



DESERT TORTOISE COUNCIL

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Via email only

November 20, 2025

Ms. Sabrina Bice
Bureau of Land Management Needles Field Office
1303 US-95
Needles, CA 92363
sbice@blm.gov

RE: Shadow Valley Well Modification Categorical Exclusion (DOI-BLM-CA-D090-2025-0028-CX)

Dear Ms. Bice,

The Desert Tortoise Council (Council) is a non-profit organization comprising 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 northern 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."

We appreciate this opportunity to provide comments on the above-referenced project. Given the location of the proposed project in habitats potentially occupied by the Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments include recommendations intended to enhance protection of this species and its habitat during activities that may be authorized by the Bureau of Land Management (BLM), which we recommend be added to project terms and conditions in the authorizing documents [e.g., issuance of right-of-way (ROW) grants, management plan and decision document, etc.] as appropriate. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed action.

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."

This status, in part, prompted the Council to join Defenders of Wildlife and the Desert Tortoise Preserve Committee (DTPC) to petition the California Fish and Game Commission (Commission) in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered under the California Endangered Species Act (CESA) (Defenders of Wildlife et al. 2020). Importantly, following California Department of Fish and Wildlife's (CDFW) (2024a) status review, in their April 2024 meeting the California Fish and Game Commission voted unanimously to accept the CDFW's petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the CESA based on the scientific data provided on the species' status, declining trend, numerous threats, and lack of effective recovery implementation and land management (CDFW 2024b). On July 15, 2025, the tortoise was officially uplisted to endangered status under the CESA (Commission 2025).

Despite a primary written request dated 11/7/2019¹ and numerous additional written requests of the BLM to identify the Council as an Affected Interest for proposed projects that may affect the tortoise, on 10/30/2025 it was a third party, not the BLM, that alerted the Council to this opportunity to comment on the above-referenced project. Please ensure that the Council is notified of this and all other proposed projects that may affect the tortoise. Notification should be made via our email address provided in our letterhead above.

Unless otherwise noted, referenced page numbers are from the eight-page, undated categorical exclusion (DOI-BLM-CA-D090-2025-0028-CE) for the Shadow Valley Well System Modification (CE), which we understand was released to the public on 10/20/2025.

On page 1 BLM says that "This Categorical Exclusion (CE) analyzes the potential impacts of the proposed pipeline segment that would cross BLM-managed land to connect with the existing SVWS infrastructure. Refer to Attachment 2 for additional details." We were unable to locate Attachment 2, which according to the three attachments listed at the end of the CE is an attachment of the Shadow Valley Well System Maps. Also missing was Attachment 1, Shadow Valley Well System Operation and Maintenance Plan Modification, and Attachment 3, Conditions of Approval. We request that BLM provide these attachments to the public as they are integral parts of the CE.

¹ <https://www.dropbox.com/scl/fi/jmsj2ex2qd3ck6qfxg9wm/BLM-CDCA-District-Manager-DTC-as-an-Affected-Interest.11-7-2019.pdf?rlkey=jm6hvrkysm36lnirxjoh9vrdg&dl=0>
Desert Tortoise Council/Comments/Shadow Valley Well Modification CE.11-20-2025

Page 1 describes the proposed project as follows: “MP Materials, operator [=Proponent] of the Mountain Pass Mine [Mine], submitted a proposal to construct a water pipeline connecting a new water well located on private land, to their existing water pipeline as part of their Shadow Valley Water System (SVWS). The Bureau of Land Management (BLM), Needles Field Office, is the leading [*sic*] federal agency responsible for the NEPA analysis and decision-making regarding this proposed action. MP Materials is responsible for implementing the project and complying with all applicable federal, state, and local regulations and stipulations.

“MP Materials is proposing an amendment to its existing Mine Plan of Operations (CACA 056118) to construct and operate a new water production well, designated SVW-6, and to install approximately 1,750 feet of underground pipeline to convey water from the new well to the existing Shadow Valley Well System (SVWS) pipeline. The proposed well, SVW-6, is located on private land owned by MP Materials [Proponent]. This Categorical Exclusion (CE) analyzes the potential impacts of the proposed pipeline segment that would cross BLM-managed land to connect with the existing SVWS infrastructure.”

“The pipeline will be installed using HDD [horizontal directional drilling] along a 1,750-foot underground route with minimal surface disturbance. Five small pits, each about 10 by 10 feet, will be dug along the path, and a 50-foot-wide buffer zone around the pipeline will allow equipment to move safely during construction. The drill rig will create a pilot hole by steering a drill bit underground, using a bentonite slurry drilling fluid to keep the hole stable and clear. The pipeline, made of prefabricated HDPE pipe sections fused together beforehand, will be pulled through the hole using special equipment to avoid twisting. When the pipe reaches the end of the bore, that spot becomes the new starting point, and a new pit is dug to continue the process until the entire length is installed. After the pipeline is in place and connected, all pits will be filled back in and the area restored. Other than the pits and some vehicle traffic within the buffer, no additional land disturbance is expected.”

We contend that the CE fails to provide a balanced view of how the Desert Renewable Energy Conservation Plan (DRECP) affects construction of the project. On page 2, the CE justifies the project with the following provisions that are limited solely to mineral development:

“• The lands within the DRECP contain a vast array of minerals that are vital to the local and national economy. Precious metals such as gold and silver abound in many areas, while Rare Earth Elements, critical components to an ever-expanding electronic world, are found principally in just one small area near Mountain Pass. In this light, it is important that we have access to these resources for now and future generations to come.”

“• The DRECP LUPA [Land Use Plan Amendments] adds the following goals and objectives:

“1. Support the national need for a reliable and sustainable domestic mineral and energy supply.”

“2. Support responsible mining and energy development operations necessary for California’s infrastructure, commerce and economic well-being.”

However, in the CE BLM fails to reveal that the DRECP (BLM 2016) requires implementation of Key Conservation Measures. These include management actions and compensatory mitigation:

Management actions: The DRECP includes specific Conservation Management Actions (CMAs) to guide activities within designated areas. These CMAs can include:

- Restrictions on the use of herbicides and pesticides near water sources and in sensitive habitats.
- Limitations on activities that could harm the tortoise or their habitat.
- Biological monitoring during project development to ensure that conservation measures are implemented effectively.

Among these CMAs, we do not see any provisions in the CE for pipeline construction or restoration following construction to be monitored by biologists authorized by USFWS and CDFW. The Proponent should commit to implementing current CMAs for projects constructed in desert tortoise critical habitat by having authorized biologists monitoring all construction and applicable restoration activities.

Equally important, the CE fails to acknowledge that the DRECP requires compensation for lost habitat in tortoise critical habitat, which is at a ratio of 5:1, where five acres are replaced for each acre either permanently or temporarily lost.

Compensatory mitigation: When temporary or permanent impacts to habitat are unavoidable, compensatory mitigation is required at a permanent ratio to help compensate for the slow recovery time of desert ecosystems.

Please ensure that these and all applicable Key Conservation Measures and CMAs from the DRECP are added to the NEPA compliance document with respect to the tortoise, tortoise habitat, and special status species.

Page 2 indicates, “Environmental protection measures have been established to minimize impacts. These include dust suppression, spill response, and revegetation plans. As the area is within the Ivanpah Area of Critical Environmental Concern (ACEC), biological surveys including desert tortoise surveys were conducted in 2015 confirming that no desert tortoise were found within the area of potential effect.”

Although provision E(g)(iv) on page 6 indicates that “A qualified biologist will conduct a pre-construction survey for desert tortoise and sensitive plant species,” the available information states that the only tortoise survey performed to date was more than 10 years ago in 2015. There have been two U.S. Fish and Wildlife Service survey protocol revisions since 2015 (USFWS 2018, 2019), the first of which says that the findings of a tortoise survey are valid for only one year, and the second one that says a proponent should contact the USFWS after one year following a survey to see if the results are still valid. Given a tortoise’s mobility, especially in the spring of a wet year, it is inappropriate for the BLM to determine that there are no significant impacts based on a single survey more than 10 years ago. Whereas we support preconstruction surveys in tortoise habitats, a new tortoise protocol presence-absence survey following current standards (USFWS 2019) should have been performed by biologists deemed qualified by USFWS and CDFW to complete an informed CE and to determine if reinitiation of formal consultation with the USFWS is warranted to see if the two biological opinions need to be revised.

BLM states that the categorical exclusion applied to the project is “Grants of rights -of-way wholly within existing corridors and land use authorizations for the construction, operation, and maintenance of minor linear transportation, communication, or utility infrastructure (e.g., roads, trails, pipelines, cables, and powerlines, etc.).”

In reviewing the new list of categorical exclusions (516 Department of the Interior Manual 11, dated January 16, 2025) we were unable to find the specific categorical exclusion that BLM references in the CE. Instead, we found “Grants of right-of-way wholly within the boundaries of other compatibly developed rights-of-way” (E.12). We question whether the location of the proposed pipeline is within the boundaries of other compatibly developed right-of-way, because we were unable to find information in the CE that another ROW has been granted by BLM for this location.

In addition, we request that BLM demonstrate that it has complied fully with the requirement that “As proposed actions are designed and then reviewed against the CX [categorical exclusion] list, proposed actions or activities must be, at a minimum, consistent with DOI and BLM regulations, manuals, handbooks, policies, and applicable land use plans regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations” (516 DM 11, page 7). We request that BLM demonstrate how this proposed project is, “at a minimum, consistent with DOI and BLM regulations, manuals, handbooks, policies, and applicable land use plans regarding design features, best management practices, terms and conditions, conditions of approval, and stipulations.” Please see our comments above with respect to the requirements in the DRECP. In addition, we request that BLM show how the implementation of the proposed project is consistent with BLM regulations, manuals, and handbooks including:

- Bureau of Land Management. 2008. H-1790-1 – National Environmental Policy Act Handbook.
- Bureau of Land Management. 2015. Advancing Science in the BLM: An Implementation Strategy IB 2015-040.
- Bureau of Land Management 2022. Habitat Connectivity on Public Lands Instruction Memorandum 2023-005.
- Bureau of Land Management. 2024. Special Status Species Management – Manual 6840. Washington, D.C. September 9, 2024.

Categorical exclusions and extraordinary circumstances: Under 43 Code of Federal Regulations (CFR) 46.215 “Categorical exclusions: Extraordinary circumstances. Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.” “Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215; if it does, further analysis and environmental documents must be prepared for the action.”

The Council contends that more than one extraordinary circumstance likely applies to the proposed project:

- (b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness

areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.”

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

Regarding extraordinary circumstance (b), the proposed project appears to be located in designated critical habitat for the tortoise which the Council considers to be an ecologically significant area. Consequently, this circumstance should be analyzed in the CE. BLM’s provides the following rationale on page 4 that “The proposed action resides within the Ivanpah ACEC, however impacts to the ACEC will be minimal” because “only” 2.2 acres would be affected. Under NEPA, impacts also include indirect, cumulative, and synergistic impacts.

The Council contends that impacts to the tortoise should not be identified and analyzed solely by reporting the quantity of acres directly impacted from implementation of the proposed project. We found no information in BLM’s CE that showed that an analysis of the quality or configuration of the remaining tortoise habitat in this critical habitat unit would be adequate to support the survival and recovery of the tortoise. According to the USFWS (2015), the tortoise population in this critical habitat unit declined 56 percent between 2004 and 2014 and continues to decline (USFWS 2022). The latest density estimates for adult tortoises in the Ivanpah Tortoise Conservation Area (TCA)/critical habitat unit is 1.8 tortoise per km². The minimum density for population viability is 3.9 adult tortoise per km² (USFWS 1994). Thus, the most recent information on tortoise density for this critical habitat unit is that tortoise density continues to decline, and is less than half the density needed for population viability and the density has been below the population viability threshold for more than a decade. The data point to habitat degradation for this decline.

Livestock grazing, ranching, and other surface-disturbing activities have caused profound and widespread changes to the distribution and composition of annual and perennial vegetation once typical of the Mojave Desert (Minnich 2008, Berry et al. 2014). The invasion, establishment, and proliferation of nonnative annual grasses, facilitated by surface disturbance caused by human activities and vehicle access (Brooks and Berry 2006) have severely altered the biomass and composition of the native annual flora (Berry et al. 2014). These annuals have altered the foods available to the tortoise, are not preferred foods of the tortoise, and are detrimental in diets of juvenile and adult tortoises because of their low nutritional and water contents (Drake et al. 2016). They have replaced native annual and perennial forbs that are high in nitrogen, other nutrients, and water that the tortoise needs for survival, reproduction, and growth, especially for hatchling and juvenile tortoises (Berry et al. 2023).

In the Mojave Desert in the CDCA, only tortoise population has densities that are above the threshold for population viability is the tortoise population in the Desert Tortoise Research Natural Area. This area is managed such that impacts from human development and surface disturbance

are not allowed. Best (2023) reported that “higher Mojave desert tortoise densities are, in general, consistent with higher habitat quality,” and that human disturbance is an important factor affecting “the distribution and densities of tortoises.” Consequently, additional projects or actions that adversely impact tortoise habitat, no matter how small the footprint, contribute to this continuing decline in tortoise density and numbers below a level that the tortoise needs to survive and recover, and contribute to the ongoing degradation in habitat quality for the tortoise.

Regarding extraordinary circumstance (h), the information we provided above for extraordinary circumstance (b) on impacts to the tortoise and its designated critical habitat apply. The significance of the impacts from the proposed project should be analyzed so it includes all direct, indirect, cumulative, and synergistic impacts to the tortoise regarding its survival and recovery.

Regarding extraordinary circumstance (f), we were unable to find in the CE the reason(s) the Mine needs an additional source of water for its existing operations. Absent this information, we conclude that the Mine has plans to expand its operations. While the construction of the pipeline to convey water may appear to have an insignificant impact on the environment, the expansion of the Mine may have a significant impact on the environment.

In addition, the current operation of the Mine may have a significant impact on BLM lands/resources and BLM is unaware of it because it is not conducting appropriate monitoring. The production of wastes and dust generated from past and proposed mining operations have the potential to unearth heavy metals (e.g., arsenic and lead, etc.) that sometimes occur with other element deposits and release them into the environment. These heavy metals are then transported in the environment through wind and water movements, sometimes several miles (Chaffee and Berry 2006). Wind-transported heavy metals can be inhaled or ingested directly by tortoises because of their geophagous behavior, or ingested indirectly as windborne dust containing heavy metals is deposited on plants (Chaffee and Berry 2006) eaten by tortoises. Water-transported heavy metals can be transported several miles down washes (Kim et al. 2012). Tortoises with elevated arsenic levels became ill (Seltzer and Berry 2005).

If BLM has not already done so, it should test the dust and wastes generated from the existing operations of the Mine that are deposited on BLM lands and tortoise habitat by wind and surface water, determine their chemical composition, and if they contain heavy metals or other elements/compounds that are considered toxic to the environment, notify the Mine of their contamination of BLM lands and need to remediate the contamination.

Regarding extraordinary circumstance (i), we assert that BLM has not provided information that the proposed well on private land has been authorized under California water law, California State Water Resources Control Board and Lahontan Regional Water Quality Control Board requirements, and County requirements, and that the construction, use, and maintenance of the well and water would not violate CESA. Our assertion is supported by BLM’s statement on page 1 that “MP Materials is responsible for implementing the project and complying with all applicable federal, state, and local regulations and stipulations.” This statement by BLM can be interpreted to mean that BLM does not have information to determine whether MP Materials has complied with all applicable federal, state, and local regulations and stipulations. Failure to comply with all applicable regulations and stipulations would prohibit the use of a categorical exclusion to analyze the impacts of the project under NEPA. If BLM cannot eliminate this extraordinary circumstance then BLM should not authorize this project under a categorical exclusion.

For example, if the project proponent needs to obtain a permit from San Bernardino County, or obtain authorization under California Fish and Game Code (i.e., obtain a section 2081 incidental take permit or a section 1600 streambed alteration agreement prior to accessing, drilling, and operating the well) and did not complete these required processes, the proponent's completed activities would not comply with State or local requirements and would be an extraordinary circumstance for which a categorical exclusion would not be the appropriate NEPA document. BLM should provide information in the NEPA document that the construction, use, and maintenance of the well does not violate State or local requirements – in other words, that it is an otherwise lawful activity.

For the above reasons, we conclude that a categorical exclusion is inappropriate for the proposed project, and that BLM should prepare a draft environmental assessment that analyzes all impacts to the tortoise and its habitat as well as other special status species and their habitats.

BLM is required to avoid or minimize the adverse impacts to critical habitat, which includes and surrounds the proposed project, and take of tortoises. Even if “impacts to the ACEC will be minimal,” it is impacts to an individual tortoise that would be significant and in violation of the Federal Endangered Species Act (FESA) unless appropriate authorization is acquired. Given their heightened mobility in the spring and fall, the lack of any recent protocol surveys to ascertain their use of the project area, the apparent lack of analysis to determine the importance of the project area for connectivity within the Ivanpah population in this critical habitat unit, and that the project will “take approximately 12 weeks, following a 10-day work schedule with up to 12 hours of work per day” (page 2), it is possible if not likely that a tortoise may be encountered and unduly harmed, captured, injured, or killed by activities associated with the proposed project.

If possible, we recommend that once appropriate authorizations have been obtained, the project should be constructed between mid-November and mid-February or in July and August when tortoise activity is typically limited and with authorized biologist(s) present to monitor the presence of tortoises in the project area as described for conducting tortoise clearance surveys (USFWS 2009).

On page 1 of the CE, BLM says, “MP Materials is proposing an amendment to its existing Mine Plan of Operations (CACA 056118) to construct and operate a new water production well.” This statement in the CE suggests that the new water well is a connected action to the proposed pipeline if a Mine Plan of Operation for BLM is being amended and must be approved by BLM. If so, these connected actions cannot be separated and should be analyzed together in one NEPA document (BLM 2008). Consequently, the categorical exclusion that BLM selected for the construction of the pipeline does not apply to well construction, operation, and maintenance. If the proposed well is not considered a Federal action, its impacts should be analyzed as an indirect impact. The effects of non-Federal actions may be indirect effects of the BLM proposed action if the other action and its effects can be prevented or modified by BLM decision-making on the proposed action (e.g., BLM may deny granting the ROW). If the effects of well location, construction, operation, and maintenance are properly considered an indirect effect of the BLM proposed action, the effects of the well “must be counted towards the significance of the BLM proposed action” (BLM 2018). BLM should incorporate this information into the analysis of the entire proposed project (either a connected action or an indirect impact) when analyzing the entire project.

In addition, we found no mention in the CE of the impacts from the maintenance, monitoring, and revegetation/reclamation of the proposed pipeline and the operation and maintenance of the well. These actions and their impacts should have been analyzed with the construction impacts to determine the appropriate compliance needed for NEPA if BLM is complying with its NEPA Handbook (BLM 2008). Please revise the analysis of impacts from the implementation of all phases of the proposed project, provide that analysis, and then determine the appropriate NEPA compliance to implement.

At the bottom of page 4 in the section on Extraordinary Circumstance, the following statements are made for category (c), “Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks” that “The proposed action would occur on undeveloped land totaling approximately 2.2 acres of potential disturbance. No significant effects will occur because the disturbances of the proposed action will be kept to a minimum with measures taken to protect vegetation, wildlife, and cultural resources.” As stated above, a CE should not be issued if it results in impacts that would violate other laws that are intended to protect threatened and endangered species. We have seen projects of less than an acre adversely affect tortoises and projects with a small footprint have a significant impact on tortoises/tortoise habitat. Concluding that there will be no significant effect because the affected area of direct impacts is small and minimization measures would be implemented is misleading. All adverse impacts, regardless of size, must be authorized, and minimization measures that may include moving tortoises out of harm’s way cannot be implemented without both federal and State authorization under FESA and CESA.

In addition, our understanding is that when analyzing the impacts of a proposed project to determine whether a categorical exclusion is appropriate, the proposed mitigation is not considered. In other words, the impacts of the proposed project without mitigation must be minimal so they meet the requirements of a categorical exclusion. This is because NEPA does not require that mitigation be implemented. Otherwise, a major proposed project with significant impacts could include mitigation that would eliminate most of the impacts and be covered by a categorical exclusion.

With regards to the following statements on Page 5, “(e) Have a direct relationship to other actions that implicate potentially significant environmental effects. Rationale: The proposed action will not be related to other reasonably foreseeable actions likely to result in any cumulative effects because no new surface facilities will need to be constructed. Ground disturbing activities within pipeline footprints will be reclaimed.” We note on page 1 that the project would “...support current operations by improving the existing water infrastructure necessary for ongoing mining, reclamation, and environmental compliance activities.” Given this information, even though the project may not result directly in significant impacts, the proposed project is necessary for other mining activities to occur that “may affect” tortoises, so it is a connected action/indirect impact that would facilitate more impactful activities to the tortoise/tortoise habitat.

On page 6 of the CE BLM says there are two existing biological opinions governing mine-related activities. Which biological opinion applies to this project? We note that the two biological opinions were issued in 1990 and 1998. Section 7 regulations found at 50 CFR 402.16 “Reinitiation of consultation” list four general conditions for when a federal agency should reinitiate formal consultation:

- (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; or
- (4) a new species is listed or critical habitat designated that may be affected by the action.

The 1990 biological opinion would not have analyzed impacts to critical habitat because critical habitat for the tortoise was not designated until 1994. Thus, the 1990 biological opinion cannot be applied to this project. Did the 1998 biological opinion analyze the impacts to the tortoise/critical habitat including the direct, indirect, and cumulative impacts that would occur from the construction, operation, maintenance, and reclamation/revegetation of a new well site and a 1,750-foot-long pipeline? Did this biological opinion consider the plethora of new information published in scientific journals and reports on the needs of the tortoise for survival and recovery, its declining demographic status and low densities affecting population viability, and new information on the effects of threats to the tortoise since 1998?

One biological opinion is 25 years old and the other 18 years old, both were issued before significant losses of tortoises were documented (Allison and McLuckie 2018, USFWS 2025). We ask USFWS biologists, who are carbon copied, if such outdated biological opinions are still effective in analyzing the current status of the listed population of the desert tortoise and the relative significance of impacts given regional findings that were unavailable before 2015. We contend that reasons (2) and (3) apply, that neither biological opinion is applicable to the project, and that BLM should reinitiate formal consultation with the USFWS.

The proposed project occurs in California where the desert tortoise is protected by both the FESA and CESA. As mentioned above, if the project is authorized by the BLM, the proponent is responsible to ensure that implementation of the proposed project does not violate CESA. As such, the proponent should consult with the CDFW to ensure that the proposed project would not result in take that would violate the CESA and does not require a Section 2081 incidental take permit (ITP). This compliance with CESA should have been coordinated with CDFW concurrently with coordination for the project with BLM and should include construction and operation of the well in addition to the construction, use, and maintenance of the proposed pipeline.

We note the following statements at the top of page 5: “(g) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species. Rationale: *The project will affect desert tortoise individuals and a limited portion of designated critical habitat [emphasis added]*. However, it is not expected to adversely affect the species, local populations, or the overall critical habitat unit.” The statements that “the project will affect desert tortoise” and “is not expected to adversely affect the species” are contradictory. Again, the implication is that if impacts

are minimal, they are not impacts. Similarly, developing even a “limited portion of designated critical habitat” still constitutes adversely affecting critical habitat. We contend that *any* adverse impact to tortoises or *any* loss of critical habitat, even if described as temporary, automatically triggers formal consultation with the USFWS. It may also trigger the need for a section 2081 permit from CDFW. The BLM’s analysis of effects to the tortoise should be based on new tortoise protocol surveys (USFWS 2019) rather than relying on 2015 surveys.

On page 6 of the CE, BLM says, “Survey reports, including findings on desert tortoise and biological resources, will be included in the Environmental Assessment (EA).” We are confused. Is BLM preparing a categorical exclusion or a draft environmental assessment (DEA)? As previously stated, we expect the DEA to be based on a new protocol-level tortoise survey of the action area, which the Council believes should encompass and extend outside the proposed “50-foot-wide buffer zone around the pipeline ... to allow equipment to move safely” (page 4).” The action area, which determines the extent of the new tortoise survey area, should be determined in conjunction with USFWS. We ask that when completed the DEA be sent to the Council for review and comment.

On page 7, please note that the term, “Desert Wildlife Management Area (DWMA)” was discontinued with adoption of the DRECP (BLM 2016) and that a 10+-year old tortoise survey, as described above, is inadequate information on which to base either the CE or the DEA nor does it follow the USFWS’s protocol for proposed projects in tortoise habitat (USFWS 2019).

We found no mention of the Monarch butterfly in the CE. On December 12, 2024, the USFWS proposed to list the Monarch butterfly (*Danaus plexippus*) as a threatened species and designate critical habitat under the FESA. The proposed project is within the range of the butterfly. BLM should update its information on “Threatened and Endangered Wildlife Species” to include BLM’s requirements under Section 7(a)(2) to confer with the USFWS on the proposed threatened Monarch butterfly under the FESA and the result of that conference.

In summary, we thank BLM for the opportunity to review the CE. In our review, we found that:

- the categorical exclusion that BLM selected for the proposed project was not on BLM’s updated list of categorical exclusions (BLM 2025);
- the analysis of impacts from the project did not include direct, indirect, cumulative, and synergistic impacts to the tortoise/tortoise habitat and other special status species;
- the proposed well that would provide the water conveyed in the proposed pipeline was not analyzed for its impacts to the tortoise/tortoise habitat and other special status species even though it is a connected action or an indirect impact;
- all applicable key conservation measures for the tortoise identified in the DRECP were not included in the CE;
- one or more extraordinary circumstances applies to the tortoise from implementation of the proposed project making the adoption of a categorical exclusion not possible and the preparation of a DEA necessary under NEPA; and
- BLM needs to reinstate consultation with the USFWS for adverse effects to the tortoise/tortoise critical habitat including implementing presence-absence surveys and coordinate with CDFW regarding compliance with CESA.

For these reasons, BLM should prepare an environmental assessment for the proposed project to comply with NEPA. A categorical exclusion is not the appropriate NEPA compliance.

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 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 and implements actions to conserve these tortoises as part of its directive to conserve biodiversity on 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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