

DESERT TORTOISE COUNCIL

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Via email and BLM NEPA ePlanning portal

December 16, 2024

Stephanie Trujillo
Bureau of Land Management
Attn: Red Cliffs Warner Valley Land Exchange
345 E Riverside Dr.
St. George, UT 84790
strujill@blm.gov

Re: Red Cliffs Warner Valley Land Exchange (DOI-BLM-UT-C030-2023-0008-EA)

Dear Ms. Trujillo,

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.

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."

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.”

We appreciate that the Bureau of Land Management (BLM) contacted the Council directly via email on 11/15/2024 with the opportunity to comment on this draft environmental assessment (DEA) by 12/16/2024. Unless otherwise noted, the page numbers given herein are taken from the DEA, entitled, “Red Cliffs/Warner Valley Land Exchange Environmental Assessment (DOI-BLM-UT-C030-2023-0008-EA),” dated November 2024.

The proposed project is described on page 5 as follows: “The lands identified for exchange include a 929.14-acre Federal Parcel located within the Sand Mountain Special Recreation Management Area in Warner Valley and an 89.43-acre Non-Federal Parcel located within the Red Cliffs Desert Reserve (Reserve) and Red Cliffs National Conservation Area (NCA). The exact acreage to be exchanged will be determined by value equalization after the appraisals of the parcels are completed. The acquisition of the Non-Federal Parcel would further consolidate the federal administration of designated critical habitat for the Mojave desert tortoise (*Gopherus agassizii*), hereafter referred to as tortoise. The WCWCD [Washington County Water Conservancy District; herein “Water District”] has entered into an option agreement to acquire the Non-Federal Parcel.”

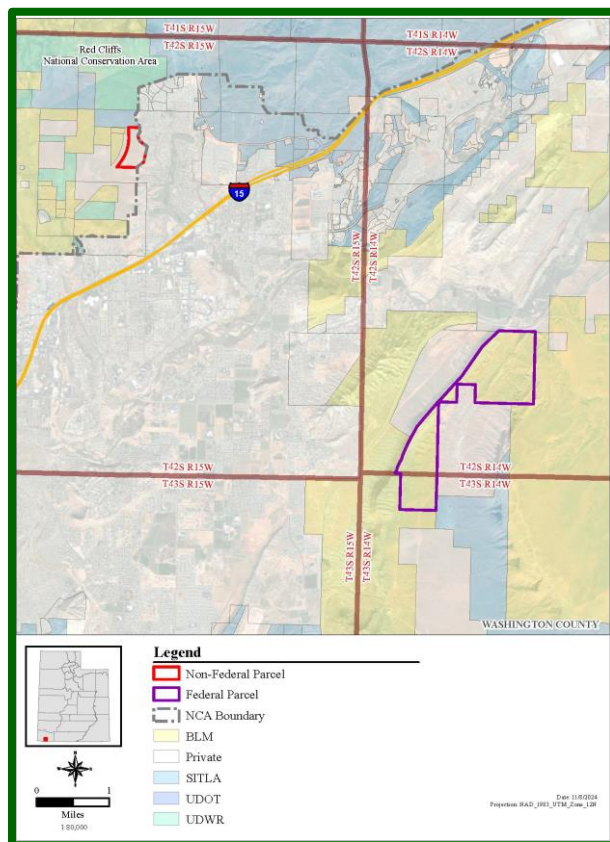


Figure 1.1. Project Area Overview Map (page 6)

Encumbrances on the non-federal parcel include a 60-foot non-exclusive access road easement with Environmental Land Technology, His Family Matters LC, and the Trust for Public Lands. The easement bisects the parcel from north to south. The easement, which has not been constructed, was created to provide ingress, egress, regress, vehicular and pedestrian traffic, and for utilities, drainage and other developmental purposes.

The federal parcel is within the Sand Mountain Special Recreation Management Area (SRMA) and just north of the Warner Ridge/Fort Pearce Area of Critical Environmental Concern. The latter is managed for listed and special status species, and other biological resource values..

Although the Council fully supports the acquisition of private parcels to consolidate conservation management within the Reserve and NCA, we note the disparity in acreage that BLM would acquire (± 89 acres) versus what the Water District would acquire from BLM (± 929 acres). The 89 acres of acquired land is a small amount of acreage and is not developable. Much of the 929 acres of land that BLM would be transferring to the Water District is developable, and from a real estate-only perspective, is likely worth much more than 89 acres of undevelopable land. This concern was expressed in the Council's scoping comments, dated 4/18/2023, which are footnoted below and herein incorporated by reference as a persisting concern¹.

As given in Table 1.2 on page 12, CFR Title 43/Chapter 2/Part 2200 "...requires that land exchanges be of equal value or equalized values based on fair market value as determined by appraisals through the United States Department of Interior Appraisal and Valuation Services Office (AVSO)." Although it should have been in the DEA, we ask that the analysis be published in the final environmental assessment (FEA). We note that there is an intrinsic, nonmonetary value associated with occurrence of the federally threatened desert tortoises on the federal lands to be exchanged that BLM should consider when it evaluates the market value as per CFR Title 43/Chapter 2/Part 2200.

In the first paragraph of Section 2.2 on page 15, we read, "The United States would acquire the *surface estate* of a single parcel 89.43 acres in size, located within the Red Cliffs NCA" (*emphasis added*). This implies that subsurface rights exist for this parcel/acreage but would not be included in the land exchange. In return, BLM is conveying "title to the surface and mineral estate of one Federal parcel totaling 1047 acres." The absence of information about who holds the subsurface rights for the 89-acre parcel, what they are, and why they would not be conveyed to BLM as part of the land exchange is worrisome. BLM should include this information in the FEA, including how pertinent rights affect the value of the lands BLM would be acquiring versus those that would be relinquished.

As given in the fourth paragraph on page 15, the acreage BLM is proposing to acquire has encumbrances on it. Authorized encumbrances on the current non-federal parcel include a 60-foot non-exclusive access road easement with Environmental Land Technology, His Family Matters LC, and the Trust for Public Lands. The easement bisects the parcel from north to south. The easement, which has not been constructed, was created to provide ingress, egress, regress, vehicular and pedestrian traffic, and for utilities, drainage and other developmental purposes. This easement will not be needed when added to the Reserve. Such easements and encumbrances should be removed before the land exchange is finalized to ensure that these lands will not be developed in the future for projects such as roads.

¹ <https://www.dropbox.com/scl/fi/k20mqmo0980ajhiuqxj1/Red-Cliffs-Warner-Valley-Land-Exchange-Scoping-4-18-2023.pdf?rlkey=3ibnrwhfsr9zqr1r4bwtqexj&dl=0>

We ask that the proposed action described on page 15 be augmented to indicate how future land management of the 89-acre non-federal parcel would differ from current management, including developmental threats, as it pertains to private lands. Although resource management plan protection is implied as described at the top of page 44, the DEA is unclear as to how this acreage would be managed. Although it is located within the boundary of the Reserve and NCA, managing it for the purposes stated in the Omnibus Public Land Management Act of 2009 should not be assumed given our concerns expressed above relative to subsurface rights and encumbrances.

If acquired, please ensure that this acreage will be managed in the future according to the purposes of the Omnibus statute, which are given as follows: “to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area; and (2) to protect each species that is— (A) located in the National Conservation Area; and (B) listed as a threatened or endangered species on the list of threatened species or the list of endangered species published under section 4(c)(1) of the Endangered Species Act of 1973 [16 U.S.C. 1533(c)(1)].”

The Council asks that a conservation easement be placed on the non-federal parcel as part of the transfer to BLM ownership. The conservation easement should be in perpetuity. It should specify the types of activities that would be allowed on the acquired acreage, (e.g., only activities that improve the habitat for the tortoise, improve the population demographics of the tortoise in the Reserve, etc.) and the types of activities that would not be allowed (e.g., no surface disturbance unless it is necessary to improve the habitat for the tortoise such as revegetation, no use of pesticides that would harm the tortoise, etc.).

The Water District has indicated in writing their plan to construct a reservoir on the 929± acres it would acquire from BLM. Consequently, these plans along with plans for nearby areas for the future should be included in the FEA because of their potential for growth-inducing impacts. According to their website (<https://www.wcwcd.gov/infrastructure/reservoirs/>), “Warner Valley Reservoir is a long-term project that has been considered by those tasked with securing water for Washington County’s growing population and economy for more than 50 years. Over the years, many versions of Warner Valley have been considered. Prior to advancing the project, technical and engineering challenges will need to be addressed as well as further analysis on potential water sources. The timing of the reservoir’s design and implementation continues to be evaluated.”

We do not believe that the four paragraphs given on pages 18 and 19 in Section 3.2 constitute a sufficiently detailed analysis of the cumulative impacts associated with foreseeable construction of the reservoir, which was one of the reasons we recommended that an environmental impact statement (EIS) was more appropriate than a DEA to fully analyze this land exchange (see scoping comments, second paragraph page 5). Nor would the BLM have any future input into how impacts of the reservoir would be analyzed after the federal lands were transferred into private ownership by the Water District.

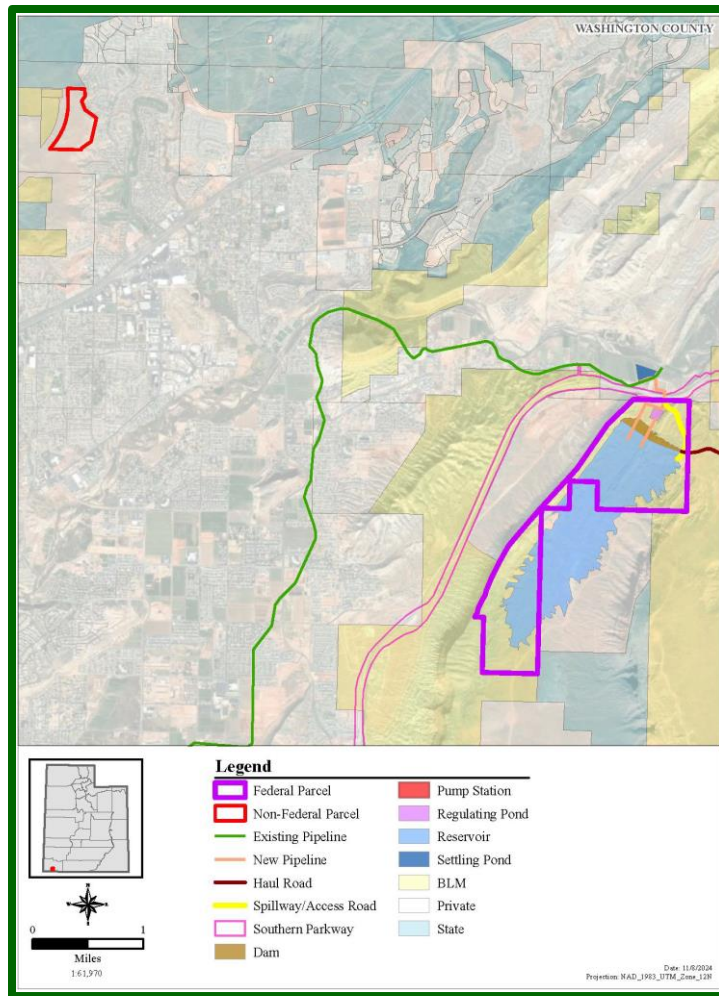


Figure 3.1. Project Area with Potential Reservoir (page 20)

Therefore, we ask that the FEA be augmented to fully analyze the direct, indirect, synergistic, cumulative, and growth inducing impacts of constructing the 742-acre reservoir on the 929±-acre parcel. Using the information given on page 42, indicate the acreage of tortoise-occupied habitats that would be lost, the number of tortoises that may be displaced, and how such tortoises will be translocated or otherwise accommodated if the reservoir is constructed. How would the new reservoir serve as a subsidy to known tortoise predators including ravens and coyotes that would not occur *but for* this land exchange? How many acres of tortoise habitats and how many tortoises occur in the proximate portions of the Warner Ridge/Fort Pearce Area of Critical Environmental Concern (ACEC) that may be adversely affected by direct and indirect impacts resulting from reservoir construction and maintenance? Given the following statement on page 64, “Placing a reservoir on the Federal Parcel would subject surrounding lands to potential flooding if a dam failure occurred,” how much habitat and how many tortoises located south of the reservoir would be affected by dam failure? These are only a few questions that the BLM should answer in the FEA.

While we are especially focused on short-term and long-term effects of the land exchange to the tortoise, which is known to occur on both parcels, we are also concerned about the impacts to other biological resources that would be subject a range of direct, indirect, and cumulative impacts. For example, the construction, operation, and maintenance of the reservoir would impact listed fish and their habitats, other special status species, migratory birds, other wildlife, and their habitats, both on and off-site. As stated above, it would result in additional human development and population growth within that portion of Washington County that would result in additional impacts to these resources. Many of the questions provided above about the impacts to the tortoise should also be addressed and analyzed in BLM's FEA for the other listed species, proposed species (please see Monarch butterfly information below), special status species, etc. When the impacts to these biological resources are fully analyzed including the construction, operation, and maintenance of the proposed reservoir, and the growth-inducing impacts, we believe that BLM will conclude that an EIS is needed.

We note the following statement published in the Federal Register on 12/12/2024: "We, the U.S. Fish and Wildlife Service (Service), propose to list the monarch butterfly (*Danaus plexippus*), the iconic orange and black butterfly, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). We propose to list the monarch butterfly as a threatened species with protective regulations under section 4(d) of the Act (a '4(d) rule')." Does this proposal affect information given in the DEA on page 43 that needs to be revised in the FEA? Has the BLM conferred with the USFWS as required in the Endangered Species Act's (ESA's) Section 7 implementing regulations for a proposed species?

We are unsure that this land exchange complies with BLM policy. The BLM's general policy, as identified in the Land Exchange Handbook (BLM 2007), is that disposal of public lands by exchange shall be considered as serving the public interest within the context of Sections 102(a) and 206(a) of the Federal Land Policy and Management Act (FLPMA). In determining public interest, the BLM must weigh the resource values and public objectives of the federal land against the non-federal land associated with the exchange. We are concerned that this public interest threshold has not been met. For example, gaining the enhanced protection of the 89.43 acres of federally protected critical desert tortoise habitat, by placing these lands under federal ownership, weighted against loss of an established and high value recreation resource and habitat for identified special status and other species on the 929.14-acres of federal lands, including the Mojave desert tortoise, are not comparable values and objectives from a public interest standpoint. In addition, the impacts of a water reservoir, the intended use of the BLM disposal lands, would have numerous direct, indirect, and cumulative impacts that far exceed the benefits of the BLM acquiring the 89.43 acres for federal protection.

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, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you notify the Desert Tortoise Council at eac@deserttortoise.org of any proposed projects that BLM may authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*, *G. flavomarginatus*) so we may comment on them to ensure BLM fully considers actions to conserve these tortoises as part of its directive to conserve biodiversity on public lands managed by 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.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

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Literature Cited

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] U.S. Bureau of Land Management. 2007. Land Exchange Handbook H-2200-1. August 20, 2007. <https://www.blm.gov/sites/blm.gov/files/H-2200-1.pdf>