue is “not impacted.” Please see our comments above under “Page 6, Fish and Wildlife Excluding Federally Listed Species” regarding direct effects and below under “Page 9, Threatened, Endangered, or Candidate Animal Species.”

Page 8, Migratory Birds: BLM says, “Migratory birds will not be directly impacted by the Proposed Action. After finalizing the Proposed Action, any direct effects from potential development or habitat modification will be minimized and mitigated under the purview of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and associated Section 10(a)(1)(B) permit.” This resource issue is “not impacted.” Please see our comments below under “Page 9, Threatened, Endangered, or Candidate Animal Species.”

Page 9, Threatened, Endangered, or Candidate Animal Species: In Table 1 of the EA, “Resources Considered in the Evaluation of the Proposed Action and Alternatives,” BLM indicates that Threatened, Endangered, or Candidate Animal Species are “present but not impacted.” Consequently, this resource issue is not analyzed in the EA. BLM says it “issued the 480-acre R&PP patent (patent # 27-08-0056) for the construction, operations, and maintenance for the Jean Prison Facility pursuant to the R&PP Act prior to the Endangered Species Act (ESA) listing of the Mojave Desert Tortoise. Therefore, no section 7 consultation is required. After finalizing the Proposed Action, any direct effects from potential development or habitat modification impacting desert tortoise will be minimized and mitigated under the purview of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and associated Section 10(a)(1)(B) permit.” This resource issue is “not impacted.”

Regarding BLM’s decision that this resource issue is not impacted under NEPA, BLM is making a discretionary decision. As stated in the EA “BLM will decide whether to deny [or] approve the NDSL request for conveyance of the reversionary interest or deny the conveyance of the reversionary interest with or without modifications.”

In *Conservation Law Foundation v. General Services Administration*, 707 F. 2d. 626 (1st Cir. 1983), the court held that a NEPA document “must adequately analyze the environmental impact of disposal of individual parcels of the land to permit a reasoned choice between retention or disposal.” The NEPA document “must discuss the environmental effects of potential uses of the property by a new owner in order to permit a reasoned choice between retention or disposal.”

Currently, most of the land is undeveloped (433.3 of 480 acres), but available information indicates it would be developed after the sale is completed. For example, BLM says “the NDSL proposes to repurpose the lands for economic development through lease of the lands and the construction of commercial uses.” The last part of this sentence specifically indicates plans for new development for commercial purposes on lands currently undeveloped. NDSL has no legal requirement to protect ecosystems or support the preservation and restoration on natural environments with the exception of the sagebrush ecosystem and the Lake Tahoe Basin (Title 28 NRS 321.592, 321.94, and 321.95). Thus, NDSL is not obligated to manage the subject lands to protect their current uses by the tortoise including linkage habitat needed for population connectivity.

Clark County has documents for planned development of southern Clark County/Northern Ivanpah Valley on private land. In the Federal Aviation Administration and BLM 2025 presentation to the public on the proposed Southern Nevada Supplemental Airport, surrounding designations and development (<https://www.snvairporteis.com/wp-content/uploads/sites/47/2026/02/SNSA-EIS-RMPA-Participating-Agency-Meeting-v3-01-22-2026.pdf>) extend north to Jean and encompass the lands of the proposed action. This planned development would result in a substantial change

from the current use and condition of the lands (i.e., “the remaining 433.3 acres are undisturbed and have been utilized as a buffer zone restricting public access to the lands around the Jean Prison Facilities”).

To comply with the court ruling, we request that BLM revise the EA to include an analysis of all effects to the tortoise and other special status species from the proposed sale and development of the parcels. BLM should use the information in these documents regarding development/repurpose plans when analyzing the effects of the proposed action on the future survival and recovery of the tortoise in the Eastern Mojave Recovery Unit, which includes needed connectivity between populations in southern Nevada and within the Ivanpah Valley.

With respect to FESA, we remind BLM that FESA requires federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical] habitat” 15 U.S.C. § 1536(a)(2). In 50 CFR 402.02, “action” is defined as “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.”

In 50 CFR 402.14, “Formal consultation. (a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section.” Paragraph (b) discusses informal consultation and that if “the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat” then formal consultation is not needed. Thus, FESA and its implementing regulations do not excuse BLM’s discretionary proposed action to sell lands identified for development from compliance with section 7 consultation.

We also remind BLM that there are data available on the occurrence of tortoises and tortoise habitat in the northern Ivanpah Valley including the area around/near Jean.

In the EA BLM says that most of the lands under the R&PP lease were used as a buffer and were not developed. Therefore, the lands BLM is proposing to sell for development would undergo a substantial change from their existing condition and use. Figure 1 above, from the EA, shows no development on the remaining 433.3 acres. A view from March 2025 on Google Earth also shows no development.

Thus, under FESA and its implementing regulations BLM cannot dismiss its obligations to analyze the proposed action by stating that the R&PP patent was issued “prior to the Endangered Species Act (ESA) listing of the Mojave Desert Tortoise.” While BLM may have issued the patent in 1979, BLM’s proposed discretionary *action* would occur after the listing of the tortoise.

Until BLM has conducted an analysis of all effects from the proposed action including future development that would occur, BLM has provided no information to show that the sale of the land and its development would not jeopardize the continued existence of the tortoise. Such analysis should include conducting formal protocol surveys for Mojave desert tortoise (USFWS 2019b)

Because USFWS (2009) require only experienced biologists to perform protocol surveys, USFWS biologists should review the credentials of the biologists prior to initiating the surveys. Per this protocol, if the impact area is larger than 500 acres, the surveys must be performed in the time periods of April-May or September-October so that a statistical estimate of tortoise densities can be determined for the “action area” (please see below for definition of “action area”). If any tortoise sign is found, BLM would coordinate with USFWS to determine whether the proposed action is likely to adversely affect the tortoise. If the answer from USFWS is “yes,” then BLM would request formal consultation with the USFWS for the proposed action.

The USFWS defines “action area” in the 50 CFR 402.02 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).” For the tortoise the areas affected directly would be the 433.3 acres of land not currently developed. The area to be affected indirectly would be much larger in size. This is because the sale and development of these mostly undeveloped lands would result in more roads, more vehicles, and more human access to and on the developed acreage.

“Effects of the action” is defined in 50 CFR 402.02 as “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.”

The effects to the tortoise that result from more urbanization/development, roads, vehicles, and human access include:

- surface disturbance to a large area that removes native plants (i.e., habitat loss);
- increased raven and coyote predation from subsidized food (road-kill) (Kristan and Boarman 2003, Esque et al. 2010a, Kristan et al. 2004, Holcomb et al. 2021, Deming 2024);
- increased human access to collect tortoises (Berry et al. 1996, USFWS 2011);
- increased noise levels that impact tortoise behavior and increase susceptibility to predation (Miles 1953, Ruby et al. 1994, Bowles et al. 1999, Gagno 2022);
- increased outbreaks of disease with reduced reproduction and increased mortality (Homer et al. 1998);
- transport and establishment of non-native invasive plants that outcompete native plants (Brooks and Esque 2002, Brooks and Berry 2006);
- increased nitrogen deposition from vehicles that promotes the growth of non-native invasive plants and other road effect zone impacts in nearby lands (Brooks and Pyke 2002, Rao et al. 2009, Esque et al. 2010b, Fenn et al. 2010, Fenn et al. 2018, Syphard et al. 2017);
- reduced availability of nutritious native herbaceous forage needed by all size classes of tortoises for growth and reproduction on nearby lands (Ofstedal 2002, Drake et al. 2016);
- fragmentation of tortoise habitat and reduction/loss of population connectivity from the edge effects from development (Averill-Murray et al. 2021);
- increased fuel load by non-native invasive plants in spaces between woody shrubs that carry wildfire (Brooks et al. 2004);

- increased human sources of wildfire (e.g., vehicles, etc.) (Brooks and Matchett 2006);
- increased size, frequency, and intensity of wildfires (Brooks et al. 2004); and
- recurring wildfires that result in vegetation type conversion from native shrubs and herbaceous plants to annual grasses (Brooks, 1999; Brooks and Esque, 2002; Brooks et al. 2004, Brooks and Matchett, 2006).

Any development within tortoise habitat or adjacent to/near tortoises has an edge effect (i.e., indirect impact) that extends beyond the boundary of the development and into the linkage habitat. This edge effect narrows or impedes the use/effectiveness of tortoise habitat including linkage habitat needed to connect tortoise populations depending on the extent of the edge effect (Averill-Murray et al. 2021).

The ongoing decline of the tortoise is an example of how edge effects from human development and activities impact the tortoise. There appears to be sufficient open space and suitable habitat for the tortoise, but the indirect impacts from human development and activities extend well beyond the perceived footprint of human development (e.g., urban development) and activities (e.g., OHV use) to adversely affect the survival of the tortoise (Tuma et al. 2016). Thus, having open space that appears to be a suitable connectivity corridor for the tortoise may provide no connectivity between tortoise populations. Therefore, the revised EA should analyze the edge effects of current and planned uses of the identified tortoise linkage habitat to determine whether they would likely be able to meet the requirements of the tortoise to provide functioning linkage habitat and connectivity between tortoise populations.

To comply with the FESA, BLM should implement protocol-level surveys for the tortoise in the action area of the proposed action, and consult with USFWS to determine the size of the action area. The results of these surveys should be published in the revised EA and should include density estimates. In addition, we request that BLM revise the EA to include an analysis of all effects (not just direct effects) to the tortoise from implementation of the proposed action, a copy of the biological assessment submitted to the USFWS, and when available, a copy of the biological opinion.

Regarding BLM's statement that "any direct effects from potential development or habitat modification impacting desert tortoise will be minimized and mitigated under the purview of the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and associated Section 10(a)(1)(B) permit," the USFWS issued a Section 10(a)(1)(B) permit in 2001 for 30 years to Clark County, Nevada Department of Transportation, and five municipalities to implement the Clark County MSHCP. NDSL is not a permittee. Consequently, the NDSL would not have authorization to take a tortoise under the FESA from activities on the lands described in the proposed action.

The Council contends that the status of the tortoise in the Ivanpah Valley is at a critical tipping point with respect to survival and connectivity which are needed to achieve recovery. BLM should be aware of this from their discussions with USFWS in the development of the Final Programmatic Environmental Impact Statement and Proposed Resource Management Plan Amendments for Utility-Scale Solar Energy Development (BLM 2023) and BLM's issuance of the Approved Record of Decision and Amendments/ Record of Decision for Utility-Scale Solar Energy Development (BLM 2024). In the latter document BLM identified "Resource-Based Exclusion

Criteria in the Approved Plan” for the tortoise that included “Mojave desert tortoise existing and future translocation sites identified by the USFWS in coordination with the BLM; crucial connectivity areas; and additional habitat areas identified in coordination with the USFWS.” The crucial connectivity areas were mapped and provided to BLM Headquarters in 2024 (USFWS 2024). This information and an analysis of effects, including edge effects and connectivity habitat, from the development of lands identified in the proposed action should be included in the revised EA.

The Clark County MSHCP lists more than 70 Covered Species. However, the Monarch butterfly, *Danaus plexippus*, is a proposed threatened species under FESA, and is not one of the species covered in the MSHCP or ITP. The butterfly’s distribution includes the area of the proposed action. Consequently, BLM should analyze the effects of the proposed action along with past effects, future effects, and cumulative effects in the revised EA and in its conference with the USFWS.

In the Finding of No Significant Impact (FONSI), BLM states “Impacts to wildlife, migratory birds, and the desert tortoise would be addressed through the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and associated Section 10(a)(1)(B) permit. Additional resource impacts would not occur with exception of socioeconomics and environmental justice.”

In the Decision Record under Decision Rationale, BLM states “As explained in the Finding of No Significant Impact (FONSI), the impacts of the Selected Action have been analyzed in the EA and determined not to result in significant impacts to the quality of the human environment, individually or cumulatively with other actions in the general area under NEPA.”

For the reasons we provided above, we believe that BLM’s EA is flawed. It ignores resource issues that should be analyzed under NEPA and FLPMA, presumes that compliance with FESA is not needed, assumes that effects to flora and fauna including species listed or proposed under FESA would be covered by the Clark County MSHCP, provides no analysis of the effects of the proposed action to the proposed threatened Monarch butterfly, presumes that complying with a 28-year-old RMP that has not been updated for management of lands for the tortoise is adequate, and ignores recent scientific literature and discussions with USFWS about linkage habitat needed for connectivity of tortoise populations in the Ivanpah Valley for survival. This flawed analysis or lack of analysis in the EA is used to support the issuance of the FONSI and the Decision Document to sell the subject lands.

Pages 9 and 10, Threatened, Endangered, or Candidate Plant Species: “The area is currently managed as a 480-acre R&PP patent for the Jean Prison Facility. As the Proposed Action is for the purchase of the reversionary interest held by the United States within the R&PP patent area, current and future threatened, endangered, or candidate plant species management and compliance is and would be subject to applicable municipal, county, and state regulatory requirements.”

Most of the Covered Species under the Clark County MSHCP are plants. We are unsure of BLM’s logic when saying that Covered Species of Wildlife would be managed under the Clark County MSHCP but Covered Species of plants would not. Please explain this discrepancy in the revised EA.

We appreciate this opportunity to provide the above comments and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate 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 Council at eac@deserttortoise.org of any proposed projects or actions 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 them to ensure BLM fully considers and implements actions to conserve these tortoises as part of its directive to conserve listed and special status species under federal statute and BLM policies.

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,



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