



DESERT TORTOISE COUNCIL

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**DESERT TORTOISE PRESERVE
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Via email only

September 20, 2024

To: Ms. Tamara Faust, Daniel Kasang, Brandon Anderson
Bureau of Land Management, Palm Springs Field Office
1201 Bird Center Dr., Palm Springs, CA 92262

BLM_CA_CDD_Easley_Solar@blm.gov, tfaust@blm.gov, dkasang@blm.gov, bganderson@blm.gov

Re: Easley Renewable Energy Project Draft Environmental Assessment (DOI-BLM-CA-D060-2023-0010-EA)

Dear Bureau of Land Management,

The Desert Tortoise Council (DTC) 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 DTC routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

The Desert Tortoise Preserve Committee (DTPC) is a non-profit organization formed in 1974 to promote the welfare of the desert tortoise in its native wild state. DTPC members share a deep concern for the continued preservation of the tortoise and its habitat in the southwestern deserts and are dedicated to the recovery and conservation of the desert tortoise and other rare and endangered species inhabiting the Mojave and western Sonoran deserts. The DTPC has a long track record of protecting desert tortoises and their habitat through land acquisition, preserve management, mitigation land banking, and educational outreach.

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.”

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

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

Importantly, since submitting our scoping comments in October 2023 on the Easley project (see footer on next page), in their April 2024 meeting, the California Fish and Game Commission voted unanimously to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management. Among other things, this determination means that the Mohave desert tortoise population in California is deemed by the California Fish and Game Commission to be closer to extinction than when it was listed as threatened in 1989. The only status more dire than “endangered” is “extinct,” and the state of California has formally determined based on its status review (CDFW 2024) that the desert tortoise is closer to extinction than it was in 1989.

The Council has provided three previous comment letters on this project, including scoping comments in October 2023 to the Bureau of Land Management (BLM)¹, a second letter on the draft environmental impact report (DEIR) to Riverside County Planning Department (County) in March 2024², and a third letter on a recirculated DEIR in July 2024³. In our scoping comments, we questioned the segregation of the gen-tie line and appurtenant facilities from the solar array occurring on private lands, as they are obviously connected actions. In our experience, if the BLM authorizes, funds, or carries out some portion of a project, the entire project is implicated, as the solar arrays cannot be constructed *but for* issuance of BLM’s right-of-way (ROW) grant for these linear features. As such, if the take of desert tortoises occurs while constructing the solar arrays on the 990 acres of private lands, BLM’s authorization of the project *may affect* an endangered species, which would trigger the need for Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS). We see that the BLM anticipates this action on page 2 of the draft environmental assessment (DEA), “The BLM has determined that private lands will be covered under the Section 7 consultation process. In addition, the project proponent has committed to complying with the CMAs [Conservation Management Actions] on both public and private lands.”

We request that BLM clarify how it will enforce the reasonable and prudent measures and terms and conditions of the biological opinion issued by the USFWS on the private lands portion of the project. If BLM does not have enforcement authority on the private lands portion of this project, the Applicant should coordinate with USFWS to determine whether a section 10(a)(1)(B) permit is needed.

Also, we are unsure of how closely BLM has collaborated with the County to share the public’s concerns for array development on private lands. For example, has the County shared ours and others’ comment letters it received on the two DEIRs? We believe that the concerns expressed in all three of our letters are applicable to this DEA, incorporate all three letters by reference and resubmission, and ask that the BLM address all our concerns in the final environmental assessment (FEA). We feel that this is important, as there is no guarantee that the County will adequately consider our concerns and project impacts expressed in the two previous letters on the DEIRs.

Unless otherwise noted, page numbers referenced herein are taken from the BLM’s DEA (DOI-BLM-CA-D060-2023-0010-EA), dated August 2024. Therein (page 1), the project is described as “...a 650 MW battery energy storage system (BESS), access roads, and other appurtenant facilities. A 6.7-mile 500 kilovolt (kV) generation-tie (gen-tie) line would connect to the power grid, mainly traversing across the Oberon Renewable Energy Project site that is located to the south and adjacent to the Easley Project site, and then connecting to the existing Oberon substation on the Oberon Project site, owned by Intersect Power Company. From the Oberon onsite substation, the project’s generated power would be transmitted to the Southern California Edison (SCE) Red Bluff Substation via the existing Oberon 500 kV gen-tie line. The Proposed Action described herein now includes 2,745 acres of BLM lands and 990 acres of private lands.”

¹ <https://www.dropbox.com/scl/fi/et2uo4wheahljyzpul73o/Easley-Renewable-Energy-Project.10-23-2023.pdf?rlkey=szm1ruh178er2ke5g69xqf7hg&dl=0>

² <https://www.dropbox.com/scl/fi/syqjh46lvqm22y4oem49w/Easley-Renewable-Energy-Project-DEIR.3-11-2024.pdf?rlkey=kuogh9140rinlsgvi5rbc55p7&dl=0>

³ <https://www.dropbox.com/scl/fi/t17u5999npi513w131ne/Easley-Solar-Project-Recirculated-EIR.7-7-2024.pdf?rlkey=n72njkgdngmto6r16qnxviw&dl=0>

We notice in Section 1.5, pages 6 and 7, that BLM lists previous environmental planning efforts, such as the 2016 Desert Renewable Energy Conservation Plan (DRECP), but fails to document findings from the two DEIRs written specifically for this project. Although these are not environmental impact statements (EISs) on which the DEA is tiered, we strongly recommend that the analyses should be summarized in the FEA, as we do not find those summaries anywhere in the DEA. If Section 1.5 is not the appropriate place to summarize the County's findings, we ask that those summaries be placed in pertinent sections of the FEA.

Perhaps even more importantly is the Federal Register Notice on August 30, 2024, "Notice of Availability of the Final Programmatic Environmental Impact Statement [FPEIS] for Utility-Scale Solar Energy Development and Proposed Resource Management Plan Amendments" for 11 western states, including California. It is our understanding that decisions made in this FPEIS supplant decisions made in the 2012 Solar PEIS (BLM and Department of Energy 2012) for six western states, which we note is also not described in Section 1.5. We ask that both the 2012 and 2024 Solar PEIS decisions be added to this section in the FEA.

Table 3.4-1 indicates that "up to 20 acres" of tortoise critical habitat would be affected, presumably by Alternative 2, BLM's proposed action; and we read on page 34: "The project would impact nearly 20- acres of the Chuckwalla CHU [Critical Habitat Unit]." Where do those 20 acres occur? We note that available maps are included in Appendix A, Figures and Maps, but do not depict critical habitat boundaries. Figure 1 would be the logical place to depict tortoise critical habitat, as Areas of Critical Environmental Concern (ACECs) are depicted there. Although ACECs are depicted in Figure 5, that map also does not include critical habitat. Please be sure that critical habitat is depicted on maps in the FEA. Critical habitat is depicted in Figures 14, 15, and 16 in the Biological Technical Report (Ironwood 2023), which should make it easy to show it in the FEA.

We appreciate the use of appendices that keep the DEA to a manageable size, but believe that the desert tortoise findings should be better documented in the FEA. The DEA states, "Desert tortoise sign (class 4 and 5 carcasses) [without explaining the significance of these classes in the DEA, although it is in Ironwood (2023)] have been observed primarily in the eastern portion of the project site in desert dry wash woodland, with carcasses observed in the western portion, as presented in Section 3.5.2 (Affected Environment)." However, when we look at the Ironwood report, we see in Figure 9 that nine tortoise carcasses were found, which is not an insubstantial number of dead tortoises. It is unfortunate that the various Ironwood resources do not show representative photographs of the site. Based on aerial images and the vegetation map in Ironwood (2023), it looks like all of the site, excepting the "Deciduous orchard/fallow agriculture" areas, is suitable habitat, which makes us question the statement in Appendix I on page 6: "Habitat on the Project site was not suitable and minimal sign (carcasses) was observed."

We note on page 34 that, "Once an alternative is selected, the BLM will initiate consultation under Section 7 of the Endangered Species Act [ESA]. The Applicant will apply for incidental take authorization from CDFW [California Department of Fish and Wildlife] under the California ESA (CESA) Section 2081 which requires review under CEQA." We wonder if accurate take statements can be derived from outdated surveys to detect tortoises. It is advisable that protocol presence-absence surveys (USFWS 2019) be performed throughout suitable habitats over the entire site before take authorization is determined to ensure that updated, accurate information is used by USFWS and CDFW when they write their respective take authorizations. Further, as envisioned

in Appendix I (Desert Tortoise Protection and Translocation Plan), please be sure the BLM and the County require clearance surveys (USFWS 2009) of the entire site, which would occur immediately prior to ground disturbance, and include a minimum of two surveys performed at 5-meter intervals, which is at least four times the survey effort of a presence-absence survey.

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 DTC and DTPC want to be identified as Affected Interests 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 request that you notify the DTC (eac@deserttortoise.org) and DTPC (roger.dale@tortoise-tracks.org) of any future proposed projects that the BLM may authorize, fund, or carry out in the range of the desert tortoise in California.

Please respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this Project.

Respectfully,



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



Roger Dale
President
Desert Tortoise Preserve Committee, President

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

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