



DESERT TORTOISE COUNCIL

4654 East Avenue S #257B

Palmdale, California 93552

www.deserttortoise.org

eac@deserttortoise.org

Via email only

April 2, 2020

Ms. Birgit Hoover
Bureau of Land Management, Barstow Field Office
2601 Barstow Road
Barstow, California 92311
bhoover@blm.gov

RE: Path 46 Transmission Line Clearance Project Environmental Assessment (DOI-BLM-CA-D080-2019-0032-EA)

Dear Ms. Hoover,

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 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 Bureau of Land Management (BLM).

As per the Environmental Assessment (EA) dated July 2019 (unless otherwise noted, all referenced page numbers are from this EA), the proposed action, in part, would result in "grading the ground surface of the area underneath the transmission lines at 68 work areas;" where total "acreage of grading would be approximately 7.8 acres, and total acreage of tower raising activities would be approximately 3.7 acres;" and would "also involve improvements to portions of existing access roads to be used for site access, equipment staging and storage, and distribution of excavated soils (Page 1)."

Although Page 25 states that “Segments 1, 2, 3, 4, and part of Segment 5 are located within the West Mojave Recovery Plan Area, one of several desert tortoise recovery areas established by the U.S. Fish and Wildlife Service (USFWS) (Page 6),” please note that one or more of these areas occur in *both* the Western *and* Eastern Mojave Recovery Units, so the statement is in error. Finally, Page 44 of Appendix G1 indicates that “approximately 1.29 acres will be graded within desert tortoise Critical Habitat.”

The project description indicates to us that there is a high likelihood of mortality of desert tortoises, along with significant disruption to burrow and shelter sites and normal behavior, including breeding. One of our members visited the right-of-way several years ago, and states that grading in Segment 6, in particular, will be very disruptive, but this is not reflected in the EA.

Although throughout this letter we refer to additional information that should be addressed in a “new EA,” in fact, we understand that, given the project’s complexity and likelihood of impacting tortoises and that planning for this project has occurred over the past five or six years (a sufficient period of time that supporting documentation like the tortoise survey is outdated), that an environmental impact statement (EIS), rather than an EA is appropriate for this project. So, the new information we are requesting in our letter should be addressed in a new EIS, at a minimum (see below), rather than in an EA.

Also on Page 25, we recognize reference to MM-BIO-2 as one of the prescriptive protection measures identified for the Desert Renewable Energy Conservation Plan (DRECP) in its final record of decision (BLM 2016). Please note that the California Department of Fish and Wildlife (CDFW) was not signatory to the DRECP, that with regards to take authorization of desert tortoises it is a BLM-only plan, and since the Mojave desert tortoise is also listed under the California Endangered Species Act (CESA), L.A. Department of Water and Power (LADWP) is required to obtain take authorization under CESA in addition to the Federal Endangered Species Act (FESA). Therefore, we expect that LADWP will acquire necessary CESA take authorization in the form of a project-specific 2081 Incidental Take Permit before either tortoises or occupied habitats are affected by this project.

Given the above observation, LADWP does not have the latitude to implement measures like the one given on page 35 until the CESA take permit is obtained: “LADWP shall provide a minimum of one biological monitor for each active segment of the project who is authorized by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife to handle desert tortoises.”

We note in Appendix G1 (LADWP 2016) that the biological inventory for this proposed action is dated May 2016, and that field work was conducted in 2014. Although the recent guidance from USFWS (2019) allows tortoise protocol surveys to extend beyond a year (prior to 2019, protocol surveys were valid for the period of only one year), we also note that this guidance suggests that the proponent contact the USFWS to determine if new surveys are warranted. Therefore, prior to any ground disturbance, we recommend that LADWP contact the USFWS, divulge that the most recent project surveys were conducted in April 2014 according to even older USFWS (2010) survey standards (see page 24 in Appendix G1), and determine if new surveys are not warranted. The Council believes that surveys performed six years ago are not indicative of current tortoise densities or distribution, and that new surveys should be performed prior to ground disturbance.

Page 13 of LADWP (2016) makes the following statement, “The purpose of this report is to disclose the locations of sensitive biological resources within and adjacent to the proposed work areas and to assess the potential impacts to such resources, based on focused surveys and habitat assessments.” Later on page 24 (LADWP), we read “Transects ... focused entirely on identification of desert tortoise and signs of desert tortoise (e.g., scat, track, carcasses, shells, and burrows).” The only results we could find in Appendix G1 (LADWP 2016) were on Page 39: desert tortoise “was determined to be present within the project area in Segments 2, 3, 4, and 6” and in Table 4 on Page 40 where it is revealed that signs included “potentially active burrows and a desert tortoise carcass, was [sic] observed in Segments 2, 3, 4, and 6 within the APE. Live tortoises were observed within Segment 2.” There is some discussion of tortoise findings in Segment 1, but then the report abruptly stops with no additional information. So, not only are we concerned that the data is invalid after six years, even the data that are presented are inconclusive, do not document tortoise occurrence within the Project area, and give us no opportunity to provide feedback on how tortoises may be protected along pertinent parts of the transmission line. Furthermore, each page of Appendix G1 is labeled “confidential – not for public distribution”. This footnote adds to the doubts about the validity of the results.

It is not clear why there is a discrepancy in the statement on Page 25 (LADWP 2016), which states that the “total area that will be graded or disturbed is approximately 12 acres,” whereas when totaled the sum of acres to be impacted in Table 2 (Page 25 and 26) equals 69 acres. We note that the acres of suitable tortoise habitat in Table 2 equals 12.38 acres, so perhaps this acreage pertains to the erroneous statement? We ask that this discrepancy be reported in the new EA required for this project to be valid and up to date.

The LADWP proposes to work through the avian nesting season. We note that these segments contain many active nests of common ravens. Disturbance of active bird nests is prohibited by state and federal law. On the other hand, since ravens are a known predator of hatchling and juvenile desert tortoises, the project presents an opportunity to effect raven control. We suggest that the applicant prepare a raven management plan, which could include nest removal outside the nesting season and other measures to reduce nesting success.

We question the validity of an EA that is four years old. For example, on Page 17 regarding the West Mojave Plan, we read: “The West Mojave Plan (WEMO) is a pending Habitat Conservation Plan pursuant to the FESA” and “this HCP provides a streamlined program for complying with the requirements of the California Endangered Species Act (CESA) and FESA.” Although these statements were erroneous even in 2016 [the West Mojave Plan does not serve as a habitat conservation plan (HCP)], we are concerned that the EA does not rely on the latest information relative to desert tortoise density trends in the last few years.

For example, the EA fails to document that between 2004 and 2014, desert tortoise densities in the Western Mojave Recovery Unit declined 50.7 percent, and in the Eastern Mojave Recovery Unit, the decline was 67.3 percent (Allison and McLuckie 2018). For these and other reasons given herein, the Council contends that LADWP should perform new studies, analyses, and reviews of current field conditions and available scientific information and draft an EIS that accurately reports current conditions and management, not those that were in place in 2016.

It is the Council's view that this project has a high risk of causing desert tortoise mortality. The USFWS must prepare a project-specific biological opinion and recommend ways to minimize and mitigate the impacts to the threatened desert tortoise to the maximum extent practicable. This is another reason the Council believes that an EIS should be prepared.

There is little mention in this EA of compliance with the California Environmental Quality Act (CEQA). The project does take place on private and LADWP lands, requiring CEQA review. An Environmental Impact Report (EIR) or other method of CEQA compliance for public disclosure should be provided. Ideally, a joint updated document (EIS/EIR) should be prepared.

Finally, we note that the opportunity for public review (e.g., released for public comment on March 26 with a closing date of April 3) for a 600+ page document is unreasonably short. There have been recent projects where BLM has provided for public comments over a 14-day period, which already seems extreme compared to the normal 30- or 45-day comment period, but under what authority has the public review been relegated to a nine-day comment period, particularly for such a controversial project?

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 particular project is provided to us at the contact information listed above.

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.
- U.S. Bureau of Land Management. 2016. Record of Decision for the Land Use Plan Amendment to the California Desert Conservation Plan, Bishop Resource Management Plan, and Bakersfield Resource Management Plan for the Desert Renewable Energy Conservation Plan (DRECP). Dated September 2016. Sacramento, CA.
- U.S. Fish and Wildlife Service. 2010. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.
- U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.