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FISH AND WILDLIFE SERVICE

Ecological Services

Carlsbad Fish and Wildlife Office

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Carlsbad, California 92011



PALM SPRINGS-SOUTH COAST
RESOURCE AREA

JUN 15 2009

In Reply Refer To:
FWS-RIV-09B0033-09F0054-R001

To: Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, Palm Springs, California

Attention: Mark Massar

From: Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California

Subject: Amendment to the Biological Opinion for the Blythe Energy Project in Riverside County, California

This letter responds to a January 13, 2009, request sent via electronic mail from Mark Massar of the Bureau of Land Management (BLM) to revise the amount of incidental take anticipated in our October 31, 2008, amendment (FWS-RIV-09B033-09F0054) to our January 31, 2001, biological opinion (FWS-I-6-0-F-1166.2). The request was based on a potential need to capture and relocate more desert tortoises (*Gopherus agassizii*) than anticipated in our 2008 amendment, based on the 2005 survey data along the project right-of-way (ROW), and the need for greater operational flexibility in light of this information.

In consideration of the request, we have reassessed the (1) level of take anticipated in our 2008 amendment and (2) effectiveness of the reasonable and prudent measures, and terms and conditions in the incidental take statement. This reassessment does not contemplate an increase in the number of tortoises killed or injured by the project; instead, it provides a more effective mechanism for capturing and relocating animals from the project footprint. Accordingly, this memorandum amends the incidental take statement in our October 31, 2008, revised biological opinion as follows:

Amount or Extent of Take

The distribution and abundance of desert tortoises within the project construction footprint is difficult to estimate because of the lack of certainty regarding the precise location of individual animals at unknown times in the future, fluctuation in population levels, which may correspond with environmental or other unknown factors, seasonal changes in tortoise detection, and variation in observer-detection probability. In addition, the numbers of eggs and juveniles are difficult to quantify because of small size, cryptic coloration, presence underground, periods of

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inactivity while in burrows, etc. As a result, finding dead or injured tortoises within the construction area is difficult, as individuals may be crushed or buried underground in burrows that were not found or inspected, and otherwise hard to recognize/detect for the reasons discussed above. Because of these complications, the Service, by convention, quantifies incidental take in terms of adult desert tortoises [greater than 6.29 in (160 mm)] that are deemed more readily detectable.

Per the October 31, 2008, amendment to the biological opinion, and based on the most recent survey results that detected seven adult tortoises in the ROW, we estimated that an average of 12 tortoises could be present in the ROW at any one time, but that most tortoises in the ROW would not actually need to be relocated because they would not be in the path of construction, or may move out of danger on their own volition. Thus, we anticipated that only five (5) tortoises would need relocation. However, because the capture, relocation, and release of desert tortoises will benefit the survival probability of individual tortoises in the construction area, we do not intend to limit the ability of the authorized biologist to capture, relocate, and release any tortoises found during preconstruction clearance surveys. As such, anticipated levels of take are exempted as follows:

1. Capture, relocation, and release of up to five (5) adult desert tortoises from within the project construction footprint. Such take is not expected to result in injury or death to any relocated tortoises. Take is also exempted for the collection and relocation of any tortoise eggs, hatchlings, or sub-adults found during clearance surveys, monitoring activities, or other incidental observations, subject to the reasonable and prudent measures, terms and conditions, and reporting requirements below.
2. Accidental injury or death of no more than one (1) desert tortoise as a result of construction-related activities. This number is based on the anticipation that the authorized biologist will conduct effective clearance surveys and ongoing monitoring efforts during project construction.

The reasonable and prudent measure in our original biological opinion remains unchanged:

On-site biological supervision/monitoring shall be utilized to minimize harm and harassment of desert tortoise during all project related construction and activities.

Terms and Conditions

In addition to the terms and conditions in our original opinion, as amended, we add the following requirements:

1. If construction monitoring finds any desert tortoises, eggs or sub-adults, all such tortoises shall be captured and safely handled consistent with the *Guidelines for Handling Desert Tortoise during Construction Projects* (Desert Tortoise Council 1999).

2. The project biologist shall immediately report (within the same work day) all relevant information to the Carlsbad Fish and Wildlife Office (CFWO) regarding the capture and relocation of all desert tortoises, including those that may be in excess of the anticipated level of five (5) tortoises. The Service will (1) review the circumstances surrounding the reported information, and (2) determine whether additional measures or adjustments to existing measures are appropriate. Project activities may continue pending the outcome of the review, provided the BLM and applicant agree to those adjusted or additional measures and the other provisions of the biological opinion, as amended, have been and continue to be fully implemented.

3. The BLM and applicant shall thoroughly document and immediately report to the CFWO any noncompliance with conservation measures, reasonable and prudent measures, and terms and conditions. The applicant and authorized biologist shall maintain effective electronic transmission and telephone contact with the CFWO regarding any difficulties in implementing the provisions of the January 31, 2001, biological opinion, as amended.

We have determined that the revised incidental take statement above does not alter the non-jeopardy conclusion in our 2001 biological opinion, as amended. For the incidental take exemptions under section 7(o)(2) to apply, all measures proposed in the project description, which includes the measures proposed in the 2005 biological assessment, and all reasonable and prudent measures, and terms and conditions in the January 31, 2001, biological opinion and subsequent amendments, remain in effect, except as modified herein.

If you have any questions regarding this amendment, please contact Pete Sorensen or Tannika Engelhard of my staff at (760) 431-9440.