



**DESERT TORTOISE COUNCIL**

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**DOCKET**

**09-RENEW EO-01**

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**Via Email and U.S. Mail**

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[FW8DRECP@fws.gov](mailto:FW8DRECP@fws.gov) (Scoping Comments)

California Energy Commission  
Dockets Office, MS-4  
Docket No. 09-RENEW EO-1  
1516 Ninth Street, Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us) (Docket No. 09-RENEW EO-1)

**Re: Environmental Impact Statement and Environmental Impact Report for the Proposed Desert Renewable Energy Conservation Plan and Possible California Desert Conservation Area Plan Amendment**

To Whom It May Concern:

The Desert Tortoise Council (“Council”) appreciates the opportunity to provide comments and information to assist the U.S. Fish and Wildlife Service (USFWS) and the California Energy Commission to define the scope of the joint Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) for the proposed Desert Renewable Energy Conservation Plan (“DRECP”) and possible amendment of the California Desert Conservation Area (“CDCA”) Plan of 1980.

The Council is a private, 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 this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

Our comments are organized by topics. Listed under each topic are questions that we believe the EIS/EIR should address. The Council's recommendations are highlighted in bold print. Most of our comments, understandably, are focused on the desert tortoise. We raise, as well, issues with respect to the Mohave ground squirrel ("MGS"), a threatened species listed under the California Endangered Species Act. The MGS should be a DRECP covered species and measures for its protection should be analyzed in the EIS/EIR.

### Desert Tortoise Recovery

The Council is reassured that one of the planning goals of the DRECP is to potentially conserve and manage up to approximately ninety "covered" species. **The desert tortoise must be included as a covered species in that it is a "threatened" species under both Federal and California law.** However, conserving the species is not sufficient. The goals of the DRECP as a conservation plan must be to both conserve *and* recover the desert tortoise. Therefore, the EIS/EIR must address the question of

How will the DRECP facilitate recovery of the Mojave population of the desert tortoise (*Gopherus agassizii*)?

The answer to this question, we believe, is that **the DRECP must be reconciled with the Revised Recovery Plan for the Mojave Population of the Desert Tortoise (2011).** In other words, desert tortoise recovery should be a planning goal of the DRECP process. More specifically, the EIS/EIR should incorporate actions identified in the Revised Recovery Plan to recover *Gopherus agassizii* within the DRECP planning area. Actions that would "protect existing populations and habitat" are detailed on pages 67 to 78 of the Revised Recovery Plan.

### Habitat

The deterioration, fragmentation, and loss of habitat as a result of human activities were primary reasons for the USFWS determination in April 1990 that the Mojave population of the desert tortoise is "threatened" with extinction. Today, the loss or degradation of habitats continues to place the desert tortoise at risk. Therefore, protecting extensive, unfragmented habitats is essential to the conservation and recovery of the desert tortoise.

In the considered judgment of the Council, **the following lands must be protected to ensure extensive, unfragmented habitats for the tortoise: (1) the Desert Tortoise Research Natural Area (DTRNA); (2) Joshua Tree National Park and the southern portion of Death Valley National Park; (3) all lands designated as critical habitat in 1980 and 1994; (4) all private lands that are in-holdings in the DTRNA, Joshua Tree National Park (tortoise habitat only), and within critical habitat; (5) lands not included within the 1980 and 1994 critical habitat designations but subsequently found to support significant populations of tortoises; (6) lands adjacent to critical habitat and for which development would have moderate to severe adverse impacts; (7) lands that serve to connect the DTNRA, critical habitat or parts of critical habitat, or the National Parks as "connecting corridors" with similar habitats; and (8) lands at elevations of 3,800-5,000+ feet outside critical habitat and currently with low densities of tortoises as these lands are likely to contain suitable habitat in the next 50**

**to 100 years with climate change.**

The Council feels strongly that the DRECP should consider these important habitats when designing and determining the best placement of renewable energy facilities; such habitats should be avoided during future development. Any plan that would facilitate development of the above habitats would detract from the recovery of the desert tortoise and would be considered a CEQA-significant impact.

In addition to incorporating the above land protections, the EIS/EIR should address these questions with respect to habitat:

How will the DRECP ensure that renewable energy and related transmission projects do not jeopardize the desert tortoise by fragmenting critical and occupied habitats?

Will the BLM's proposed amendment to CDCA Plan prohibit placement of solar and other large-foot-print renewable energy development on public lands inside Desert Wildlife Management Areas (DWMAs)?

How can the DRECP regulate large scale renewable resource energy development on *private* lands inside DWMAs or inside the MGS Conservation Area?

How will the DRECP affect BLM's one percent "allowable ground disturbance" in DWMAs and in the MGS Conservation Area?

Will the DRECP facilitate development of linear facilities outside existing BLM utility corridors? The Council feels strongly that long, linear facilities should conform to existing utility corridors, particularly those situated parallel to highways and freeways. **We strongly discourage designation of any new utility corridors than those already identified in the CDCA Plan.**

Take Authorizations and Mitigation

The Council recognizes that the DRECP will provide for issuance of take authorizations for covered species incidental to covered activities. Nonetheless, **the stipulations for take authorizations must be formulated so as to minimize incidental take.** The construction of renewable-energy and related electric-transmission projects will invariably lead to the death of some number of the covered species. This is an issue of particular concern with respect to desert tortoises as human and human-related mortality is a principal cause of the decline in desert tortoise numbers across the desert. It is not sufficient to meet the minimum requirement of Section 10 of the ESA that any proposed take "cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild." **Any stipulations regarding take authorizations must be formulated so as to reduce the number of tortoises that might be harassed, harmed or killed.** In addition, the EIS/EIR should answer these questions with respect to the administration of take authorizations and mitigation:

Which local government agency or other entity will be responsible for implementing the take program under authority of federal section 10(a) and state section 2081 permits?

What will be the fee structure for issuing incidental take permits? How many dollars per acre of lost habitat will be collected to offset impacts? How will these fees be collected and spent to offset impacts? **Development of both occupied and unoccupied habitats must be compensated given the potential to fragment habitats that may not be currently occupied.**

How will the DRECP meet the “fully mitigate” standard mandated by California law and administered by California Department of Fish and Game? How will the DRECP ensure the level of take is concomitant with the level of mitigation for direct and indirect impacts resulting from implementation of the plan?

### Cumulative Impacts

The cumulative environmental impacts of the construction, operation, and decommissioning of renewable energy and related electric transmission projects within the DRECP area must be evaluated as fully as direct environmental impacts. Specifically, **given the recent expansion of Fort Irwin onto lands with large desert tortoise populations and the Marine Corp Air Ground Combat Center Twentynine Palms’ intent to expand into occupied desert tortoise habitat, cumulative impacts must be assessed in the DRECP.** And this question should be addressed:

What is the relationship of these and other military-institution management plans with the DRECP?

Assuming the DRECP does facilitate approval of renewable energy projects,

How do the agencies intend to track growth-inducing impacts and indirect effects resulting from those approvals within the regional action area?

Will the DRECP result in increased vehicular access to tortoise habitats that are not currently accessible by existing roads. In other words, will the plan result in any new roads within the planning area that will further impact tortoises and result in more degraded habitats?

In addition to direct loss of habitats within the development footprint, new energy will predictably result in more development and more uses of habitats outside the direct impact footprint.

How will the DRECP analyze and propose to offset these indirect, growth-inducing, cumulative impacts?

### Alternatives

**There are two contingencies that the EIS/EIR should anticipate: (1) a change in the federal status of *Gopherus agassizii* from “threatened” to “endangered” and (2) federal listing of the MGS.** The identification of a new species of desert tortoise (*Gopherus morafkai*) by Murphy, et al. (2011) reduces the distribution of *Gopherus agassizii* to about 30 percent of its former range. Because the reduction carries implications for species conservation, the authors argue that the Agassiz’s desert tortoise may require a higher level of protection under the Endangered Species Act to ensure the level of management that would maximize its chances of survival. In April 2010, the USFWS announced that it would review the status of the MGS and possibly increase its protections under the Endangered Species Act. A higher level of protection for *Gopherus agassizii* and listing of the MGS by the Federal government are likely (or, possible) after DRECP approval. While these are not “alternatives” in the typical sense, the potential changes should be planned for to ensure appropriate protection for each species.

The rules for preparing an EIS/EIR require that the “No Action Alternative” be addressed in the environmental documents. Given this,

What is the DRECP alternative that actually considers less use of energy (renewable or otherwise) within the regional action area, an alternative requiring no action?

**The DRECP should fully analyze the alternative of placing facilities, particularly solar panels, in existing urban areas (e.g., on roof tops) rather than in covered species habitats.** The Council feels that placing panels in residential and commercial areas, such as shade structures in parking areas, is highly preferred to developing such facilities in native desert habitats, whether occupied by tortoises or not.

We urge, in conclusion, that full consideration be given to the recommendations of the Independent Science Advisors to the Renewable Energy Action Team for the California DRECP (2010). Each recommendation of this group of eminent scientists should be carefully considered for inclusion in the EIS/EIR. We urge, as well, that the EIS/EIR incorporate the “no regrets” strategy advocated by the independent science advisors, “*such as siting developments in already disturbed areas*” in the near term until more refined analyses become available to guide more difficult decisions (2010, iii).

Sincerely,



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**References:**

Independent Science Advisors. 2010. Recommendations of Independent Science Advisors for The California Desert Renewable Energy Conservation Plan (DRECP).

Murphy RW, Berry KH, Edwards T, Leviton AE, Lathrop A, Riedle JD. 2011. The dazed and confused identity of Agassiz's land tortoise, *Gopherus agassizii* (Testudines, Testudinidae) with the description of a new species, and its consequences for conservation. ZooKeys 113: 39–71.

U.S. Fish and Wildlife Service. 2011. Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*). Sacramento, California: U.S. Fish and Wildlife Service, Pacific Southwest Region.