



DESERT TORTOISE COUNCIL

3807 Sierra Highway #6-4514

Acton, CA 93510

www.deserttortoise.org

eac@deserttortoise.org

Via email

April 18, 2023

Red Cliffs/Warner Valley Land Exchange Bureau of Land Management

Attn: Stephanie Trujillo, Realty Specialist

345 East Riverside Drive

St. George, UT 84790

blm_ut_sgfo_comments@blm.gov

RE: Red Cliffs Warner Valley Land Exchange DOI-BLM-UT-C030-2023-0008-EA

Dear Ms. Trujillo,

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.

As of June 2022, our mailing address has changed to:

Desert Tortoise Council

3807 Sierra Highway #6-4514

Acton, CA 93510.

Our email address has not changed. Both addresses are provided above in our letterhead for your use when providing future correspondence to us.

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 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." It is one of three turtle and tortoise species in the United States to be critically endangered.

This status, in part, prompted the Council to join Defenders of Wildlife and the Desert Tortoise Preserve Committee (Defenders 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.

Description of Proposed Land Exchange

The BLM, St. George Field Office, is initiating the scoping phase of the National Environmental Policy Act (NEPA) process and is requesting input from the public to identify issues and resource concerns involving the following proposal:

The BLM proposes to complete a land exchange with the Washington County Water Conservancy District (District) involving two parcels near St George, Washington County, Utah. The exchange would be between the BLM and the District, with Washington County acting as facilitator. The United States (U.S.) would acquire the surface estate of one non-federal parcel located within the Red Cliffs National Conservation Area (NCA) (89.43 acres), the acreage of which will be determined following valuation of the Federal parcel. In exchange, the U.S. would convey title to the surface and mineral estate of one Federal parcel totaling up to 1,050 acres.

The proposed exchange would provide for the acquisition of designated critical habitat for the Federally threatened Mojave desert tortoise and consolidate Federal ownership within the Reserve and Red Cliffs NCA, resulting in more efficient management of the BLM-administered lands and reducing the risks of habitat loss through development of private lands. Washington County, as administrator of the multi-species Habitat Conservation Plan (HCP) that established the Reserve, will contribute funding to cover some of the processing costs of the exchange.

The BLM made a commitment to participate in the implementation of the HCP and “work to gain title” from School and Institutional Trust Land (SITLA) and willing sellers of private lands within the Reserve. This commitment is memorialized in the HCP’s Final Implementation Agreement (December 1995), the 1999 St. George Field Office Record of Decision and Approved Resource Management Plan (RMP), as amended, the 2016 Red Cliffs NCA Record of Decision and Approved RMP, and the 2021 Implementation Agreement for the Washington County Habitat Conservation Plan. The BLM, District, and Washington County entered a Memorandum of Understanding (MOU) in December 2020 for this purpose and are working together to acquire the remaining privately-owned acreage within the Red Cliffs NCA through exchange and possible donation. The County has offered to facilitate the exchange by contributing funding towards the processing of the exchange, and the District has entered into an option agreement to acquire the non-Federal property needed for the exchange.

The specific amount of non-federal acreage to be acquired will be the amount determined to be equivalent in value to the appraised value of the Federal land. Encumbrances on the Federal parcel include a portion of the Sand Mountain Special Recreation Management Area located near the western boundary, a portion of the Sand Hollow Regional Pipeline and right-of-way access road, a portion of the Sand Mountain Recreation Facilities, including four camping facilities and a restroom facility, and the Warner Valley grazing allotment. Authorized encumbrances on the non-Federal parcel include a 60-foot non-exclusive access road easement with Environmental Land Technology, His Family Matters LC, and the Trust for Public Lands. The easement bisects the parcel from north to south. The easement, which has not been constructed, was created to provide ingress, egress, regress, vehicular and pedestrian traffic, and for utilities, drainage and other developmental purposes. The title evidence for the non-Federal parcel has revealed no title issues.

General Comments

While we strongly support land acquisition as a means of facilitating desert tortoise recovery, we are concerned that this proposal does not effectively support these objectives. The BLM’s H-2200-1 Land Exchange Handbook (Public), dated 8/31/2005 (Revised 8/20/07), provides guidelines for initiating land exchanges. First, the Handbook requires that BLM evaluate and consider the full range of land disposal and acquisition tools available to meet overall program objectives prior to proceeding with a land exchange proposal (p. 1-1). In assessing the feasibility of a land exchange, a summary of the funding and staffing commitments necessary to process the exchange and an assessment if the land exchange warrants the commitment of staff and funding is required (p. 2-8).

Land exchanges, by their very nature, are expensive, time consuming, and are often difficult to successfully complete. With this proposed land exchange, there are numerous other ways for BLM to secure ownership of the identified 89.43-acres of non-federal lands, containing federally protected critical habitat for the Mojave desert tortoise, without going through the time and expense of attempting this controversial land exchange. BLM staff time and funding would be better used focusing on a range of critically needed desert tortoise recovery actions within the Red Cliffs NCA and regionally.

The BLM's general policy, as identified in the Land Exchange Handbook (p. 1-8), is that disposal of public lands by exchange shall be considered as serving the public interest within the context of Sections 102(a) and 206(a) of the Federal Land Policy and Management Act (FLPMA). In determining public interest, the BLM must weigh the resource values and public objectives of the federal land against the non-federal land associated with the exchange (p. 9-1).

We are concerned that this public interest threshold has not been met. For example, gaining the enhanced protection of the 89.43 acres of federally protected critical desert tortoise habitat, by placing these lands under federal ownership, weighted against loss of an established and high value recreation resource and habitat for identified special status and other species on the 1,050 acres of federal lands, including the Mojave desert tortoise, are not comparable values and objectives from a public interest standpoint. In addition, the impacts of a water reservoir, the intended use of the BLM disposal lands, would have numerous direct, indirect, and cumulative impacts that far exceed the benefits of the BLM acquiring the 89.43 acres for federal protection.

The Land Exchange Handbook outlines a process to identify conflicts, problems, and areas of potential sensitivity involving a land exchange proposal (p. 2-9). While we understand the areas of support for this land exchange, the level of public controversy associated with this proposal (Kessler 2023) raises further public interest issues including the disparity between the resource values gained and lost associated with exchanging these lands. In addition, the handbook establishes a priority of developing land exchange proposals that have nearly equal land values of federal vs non-federal lands to avoid or minimize land exchange equalization payments (p. 1-12). Because valuation issues are often the source of complications and delays in BLM land exchange proposals, we strongly suggest thoroughly vetting this land value issue before additional bureau time and funds are expended processing this exchange. On the surface, these lands do not seem to meet BLM thresholds for equalizing land values.

We also request that background information be added to and made easily available on the land exchange ePlanning Website. This includes the Feasibility Study, the Cooperative Management Agreement with the Washington County Water Conservation District, and any agreements with Washington County for facilitation services. This information will allow us and the public to better understand the various components of this complex land exchange process including any additional purpose and intent.

Comments on the Red Cliffs Warner Valley Land Exchange; Interdisciplinary Team Checklist

We appreciate reviewing the BLM Interdisciplinary Team Checklist for the Red Cliffs Warner Valley Land Exchange. The Checklist identifies resources with the potential for relevant impacts that need to be analyzed in detail in the environmental assessment (EA) (identified as "PI"). While we are especially focused on effects of the land exchange involving biological resources, including the Mojave desert tortoise known to occur on both parcels, we consider the broad environmental effects on other resources equally important as associated with a range of direct, indirect, and cumulative impacts.

Few impacts would occur on the 89.43-acre BLM acquisition parcel other than the positive impacts associated with additional protection under federal ownership and inclusion within the Red Cliffs NCA. As identified in the Checklist, however, there would be a broad range of potential direct and indirect impacts from disposal of the 1,050-acre Warner Valley BLM parcel involving the Warner Ridge/Fort Pierce ACEC, local socioeconomics, special status and other species and their habitat (both plant and animal) including the Mojave desert tortoise, invasive species, and displaced recreation use (both commercial and non-commercial OHV).

Effects of the Warner Valley Reservoir, both on and off-site, were not thoroughly identified in the Checklist. The District's acquiring BLM land through this land exchange to build the Warner Valley Reservoir and potential reverse osmosis treatment plant, as has been reported, should be considered a major federal action that significantly affects the quality of the human environment and therefore would require an environmental impact statement (EIS). The reservoir would impact wildlife habitat, plants, wildlife, migratory birds, fish, and special status species, both on and off-site, and would result in additional development and growth within that portion of Washington County.

To thoroughly address this potential reservoir and overall effects of this land exchange, we request that this analysis be completed with a focus on the following NEPA elements.

Connected Actions

The Council on Environmental Quality's (CEQ) Regulations for Implementing the National Environmental Policy Act (NEPA) requires that "connected actions" be considered together during a NEPA environmental impact analysis (40 Code of Federal Regulations (CFR) 1508.25). If development of the planned Warner Valley Reservoir would occur upon acquisition of the federal parcel by the District, this development should be considered a connected action and be analyzed as such in the EA, or potential EIS, including direct, indirect, cumulative impacts.

Cumulative Effects Analysis

CEQ (1997) states "Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." The analysis "must describe the response of the resource to this environmental change." Cumulative impact analysis should "address the sustainability of resources, ecosystems, and human communities." This CEQ document is referred to in BLM's National Environmental Policy Act Handbook (BLM 2008).

The CEQ provides eight principles of cumulative impacts analysis (CEQ 1997, Table 1-2). These are:

- 1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.**

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis

needs to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

Please ensure that the CEQ's "Considering Cumulative Effects under the National Environmental Policy Act" (1997) is followed, including all eight principles, when analyzing the cumulative effects of the land exchange to the tortoise, its habitat as well as the other affected resources. When conducting this analysis, ensure that the conclusions are supported with scientific data. The NEPA regulations and BLM (2008) direct that science will be used in conducting analyses.

- 40 CFR 1507(2)(a) - "insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the human environment."
- 40 CFR 1500.1(b) - "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."
- 40 CFR 1502.24 Methodology and scientific accuracy - Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

Growth-inducing Impacts

According to the BLM NEPA Handbook (2008), "[i]ndirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on water and air and other natural systems, including ecosystems" (40 CFR 1508.8(b))." The removal of obstacles to population growth (e.g., availability of water supply), or actions that encourage and facilitate other activities beyond those proposed by the project are examples of growth-inducing effects. According to CEQ, "EAs and EISs must analyze and describe the direct effects and indirect effects of the proposed action and the alternatives on the quality of the human environment (40 CFR 1508.8, as cited in BLM 2008). "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§1508.8)" (40 CFR 1508(25)). We request that the NEPA document include an analysis of the growth-inducing effects associated with the proposed land exchange from the additional human population growth, development, and activities.

We appreciate this opportunity to provide comments on this 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.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Cc: Gloria Tibbetts, District Manager, Color Country, Bureau of Land Management, Cedar City, UT; BLM_UT_Cedar_City@blm.gov
Jason West Field Manager, St. George Field Office, Bureau of Land Management, St. George, UT; utsgmail@blm.gov
Tracy Stone-Manning, Director, Bureau of Land Management, tstonemanning@blm.gov
Nada L. Culver, Deputy Director of Policy and Programs, Bureau of Land Management, nculver@blm.gov
David Jenkins, Assistant Director of Resources & Planning, Bureau of Land Management, djenkins@blm.gov
Greg Sheehan, Utah State Director, Bureau of Land Management, gsheehan@blm.gov

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