



DESERT TORTOISE COUNCIL

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Via email only

8 September 2020

Attn: Kayla Brown
Bureau of Land Management
22835 Calle San de Los Lagos
Moreno Valley, CA 92553
kbrown@blm.gov

RE: California Department of Fish and Wildlife Small Game Guzzler Enhancement
Environmental Assessment DOI-BLM-CA-D060-2020-0036-EA

Dear Ms. Brown,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats likely occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with "Agassiz's desert tortoise"), our comments pertain to enhancing protection of this species during activities authorized by the Bureau of Land Management (BLM). Please accept, carefully review, and include in the relevant project file the Council's following comments on the Project. Additionally, we ask that you 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.

Unless otherwise noted, all page numbers pertain to the draft Environmental Assessment (EA) referenced above and dated 30 July 2020. Page 6 of the EA describes the project as follows: "The California Department of Fish and Wildlife (CDFW) was granted the sum of \$190,000.00

by the Wildlife Conservation Board to repair and increase the storage capacity of small game guzzlers on Bureau of Land Management land (BLM) among the various mountain ranges and washes within an approximate 75-mile radius of the city of Blythe, California in Riverside County. CDFW is proposing to repair and increase the storage capacity of five small game guzzlers which would make them available for large game species. This involves replacing the existing small game guzzler with a slightly larger guzzler that is accessible to large game and repairing the existing concrete apron to ensure that water can be collected and funneled into the guzzler during rain events.”

Although we will specifically address our concerns with this EA below, we first want to express our disappointment that this money has been ear-marked to improve *five* guzzlers for use by bighorn sheep and mule deer. We have known since 1995 that desert tortoises are dying in guzzlers (Hoover 1995), and that this death can likely be avoided by retrofitting those guzzlers. Given the affected area within 75 miles of Blythe, we can conclude that all of these guzzlers are within tortoise habitats, as confirmed on pages 26 and 27, including three in critical habitat. Hoover (1995) found the remains of 26 dead tortoises in 18 guzzlers. I happen to have helped Frank Hoover with this study in the early 1990s, when I visited 45 of the 89 guzzlers in his study and found the remains of seven tortoises in them. He reports that dead tortoises were found in 20% of the guzzlers we checked, and since 89 guzzlers is a fraction of those constructed in tortoise habitats, the total, unknown loss of tortoises could be significant.

Importantly, all guzzlers I checked were intended for birds, and all those with drowned tortoises were comprised of slick, fiberglass bottoms; no tortoise remains were found in those guzzlers I checked with coarse, concrete bottoms. Hoover (1995) reports that of the 18 dead tortoises, 15 (83%) were found in fiberglass guzzlers and 3 (17%) were found in guzzlers with concrete bottoms. We recommended to CDFW at the time that the spaces between the rebar at the opening of the guzzlers be diminished and that the bottoms of fiberglass guzzlers be retrofitted with mesh materials or otherwise treated to provide rough surfaces. Although the cost to perform these improvements is unknown, we believe that substantially more than five upland quail guzzlers could have been treated to avoid tortoise mortality with the \$190,000 grant to CDFW.

We note in this rather simple EA that there are only two alternatives, including the No Action Alternative and the Proposed Action Alternative; so, in effect, there are no other action alternatives to be considered. We cannot tell from the information presented in the EA if it is a stipulation of the Wildlife Conservation Board (WCB) that the CDFW is obligated to spend the \$190,000 grant on five big game guzzlers, or if there is the latitude to spend it in other ways on guzzler rehabilitation, or if this is a one-time grant. Although it may now be too late to reconsider how these funds are spent, we strongly recommend that additional funds be solicited from the WCB and that those funds be spent to retrofit as many upland game guzzlers as possible to avoid tortoise mortalities.

Given the ongoing declining status of the tortoise, and that most populations in California are below the density needed for population viability, the tortoise cannot afford mortality, especially if it can be avoided by designing and monitoring guzzlers to prevent entrapment/drownings. In addition, the increased storage capacity would likely make water available for longer periods or perhaps year-round.

More pertinent to the proposed project description given on page 10, particularly in light of Hoover's findings described above, we read "A new *fiberglass* large game guzzler, which are [sic] 17' long x 9' wide x 3' deep in size, would be placed in the existing hole [*emphasis added*]. Nor is there any description on page 10 or elsewhere that these guzzlers will be fashioned to avoid entrapping tortoises and other animals. Hoover (1995) reports that "...the remains of 173 other vertebrate animal species were collected from other guzzler tanks." And, I know from my experience that two of these animals included CDFW sensitive species, American badger (*Taxidea taxus*) and kit fox (*Vulpes macrotis*). We strongly suggest that either (1) fiberglass surfaces not be used in the installation of these five tanks or (2) that the fiberglass bottoms be painted or otherwise treated with a roughened surface material like concrete to allow entrapped animals to escape.

We note the following information on page 10 relative to accessing the sites: "CDFW has proposed to access the five existing guzzlers using BLM designated OHV routes to get as close to each guzzler as possible, *they will then drive the remaining distance to the guzzlers using open washes [emphasis added]* ... A qualified biologist will clear the off-route tracks for desert tortoise, nesting birds, and active mammal dens before driving. Upon departure, CDFW will completely cover their off-route tracks."

We appreciate that CDFW is implementing measures to avoid impacts at the time of installation and will cover the tracks to avoid future use of the washes, as our experience is that once tracks occur in washes, more are likely to occur. Before leaving the areas, we recommend that symbolic row(s) of rocks be placed at the interfaces between the roads and washes, and/or vertical or horizontal mulching using dead and down materials be used to help conceal the entry points into the washes. In addition, we recommend that the CDFW or BLM revisit the entry points from the open routes into the washes approximately a month after installation, look for any additional use, and if there is any, eliminate the tracks again. For the record, it would be good to have before and after photographs to see if these approaches worked and, if so, encourage their implementation for other similar projects.

With regards to equipment listed on page 10, we note that a backhoe and four, four-wheel drive trucks will be used, but it is not revealed to what extent. We certainly hope that not all four trucks will follow the backhoe into each site, particularly in the washes. In any case, we recommend that as few vehicles as possible access each site, and that the backhoe not make multiple trips into and away from the sites. It is highly advisable that there be one trip in and one trip out, with as few vehicles as possible, and without multiple visits per vehicle.

With regards to monitoring on page 11, we read, "CDFW and/or its agents would drive to the sites to monitor the enhanced guzzlers as needed for water level and quality inspection." Please specify that CDFW personnel will not drive in any washes to inspect or monitor the sites. Certainly, we understand that constructing the guzzlers will require one-time access by heavy equipment and personal vehicles using washes while implementing the mitigating measures, but it should be clear that these washes will not become permanent access roads for monitoring, which we firmly believe can be accomplished on foot within washes. It is not clear how the acreages were calculated in Table 3 on page 17, but given the relatively small acreages of temporary impacts, we judge this to mean that the access areas along washes are relatively short.

We note in Table 2 on pages 15 and 16, that American badger and desert kit fox, which are known to drown in guzzlers (LaRue, personal observation) definitely occur in the area but are missing from the table. As per the CDFW's Special Animals list of July 2020, American badger is listed as a California Species of Special Concern and as a fur-bearing mammal, desert kit fox is Fully Protected by CDFW. Adding these two species [and perhaps others, like loggerhead shrike (*Lanius ludovicianus*)] to the draft EA has limited value; what is more important is how can the guzzlers be designed to avoid mortality of these sensitive animals? We do not have the answer(s), but encourage the BLM and CDFW to discuss potential protective measures (e.g., avoiding fiberglass floors, treating the floor surfaces, installing rebar at shortened widths to preclude entry by larger animals, like badgers).

Although the following speculative statement is given on page 17, "It is impossible to determine whether the remains were washed in the guzzlers from routine filling or if the tortoises fell in and became trapped," having provided half of the data in Hoover's study, I'm convinced that *all* of the dead tortoises I found had drowned in the guzzlers. The aprons are constructed with raised edges around the peripheries, which effectively preclude a dead tortoise from being washed into the guzzler, as implied.

With regards to the following statement on page 17, "...the proposed guzzlers would be equipped with a roughened ramp or steps to allow tortoises to climb out," it is important that the roughened ramp extends as far back as possible into the reservoir. Ideally, fiberglass would not be used. But, if it is the only guzzler type available, the best scenario may be to paint the roughened surface across the entire bottom of the tank, or scarify it in some manner, so the slickened fiberglass surface is roughened to allow tortoises and other animals to find purchase, enabling them to leave the tanks. If *any* tortoises are found dead in any of the tanks, CDFW's commitment to remedying the situation, as given on page 11, must be implemented immediately. Even if this means emptying the tank until which time the cause of death can be eliminated. This is necessary if impacts are to be avoided, minimized, or mitigated, as given on page 22; and to ensure that there are no adverse effects to tortoises, as stated at the top of page 18.

With regards to CMA 1 on page 18, "The QB [qualified biologist] may be a BLM Wildlife Biologist or BLM Biological Science Technician," it is important that the biological qualifications not be limited to these assigned titles; the biologist(s) must have prior tortoise experience, not just an assigned title.

With regards to CMA 4 on page 19, please add that all flagging along wash-portions of the access routes will be removed, which is likely understood but not stated.

With regards to CMA 5 on page 19, "If the qualified biologist is available, the qualified biologist may move the desert tortoise from harm's way," we cannot envision a scenario where a tortoise would need to be handled. However, BLM should be aware and enforce the stipulation that that in the absence of a CDFW 2081 Incidental Take Permit for this project, which we understand is NOT being solicited, it is illegal for anyone to handle desert tortoise until which time the state take permit is secured. This prohibition also applies to CMA 9 on page 19. This prohibition also applies to the Federal Endangered Species Act and the need for a biological opinion to incidentally take or handle a desert tortoise or implement an action that is likely to adversely affect the tortoise by CDFW or BLM for the proposed action.

Given the following statement on page 20, “Direct effect[s] to wildlife will be positive as this project will make the current small game guzzlers accessible for desert bighorn sheep, mule deer, and pronghorn if they are reintroduced into the area,” we again point out that guzzlers may also pose a significant mortality factor to animals (Hoover’s “...173 other vertebrate animal species” lost in guzzlers). Although there is limited usefulness to amending the draft EA to make this statement, we do suggest that in addition to CDFW’s routine monitoring of the tanks, CDFW should develop and implement a scientifically based monitoring study to determine whether the guzzlers are incidentally taking the Mojave desert tortoise or other wildlife species. This would include the use of aquatic dip nets or other means to inspect the guzzlers for drowned animals, and that CDFW implement adaptive management measures immediately, which could include disabling or emptying the guzzlers, until which time the cause of death is remedied.

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during any authorized project activities. Herein, we ask that the Desert Tortoise Council be identified as an Affected Interest for this and all other BLM projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this particular project is provided to us at the contact information listed above. We also ask that you acknowledge receipt of this letter as soon as possible so we can be sure our concerns have been received by the appropriate parties.

Regards,



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

Literature Cited

California Department of Fish and Wildlife, Natural Diversity Database. 2019. Special Animals. Animal species list published and updated by State of California, The Resources Agency, Department of Fish and Wildlife, Biogeographic Data Branch, California Natural Diversity Data Base. Dated August 2019. Sacramento, CA. 67 pp.

Hoover, Franklin G. 1995. An investigation of desert tortoise mortality in upland game guzzlers in the deserts of southern California. Proceedings of the Desert Tortoise Council 1995: 36-43.