

Desert Tortoise Preserve Committee * Desert Tortoise Council
Center for Biological Diversity * Desert Protective Council
Sierra Club * Public Employees for Environmental Responsibility
California Wilderness Coalition * The Wilderness Society * Defenders of Wildlife
California Native Plant Society

September 3, 2002

U.S. Department of the Interior
Director, Bureau of Land Management (210)
Attn: Brenda Williams
Telephone (202) 452-5045
1620 "L" Street, NW, Rm 1075
Washington D.C. 20036

RE: Protest Of Proposed Northern and Eastern Colorado Desert Coordinated Management Plan and Final Environmental Impact Statement

Dear Director Clark:

Pursuant to 43 C.F.R. 1610.5-2 the following listed organizations protest the *Proposed Northern and Eastern Colorado Desert Coordinated Management Plan and Final Environmental Impact Statement* (referred hereinafter as the NECO Plan/FEIS): the Desert Tortoise Preserve Committee, Desert Tortoise Council, Center for Biological Diversity, Desert Protective Council, Sierra Club, Public Employees for Environmental Responsibility, California Wilderness Coalition, The Wilderness Society, Defenders of Wildlife, and California Native Plant Society¹. All of these organizations have previously commented on or have been otherwise involved in the NECO planning effort. We are filing this protest because we find these documents to be incomplete, and that they do not adequately address public comment, and fail to analyze significant environmental impacts. Consistently, the Proposed Plan illegally defers necessary management decision to a future date, or to a time uncertain. The Plan/FEIS fails to address many significant concerns raised throughout the planning process detailed below. We believe the Plan/FEIS violates the National Environmental Policy Act, the Federal Land Policy Management Act, the Endangered Species Act, the Wilderness Act, and other congressional acts.

Issues in the Plan Being Protested

As set out more fully below, appellants protest those issues and portions of the plan (and the EIS upon which it is based) which:

- fail to properly respond to public comments;
- fail to adequately analyze the environmental impacts of the proposed plan, including ecological impacts and impacts to air and water resources;

¹ The California Native Plant Society (CNPS) joins this protest only as to those issues affecting vegetation. CNPS takes no position as to other items raised in this protest.

- fail to analyze a reasonable range of alternatives;
- fail to comply with the recommendations and requirements of the Desert Tortoise Recovery Plan
- fail to comply with the requirements of the Federal Land Policy Management Act;
- fail to comply with the requirements of the Endangered Species Act;
- fail to comply with the requirements of the National Environmental Policy Act;
- fail to comply with the requirements of the Wilderness Act;
- fail to provide adequate protections against impacts caused by off-road vehicles;
- fail to be consistent with the CDCA Plan.

I. RESPONSE TO PUBLIC COMMENTS

As an initial matter applying to all issues addressed in the Plan/FEIS and relevant to all portions of the plan being protested, the Plan/FEIS fails to properly address public comments. The Plan/FEIS fails to address significant concerns raised during the planning process and in written comments made on the draft plan. The approach taken in the Public Comments and Responses section of abstracting comments and answering them in isolation has ensured that the general public reviewing this document will remain ignorant of the reasons and context behind the comments. The comment letters should have been attached to the Appendix. The public would have benefited from at least being able to read verbatim the comments of members of the Interest Groups Committee such as the Desert Tortoise Preserve Committee or the California Association of 4 Wheel Drive Clubs.

Because the actual comment letters are not included in the FEIS, it is unclear what issues have simply not been addressed by BLM at all. However, we do know that several issues that were raised in comment letters by one or more of the protesting organizations were not addressed. Examples of this include: The Bureau was specifically asked to explain why 70 square miles or so of critical habitat designated as category I was being deleted from the western end of the Chemehuevi critical habitat unit in the immediate vicinity of the proposed Cadiz Water project. Comments regarding the lack of scientific study justifying the installation of new drinkers/guzzlers and requesting a full analysis of their impacts on the desert tortoise were ignored. Because the text of comment letters was not available omissions of questions and comments may have occurred on a large scale. The comments were compartmentalized in such an arbitrary manner that responses are often fragmentary and contradictory responses can be found under different sections (e.g. see below under Washes and Route Designations). Many responses are vague, capricious, or inconsistent. A copy of the direct responses to individual comment letters was requested from the project manager but was not provided.

Additionally, the FEIS ignored the hundreds of comments submitted by members of the public and members of the protesting organizations that were submitted via email or fax. NEPA does not allow the BLM to disregard these comments simply because of the form in which they were submitted.

II. TORTOISE ISSUES

The Plan/FEIS treatment of issues relating to the desert tortoise is wholly inadequate and violates virtually every law BLM is charged with implementing. The initial impetus to create the various subregional plans in the CDCA of which NECO is one, was to bring the CDCA Plan up to date so as to address and reverse the decline of the desert tortoise. More specifically, the planning process was to be the vehicle for the BLM to implement the desert tortoise Recovery Plan. The Plan/FEIS however absolutely fails to meet any of these objectives.²

In 1994, the U.S. Fish and Wildlife Services published the *Desert Tortoise (Mojave Population) Recovery Plan*. The *Recovery Plan* outlined a strategy to recover the tortoise based on establishing reserve level desert tortoise wildlife management areas (DWMA) that would be intensively managed to conserve the species in each of the six desert tortoise Recovery Units. The Northern and Eastern Colorado Desert Coordinated Management Plan planning area includes two entire desert tortoise Recovery Units. Data from the USGS permanent study plots clearly indicates that the desert tortoise population has experienced severe declines in both of these Recovery Units. Evidence for continued population declines since 1994 highlights the ineffectiveness of current management and the need for strong effective management. However, the proposed plan is actually less protective than current management. It seeks to significantly reduce the amount of desert tortoise critical habitat, it fails to designate routes through washes in critical habitat where desert tortoises spend much of their above ground activities, it allows cattle turnout in critical habitat at lower ephemeral production levels than today, and it facilitates the installation of over 100 new water developments throughout the Chuckwalla critical habitat unit without analyzing the impacts to tortoise recovery. We fail to see how this plan will conserve or recover the desert tortoise as required by the Endangered Species Act, or how it complies with FLPMA mandates to protect the resource. The failure to address relevant comments and concerns that we raised repeatedly throughout the planning process also raises NEPA issues.

Failure to Review and Consider All Reasonable Alternatives:

An Environmental Impact Statement is required to rigorously explore and objectively evaluate all reasonable alternatives in a large and/or controversial public land analysis per NEPA. The BLM and all Federal agencies are also required under the ESA to *... develop and implement plans for the conservation and survival of endangered and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species...(Section 4 (f)(1) ESA)*. In fact this congressional direction argues for the need of Federal agencies to incorporate species recovery plan measures in all alternatives analyzed for a particular land use decision, particularly in habitat areas designated officially for any species as critical habitat.

Despite many verbal and written requests over the last seven years of the NECO planning effort³, the Bureau of Land Management has failed to analyze a Plan alternative that would fully

² The issues raised in the section, while primarily of concern with regard to the tortoise also are in many instances of general applicability (ie the failure to properly designate routes). As such, the issues protested include all elements of the Plan/FEIS to which they apply.

³ Letters from DTPC and DTC dated February 13, 1995; February 28, 1997; January 20, 2000; October 15, 2001; Presentation to NECO Interest Group Committee, February 17, 1995. Additional comment letters were submitted by the various organizations submitting this protest both during and prior to the public comment periods on the Plan/DEIS.

implement the recommendations of the 1994 *Desert Tortoise (Mojave Population) Recovery Plan*. Chapter 2 “Alternatives” on pages 2-3 to 2-4 lists three reasons why an alternative that would implement the recommendations of the Recovery Plan was not analyzed. We find none of these reasons to be credible. For convenience we review each in turn:

(1) was a variation of an alternative already being considered in this plan amendment

Since the onset of the planning effort we have repeatedly asked the Bureau to analyze an alternative based on implementation of the recommendations of the *Recovery Plan*. No alternative comes close to implementing the recommendations of the *Recovery Plan* and no *Recovery Plan* alternative was considered. So how could a *Recovery Plan* alternative be a variation of an alternative? Since we made our request at the beginning of the planning effort the Bureau should explain why it ignored our initial requests to consider the recommendations of its sister agency the Fish and Wildlife Service. Given the similarity of the no action alternative and the proposed plan, one is left wondering why were both of those considered?

(2) would not meet the Purpose and Need of this amendment or the Purpose and Need of the CDCA Plan

Page 1-1 states: “The primary purpose of this EIS is to amend or create land use plans and specific management prescriptions for species and habitats on federal lands, providing in particular for the recovery of the tortoise.” The *Recovery Plan* outlines a substantial and detailed strategy to recover the desert tortoise. None of the alternatives reviewed in the Plan/FEIS do this.

(3) would violate the FLPMA

The U.S. Congress has declared that it is the policy of the United States that-...***goals and objectives be established by law as guidelines for public use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law...***(Section 102 (a) (7) Federal Land Policy and Management Act). This cornerstone act requires the Bureau to manage public lands to protect the quality of the resources present. It also specifies that “management be on the basis of multiple use and **sustained yield** unless otherwise specified by law”. The failure to evaluate full implementation of the recommendations of the Desert Tortoise Recovery Plan places the Bureau in violation of FLPMA and ESA because without full evaluation of the resources present, documented threats and known impacts to that resource; the Bureau can not fully understand the quality of remaining listed species habitat and other resource values. Particularly amid continuous extractive use requests that the BLM authorizes on a daily basis without knowing if affected resources can be sustained; and in ignoring specific recommendations and associated peer-reviewed scientific basis put forth in a legal species recovery plan. As the tortoise has been recognized as a cornerstone species of various Mojave Desert habitats, this species certainly is key to the parameter of habitat sustainability. Further, it can be successfully argued that the ESA is certainly another law that would qualify under the phrase ***...unless otherwise specified by law...*** that would direct listed species protection needs to supercede recreational desires expressed under the parameters of multiple use in public land use decisions.

None of these reasons justifies the BLM's failure to fully analyze the Department of Interior's own desert tortoise management recommendations in the NECO Plan/FEIS. We believe this failure to analyze a bona fide alternative based on the *Desert Tortoise Recovery Plan* has resulted in the Bureau producing a plan that will set back desert tortoise conservation rather than achieve it; a duty with which the BLM has been charged. In addition, the failure to analyze a *Recovery Plan* alternative is grossly inconsistent with the California Desert District's other regional planning efforts. The Bureau's NEMO plan did consider a *Recovery Plan* alternative, and a *Recovery Plan* alternative is also being developed in the as yet incomplete West Mojave Plan.

Failure to Review and Consider Specific Comments Related to Tortoises on the Proposed Plan

Washes

Motorized vehicle traffic through their habitat poses a significant threat to adult tortoises: consequently, motorized vehicles must be restricted to authorized designated routes in critical habitat. As we have pointed out repeatedly, since, new research published since the *Recovery Plan* was completed has increased our understanding of the crucial role that desert washes play in tortoise biology. For example, Jennings found that tortoises spent the bulk of their activity time above ground in desert washes. Clearly, therefore, routes along desert washes in critical habitat need to be carefully scrutinized and regularly monitored. As we indicated previously, we view the creation of open wash areas in DWMA as a clear failure by the Bureau to protect the tortoise as it has been charged and essentially a condoning of "mini-open OHV areas". The whole point of this planning exercise is to minimize resource conflicts. The Bureau must designate routes in areas where resource conflicts occur or it will be unable to protect the resources and thus violate the FLPMA.

The Plan's responses glossed over, took out of context, or otherwise sidestepped many fundamental comments on the open wash areas, such as the mandate under NEPA to review the effect of vehicular travel in washes and its impacts to tortoise and other species on a site-specific basis with appropriate public input. The only response to ours and others requests to close washes in critical habitat except where designated as routes appears to be "The level of routes and washes that would be designated as open should be compatible with recovery of the desert tortoise" PC120 (Appendix S-39). What does this mean in clear English? There is no justification or analysis in the FEIS to support the contention that the level of open routes and washes is compatible with recovery. Indeed, the opposite case is made elsewhere. In response to PC 278 (Appendix S-69) it is argued that the inventory of washes is so large that the task was considered unreasonable to undertake. At S-70 the Plan admits "a wash need only be two feet wide and have a history of prior use to qualify as an 'existing' route in accordance with the CDCA Plan. Washes are addressed on a zone basis... a history of prior use is virtually impossible to establish... and the number of known washes in the planning area is estimated to be in the thousands." If these facts are true, then this is an argument not to leave the resource unmanaged and in conflict, but to close the entire wash system. Indeed, by declaring wash open areas, the only remedy for future impacts to the species may now be for the Bureau to close the entire the wash system thus ensuring uproar from the OHV community. NEPA and ESA concerns require a reasonable justification for why the recreational use of a particular route was

more important than the agency's clear mandate under the ESA to pursue species recovery or it requires closure of all washes in DWMAAs.

The response to PC407 (Appendix S-79) also argues that biological parameters should be involved in designating routes: clearly, wash use by tortoises is such a biological parameter and this has been expressed previously in the BLM's own West Mojave Route Designation, Ord Mountain Pilot Unit, Biological Resource Screening Components (USDI BLM CDD 1997). Why isn't this biological parameter analysis method being used in the FEIS?

The Sierra Club requested hard data on amounts of washes closed outside of existing Wilderness areas. It is impossible to compare the conservation value of the proposed action with other alternatives, such as no action alternative, without knowing how the proposed alternative differs from the existing condition (i.e. washes already closed by virtue of being in Wilderness).

Vehicles are a major cause of tortoise deaths and they impact massively on habitat of a great many plant and animal species. A majority of washes in the planning area are extensively used by large numbers of migratory bird species. Vehicle use in these washes at critical times of the year diminishes the value of these habitats to these species as well. The BLM and other Federal agencies are mandated under the Federal Agency Migratory Bird Habitat Protection Executive Order (Clinton 2001) to develop planning documents that avoid impacting habitats of these species. This is barely addressed in the FEIS. The BLM needs to designate routes so that visitors know where they can safely drive without damaging the resources, and so that problem areas can be monitored, and appropriate management instituted when required. This failure to designate routes violates the FLPMA mandate that land use plans should protect the quality of the resources; the ESA mandate to pursue desert tortoise recovery options at every juncture; the BLM Manual to promote the conservation of special status species; and several executive orders related to vehicle use on public lands (Nixon, Carter).

Route Designations

The route designation process is incomplete and Implementation dates for route designations and other plan decisions are not stated. The Motorized Vehicle Access Element of the CDCA Plan as Amended requires that:

“Areas and trails be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention would be given to protect endangered or threatened species and their habitats.”

“When designating or amending areas or routes for motorized vehicle access, to the degree possible, avoid adverse impacts to desert resources”; and

“Manage recreation use to minimize user conflicts, provide a safe recreation environment, and protect desert resources.”

The Plan/FEIS fails to designate routes throughout the proposed tortoise conservation areas in direct contravention to the recommendations of the CDCA Plan's Motorized Vehicle Access Element. In doing so, the Plan/FEIS fails to conform with CFR 8342.1.

The Plan failed to provide requested overlays of key Plan proposals, such as DWMAAs and route designations as requested. This would have been a simple printing matter, and would have

enabled readers to move from resource map to resource map, and to locate and comprehend what actions were being proposed in relationship with the underlying resources. Responses to comments indicated that overlays were available at workshops. However, no such overlays were available, at least at the Palm Springs Field Office.

Grazing

Citing specific impacts, including direct trampling of tortoises, trampling of burrows and cover sites, changes in quality and quantity of plant foods available to desert tortoises, competition for food, soil erosion and compaction, impacts on soil crusts and cryptogams, and alterations in perennial vegetation, the Desert Tortoise Recovery Team placed domestic livestock grazing on its list of activities that “should be prohibited throughout all DWMA’s because they are generally incompatible with desert tortoise recovery and other purposes of DWMA’s [FWS Recovery Plan, p. 57]. The FEIS failed to review implementation of the FWS Recovery Team’s recommendation to prohibit livestock grazing in tortoise habitat (although one alternative took the tack of deleting desert tortoise critical habitat from the Lazy Daisy allotment).

The Proposed Plan will “remove” the ephemeral authorization and make Lazy Daisy a “Perennial” allotment (page 2-28) but it won’t change the AUMs. The plan specifies that cattle must be removed between March 15 and June 15 if ephemeral forage is less than 230 lbs/acre. (A step backwards. The level for authorizing ephemeral grazing is currently 350 lbs/acre under the existing Biological Opinion.) The proposal is vague with the details to be elucidated in “2-3 years” (4-90). The claim is made, without justification, that the 230lbs/acre level “would eliminate competition for grazing” (page 4-74).

Page 4-90 “The proposed Plan would authorize grazing use until the lessee desires to relinquish the grazing lease and then the habitat would be allocated solely for the recovery of the desert tortoise. If that should occur, lessee would be compensated for his financial investment in the Lazy Daisy Allotment.”

On page 4-83 it is noted that grazing causes surface disturbance and reduction in native plant cover thus promoting weed propagation. **The Plan/FEIS fails to analyze this impact** on the desert tortoise or its habitat.

Critical Habitat

For the Chemehuevi unit, the total critical habitat area [Federal Register 59(26) 5827, February 8, 1994] is 937,400 acres versus the proposed 874,843 acres proposed in the NECO Plan (and 10,000 acres less than the 886,578 acres quoted in the draft NECO plan). No explanation is given for the deletion of 70 square miles of Category I habitat from the western end of the Critical Habitat Unit (Maps 2-3, 2-6 and 3-5) though we asked for it. We asked what biological or other data justified the exclusion of this habitat that is located between the Cadiz agriculture operation and the proposed DWMA boundary. No answer has been given in the document. The Cadiz pipeline is mentioned in passing in the Cumulative Impacts section (page 4175) and is the only reference to the Cadiz water project.

According to the response to PC71 (S-38), Critical Habitat was modified to fit the boundaries of BLM category 1 and II habitat. But this is simply not true since much of the critical habitat proposed for deletion at the western boundary of the Chemehuevi DWMA is Category I habitat. Also, the area of the Chuckwalla Critical Habitat Unit southeast of Highway 78 has been deleted. Although formerly a checkerboard of public land and private lands owned by Catellus Corporation it is our understanding that the Catellus lands in this area have been acquired by the Wildlands Conservancy and will be transferred to the Bureau. In the absence of a compelling biologically-based argument as to why this critical habitat should be released, it should be retained as part of the Chuckwalla DWMA.

Raven Management and New Waters

While the plan recognizes that tortoise recovery is hampered by the desert's growing raven population, corvid management is barely given lip-service. On the contrary, the proposal lays the foundation for establishing over 100 new wildlife drinkers in and around the Chuckwalla DWMA without providing a sound scientific analysis and justification of why these new waters are required and without analyzing their impact on the tortoise. What impacts will these drinkers have on predator numbers? If there is an artificial increase in the numbers of deer, what impacts will this have on the desert tortoise and its habitat? How will drinkers impact on weed management issues? We have asked the BLM to specifically address the impacts of these proposed water developments on tortoise recovery within the Eastern Colorado Recovery Unit. No such analysis has been undertaken, and our comment has not been addressed. **The BLM has failed to address the direct, indirect and cumulative impacts of these water developments on the recovery of the desert tortoise, the very species that was driving this plan.**

Competitive Motorized Events and Motorized Recreation

The Johnson Valley to Parker racecourse is retained in the Plan/FEIS. This course runs south of the Chemehuevi critical habitat unit and crosses habitats of several special status species. Where the route enters the NECO planning area on the east side it would have crossed the proposed Pisgah Crater ACEC in the West Mojave Planning Area. This locale is a former CDCA Plan Research Natural Area and is also believed to be a unique transition area between East and West Mojave desert tortoise populations, replete with documented instances of unusual tortoise behavior. The area also supports large populations of the BLM-designated sensitive Mojave fringe-toed lizard, and several other sensitive species. Other features include fragile lava tubes, extensive cultural resources and considerable hazardous surface ordinance and safety/national defense concerns associated with the adjacent Twentynine Palms Marine Corps Base. **This impact is not mentioned or analyzed** although the presence of the racecourse in the NECO plan was raised during concurrent West Mojave Planning effort meetings as a justification for the course being considered for incorporation into the still-developing West Mojave Plan. Additionally, one wonders about past BLM activity plan statements that rationalized the need for large, open areas like the Johnson Valley OHV Area based on the need to facilitate point-to-point races, if additional lands outside these open areas will continue to be subjected to potentially devastating habitat effects associated with competitive events.

The Plan assures the reader that OHV use at places like Rice Valley Dunes and Ford Dry Lake will not increase because of these areas' remoteness from urban centers. This is an erroneous assumption for many reasons. The BLM must recognize and provide adequate monitoring of these and other resources if adaptive management is to occur within the NECO planning area.

Tortoise Monitoring

The tortoise monitoring proposal (page 5-3) is too inadequate to address in much detail. The monitoring proposal is not listed in the Implementation section (page 6-1 to 6-3). Monitoring should be a priority and usually is in BLM planning actions in other regions. Without adequate monitoring how can the success or failure of management be assessed? In failing to fully and adequately address monitoring of listed species, the BLM is violating its own manual directions.

Weed Management

On page 4-83 it is noted that grazing causes surface disturbance and reduction in native plant cover thus promoting weed propagation. Weed management is increasingly important in the desert. **The Plan/FEIS does not fully analyze the impacts** of weeds on the desert tortoise or its habitat or and **does not propose adequate management actions** to deal with weeds and other exotic species.

It should be explicit that changes in land use designation e.g. Wilderness Areas to Class "C" should not hinder tamarisk removal and other weed management activities that may be essential to maintaining the health of the desert ecosystem and tortoise habitat. The recent CDCA lawsuit settlement contained measures to develop an implementation and scheduling plan for the complete removal of tamarisk throughout the planning area. Why has this not been incorporated into the FEIS? This issue is critical to the survival of countless species that rely on desert waters and vegetation.

III. WILDERNESS ISSUES

In addition to its woeful inadequacy with regards to the desert tortoise, the Plan/FEIS also is inadequate with regard to wilderness issues. These inadequacies are both procedural (NEPA) and substantive (FLPMA, Wilderness Act). The failings of the Plan/FEIS with regard to wilderness issues themselves are sufficient reason to grant the protest and issue a new DEIS and a draft plan that complies with the law.

The plan lacks scientific basis for the claim that new waters in Wilderness will benefit bighorn sheep and may negatively impact them in ways not analyzed; it will likely alter and disrupt natural patterns of hydrology and plant and animal species distribution and behavior; it would negatively impact the natural character of wilderness in violation of BLM Manual 8560; it is not shown to be the "minimum necessary" under BLM Manual 8560, and it would alter the fundamental wilderness character of areas in violation of the Wilderness Act of 1964.

No evidence is presented to suggest that locating these guzzlers inside Designated Wilderness Areas would be best for the bighorn sheep. Nor is there evidence that even within these

Wilderness Areas, the locations chosen are the best ones for bighorn sheep. There is no evidence that “expanding the range” of the bighorn, or fundamentally altering the range by placement of artificial water sources, will benefit the bighorn. CDFG is preparing an in-depth plan for placement, maintenance, and monitoring of guzzlers. As far as we know, they are not researching the effectiveness of current guzzlers or the effects these guzzlers have on seasonal wildlife patterns in the area. Do guzzlers change bighorn population movement at different times of the year or under different types of stress (drought, pregnancy)? Will they enhance or diminish the connectivity of subpopulations (demes)? Where is the evidence that existing guzzlers are beneficial for these bighorn populations? Without such evidence, how can BLM plan to add new ones? **None of these questions are answered or even analyzed in the FEIS.**

Areas where guzzlers are proposed may be less suitable or more dangerous for bighorn for any number of reasons; predators, disease, insufficient forage. Bighorn may become dependent on these artificial guzzlers – BLM’s proposed artificial water sources in some Wilderness Areas would outnumber the natural water sources there. Will the guzzlers artificially maintain populations through water availability that are not supported by food availability? The cumulative impacts of existing guzzlers are not analyzed – where is this assessment?

Installation of large numbers of guzzlers in wilderness may attract greater numbers of bighorn sheep, but will also attract greater numbers of other species as well. Will this re-plumbing of desert habitat alter other animal species behavior, dispersal and movement patterns, predation patterns and forage use, and plant populations? Will it attract greater numbers of predators such as ravens with adverse impacts on the desert tortoise? Will it create a cascade of artificial ecological effects in one or several species? **None of these critical questions are answered or even analyzed in the FEIS.**

How does the large number of guzzlers affect natural springs in the area? Are they stealing water from natural springs? Are guzzlers being used as a cheap way to replace surface water stolen by tamarisk? Would tamarisk removal bring about the natural return of surface water making artificial guzzlers unnecessary? Has all tamarisk been removed from areas where guzzlers are proposed to see whether natural surface water will return? **None of these questions are analyzed in the FEIS.**

The FEIS claims that this plan will not substantially affect the natural character of Designated Wilderness Areas (p. 4-87). This is false. BLM’s proposal will negatively impact the naturalness of wilderness in violation of BLM Manual 8560 (04-27-83), *Management of Designated Wilderness Areas*. Twenty-two new artificial guzzlers are proposed for installation in six wilderness areas: 1 in Little Chuckwalla Mountains Wilderness, 1 in Picacho Peak Wilderness, and another 20 combined in the Chuckwalla Mountains, Indian Pass, Little Picacho Peak, and Orocopia Mountains (an average of 5 new guzzlers in each). Guzzlers are installed with 4 wheel drive vehicles and backhoes and installation requires access through washes, ground disturbance, and a permanent visible structure. CDFG will insist on maintaining these guzzlers by motor vehicle access pursuant to the 1997 MOU, and they will also insist on inspecting the guzzlers annually (or more frequently) by motor vehicle as well. (BLM should require that they be inspected on foot or by horse.) This would amount to the de facto creation of an *average* of 5 new “administrative roads” in each of the four most heavily impacted

Wilderness Areas, with vehicles traveling them several times a year. Many guzzlers would also require the installation of new fences to prevent burros from accessing the guzzler. All of these are substantial negative effects on the natural character of wilderness— especially in those Wilderness Areas that are targeted for 5 or more guzzlers each.

For each of these guzzlers, the artificial effects on wildlife behavior and hydrology described in items 1-3 also constitute negative impacts to wilderness and its natural character. Why are these guzzlers proposed inside wilderness rather than outside? Has all tamarisk been removed from the drainages in which guzzlers will be placed? Invasive tamarisk is responsible for the loss of surface waters in many areas – has BLM tried to remove this artificially introduced plant before planning an artificial water development to counteract it?

BLM Manual 8560 (04-27-83), *Management of Designated Wilderness Areas* states that construction of facilities in wilderness is generally not consistent with the free operation of natural processes, but that exceptions may be made if “necessary for the continued existence or welfare” of wildlife. The Manual further requires that permanent installations must be “compatible with preserving wilderness character and...consistent with wilderness management objectives for the area, and...the minimum necessary to accomplish the task. The FEIS fails to satisfy these requirements: the FEIS does not demonstrate that this large number of guzzlers is necessary for the “continued existence or welfare” of bighorn sheep; the large number of artificial guzzlers and associated impacts is not compatible with preserving the area’s wilderness character; and the FEIS does not demonstrate that the number of guzzlers proposed is the minimum necessary.

Our analysis of the FEIS indicates that BLM is proposing to construct so many guzzlers in Wilderness Areas that artificial water developments will actually outnumber natural water sources in some Wilderness Areas. The extreme number of artificial water developments BLM proposes to construct inside Wilderness Areas raises a major statutory question about whether BLM is fundamentally altering the character of Wilderness Areas in violation of the Wilderness Act of 1964.

If BLM’s management activities cumulatively create more artificial water sources than natural water sources in a Wilderness Area, then the area no longer “appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” It no longer is being “protected and managed so as to preserve its natural conditions.” It no longer “retains its primeval character and influence, without permanent improvements.” Instead, if BLM’s plans are carried out, these desert Wilderness Areas will be more artificial than natural in their most fundamental ecological element – surface water, which in this desert environment greatly determines the natural character of the area. In this critical respect, the area will be affected more by man’s work than by the forces of nature. It will lose its primeval character and its natural conditions. It will be managed to attain and maintain artificial conditions, expanding the range of a species into areas it would not frequent naturally. How is the wilderness visitor to experience a primitive, primeval, natural area when most of its waters are manmade?

This artificial plumbing may attract greater numbers of bighorn sheep, but it will also attract greater numbers of other species as well, altering wildlife movement, dispersal, predation

patterns, and forage use, and creating a cascade of artificial ecological effects throughout a number of species. The naturalness of wilderness would be gone.

We believe the proposed guzzler installation program in the NECO FEIS would violate the Wilderness Act of 1964 in these critical respects. The statutory definition, purpose, and management direction for Wilderness Areas provided in the Wilderness Act of 1964 overrides BLM's administrative guzzler guidance in BLM Manual 8560 (04-27-83), *Management of Designated Wilderness Areas*. BLM must rein in this overambitious program of artificial plumbing in wilderness and preserve the naturalness and wilderness character of Designated Wilderness Areas.

IV. OTHER LAND USE ISSUES AND LAND TENURE ADJUSTMENT

While the Plan/FEIS is significantly deficient in its treatment of tortoise and wilderness issues, numerous other items addressed in the documents are dealt with in an illegal and inadequate manner. Specific additional items protested include the following:

The Plan's maps and data are confusing and inadequate. How many square miles of federal land could become private and available for development pursuant to this Plan? It appears to exceed 100 square miles, but insufficient data are provided to determine this amount.

The Plan has failed to address the request for an analysis of the feasibility of accomplishing land acquisitions without employing land exchanges as the preferred method.

Consistently and repeatedly, the Plan makes assurances such "Little urban growth is expected in the planning area due to the remoteness of the area from existing urban centers, the relatively small amount of private lands in the area, lack of infrastructure, and the relatively harsh, water-less [sic] climate (page 4-2). However, by its very Land Tenure decision, the Plan allows for disposal of over a hundred square miles or more of federal lands that are not included in DWMA or other designated areas. The rationale of this wholesale disposal is "acquisition of private lands would be accomplished as much as possible and practical through exchange to reduce the impact of loss of tax base to counties" (page 2-91) and to "facilitate.. the opportunity for community expansion" (page 2-90). Since when was it BLM's mandate to ensure development and to maximize tax revenue for counties?

Furthermore, the environmental consequences of this action and the consequent development it enables, with all its inevitable direct and indirect impacts to both on and off site resources, have not been analyzed. The Plan assures us that land tenure adjustment would take place only where "environmentally suitable." Does this mean BLM intends to piecemeal its review of these proposed trades? At the very least, the Plan must analyze the effects of its decision to definitely make land around freeway exits available for trade, see S-97 "lands around freeway exits are not included in DWMA's so that they have [sic] to be developed." Yet, because the Plan specifically and repeatedly indicates that there will be very little development in the future, it has performed no such analysis.

Plan predictions and assumptions about potential for urban development could not be more incorrect. For example, a new town called “Paradise Valley” has been proposed. The landowner has applied to Riverside County for an “urban center” land use designation (Riverside County planning records on the matter are hereby incorporated by reference). This urban development is being proposed in spite of its “remoteness, lack of infrastructure... harsh, water-less climate,” the very attributes BLM assures us will prevent urban growth in the Plan area. At page 4-2, the Plan alludes to some contemplated trades/acquisitions with Catellus Corporation in NE Imperial County and “two other small areas, which could see some development.” The Plan needs to specify the location and extent of these actions as well as their likely environmental consequences, along with the larger mandated review of the vast potential land disposal provided for by the Plan.

V. CONCLUSION

In sum, as outlined above, we believe that the Plan/FEIS for the NECO planning area to be legally deficient in numerous respects. As such, we file this protest and request that those portions of the NECO Plan protested in this document be stayed until the protest is resolved and these deficiencies are corrected. Specifically, we request that a Record of Decision not be issued; instead the BLM should circulate a revised draft plan that addresses these issues and a new DEIS that includes a full range of alternatives, including a desert tortoise recovery plan alternative. We incorporate by reference any additional protest letters filed by any of the organizations filing this protest. We also incorporate by reference all comment letters submitted by any of the organizations filing this protest. We thank you again for this opportunity to protest the proposed NECO Plan, and we look forward to a positive response from you on our comments. Please keep us informed of any decisions and actions related to this Plan.

Sincerely,

(on behalf of the following)

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