

RECEIVED BLM  
SOUTHERN NEVADA  
DISTRICT OFFICE



## United States Department of the Interior



### FISH AND WILDLIFE SERVICE

Nevada Fish and Wildlife Office

4701 North Torrey Pines Drive

Las Vegas, Nevada 89130

Ph: (702) 515-5230 ~ Fax: (702) 515-5231

April 24, 2014

File Nos. 84320-2014-F-0172 and

1-5-04-F-526

RECEIVED BLM  
SOUTHERN NEVADA  
DISTRICT OFFICE

04 APR 31 AM 9:01

#### Memorandum

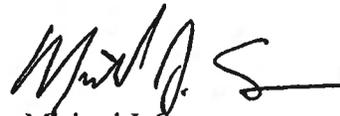
**To:** Assistant Field Manager, Division of Resources, Las Vegas Field Office, Bureau of Land Management, Las Vegas, Nevada

**From:** Assistant Field Supervisor, Nevada Fish and Wildlife Office, Las Vegas, Nevada

**Subject:** Request to Append a Low-water Crossing and Pavement Upgrade to the Programmatic Biological Opinion for the Red Rock Canyon National Conservation Area, Clark County, Nevada

This responds to your memorandum received March 31, 2014, requesting that the subject actions be appended to the programmatic biological opinion (PBO) issued to the Bureau of Land Management for actions in the Red Rock Canyon National Conservation Area (Fish and Wildlife Service File No. 1-5-04-F-526). The PBO addressed potential effects from construction, operation, and maintenance of facilities to the threatened Mojave desert tortoise (*Gopherus agassizii*), in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.) and 50 CFR § 402 of our interagency regulations governing section 7 of the Act. Funding for the projects is provided by the Central Federal Lands Highway Division of the Federal Highway Administration which adds a second Federal action to this consultation.

Our response to your request is attached. If we can be of further assistance, please contact Michael Burroughs in the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230. Please reference File No. 84320-2014-F-0172 in future correspondence concerning this consultation.



Michael J. Senn

Attachment

*Red Rock Canyon NCA Low-water Crossing*

*File No's. 84320-2014-F-0172  
and 1-5-04-F-526*

cc:

Supervisory Biologist – Habitat, Nevada Department of Wildlife, Las Vegas, Nevada  
Central Federal Lands Division, Federal Highway Administration, Lakewood, Colorado (attn:  
Matthew Ambroziak, Project Manager)

**Attachment**

**APPENDED ACTION UNDER THE  
RED ROCK CANYON NATIONAL CONSERVATION AREA (NCA)  
PROGRAMMATIC BIOLOGICAL OPINION (PBO)  
Proposed Action File No: 84320-2014-F-0172**

**Dates of Request:** March 28, 2014  
**Dates Received:** March 31, 2014  
**Date of Response:** April 24, 2014

**PBO File No.:** 1-5-04-F-526  
**Programs:** Recreation & Visitor Management

**Species Affected:** Mojave desert tortoise (*Gopherus agassizii*); no critical habitat will be affected

**PROPOSED ACTION**

The Bureau of Land Management (BLM) and Central Federal Lands Highway Division (CFL) propose to improve two low-water crossings (Sandstone Wash and Red Rock Wash) along the Scenic Loop Drive and Moenkopi Road; improve the Visitor Center parking area; and install a flood warning system. The work areas are identified on Figures 1-8 of the March 28, 2014, request. The Sandstone Wash and Red Rock Wash projects each consist of two design alternatives. Because the alternatives have the same footprints of total disturbance, we determined that the effects to the desert tortoise are the same for the project alternatives based on the poor quality habitat and absence of any tortoise sign in the project area (only two inactive burrows found in action area on outer belt transects- see Environmental Baseline discussion below).

Details of the projects are described in the March 28, 2014, request.

**Proposed Minimization Measures**

The BLM and CFL proposed measures to minimize the potential effects of the proposed actions on the desert tortoise in their March 5, 2014, request which are summarized below:

1. restrict vehicle speed to 35 miles-per-hour (mph) on the Scenic Loop Road and 25 mph on unposted roads
2. require vehicles be checked underneath for tortoises
3. restrict vehicle use to existing routes
4. implement litter-control
5. require BLM and Fish and Wildlife Service (Service) notification of tortoise injuries or mortalities
6. consider additional measures if warranted
7. implement tortoise awareness program
8. require approval of desert tortoise biologists

9. ensure potential tortoise biologists are qualified
10. move tortoise from harm's way
11. locate tortoise moved from harm's way appropriately [in accordance with Service 2009]
12. designate a BLM representative to oversee the projects
13. avoid desert tortoise burrows
14. ensure tortoises are not exposed to dangerous heat levels and if heat distress occurs, treat appropriately
15. ensure a post-project report is prepared and provide to the Service
16. mark or flag project areas and restrict project activities to these areas; confine activities to designated areas
17. blade vegetation only as necessary [not to exceed 23 acres for all activities]
18. pay appropriate remuneration fees
19. clear work areas of tortoises
20. backfill or cover open trenches
21. a desert tortoise monitor will be onsite if work occurs from March 1 through October 31 and an authorized desert tortoise biologist will be on-call at all times.

#### **STATUS OF THE SPECIES - RANGE-WIDE**

The range-wide status of the desert tortoise consists of information on its listing history, species account, recovery plan, recovery units, distribution, reproduction, and numbers. Because of the length of the document, the current range-wide status of the species and its critical habitat is provided on the Service's website at:

[http://www.fws.gov/nevada/desert\\_tortoise/documents/misc/status-desert-tortoise.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/misc/status-desert-tortoise.pdf).

If unavailable on this web site, contact the Nevada Fish and Wildlife Office in Las Vegas at (702) 515-5230, and provide File No. 84320-2014-F-0151 and the date February 7, 2014. Additional information is provided in our 5-year review (Service 2010) and revised recovery plan for the Mojave desert tortoise (Service 2011).

#### **ENVIRONMENTAL BASELINE**

In general, vegetation in the action area consists of creosote-bursage scrub, desert wash, and Mojave mixed scrub communities that transition to blackbrush. The area is situated at approximately 3,600 to 4,700 feet in elevation which is at or above the elevation limit for the desert tortoise. Wildfires in 2005-2006 burned much of the Scenic Loop Road area. Overall, the action area consists of areas that range from unsuitable for tortoises to poor quality tortoise habitat.

Surveys of the action area were performed to determine presence or absence of desert tortoises in February-March 2014. No desert tortoise sign was found in the project areas, but an inactive

tortoise burrow was found on the 600-meter belt transect for the Sandstone Wash project and a second inactive tortoise burrow was found on the 400-meter transect for the Flood Warning System project.

## EFFECTS OF THE ACTION

The effects of the proposed action are described in the *Effects of the Proposed Action on the Listed Species* section of the PBO, and are hereby incorporated by reference.

Direct effects of the action are the immediate, often obvious effects on the desert tortoise or its habitat resulting from the action. Indirect effects are caused by or result from the action, are later in time, and are reasonably certain to occur. In contrast to direct effects, indirect effects can often be more subtle and may affect desert tortoise populations and habitat quality over an extended period of time, long after project activities have been completed. Indirect effects are of particular concern for long-lived species such as the desert tortoise because project-related effects may not become evident in individuals or populations until years later. Cumulative effects are those effects of future State, local government, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

The direct effects associated with this action would result in disturbance of approximately 23 acres of marginal to poor quality desert tortoise habitat. Because tortoise sign was found in the action area, individuals could wander into the project area and if not observed, may be directly harmed (i.e., injured or killed) by heavy construction equipment. Displaced tortoises may wander into new areas and be subject to increased incidences of predation and illegal harassment. Desert tortoises occupying the habitat surrounding the project may be indirectly disturbed by project construction noise and activity. Because of the short-term duration of project activities, proposed minimization measures, and low number of tortoises in the action area, these effects would have minimal impact on desert tortoises and their habitat.

There are no cumulative effects to desert tortoise in the action area since it only includes Federal lands.

## CONCLUSION

After reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it is the Service's biological opinion that the proposed action is within the scope of the PBO and is therefore, not likely to jeopardize the continued existence of the threatened Mojave desert tortoise.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act, as amended, prohibits take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering (50 CFR § 17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR § 17.3). Incidental take is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to, and not intended as part of the agency action, is not considered a prohibited taking provided that such taking is in compliance with the Terms and Conditions of this incidental take statement.

The measures described below are non-discretionary and must be undertaken by BLM and CFL, or any other jurisdictional Federal agency, so that they become binding conditions of the permit, as appropriate, for the exemption in section 7(o)(2) to apply. BLM, CFL, or any other jurisdictional Federal agency, has a continuing duty to regulate the activity that is covered by this incidental take statement. If BLM or CFL, or any other jurisdictional Federal agency, (1) fails to require the project proponent to adhere to the action-specific Terms and Conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with action-specific Terms and Conditions, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, BLM or CFL must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement (50 CFR§402.14(i)(3)).

## **AMOUNT OR EXTENT OF TAKE**

Based on the analysis of effects provided above, minimization measures, and anticipated project duration, the Service anticipates that no desert tortoise may be incidentally killed or injured as a result of the action and an unknown number of desert tortoises may be captured and displaced from the project site; however, the Service estimates that no more than one desert tortoise is likely to be incidentally taken by capture.

## **EFFECT OF THE TAKE**

In the PBO issued to BLM and CFL for the RRCNCA actions, the Service determined that these levels of anticipated take are not likely to result in jeopardy to the threatened Mojave population of the desert tortoise. Incidental take anticipated for the proposed project is within the level of take exempted in the PBO.

**REASONABLE AND PRUDENT MEASURES (RPM) WITH TERMS AND CONDITIONS**

The Service does not include any additional measures beyond those proposed by the BLM and CFL.

This concludes formal consultation on the action outlined in your March 28, 2014, request. Information in the request and this consultation document are hereby appended to the PBO issued to fulfill their consultation requirements pursuant to section 7(a)(2) of the Act.

## LITERATURE CITED

Service (Fish and Wildlife Service). 2009. Desert Tortoise Field Manual. Desert Tortoise Recovery Office, Reno, Nevada. Available at:  
[http://www.fws.gov/ventura/species\\_information/protocols\\_guidelines/](http://www.fws.gov/ventura/species_information/protocols_guidelines/)

Service (Fish and Wildlife Service). 2010. Mojave population of the desert tortoise (*Gopherus agassizii*), five-year review: summary and evaluation. Desert Tortoise Recovery Office, Reno, Nevada. September 30, 2010. Available on the internet at:  
[http://www.fws.gov/ecos/ajax/docs/five\\_year\\_review/doc3572.DT%205Year%20Review\\_FI\\_NAL.pdf](http://www.fws.gov/ecos/ajax/docs/five_year_review/doc3572.DT%205Year%20Review_FI_NAL.pdf)

Service (Fish and Wildlife Service). 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. 222 pp. Available on the internet at:  
[http://www.fws.gov/nevada/desert\\_tortoise/det\\_recovery\\_plan.html](http://www.fws.gov/nevada/desert_tortoise/det_recovery_plan.html)