



DESERT TORTOISE COUNCIL

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Via email only

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Michelle Van Der Linden, Contact
Miriam Liberatore, Project Manager
Bureau of Land Management
Palm Springs–South Coast Field Office
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RE: Draft Environmental Impact Statement (DEIS) for the Whitewater River Groundwater Replenishment Facility Project

Dear Ms. Van Der Linden, Ms. Miriam Liberatore,

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 possibly occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities authorized by the Bureau of Land Management (BLM), which we request to be added to and addressed in the Final EIS and Record of Decision. Please accept, carefully review, and include in the relevant project file the Council's following comments for the proposed project.

In spite of repeated written requests sent to the BLM¹ to inform the Council about projects that may affect tortoises, on June 10, 2021 a third party informed us that a Draft Environmental Impact Statement (DEIS; DOI-BLM-CA-D060-2019-0024-EIS) was available for review on the above-referenced project. Please see our reiteration of this request in the last paragraph of this letter.

Page 3,3-19: Under Direct Impacts – Maintenance and Repair, BLM reports “For the MDT [Mojave desert tortoise], modeled habitat only occurs within the vicinity of Berm #1 and the Low-Flow Dike and Channel Crossing.” “The current operations of the Facility have potential to affect the following BLM-sensitive species: CVFTL, TRMV, CVFTL, MDT, FTHL, BUOW, PSPM, and PSGS [see DEIS for explanations of abbreviations].” “Impacts to CVFTL, CVMV, TRMV, and MDT are considered potentially substantial and adverse without mitigation within their respective locations where they can occur.”

Page 3.3-20 and 3-21: Under Indirect Impacts – Maintenance and Repair Activities, BLM reports “This includes CVFTL, CVMV, TRMV, and MDT for their respective locations where modeled habitats occur. Indirect impacts to these species are adverse and potentially substantial without mitigation.”

Page 3.3-25: Under Residual Impacts, BLM states “Implementation of the mitigation measures above will avoid impacts to biological resources. No residual impacts are expected as a result of continuation of the Project with existing and recommended mitigation measures in place.” However, the mitigation section in the DEIS does not describe mitigation measures that will be implemented for these substantial and adverse impacts to the desert tortoise.

We then checked Appendix D, “Coachella Valley Multi-species Habitat Conservation Plan (CVMSHCP) - Required Biology Avoidance/Minimization Measures from the Coachella Valley Water District Operations and Maintenance Manual.” Neither the word, “tortoise,” nor the abbreviations, “DT” or “MDT” appear anywhere in this two-page appendix that refers to various special status plants, invertebrates, reptiles, birds, and mammals, but not to tortoises. Thus, Appendix D documents no mitigation for the tortoise.

Appendix H does mention the Mojave desert tortoise several times. In addition to standard paragraphs on tortoise life history, we read the following statement on page 44 of Appendix H: “MDT [Mojave desert tortoise] surveys of the BSA [Biological Study Area] were not conducted. There is CVMSHCP-modeled habitat for MDT in the proposed right of way (Area A and Area B); *therefore the species is presumed to be present where the habitat is modeled* (emphasis added).” This determination also appears in Table 1, in Appendix D, which is part of Appendix H, where with regards to Area A, Area B, and the BSA, the abbreviation is given: “P = Occurrence of the species is possible; suitable habitat exists.” Page 9 of Appendix H, indicates: “The area also provides some land designated as Other Conserved Habitat (not core habitat) for ... Mojave desert tortoise (*Gopherus agassizii*)” among other species.

¹ <https://www.dropbox.com/s/mlwe60a9lcxhy56/BLM%20CDCA%20District%20Manager%20DTC%20as%20an%20Affected%20Interest.11-7-2019.pdf?dl=0>

The Biological Resources Technical Report, dated February 2021, prepared by ECORP Consulting, Inc. comprises Appendix H. The results of this report, as summarized above, indicate that no tortoise surveys were performed and based on modeled habitat, tortoises are "...presumed to be present." We found no mitigation measures for the tortoise in the DEIS, Appendix H, or in Appendix D, where avoidance and minimization measures are identified for some BLM Sensitive Species but not for the tortoise.

We request that BLM modify the DEIS and add pertinent minimization and mitigation for the tortoise as it clearly states the impacts from the preferred alternative are "potentially substantial and adverse without mitigation." Since the tortoise is listed as Threatened under both the California Endangered Species Act (CESA) and Federal Endangered Species Act (FESA), impacts and applicable protective measures (i.e., mitigation) should be assessed and identified to offset the impacts relative to both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

BLM Manual 6840 – Special Status Species (2008a), BLM issued its policy stating "actions authorized by the BLM shall further the conservation and/or recovery of federally listed species and conservation of Bureau sensitive species." Mitigating adverse impacts to the tortoise would contribute to this policy. We request that BLM implement section 6.8.4 "Mitigation and Residual Effects" in its National Environmental Policy Act Handbook (BLM 2008b) when developing and adding pertinent mitigation measures and monitoring their effectiveness for the tortoise to the DEIS.

We appreciate that this is a Draft EIS, which implies that a Final EIS is forthcoming. The Final EIS must fulfill its function to determine and describe baseline occurrence, assess impacts, and provide for pertinent effective minimization and mitigation measures. To determine baseline occurrence, a desert tortoise protocol survey (USFWS 2019) should be performed.

We note with regards to burrowing owl (*Athene cunicularia*), the following statement on page 48 of Appendix H: "Although focused BUOW [burrowing owl] surveys were not conducted, biologists driving through the area on access roads and along dikes within the infiltration ponds during other surveys had the potential to make incidental observations of BUOW or their sign. No BUOW or sign of BUOW were observed, however. Nevertheless, the species is presumed to be present where habitat occurs in both Area A and Area B." As its name implies, this diminutive owl burrows in the ground, leaving signs that for the most part would not be visible from a moving vehicle. Therefore, in addition to the tortoise survey referenced above, a focused burrowing owl survey and habitat assessment should also be conducted (CDFG 2012) and appropriate mitigation measures implemented to offset these impacts to comply with BLM Manual 6840– Special Status Species. As a BLM-designated sensitive species, burrowing owl should be "managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA."

The Final EIS should use results of these two surveys [and perhaps others, including focused plant surveys (CDFG 2009)] to determine impact levels, if any. We note on page 1 of Appendix H, the following statement, which we understand refers to desert tortoise, among other species: "There are eight species specifically covered under the BMPs [Best Management Practices], which

include pre-activity surveys, monitoring during work activities near sensitive species locations, flagging of avoidance areas if species are found near work areas, and various policies and special procedures for work crews to implement when conducting activities that may affect sensitive species.” Using the results of aforementioned surveys, the Final EIS should address how these generalized protective requirements would be implemented. Additionally, there should be a discussion of how the CVMSHCP will or will not fully mitigate impacts to the desert tortoise, burrowing owl, and any other rare species that may occur, particularly since the BLM is not signatory to the CVMSHCP.

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. 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.

Regards,



Edward L. LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Literature Cited

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