

DESERT TORTOISE COUNCIL

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Via email only

31 July 2023

Attn: Bureau of Land Management, Needles Field Office
Cadiz MLA Right-of-Way Assignment c/o
1303 S.U.S. Hwy 95
Needles, CA 92363
[BLM CA Web NE@blm.gov](mailto:BLM_CA_Web_NE@blm.gov)

RE: Cadiz MLA ROW Assignment (DOI-BLM-CA-D090-2023-0006-CX)

Dear Bureau of Land Management,

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.

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 project, despite the fact that after years of requesting the BLM to consider the Council as an Affected Interest¹, it was a third party, not the BLM that informed us of this latest attempt of the Cadiz Land Company to extract water from the region.

¹ <https://www.dropbox.com/s/dzsh3feh6ys3qv/BLM%20AZ%20District%20Managers%20DTC%20as%20an%20Affected%20Interest%20%202019-11-8.pdf?dl=0>

Given the location of the proposed project in habitats known to be occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the Bureau of Land Management (BLM), which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

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), habit 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 had 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.

The Council has opposed extraction of groundwater from the Cadiz aquifer by Cadiz Land Company (proponent) since 2012², another time in 2016³, again 2018⁴, and now in 2023 in this comment letter. We provide links to these three documents and enter them into the public record because the issues raised in them are as pertinent now as they were then, more than a decade ago [excluding portions of the 2016 letter pertaining to use of the then-proposed railway right-of-way (ROW)]. We believe that, whereas the proponent is attempting to extract water in this new way, the results will be the same if BLM authorizes this project, which it has denied on at least two previous occasions.

The following project description is taken from an undated and unpaginated Categorical Exclusion (Cat-X) document posted on the BLM's eplanning website: "In 2000, EPNG [El Paso Natural Gas Company] purchased the Northern Pipeline from All American Pipeline (All American) and was granted the right to operate and maintain the segments that traverse federal lands by BLM MLA ROW CACA042649. This ROW was renewed by the BLM under the serial number AZA021968 in 2020. Additionally in 2020, Cadiz completed purchase of the Northern Pipeline from EPNG and assumed responsibility for the internal and external integrity of the Northern Pipeline, including maintenance of a nitrogen blanket and cathodic protection to prevent corrosion. Subject to BLM's approval, EPNG has agreed to assign the MLA ROW grant to Cadiz and Cadiz has agreed to continue operating and maintaining the Northern Pipeline in accordance with the MLA ROW grant."

² <https://www.dropbox.com/scl/fi/b0w4a9mxosi01j1y2w65f/Cadiz-Pipeline-Conference-Call.1-6-2012.pdf?rlkey=phc5ug5tv1ghku1hikkyv9ozd&dl=0>

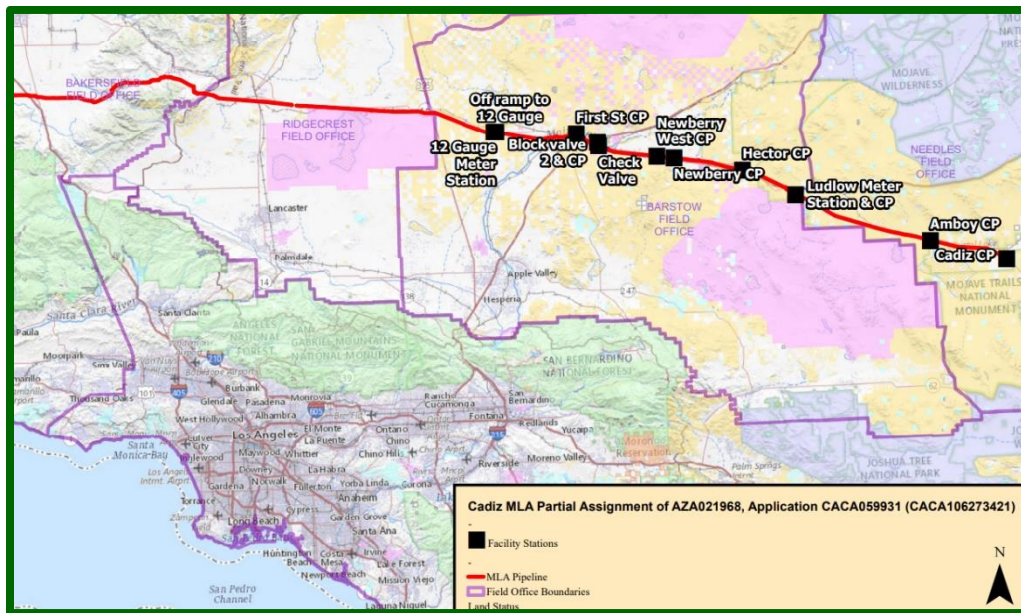
³ <https://www.dropbox.com/scl/fi/19ocv39pq7gvlvd6vo7cz/Cadiz-DOI-BLM-Railroad-ROWD.11-12-2016.pdf?rlkey=lf2ad1jwqi9n3jhalp5dekhf5&dl=0>

⁴ <https://www.dropbox.com/scl/fi/c2wwhz9wds33hhgzmc7ai/Cadiz-Pipeline-Opposition.3-20-2018.pdf?rlkey=4i8w8af01dlvplkcnvfr18rv&dl=0>

“Cadiz has not requested to construct any new facilities in their ROW application and would not be allowed to without further consideration from the BLM. Their Plan of Development (POD) describes the activities needed to maintain the Northern Pipeline in proper working order while protecting natural resources as required by applicable laws and regulations and in compliance with the terms and conditions consistent with MLA ROW grant AZA021968. This active maintenance is required to ensure that the Northern Pipeline continues to be viable for conveyance in the future and are necessary to protect the public health and safety.”

“Cadiz has expressed an interest to convert the ROW to convey water under the Federal Land Policy and Management Act however, no application has been submitted at this time and they are also currently pursuing arrangements with third parties to transport oil and gas and other gaseous fields through the Northern Pipeline.”

With regards to these few paragraphs, we note that the only three documents provided on the BLM’s eplanning website are the Cat-X, a two-page legal description, and a single page map of the project (below), which we note is either proximate to or bisects three critical habitat units (CHU) that coincide with BLM Areas of Critical Environmental Concern (ACECs), including the Ord-Rodman, Superior-Cronese, and Fremont-Kramer CHUs/ACECs, between Amboy and Tehachapi Mountains:



Although the Cat-X refers to both a POD and MLA ROW grant, neither of the documents is provided for public review. Therefore, there is no opportunity to understand the proponent’s latest attempt to promote this twice-failed project. We note, for example, in the absence of the POD, there is no way for the public to understand how protective terms and conditions 1, 4, 25, 31, and 40 at the end of the Cat-X may or may not be because the POD is not provided. For these reasons, we believe that the BLM needs to provide a new Cat-X that includes both the POD and MLA ROW grant, with a new 30-day comment period that allows us and the concerned public to fully understand the proponent’s proposal.

We rigorously oppose the following statement with emphasis italicized: “The *proposed action is in conformance with the Plan* because it is clearly identified in Energy Production and Utility Corridor Element which recognized the construction of the pipeline by All American.” The prevalent issue that has plagued the proponent’s attempts to promote this project is the extraction of groundwater with its ensuing impacts, not “construction of the pipeline.” For this reason, we believe that the BLM require the proponent to provide a full environmental impact statement (EIS), that a Cat-X is not the appropriate document for adequate National Environmental Policy Act (NEPA) review and analysis of this latest proposal.

For similar reasons, we seriously question BLM’s determination that there would be no significant impacts to natural resources, on what would be the third page in the unpaginated Cat-X, where “No” is checked after the following paragraph: “Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness or wilderness study areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas?”

In addition to the POD and MLR ROW grant that are not provided as attachments to the Cat-X, we believe that the public should be provided with links to previous (actual) environmental analyses that clearly document impacts due to the extraction of aquifer water from the Cadiz Valley to every one of the resources listed above except, perhaps, prime farmlands (although we note that Cadiz has extensive fruit orchards that may also be affected by unregulated extraction of regional groundwater).

Amazingly, we read on page 4 the following statement (*emphasis added*): “3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]? (X) No () Maybe () Yes. Comment: Exception does not apply. *There are no controversial environmental effects or unresolved conflicts* associated with the action of assigning this ROW to Cadiz. This is an administrative action with no consideration for new development and having no controversial environmental effects to consider.”

In our collective memory, we cannot think of another single project that has drawn more controversy and negative public outcry than the proposed extraction of groundwater by the Cadiz Land Company. We fully understand that BLM is technically correct about this being an “administrative action” that would not have any immediate physical impacts, but surely BLM recognizes that this is the beginning of a new proposal that will undoubtedly have growth inducing impacts and “controversial environmental effects” that have been well documented in the public record resulting in failed attempts for the proponent to extract groundwater. To claim that there are no significant impacts or unresolved conflicts is misleading to naïve readers who may not be aware that Cadiz Land Company (now “Cadiz Real Estate, LLC” in the Cat-X) has been trying unsuccessfully to extract ground water since 1998.

We note that there are nine other miscellaneous environmental impacts that are all marked as “No” under the technicality that this administrative action will have no physical impact consequences. However, we note that “but for” this administrative action by the BLM, there would be no opportunity to promote the BLM-proposed action that has already been documented *ad nauseosus* to result in unacceptable impacts to the natural environment and surrounding protected CHUs, ACECs, and Mojave National Preserve if this project is approved.

We note that the Cat-X fails to even mention the *public interest* that is absent from this project, which clearly is not in the public’s interest given the widespread, outspoken opposition to various Cadiz pipeline aquifer extraction proposals with multiple configurations. Pursuant to Title 43 CFR § 2887.11(e): "Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the *public interest*. The BLM may modify the grant or TUP or add bonding and other requirements, including terms and conditions, to the grant or TUP when approving the assignment. If we approve the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder" (*italics added*).

While the term "public interest" related to BLM actions on public lands can be broadly interpreted, the very long record of public opposition to the Cadiz Water Project, including extensive data supporting the significant adverse effects of this project on the environment, demonstrate that BLM's granting this partial right of way assignment does not meet a reasonable public interest threshold. Ultimate use of this pipeline by the Cadiz Water Project to mine, transport and market groundwater taken from this extremely arid and sensitive Mojave Desert region has no public benefit that cannot be derived using other more appropriate means and without significantly affecting the well-established public interests involving protecting the long-term viability of this invaluable public land resource.

Our concerns expressed above are heightened when we read the following BLM conclusion (*emphasis added*): “Based on the review the Extraordinary Circumstances prepared by the Needles Field Office Staff, I have determined the proposed action *is in conformance with the CDCA*, as amended, and *involves no significant impacts requiring further environmental analysis*. It is my decision to approve the action as proposed, with the following terms and conditions: Mike W. Ahrens, Field Manager.” For reasons given herein, we conclude that the proposed action in no way conforms with the CDCA Plan, that approving this Cat-X is a step towards facilitating otherwise avoidable significant impacts, and that additional environmental analysis, at the level of an EIS, is warranted.

With regards to the terms and conditions (TC) listed at the end of the Cat-X, we feel that TC 50 that is intended to avoid tortoise injury or death, Advisory action 3, which also prohibits handling and harassment of tortoise, and TC 53 that requires checking under vehicles for tortoises are the only three tortoise-centric protective measures, rendering the Cat-X significantly deficient in addressing potential impacts and identifying protective measures for tortoises. Whereas some of the measures like restricting impacts to the ROW (TC 32), maintaining sanitary workplaces (TC 37 and 39), prohibition of pets in the workplace (TC 52, 3rd bullet), concerns with steep-walled trenches (TC 52, 5th bullet), and 15 mph speed limits (TC 54) will ostensibly minimize impacts to tortoises, as presented, there is no clear indication that these measures are intended to avoid tortoise impacts. Nor do the TCs address impacts by ravens, the prohibition of firearms in the workplace, seasonal restrictions intended to avoid heightened tortoise activity, or how the proponent will implement measures and provide compensation for impacts that are identified in the Desert Renewable Energy Conservation Plan (DRECP; BLM 2016), which is the most recent plan amendment that identifies applicable protective measures that are not included among the TCs listed in this Cat-X.

We assert that this Cat-X is deficient, due in part to the lack of providing requisite documents like the POD and MLR Row grant, to document and require current management standards that are readily available in most BLM environmental documents (excluding this one but including the DRECP) and U.S. Fish and Wildlife Service (USFWS) biological opinions issued in the past few years. We recommend that the deficiency be remedied by providing the missing documents; that upper BLM management reconsider numerous erroneous conclusions that there will be no significant impacts associated with this action; and recirculate the Cat-X once the actions are taken.

We appreciate this new opportunity to provide comments on this old project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise 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 species of 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 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.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council

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Literature Cited

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