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Via email and BLM NEPA ePlanning webpage

November 4, 2024

To: Matt Toedtli, Bureau of Land Management
Palm Springs – South Coast Field Office
1201 Bird Center Drive
Palm Springs, CA 92262
blm_ca_pssc_sapphire@blm.gov

Re: Sapphire Linear Facility Routes Environmental Assessment (DOI-BLM-CA-D060-2024-0003-EA)

Dear Mr. Toedtli,

The Desert Tortoise Council (DTC) 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 DTC routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

The Desert Tortoise Preserve Committee (DTPC) is a non-profit organization formed in 1974 to promote the welfare of the desert tortoise in its native wild state. DTPC members share a deep concern for the continued preservation of the species and its habitat, and are dedicated to the recovery and conservation of the desert tortoise and other rare and endangered species inhabiting the Mojave and western Sonoran deserts. The DTPC has a long track record of achieving our mission through land acquisition, preserve management, mitigation land banking, and educational outreach.

Both our physical and email addresses are shared in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to communicate electronically via emails as it is faster and environmentally friendlier than mail delivered via the U.S. Postal Service.

We appreciate that the BLM first contacted us on 12/19/2023, which enabled the DTC to provide scoping comments dated 1/22/2024 (DTC 2024), which are given in the link in the footer below¹, and contacted us again via email on 10/4/2024, which enabled Ed LaRue to attend the BLM's webinar on 10/24/2024. Unlike the previous scoping letter, this letter is coauthored with the DTPC, which owns and manages conservation lands in the Chuckwalla Area of Critical Environmental Concern (ACEC) and Chuckwalla Critical Habitat Unit (CHU) located south of the project area and enables both of our groups to express our concerns herein. Unless otherwise noted, the page numbers referenced below are taken from the BLM's Draft Environmental Assessment (DEA), dated October 4, 2024, for the Sapphire Linear Facility Routes project (LFR), and where indicated, its appendices.

As given on page 4, "This EA evaluates the environmental effects of constructing, operating, maintaining, and decommissioning one 230-kilovolt (kV) generation tie (gen-tie) line, two access roads, and one collector line route on BLM managed land in Riverside County, California (the LFR Project) (see Figure 1-1, Project Location; all figures referenced in this DEA are provided as Appendix A). The transmission line and access route would connect to and service a newly proposed solar facility on private lands (the Sapphire Solar Project)."

"The LFR Project site is in the central part of the Chuckwalla Valley in Riverside County, approximately 3 miles north of Interstate (I) 10 and in the vicinity of the community of Lake Tamarisk in Desert Center, California...The area encompassed by the LFR Project application contains approximately 41 acres of public land administered by the BLM. The 230-kV gen-tie line would run south across I-10 to connect into the existing Southern California Edison (SCE) Red Bluff Substation. The LFR Project site is within BLM's California Desert Conservation Area (CDCA) Planning Area, and within a Development Focus Area (DFA) designated by the Desert Renewable Energy Conservation Plan (DRECP) Land Use Plan Amendment (LUPA) (BLM 2016a)" (see the literature cited section in the DEA for parenthetical references.)

"There are two primary natural vegetation communities (creosote bush scrub and desert dry wash woodland) and one distinct natural habitat type (desert pavement). One vegetation community (desert dry wash woodland) is identified by the BLM and the California Department of Fish and Wildlife [CDFW] as sensitive."

¹ <https://www.dropbox.com/scl/fi/bjyvk613o9hh87ozbeds7/Sapphire-Linear-Facility-Routes-Scoping-Comments.1-22-2024.pdf?rlkey=vihkpo1km6bh2btc0zqgc5d7w&dl=0>

We note in Table 1-1 on page 11 the following paragraph: “Given the absence of a nexus to waters of the United States, the aquatic resources in the LFR Project area are not expected to be subject to federal jurisdiction pursuant to Clean Water Act Section 404 under Supreme Court precedent or current waters of the United States regulations. *Therefore, this resource topic has been eliminated from further analysis in this EA* [emphasis added].”

In the DTC’s (2024) scoping comments, we noted, “... that there are 7.8 acres of Desert Dry Wash Woodland and 32.3 acres of Ephemeral Dry Wash, however, there is no evidence that a jurisdictional waters analysis was performed. A jurisdictional waters analysis should be performed for all potential impacts to washes, streams, and drainages, including both manmade features (e.g., Artificial Wetland/Artificial Open Water/Non-Native Riparian described in Ironwood 2023). As part of the permitting process prior to ground disturbance, a Streambed Alteration Agreement must be acquired, if deemed necessary by CDFW [California Department of Fish and Wildlife].”

Although we concur that there may be no jurisdictional waters associated with Section 404 of the Clean Water Act, we believe that the BLM is remiss in not publishing the fact that there may be jurisdictional waters of the State that are protected under Section 1602 of the California Fish and Game Code, which will likely require a Streambed Alteration Agreement from the CDFW to avoid violating this code. In its assessments and authorizations, BLM should not promote actions that would result in violating State regulations without informing the proponent of that potential.

Although the DTC provided its scoping comments to the Riverside County Transportation and Land Management Agency Planning Department (County), asking them to identify the DTC as an affected interest, the County did not provide us with an opportunity to comment on the draft environmental impact report, which had a due date of 9/26/2024 according to information BLM provided during its 10/24/2024 webinar. As such, we are unsure if either the County or the BLM have adequately informed the proponent of the need to obtain pertinent permits under the CDFW administered Lake and Streambed Alteration Program².

On pages 11 through 13, Section 1.5, Tiering and Incorporation by Reference, beginning with discussions of the Desert Renewable Energy Conservation Plan (DRECP) and ending with the 2007 and 2016 Vegetation Treatments Using Herbicide on Bureau of Land Management Lands in 17 Western States PEISs, we note that the Final Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development and Proposed Resource Management Plan Amendments for 11 western states, including California, which was published in the Federal Register on 8/30/2024 is not included in this section. Although we understand that the lands within the DRECP were excluded from consideration in this most recent solar PEIS, we want to know if there are prescriptions in the related 2012 solar PEIS (BLM and DOE 2012a and 2012b), which the 2024 PEIS amended, that may still apply to the Proposed Action, and ask that the 2012 document be summarized in the final environmental assessment (FEA).

The second paragraph on page 36 that is intended to address impacts to tortoises, uses the following phrases relative to tortoises: “Mojave desert tortoises are unlikely to occur,” “predicted occupancy at this site is now low,” “impacts are expected to have further reduced the probability of desert tortoise occurrence,” “desert tortoise surveys performed for the LFR Project detected no live

² See <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

tortoises or active sign, consistent with the Solar Project site’s location within a DRECP No Survey zone (no pre-project or clearance surveys required due to known low densities),” but fails to note that two desert tortoise carcasses were found (although they are reported on page 4 in Appendix G). As stated on page 42, although “Any incidental destruction of eggs and juvenile tortoises during construction would not be expected to have a substantial effect on the stability of the overall desert tortoise population in the Colorado Desert Recovery Unit,” those actions would constitute unlawful take unless both State and federal incidental take authorizations have been granted.

According to BLM’s Analysis of Connected Actions under the National Environmental Policy Act (NEPA) – PIM 2018-023 (BLM 2018), the NEPA process is focused on agency decision-making (40 CFR 1500.1(c), 40 CFR 1508.18, 40 CFR 1508.23). Therefore, a non-Federal action, even if closely related to a proposed BLM action, will not be a connected action pursuant to the Council on Environmental Quality regulations, because connected actions are limited to Federal actions. Rather, if the non-Federal action or its effects can be prevented or modified by BLM decision-making, then the effects of the non-Federal action are properly considered indirect effects of the BLM action and must be analyzed as effects of the BLM action (40 CFR 1508.7, 40 CFR 1508.25(c)) (see section 6.8.2, Direct and Indirect Effects). Effects of the non-Federal action that cannot be prevented or modified by BLM decision-making may still need to be analyzed in the cumulative effects analysis for the BLM action, if they have a cumulative effect together with the effects of the BLM action.

It is our understanding that the LFR must be approved and implemented for the proposed solar facility on private lands, the 1,082-acre Sapphire Solar Project, to deliver electricity to the grid and customers. Therefore, the LFR and the Sapphire Solar project are “interdependent parts” and both should be analyzed as indirect impacts and cumulative impacts in BLM’s NEPA document. Please be sure this analysis is included in the FEA.

In addition, the DTC and DTPC contend that the BLM should analyze these impacts of the interdependent parts in the biological assessment for the tortoise, and that BLM would also be responsible for any take of tortoises that may occur on any portion of the project, including the private lands.

We contend that the presence of tortoise carcasses indicates potential for living tortoises to occur, as stated on page 5 in our scoping comments, “These findings prompt us to inform the BLM that the CDFW has deemed habitats to be suitable and potentially occupied when carcasses are the only evidence of tortoises that are found within a project area (Becky Jones, CDFW retired biologist, personal communication). These findings also suggest that tortoises or their sign are likely to be found in adjacent areas because the carcasses found in fallow agricultural fields, even if they are more than four years old, are evidence that local habitats recently supported tortoises and still may.” Table 1 on page 4 indicates that the project “may affect” desert tortoises, which we interpret to mean that the BLM concurs there may be impacts to live tortoises.

We note on page 4 of Appendix G that whereas consultation has been initiated with the U.S. Fish and Wildlife Service (USFWS), there is no indication that CDFW has been consulted, and CDFW is not listed on page 75, Section 4.0, Consultation and Coordination. The second full paragraph on page 17 of Appendix G states, “Then BLM will submit those credentials [of prospective

Authorized Biologists] to the USFWS for review and approval at least 30 days prior to the need for the biologist to perform those activities in the field [i.e., moving desert tortoises out of harm's way]. The USFWS will provide approvals based on appropriate qualifications and experience to avoid and minimize adverse effects to the species." We note that CDFW is listed as a "relevant permitting agency" in the Biological Assessment in Appendix G on page 17, but there is no mention of their mandatory permitting authority for take, including handling of tortoises, in the DEA, which should be clarified in the FEA.

As stated above, the BLM should not grant authorizations that would result in violating State regulations, and in particular the California Endangered Species Act (CESA), which would occur if a USFWS-approved biologist handled tortoises without analogous CDFW authorization. Therefore, the BLM must ensure that federally-authorized biologists are also authorized under Section 2081 of the CESA before handling any tortoises. Unless there are both State and federal take authorizations, statements such as those that follow are erroneous: (page 43): "...potential major impacts would be avoided, minimized, or mitigated by implementing the CMAs (summarized in Appendix J), reducing the potential for desert tortoise mortality or injury" and (page 56) "MM BIO-4 (Minimization of Impacts to Wildlife) includes a condition to inspect structures prior to demolition and remove wildlife," e.g., desert tortoises.

The second sentence in the following quote from page 43 should NOT be reprinted in the FEA: "Indirect effects may include increased predation from ravens, coyotes, pet or feral dogs, and other predators. *However, these tortoise predators may avoid predation of tortoises in favor of other food sources, such as trash and roadkill present on site during the construction phase* [emphasis added]." MM BIO-4 described at the bottom of page 20 states, "No deliberate feeding of wildlife shall be allowed. Further, to avoid indeliberate feeding of wildlife, all food-related trash items, including wrappers, cans, bottles, and food scraps (organic waste) shall always be contained and properly disposed of in self-closing, sealable containers, with lids that latch to prevent wind and wildlife (e.g., ravens and coyotes) from opening the containers." As written, the statement on page 43 implies that ravens will not depredate tortoises because "other food sources, such as trash and roadkill [will be] present during the construction phase," which is contrary to the intent of MM BIO-4. Please correct this information and analysis in the FEA.

Cumulative Effects

The Council for Environmental Quality (CEQ) (1997) states "Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." The analysis "must describe the response of the resource to this environmental change." Cumulative impact analysis should "address the sustainability of [emphasis added] resources, ecosystems, and human communities."

The CEQ provides eight principles of cumulative impacts analysis (CEQ 1997, Table 1-2). These are:

1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis needs to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resource, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of the resource.

Note that CEQ recognizes that synergistic and interactive impacts as well as cumulative impacts should be analyzed in environmental assessments and environmental impact statements for the resource issues.

On page 19 of the DEA under Cumulative Scenario, BLM describes the geographic scope for Biological Resources as the "Desert portion of Riverside County (Palm Springs to the Colorado River)." For the tortoise, this geographic scope severs two identified populations of the tortoise, the Chuckwalla population and the Joshua Tree population. Like many species, the population occurrences of the tortoise do not follow political boundaries such as the boundary of Riverside County that BLM selected. Please see CEQ's #5 above.

Because the tortoise is a federally and State listed species, the DTC and DTTPC assert that BLM should expand the geographic area for cumulative impacts analysis for the tortoise in the FEA to include the entire Chuckwalla population for the tortoise, which is the population that occurs where the LFR and interconnected Sapphire Solar Project are proposed. Selecting this geographic scope would follow CEQ's guidance for considering cumulative effects.

In addition, the DTC and DTTPC request that BLM demonstrate that it has followed all eight of CEQ's principles with respect to cumulative effects analysis of the tortoise in the FEA with an emphasis on #6, #7, and #8.

BLM should provide for both the LFR and the Sapphire Solar Project a cumulative impacts analysis of the impacts to desert tortoises and tortoise habitat and how these impacts would affect the survival of the Mojave desert tortoise at a population, recovery unit, or species level. The DTC and DTTPC urge BLM to conduct this analysis given the densities of the Mojave desert tortoise populations of less than the minimum density for a viable population (USFWS 1994, Allison and McLuckie 2018) for the Chuckwalla population, four of seven populations in the Colorado Desert Recovery Unit, and 10 of 17 populations throughout the range of the species. This type of analysis is required in all environmental assessments and environmental impact statements.

Although the two projects would be located outside of the Chuckwalla population for the tortoise, the LFR is less than 0.66 mi from this population. In the DEA we did not find the analysis part of the cumulative impact analysis for impacts to desert tortoises (e.g., increased subsidies for tortoise predators such as common raven and coyote; decreased occurrence of native herbaceous vegetation needed by tortoises for adequate nutrition for survival, reproduction, and growth, etc.), and how these impacts would affect the survival of the Mojave desert tortoise at the Chuckwalla population, the Colorado Desert recovery unit, or the species level. We urge BLM to conduct this analysis given the densities of the Mojave desert tortoise population are less than the thresholds for viable populations for the Chuckwalla population [e.g., last reported as 2.6 adult tortoises per km² (USFWS 2022)], four of seven populations in the Colorado Desert Recovery Unit, and 10 of 17 populations throughout the range of the species. Please add this analysis to the FEA.

On page 42, BLM provides the following information, “Overall, adverse effects to desert tortoise would be avoided, minimized, or mitigated by implementing the CMAs [Conservation Management Actions] regarding vegetation and wildlife protection, desert tortoise protection, and compensation for loss of potential habitat.” Following the revised analysis of the cumulative impacts from the construction, operations and maintenance, and decommissioning of the LFR and Sapphire Solar Project to the tortoise, tortoise habitat, and connectivity of tortoise populations (Averill-Murray et al. 2021, CEQ 2023), we request that BLM demonstrate how it will mitigate for the lost functions and values described in this analysis from the implementation of the LFR and Sapphire Solar Project. This includes complying with BLM’s Manual Section (MS-1794) and Handbook (H-1794-1) on Mitigation (BLM 2021a, b. c).

We request that the EIS be revised to (1) include CEQ’s eight principles in BLM’s analysis of cumulative impacts to the Mojave desert tortoise; (2) ensure that synergistic and interactive impacts from the LFR and Sapphire Project are included in this analysis; (3) address the sustainability of the tortoise in/near the project area including the Chuckwalla population/Tortoise Conservation Area, the Colorado Desert Recovery Unit, and the species; and (4) include effective science-based mitigation, monitoring, and adaptive management that protect desert tortoises and their habitats during BLM’s management of the public lands on which it would grant a ROW.

In addition, we request that BLM add this project and its impacts to a BLM database and geospatial tracking system for special status species, including Mojave desert tortoises, that track cumulative impacts (e.g., surface disturbance, paved and unpaved routes, linear projects, invasive species occurrence, herbicide /pesticide use, wildfires, etc.), management decisions, and effectiveness of mitigation for each project. Without such a tracking system, BLM is unable to analyze cumulative impacts to special status species (e.g., desert tortoises) with any degree of confidence.

The following information is provided on page 53 of the DEA, “The incremental contribution of the LRF Project to the cumulative impacts to burrowing owls, including habitat loss, construction-related mortality, or collision mortality, would not be considerable with implementation of various MMs and other measures; native habitat loss would be offset, no take of individuals is expected during construction, and the prospect of potential collision as described above for native birds is insubstantial.” Since the DEA is dated 10/4/2024, the authors were not then aware that the western burrowing owl occurring in this area was designated as a Candidate Species for Listing with the California Fish and Game Commission on 10/9/2024.

“The Commission unanimously approved naming the western burrowing owl (*Athene cunicularia hypugaea*) as a candidate for potential listing as a protected species under the California Endangered Species Act. Threats facing burrowing owls in California are direct mortality and permanent habitat loss caused by urbanization and reduction or elimination of their primary burrow excavators — ground squirrels — from grazing and agricultural lands. The Department [CDFW] will undertake a one-year review of the species’ status before the Commission is expected to make a final decision on listing. *As a candidate for potential listing, the species is temporarily afforded the same protections as a state-listed endangered or threatened species*³ [emphasis added]. The FEA must assess how this decision would affect project development, and protection and mitigation for western burrowing owl.

³ <https://wildlife.ca.gov/News/Archive/fish-and-game-commission-western-burrowing-owl-becomes-cesa-candidate-wildlife-prosecutor-of-the-year-named-waterfowlers-hall-of-fame-inductees-recognized>

We appreciate this opportunity to provide the above comments and trust they will help protect the desert tortoise during any resulting authorized activities. Herein, we reiterate that the DTC and DTPC want to be identified as Affected Interests 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. Additionally, we request that you notify the DTC (eac@deserttortoise.org) and DTPC (roger.dale@tortoise-tracks.org) of any future proposed projects that BLM may authorize, fund, or carry out in the range of the desert tortoise in California.

Please acknowledge in an email that you 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



Roger Dale
Desert Tortoise Preserve Committee, President

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