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Via email only

September 23, 2026

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RE: Mineral Material Exploration Drilling in Iron Mountain, San Bernardino County, California (CACA 106763808, Categorical Exclusion DOI-BLM-CA-D080-2026-0026-CE)

Dear Mr. Livingood, Ms. Campbell,

The Desert Tortoise Council (Council) is a non-profit organization comprising 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 northern 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. Given the location of the proposed project in habitats potentially occupied by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities that may be authorized by the Bureau of Land Management (BLM), which we recommend be added to project terms and conditions in the authorizing documents [e.g., issuance of right-of-way (ROW) grants, management plan and decision document, etc.] as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed action.

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 Council to join Defenders of Wildlife and the Desert Tortoise Preserve Committee (DTPC) to petition the California Fish and Game Commission (Commission) in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered under the California Endangered Species Act (CESA) (Defenders of Wildlife et al. 2020). Importantly, following California Department of Fish and Wildlife's (CDFW) (2024a) status review, in their April 2024 meeting the Commission voted unanimously to accept the CDFW's petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the CESA based on the scientific data provided on the species' status, declining trend, numerous threats, and lack of effective recovery implementation and land management (CDFW 2024b). On July 15, 2025, the tortoise was officially uplisted to endangered status under the CESA (Commission 2025).

Although we understand as per the latest version of the U.S. Department of the Interior (DOI) Handbook (DOI 2026, page 29) that the National Environmental Policy Act (NEPA) "…does not require public involvement when a bureau uses a CE [categorical exclusion]," as an active, established Affected Interest, we believe that the Council has rights that enable us to provide even unsolicited comments that will provide information pertinent to the CE. So, we offer the following observations and comments in a good faith effort to provide an environmentally conscientious perspective to ensure the project does not violate rules, policies, and laws governing BLM authorizations.

Categorical Exclusion Document and Biological Technical Report

Unless otherwise noted, the following page numbers are taken from the CE that was signed by Assistant Field Manager, Julie Donnell on 8/26/2026.

The following project description is given on page 1: "The Bureau of Land Management, Barstow Field Office, proposes to authorize an exploratory drilling project consisting of eight core drill holes in Sections 18, 19, and 20 of T.9N., R.3W., SBBM (see Appendix A: Location Map). Each hole would reach up to 200 feet in depth and 5 inches in diameter. Five drill sites would be accessed using existing BLM open routes, while Pads 1, 3, and 8 would require approximately 0.286 acres of new cross-country travel. No grading is proposed; instead, drilling operations would occur within a 40-by-40-foot disturbance area at each pad. A tracked-drill rig, a water truck, two pickup trucks and a skid steer would be utilized to perform the proposed drilling operations."

Comment 1. Concerns with the definition of "minimal and temporary" impacts. Page 1 includes the following statements, "While the project lies within the Superior–Cronese Area of Critical Environmental Concern (ACEC), impacts would be *minimal and temporary in nature* [*emphasis* added]. Open routes will primarily be utilized, and each drill pad would be reclaimed prior to the project advancing. The proposed cross-county travel impact would be nominal (less than 0.3 acres in total), and temporary in nature…The proposed project will take place over 1-2 months, in the Fall of 2026, weather and funding dependent."

We understand the implication here, that impacts would be minimal and temporary because existing roads would be used to access drill sites, less than an acre would be directly impacted, protective Conservation Management Actions (CMAs) would be implemented, and the sites would be reclaimed. The Iron Mountain area, in which proposed drilling is planned, was not designated as critical habitat by the U.S. Fish and Wildlife Service (USFWS 1994a). The Iron Mountain area was also not included in the Superior-Cronese Desert Wildlife Management Area (DWMA) that was identified in the initial desert tortoise recovery plan (USFWS 1994b), which was effectively replaced by the ACEC designation under California Desert Conservation Area (CDCA) plan amendments associated with the Desert Renewable Energy Conservation Plan (DRECP) approved in 2016 (BLM 2016). However, because of the high density of tortoises (particularly juvenile and subadult tortoises) found throughout the area between 1998 and 2000 during surveys performed for the West Mojave Plan (WEMO Plan, BLM 2006), the DWMA (and in 2016, this portion of the ACEC) was expanded by 44 square miles to encompass the Iron Mountain, including the proposed drilling sites.

Given that the project is planned for up to two months in the fall of 2026, these activities will coincide with the time during which tortoise eggs hatch and hatchling tortoises will be most common in the area. Even if drill workers conscientiously remain on established open routes and follow reduced speed limits, given the densities of tortoises and the prevalence of small tortoises, animals may be crushed by vehicles either enroute to the sites or actively drilling one of the eight sites. It is also the heightened activity period for adult male tortoises seeking and copulating with female tortoises. It only takes a single tortoise to be injured or killed by BLM-authorized mine activities for the impact to be considered significant and for the premise of the CE to be invalidated.

Recommendation 1. Drilling activities should be postponed until November 2026 through January 2027 to avoid the heightened fall activity period of adult tortoises and heightened hatching period of tortoise eggs.

Comment 2. Concern that the proposed action will result in more substantive impacts. We read on page 4 that the proposed action will not, "(d) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

"Rationale: The proposed action does not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. These projects are evaluated on a case-by-case basis to ensure they are in accordance with the resource management plans."

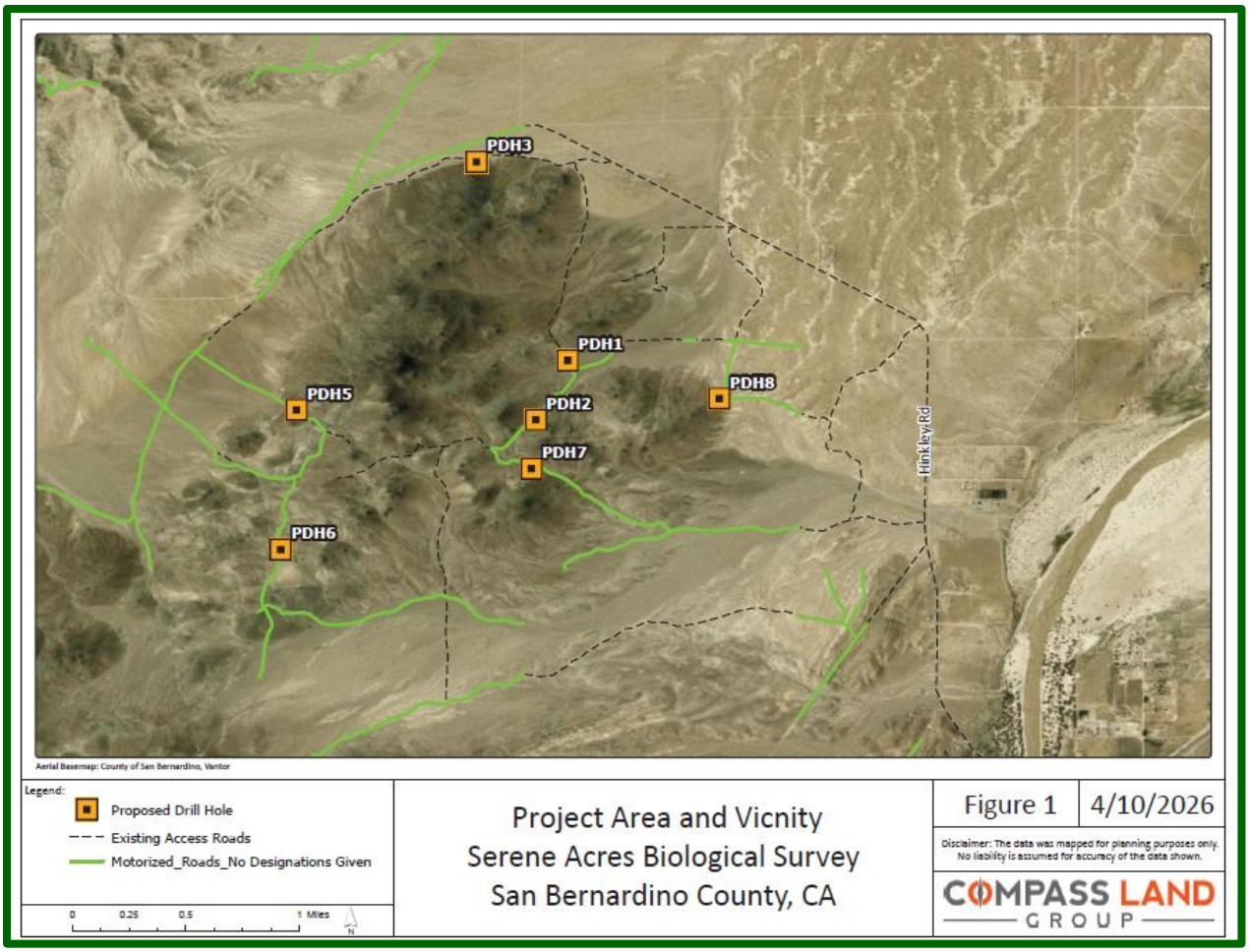
Given the nature of exploratory drilling, the intent is to collect data that will facilitate the proponent's ability to establish a future mine site that will directly impact more than the 0.3± acre that will likely have significant environmental effects. This certainly seems to be a foreseeable "future action … with potentially significant environmental effects," so we are not sure why this Extraordinary Circumstances Review has no effect.

Recommendation 2. We ask that if the proposed action results in eventual mining in the area, with the understanding that an EA or EIS would be drafted for the new mine, that the Council be considered an Affected Interest and be given an opportunity to review and comment on the NEPA document when available.

Comment 3. Concerns with desert tortoise and burrowing owl survey methodologies. Pages 1 and 2 of Stringer Biological Consulting (2026), which is included as Appendix E to the CE, indicate that biologists with Naiad Biological Consulting performed "reconnaissance surveys" with a "100 foot radius buffer surrounding each work pad" and "three temporary access road segments, leading to drill work pads PDH-1, PDH-3, and PDH-8…were surveyed with a 20-foot buffer around each."

USFWS (2019a) describes tortoise protocol presence-absence surveys that should be performed within a designated "action area." It does not appear that the consulting biologists consulted with USFWS biologists to determine a sufficiently large action area for the proposed drilling activities. The "action area" is defined in 50 Code of Federal Regulations (CFR) 402.2 and the USFWS Desert Tortoise Field Manual (USFWS 2009) as "all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action" (50 CFR §402.02). Thus, the 100% coverage survey area is larger than the impact footprint and project site. Although the 100-foot buffer around pad sites and 20-foot survey area along three new access roads is larger than the impact areas, we believe that they were insufficient to accurately characterize tortoise occurrence in the area.

Given our experience with detection of tortoises during formal presence-absence surveys (which excludes reconnaissance surveys) and our knowledge of tortoises in the region (BLM 2006), it is not surprising that tortoise sign was not found within 100 feet of eight pad sites or within 20 feet of three access road segments. Nor is it indicative of tortoise presence in the region. Considering Figure 1 on the next page taken from Stringer Biological Consulting (2026), when one considers the extent of vehicle access (presumably from National Trails Highway and Hinkley Road, although that is not clarified in either the biological report or CE) and the intent to perform the activities in the fall, tortoises will more than likely be encountered along access roads and at drill pad sites. Whereas it is impractical to survey every access road to every site, the Council can safely conclude based on surveys in the area (BLM 2006) that tortoises occur throughout the Iron Mountain project area. Whereas it may be only one mile to assess PDH8 from Hinkley Road, it appears to be four to five miles to access PDH5 from Hinkley Road, all of which is through occupied tortoise habitat.



On page 1 and 2, we read, "…the primary focus of the biological reconnaissance survey was to search for… burrowing owl (*Athene cunicularia*) individuals, burrows, or sign," among other rare species. However, the consultant failed to implement burrowing owl survey protocols (CDFG 2012), which recommend surveys out to 150 meters, which typically include surveys along five transects at 30-meter intervals because owls tend to flush within 50 meters of the surveyors. We suspect that surveys over this larger area (i.e., a 450-foot buffer rather than a 100-foot buffer at pad sites and a 20-meter buffer along new access roads) would have given a more realistic indication of both tortoise and burrowing owl occurrences around each pad site and along the new access roads.

Recommendation 3. Given multiple miles of access routes to the eight drill sites and the relatively small buffer areas associated with field surveys, we suspect that the project "may adversely affect" the desert tortoise and burrowing owl and recommend that an EA – not a CE – is the pertinent NEPA document for this project.

Comment 4. Project-specific consultation with the USFWS and CDFW. We note on page 4 of the CE that, "Consultation with the USFWS *was completed under the existing BLM Programmatic Biological Opinion (PBO)* [*emphasis* added] for Activities in the California Desert Conservation Area (FWSKRN/SBD/INY/LNRIV-1780532-17F1029) issued by the U.S. Fish and Wildlife

Service for desert tortoise." The CE does not indicate when this programmatic biological opinion was written or if BLM shared the survey results for a project-specific informal consultation. Did BLM informally consult with USFWS on this project to see if the programmatic biological opinion is applicable for this proposed action?

The Council presumes that BLM is referring to a biological opinion (BO) issued by USFWS in 2017. In this BO, USFWS states under "Administration of the Consultation," that "If the Bureau determines that a future activity within the California Desert Conservation Area may affect the desert tortoise or its critical habitat, it *will follow* [*emphasis* added] the procedures outlined in this section." Some of these procedures are listed below:

- "As part of the land use plan amendment, the Bureau [BLM] adopted numerous conservation and management actions, which it defines as the "specific set of avoidance, minimization, and compensation measures, and allowable and non-allowable actions for siting, design, pre-construction, construction, maintenance, implementation, operation, and decommissioning activities on (Bureau) land." The Bureau will apply these conservation and management actions to all future activities. The land use plan amendment (Bureau 2016) contains a complete list of the conservation and management actions."
- "For projects that affect 10 acres of habitat or less, or that do not involve ongoing impacts to desert tortoises that are associated with transportation, the Service will have 30 days to respond via electronic mail if we have any concerns with use of the programmatic consultation."
- "The Bureau or Service may opt out of using this consultation for a specific activity. If either agency determines that the use of this biological opinion may not be appropriate for a specific activity, it will notify the other agency as soon as possible to allow for changes in planning schedules."
- "Staff and managers from the PSFWO [Palm Springs Field Work Office] and the Bureau will meet annually to review how this consultation is functioning and to discuss any potentially important events in the upcoming year."
- "To ensure that its activities are not likely to jeopardize the continued existence of the desert tortoise, the Bureau has proposed to re-initiate formal consultation if 15 large desert tortoises are killed in a calendar year as a result of the activities considered in this biological opinion."
- "The Bureau and Service [USFWS] will reassess, and alter if appropriate, the re-initiation threshold every 5 years using the results of the Service's range-wide sampling program and the number of large tortoises killed in the previous 5 years. For example, if the density of desert tortoises decreases, we will reduce the re-initiation threshold accordingly."
- "The Bureau and Service have not established a cap system for habitat loss outside of protected areas because these areas support few desert tortoises and are not necessary for the conservation of the species."
- "The Bureau will implement a monitoring program to assess the effects of the proposed activities. The program will include activity-level monitoring for compliance with its project-specific approvals and monitoring of the effects of the land use plan. Both activity- and plan-level monitoring include provisions for effectiveness monitoring and adaptive management."

Regarding the first bulleted item, BLM should list in the CE all required conservation and management actions for the proposed action.

For the second bulleted item, BLM and USFWS should clarify "affect 10 acres of habitat or less." Under FESA, the effects of the action include "the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action. These effects are considered along with the environmental baseline and the predicted cumulative effects to determine the overall effects to the species for purposes of preparing a biological opinion on the proposed action (50 CFR §402.02 and USFWS and NMFS 1998). Because the BO was prepared following requirements for FESA, we presume that the use of the phrase "affect 10 acres of habitat or less" by the USFWS includes all these effects. Therefore, BLM should analyze the effects of the proposed action with respect to effects under FESA using the best available scientific information.

This would include direct and indirect effects, the effects of interrelated or interdependent actions, and cumulative effects. Given the documented effects of roads or routes and vehicle use to tortoise abundance, tortoise behavior, and tortoise habitat (von Seckendorff Hoff and Marlow 2002, Boarman 2003, Boarman and Sazaki 2006, Nafus et al. 2013, Peaden et al. 2017, Carter et al. 2020, Hromada et al. 2020, Averill-Murray and Allison 2023, Hromada et al. 2023, Richter et al. 2024), the effects of routes on the introduction, spread, and proliferation of invasive non-native plants (Brooks and Bery 2006, Karban et al. 2024) that adversely affect tortoise forage availability and nutritional requirements (Drake et al. 2016), and the surface disturbance that would result in decades or longer before being restored to pre-project condition, (Abella 2010), and that BLM's typical method for vegetation restoration, which is reseeding, is not effective (Abella et al. 2012), we request that BLM document in their analysis the acres of habitat that would be affected by the proposed action using these criteria under FESA to comply with the BO.

Regarding the fourth bulleted item, we presume that USFWS and BLM have met annually to discuss how the programmatic consultation is working with respect to the tortoise and critical habitat.

For the fifth bulleted item, BLM should provide information in the NEPA document about the number of tortoises taken in the past year in the CDCA including those killed, injured, captured, trapped, harmed, harassed, etc. BLM should also clarify what is meant by a "large tortoise" as this is not a term defined in the scientific literature. This term is ambiguous as it has at least three different meanings to us – a large adult tortoise, an adult tortoise, or adult and subadult tortoises.

For the sixth bulleted item, we ask BLM and the USFWS to provide information on whether they have complied with the requirements of this BO. Since it has been nine years since the BO was issued, BLM and USFWS should have met at least once to discuss the re-initiation threshold and a second meeting should be scheduled in 2027. In addition, a recent court ruling on the adequacy of BLM's monitoring of incidental take of the tortoise in the CDCA (Center for Biological Diversity v. Culver, October 15, 2024) likely has relevance to this BO. Consequently, BLM should explain in the NEPA document the scientific methods used to monitor incidental take of the tortoise for the activities included under this BO and what the results were each year for all forms of take, not just mortality.

In addition, the density of tortoises in most of the CDCA has decreased since the BO was issued in 2017. Has USFWS decreased the incidental take limit in response to these new data?

Under the regulations for implementing FESA, USFWS has several other conditions under which re-initiation of consultation is required. Section 7 regulations (50 CFR 402.16) list four general conditions that require a federal agency to reinitiate formal consultation: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the action is modified in a manner causing effects to listed species or critical habitat not previously considered; and (4) a new species is listed or critical habitat designated that may be affected by the action.

We assert that the second condition may be relevant because the USFWS assumed that connectivity between critical habitat units and Tortoise Conservation Areas (TCA) are not necessary for the conservation of the species in the 2017 BO. Please see our comments under the seventh bulleted item. We also assert that the demographic data for the tortoise rangewide has changed. It has not improved and for some TCAs it has declined. In addition, new information on route densities has been published that provides maximum densities for areas managed for the survival of the tortoise (Averill-Murray and Allison 2023). We do not believe that BLM or USFWS considered this information when the BLM approved open routes in tortoise habitat in the CDCA when the USFWS issued the BO in 2017.

The seventh bulleted item is concerning. The USFWS stated in the BO that "these areas [outside protected areas] support few desert tortoises and are not necessary for the conservation of the species." Apparently the USFWS had not read the 1994 or 2011 recovery plans for the tortoise. In the 1994 recovery plan, the USFWS said, "To insure population persistence the Plan proposes multiple DWMAs [Desert Wildlife Management Areas, now called reserves or TCAs] *connected by protected functional habitat* [*emphasis* added] within recovery units." For the design of tortoise reserves, "[b]locks of habitat that are close together are better than blocks far apart. This arrangement facilitates dispersal of desert tortoises among habitat patches. *Connecting habitat segments* [*emphasis* added] should be of medium to high quality and be wide enough to accommodate several desert tortoise home-range widths." Also, "maintaining linkages among habitat patches within DWMAs and among the DWMAs themselves is considered here to be important."

In 2011 this need for connectivity between TCAs rangewide was reiterated with "aggressive management as generally recommended in the 1994 Recovery Plan needs to be applied within existing tortoise conservation areas or other important areas identified by Recovery Implementation Teams (e.g., important genetic linkages identified by Hagerty et al. 2010) to ensure that populations remain distributed throughout the species' range." Also, "[a]ctions or projects occurring outside tortoise conservation areas, which will be reviewed under existing State laws and the Federal Section 7 and 10 processes, should seek to minimize (1) negative impacts in adjacent areas, (2) creation of edge effects (impacts within an area from projects or activities outside that area) within the conservation areas, or (3) the severing of genetic linkages between tortoise conservation areas (see Hagerty et al. 2010)." (USFWS 2011).

Consequently, we question the validity of some statements made by the USFWS in the 2017 BO and the analysis of effects regarding the survival and recovery of the species, which is required for jeopardy analysis in biological opinions.

Additionally, Averill-Murray et al. (2021) reported on the importance of linkage habitat to connect tortoise populations both within and between recovery units with respect to the survival and recovery of the species.

Regarding the eighth bulleted item, BLM should provide in the NEPA document a description of the science-based monitoring for the tortoise and its habitat that will be implemented for the proposed action. Prior to this, BLM should provide this information to the USFWS for their review and concurrence. Again, this request is supported by a recent court decision on BLM's monitoring of incidental take of tortoises in the CDCA.

For the above reasons, we request that BLM re-initiate formal consultation on the proposed action and likely future actions associated with the proposed exploratory drilling.

Desert tortoise, burrowing owl, and Mohave ground squirrel, which was observed during surveys in April 2026 at one of the pad sites, are all designated by CDFW as endangered, candidate species for listing, and threatened, respectively, and protected under CESA from take. Did BLM consult with CDFW to see if any of the activities it plans to authorize would result in incidental take of any of these State candidate and listed species?

It is our understanding that the BLM and CDFW signed a Memorandum of Understanding in 1990 (CDFG and BLM 1990) that obligates BLM to consult with CDFW when a State-listed species may be adversely affected by one of its authorized activities. Hence page 4 states: "7. To notify the Department [CDFW] of all projects involving impacts to, or manipulation of, State-listed rare and endangered fish, wildlife and plants and to obtain State recommendations for the project-specific management of such populations."

Recommendation 4. BLM should share biological survey results and the CE with USFWS and CDFW biologists to ensure the proposed action is covered by the programmatic biological opinion and does not violate the California Endangered Species Act (CESA). Please see our other recommendations listed above regarding the bulleted items from the BO.

General Mitigation Measures for DOI-BLM-CA-D080-2026-0026-CE

Comment 5. Concerns with Mitigation Measure (MM)-2. As given in Appendix B, BLM's Stipulations, the latter part of MM-2 reads, "The [pre-drilling clearance] survey will be conducted in accordance with the USFWS 2017 Small Project Survey guidance. Should burrowing owl be observed during this survey then CDFW protocol surveys will be required."

Recommendation 5. We recommend that the following statement be modified as shown: "Should burrowing owl **or its sign** be observed during this survey then CDFW ~~protocol surveys will be required~~ **will be contacted to see if protective measures can be implemented in lieu of issuing an incidental take permit**."

Comment 6. Concerns with MM-13. MM-13 reads, "MM-13: A biological monitor shall be on site during all operations and will be responsible for implementing all mitigation measures. The biological monitor shall have the authority to stop work that may be in violation of the mitigation measures."

Recommendation 6. We recommend that MM-13 be modified to indicate that either an Authorized Biologist or a Biological Monitor must also be approved by CDFW, in the emergency situation where a tortoise needs to be handled.

Comment 7. Consistent use of terminology in MM-13 and MM-14. Terminology concerning biologists varies among agencies, which may use the terms Authorized Biologist, Biological Monitor, Designated Biologist, etc. Given the specificity of these terms that are invariably associated with specific authorized activities (e.g., typically Authorized Biologists can handle tortoises but Biological Monitors are not allowed to handle tortoises unless the Authorized Biologist is physically present), we note that it is important that the BLM use consistent terms.

Recommendation 7. Either use "biological monitor" as given in MM-13 or "qualified biologist" as given in MM-14 and elsewhere, but not both, unless the different titles are intentional, in which case BLM should define the terms and the actions they may or may not conduct.

Comment 8. Note that MM-15 is missing the final clause plus miscellaneous other concerns.

Recommendation 8. Complete the following sentence with the intended wording: "MM-15: Prior to any drilling activity, a pre-drilling clearance survey for desert tortoise shall be conducted within 10 days of the drilling start date in accordance with the USFWS 2017 Small Project Survey guidance and all on-site staff will be required to receive **???**"

Additionally, although performing the survey within 10 days may be revealing, given the mobility of tortoises and the requirement that a biological monitor always be present (MM-13), BLM should clarify that the area around the immediate drill hole should be cleared by the authorized biologist on the morning the drill is to be set up. BLM should also identify how large an area would be covered by the pre-drilling clearance survey. Our recommendation would be to survey areas out to 100 meters (300 feet) and to measure the widths and either flag or map all tortoise burrows. The importance of this methodology is that if a tortoise does move into harm's way, the biologist may have located a burrow of the same size as the tortoise to which it may be relocated (assuming incidental take has been authorized). Finally, whereas we are not familiar with the 2017 Small Project Survey guidance, we know that USFWS (2019b) has specific methodologies for performing clearance surveys, which may provide more (updated) protection compared to the 2017 document. We recommend that BLM implement the most recent USFWS methodology for clearance surveys.

Comment 9. Clarification of MM-16 on prohibition against handling tortoises. Given the context that MM-16 applies to workers who may find a tortoise under their vehicle and that it is not to be handled, the implication is that it is only workers who are prohibited from handling tortoises.

Recommendation 9. Modify MM-16 as follows (or with similar wording): "Handling of tortoise**s** is not authorized **for either workers or biological monitors, as take authorization has not been granted. If a tortoise is in harm's way and must be handled or die, a clear line of communication should be predetermined between the biological monitor, BLM, USFWS, and/or CDFW for immediate, emergency consultation and advice to avoid direct or indirect mortality or injury to the tortoise**.

Comment 10. Concerns with MM-23, which reads: "MM-23: Upon locating a dead or injured desert tortoise, the operator is to notify the Bureau within 24 hours. Injured animals shall be transported to a qualified veterinarian for treatment at the expense of the project proponent. If an injured animal recovers, the Bureau shall be contacted for final disposition of the animal. Dead individuals shall be left in place where discovered."

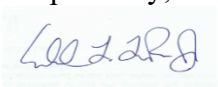
Recommendation 10. We certainly understand the importance of getting an injured tortoise to a nearby authorized veterinarian, who should be identified prior to any ground disturbance. Even so, it sends mixed messages to say that tortoises cannot be handled but that injured tortoises should be handled. If a tortoise is injured or killed by the drilling crew, even inadvertently, is Serene Acres, LLC to be fined or penalized for unauthorized take, which is the weakness of covering these activities by a CE rather than a formal EA and associated take authorization?

Our main concern, however, is that issuance of the CE is based on the assumption that there are no tortoises, or at least, that they will not be impacted. So, if a tortoise is injured, all drilling activities should stop, and the BLM must contact the USFWS and CDFW to see if take authorization is warranted. The Council believes that even the appearance of a tortoise in the vicinity of the drill rig should trigger this consultation, as BLM assumes there are no tortoises in the action area that may be affected by the proposed action.

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 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 desert tortoises. Please provide any subsequent environmental documentation for this project to us at the contact information listed above, so we may comment on them to ensure BLM fully considers and implements actions to conserve tortoises as part of its directive to conserve biodiversity on lands managed by the BLM.

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.
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