



DESERT TORTOISE COUNCIL

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Via email only

August 8, 2022

Attn: Randall Porter
Bureau of Land Management, Ridgecrest Field Office
300 South Richmond Road
Ridgecrest, California 93555
rporter@blm.gov

RE: Jokers Wild Placer Mining Project (DOI-BLM-CA-D050-2022-0007-EA)

Dear Mr. Porter,

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, and that the Bureau of Land Management (BLM) contacted us directly in an email dated July 7, 2022. Given the location of the proposed project in habitats potentially 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 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), as it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), population size fewer than 50 individuals, other factors." 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 Desert Tortoise Preserve Committee (Desert Tortoise Council 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.

Unless otherwise noted, paged numbers referenced below are taken from the undated environmental assessment (EA). Page 1 indicated that the "BLM Ridgecrest Field Office (RIFO) has received a Mining Plan of Operations (Plan) as part of the proposed Jokers Wild Placer Mining Project (project). The area of the proposed project is approximately 22 miles south of Ridgecrest, California (see Map 1 in Appendix A [of the EA]). The Plan, as submitted by John Roach and associates (hereafter referred to by the short project name, Jokers Wild), describes excavation activities on the Jokers Wild unpatented placer claim (BLM serial number CACA-58962). The site is located on land managed by BLM RIFO in San Bernardino County, California. Jokers Wild proposes to work previously-mined tailings for placer gold using a small garden tractor, screen, and portable drywasher, resulting in a total surface disturbance of approximately 0.85 acre.

"The proposed project area is within the boundaries of designated critical habitat for the Mojave Desert Tortoise (*Gopherus agassizii*) (see Map 2, Appendix A [of the EA]). Because of this overlap with critical habitat and the equipment proposed to be utilized, Jokers Wild would not qualify as casual use nor as a notice-level operation; under this circumstance, Surface Management regulations (43 CFR 3809.11(c)(6)) require an authorized Plan. This environmental assessment (EA) analyzes the potential impacts of the Plan in accordance with 43 CFR 3809.411(a)(3)(ii)."

Given that a 2017 Section 7 consultation is referenced in Table 1.1 on page 2 implying that the project may affect tortoises, it is equally important that Jokers Wild also adhere to and implement all requirements pertaining to the California Endangered Species Act (CEQA), which is not included in Table 1.1 of the EA. If there is to be take of tortoises either enroute to the site or at the site, then a 2081 incidental take permit would be required. Section 7 authorization, alone, does not adequately authorize take of tortoises, such as handling, since the tortoise is also state-listed as Threatened. As such, none of the activities in the Plan or protective measures identified in Appendix D of the EA that would result in take can be carried out or implemented until a Section 2081 incidental take permit is acquired from California Department of Fish and Wildlife (CDFW). These restrictions also relate to take of Mohave ground squirrel (*Xerospermophilus mohavensis*), which is state-listed as Threatened.

We note in the second paragraph on page 1 that the site is within designated desert tortoise critical habitat, and that the first row in Table 1.3 on page 4 states that the site is not within a BLM-designated Area of Critical Environmental Concern (ACEC). So, this one of those rare cases where the project occurs in critical habitat but outside an ACEC. Even so, although critical habitat is not specifically designated by the BLM, the project “would not qualify as casual use nor as a notice-level operation; under this circumstance, Surface Management regulations (43 CFR 3809.11(c)(6)) require an authorized Plan” as stated on page 1. Critical habitat is a “special designation area,” so it is important that impacts be minimized insofar as possible.

The second bullet on page 9 under the subtitle, *Wildlife, Threatened and Endangered, and other Special-Status Species*, states “The fencing shall be 1/2-inch mesh hardware cloth supported by steel t-posts. The fencing shall be at least 18 inches high but need not be buried. Provisions shall be made for closing off the fence at the point of vehicle entry.” This statement suggests that BLM is not implementing the latest standards for fencing (USFWS 2009), which required a 1”x2” mesh hardware cloth, 36” wide, with 12” buried and 24” aboveground, excepting places where there is bedrock, in which case the lower part of the fence can be angled and pinned to the ground. We suggest that BLM require that these latest standards be implemented instead of what is given in the EA.

We see the reason for this outdated measure is that the Biological Opinion referenced in Appendix D is dated 1992. There have been significant modifications in best management practices for protective measures since then, particularly the USFWS (2009) field manual. As given throughout this letter, none of the measures identified in Appendix D that would result in take can be implemented until which time a 2081 permit is obtained. We are very concerned that the following statement given in the Biological Opinion on page D-1 will be misconstrued by the proponent unless clarified by BLM: “Authorization for handling [tortoises] shall be granted under the auspices of this section 7 consultation.”

We are concerned the BLM is using a Biological Opinion issued in 1992 for the proposed project. The status of the tortoise has changed substantially since that Biological Opinion was issued 30 years ago. We remind BLM that re-initiation of section 7 consultation is required if “(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; (4) a new species is listed or critical habitat designated that may be affected by the action.”

We do not believe the status of the tortoise population in the project area or Western Mojave Recovery Unit was at a density less than viable (USFWS, 2015, Allison and McLuckie 2018) when the Biological Opinion was issued in 1992. Consequently, we would argue that unless BLM has already done so, BLM should reinitiate consultation with the USFWS for the proposed project and not rely on the analysis the USFWS presented in a 30-year-old Biological Opinion for the tortoise. In addition, we are not sure that the 1992 Biological Opinion analyzed the impacts to designated critical habitat as this analysis would have changed in 30 years, and critical habitat was not even designated until 1994 (USFWS 1994), two years after the Biological Opinion was issued.

The fourth bullet in the same section states, “Once the tortoise fence is erected, the area inside the fence would be surveyed for tortoises. If a tortoise is found, the BLM shall be contacted.” As given above, we believe that finding a tortoise inside the fence would also trigger the need for a Section 2081 incidental take permit from CDFW, which should be conveyed to Jokers Wild. For the same reasons, the following statement in the 6th bullet is erroneous: “Only USFWS Authorized Biologists would handle desert tortoises.” It should read, “Only USFWS- and CDFW-Authorized Biologists would handle desert tortoises.”

We request that BLM require the project proponent to comply with BLM’s (2021a) Mitigation Manual (MS-1794) and Mitigation Handbook (H-1794-1; BLM 2021b). The Mitigation Manual and Handbook provide policy and guidance on implementing mitigation to address impacts to resources from public land uses. Specifically, we request that Jokers Wild be required to mitigate for all direct and indirect impacts of the proposed project to the tortoise and tortoise habitat and effectiveness monitoring.

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: Patricia Moyer, Habitat Conservation Program Supervisor, Desert Inland Region 6

Literature Cited

- Allison L.J. and A.M. McLuckie. 2018. Population trends in Mojave desert tortoises (*Gopherus agassizii*). *Herpetological Conservation and Biology*. 2018 Aug 1;13(2):433-52.
- Berry, K.H., L.J. Allison, A.M. McLuckie, M. Vaughn, and R.W. Murphy. 2021. *Gopherus agassizii*. The IUCN Red List of Threatened Species 2021: e.T97246272A3150871. <https://dx.doi.org/10.2305/IUCN.UK.2021-2.RLTS.T97246272A3150871.en>
- [BLM] Bureau of Land Management. 2021a. Mitigation Manual (MS-1794). Bureau of Land Management, September 22, 2021. https://www.blm.gov/sites/default/files/docs/2021-10/IM2021-046_att1_0.pdf.

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[USFWS] U.S. Fish and Wildlife Service. 1994a. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.

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