



**DESERT TORTOISE COUNCIL**

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**Via email only**

16 September 2021

Mr. Jimmy Linares  
Bureau of Land Management  
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Mr. Glenn Knowles  
U.S. Fish and Wildlife Service  
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RE: High Speed Events in the Jean/Roach Dry Lake Special Recreation Management Area (LLNVS0-0530-21-005)

Dear Mr. Linares,

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.

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 authorized by the Bureau of Land Management (BLM), which we assume will be added to the Decision Record as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Despite numerous, repeated requests of the BLM to inform us directly of any projects on public lands administered by the BLM<sup>1</sup> that may affect desert tortoises, a third party informed us only recently of the above-referenced project. The information provided to us was an undated, 35-page document, referred to as “Determination of NEPA [National Environmental Policy Act] Adequacy (DOI-BLM-NV-S010-2021-0072-DNA)” (herein referred to as the “DNA”). No BLM contact was named, nor was a submission deadline identified in the DNA for public input. Our most recent comment letter to the Southern Nevada Field Office was relative to Best ATV Tours in the Nelson Hills, which we submitted to Mr. Linares’ attention in May 2021. As such, we assume that you may be the best BLM contact for this letter as well, and if not, ask that you direct it to the appropriate person. Given the above lack of information and proper notice, we also respectfully ask that these comments be accepted and considered even if they are not within the deadline for submission, which remains unknown to us.

Unless otherwise noted, the page numbers referenced below are from the DNA.

Page 1 describes the proposed action as, “The Bureau of Land Management (BLM) is proposing to issue multiple Special Recreation Permits (SRP) for high-speed truck, buggy, UTV, motorcycle or quad races throughout the year for the next five years. The races may be multiple days and could occur day or night on BLM land in the Jean / Roach Dry Lake Special Recreation Management Area. The area and roads proposed to be used for these events have been previously used for the same or similar purpose. The activities proposed herein have been analyzed in Environmental Assessment (EA) DOI-BLM-NV-S010-2013-0157EA.”

Further, “Activities such as vending, filming and media associated with the events will most likely be authorized in the overall event permit; however, there may be cases where separate permits are issued for these activities. These permits would contain both standard and special stipulations to minimize environmental impacts and outline the parameters for use of the area. Each proponent will be responsible for adhering to the stipulations of the permit as well as informing the participants of the stipulations and terms and conditions of the Biological Opinion and ensuring that they are followed.”

Page 2, “The pits / spectator / staging areas would be located in existing disturbed areas and would be outlined in such a way as to make the boundaries of these areas clear to the public and event teams. Route maintenance may be required pre-event and post even.” And “Some events may include a controlled pre-run or fun run of the approved course, at controlled speeds on average of 25 MPH but no faster than 35 MPH, during the week prior to the event.”

Page 2, “Each race event would typically involve several classifications, including but not limited to, cars, trucks, buggies, UTVs, motorcycles or quads. Typically, the types of events have approximately 300 racers participating on a 20-100 miles course with an additional 3 to 4 pit vehicles associated with each team. Each event may use any configuration of the approved BO [biological opinion] routes, see Figures 1-3, and will follow the approved BO active tortoise high speed race schedule, this may include year-round racing in Primm, see Figure 3. In addition to the participants and support crews there is expected to be approximately 200 event personnel, 200 media personnel, and up to 10,000 spectators for each event.”

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<https://www.dropbox.com/s/xx5wmxcae1c1cju/BLM%20Southern%20Nevada%20District%20Managers%20Council%20as%20an%20Affected%20Interest.11-7-2019.pdf?dl=0>

Our concerns relative to the above proposals follow:

1. We note that the referenced environmental assessment (EA), which was not made available for review and should have been provided as an attachment, appendix, or link to the DNA, was written in 2013. Tortoise populations in the period between 2004 and 2018 have decreased by as much as 50% throughout much of the range (Allison and McLuckie 2018). We contend that a new EA should have been written for this action, which would authorize vehicle events over the next five years as tortoises are likely to continue to decline. The new EA should provide new data that document impacts occurring since 2013 and remedial activities implemented by the BLM to minimize and mitigate impacts.

2. Similarly, the biological opinion, which was not made available for review as an attachment to the DNR, was written in 2019, six years after the 2013 EA. The new EA should be drafted to update BLM stipulations and document additional protective measures, like terms and conditions, identified in the biological opinion.

3. There is no indication in the DNA how many previous events have been authorized since the 2013 EA and 2019 biological opinion, which should be divulged in the new EA. There are stated requirements for monitoring, like measure 7.1 on page 11 that requires annual monitoring of noxious weeds, and the new EA is the appropriate place to document the results of those monitoring efforts and any remedial measures that have been implemented as a response to the findings of the studies. In the meantime, we ask that all such monitoring reports be made available to the Council for our information.

4. With as many as 10,000 spectators anticipated for these events, how does the BLM plan to avoid impacts associated with campers and non-event participants driving cross-country or camping in non-designated locations, to avoid the perception that the region is a BLM-designated open area? *But for* the BLM's approval of such events, these impacts would not occur, and certainly they *may affect* tortoises, which we assume is the impetus behind obtaining the biological opinion. Has BLM documented the impact to habitats and loss of tortoises associated with campers and spectators, which should be tallied as part of the mortality incidental take in the biological opinion associated with previous authorized events? Absent these documents, the USFWS lacks the necessary documentation to determine if adverse modification of critical habitat has resulted and will result from these BLM-endorsed activities.

We note on page 7 of NEPA Adequacy Criteria, the following: "3. Is the existing analysis valid in light of any new information or circumstances (such as, rangeland health standards assessments, **recent endangered species listings**, and updated lists of BLM-sensitive species)? Can you reasonably conclude that **new information and new circumstances would not substantially change the analysis** of the Proposed Action?" (**bold emphasis added**). We note that the rangewide declines in tortoise numbers represent a changed circumstance that requires BLM to produce a new EA that includes the new information that was not available when the 2013 document was drafted.

Similarly, also on page 7: “4. Are the direct, indirect, and cumulative effects that would result from implementation of the new Proposed Action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?” We note that there has been an extensive loss of tortoise habitats to solar development between Stateline and Jean, NV that could not have been included in the 2013 cumulative effects analysis because those projects have been developed in the past eight years. The new EA needs to produce a current cumulative effects analysis that addresses extensive solar development throughout southern Nevada.

With regards to the following stipulation on page 9, “2.5. Races that use course in critical habitat will be required to have a wildlife specialist accompany the recreation specialist **during post course inspection** of all sections of critical habitat to assess impacts and determine if racing this area remains appropriate,” (**bold emphasis added**) we contend that a baseline study *prior to each event* is required to determine the extent of impacts based on “post course inspection.” Unless measurements and conditions are documented before the event, a post event inspection will have no baseline for comparison. The new EA should require both pre-event and post-event documentation that includes, among other things, the widths of a given course before and after each event, counts of cross-country vehicle tracks adjacent to the course before and after, tallies of litter and debris before and after the event, etc.

We note that the pagination stops after page 18, where the U.S. Fish and Wildlife Service’s (USFWS) terms and conditions are listed, so the following discussion points reference the numbers assigned to the terms and conditions (e.g., TC#) appearing in this part of the DNR:

**TC1b.** We note that herein the USFWS requires that this and other TCs be implemented by Authorized Biologists, but the BLM’s stipulations indicate that BLM Wildlife Biologists will be engaged to perform these activities. It has been our experience that USFWS has very stringent standards for Authorized Biologists, and that not all BLM biologists will necessarily meet those standards. Even if they are qualified, we feel that third party biologists are more likely to be impartial, perform all identified activities as per both the BLM stipulations and USFWS biological opinion terms and conditions, and submit requisite monitoring reports. If the BLM is unwilling to enlist third party biologists, we insist that all BLM wildlife biologists undergo the same scrutiny as private biological consultants and be formally approved by USFWS as Authorized Biologists to satisfy this and other TCs.

**TC1d.** “A desert tortoise education program will be presented to all personnel on site during construction activities by an agency or authorized desert tortoise biologist.” Since the TCs are prefaced with a statement that, not only these recreational activities but also construction and mining activities are regulated by the TCs, this TC fails to require any meaningful education of the events participants and particularly the “10,000 spectators” who will not receive any tortoise awareness education. We feel that it is vitally important that the BLM educate participants of these authorized events on prudent protective measures; otherwise, BLM is facilitating take of tortoises that we (in the absence of having the biological opinion for review) fear will result in loss of both habitats and individual tortoises. We believe that it is prudent to install kiosks and develop brochures that can be distributed to all participants and spectators. Further, it is appropriate for the BLM wildlife biologist and/or Authorized Biologist to meet with event participants and as many spectators as possible to inform them of ways to minimize and avoid impacts.

**TC1e.** With regards to vehicle travel, the biological opinion clearly states in TC1e that speed limits are not to exceed 25 miles per hour in the “least active season,” cited as November through December but fails to identify a speed limit during the relatively more active season of March through October, which we feel should be 15 miles per hour. First, we note that the DNR contradicts the biological opinion by allowing “...controlled speeds on average of 25 MPH but **no faster than 35 MPH**, during the week prior to the event” as per page 2 of the DNR and that the actual events are identified on page 1 as “...**high-speed** truck, buggy, UTV, motorcycle or quad races throughout the year” (**bold emphasis added**), which would include the tortoise activity periods. The DNR does not define what a “high-speed event” entails, but we assume that it refers to vehicle speeds far in excess of what the biological opinion authorizes.

**TC1j.** Similarly, we recognize “penning” as a technique used during active construction projects to avoid crushing tortoises in an identified right-of-way. We don’t believe that such an approach was ever intended for competitive, high-speed events. Given that burrows are not to be flagged to avoid attracting peoples’ attention to tortoises in those burrows that may be poached (part of TC1g), it is counterintuitive to encircle a tortoise with a highly visible fence that is more likely to attract humans than a simple flag.

**TC3b** prohibits cross-country vehicle travel outside designated areas, which we believe pertains to construction and mining actions, and does not readily apply to competitive high-speed events, particularly where 10,000 spectators are anticipated. In the absence of a formal brochure or education program targeting event participants and associated spectators, how does BLM intend to educate the public and enforce the prohibition of cross-country vehicle travel? We note that the DNR fails to mention any commitment to law enforcement observation during the events; rather, a biologist will visit the site afterwards to document the impacts.


In this regard, we note that the DNR, and presumably the EA, fail to adequately identify the formal “action area” for authorized events. What is the effective action area for an event that anticipates 10,000 spectators, and how does BLM propose to document impacts within the action area? Will “...remuneration fees to offset residual impacts to desert tortoises from project-related disturbance to desert tortoise habitat,” as required by TC3d, be applied to the entire action area? Such questions need to be addressed in a new EA.

Given the above observations, we believe that it is essential that the new EA clearly list and adopt the pertinent terms and conditions in the 2019 biological opinion so there is no confusion between those measures that are intended for construction and mining versus competitive, high-speed events. We also expect that the BLM needs to revisit and rewrite those stipulations that directly contradict terms and conditions in the biological opinion, like allowing vehicles to travel 35 miles per hour when the biological opinion says 25 miles per hour (in bold font in TC1e). We question the validity and appropriateness of applying the 2019 biological opinion to high-speed events when there is a 25 mile per hour speed limit, and believe that the BLM needs to consult with USFWS separately for such events, or revisit the 2019 biological opinion to remedy these contradictions.

In conclusion, we question why the Determination of NEPA Adequacy has failed to identify the inadequacy of its primary document, the environmental assessment, which is six years old and fails to document (1) the current persisting declines of desert tortoise populations throughout the listed range; (2) the cumulative impacts of solar development in southern Nevada; (3) any mention or documentation of monitoring reports required since 2013; and (4) enhanced protections associated with the terms and conditions in the 2019 biological opinion. We assert that the BLM cannot authorize activities envisioned by the proposed action until a new environmental assessment is completed that analyzes, at a minimum, these four changed circumstances. Equally important, BLM and/or USFWS need to reconsider the appropriateness of the 2019 biological opinion to authorize events that expressly violate its terms and conditions.

We appreciate this opportunity to provide input and trust that our comments will help protect tortoises during any authorized project activities. Herein, we ask that the Desert Tortoise Council 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 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.

Regards,



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

### **Literature Cited**

Allison, L.J. and A.M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology* 13(2):433–452.