



DESERT TORTOISE COUNCIL

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Via email only

14 March 2022

Attn: Michael Cutler, Rangeland Management Specialist

Bureau of Land Management

Arizona Strip Field Office

345 E. Riverside Drive

St. George, UT 84790.

mcutler@blm.gov, ahughes@blm.gov, tstone-manning@blm.gov, rsuazo@blm.gov

RE: Sullivan Spring Water Development (DOI-BLM-AZ-A010-2022-0005-EA) - Scoping
Comments

Dear Mr. Cutler,

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 may occur in habitats occupied/used by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the Bureau of Land Management (BLM), which we assume will be added to the Administrative and Decision Records for this project. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

Please note, once again, that BLM failed to contact the Council as an Affected Interest for this project, which we formally requested in a November 2019 letter (please see attachment), and continue to request in every letter we submit to the BLM. Despite this persisting request, a third party alerted us to this opportunity to comment. Now that we are submitting formal scoping comments, we fully expect to be alerted to the distribution of the draft environmental assessment (EA), and anticipate the opportunity to review and comment on future associated documents.

Mojave desert tortoise is now on the list of the world's most endangered tortoises and freshwater turtles. It is in the top 50 species. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers Mojave desert tortoise to be Critically Endangered (Berry et al. 2021). As such, it is a "species that possess an extremely high risk of extinction as a result of rapid population declines of 80 to more than 90 percent over the previous 10 years (or three generations), a current population size of fewer than 50 individuals, or other factors." It is one of three turtle and tortoise species in the United States to be critically endangered.

Proposed Action

BLM would allow the installation of approximately 5,400 feet of a 1.5 to 2.0-inch diameter pipeline, as an extension to the existing Sullivan Spring Pipeline to a proposed 4,500-gallon water tank. The pipeline would be buried along an existing road/trail that leads to an existing trough approximately 500 feet south of Sullivan Spring, which is where the pipeline currently terminates. The pipeline extension would follow the road south to an existing corral.

To accommodate moving the water up in elevation about 800 feet from the spring to the corral, a 550-gallon reservoir tank, and eight 3.5 feet x 5.5 feet solar panels would be installed at the spring location to pump the water to the proposed water tank at the existing corral. Water-resistant electrical line would be buried from the pump to the proposed solar panels.

The proposed 4,500-gallon storage tank would be placed near the existing corral. Water from the tank would be piped to an existing trough at the corral. The storage tank would accommodate water storage while the solar pump is not functioning at night, as well as if the pump fails or requires maintenance. The storage tank would sit above ground and is approximately eight feet in diameter by 12 feet high.

The proposed action would also include future maintenance activities for the project although these are not described.

The Sullivan Canyon Allotment is located in a wilderness area and ranges on elevation from 2,000 to 7,000 feet in the Virgin Mountains in Mohave County, Arizona. The proposed action occurs in the Paiute Wilderness Area.

BLM is soliciting comments during the scoping phase for the proposed action to help in the preparation of an environmental assessment.

Alternatives Analysis

The Draft EA should include alternatives in addition to the no action and proposed action alternatives.

Global Warming, Greenhouse Gas emissions, and Non-native Plants

We request that the Draft EA address the effects of the proposed action on global warming and the effects that global warming may have on the proposed action. For the latter, we recommend including: an analysis of habitats within the action area that may provide refugia for tortoise populations; an analysis of how the proposed action would contribute to the spread and proliferation of nonnative invasive plant species; how this spread/proliferation would affect the desert tortoise and its habitats (including the frequency and size of human-caused fires); and how the proposed action may affect the likelihood of human-caused fires. We strongly urge the BLM and the permittee to develop and implement a management and monitoring plan using this analysis and other relevant data that would reduce the transport to and spread of nonnative seeds and other plant propagules within the action area and eliminate/reduce the likelihood of human-caused fires. The plan should integrate vegetation management with fire management and fire response.

In addition, we note that cattle production is a major producer of greenhouse gas emissions and a significant contributor to climate change (IPCC 1990, Dijkstra et al. 2011, McGregor et al. 2021). It appears the purpose of the water development is to enhance livestock production that would add to greenhouse gas emissions. The livestock sector is responsible for 18% of global anthropogenic greenhouse gas emissions, with enteric CH₄ of livestock being 25% of the livestock related greenhouse gases (Dijkstra et al. 2011). Please explain in the Draft EA how the proposed action, which would be approved by the federal government, complies with the President's Executive Order 14008 on "Tackling the Climate Crisis at Home and Abroad" (e.g., section 204, etc.).

Analysis of Impacts to the Mojave Desert Tortoise and Its Habitat

The proposed action is located in the Northeastern Mojave Recovery Unit of the Mojave desert tortoise and is within the elevation of tortoises/tortoise habitat. Mojave desert tortoises have been reported from the Virgin Mountains by staff from the Arizona Game and Fish Department (J. Hohman, personal communication). Because the tortoise is a federally threatened species, BLM should conduct a records search of the Arizona Heritage Data Management System (Arizona HDMS/<https://www.azgfd.com/Wildlife/HeritageFund/>) for rare plant and animal species reported from the region. The results of the Arizona HDMS review would be reported in the Draft EA with an indication of suitable and occupied habitats for all rare species reported from the region based on performing species specific surveys described below.

Formal protocol surveys for Mojave desert tortoise (USFWS 2019) should be conducted. If any tortoise sign is found, BLM would need to initiate section 7 consultation with the U.S. Fish and Wildlife Service (USFWS). We strongly recommend that the BLM require that only experienced biologists perform protocol surveys, which may mean that the USFWS review their credentials prior to the surveys.

The survey area would include the action area, not just the project footprint. The USFWS defines “action area” in 50 Code of Federal Regulations (CFR) 402.2 and their Desert Tortoise Field Manual (USFWS 2009) as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action (50 CFR §402.02).”

Compliance with the Wilderness Act and Regulations

The Wilderness Act of 1964 as amended, and its implementing regulations “grandfathered” existing grazing. However, 43 CFR 6302.20 prohibits using motorized equipment, motor vehicles, building, installing or erecting structures. The construction of new livestock management facilities must be for the purposes of protection and improved management of wilderness resources.

We presume that many of the materials that the pipeline, reservoir tank, storage tank, and eight solar panels will be made of materials (e.g., various types of plastics, electric wires, etc.) that do not contribute to the “primeval character and influence” [Public Law 88-577 (16 U.S.C. 1131-1136)] of the Paiute Wilderness, nor will the noise produced by the water pump. These facilities would not (1) be in keeping with the “preservation of their wilderness character,” (2) retain “its primeval character and influence without permanent improvements,” and (3) provide “outstanding opportunities for solitude or a primitive and unconfined type of recreation” as described in the Wilderness Act of 1964, as amended. Please explain in the Draft EA how the installation, use, and maintenance of these long-term facilities will protect and improve the management of wilderness resources.

The Draft EA should include a thorough analysis and discussion of the status and trend of the tortoise in the action area, Gold Butte – Pakoon Tortoise Conservation Area, Northeastern Mojave Recovery Unit, and range wide. Tied to this analysis should be a discussion of all likely sources of direct and indirect mortality for the tortoise and degradation and loss of habitat used for feeding, breeding, shelter and population connectivity from implementation of the water development project. We presume that construction and maintenance activities would impact soils and vegetation including promoting the growth of non-native annual grasses that outcompete native plants and contribute to the increased frequency, size, and intensity of fires. We also presume that the proposed action would likely expand the area to be grazed and/or increase the period of grazing to include dry years. The promotion of the growth of non-native annual grasses, reduction in native annual and perennial plants, increased fuel for fires/impacts of fires, and increased grazing pressure on native annual and herbaceous perennial plants previously not grazed/not as heavily grazed and drought-stricken plants should be analyzed in the Draft EA with respect to the tortoise, if it occurs in/near the action area, and associated impacts to soils/soil crusts. Please expand this analysis to include impacts from the operation and maintenance of the new facilities including vehicles used to access the site.

Cumulative Effects Analysis

Please see *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345-46 (D.C. Cir. 2002) in which the court decided that agencies must analyze the cumulative impacts of actions in environmental assessments. In the cumulative effects analysis of the DEA, please ensure that the CEQs “Considering Cumulative Effects under the National Environmental Policy Act” (1997) is followed, including the eight principles, when analyzing cumulative effects of the proposed

action to the tortoise and its habitats. CEQ 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 resources, ecosystems, and human communities.”

CEQs guidance on how to analyze cumulative environmental consequences, which contains eight principles listed below:

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.

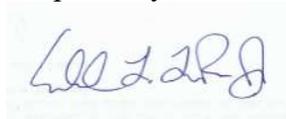
8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

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.

We request that the Draft EA include a cumulative impacts analysis on the tortoise and its habitat if tortoise sign or information on tortoise occurrence is found for the project area or nearby.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise 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 species of 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 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

cc: Director, Bureau of Land Management, tstone-manning@blm.gov
Arizona State Director, Bureau of Land Management, rsuazo@blm.gov

Attachment

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>

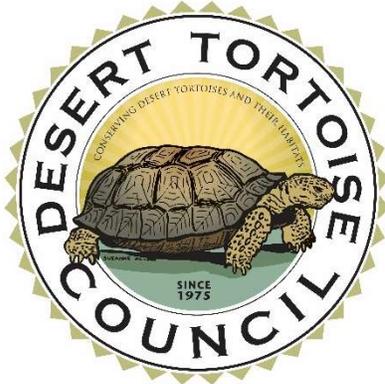
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McGregor, A., L. Rickards, D. Houston, M.K. Goodman, and M. Bojovic. 2021. The biopolitics of cattle methane emissions reduction: Governing life in a time of climate change. *Antipode*: <https://doi.org/10.1111/ANTI.12714>. https://dlwqtxts1xzle7.cloudfront.net/65975122/Bovine_revolutions_v4_to_post-with-cover-page-v2.pdf?Expires=1647221703&Signature=RdpFpta974OcpjepQKvBIhNItknYP8KNAwdVSfrfXvRU~VeFipzUnnqmUCMtRbZK5oWr3rTVMIH2EWQazwYB1gFOp5HDjgbemQr4pkOqOtGgloJIheg6OglGhU6HRzkdtrOPdidoTLh~InwHpzu5aMoPBWleoFQcovbdIEw4Uo0x1IyHIKT~ydwkX3eiNY-YeBb4Tz7~Nn~-G4fvUiHfN05XUnlqic3vZAH5xbtkuiC0GFzH165Nu5wk4XW3Mw6JwBpnh3xGbd9pAWabRxgkemEM2JyuizhrJh-B9UV3TjG2KNkHt08fx7EVg-lyLaGW5CiFoUSzFr7Fgg1~xEQ0IQ__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

[USFWS] U.S. Fish and Wildlife Service. 2009. *Desert Tortoise (Mojave Population) Field Manual: (Gopherus agassizii)*. Region 8, Sacramento, California.

[USFWS] U.S. Fish and Wildlife Service. 2019. *Preparing for any action that may occur within the range of the Mojave desert tortoise (Gopherus agassizii)*. USFWS Desert Tortoise Recovery Office. Dated 21 August 2017. Reno, NV.



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CERTIFIED MAIL

November 12, 2019

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RE: Reiteration of the Desert Tortoise Council's Previous Requests as An Affected Interest for
Notification of Bureau of Land Management Proposed Actions Affecting the Desert
Tortoises or Habitats

Dear Mr. Feldhausen, Mr. Thomas, Mr. Mack, and Mr. Herder:

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons throughout the United States and other countries. Council members share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of the three species of desert tortoises. 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.

The Council has submitted written comments on numerous proposed actions by the Bureau of Land Management (BLM) within the range of two species of desert tortoises (i.e., *Gopherus agassizii* synonymous with "Mojave desert tortoise" and *Gopherus morafkai* synonymous with Sonoran desert tortoise).

In the last few years, the Council provided written comments on numerous BLM proposed actions in the range of the Mojave and Sonoran desert tortoises. Some of these proposed actions in Arizona are listed below:

In 2019:

- 2019/8/16 - 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

In 2018:

- 2018/11/29 - Ten West Link Draft Environmental Impact Statement (DEIS) and Draft Resource Management Plan Amendments (DEIS) (DOI-BLM-AZ-C020-2016-0010-EIS)
- 2018/5/08 - Draft Buckeye Hills Travel Management Plan, Pinal and Maricopa Counties, Arizona
- 2018/3/07 - Scoping Comments for the Lower Colorado River Travel Management Plan 03/07/18
- 2018/2/13 - Environmental Assessment (EA) for the Lower Centennial Complex

In 2016:

- 2016/2/12 - Pakoon Springs Public Use Environmental Assessment (DOI-BLM-AZ-A030-2016-0004-EA)
- 2016/9/22 - Pakoon Springs Public Use Environmental Assessment (DOI-BLM-AZ-A030-2016-0004-EA)

In each comment letter to the BLM, the Council asked “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 Project is provided to us at the contact information listed above.” The contact information is contained in the letterhead of these comment letters, eac@deserttortoise.org.

The Council believes this language was clear to the BLM and that the Council as an Affected Interest was to be notified of BLM proposed actions that may affect species of desert tortoises. However, the Council did not learn about any of these proposed actions from the BLM, but from several third parties. Given the numerous requests the Council has submitted to project officials at BLM field offices in Arizona in the last few years to be identified as an Affected Interest, we are puzzled as to why we did not (and do not) receive notification from the Gila District Office, the Phoenix District Office, Colorado River District Office, Arizona Strip District Office or any of the field offices within these Districts of any proposed actions on BLM lands in Arizona. Consequently, we are elevating our request to you as the District Managers in Arizona.

Our request for the BLM to notify the Council of these proposed actions is based on federal regulations and BLM’s handbook. According to 40 CFR 1500.2, “federal agencies shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment.” This public involvement is further discussed in 40 CFR 1506.6, which says, “Agencies shall make diligent efforts to involve the public in preparing and implementing their National Environmental Policy Act (NEPA) procedures. The agency should

request comments from the public and should *affirmatively solicit comments* [emphasis added] from those persons or organizations who may be interested or affected.”

The BLM NEPA Handbook states, “A primary goal of public involvement is to ensure that all interested and affected parties are aware of your proposed action. Knowing your community well is the first step in determining the interested and affected parties and tribes. You may already have a core list of those interested in and potentially affected by the BLM's proposed actions; this may provide a good starting point” (section 6.9.1). The Handbook also states under Environmental Assessments “The EA must list tribes, individuals, organizations, and agencies consulted (40 CFR 1508.9(b))” (section 8.3.7).

We urge the BLM to comply with these directives. With this letter, the Council requests that you ensure that the BLM notifies the Council in a timely manner (e.g., prior to the first day of the public comment period) of any proposed action in the Gila District, Phoenix District, Colorado River District, or Arizona Strip District that may affect the Mojave desert tortoise, Sonoran desert tortoise or their habitats. This includes any action that may affect, either directly or indirectly, these species. If the BLM is unwilling or unable to do this, we request that it provide a written response to the Council explaining why it is unable to honor this request to comply with federal regulations and the BLM NEPA Handbook.

Should you have any questions regarding this request, please contact me at the contact information on the Council’s letterhead above.

Regards,



Edward L. LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

cc: Jayme Lopez, Field Manager – Tucson Field Office
Ed Kender, Field Manager – Lower Sonoran Field Office
Angie Meece, Acting Field Manager – Hassayampa Field Office
Amanda Dodson, Field Manager – Kingman Field Office
Aron King, Field Manager – Yuma Field Office
Jason West, Field Manager – Lake Havasu Field Office
Lorraine Christian, Field Manager – Arizona Strip Field Office
Mark Wimmer, Manager – Grand Canyon-Parashant National Monument

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https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf