



DESERT TORTOISE COUNCIL

4654 East Avenue S #257B

Palmdale, California 93552

www.deserttortoise.org

eac@deserttortoise.org

Via email only

16 August 2019

Mr. David Kiel
Bureau of Land Management, St. George Field Office
345 East Riverside Drive
St. George, UT 84790
dkiel@blm.gov

RE: Environmental Assessment (DOI-BLM-UT-C030-2017-0063-EA) for Rocky Mountain Power Powerline Upgrade Project and City of St. George Waterline Development Project Red Cliffs National Conservation Area

Dear Mr. Kiel:

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 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).

We note the following statement on page 1 of the Environmental Assessment (EA) (unless otherwise noted, all referenced page numbers are in the EA): "An EA provides evidence for determining whether to prepare an Environmental Impact Statement (EIS) or a statement of 'Finding of No Significant Impact' (FONSI), based on the considerations of 'Significance' found in the *Code of Federal Regulations* (CFR) at 40 CFR 1508.27. If the decision-maker determines that either of these projects would have 'significant' impacts, then an EIS would be prepared."

Based on the likelihood that the projects “may affect” desert tortoises, and because the projects would be located within Red Cliffs National Conservation Area (Red Cliffs NCA), which is intended for proactive management leading to the conservation and recovery of the desert tortoise, the Council believes that every effort should be taken to avoid significant impacts and adverse modification of critical habitat.

We note on pages 3 through 6 of the EA, which are intended to assess the conformance of the project with the Red Cliffs National Conservation Area Record of Decision/Resource Management Plan (Red Cliffs NCA ROD/RMP; BLM 2016) that the EA in Section 1.4.1 considers conformance with visual resource management and in Section 1.4.2 conformance with lands and realty but fails to assess conformance with decisions relating to biological resources, which is our main concern. Failure to properly analyze conformance of the two projects with these decisions and the statutory provisions of the NCA to conserve and recover tortoises renders this section of the EA deficient, and lacking in full disclosure.

In the next few subsections, we summarize some of the more pertinent impacts associated with the two proposed projects followed by a few recommended measures to be implemented by Rocky Mountain Power for the powerline and the City of St. George for the waterline (Proponents).

In Section 2.2.1, pages 10 through 15, the Proposed Action for the powerline portion of the project is summarized as follows:

1. “Increase the width of its current 50-foot right-of-way (ROW) by up to 30 feet in three specific areas to encompass new guy wire anchors, and include the Winchester Trail (that was originally developed as the powerline access road during construction of the MDD24 powerline in 1980) as an authorized access route.”
2. “The proposed upgrade would be completed through a pole-for-pole replacement of 31 single wooden poles with new wooden poles that would be between 30 and 60 feet taller than the existing poles. Eight of the new poles would require guy wire anchors. An approximately 25-square foot area around each pole and guy wire anchor would be temporarily disturbed during construction. Permanent disturbance would include an approximately 3-foot by 3-foot footprint for each pole and a 1-foot by 1-foot footprint for each guy wire anchor.”
3. [Although] “No new access roads would be constructed to complete the upgrade as the Winchester Trail, with minor improvements, and other existing roads would provide adequate access for construction activities [nevertheless] Over time, this route has substantially re-vegetated and approximately 1.7 miles of the trail would require re-grading to restore its width to the 15 feet needed for construction equipment access.”
4. “The original 7-foot width of the Winchester Trail would be maintained for public trail use and access to the powerline ROW, but the margins disturbed by the project would be rehabilitated.”
5. As per Table 1 on page 11, the powerline portion of the project would result in temporary impacts to 4.8 acres, including 4.2 acres of critical habitat, permanent impacts to 238 square feet, including 222 square feet of critical habitat, with 9.03 acres to be rehabilitated, including 4.8 acres associated with the project and 4.23 acres of other lands as mitigation.

In Section 2.2.2, pages 14 and 15, the Proposed Action for the waterline portion of the project is summarized as follows:

6. “The City proposes to install approximately 4.9 miles of 12-inch diameter culinary waterline to connect two existing tanks: T-Bone Water Tank, located west of Cottonwood Road on private land with the Ledges Water Tank, located on private land in the Winchester Hills/Ledges area.”

7. “A new pump station would be constructed at the T-Bone Water Tank to service the proposed new waterline.”

8. “From the T-Bone Water Tank, the waterline would follow Cottonwood Road for 3 miles, with the pipe being installed in the roadbed or along the road shoulder. Along the Winchester Trail, the waterline would be installed within the footprint of the trail, which will have been improved to a 15-foot wide route by Rocky Mountain Power’s Proposed Action.”

9. “Where the alignment crosses Black Gulch, the waterline would divert slightly from the Winchester Trail to avoid switchbacks. It would then follow unpaved roads on private land and connect to an existing waterline to the Ledges Water Tank.”

10. “The permanent waterline ROW would be 25 feet wide. An additional 25-foot width around the permanent ROW would be needed for temporary construction workspace. Four other temporary use areas along the Winchester Trail would be used for staging construction equipment and materials. The pump station would be a permanent disturbance but would be placed in an existing disturbed area at the T-Bone Water Tank. The waterline trench would be excavated primarily with backhoes, but in areas where trenching is impeded by bedrock or consolidated rock, blasting may be required.”

11. “Cottonwood Road is fenced and includes a 3-foot high wire mesh tortoise fence at the base that precludes desert tortoises from entering the fenced road area” ... “the fenced road area contains none of the primary constituent elements for desert tortoise critical habitat and is considered unsuitable habitat” ... “the portions of the waterline development project proposed in Cottonwood Road are excluded from all surface disturbance calculations in this EA.”

12. “Blasting could permanently alter some resources (including tortoise critical habitat); however, this permanent disturbance cannot be quantified because it is not known if blasting would be necessary for the waterline installation.”

13. As per Table 2 on page 15, there would be no permanent loss of tortoise habitat, 11.1 acres of temporary disturbance, including 10.3 acres of critical habitat, and 21.4 acres would be rehabilitated, including the 11.1 acres disturbed by the project and 10.3 acres of existing disturbance.

With regards to the 13 project impacts summarized above, the Council makes the following observations and/or recommendations:

- With regards to number 4, it is our understanding that Winchester Trail, which is only one to two feet wide in places and has substantially revegetated (which is a desirable condition in critical habitat and should not be dismissed as inferior habitat), would be regraded to a width of 15 feet for 1.7 miles, and in absence of restrictions, could facilitate increased public use, including vehicle recreation. The Council believes that the gates should be closed and locked behind maintenance vehicles to prevent indiscriminate public (particularly recreational) uses.
- For the following statement to be true (see page 38), it is necessary to gate Winchester Trail and limit vehicle use to authorized personnel: "...The Proposed Actions would not increase human access to the critical habitat above current levels or impede tortoise movement because no new access roads/trails, parking areas, fences, or other barriers would be constructed; only existing trails and roads would be modified and/or used."
- With regards to future use on Winchester Trail, what is the Proponent's standard procedure for vehicle travel on improved, unfenced roads? Are vehicle operators just expected to look carefully for tortoises in the roadway after receiving tortoise training, or are biologists expected to clear the road prior to travel? Will there be seasonal restrictions for routine maintenance requiring that the Proponents only use the road during lower tortoise activity periods like winter and summer? There are a few roads like this in the NCA, and standard practices should be clarified for this project.
- Given the above observations, the Council strongly recommends that Winchester Trail continue to be used for foot traffic only, and not be open to vehicular traffic, except on an emergency basis and by authorized personnel only. Locked gates and/or other barriers that allow foot traffic but preclude recreational vehicular traffic should continue be used to implement this recommendation.
- Number 11 implies that all impacts would remain within the existing disturbed and fenced portions of Cottonwood Road, and would therefore not be compensable. There must be a reassessment following completion of all phases of project development, including improvements of Cottonwood Road and Winchester Trail, by a neutral third party that assesses exactly how much habitat is permanently and temporarily disturbed. Based on these post-project calculations, the estimates given in these sections should be compared to actual impacts and pertinent adjustments made to ensure that the mitigation is commensurate with the impact.
- The preceding point is particularly true with regards to numbers 10 and 12; there should be an assessment immediately after blasting, if it occurs, to determine if it has resulted in permanent disturbance. Additionally, if blasting is to occur, all areas within a 300-foot circumference should be searched by qualified tortoise biologists within 24 hours of blasting, any burrows flagged, and then revisited after blasting to ascertain their condition. This is particularly important if a tortoise is found in a burrow and could become entrapped if that burrow collapses in response to blasting.
- As stated in numerous places, the Proponents are obligated to follow the protective measures in a half-dozen documents, including the Washington County HCP, which states "Blasting generally is not permissible within 100 feet of an occupied tortoise burrow" (prescription GC-6 in Washington County Commission 2006). Pertinent regulatory personnel must be contacted if a tortoise is found in a burrow within 100 feet of a planned blasting site.

- It is our understanding that portions of the existing fence along Cottonwood Road are decrepit, with old style mesh that is not tightly attached to the range fence. Since the project is likely to result in improved access along this road and perhaps attract vehicle users that would not otherwise be on the road, the Council feels that the Proponents should replace and repair the fence as necessary, and extend it up the road to the edge of tortoise habitat. In so doing, tortoises are less likely to become entrapped within the fence and subjected to poaching, vandalism, or crushing. Further, these repairs should occur before ground disturbance within the fence is initiated.

We appreciate that the protective measures given in the seven bulleted resources on page 15 of the EA appear to be comprehensive and should result in fewer impacts to tortoises and habitats if implemented conscientiously. As a friendly amendment, we are attaching a set of construction Best Management Practices (BMPs) (Desert Tortoise Council 2017) and restoration BMPs (Abella and Berry 2016) both developed by the Council for your consideration and use. If the Proponents find something in our BMPs that are not included in these resources that would enhance tortoise protection, we hope they will be implemented along with those identified on page 15 of the EA.

We are concerned that the EA is inadequate in its assessment of alternatives that were considered but eliminated, particularly for Alternative 2, discussed in Section 2.4.2 on page 16. We understand that one of the functions of the EA is to divulge all factors relative to a particular issue, in this case an alternative, so that the reader can make an independent assessment of the veracity of the conclusions. Section 2.4.2 claims that Alternative 2 is too expensive for the City without revealing either the cost of the proposed pipeline or the Alternative 2 pipeline, so we are unable to know the accuracy of this assertion. Nor does Section 2.4.2 indicate how much longer the Alternative 2 pipeline would be relative to the 4.9-mile pipeline proposed in the Proposed Action; we are only told that it is a “longer waterline [requiring] additional pumping stations,” the number of which is also not given. Also, Figure 2 of the EA does not support the conclusion that the Alternative 2 pipeline would enter the ROW exclusion area, as Highway 18 is bordered on both sides by a gray area, not the pink area demarking the exclusion area. It is well documented that tortoises occur in depressed numbers along roadways (LaRue 1992, von Seckendorff Hoff and Marlow 2002), which support our contention that there may very well be fewer environmental impacts to tortoises and occupied habitats associated with Alternative 2 than with the preferred alternative.

We appreciate that several focused desert tortoise surveys have been performed by “qualified biologists,” as documented on page 27. We wonder why BLM has not used data from numerous regional surveys within the NCA to map the relative densities of tortoises in this area compared to others, including the vicinity of Alternative 2, the rejected alternative given above. We believe that such maps would also show the relative impacts along Cottonwood Road, which is already used by vehicles compared to tortoise densities adjacent to Winchester Trail, which has not been used by vehicles but might be used as the result of this project.

It is not clear to us why the Proponent has chosen “...a mitigation ratio of 3:1 would be applied to each acre of critical habitat where the Proposed Actions create permanent disturbance (Rocky Mountain Power only) and a ratio of 2:1 would be applied for temporary disturbance in critical habitat” (page 39) instead of what is typically required of proponents working under authorization of the HCP. It is our understanding that typical compensation ratios in critical habitat may be as high as 6:1. To be consistent with current management, we ask that the compensation ratio be set at 5:1 in critical habitat for both permanent and temporary impacts.

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

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