

DESERT TORTOISE COUNCIL

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Via email

December 8, 2022

Daniel Steward
Environmental Sciences Division
U.S. Army Garrison—Yuma Proving Ground,
301 C St., Bldg. 307
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RE: Scoping Comments on Notice of Intent to a Prepare Legislative Environmental Impact Statement Regarding Proposed Public Land Withdrawal in Vicinity of Arizona State Route 95, Yuma Proving Ground, Arizona

Dear Mr. Steward,

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.

As of June 2022, our mailing address has changed to:

Desert Tortoise Council
3807 Sierra Highway #6-4514
Acton, CA 93510

Our email address has not changed. Both addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that the Department of the Army (Army) email to us 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 proposed action. Given the location of the proposed action in habitats known to be occupied by the Sonoran desert tortoise (*Gopherus morafkai*) (synonymous with Morafka's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, proposed, authorized, or carried out by the Army, which we assume will be added to the Decision Record for this proposed action as needed. Please accept, carefully review, and include in the relevant file for this proposed action the Council's following comments.

Proposed Action

In its Notice of Intent (NOI), the Army is proposing to withdraw for military use about 22,000 acres of public land currently managed by the Bureau of Land Management (BLM). The purpose of the proposed land withdrawal is to provide additional area for testing and training at Yuma Proving Ground (YPG) including testing of advanced air delivery technologies and aviation systems, parachute systems, and payload drops using GPS-guided delivery from aircraft to the ground. The additional land will allow the Army to execute more complex air delivery and tactical scenarios. The withdrawn land may also be used for other training and testing activities that are unknown at this time. This withdrawal and use would add to the existing withdrawal and reservation for the Army's YPG in Yuma and La Paz counties, Arizona. The requested withdrawal area extends east to State Route 95.

YPG's mission is to plan, conduct, assess, analyze, report, and support developmental, production, and operational tests on medium- and long-range artillery; aircraft target acquisition equipment and armament; armored tracked and wheeled vehicles; a variety of munitions; and parachute systems for personnel and supplies. YPG also provides training support to the Army, Department of Defense (DoD), other federal agencies, and international and commercial customers. Currently, in a typical year, YPG conducts, more than 500,000 artillery, mortar, and missile firings; 36,000 parachute drops; vehicles driving 200,000 miles during training, and more than 4,000 flights of air sorties. In a typical year, dozens of military units use the facility for realistic desert training, especially before deploying overseas.

Connected Actions Argument

In the NOI, the Army says it will analyze potential environmental impacts resulting from the withdrawal of land from BLM oversight **and** (emphasis added) from expanding military capability within the withdrawn area. Under 40 CFR 1506.8(b) "preparation of a legislative environmental impact statement shall conform to the requirements of these regulations" with "these" meaning the regulations for implementing the National Environmental Policy Act (NEPA). Later in the NOI, the Army says "[t]he LEIS [Legislative Environmental Impact Statement] is the detailed environmental statement required by law that will support the [Army's] legislative proposal of the withdrawal of the 22,000 acres of land. The Army will cover possible impacts to biological and cultural resources in a **separate** (emphasis added) NEPA analysis before training and testing by the Army begin." From the last two sentences, we conclude the Army will analyze the impacts of the administrative withdrawal, and later in another NEPA document, it will analyze the impacts of the proposed uses the Army will conduct on the withdrawn lands. Herein, we ask that any additional documents be provided to us via email to allow additional opportunities for input.

Under NEPA's implementing regulations, connected actions are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

- (1) Automatically trigger other actions that may require environmental impact statements.
- (2) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (3) And/or, are interdependent parts of a larger action and depend on the larger action for their justification (40 CFR 1508.25).

We believe the legislative proposal for the land withdrawal is connected to the uses of the withdrawn lands the Army describes in the NOI. These are listed above under Proposed Action. We conclude this because it is the Army that is requesting the land withdrawal from Congress and the Army identified reasons for the request in the NOI. Because the land withdrawal is connected to the Army's need for testing and training that they identified in the NOI, we believe the land withdrawal and the use of the withdrawn lands by the Army are connected actions. *But for* the land withdrawal, there would be no change in land use. Consequently, we request that the Army prepare a single LEIS on the land withdrawal and land use that describes and analyzes the impacts to the human environment including the Sonoran desert tortoise and its habitat, not two as the Army mentions in its NOI. We provide additional reasons below under "Transparency" and "Need for Congress as a Decisionmaker to Be Fully Informed."

Transparency

The current administration has promised to be the most ethical and transparent in history. The Council believes the Army is not being transparent about the land withdrawal by separating the analysis of the land withdrawal (needed for expanded testing training, and public safety) from the proposed uses of the withdrawn lands. We request the Army include in one NEPA document the land withdrawal and a description and analysis of the impacts to the human environment, including the Sonoran desert tortoise, and identify effective mitigation to fully offset these impacts.

Need for Congress as a Decisionmaker to Be Fully Informed

For the proposed action, Congress is the decisionmaker for the land withdrawal and the Army is the decisionmaker for the uses of, impacts to, and mitigation for the withdrawn lands. The purpose of the LEIS is to describe and analyze the impacts of the land withdrawal to the human environment, which includes the Sonoran desert tortoise and its habitat, and to identify mitigation for the impacts. The LEIS should include a description and analysis of the impacts of existing uses/activities at YPG and proposed uses/activities on withdrawn lands that the Army describes in the NOI, which is why the Army claims there is a need for the land withdrawal. This "package" of information and analysis is needed because these are the activities that would occur on the withdrawn lands, and Congress needs to know what the full effect of their decision will be on the human environment including the Sonoran desert tortoise and its habitat.

We request that the Army produce one LEIS for Congress and the public that includes an analysis of the impacts of the land withdrawal, the impacts that will occur on the withdrawn lands, and mitigation that will be implemented, especially for the Sonoran desert tortoise.

Alternatives

The alternatives mentioned in the NOI include:

Proposed Action Alternative – withdrawal of 22,000 acres for military testing and training

No Action Alternative - no additional land would be withdrawn and YPG would not expand its capability

Other Alternatives - these could include the withdrawal and reservation of land for a shorter duration (i.e., 25 years).

We recommend the Army analyze one or more alternatives that includes the following:

- Exclusion of the withdrawn land from compliance with the Wild Free-roaming Horses and Burros Act;
- Management responsibility of biological resources given to the Army;
- Effective implementation of the Sikes Act Improvement Act at YPG to “provide for the conservation and rehabilitation of natural resources on military installations;”
- An updated, fully funded, and implemented YPG Integrated Natural Resources Management Plan (INRMP) especially with respect to management/restoration of the tortoise population and habitat, monitoring, and adaptive management to enhance the Sonoran desert tortoise population/habitat at YPG;
- Establishment of a refuge overlay on the withdrawn lands for future U.S. Fish and Wildlife Service (USFWS) management; and.
- With effective implementation of these activities, consideration of the Army’s withdrawal for longer than 25 years.

Exclusion from Wild Free-roaming Horses and Burros Act: Feral burros occur in and near the YPG. They compete with tortoises for limited forage and trample the ground causing damage to soil crusts, soil compaction, and increased erosion (Abella 2008). These conditions further limit seed germination and growth of native plant species in an environment that already limits native plant germination/growth from high temperatures, low humidity, and low availability of water/precipitation. Berry et al. (2020) identified a negative association between tortoises and feral burros (i.e., as burro sign increased, tortoise presence decreased) and Tuma et al. (2016) reported grazing livestock and feral burro disturbances caused the most severe tortoise population declines. Feral burros negatively impact other wildlife species and their habitats. In addition, feral burro management diverts resources—both human and financial—from the management of native species, undermines the principles of wildlife biology/conservation, and harms the public credibility of wildlife biologists (Becar 2017).

If the Army’s intent is to successfully conduct its military mission while managing YPG for native species and habitats (e.g., Sikes Act Improvement Act), especially given the increasing impacts of climate change and growing species extinction rate, the Army should not be encumbered with managing feral burros at YPG. Abella (2010) notes that efforts to restore/maintain old growth perennial plant communities in southwest deserts should include removal of feral burros. Congress has the authority to exclude YPG from the Wild Free-roaming Horses and Burros Act. We recommend this exclusion be included in the land withdrawal legislation and analyzed in the LEIS.

Management Responsibility for Biological Resources: The Army is proposing a land withdrawal, not an acquisition, for an unspecified duration. We are unsure whether BLM may retain some or all responsibility for managing the biological resources, including the Sonoran desert tortoises that occur on the 22,000 acres. If BLM does, we believe this arrangement unduly complicates management and coordination of wildlife resources. Management of biological resources should be science-based and streamlined, as quick and efficient implementation of management actions to conserve species and habitats will likely be needed to reduce increasing extinction rates and better manage for species diversity as climate change impacts increase.

The Council recommends that the Army be the land manager for the biological resources using the 22,000-acre proposed expansion area at YPG with two conditions – (1) the Army should implement the Sikes Act Improvement Act effectively, and (2) a refuge overlay should be placed on the withdrawn lands for future refuge designation.

Effective Implementation of Sikes Act Improvement Act/Revised INRMP: The purpose of the Sikes Act Improvement Act is to “provide for the conservation and rehabilitation of natural resources on military installations.” To facilitate this, the Sikes Act Improvement Act requires the DoD (which includes the Army) to develop and implement INRMPs for military installations. INRMPs are to reflect the mutual agreement of the parties concerning conservation, protection, and management of fish and wildlife resources.

The intent of the Act appears to have been diminished in YPG’s recent INRMP (Army 2022), which includes language for conservation management actions such as “when feasible” that allows the Army to avoid or de-prioritize implementation of conservation actions, especially for management and monitoring of the tortoise/tortoise habitat. This INRMP should be revised to include management and monitoring actions to ensure the Army is effectively contributing to the conservation of the Sonoran desert tortoise at YPG. Given the climate change and extinction crises worsen yearly, we recommend the LEIS include a requirement that the Army at YPG fully implement its future INRMPs, and that wording that enables the Army to forego conservation management be eliminated.

Establishment of a Refuge Overlay: When the military withdrawal is no longer needed, the withdrawn lands would revert to the USFWS as part of Kofa National Wildlife Refuge following DoD’s removal of any environmental contaminants on the withdrawn lands.

These bulleted management actions would help to offset the impacts of the proposed land withdrawal and associated military uses for testing and training purposes. If the Army does not include them as part of the description of alternatives, they could be included in the mitigation section of the LEIS.

Direct and Indirect Impacts

Fencing associated with the Land Withdrawal: From the NOI we presume the Army intends to fence the new YPG boundary to prevent public access to the 22,000 acres. Installation of fencing may result in injury or mortality to tortoises, and new surface disturbance in tortoise habitat will promote the establishment, growth, and spread of non-native invasive annual plant species that

provide a carpet of fuel to spread fires. Depending on the type of fence, it may create a barrier to tortoise movement between populations resulting in a substantial reduction or halt of gene flow between populations, effectively isolating tortoises within YPG. This isolation can result in population declines from genetic (e.g., inbreeding depression), demographic (e.g., small population size), and environmental (e.g., fire, climate change, etc.) stochasticity (Gilpin and Soulé 1986). These impacts should be analyzed in the LEIS.

Fencing will also prevent people from hiking on the withdrawn lands; exploring them to enjoy the solitude, colors, sounds, and fragrances of nature; and wildlife viewing including observing tortoises in an undisturbed setting. The loss of these opportunities should be analyzed in the LEIS.

Testing and Training Activities: Direct and indirect impacts of Army testing and training on the withdrawn lands include direct injury and mortality of tortoises, indirect mortality from subsidized predators and human activities, indirect harm and mortality of tortoises from degradation, fragmentation, and loss of habitat (e.g., non-native invasive plants and fire, etc.), and alteration of behavior from noise. These impacts should be analyzed in the LEIS along with the impacts of environmental contaminants that are used by the Army at YPG that remain after use of testing and training activities in the withdrawn lands, or may migrate there from current uses on adjacent YPG land. These impacts should be described and analyzed in the LEIS.

This proposed action appears to be a continuation of the military's recent practice of expanding the areas of existing military reservations in the southwest deserts (e.g., Fort Irwin, Marine Corps Air Ground Combat Center, China Lake Naval Air Weapons Station, etc.). Such changes in management of large areas of tortoise habitat with little or no analysis of the direct, indirect, cumulative, interactive, and synergistic effects to the native flora and fauna of these areas, including special status species such as the tortoise is unacceptable. While an administrative change in land management responsibility would have some impacts to the Sonoran desert tortoise and its habitat, the implementation of on-the-ground activities the Army is proposing on the withdrawn lands (e.g., surface disturbance, noise, etc. from tactical scenarios that use artillery, armored tracked and wheeled vehicles, a variety of munitions, and parachute systems for personnel and supplies), which is the purpose for the withdrawal, would result in impacts to the Sonoran desert tortoise and its habitat, including habitat used for connectivity to tortoise populations located in a patchy distribution in other parts of western and southern Arizona. Please include and analyze these impacts in the LEIS.

Cumulative Impacts

The Council requests that the Army conduct an analysis of all direct, indirect, interactive, synergistic, and cumulative impacts likely to occur as a result of the land withdrawal and resulting land uses in the withdrawal area. This analysis of cumulative, interactive, and synergistic impacts should be conducted according to the Council on Environmental Quality's (CEQ) "Considering Cumulative Effects under the National Environmental Policy Act" (CEQ 1997). Note that CEQ specifically names an analysis of interactive and synergistic effects under #6 with its analysis of cumulative effects.

For the alternatives in the LEIS, we request that BLM include all eight principles in its analysis of cumulative impacts to the Mojave desert tortoise, especially an analysis of interactive, cumulative, and synergistic impacts to the tortoise and tortoise habitats (#6), an analysis of the cumulative effects to the tortoise/tortoise habitat beyond the life of the project alternatives by applying the best science and forecasting techniques to assess potential catastrophic consequences in the future (#7), and an analysis of the capacity of the tortoise and its habitat to accommodate additional impacts from each alternative based on the tortoise's life history strategy and time needed for restoration of desert soils and vegetation needed by the tortoise for nutrition, shelter, and population connectivity (#8).

Mitigation

In the NOI the Army says, "The LEIS will also identify mitigation measures that would **reduce** [emphasis added] or eliminate any adverse impacts resulting from the transfer of this land to the Army's administrative control." Why isn't the Army obligated to fully offset and fully mitigate the adverse impacts of the land withdrawal and Army's proposed land use? Will the proposed mitigation be fully and effectively implemented? Unfortunately, the Council's experience with other federal agencies is they identify mitigation to help offset the impacts of a proposed action in a NEPA document, but the mitigation is often not implemented.

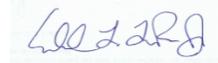
To mitigate for the impacts described earlier and to assure that the Army's actions do not contribute to the listing of the Sonoran desert tortoise in the future, we strongly recommend the Army implement the following actions along with monitoring their effectiveness and promptly implementing adaptive management when implemented management actions are not fully effective.

1. The Army should update the INRMP (Army 2022) prior to implementing any change to the current management of the withdrawn lands. These updates should include funded management actions to conserve the Sonoran desert tortoise as well as other special status species. Updating the INRMP should be a public and transparent process under NEPA. The INRMP should include specific management actions with measurable/quantifiable objectives. It should be science-based and statistically rigorous. Hence, monitoring for effectiveness of the management actions should be required.
2. The Commander at YPG should be a signatory to the Candidate Conservation Agreement for the Sonoran desert tortoise, after the Agreement is revised to reflect the recent devastating loss/degradation of tortoise habitat and tortoises from wildfires and climate change.
3. If the Army has no plans to relinquish the proposed withdrawal of the 22,000 acres in the foreseeable future, it should modify its withdrawal request to add lands to Kofa National Wildlife Refuge that include a preponderance of tortoise habitat, and place a conservation easement or similar designation/protection on these mitigation lands.

We appreciate this opportunity to provide comments on this project and trust they will protect and conserve 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 Army 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.
Ecosystems Advisory Committee, Chairperson
Desert Tortoise Council

Literature Cited

- Abella, S.R. 2008. A systematic review of wild burro grazing effects on Mojave Desert vegetation, USA. *Environmental Management* 41: 809–819.
- Abella. S.R. 2010. Disturbance and plant succession in the Mojave and Sonoran Deserts of the American Southwest. *International Journal of Environmental Research and Public Health* 7: 1,248–1,284.
- Army. 2022. Environmental Assessment - Integrated Natural Resource Management Plan. U.S. Army Garrison, Yuma Proving Ground, Environmental Sciences Division, September 2022.
https://ypg-environmental.com/files/2.-EA_INRMP-Sept-2022.pdf#:~:text=The%20purpose%20of%20this%20Integrated%20Natural%20Resources%20Management,mission%20capacity%20results%20from%20meeting%20our%20stewardship%20responsibilities.
- Becar, J. 2017. *Effects of an Invasive Species: Feral Horses and Burros*, The Wildlife Society. Retrieved from <https://policycommons.net/artifacts/1755988/effects-of-an-invasive-species/2488090/> on 08 Dec 2022. CID: 20.500.12592/4ndsqq.
- Berry, K.H., J.L. Yee, and L.M. Lyren. 2020. Feral Burros and Other Influences on Desert Tortoise Presence in the Western Sonoran Desert. *Herpetologica* 76(4), 403-413. <https://doi.org/10.1655/Herpetologica-D-20-00023.1>
- [CEQ] Council on Environmental Quality. 1997. Considering Cumulative Effects under the National Environmental Policy Act.
https://ceq.doe.gov/publications/cumulative_effects.html
- Gilpin, M.E., and M. E. Soulé. 1986. Minimum viable populations: processes of species extinction. Pp. 19-34. *In*: M. E. Soulé (editor), *Conservation biology: the science of scarcity and diversity*. Sinauer Associates 1986.

Tuma, M.W., C. Millington, N. Schumaker, and P. Burnett. 2016. Modeling Agassiz's desert tortoise population response to anthropogenic stressors. *Journal of Wildlife Management* 80(3):414–429; 2016; DOI: 10.1002/jwmg.1044. <https://doi.org/10.1002/jwmg.1044>. <https://wildlife.onlinelibrary.wiley.com/doi/abs/10.1002/jwmg.1044> or <https://www.dropbox.com/s/z27bfcoqyfpz4bd/Tuma%20et%20al%202016%20Modeling%20Agassiz%27s%20desert%20tortoise%20population%20response%20to%20anthropogenic%20stressors.pdf?dl=0>