

Attachment DR10-13

From: Kimberly McCormick [kimberly.mccormick@comcast.net]
Sent: Friday, March 30, 2007 7:15 AM
To: Thomas Barnett; tonypenna@inlandenergy.com; Frederick Redell
Cc: Wilcox, Michael D; STREAMNUT@aol.com; Michael.Carroll@lw.com
Subject: VV2 - March 28 Meeting with USFWS

Mike, Tom and I met with Ray Bransfield at USFWS in Ventura yesterday, with Tonya Moore (CDFG) participating by phone. Larry LaPre (BLM) also participated by phone for the portion of the meeting discussing desert tortoise translocation. A summary of the meeting follows.

1. Desert tortoise translocation.

a. Locations.

i. BLM. Both Ray and Tonya agreed that we could either translocate the tortoises to BLM land or translocate them to private lands purchased as part of our compensation requirements for the project. We discussed with Larry the possibility of moving them to a BLM area south of the Brisbane Valley area near the BLM Area of Critical Environmental Concern (ACEC), which is located approximately 5 miles east of our project site on the other side of the Mojave River. The ACEC is 14 square miles, bounded by IH 15 and Highway 66 and is designated for limited use in the West Mojave Plan. WE also discussed the possibility of moving the tortoises to a small strip of BLM land adjacent to the power plant site, located north of Colusa Road, but concluded that it likely is too narrow and also would not be suitable because it is designated as multiple use by BLM and also is located in a Land Tenure Adjustment Act (LTA) area which means BLM could trade it to a private party for development at some point in the future. BLM would have to comply with NEPA if we translocate onto BLM lands, and we discussed the possibility that BLM would prepare an Environmental Assessment for NEPA compliance, could use the EIS for the West Mojave Project to analyze non-biological areas, and that the project applicant consultants could prepare the initial draft NEPA document for BLM to avoid permitting delays.

ii. Private lands. With respect to private lands, we agreed to investigate some potential locations with the Desert Tortoise Preserve Committee (DTPC) but noted that we would agree to translocate onto private lands only if those lands also were included in compensation requirements for desert tortoise, Mohave ground squirrel and burrowing owl. Both Ray and Tonya agreed that the compensation lands and translocation lands should be located in San Bernardino County to keep them in reasonable proximity to the project site. Larry LaPre noted that TXI/Riverside Cement has approximately 300-400 acres across the Mojave River from the project site that may be available for a potential translocation site, but Tonya expressed concern that this area likely would not be suitable habitat for MGS because the Mojave River is considered east of the range for MGS.

b. Scope of work. Both Ray and Tonya agreed that the project should not present any problems and that it is fairly straightforward. Ray stated that the project "is not a big deal," is in an area expected to be built out, the desert tortoises will be translocated and that Biological Opinions for desert projects such as this have typically been completed

with the 135-day statutory timeframe for completion of Section 7 consultations. Tonya agreed that the project is “pretty simple,” that it is located in an area that will be disturbed, and that she has submitted a couple of questions to the CEC in a comment letter. She also stressed that CDFG would need to see a translocation plan before any agreements could be reached. She also expressed concern about disease issues, but after a discussion regarding the Hyundai translocation plan and the manner in which disease was addressed in that plan, she seemed comfortable that we could address this issue without too much trouble. We also discussed whether the translocation area would have to be fenced, and there was some agreement that at least temporary fencing would be required to make sure the tortoises stay in the translocated area.

2. Coordination between USFWS and CDFG

Tonya Moore expressed a preference for issuing a separate CDFG Section 2081 permit for both desert tortoises and MGS, rather than concurring with the federal Biological Opinion on desert tortoise and then issuing a separate 2081 for MGS. Ray Bransfield stated categorically that USFWS would NOT include MGS in the Biological Opinion because it is neither a listed species nor proposed for listing. He did provide assurance that if MGS is proposed for federal listing in future, EPA could obtain a conference opinion from USFWS stating that the measures required by CDFG to avoid/minimize/mitigation for MGS impacts also would provide federal incidental take protection. After some discussion, it appears that it will be more timely to obtain a separate 2081 permit for both species, because Tonya agreed to process the 2081 permit at the same time that USFWS is engaging in the Section 7 consultation and processing the Biological Opinion. This way, there is a better likelihood that the project will obtain both the federal and state authorizations at roughly the same time. If we ask CDFG to adopt the federal Biological Opinion for desert tortoise, that cannot occur until at least 30 days after the Biological Opinion is issued, and could take even longer if CDFG finds that the BiOp is NOT consistent with CESA requirements due to the manner in which compensation requirements are phrased. Because CDFG is doing a 2081 permit anyway for MGS, it makes sense to include desert tortoise in that opinion.

3. Next steps.

- a. Confirm with EPA that they are still lead agency (Kim will do this).
- b. Prepare a Biological Assessment for the Section 7 consultation between EPA and USFWS, and an application for a 2081 permit from CDFG for desert tortoise and MGS. We discussed a single document that accomplishes both these tasks and both Ray and Tonya agreed this could be done. (AMEC will do this).
- c. Prepare a translocation plan for the desert tortoises. (AMEC will be lead, working with Alice Karl).
- d. Work with BLM and DTPC to identify potential locations for translocation. (Kim and AMEC)
- e. Work with DTPC to identify potential locations for compensation lands (Kim and AMEC)
- f. Schedule another meeting with CDFG/USFWS to discuss compensation ratios

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