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Via email and BLM eplanning portal

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Paul Rodriguez, Realty Specialist
Bureau of Land Management
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RE: Environmental Assessment for Right-of-Way for Access to State of California Habitat Parcel in Inyokern, Kern County, CA (DOI-BLM-CA-D050-2020-0024-EA)

Dear Mr. Rodriguez:

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 the 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 action in habitats occupied by Agassiz's desert tortoise (*Gopherus agassizii*) (synonymous with "Mojave desert tortoise"), our comments pertain to enhancing protection of this species during activities authorized by the federal, state, and local agencies listed below.

We acknowledge and thank the Bureau of Land Management's (BLM) Ridgecrest Office for notifying the Council of this Environmental Assessment on 15 May 2020. We appreciate your efforts to honor the Council's written request to provide us with information on proposed actions by BLM that may affect the Mojave desert tortoise and/or its habitats.

Purpose and Need for the Proposed Action

In response to an application from the California Department of Transportation (Caltrans), the BLM proposes to grant a right-of-way (ROW) to District 9 (Bishop) of Caltrans to access a landlocked State of California parcel. Access would be from Kern County's graded Redrock-Inyokern Road across public lands managed by the BLM to the parcel.

Caltrans acquired this landlocked parcel to meet California Department of Fish and Wildlife's (CDFW) mitigation requirements for transportation projects. This ROW will eventually be transferred to CDFW. BLM asserts that a documented ROW is necessary, as "CDFW needs more than 'casual use' to monitor and manage this parcel, which is part of the future Indian Wells Valley Ecological Reserve for desert tortoise/Mohave ground squirrel (*Xerospemophilus mohavensis*) habitat." To analyze the impacts of this ROW request, BLM has prepared an Environmental Assessment for Right-of-Way for Access to State of California Habitat Parcel in Inyokern, Kern County, CA (EA).

Proposed Action and Alternatives

BLM proposes to grant a 10-foot wide ROW to Caltrans for CDFW to access the parcel for "occasional use" from Redrock-Inyokern Road by crossing BLM land. In the future, this ROW will be transferred to CDFW. "Occasional use" includes monitoring and managing habitat on this parcel.

In the EA, BLM describes two alternatives in addition to the "No Action" Alternative, (i.e., to deny the ROW request). The two action alternatives BLM considered are:

- Overlay the ROW along an existing dual-track or 2-track road for 1,250 feet and over undisturbed land for last 200 feet to reach the CDFW parcel. On the 200-foot section of the ROW, vehicles would crush woody vegetation.
- Overlay the ROW over undisturbed land for about 450 feet, the shortest distance between the Redrock-Inyokern Road to the CDFW parcel.

BLM dismissed the 450-foot alternative because it would result in more impacts to an area previously undisturbed by vehicles. The 1,450-foot long ROW is the only action alternative analyzed in the EA.

Relationships to Statutes, Regulations and Other Plans

BLM provides a general statement that this EA is in compliance with the regulations implementing the National Environmental Policy Act (NEPA), the BLM NEPA Handbook, and BLM regulations for ROWs. It does not provide information on compliance with other applicable environmental laws or regulations, specifically the federal Endangered Species Act and California Endangered Species Act, or refer to another section of the EA that provides this information. For example, has a 2081 incidental take permit been acquired from CDFW for this activity? Because the desert tortoise is a federally and state threatened species, compliance with these laws and their implementing regulations/codes should be provided in the EA. In addition, please see our comments under **Environmental Impacts** regarding the adequacy of the analysis of impacts to the tortoise/tortoise habitat from implementation of the Proposed Action.

Need for a ROW

BLM uses the terms “casual use” and “occasional use” and indicates that CDFW’s use of the ROW will be more than casual use. Casual use does not require BLM to issue a ROW for use by the public on designated open or limited routes. We are confused because these terms are not defined in the EA. We suggest BLM define these terms, as without a definition, they appear similar and imply that a ROW may not be needed.

In Appendix E of the EA, Caltrans reports, “the 2-track lacks sign of recent use.” This suggests this route may not be designated as an open or limited route. We were not able to find information in the EA that stated whether this dual track is designated as an open or limited route by BLM, or is an unauthorized route and should be closed to casual use by the public. If the latter, this would provide relevant information supporting the need for granting a ROW. We request that the current legal status of the dual track be provided in the EA.

Environmental Impacts

Connected Actions: BLM’s Proposed Action is not limited to an administrative process of granting a ROW. According to BLM, if they did not grant the ROW, it “could interfere with eventual CDFW access and ability to effectively manage this parcel of the future Indian Wells Valley Ecological Reserve.”

40 Code of Federal Regulations (CFR) 1508.2 describes/discusses “connected actions.” Actions are connected if they “c[C]annot or will not proceed unless other actions are taken previously or simultaneously.” Actions that are connected should be discussed in the same NEPA document.

BLM’s statement indicates that but for the granting of the ROW, CDFW would not be able to effectively manage the mitigation parcel of the future Indian Wells Valley Ecological Reserve. Based on information provided in this EA, we conclude that granting the ROW is necessary for CDFW to proceed with management of the mitigation parcel of the future Indian Wells Valley Ecological Reserve and these two actions are connected actions. This means that CDFW’s actions to manage the mitigation parcel should be discussed and analyzed in the EA.

At the mitigation parcel, one example of a connected action would be fencing. The mitigation parcel is within the Cantil Common Allotment for livestock grazing. As part of their management of this parcel, CDFW will likely fence the perimeter of the parcel to exclude livestock grazing. This action would require the use of pickup trucks or larger vehicles and equipment, and these vehicles would have difficulty turning around/driving past another vehicle within a 10-foot wide ROW. In addition, fence construction is likely to impact the desert tortoise, as a typical fence installation process includes cross-country travel along a proposed fence line (e.g., perimeter of a parcel). This is one example of many likely actions that would impact biological resources, including the desert tortoise and its habitat, within the ROW and/or the mitigation parcel because of access provided by the ROW. As such, future actions that CDFW will implement on the mitigation parcel using the ROW to access the parcel should be described and their impacts analyzed in the EA, because they are connected actions to BLM granting the ROW.

Impacts to the Desert Tortoise: BLM says the Proposed Action “is not anticipated to impact any of the resources listed in Appendix E-1” (e.g., desert tortoise, Mohave ground squirrel, and burrowing owl). We have five concerns about this statement. First, according to the April 7, 2020 Caltrans Biological Resources Evaluation Memo on Eastern Kern Mitigation Parcel ROW, Appendix E-1 consists of the results from queries of the California Natural Diversity Database (CNDDDB), California Native Plant Society (CNPS), and U.S. Fish and Wildlife Service (USFWS) species lists. Species on these lists were desert tortoise, burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), LeConte’s thrasher (*Toxostoma lecontei*), and Mohave ground squirrel, Mojave fish-hook cactus (*Sclerocactus polyancistrus*); and California condor (*Gymnogyps californianus*). However, BLM only mentions the desert tortoise, burrowing owl, and Mohave ground squirrel with respect to impacts. It does not mention, badger, LeConte’s thrasher, California condor, or Mohave fish-hook cactus.

Second, BLM does not provide a description or analysis of direct and indirect impacts to the tortoise, burrowing owl, Mohave ground squirrel, or the other special status species from granting the ROW. BLM says that “n[No] plant or sensitive wildlife species (i.e. no DT, BUOW, or MGS individuals, sign, or burrows) were observed” in the Biological Study Area (BSA), which extended the length of the ROW and 5 feet beyond the ROW width on either side. Because no species or sign were observed in the BSA during a one-day survey, BLM concludes there will be no impacts to any of the biological resources listed in Appendix E-1. While we agree that the administrative action of overlaying a ROW on BLM land and granting it to the State of California would not impact biological resources, the use of the ROW will result in impacts to these species. This is what the EA should be analyzing.

For the desert tortoise, these impacts include (1) direct impacts (e.g., injury, or death from collision with vehicles, vandalism, and increased collection, etc.), and (2) indirect impacts (e.g., a reduction/loss of native woody vegetation used for cover from temperature extremes and predators resulting in increased predation and physiological impacts, a reduction in native forage that provides adequate nutrition, an increase in nonnative invasive annual plant species along the ROW that spread to adjacent areas, etc.) without implementation of appropriate mitigation, monitoring, and adaptive management measures.

Third, although a biologist surveyed an area twice the width of the proposed 10-foot ROW, we found no information in the EA that protocol level surveys for the Mojave desert tortoise (USFWS 2019) were implemented. To determine the full extent of impacts to tortoises, we request that BLM comply with 50 CFR 402.2 and survey the “action area,” not just the project footprint or the BSA. The “action area” is defined as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action.” BLM should follow these regulations and implement USFWS protocol-level surveys for the tortoise. Furthermore, the protocol level surveys for the Mohave ground squirrel should also be implemented. The results of these surveys should be included in the EA and used to help formulate the analysis of direct and indirect impacts to the tortoise and ground squirrel.

We described our fourth concern about “connected actions” above. The EA should provide a description and analysis of impacts to the actions conducted from using the ROW. These actions include those conducted on the mitigation parcel of the future Indian Wells Valley Ecological Reserve.

Fifth, after providing a description and analysis of the direct and indirect impacts to the tortoise, BLM should describe the specific Conservation Management Actions (CMAs) and other mitigation measures that will be implemented, and analyze how these CMAs/mitigation measures would affect the direct and indirect impacts to the tortoise (BLM 2016).

We request that BLM correct these five deficiencies and release a revised EA for public review and comment. This information is necessary so the decisionmaker has a complete description and analysis of the impacts of the Proposed Action to the tortoise before making their decision.

Cumulative Impacts

BLM's analysis of cumulative impacts is the following: "If the design features in Ch. 2 are followed, it has been determined that cumulative impacts would be negligible as a result of the proposed ROW for occasional use. There are no impacts resulting from the incremental impact of this ROW when added to other past, present, or reasonably foreseeable actions regardless of what agency or person undertakes such other actions." This "analysis" is a conclusion.

The Council on Environmental Quality (CEQ) has provided guidance on how to analyze cumulative environmental consequences that the BLM NEPA Handbook – H-1790-1 (BLM 2008) has adopted. CEQ (1997) says, "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 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." CEQ lists eight principles of cumulative impact analysis:

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 need 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.

We found no information in the EA that indicates that BLM conducted an analysis of cumulative impacts following NEPA regulations (40 CFR 1500-1508) or the BLM NEPA Handbook as BLM claims in the section **Relationships to Statutes, Regulations and Other Plans**. We request that BLM (1) comply with NEPA regulations and the BLM NEPA Handbook with respect to cumulative impacts, and (2) apply CEQ's eight principles of

cumulative impact analysis when analyzing the cumulative impacts of the Proposed Action with respect to the desert tortoise and its habitat. We request that BLM provide in the EA their analysis of the cumulative impacts and then present their conclusion based on this analysis. As we stated above, this information is necessary so the decisionmaker has a complete description and analysis of all impacts of the Proposed Action to the tortoise before making their decision.

Appendix A

Determination of Staff: In Appendix A, BLM says “The proposed ROW is within an ACEC [Area of Critical Environmental Concern]...,” but we were unable to find the ACEC named in the EA. We believe it is the El Paso to Golden Valley Wildlife Corridor ACEC. The overarching goal of this ACEC is to “M[m]aintain habitat connectivity for wildlife with a movement corridor between the El Paso mountains, the Golden Valley Wilderness and Western Rand Mountains ACEC. Maintain healthy desert ecosystem for desert species such as desert tortoise, Mohave ground squirrel, burrowing owl, kit fox, American badger, and a variety of bird species. Prevent habitat fragmentation.” We request that the EA demonstrate how implementation of the Proposed Action with its CMAs, mitigation measures, and terms, conditions, and stipulations will contribute to reaching/attaining this overarching goal.

In Appendix A, BLM says, “Lands / Access - No impact since casual use access over the BLM parcel remains available.” This wording implies that casual use access is allowed throughout any part of the BLM parcel. We thought it was authorized only on designated open or limited routes. Please clarify this information.

In Appendix A, BLM says, “Special Status Animal Species other than USFWS candidate or listed species e.g. Migratory birds - The proposed ROW follows an existing dual track and then an approx. 200-ft segment. Field review to assess Special Status Animal Species will occur. But if no new t[r]ack creation?”

We support field surveys of special status species, but believe it should occur prior to preparing the EA as well as prior to using the new 200-foot segment of the ROW that will result in crushed vegetation. We request that BLM describe what “field review to assess special status animal species will occur” means, as we do not recall seeing this in the description of the Proposed Action, CMAs, or mitigation measures.

In Appendix A, BLM says, “Threatened, Endangered or Candidate Animal Species - The BLM parcel and adjacent areas are known desert tortoise and Mohave ground squirrel habitat. The proposed ROW utilizes an existing dual track and a new approx. 200-ft segment. Field review to assess desert tortoise/Mohave ground squirrel will occur to determine the new segment location. Any impacts upon such species will be avoided??” We request that BLM describe what “field review to assess desert tortoise/Mohave ground squirrel will occur” means, as we do not recall seeing this in the description of the Proposed Action, CMAs, or mitigation measures. This description should include a discussion of desert tortoise clearance surveys per the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009). In addition, it appears that BLM is unsure whether impacts to the desert tortoise/Mohave ground squirrel will be avoided because of the questions marks. We request that BLM answer this question with respect to direct, indirect, and cumulative impacts to the tortoise and provide data and analysis to support it.

Appendix C – Conservation Management Actions

In Appendix C, under the “Individual Focus Species – Desert Tortoise,” some of the CMA paragraphs have a “Yes,” some have a “No,” and some have no designation under the “Applicability” column. Without this information, the public and the decisionmaker are unsure whether a CMA with no designation was intended for implementation or not. In addition, this information is needed for BLM to determine the type and extent of the direct, indirect, and cumulative impacts to biological resources including the desert tortoise and its habitat from implementation of the Proposed Action. We request that BLM clarify which CMAs/paragraphs of CMAs are required and are not required by placing a “Yes” or a “No” in the “Applicability” column for each CMA paragraph.

According to the Desert Renewable Energy Conservation Plan Land Use Plan Amendment, “BLM requires holders of ROW grants to prepare and fund a plan to ensure compliance with the BLM terms, conditions, and stipulations in the ROW grants” (BLM 2016, beginning on page 207). The purposes of the plan include to ensure that mitigation is implemented; that terms, conditions, and stipulations of ROWs are implemented; and that monitoring and adaptive management are incorporated according to BLM’s Assessment, Inventory, and Monitoring (AIM) Strategy. Please ensure that the ROW grant for the Proposed Action includes a requirement to prepare and fund this plan, especially with regard to mitigation for the desert tortoise.

Additional Mitigation Measures

We request that the following mitigation measures be added to the terms, conditions, and stipulations for the ROW for the Proposed Action:

- The route along the ROW will not be designated as an open route. Its use should be limited to CDFW. In addition, near the intersection of the ROW with Redrock-Inyokern Road, the ROW will be controlled so the public is not physically able to use/access the route for casual use or other purposes.
- Please indicate if Caltrans will be asked to acquire lands and compensate for habitats that are lost to the Proposed Action.
- Near the intersection of the ROW with Redrock-Inyokern Road, the ROW will be controlled so the public is not able to use the ROW for casual use or other purposes. (This assumes the dual track is not a designated open or limited route.)
- The ROW will be routinely managed/monitored to control invasive nonnative plant species during the duration of the ROW grant.

Specific Comments

Chapter 2, Description of Alternatives, Proposed Action: In this section, BLM says, “all workers engaged in activities for this project will be educated about these avoidance measures.” We found no list of or reference to what these avoidance measures are. We request that BLM add the avoidance measures here or refer to a table or appendix with these measures.

We appreciate this opportunity to provide input and trust that our comments will further protect tortoises if the ROW is granted. Herein, we ask that the Desert Tortoise Council continue to 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 Proposed Action is provided to us at the contact information listed above.

Regards,



Edward L. LaRue, Jr., M.S.
Chair, Ecosystems Advisory Committee

Literature Cited

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