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Carl Symons
Paul Rodriquez
Bureau of Land Management
Ridgecrest Field Office
300 S. Richmond Road
Ridgecrest, CA 93555
Via email to: csymons@blm.gov, prodriqu@blm.gov

Re: Rand Communities Water District Water Supply Project

Dear Mr. Symons and Mr. Rodriquez;

This letter from Defenders of Wildlife (Defenders) and the Desert Tortoise Council (Council) is in response to the Environmental Assessment (EA), Finding of No Significant Impact (FONSI) and Decision Record prepared by the Bureau of Land Management (BLM) for the proposed Rand Communities Water District Water Supply Project.

Project background: The proposed project includes installing a new water production well, a water storage and blending tank, new buried 6-inch diameter water lines, a new booster pump

station, and restoration of associated surface disturbance. Proposed project activities will occur within Fremont Valley in the western Mojave Desert.

Although the EA and FONSI have been finalized, we submit the following comments:

1. **FONSI:** On page 5 of the FONSI, the following statement is made: *“Designated critical habitat does not coincide with the project...”*

However, on page 88 of the EA, the following contradictory statement is made regarding the location of the project within Critical Habitat designated for the threatened desert tortoise: *“The project site is located within the Western Mojave 2010 Recovery Unit and the Fremont Kramer critical habitat unit designated for the Mojave population of desert tortoise (Gopherus agassizii). The project site is in the extreme northwestern portion of the Fremont Kramer critical habitat unit, which is also designated as a Desert Wildlife Management Area (DWMA), which is managed by the BLM.”*

Please correct the FONSI to indicate that the project will impact critical habitat for the state and federally listed threatened Agassiz’s desert tortoise within the Fremont-Kramer Critical Habitat Unit, totaling 3.63 acres according to the EA. Please note, too, with the record of decision for the Desert Renewable Energy Conservation Plan (DRECP, BLM 2016), DWMA’s are no longer recognized in the California Desert Conservation Area (CDCA) plan area; rather, those portions of the project within critical habitat are also within the Fremont-Kramer Area of Critical Environmental Concern (ACEC).

2. **Consultation with the U.S. Fish and Wildlife Service:** Page 93 of the EA states that Endangered Species Act (ESA) Section 7 consultation with the United States Fish and Wildlife Service (USFWS) will be required.

Before the EA can be finalized and a decision record issued by the BLM, ESA Section 7 consultation with the USFWS must be completed. Please ensure this occurs, and please correspondingly post a copy of the Biological Opinion issued by the USFWS on the documents section for the project on BLM’s National Environmental Policy Act (NEPA) webpage for the project. Also, be aware that if either desert tortoise or Mohave ground squirrel (*Xerospermophilus mohavensis*) is either directly or indirectly affected by this project, a state Section 2081 incidental take permit will also be required.

3. **Disturbance Caps:** Page 1 of the FONSI indicates that the disturbance cap of 0.5% for the Western Rand Mountains ACEC has been exceeded.

There is no mention of this in the EA that the disturbance cap has been exceeded in the ACEC, including to what extent the existing disturbance exceeds the 0.5% cap. However, on page 40 of the EA is a table that indicates the Conservation Management Actions (CMAs) in the DRECP that address disturbance in the ACEC does not require analysis in the EA.

According to the DRECP amendments to the CDCA Plan, before a project can be approved, specific ground disturbance mitigation is required, and is separate from other required mitigation. The DRECP amendments also require BLM to calculate existing ground disturbance at the time an application for a proposed project is filed with BLM, and that information is to be used in a NEPA analysis for the project. Disturbance cap mitigation is required for projects at varying ratios depending on the condition of the site. For project activities located on undisturbed BLM managed land, the required disturbance mitigation is at a ratio of 3:1. However, since the proposed project will impact desert tortoise critical habitat, compensatory mitigation at a ratio of 5:1 is required, which is in addition to the disturbance cap mitigation. Please clarify if these mitigation requirements can be “nested” or if they apply separately.

Disturbance cap mitigation involving restoration is required for a project and will be considered satisfied when field verification documents the establishment of native shrubs and ecological function or that the disturbance can no longer be seen on 1:10,000 scale aerial imagery.

Please correct deficiencies in the EA regarding existing disturbance in the ACEC, the disturbance cap, disturbance cap mitigation, standards used to measure compliance with mitigation if it involves restoration of disturbance, and the need for the proponent to acquire a 2081 incidental take permit.

4. **Decision Record:** The BLM NEPA webpage for the project includes the Decision Record, an indication that BLM has approved the proposed project. However, the file containing the Decision Record can't be opened because it is identified as “corrupted.”

Please include an uncorrupted electronic file for the Decision Record to be issued on the project's NEPA webpage.

5. **Conclusion:** Defenders and the Council recommend that BLM revisit the following regarding the EA, FONSI and Decision Record issues:

- Identify and analyze the extent of impacts to desert tortoise habitat in the Fremont-Kramer Critical Habitat Unit.
- Identify how many acres of compensatory mitigation is required for impact in the Fremont-Kramer Critical Habitat Unit, and that it must be within this specific Critical Habitat Unit.
- Correct deficiencies regarding the disturbance cap including the amount of existing disturbance that is above the 0.5% cap, how many acres require restoration to satisfy the 3:1 ratio, where the restoration will occur, and how the standards for restoration will be met, including monitoring.
- Include a copy of the Biological Opinion prepared for the project issued by the USFWS on the BLM NEPA webpage for the proposed project.
- Ensure that the project proponent is aware that there are also State authorizations required if a State-listed species is affected by the proposed action.

Please contact either one of us if you have questions about our comments or wish to discuss them in detail.

Sincerely,



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