



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Palm Springs Fish and Wildlife Office
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In Reply Refer To:
FWS-SBR-12B0203-17TA0886

June 14, 2017
Sent by Email

Craig Wentworth
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Division of Environmental Planning
Department of Transportation
464 West Fourth Street, MS 828
San Bernardino, California 92401-1400

Subject: Amendment to the Biological Opinion for the Kramer Junction Expressway
Project (FWS-SB/KRN-12B0203-14F0423)

Dear Mr. Wentworth:

By letter dated April 19, 2017, you notified us of changes to the Kramer Junction Expressway Project and requested that the U.S. Fish and Wildlife Service (Service) amend its biological opinion for the proposed action to accommodate these alterations. Specifically, you requested to amend the project to include five areas that the California Department of Transportation (Caltrans) proposed to use for borrow material and other activities associated with the proposed action. By electronic mail dated May 5, 2017, Josh Jaffery of your staff requested that we consider three additional changes to the proposed action in the amended biological opinion. Your requests and our response are made pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended.

The Service issued a biological opinion for rerouting State Route 58 in 2014 and concluded that the proposed action was not likely to jeopardize the continued existence of the desert tortoise (*Gopherus agassizii*) or result in the destruction or adverse modification of its critical habitat. In the biological opinion, we noted that we could not estimate the likely number of desert tortoises in the project area from the information in the biological assessment, at least in part because of the low number of desert tortoises found during surveys and the long, linear nature of the proposed action. Therefore, to assess the potential effects of the proposed action, we used the density estimate that the Service derived for the Fremont-Kramer Critical Habitat Unit during range-wide sampling in 2012 to estimate that 4 desert tortoises greater than 180 millimeters in length may reside in the project area. In the incidental take statement, the Service stated that "... we will consider the amount or extent of take to be exceeded if two large desert tortoises are killed or injured within the project area. We are not establishing a re-initiation criterion for the number of large or small desert tortoises that would be moved out of harm's way during construction of the proposed project. Furthermore, we are not establishing a re-initiation criterion for the loss of small desert tortoises or eggs."

To evaluate the proposed changes in the reroute project, the Service considered information in our biological opinion, information you provided in your requests, and information obtained during a site visit attended by you and Mr. Jaffery, Ray Bransfield of my staff, and Heather Elder of the California Department of Fish and Wildlife on December 1, 2016. Your April 19, 2017 letter also states that Caltrans will implement the applicable avoidance and minimization measures from its biological assessment and the Service's biological opinion within these additional work areas. We will address your proposed changes in the following paragraphs.

Area 2: Caltrans proposes to use approximately 100 acres of this parcel, which is located at the western end of the project area, for borrow material. Caltrans would also install a water well and construct a pond that would serve as a water source for the project.

Area 2 contains three graded airstrips and a playa. Saltbush and alkali sink scrub comprise the plant communities; the habitat generally seemed of low quality for desert tortoises. Caltrans partially surveyed this area for desert tortoises in 2009 and did not detect any desert tortoises or their signs. As Caltrans notes in its request; we concluded given the existing disturbance on the site, the proximity of the site to State Route 58, the results of the surveys, and the habitat types present, few, if any, desert tortoises are likely present within Area 2. The disturbance of Area 2 would not affect critical habitat of the desert tortoise or other areas important for the long-term conservation of the species.

Area 3: Caltrans proposes to use approximately 36 acres of the area that lies northeast of the intersection of State Route 58 and U.S. Highway 395. Caltrans would use this area for a trailer complex, parking lot, maintenance yard, shop, batch plant, laydown area, and a retention pond.

Area 3 lies adjacent to a small block of buildings and is heavily littered with trash that likely has blown onto the site from businesses to the west. Saltbush scrub comprises the plant community. Caltrans surveyed the route of the new freeway for desert tortoises in 2009, which lies to the north of Area 3, and did not detect any desert tortoises or their sign. The structure and nature of the habitat seemed suitable for desert tortoises; however, the proximity to the major roads, developed areas, the transmission lines to the east, and trash render it likely that few, if any, desert tortoises occupy the site.

Area 3 lies within critical habitat of the desert tortoise. Existing conditions in this area have already compromised its value for the conservation of the desert tortoise; restoration of the conservation value of Area 3 is highly unlikely as long as Kramer Junction remains a transportation hub. We will evaluate the aggregate effect on critical habitat of the additional work areas later in this document.

Area 4: Caltrans proposes to use residual material from past widening of State Route 58 as borrow material for the proposed rerouting of the freeway. The residual material lies in large berms on both sides of the highway to the east of the intersection of State Route 58 and U.S. Highway 395.

During the past widening of State Route 58, Caltrans installed a fence to prevent desert tortoises from entering the roadway. The berms to be used as borrow material lie between the existing highway and the desert tortoise fence. Consequently, desert tortoises are absent from these areas.

Area 4 lies within critical habitat of the desert tortoise. However, in our biological opinion regarding the proposed rerouting of State Route 58, the Service noted that the critical habitat within the area previously fenced to exclude desert tortoises no longer provided the conservation function of critical habitat and its loss or disturbance did not comprise a new adverse effect. Caltrans has determined that removal of the berms within the right-of-way will have no effect on critical habitat.

Area 6: Caltrans proposes to use this 8.73 acre site for borrow material. This site has been heavily disturbed by past vehicular activity and excavations; it supports little to no saltbush scrub vegetation.

Desert tortoises are highly unlikely to reside within Area 6. This site is not within critical habitat of the desert tortoise.

Area 7: Caltrans proposed use of this site in its April 19, 2017, letter but, in its May 5, 2017, electronic mail, stated that it will not use Area 7. Therefore, we will not discuss this site further.

In its May 5, 2017 electronic mail, Caltrans noted that Pacific Gas and Electric was required to relocate two of its pipelines because of the reroute project. Near the western end of the reroute, Pacific Gas and Electric would relocate approximately 500 feet of pipeline that lies within the new right-of-way. The work in this approximately 0.3-acre area would be entirely within the right-of-way for the rerouting of State Route 58 and Pacific Gas and Electric will implement the protective measures for the desert tortoise from the biological opinion. For these reasons, the effects on the desert tortoise would be essentially the same as those we anticipated in the biological opinion. This area is not within critical habitat of the desert tortoise.

Pacific Gas and Electric would also need to install approximately 3,100 feet of pipeline that extends east from the vicinity of Highway 395 and then turns directly south until it crosses the new right-of-way for State Route 58. Most of this line would traverse desert scrub habitat that may support desert tortoises; a small portion of the line would be placed in disturbed habitat west of and under Highway 395 and the southernmost portion of the line would lie within the right-of-way of the rerouted highway. Because Pacific Gas and Electric will implement the protective measures described in the biological opinion, we expect that few, if any, desert tortoises are likely to be killed during this work.

Pacific Gas and Electric would disturb approximately 8.2 acres of critical habitat during this work. The temporary disturbance would not reduce the amount of space available to support a viable population of desert tortoises within Western Mojave Recovery Unit; the disturbance would also not impede for the long-term movement, dispersal, and gene flow within the

Fremont-Kramer Critical Habitat Unit (the first physical and biological feature of critical habitat).

Installation of the pipeline would disturb the second physical and biological feature of critical habitat (sufficient quality and quantity of forage species and the proper soil conditions to provide for the growth of these species). Disturbed substrates in the desert promote the spread of non-native invasive species that can displace native forage species for the desert tortoise and are not as nutritious. Caltrans has committed to use best management practices and measures to help reduce the possibility of introducing new invasive plants into the project area; this measure should reduce the likelihood that new species are introduced into the area but does not address the potential for the proposed action to increase the abundance of non-native species that are already present. The extent to which native forage species and proper soil conditions can be restored within the pipeline right-of-way depend on the extent of the restoration work, the types of soils and plants currently onsite, the amount of unauthorized disturbance after installation, weather, and how frequently Pacific Gas and Electric may need to excavate the right-of-way for maintenance. In some cases, pipeline rights-of-way support a wide diversity of native plant species.

Installation of the pipeline would disturb the second through fifth physical and biological features of critical habitat (suitable substrates for burrowing, nesting, and overwintering; burrows, caliche caves, and other shelter sites; sufficient vegetation for shelter from temperature extremes and predators). Installation of the pipeline would disturb substrates, burrows, caliche caves, and the perennial shrubs that desert tortoises use for cover. As with the forage species of the desert tortoise, the ability of these physical and biological features to recover depends in large part on numerous factors.

Installation of the pipeline would temporarily affect the sixth physical and biological feature (habitat protected from disturbance and human-caused mortality) because it would require a relatively short amount of time. Operations and maintenance would introduce short-term, sporadic disturbances to critical habitat, as workers travel the pipeline for safety inspections and excavate portions of it for repairs. Overall, installation, operations, and maintenance would not have a measurable effect on this physical and biological feature.

The staging area that Pacific Gas and Electric would use east of Highway 395 has been heavily disturbed by previous activities. Because of this disturbance and the proximity of the area to the highway and human habitation at Kramer Junction, we expect that few, if any, desert tortoises occur onsite.

The staging area, which covers 2.5 acres, is also within the Fremont-Kramer Critical Habitat Unit. The existing disturbance has likely degraded the second through fifth physical and biological features of critical habitat on this parcel. The use of the site as a staging area would result in some additional degradation of these physical and biological features and short-term effects to the first and sixth physical and biological features of critical habitat

To conduct a quantitative analysis of the effects of the additional disturbance of critical habitat, we combined the acreages of all of the areas and compared it to the amount of disturbance we analyzed in our biological opinion. We conducted a worst-case analysis by including all areas of critical habitat that would be disturbed, regardless of the current condition of the habitat, whether the area could be restored, and whether it overlaps with a portion of critical habitat that we evaluated in our biological opinion.

In our biological opinion regarding the proposed rerouting of State Route 58, the Service noted that the loss and disturbance of approximately 334 acres of critical habitat along the right-of-way comprised approximately 0.065 percent of the 518,000-acre Fremont-Kramer Critical Habitat Unit. The additional loss of 380.7 acres (Area 3, 36 acres; gas line, 8.2 acres; staging area, 2.5 acres) would bring that percentage to approximately 0.074. (That is $[334 + 36 + 8.2 + 2.5] / 518,000 \times 100 = 0.07349$.) The increase in the amount of disturbance to critical habitat is minor; additionally, most of the additional work areas are subject to existing disturbance and are unlikely to support the physical and biological features of critical habitat in the future. For these reasons, the Service does not recommend re-initiation of formal consultation.

The Service also does not recommend that Caltrans re-initiate formal consultation regarding the desert tortoise. As we mentioned previously in this document, the incidental take statement in the Service's biological opinion for the rerouting of State Route 58 established a trigger for re-initiation of formal consultation if two large desert tortoises are killed or injured within the project area but did not establish re-initiation criteria for the number of desert tortoises that would be moved out of harm's way during construction or for the loss of small desert tortoises or eggs. All of the additional work sites that we have evaluated in this document are likely to contain few, if any, desert tortoises and the protective measures proposed by Caltrans should be highly effective in avoiding mortality of large desert tortoises. For these reasons, the additional work proposed by Caltrans does not affect the desert tortoise in a manner to require re-initiation of formal consultation. Please notify us as soon as possible if you become aware of additional changes in the proposed action.

We offer Caltrans two recommendations regarding the proposed action. First, Caltrans' protective measures focus on preventing the introduction of invasive plant species that are new to the area. We recommend that Caltrans and Pacific Gas and Electric, as appropriate, also implement measures to manage non-native invasive plants that currently occur in the project area within their work areas. For example, invasive plants that currently occur in the Mojave Desert, such as Sahara mustard (*Brassica tournefortii*), often increase greatly in number in disturbed areas. We recommend management of such species in disturbed areas until disturbed substrates stabilize to the extent that they no longer provide optimal habitat for these species.

Secondly, we recommend that Caltrans take specific precautions at Area 6 to ensure that the mitigation site for the Barstow woolly sunflower (*Eriophyllum mohavense*) is not indirectly affected by its work. These effects may include but are not limited to fugitive dust and drainage.

If you have any questions, please contact Ray Bransfield of my staff at (805) 677-3398 or ray_bransfield@fws.gov.

Sincerely,

Kennon A. Corey
Assistant Field Supervisor