

CENTER FOR BIOLOGICAL DIVERSITY ♦ GREAT OLD BROADS FOR WILDERNESS ♦  
LOS PADRES FOREST WATCH ♦ PACIFIC BIODIVERSITY INSTITUTE ♦  
PUBLIC EMPLOYEES FOR RESPONSIBILITY ♦ VENTANA WILDERNESS ALLIANCE ♦  
WESTERN LANDS PROJECT ♦ WESTERN WATERSHEDS PROJECT ♦  
WILDEARTH GUARDIANS

May 9, 2016

Director Neil Kornze  
Bureau of Land Management  
1849 C Street NW, Rm 5665  
Washington, D.C. 20240  
[nkornze@blm.gov](mailto:nkornze@blm.gov)

**Re: The need to expedite the removal of trespass cattle from Gold Butte and the surrounding critical habitat for the Mojave desert tortoise**

Dear Mr. Kornze,

The undersigned organizations, on behalf of our staff and members, are writing you today to urge you to resolve the Bureau of Land Management's failure to remove trespass livestock that are adversely impacting the federally-threatened Mojave desert tortoise (*Gopherus agassizii*) and its habitat on BLM managed lands of southern Nevada and northern Arizona. The lands in and around the Gold Butte-Pakoon Critical Habitat Unit (CHU) of the Northeastern Mojave Recovery Unit, the Gold Butte Area of Critical Environment Concern (ACEC), and in and around the former Bunkerville allotment have been closed to authorized livestock grazing for years. The BLM's publicly stated unwillingness to promptly address ongoing trespass livestock violates the duty of the agency to conserve the species.

As you are certainly aware, livestock grazing has direct and indirect adverse impacts on tortoise populations, ranging from crushing individuals and trampling dens to altering habitat in ways that reduce forage availability and nutrition for animals. These impacts in turn affect tortoise reproduction, recruitment, and health.<sup>1</sup> Livestock introduction of non-native vegetation impacts tortoise habitats by increasing the frequency of wildfire, decreasing the presence of nutritious native forbs and grasses, and substantially affecting erosion and infiltration.<sup>2</sup> As recognized by the U.S. Fish and Wildlife Service, "Essentially, most or all tortoises whose home ranges overlap actively grazing allotments may be affected by the long-term grazing of livestock to some degree including death."<sup>3</sup>

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<sup>1</sup> U.S. Fish and Wildlife Service ("FWS"), 2013. Programmatic Biological Opinion for Bureau of Land Management Activities Adversely Affecting 19 Listed Species and Critical Habitat. Nevada Fish and Wildlife Office. January 2, 2013, at page 165.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 178.

Livestock have been illegally trespassing on the former Bunkerville allotment since the previous livestock permittee, Cliven Bundy, refused to sign his grazing permit in 1993. Having ignored internal administrative warnings, notifications of violations, and fines imposed by BLM, on November 3, 1998, the United States District Court of Nevada permanently enjoined Mr. Bundy's use of the allotment. Mr. Bundy was ordered to remove his livestock by November 30, 1998. The Court issued a second order on September 17, 1999, and affirmed the previous actions with a third order issued on October 9, 2013. This final order explicitly ordered the United States to seize and impound Mr. Bundy's livestock if he failed to remove them within 45 days; in April 2014, BLM attempted to fulfill the court's order but was forced to retreat under peril of armed resistance from Mr. Bundy's sympathizers.

Notwithstanding the court's unheeded orders to Mr. Bundy to remove the trespass livestock, the agencies have a specific mandate under the ESA to protect and preserve imperiled species.

Additionally, the critical habitat of Gold Butte is being used to mitigate development impacts in Clark County, Nevada, pursuant to the Multi-Species Habitat Conservation Plan signed in 1998.<sup>4</sup> If this habitat is unprotected from trespass livestock grazing, it cannot be an effective offset for impacts elsewhere.

Our organizations are well aware that the threat of violence and tactical intimidation of agency personnel by the livestock operator were very real barriers to the removal of trespassing livestock in the region. Though we were disappointed that the April 2014 removal effort was not successful, we understand that the safety risks at that time were real. But now that Mr. Bundy and many of his allies are being held in federal prisons for their actions during the 2014 round-up event,<sup>5</sup> we believe the threat to agency personnel on the ground is substantially less than it was two years ago. Therefore, we urge you to now take action to remove the trespass cattle that have been threatening the Mojave desert tortoise for over twenty years.

A recently published study on Mojave tortoises modeled the anthropogenic impacts of livestock grazing in the Gold Butte-Pakoon CHU and determined that livestock grazing and feral burro disturbance cause the most severe declines in tortoise populations.<sup>6</sup> This threat is particularly severe because it is widespread and constant, causing habitat degradation and direct mortality. The Service has admitted that direct take of tortoises is unknown and hard to quantify.<sup>7</sup> Livestock grazing has also recently been linked to the amplified presence of predators in avian populations, which is a major threat to the juvenile tortoises that are the key to long-term stability in the tortoise population.<sup>8</sup> Taken together, the agency must consider that failure to remove livestock grazing from the Gold Butte-Pakoon CHU is a double-whammy for the imperiled chelonian, and that the current levels of take exceed the predicted levels of take ("unknown plus") in the 2013 Programmatic Biological Opinion (2013 BO) because of the agency's failure to promptly remove trespass livestock.

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<sup>4</sup> See <http://www.clarkcountynv.gov/airquality/dcp/pages/bcce.aspx>

<sup>5</sup> <http://www.kolotv.com/content/news/Bundy-18-Others-Indicted-in-2014-Range-Standoff-in-Nevada-371026641.html>

<sup>6</sup> Tuma, M.W., C. Millington, N. Schumaker, and P. Burnett. 2016. Modeling Agassiz's desert tortoise population response to anthropogenic stressors. *Journal of Wildlife Management*. Available online: [http://onlinelibrary.wiley.com/journal/10.1002/\(ISSN\)1937-2817/earlyview](http://onlinelibrary.wiley.com/journal/10.1002/(ISSN)1937-2817/earlyview)

<sup>7</sup> FWS 2013 at 178.

<sup>8</sup> Coates, P.S., B.E. Brussee, K.B. Howe, K.B. Gustafson, M.L. Casazza, and D.J. Delehanty. 2016. Landscape characteristics and livestock presence influence common ravens: relevance to greater sage-grouse conservation.

Additionally, on-the-ground monitoring conducted by Friends of Gold Butte, a non-profit advocacy group, has revealed that new livestock infrastructure has been illegally constructed, new trenches have been built using heavy equipment, and evidence of vehicle intrusions exists around important archeological sites.<sup>9</sup> These impacts are probably incidental to the illegal livestock operations that continue to occur in the area, and/or are certainly cumulative impacts to the imperiled desert tortoise.

Simultaneously, the BLM has continued to publicly state that it has no imminent plans to round up the trespassing livestock.<sup>10</sup> While the BLM continues to defer planning a livestock gather to its coordination with the Department of Justice on the criminal investigation, the two issues are being unnecessarily and illegally conflated. Whether Mr. Bundy and his allies broke the law in the 2014 standoff is not the issue here; the issue is whether Mr. Bundy's livestock will continue to trespass on federal lands in desert tortoise critical habitat without intervention by the BLM.

The BLM's failure to immediately address the trespassing livestock is also at odds with the 2013 BO, which states:

“Any livestock that move into areas closed to grazing shall be promptly captured, ear-tagged with BLM-issued tags, and moved back to the allotment within 72 hours of notification of straying. The authorized officer may approve some other time frame based on extraordinary circumstances... If offending livestock are identified in critical habitat a total of three times, they shall be permanently removed from the allotment. If straying of livestock becomes problematic, BLM, in consultation with the Service, shall take measures to ensure straying is prevented.”<sup>11</sup>

The 2013 BO also provides the following reasonable and prudent measures for minimizing take of desert tortoise, stating that the measures *must* be implemented to ensure incidental take exemptions apply.<sup>12</sup>

RPM 5. b. Livestock grazing in desert tortoise habitat shall be managed consistent with the most current version of the Desert Tortoise Recovery Plan, including allotments or portions of allocations that become vacant and occur within desert tortoise critical habitat outside of [Areas of Critical Environmental Concern].

...5.d. The permittee shall be required to take immediate action to remove any livestock that moves into areas unavailable for grazing. If straying of livestock becomes problematic, BLM, in consultation with the Service, shall take measures to ensure straying is prevented.

...5.i. ... BLM will ensure that no livestock grazing (including trespass) will occur in desert tortoise critical habitat or ACECs.”<sup>13</sup>

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<sup>9</sup> See report: [http://www.eenews.net/assets/2015/08/19/document\\_gw\\_02.pdf](http://www.eenews.net/assets/2015/08/19/document_gw_02.pdf)

<sup>10</sup> See, e.g., <http://www.eenews.net/stories/1060033077>: “BLM said Bundy's cattle ‘continue to be in trespass’ but that there are ‘no plans for a gather at this time as we continue to cooperate with the Department of Justice on the on-going legal matter.’”

<sup>11</sup> FWS 2013 at 47.

<sup>12</sup> *Id.* at 179.

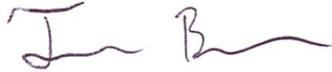
<sup>13</sup> FWS 2013 at 195-6.

Additionally, the BLM committed to “promptly remove trespass livestock,” in order to minimize effects to the desert tortoise.<sup>14</sup> Without action from BLM, the agency is violating this legally-binding commitment.

The need to remove Mr. Bundy’s livestock is separate and apart from the current prosecution of Mr. Bundy’s federal charges, and the BLM must not wait to act to protect the desert tortoise. The cattle should be rounded up and removed from these public lands no later than summer 2016.

We look forward to BLM’s early response and prompt action in this matter. Please direct your reply to Travis Bruner at Western Watersheds Project, [travis@westernwatersheds.org](mailto:travis@westernwatersheds.org).

Sincerely,



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<sup>14</sup> *Id.* at 255.

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