September 11, 2003

West Mojave Plan
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

Re: Draft Environmental Impact Report and Statement for the West Mojave Plan Dated May 2003 ("WEMO Plan")

These comments are submitted on behalf of American Motorcyclist Association District 37 and District 37 Dual Sport (AMA D-37), American Sand Association (ASA), Americans for Forest Access, Back Country Horsemen of California, California Association of 4 Wheel Drive Clubs (CA4WDC), California Off Road Vehicle Association (CORVA), Coachella Valley Trails Council, Coalition of Off Road Desert Racers, DeathValley.com, Desert Vipers Motorcycle Club (DVMC), Environmental Common Sense Coalition, FaunkyBroncys, High Desert Multiple Use Coalition (HDMUC), Jeeping Jeepers Jeep Club, Lost Coyotes Motorcycle Club, Mountain Coalition, Off Road Business Association (ORBA), San Diego Off-Road Coalition (SDORC), United Four Wheel Drive Associations (UFWDA) and Warriors Society. Other contributors include representatives from mining interests and other California desert users. The members of the listed organizations are interested in the health of the environment and the ability to safely view and enjoy the environment.

Contributors subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) condition and safety of the environment; and 3) sharing our natural heritage. With these guidelines, the below comments were developed. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal safety. They desire a wildlife available for viewing and scenic vistas to enjoy. They also want to feel safe while enjoying the natural wonders. Lastly, the public desires to share the

natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence?

After reviewing the WEMO Plan, we support Alternative A: with the following modifications: 1) Implement the Species Conservation Measures with respect to tortoise disease and predator control identified in Alternative F; 2) Implement a consistent "Open unless posted closed" route/transportation policy within Alternative A, Section 2.2.6, Public Land Motorized Vehicle Access Network; 3) Complete the unfinished route inventory and analysis prior to designating any routes as closed; 4) Eliminate the definitions (and designation) of Open Space Corridors, Biological Transition Areas, and Special Review Areas; 5) Implement the Land Use and Route Classification identified in 43 CFR 8340; and 6) Develop a financial management plan and schedule for implementing recommendations of the final Environmental Impact Statement.

(Material quoted from WEMO Plan is italicized.)

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## 1. GENERAL COMMENTS ON WEMO PLAN

### 1.1 DWMAs

The DWMA's are not accurately reflected based on discussions at the Super Group meetings. The DWMA's have become over inclusive in scope and not sufficiently supported with scientific data. The scope of the DWMAs includes more than the maximum recommended by the Desert Tortoise Recovery Plan. The scope has been expanded to include habitat for species that are not listed as threatened or endangered. The number of DWMAs designated appears to leave little space between them creating a closure of normal access in the desert areas. The DWMAs need to be redrawn to the original intent of the Super Group as per map in possession of BLM.

The activities allowed in DWMAs are too restricted. For instance, a time line is placed on Dual Sport events. These restricted events are nothing but touring events. The general public can use the designated routes anytime they wish; but, an "event" is restricted. This is an arbitrary action for comparable activities and needs to be removed.

### 1.2 Land and Route Classifications

Land Classifications: The original intent of BLM provided definitions of land classification was that the designation "I" was Intensive Use, "M" was Moderate Use, a mixture of Intensive and Moderate, but not quite so intensive, and "L" was for Limited Use. Limited Use was to limit use to existing trails. These classifications have been standard since 1980. It is here that we seem to have a problem with all alternatives as they are changing the classification for "M" to "L" and putting very specific restrictions on the "L" classification. Proposed changes in classifications from "M" to "L" are without scientific evidence in the record. Changing the definitions is an arbitrary action that is counter to Agency policy as implemented in other BLM regions creating a confusion factor for the public. The proposed changes appear to be in conflict with 43 CFR 8340.

Route Classifications: During the 1980 plan, the descriptions for Open, Closed and Limited were clearly defined. Open was open to riding in all of the area, Closed was closed to motorized, and Limited was where there was some lower use or restriction. With all these alternatives, BLM seems to have redefined what limited is; i.e.: only vehicles for government use, routes are gated, and access is controlled. Limited was to be a route that

because of the open designation with signing and maps, most of the public would be using these routes and unlimited cross country travel was not permitted.

We recommend that existing BLM designations (and definitions) of OPEN, CLOSED, and LIMITED be continued with no change. There is no scientific data to support the type of restrictions that are introduced within this management plan as limited designation. (Please see enclosed "E.P.A." Route System for implementation.)

1.3 Areas of Critical Environmental Concerns

The addition of all these ACEC's is the concern that the plan is arbitrarily adding more restricted access areas, which will ultimately be used to eliminate Motorized Vehicle Access, e.g. Rands ACEC. BLM continues to use this designation as an excuse for closing access. These need to be reviewed, justified with scientific data, and a time frame of ACEC status assigned to remove them after a specific time period with this status. The definition "Area of Critical Environmental Concern" is very specific to satisfy the concern for a specific management prescription to address a specific issue. This designation was not introduced to provide yet another designation to apply wilderness management criteria.

1.4 Financial Implications

This plan is not taking into account the financial implications to the citizens of rural communities by the actions taken here. What is the loss to the California economy especially to the desert communities with this wholesale closure of routes and land? The costs of implementing this plan are not adequately addressed.

Financial implications of this plan are twofold: cost to implement the plan and cost to the local communities. No mention is made regarding the financial impact of the cost to implement and support this plan. In other words, a cost analysis should be made in this plan with time frame and source of funds to accomplish what is being proposed. The cost analysis needs to identify initial program goals and implementation costs along with subsequent continuing support and monitoring costs for the out years. Agency needs to identify projected costs to implement and support the preferred alternative and show that sufficient funding is available to implement and support the proposed alternative. If this is not done, the

entire plan is subject to litigation for noncompliance. We submit that this plan cannot be implemented in the Agency's current budget framework.

Part two of the financial implications involve the impact to the local economies. With respect to the definition of "local," the projected impacted recreation users include residents of Southern California and the adjoining regions of Nevada and Arizona. The local desert communities will be most impacted. Their economies depend on providing services (food, water, fuel, and other supplies) to members of the public seeking recreation activities in the area covered by the management plan. Restrictions on types of activities, areas of access, and numbers of people allowed access have direct impacts on local desert economies along with the regional economies in Southern California and the adjoining states.

As with budget considerations, the financial impacts to the economy need to be identified and considered in determining the final alternative to be accepted. The economic analysis must address the cumulative and include impacts from all sources. (New Mexico Cattle Growers v. USFWS provides guidelines for an economic analysis that is cumulative.)

1.5 Elimination of Parallel Routes

During the route designation process, BLM deemed it proper to remove routes it felt were duplicative. The elimination of these routes will contribute nothing more than an over use of existing designated routes, thus potentially increasing environmental impacts on the route system. When you have a fanning out of routes, the use is dispersed and thus lessens impact on any one trail. If a route truly has some significant cultural or environmental problem, justification for closure could be acceptable after appropriate review and analysis. But, to just say "we don't want so many routes" is arbitrary and capricious by those doing the designation. We again suggest that we use the EPA route system to designate routes within the existing 1980 route designation of "Open, Closed and Limited."

In addition, the closing of "dead-end" routes without review and analysis is arbitrary and capricious action. Many of these routes lead to scenic viewpoints, points of interest or trailheads for hiking and hunting activities. These routes serve an important function providing public access to desert areas with minimal impact.

We oppose any attempts by the BLM to close duplicate routes. The BLM attitude seems to be that by funneling all of the traffic onto one route, any parallel routes can be closed. This is based on their bias of wanting to close routes to appease the anti-access environmental groups. There can be no other reason. We oppose this course of action for the following reasons:

1. If two routes are traveled upon evenly, then closing one would double the amount of traffic on the other route, thereby doubling the impact. This is not a wise course of action.

2. One route may have an easier level of difficulty than the other, thereby giving riders a choice to either take the easy route, or the more difficult route. This freedom of choice should be maintained and both routes should remain open.

3. Occasionally a route may be temporality incapacitated, such as flooded with water. Therefore, an alternate route should be available to ensure that traffic can proceed. In many cases, alternate (duplicate) routes were developed just for this reason.

4. As a rough analogy, what is wrong with keeping both the I-5 and the I-405 freeways open through Los Angeles? These are parallel routes through Southern California, and both are needed. The same is true for the desert. We should keep alternate routes open and we oppose closing any routes.

1.6 Survey of Maps

During the preparation of the route inventory, the BLM identified 21 areas (polygons) within the area covered by the West Mojave Plan. Of these areas, five have been surveyed for single and two-track routes. Six areas have been partially surveyed covering two-track routes. The remaining ten areas have never been surveyed. This underscores the contention that the WEMO Plan is flawed in that it is based on incomplete data.

The plan uses new data in combination with old data based on a 1985-87 route inventory. The new route inventory clearly demonstrates that the 1985-87 route inventory fails to represent the actual network of routes on the ground, under-accounting for routes in all surveyed subregions by an

average of 155%. In the Kramer subregion, the actual inventory was found to be nearly 450% larger than that within the 1985-87 route designations.

With almost half of the subregions surveyed, and knowing that the survey was erasing all credibility of its 1985-87 inventory, the BLM denied the 2001 route survey project the necessary funding to complete the survey in the remaining subregions.

The remaining subregions together accounted for over 25% of the 1985-87 inventory. Based on the experience in the eleven surveyed subregions, it is reasonable to expect that the 1985-87 inventory fails to include some 1050 to 1450 miles of legitimate and noticeably traveled routes. Furthermore, the 1985-87 route inventory fails to designate single track motorcycle routes, only traditional two-track routes.

Therefore, we find that the Plan neglects to apply the best available data to the question of route designations in the twenty-one subregions within the plan by relying on proven obsolete route inventories rather than completing the 2001 route survey project across the entire planning area.

Of the five single track surveyed areas, none were listed in the preferred alternative maps. Yet, this plan presents the public with a route system that is about 25% surveyed, 25% partially surveyed and almost 50% un-surveyed. The completed surveys indicate that the 1985-87 route inventory is inaccurate with significant underreporting of existing routes (by an average of 155% underreporting of routes). The use of the faulty inventory is inadequate to develop a viable route system.

There needs to be a system in place to permit BLM to complete the survey so there will be an accurate route system of single-track and two-track routes. In the meantime, no closure of routes in the 10 un-surveyed areas and the six areas with incomplete surveys should be permitted unless or until a separate analysis is done regarding such closures. To implement a route system in these areas now would be premature and irresponsible.

BLM needs to make a concentrated effort to identify single track and two track routes and complete the current route inventory. All routes have been identified in five areas. All of these routes are not listed on the maps. This action must be completed. Again, a closure of routes in all areas needs to

be prohibited so that we do not inadvertently deny the use of a perfectly good route.

1.7 RS2477

Under state law and the county RS2477 assertions a route can only be closed by abandonment proceedings by the county. FLPMA is also clear 509(a), 43 U.S.C. 1769 a. This provision mandates that the holder, the county and public as the Dominant tenant, cannot be forced to give up its R.S. 2477 right-of-way. Therefore, the comment regarding RS2477 in the WEMO Plan should state that "absent county proceedings of abandonment, no state or federal agency has jurisdiction to post or close any routes and the public is free to exercise rights of passage guaranteed by 43 USC 1769 a (takings clause)".

1.8 Competitive Events

We disagree that competitive events outside of open areas should be prohibited. Several race corridors were designated in the FLPMA (Federal Land Policy Management Act), including the Barstow to Vegas Hare & Hound and the Johnson to Parker corridor. The BLM cannot dictate the termination of all competitive events and desert races outside the Open areas when Congress specifically intended to allow races in these other portions of the desert. This provision must be eliminated from this plan. In addition, the NEMO plan (Northern and Eastern Mohave Desert Management Plan) suggests that the BLM must develop a comprehensive plan toward OHV recreation and competitive events in the Mojave Desert. How can the BLM say they need to develop a plan while at the same time stating all competitive events will be prohibited? In addition, we protest the removal of the Barstow to Vegas course from the WEMO Plan. Just because this course was removed from the NEMO plan is no reason to remove it from the WEMO Plan. There is no reason that the BLM could not work with OHV enthusiasts to allow this and other competitive events, as envisioned by Congress. We recommend this course be included in the WEMO Plan and then revise the NEMO plan accordingly. If these courses and corridors were placed in the plan, then the requirement for individual and specific Environmental Assessments (EAs) could be eliminated. We have worked closely with several BLM representatives to find a viable route for this race, and these efforts need to be recognized and this work needs to continue to fruition.

CFR Subpart 2930 covers Permits for Recreation on Public Lands. CFR Subpart 2932.31 provides for determining fee structure. Currently, BLM can assign a fee for "Cost Recovery" if more than 50 hours of staff time are required to process the permit. Cost recovery will be limited to BLM's costs of issuing the permit.

There is no specific citation within the management plan that details how the CFR will be applied. There is no language supporting any check and balance for uniform application; no language requiring any degree of training, knowledge or number of observers supplied by the promoter of an event or determining these issues in advance of the day of the event.

Simply stated: For any given event, on any given day, the BLM could arbitrarily and capriciously require observers and day of event ground personnel that would essentially put the individual or group promoter out of business for events by changing the requirements on the day of the event. These events have shown to be of VERY low impact and of no consequence to habitat or wildlife. These facts lead to a conclusion that non-speed and non-timed touring events should be treated as "events of no consequence" to wildlife and habitat; thereby negating the requirements for excessive observation and wasted resources on day of event activities. At the very least, a cost ceiling must be established for touring events that are non-speed and non-timed.

## 2. DESERT TORTOISE ISSUES

*Chapter One – Introduction*

*1.1 OVERVIEW*

*The West Mojave Plan (Plan) is a habitat conservation plan and federal land use plan amendment that (1) presents a comprehensive strategy to conserve and protect the desert tortoise, the Mohave ground squirrel (MGS) and over 100 other sensitive plants and animals and the natural communities of which they are a part, and (2) provides a streamlined program for complying with the requirements of the California and Federal Endangered Species Acts (CESA and FESA, respectively).*

Protection of the desert tortoise is the primary motivation for this plan. The strategy is based on the flawed and outdated Desert Tortoise Recovery Plan of 1994. This plan was to be rewritten every 3 to 5 years. It has never been rewritten or amended. The West Mojave (WEMO) Plan reliance

on flawed and outdated data and inadequate science renders the entire WEMO Plan invalid.

The ESA listing of the Desert Tortoise was controversial in the first place. The method used in pre-listing was not critically reviewed nor was it a scientifically designed and tested study for this species. Studies from Germano and Bury 1995 of NBS in Washington; Bury-Corn in NBS Bulletin 23(1):41-47, Journal of the Society for Conservation Biology, J. E. Freilich, K.P. Burnman, C.M.Collins and C. Ann Garry; November-October 2000, Volume 14 document much that is known of the Desert Tortoise. The Bury-Corn study (NBS Bulletin 23(1):41-47) was conducted from 1991 to 1996 in Joshua Tree National Park. That study showed populations of Desert Tortoise were higher than before the 1971 ESA listing. Throughout these studies, there is no comparison base to determine the Desert Tortoise population at 10, 20, 50 or 100 year marks. What data is available indicates the tortoise population is on the increase. And yet, this plan seeks to use dwindling tortoise populations as a means of reducing access to desert areas.

The WEMO Plan lists over 100 other plants and animals with a label of "sensitive." Each of these species should be studied under separate recovery plans developed to identify and mitigate the risks to each species. Without the proper scientific studies and data, public trust in the ESA is threatened and litigation is likely.

*1.2 PURPOSE AND NEED*
*Loss or degradation of species habitat along and beyond the urban interface can lead to the listing of plants and animals as threatened or endangered by the USFWS and/or the CDFG. USFWS has listed thirteen western Mojave species; CDFG has listed eleven; six are listed by both agencies (see Table 1-3). It was the listing of the desert tortoise by USFWS and CDFG in 1990 and 1989, respectively, that was the impetus for the preparation of the West Mojave Plan. Several dozen other plants and animals are at risk of listing in the next few decades, unless proactive conservation steps are taken.*

This statement is too broad in scope and speculative. Some of the other species overlap habitat but in much smaller ranges. The WEMO assigns the same level of risk and mitigation blurring the distinction between a "threatened" species and an "endangered" species. This process also

blurs the distinction between species that are "threatened" and "endangered" with those from healthy populations. The DWMA's and permanent study plots spread over the Mojave Desert that are set aside now should be enough to facilitate proper science and monitoring to enable continued study of the factors that affect the desert ecosystem which will lead to de-listing or other measures of conservation of species. These areas currently have little or no public access and should be open to access unless science demonstrates a need to keep access restrictions in place.

*1.4.4 Data Base*
*The West Mojave Plan is based upon the best science reasonably available. To meet this standard, data were reviewed to identify pertinent life history information, assess threats to covered species, and provide the most appropriate management prescriptions to address those threats. Where existing information was considered incomplete, species experts were consulted to fill in the data gaps. The planning team consulted 8 botanists, 13 ornithologists, 3 mammalogists, and 4 herpetologists to ensure that data for those taxa were the most complete and accurate information available. For the desert tortoise, this meant collecting and digitizing existing transect data and performing new surveys over approximately 3,615 square miles that had not been recently surveyed. Previous planning for Mohave ground squirrel conservation (Remple 1991, Clark 1993) and recent studies (Leitner and Leitner 1989, 1990, 1996a, 1996b; Leitner et al. 1995, 1997) were important for designing reserves and determining appropriate management prescriptions. New field surveys were conducted in the spring of 2001 for sensitive birds and plants.*

*Dr. William Boarman prepared a survey of the threats adversely affecting the desert tortoise for the West Mojave planning effort. This was the peer-reviewed Threats to the Desert Tortoise: A Critical Review of the Scientific Literature (attached as Appendix J). Dr. Boarman's threats analysis was instrumental in identifying potential conservation measures to address each known threat adversely affecting the tortoise.*

The statement "The West Mojave Plan is based upon the best science reasonably available." is not entirely true. The University of Redlands was hired by the Desert Managers Group to log and develop a data base of information and studies on the desert tortoise. Peer-reviewed scientific data is the only proper basis for developing a plan to protect a species or

habitat. To date, no priority has been assigned by the Desert Tortoise Planning Team regarding the threats to the desert tortoise. The motorized access community has been asking for years for a ranking of relative threat levels. This question has been avoided by the desert tortoise recovery team.

As stated in General Accounting Office Report No. 03-23 dated December 2002 covering the Mojave Desert Tortoise Recovery Plan "GAO Report"), most of the monitoring has not been done on surveyed tortoise sites. Only the DOD military bases have done any on-the-ground work to determine the risks and engage in mitigation actions to save the species.

We recommend that BLM undertake an effort to establish a monitoring program as defined in the Desert Tortoise Recovery Plan. Data must be collected to establish the exact population and extent of issues impacting the population.

*1.4.5 Biological Evaluation*
*Following the assembly of the database, a "Biological Evaluation" was conducted in a series of meetings between March 1998 and June 2000. Participants included biologists from the West Mojave planning team, USFWS, CDFG and invited experts. Biologists evaluated the effectiveness of current management, identified management shortfalls, and suggested measures to address those shortfalls. Evaluation meetings were structured around the following seven questions:*

*--How important is the planning area to the species as a whole?*
*--Does the planning area contain essential habitat for the species to complete its life history?*
*--Why was the species placed on the special status list? What is the concern?*
*--Is current management adequate to protect the species?*
*--Is the geographical size and location of conservation areas adequate to protect the species? If not, what additional areas need to be committed to assure protection of the species?*
*--Is the management of proposed conservation areas adequate to protect the species? If not, what management improvements could be implemented to assure protection of the species within the target conservation areas?*

*--Is management of lands outside conservation areas adequate to protect the species? If not, what management improvements could be implemented to assure protection of the species outside conservation areas?*

*An Evaluation Report addressing the Desert Tortoise, mammals, birds, fish, reptiles and amphibians was published on September 22, 1999 and distributed to the Supergroup. A Mojave Ground Squirrel Evaluation Report was completed and distributed on September 14, 2000. Finally, an Evaluation Report addressing rare plants was completed and distributed on October 15, 2001.*

The University of Redlands is still working on the database. What database was used by BLM to draft the WEMO Plan? Again, this underscores the contention that the WEMO Plan is flawed in that it is based on incomplete data.

This report is speculative as it assumes the populations of the other 100 sensitive species cited in the WEMO Plan have been declining. Time based studies of species in others areas exhibits a natural cycle of increasing and declining populations of species based on a multitude of influence factors. The WEMO assumes a consistent decline of species populations without providing data to determine if the decline is part of a natural cycle or caused by other influence factors. In fact, as previously noted, populations of Desert Tortoise are higher today than in 1971. Overall, there is a lack of data to support a claim of increased, decreased or stable populations of Desert Tortoise and the other 100 "sensitive" species listed.

*1.4.6 Task Groups Develop the Conservation Strategy*
*Numerous issues were too complex or controversial to resolve at a single task group meeting. In such cases, subcommittees composed of volunteers were asked to discuss the issue and return with a proposed solution at the following task group meeting. Task Group 1 formed over a dozen subcommittees that dealt with issues as diverse as the expensive tortoise fencing program, desert recreation, mitigation fees and compensation structure, and "best management practices" to apply as standard take-avoidance measures. To assist Task Group 2 and the route designation process, two subcommittees were formed: a field survey advisory group and a route designation technical committee. A*

*subcommittee might meet once or, once established, be recalled on numerous occasions to address difficult issues. Over 50 subcommittee meetings were held in addition to task group meetings.*

The statement "Numerous issues were too complex or controversial to resolve" indicates that the scientific principles of problem definition, hypothesis development, data collection and data analysis were not applied. Adequate problem definition would have eliminated the "complex and controversial" assumptions. Adequate data collection and analysis would have lead to a tested and peer-reviewed study to determine mitigation factors necessary. As stated in Paragraph 1.4.6, a subcommittee was formed to deal with the issue of tortoise fencing. A conclusion was assumed and tortoise fencing was installed. Subsequent observations indicate that fencing concentrates young desert tortoise which makes them more vulnerable to predators.

*1.5.3 Relationship to Other Regional Plans*
*Northern and Eastern Mojave Plan (NEMO): The BLM's NEMO plan addressed recovery of the desert tortoise and management of a few additional species of concern on public lands. NEMO addressed only BLM programs, and only the BLM's CDCA Plan was amended; private lands and other federal agencies were not affected. The NEMO planning area lies to the northeast of the western Mojave Desert, in the area that generally lies between Death Valley National Park and the Mojave National Preserve. The most important cross-boundary issues that affect both NEMO and West Mojave involve the management of a small Mojave Ground Squirrel population northeast of Trona, and ensuring that CDCA Plan Amendments are consistent. A Record of Decision for NEMO was signed in December 2002.*

The plan does not discuss how WEMO, NECO (Northern and Eastern Colorado Desert Coordinated Management Plan), and WECO (Western Colorado Desert Routes of Travel Designations) are to interact together and interact with Arizona and Nevada plans. Nor do these plans address the cumulative impacts of DOD and California State threatened and endangered species management plans. The plans are not coordinated and each assumes success based on management strategies ranging from very complex to simple.

The record of decision with regard to motorized access does not take into consideration the effect the loss of access in one plan area has upon another plan area.

*Chapter 2 – Alternatives*
*2.1.1 Overview*
Alternative C: Tortoise Recovery Plan. This combines those elements of Alternative A that are applicable to the Mojave ground squirrel and other sensitive species with the management program recommended by the 1994 Desert Tortoise (Mojave Population) Recovery Plan. CDCA Plan amendments and a habitat conservation plan would be adopted and incidental take permits would be issued to participating local jurisdictions and state agencies. The public expressly requested detailed consideration of this alternative during NEPA scoping meetings.

The public is under the assumption that all these plans are based on valid, peer-reviewed science, but that is not the case.

*2.1.2 Biological Goals and Objectives*
*Table 2-1*
*Biological Goals and Objectives*
*Desert tortoise*

*Goal 1: Protect sufficient habitat to ensure long-term tortoise population viability.*

This has been achieved and documented by the GAO Report on the desert tortoise. Most of the funds spent on the tortoise so far have been on habitat conservation.

*Objective 1.1: Establish a minimum of three, preferably four, Desert Wildlife Management Areas that would be managed for the long-term survival and recovery of the desert tortoise, and which would also benefit other special-status plant and animal species.*

There have been numerous areas set aside for the tortoise recovery in the Mojave Desert to date as detailed in the GAO Report. However, population monitoring has not been accomplished in these areas. This leads to speculation that the BLM, USFWS, and CDFG cannot or are not willing to do such monitoring. The GAO Report also states that no significant

scientific progress has been reached in protecting the tortoise from predation or disease. Given that population monitoring has not been accomplished in existing areas set aside for tortoise recovery, additional set aside areas are not warranted.

*Objective 1.2: Ensure that at least one DWMA exceeds 1,000 square miles in size.*

There is no sound science dictating the minimum size of a DWMA needed to sustain a given population of desert tortoise based on home range and dietary needs. Both home range size and dietary needs are in dispute. The tortoise recovery plan states that the DWMA can be many smaller plots perhaps totaling 1,000 square miles where an individual large DWMA is not feasible. There is no scientific conclusion that supports a need to establish a single DWMA that exceeds 1,000 square miles nor a series of smaller contiguous DWMAs exceeding 1,000 square miles.

*Objective 1.3: Design DWMA's so that they are well distributed across the recovery unit, edge-to-area ratios are minimized, impediments to the movement of tortoises are avoided, and (where feasible) boundaries are contiguous.*

This statement assumes that the entire area covered by the WEMO is a Desert Tortoise Recovery Unit. As stated above, there is no scientific conclusion that supports a need to establish a single DWMA that exceeds 1,000 square miles nor a series of smaller contiguous DWMAs exceeding 1,000 square miles. There may be valid rationale to establish a "large" DWMA where impediments to movement are avoided; however, existing data does not support this as a viable solution to tortoise recovery. There is existing data to support isolation of desert tortoise in order to contain the highly contagious Upper Respiratory Tract Disease (URTD) threatening the survival of the tortoise. Since URTD is such a serious threat to the species, the rationale for designing DWMA's in the manner defined in Objective 1.3 is questionable.

*Goal 2: Establish an upward or stationary trend in the tortoise population of the West Mojave Recovery Unit for at least 25 years.*

This objective assumes there is a declining population of Desert Tortoise. The six year study in Joshua Tree NP indicates that more tortoise live in

the study area now than there were when the tortoise was proposed for listing in 1978. This was a goal of the first tortoise recovery plan team and according to data, has been achieved. This goal (#2) should be replaced with a goal that reads: "Determine the cause of the URTD that is afflicting the Desert Tortoise and establish a cure within at least 25 years." The plan should have higher expectations for a healthy population that is not predicated on reducing access to public lands for extended periods of time.

*Objective 2.2: Attain a minimum average population density of 10 adult female tortoises per square mile within each DWMA.*

As cited in the GAO Report, population studies have not been conducted on existing study areas. As noted, the current population size appears to be in excess of when it was listed. Hence, this objective could be satisfied. It is recommended that BLM complete population surveys on the un-surveyed plots identified in the GAO Report. This data would be used to determine if the desired population density has been achieved.

The arbitrary figure of "10 adult female tortoises" carries no supporting justification. While it is noted that female tortoise are the source of eggs for future generations, health of the female tortoise is a major factor that determines quantity (and quality) of the eggs laid. Existing data and anecdotal evidence suggest health of the tortoise population is a more important indicator of "survival" than an arbitrary number of 10 adult females per square mile. There is no data presented to support this as a valid or realistic target to ensure species survival. The 1994 recovery plan did not identify gender as a criteria to determine population density.

*Objective 2.3: Establish a program for tortoise population monitoring that would detect an increase, decrease, or stable trend in tortoise population densities, and include an information feedback loop that ensures that necessary changes would be made in management.*

As noted above, the GAO Report cited that population studies have not been conducted in existing recovery areas. It is recommended that the BLM complete population studies in existing study areas to determine the status of the Desert Tortoise population.

*Goal 3: Ensure genetic connectivity among desert tortoise populations, both within the West Mojave Recovery Unit, and between this and other recovery units.*

As previously noted, the desert tortoise is susceptible to URTD that is highly contagious. Ensuring genetic connectivity among desert tortoise populations could be detrimental to the survival of the entire species. Any genetic connectivity should be studied within a closed quarantine laboratory away from any outside environmental factors to determine if there is a genetic disposition to develop URTD symptoms.

*Objective 3.1: Delineate and maintain movement corridors between DWMA's, and with the Eastern Mojave Recovery Unit, the Eastern Colorado Recovery Unit, and the Northern Colorado Recovery Unit.*

As previously noted, the URTD is highly contagious and establishing corridors between DWMAs could facilitate the transfer of disease to existing healthy populations. In addition, the existence of the Interstate Highway Transportation System transects the California Desert Conservation Area and precludes establishing connecting corridors. Achieving this objective would entail extensive and expensive highway modifications.

*Objective 3.2: Ensure a minimum width of two miles for movement corridors, and include provisions for major highway crossings.*

As previously noted, the efforts to establish movement corridors could lead to rapid transfer of the highly contagious URTD to healthy populations. Achieving this objective would entail extensive and expensive highway modifications with no data or scientific conclusion to indicate that it would benefit the desert tortoise.

*Goal 4: Reduce tortoise mortality resulting from interspecific (i.e., raven predation) and intraspecific (i. e., disease) conflicts that likely result from human-induced changes in the ecosystem processes.*

This statement presumes that "human-induced changes in the ecosystem processes" are somehow responsible for raven predation and disease - a theory that has not been established to be factual or tested by science. Data do support that predation is a factor influencing the tortoise

populations. Efforts to control predation (by ravens or other predators) are encouraged. Efforts to identify the source and a cure for the URTD that afflicts the desert tortoise are encouraged. Assuming they are "human-induced" prejudices the pending scientific study to determine the cause and develop a cure for the URTD.

*Objective 4.1: Initiate proactive management programs addressing each conflict, to be implemented by each affected agency or jurisdiction.*

This is a well-meaning proactive approach. However, some of the DMG (Desert Managers Group) members do not feel that BLM, USFWS and CDFG can do their parts. Weed management was one item cited. A military representative at the 29 Palms DMG meeting indicated the military base was willing to eliminate invasive weeds. However, if the agency responsible for land around the base did not eradicate weeds, the next big wind would waste the effort on the base.

*Objective 4.2: Establish an environmental education program to facilitate public understanding and support for proactive management programs necessary to reduce tortoise mortality.*

A public outreach program was started after the desert tortoise was listed and never followed up. The public wants a balanced approach to the tortoise's recovery, not just land and route closures.

We recommend the Agencies review their public outreach efforts and establish a proactive tortoise management and recovery program that includes predation control and disease treatment.

*Objective 4.3: Continue research programs and monitoring programs that assess the relative importance of human activities and natural processes that affect desert tortoise populations.*

This statement sounds commendable. However, there exists little scientific data addressing the importance of human activities on desert tortoise. The criteria that will be used in researching and monitoring human activities and natural processes affecting desert tortoise populations need to be specifically stated and uniformly applied. To date, "recovery" efforts have focused on study and resulted in delay of actions for species recovery.

Treatment of disease and predation control should be top priorities in the proposed management prescription.

We recommend the Agency establish a proactive species recovery program that includes "head start" concepts, disease treatment, and predation control.

*2.2.1 Habitat Conservation*
*2.2.1.1 Structure and Components*
*2.2.1.1.1 Overview*
*Conservation Areas: The HCA would be composed of eighteen conservation areas that are intended to conserve the habitat of particular species, groups of species or biologically important geographic areas. Conservation areas include those established to protect:*

- *Desert tortoise. Four tortoise conservation areas would be established. They are referred to as tortoise DWMAs (Desert Wildlife Management Areas) because this name is consistent with the terminology used by the Desert Tortoise (Mojave Population) Recovery Plan, and has been adopted by other regional planning efforts throughout the listed range of the tortoise.*

The recovery plan suggested at least one DWMA for each recovery unit. There are six recovery units in the Mojave Desert. The concern is, should tortoise recovery be successful and the species de-listed, it is not clear how or whether the BLM will reopen areas closed to access or manage them as resource areas that the public could benefit from (mining, oil exploration, recreation, grazing, and farming).

It is much easier and less expensive to facilitate management strategies in open areas. This would minimize potential future litigation that is likely to ensue due to lack of adequate funding to implement management plans such as the proposed WEMO Plan.

***Open Space Corridors**: Three open space corridors would protect critical linkages and wildlife movement corridors. These corridors connect the HCA with surrounding National Park Service and Forest Service lands.*

***Biological Transition Areas (BTA):** Strips of land adjacent to the tortoise DWMAs and Mojave Ground Squirrel Conservation Area wherein a heightened biological review of all new projects would be conducted to*

*ensure that such projects would not degrade the biological integrity of or conflict with the conservation goals established for the adjacent conservation area.*

***Special Review Areas (SRA):*** *Lands adjacent to the HCA but possessing biological values for which a heightened environmental review of new projects would be conducted.*

In a landmark decision dated May 9, 2003, U.S. District Judge Anthony Ishii ruled that the U.S. Fish and Wildlife Service (USFWS) engaged in an unlawful land grab when it designated critical habitat for the Alameda whipsnake. The challenge focused on the government's failure to follow the requirements of the ESA when making the determination of critical habitat for the whipsnake. It was shown that USFWS didn't bother to identify what areas were truly needed by the snake and simply included all land it believed was within "the range" of the snake that "might contain habitat features." The court ruled that the law requires a far more careful analysis than the government performed and ordered the USFWS to undertake a thorough review.

We believe similar circumstances exist with the designation of multiple areas for the core issue of "habitat designation" for Desert Tortoise. In this instance, identifying "Open Space Corridors," Biological Transition Areas," and "Special Review Areas" in addition to the DWMAs increases the area that is truly needed by the Desert Tortoise. These additional areas include land that is believed to be "within the range" or that "might contain habitat features" but lacks the documentation that the areas are truly needed for species protection.

*2.2.1.1.2 Desert Tortoise Component of HCA*

This section presupposes that DWMA's, ACEC's and HCA's can benefit a species by locking the public out of public lands. There are lands within this plan that have not been open to motorized access, grazing or mining for several years and yet the Desert Tortoise population has decreased in those areas. Yet in areas that still have motorized access, populations are holding or increasing. The GAO Report states that conservation land has been secured and no marked improvements in tortoise populations have been reported by the scientific staff of the BLM, USFWS and CDFG. This

substantiates the need for proper, peer-reviewed science and indicates additional habitat conservation areas are not necessary.

*2.2.1.1.7 Special Review Areas (SRA)*
*There exist regions that are not well suited for inclusion within the Tortoise DWMAs, although they contain relatively high numbers of tortoises. The land ownership pattern may be too fragmented, and the size too small. While these areas are not suited for long-term conservation, enough tortoises are present to warrant a heightened level of environmental review for new projects.*

*The special management required for protection of the Little San Bernardino Mountains gilia also warrants designation of a Special Review Area.*

*(HCA-6) Three "Special Review Areas" would be established: the Brisbane Valley SRA (located between Interstate 15 and National Trails Highway), Copper Mountain Mesa SRA (located north of Highway 62, between Yucca Valley and Twentynine Palms), and the Joshua Tree SRA, located south of Highway 62 near the community of Joshua Tree. The first two areas contain relatively high numbers of tortoises, but are isolated, small and composed of fragmented land ownership patterns. Neither is particularly well suited for designation as a Tortoise DWMA. The Joshua Tree SRA would be established for conservation of the Little San Bernardino Mountains gilia. Conservation of the gilia would be an additional requirement within the Copper Mountain Mesa SRA. Management within the tortoise SRAs would focus on take avoidance rather than on long term tortoise conservation. Clearance surveys would be performed throughout the SRA by tortoise biologist(s) authorized to move tortoises out of harm's way. Protective fencing may be needed to preclude tortoises from a development site in the absence of a biological monitor. BLM public lands would be managed as Category III tortoise habitat.*

If Agency logic is applied to these fragmented regions, a significant human-induced impact on the desert tortoise population should be evident within these areas. However, as stated, they contain "relatively high numbers of tortoise." The fact that some large populations of tortoise exist in areas with human populations disputes Agency statements that human-induced activities are negative to the desert tortoise. The above logic does not

support the Agency contention for large DWMA's to sustain good tortoise populations.

This also supports the GAO Report that questions the validity of the tortoise data. The lack of peer-reviewed science clouds the management actions proposed by the Agency and eliminates actions that could benefit the tortoise populations.

*2.2.4 Species Conservation Measures*
*Alternative A proposes ecosystem-scale conservation with the establishment of four very large DWMAs and additional lands for the Mohave Ground Squirrel Conservation Area. The tortoise and Mohave ground squirrel are "umbrella species", a term used to describe protection of many other species under the "umbrella" of conservation for important wide-ranging species. The size of the DWMAs and Mohave ground squirrel conservation lands insures adequate protection for selected plant communities, and for common and unique elements of the desert flora and fauna. The focus on conservation of threatened and endangered species sometimes neglects the importance of maintaining viable populations of the common species, which function in the ecosystem as food plants, prey, pollinators, seed dispersers, or regulators of population size. Protection of species at all levels (trophic levels) of the food pyramid or web recognizes the interdependency of species that is the basis of ecology, and makes conservation of selected rare and endangered species easier, since ecosystem components are kept intact.*

Alternative A proposes ecosystem-scale conservation. Species under the "umbrella" could have a positive impact or a negative impact under this approach. Any and all species in this plan should have separate funding and accounting methods to track cost to benefit of science and conservation. Otherwise, a species could suffer and be sacrificed at the expense of another. It is clear from the GAO Report species that were being watched under the Desert Tortoise "umbrella" have been neglected. This approach could lead to more litigation.

*2.2.4.1 Species Conservation Measures Applicable Throughout the HCA*
*Recreation:*

*(HCA-42) Minimum impact recreation (e.g., hiking, equestrian uses, bird watching, photography, etc.) would be allowed within the HCA.*

This strategy again conflicts with the statements that human-induced changes on the desert negatively impact the tortoise's recovery or impact the 100 other species. In order to access these areas for whatever purpose, some form of vehicular access would be needed. The proposed routes are inadequate to provide for public access. Additionally, studies on the Northern Spotted Owl indicate that birds adapt to human activity, including motorized activity. Adverse reactions were noted in the owls when human foot traffic (bird watching and photography) deviated from the normal route.

Emergency vehicle access needs to be addressed.

Approved parking areas or cushions on ether side of trail or road need to be addressed to facilitate proper parking of vehicles. It is recommended that a consistent route width of 30 feet from centerline be adopted for two-track routes and 15 feet of centerline be adopted for single-track routes.

Handicapped persons have the right to access public lands and require vehicular access in order to do so. Without addressing these concerns BLM, USFWS and CDFG are inviting litigation.

Hikers would need vehicular access in order to access the center portions of these areas. Adequate consideration of trailhead and parking facilities is not addressed within the WEMO Plan.

Bird watching demographics are predominately people age 46-55. Without vehicular access some of the public is excluded from the greater part of the habitat area.

Equestrians need vehicular access to the interior of these areas. Riding from the edge to the center of a 1,000 square mile DWMA, ACEC or HCA is not feasible for most equestrians.

Photographers have needs similar to the above users. Anyone desiring access to the desert, for whatever reason, requires reasonable vehicular access.

*2.2.4.2.3 Proactive Tortoise Management Programs*
*Disease: (DT-16) The disease management program's focus would include but not be limited to the following: (1) Infectious diseases including URTD (Mycoplasma agassizii, Mycoplasma cheloniae, etc.), herpesvirus, shell diseases (cutaneous dyskeratosis, necrosing, fungal disease, etc) and others; and (2) Presumed noninfectious diseases including heavy metal and other elemental toxicants.*

This was discussed in the 1994 Desert Tortoise Recovery plan and has not been implemented to this date. The issue of infectious diseases is the area of the desert tortoise recovery that needs the most attention. Little accurate science is known on this topic. More peer-reviewed science is needed to combat the diseases. Very little funds were spent in this area, according to the GAO Report. Other states with desert tortoise populations have been working on this factor for years now and have found it to be a high priority. Apparently, hydration is the largest factor in vulnerability of a tortoise to disease. This was covered at the 2003 Tortoise Symposium in Las Vegas. Reactivating the water guzzlers closed during the anti-grazing era could help during the years of low rainfall. Dietary supplements would help the nourishment needs of the tortoise that are stressed by the disease; this is available for captive tortoises. Studies show that tortoises caught soon enough could be salvaged from full-blown URTD.

Daily or more frequent tortoise monitoring during the tortoises active months and removal of any infected tortoise from the DWMA's should be instituted. Currently, infected tortoises are returned to the DWMA's population. This is a serious mismanagement action leading to more infections in the DWMA's population, and failure of the tortoise recovery plan. Cost versus species recovery should be a heavily weighed factor on any action taken for recovery of a species.

*Issues relative to disease would be considered at the level of the interagency desert tortoise Management Oversight Group (MOG). Disease research is encouraged, and coordination between the Implementation Team and the appropriate MOG contact should be maintained. Any breakthrough relative to disease management should be incorporated into the West Mojave Plan through adaptive management provisions.*

*(DT-17) A potential disease management program that could be implemented by the participating agencies is presented in Table 2-14.*

*Primary reliance, however, would rest upon measures implemented by the MOG. Implementation of the program suggested by Table 2-14 would occur only after all other tortoise management programs established by this Plan have been funded and implemented.*
*Table 2-14*
*Suggested Tortoise Disease Management Strategy*
*Vector Control*

- *Install boundary fencing at urban/desert interface and along critical habitat boundary.*

Boundary fencing is a costly measure: a conservative estimate of $15.00 per lineal foot to fence a 1,000 square mile DWMA would cost $10 million. Also, tortoise fencing is a restrictive impact to other species.

- *Develop a biologically based quarantine management protocol*

Quarantine management should have been implemented from the time of the listing of the Desert Tortoise. It was a high priority in the 1994 tortoise recovery plan; however, to date, no action has been taken. This is a frequently addressed topic by the public that has been largely ignored. No new peer-reviewed scientific data have been published on this topic. The public believes that more good peer-reviewed science is needed.

- *Define criteria that trigger quarantine management*

This research has been accomplished in Clark County Nevada with much success as stated at the 2003 Tortoise Symposium.

- *Delineate potential boundaries for quarantine fencing (could be effectively combined with dog management)*

A costly measure - see earlier comments. The issue of "dog management" is not adequately addressed nor is the rationale for fences. This statement equates "fences" to quarantine efforts. Previous statements link fences with "movement corridors" and "predator control." Overall, the issue of predator control is ill-defined and the issue of quarantine is ill-defined and the expected benefits are not defined.

- *Implement head starting or appropriate reintroduction protocols in critical habitat areas with few to none remaining diseased tortoises to protect reintroduced tortoises from contact with infected tortoises.*

This was discussed in the 1994 recovery plan and has not been implemented to this date.

*Promote Tortoise Health*

- *Ensure adequate nutrition by improving quality of forage in critical habitat (reduce weed dispersal by reducing motorized vehicle routes density; reduce biomass of nonnative plants by reducing/eliminating ground disturbance).*

This statement presumes that motorized vehicles are the culprit for weed dispersal. Natural factors such as air currents (wind) and birds (seed eaters) are not given consideration as cause of weed dispersal. This plan does not provide sufficient data to demonstrate that removal of motorized vehicle routes will alleviate dispersal of weeds. Historical use of the desert for grazing has helped control the growth and dispersal of weeds. Herbicides are not safe in wild environments as they are indiscriminate affecting invasive and native forage as well as wildlife that depend on the forage.

Existing studies indicate that tortoise populations vary depending on drought verses wet years. These are major factors that influence the quality and quantity of desert forage available. In addition, a food supplement is available on the open market that has been tested and deemed safe by veterinarians.

This is an area of science that needs better peer review.

- *Field trials of experimental interventions (water, feed supplementation*

This proposal will most likely prove to have the most significant impact on the recovery of the tortoise and protection of the other 100 species.

*Monitoring*

- *Monitor dust emissions from mining sites, agricultural fields, road edges, disturbed playas for toxic elements such as: As, Cd, Cr, Hg, Pb, Zn, Cu, Mo, Se, etc*

- *Monitor tortoise health status*
- *Necropsy all ill, dying and recently deceased tortoises as per salvage protocols*

This monitoring is overdue. The GAO Report stated only the DOD bases and one National Monument have followed the recovery plan.

Also suggest daily or more frequent tortoise monitoring during active months and removal of any infected tortoise from the DWMA's.

*Fencing: Tortoise mortality along highways remains a significant, persisting threat. This threat can be minimized by the construction of fencing adjacent to highways that is designed to preclude access to highways by tortoises.*

Fencing is a costly measure - see earlier comments. There is no good scientific data to substantiate that installing fencing could recover the desert tortoise; however, it could help reduce the spread of the URTD by containing infected populations within restricted areas without subjecting the rest of the DWMA's population to further infection.

*Headstarting: (DT-26)*

This is the basic program of introducing tortoise into the area by aggressively putting up over 100 cages of 1 to 2 acres in size with a water system when needed, breeding of tortoise on site free of any disease. It is estimated that in 5 years we can have a successful breeding program. Once the tortoise is of mature age (5 to 8 years), remove the fences and the tortoises remain in their own habitat. It is insanity to put one such head start program near Fremont Peak, where there is a high density of Motor Vehicle Access and such proximity to Highway 395, Highway 58, and communities. These head start locations need to be in remote areas. The water system is only there in case of drought years; otherwise they are on their own. Fencing prevents predators from reaching the newly hatched tortoise.

This was also looked into in the 1994 recovery plan, and could be viable. A transrelocation plan is also being used in Clark County, Nevada.

*Landfills: (DT-27) With the exception of the Barstow Landfill expansion, the planning of which has already been initiated, counties and cities would ensure that no new landfills are constructed inside DWMAs or within five miles of them.*

Landfills receive the blame for numerous problems in the desert. Most commercial dumps have proper protocol for disposing of waste and are secured at night. Open dumps could employ commercial non-lethal aviary dispersal methods, some of which are used by the DOD on their airfields.

*Ravens: The following action items would be implemented throughout the western Mojave Desert. Where headstarting is implemented, ensure that predation by ravens and other predators does not compromise the integrity, function, and success of the program.*

Ravens are not a native species of the Mojave Desert and should be treated like an invasive species. Disease can be spread within the wild animal population. Birds, rodents and reptiles all encounter the Desert Tortoise; research on captive tortoise shows cross contamination of disease to and from other species.

The raven is a species of opportunism. It could live in the Mojave Desert with or without the presence of man. Ridding the desert of this pest could be achieved relatively quickly. This was the case before BLM, USFWS and CDFG stopped the lethal take of this pest as a result of litigation.

*Weed Abatement: (DT-40) The Implementation Team would cooperate with known weed abatement specialists and organizations (including the Kern County Weed Management Agency, the Mojave Desert Resource Conservation District, and the California Exotic Pest Plant Council) to fund, coordinate, encourage, implement, and facilitate weed abatement/management programs that contribute to the conservation of plant or animal species covered by the Plan. Goals to guide weed abatement are provided in the BLM action plan Partners Against Weeds (BLM 1996).*

Weed abatement programs rely on chemical or manual treatments. Chemical treatments have a potential for causing unintended consequences over long term. Weed sprays kill species of all types, and cannot be applied in an open area precisely enough as to not affect

surrounding areas under soil habitat without cross contamination. This could inadvertently affect the tortoise or other species.

Manual (mechanical) treatment methods are expensive and inefficient. Grazing is one method of weed management.

*Other Measures: (DT-41) The Implementation Team would require a study that would sample quail guzzlers in the West Mojave, in all four DWMAs, to determine if there is a tortoise mortality problem. If the tortoise mortality level is considered unacceptable, then a study would be designed to determine the best method of eliminating tortoise entrapment while not impairing the function of the guzzler.*

Studies have been done on this. Guzzlers have been dragged for tortoise carcasses with limited success. Again, there is a lack of data to establish an acceptable (or unacceptable) tortoise mortality level.

Guzzlers provide a benefit for all desert wildlife. The guzzlers could (and should) be modified to better serve more species during the drought years.

*2.2.6 Public Land Motorized Vehicle Access Network*
*2.2.6.1 Background*
*The West Mojave Plan would designate routes on public lands managed by the BLM as open or closed to motorized vehicle access, or as open on a limited basis. This designation of motorized routes is a requirement of federal regulation, BLM policy and the BLM's CDCA Plan, and is one of the recommendations of the USFWS Desert Tortoise Recovery Plan. Two steps are involved in this process: (1) the designation of routes as open, closed or limited, and (2) amendment of the CDCA Plan to incorporate the network of open and limited routes as a component of the CDCA Plan.*

This reference in the Desert Tortoise Recovery Plan was to limit all travel in a DWMA. Motorized access was listed as a major cause of the decline of tortoise population desert-wide. This is a controversial theory; very little peer-reviewed science has been produced to substantiate this. One way to test this hypothesis is to list each threat factor and tabulate each tortoise death over a period of time through drought and wet years. This approach will help the managers to manage each factor in a management area: Education, access restriction, law-enforcement, fire fighting and roadway

fencing and how much a population loss can be sustained in a management area in case of an emergency or short term heavy use.

Agency cites "vehicle mortality" and an intent to restrict all travel within a DWMA. We recommend that the concept of "vehicle mortality" be separated into the below listed factors. Each factor has a separate risk and mitigation that can be implemented. Combining all factors into one general category falsely inflates the overall risk. Assigning one mitigation to address all factors assigns an overly restrictive management prescription that impacts the ability of the public to access public lands.

1. paved road mortality
2. highway/interstate mortality
3. county or federally maintained dirt roads mortality
4. off road vehicle roads and trails ( 4x4, ATV'S, dune buggies, motorcycles)
5. competition and events (motorcycles, off road cars and trucks, buggies and ATV'S and chase vehicles)
6. construction and waste disposal vehicle traffic (earth movers, transport vehicles, trash trucks and service vehicles)
7. Agencies motorized access for official duties: Bureau of Land Management, Border Patrol, National Park Service, U.S. Fish and Wildlife Service, county, state and federal law enforcement, fire and rescue
8. rail traffic (train cars, motors, service vehicles)
9. vandalism: shooting, taking for pets, taking for food or ceremony by ethnic groups
10. military (track, tire, rail vehicles)
11. recreation (state parks, national monuments, public land)
12. public leased land (grazing allotment, mining claims)
13. commercial resources, exploration for energy (geothermal, oil, wind and hydro)

*2.2.8.5 Tortoise Distance Sampling Transects*

Line distance sampling transects is a controversial subject. It is flawed science and not peer-reviewed as an accepted practice. Many methods have been tried and each neglect factors affecting the Mojave Desert and wildlife species, such as long term drought, invasive species, etc. Recent studies show serious concerns.

Others question the population densities pre-listing (Wilcove et al. 1993[1]). In the case of the desert tortoise, "methods used in the pre-listing assessment were neither critically reviewed nor specifically tailored to the problem" (Germano & Bury 1994). Questions exist as to "historic population densities" (Bury & Corn 1995) and "populations are widely distributed" across the Mojave (Germano et al. 1994). Agencies within the Desert Managers Group cannot agree on a sampling method.

### *2.4 ALTERNATIVE C: TORTOISE RECOVERY PLAN*

#### *2.4.1 Overview*

*The Desert Tortoise (Mojave Population) Recovery Plan (Tortoise Recovery Plan) was adopted in 1994. Prepared for USFWS by a "Desert Tortoise Recovery Team," it presented a set of actions that the recovery team concluded were needed to recover tortoise populations. Although its recommendations are not binding on the agencies with jurisdictions over lands within desert tortoise habitat, the Recovery Plan's conservation strategy has served as a starting point in the process of developing conservation strategies for the West Mojave and other regional plans.*

*The USFWS is currently initiating a two-step review of the Recovery Plan. During 2003, a team assembled by USFWS will conduct an assessment of the plan in light of new information collected since 1994. If the assessment indicates that a revision of the Recovery Plan is warranted, that revision could occur during 2004.*

Some of the members of the new team were on the original team. This is a mistake, since the 1994 Recovery Plan is inadequate.

The tortoise recovery plan included generalities regarding other species. There is no sound science to support that the Mojave Ground Squirrel and other sensitive plants and animals share the same habitat ranges across the Mojave Desert. Therefore, the size of a DWMA is not directly related to the 100 other species. The size of a DWMA was based on a tortoise's feeding range. The recovery plan felt that a population base at 10 per square mile could release the DWMA's boundary constraints; there is little science to support any further action toward Mojave Ground Squirrel and other sensitive plants and animals in this document.

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[1] Wilcove, D. S., M. McMillan, and K. C. Winston. 1993. What exactly is an endangered species? An analysis of the U.S. Endangered Species list: 1985–1991. Conservation Biology 7:87–9

Each species should have its own peer-reviewed science and recovery plan. Otherwise a species is liable to suffer extinction as the scientists and managers focus solely on the umbrella species. Location of DWMA's should be based on viable salvageable populations.

The WEMO PLAN should first be a land use plan and secondly incorporate conservation measures. It is public land used for all types recreation and resource benefits in the public's best interest.

*2.4.4.1 Desert Tortoise Take-Avoidance Measures*
*The following desert tortoise take-avoidance measures would be adopted.*

- *(AC-1) Surface disturbance within DWMAs would be restored to pre-disturbance conditions (defined as the topography, soils, and native vegetation that exist in adjacent undisturbed or relatively undisturbed areas), closing access to non-designated vehicle routes and including restoring non-designated roadbeds to their pre-disturbance state.*

Surface disturbances within DWMA's have little effect on the overall tortoise health if referring to roads or trails. The limited funds available to the agencies for the recovery of any species should properly be spent on their recovery, not on artificially restoring nature. Nature does a good job of self-restoration.

- *(AC-2) All competitive and organized events (including dual sport) would be prohibited within DWMA's.*

These events have been a part of history of the Mojave Desert for a very long time; to date little damage has occurred. This is documented in the recent years of required incidental take reports of each event holder. Therefore, this requirement should be removed from the Plan.

- *(AC-4) Tortoise DWMAs may provide forms of recreation compatible with tortoise recovery, including minimum impact recreation (e.g. hiking, equestrian uses, bird watching, and photography).*

DWMA's should be sized to facilitate all forms of recreation including motorized recreation access.

- *(AC-5) Between February and September, no shooting would be allowed in DWMAs.*

This implies that tortoises are shot when out of hibernation; no good science supports this. The California State Department of Fish and Game establishes seasons for game birds and mammals. These hunting seasons are outside the timeframe when tortoise are expected outside their burrows. Shooting of certain non-game species is permitted year around. These non-game species are noted as Desert Tortoise predators. Restricting shooting in the DWMA removes one method of predator control available as a management tool.

- *(AC-6) Mining would be allowed on a case by case basis, provided cumulative impacts do not significantly impact tortoise habitats or populations, and effects would be mitigated during operation and land restored to pre-disturbance condition. Requirements that surface disturbance within DWMAs be restored to pre-disturbance conditions would apply to open pit mines and hard rock quarries. Mineral withdrawals identified by Alternative A (Afton Canyon, acquired lands within the Carbonate Endemic Plants ACEC, Coolgardie Mesa and West Paradise Conservation Areas, and Rand Mountains) would be pursued*

Mining should have no more restrictions than needed for BLM staff to inspect that the claimer is complying with appropriate laws regarding mining.

- *(AC-7) Vandalism should be halted, as should the collection and release of captive tortoises. Regular and frequent patrols by law enforcement personnel are essential*

This should be done for all aspects of the Mojave Desert regardless of ACEC, DWMA, HCA or management area (illegal collection of species, illegal dumping, illegal claims, graffiti and illegal events).

- *(AC-8) Emergency measures would be developed to control unleashed dogs and dog packs.*

Feral dogs are just one small portion of the predators in the Mojave Desert. Each known predator should be controlled proportionally to the take of the

tortoise. Domestic dogs are controlled under the general use rules. Each county has animal control laws and an animal control department. It is recommended that agency partner with local counties to establish a viable program to control feral dogs.

Many visitors to the desert areas bring domestic dogs. It is recommended that BLM institute and education program to advise visitors their pets can endanger the health of native species.

- *(AC-9) Initiate cleanup of surface toxic chemicals and unexploded ordinance. Identify and clean up unauthorized dumps in DWMAs. Reduce or eliminate use of authorized landfills and sewage ponds in and near DWMAs by predators of the desert tortoise (e.g., ravens and coyotes). Allow no new landfills or sewage ponds within DWMAs.*

This should have been done since it was first noted in the tortoise recovery plan, however the EPA's super fund and California's Keep CA Clean would fund clean ups. It should not be part of the recovery plan.

Unexploded ordinance is a problem best left to the military; it should not be part of the recovery plan.

Control of municipal structures such as water, wastewater, land fills etc. around DWMA's, ACEC's, HCA's and management areas should be done with collaboration of municipalities and agencies.

*2.4.4.3 Proactive Tortoise Management Programs*
*Desert Tortoise Fencing and Signing: (AC-14) Fence or otherwise establish effective barriers to tortoises along heavily traveled roads. Install culverts that allow underpass of tortoises to alleviate habitat fragmentation. Construct desert tortoise barrier fencing and underpasses along Highway 395, parts of Highway 58, the Randsburg-Mojave Road, the Red Rock - Randsburg Road, the Red Rock - Garlock Road, the railroad north and adjacent to Highway 58, Highway 247, Interstate 15, Fort Irwin Road, Manix Trail, Superior Lake [Copper City] Road, and the northern boundary of the Superior-Cronese DWMA. Construct highway underpasses along Fort Irwin Road to allow desert tortoise movement and to facilitate genetic exchange.*

Fencing is a costly measure; see previous comments. Highway wildlife crossings designed for other species have demonstrated limited success. They do concentrate wildlife and enhance their susceptibility to predation.

The cost of such items as culverts and underpasses under roads needs to be weighed carefully against potential benefit to the species.

The benefits of culverts and underpasses:
- alleviate habitat fragmentation

The detriments of culverts and underpasses:
- spread of disease
- entrapments for predators and illegal collecting, easy pickings
- heavy management problems (frequent monitoring for obstructions, lethal drop-offs, etc.)

*(AC-15) (AC-18)* Signing has its pros and cons.

The benefits of signing:
- education as to location of DWMA boundaries
- education describing the species and mitigation factors in force

The detriments of signing:
- signing could lead to vandalism by showing less informed visitors where tortoise are (taking for pets, taking for food or ceremony by ethnic groups)
- labor intensive and expensive management (cost of signs and installation, frequent monitoring for replacement)
- liability potential in event of an accident

*Land Acquisition: (AC-19)*
*The goal of the plan would be to acquire all private lands in DWMAs. Maintenance of the local tax base would not be a goal of the DWMA land acquisition program. Outside of DWMAs, acquisition priorities set by Alternative A would be followed; land acquisition would be from willing sellers only, and the acquisition program would seek to maintain the stability of the local tax base.*

Land Acquisition:
Cost versus species recovery should be a heavily waited factor on any action taken to recovery of a species. How would land bought for a DWMA's, ACEC, HCA, be used once a species recovers and only fair market value paid? Should this action be taken, would conservation groups donate land that they have acquired for species habitat? How would such donated land be used once a species recovery is complete?

Loss of tax base would impact surrounding communities. This plan does not adequately address the financial impacts its implementation would have on the desert communities. Maintaining the local tax base should be a goal of any land acquisition program. Restrictions on private land holders within DWMA's should be minimal. Implementing land use restrictions that force the private land holder to recover species is a "takings" issue that needs to be addressed.

As previously noted, this plan does not address the financial aspects of implementation. There is no accompanying budget defined to implement the adopted alternative.

Assigning management prescriptions to private land owners that inhibits the use of property is a "takings" which would cause expensive litigation.

*CHAPTER THREE*
*AFFECTED ENVIRONMENT*

*3.3.2.2 Tortoise Habitat Designations*

*USFWS Recovery Units and Desert Wildlife Management Areas: The Desert Tortoise (Mojave Population) Recovery Plan (USFWS 1994) established recovery goals and objectives for six "recovery units." The Western Mojave Recovery Unit is within the West Mojave planning area. The Recovery Plan stated that recovery units are "...essential to the long-term recovery, viability, and genetic diversity of the species..." The Recovery Plan also recommended that Desert Wildlife Management Areas be established within each recovery unit. DWMAs were characterized as areas in which "...recovery actions will be implemented to provide for the long-term persistence of viable desert tortoise populations and the ecosystems upon which they depend..."*

The recovery plan outlined that at least one DWMA for each recovery unit should be established. There are six recovery units Mojave Desert; Northern Colorado, Eastern Colorado, Eastern Mojave, Western Mojave, Northeastern Mojave and the Virgin River.

Each recovery unit is to have one at least 1000 square miles (OR) a combined amount of land deemed as good tortoise habitat totaling 1000 square miles total, if a contiguous 1000 square miles is not viable.

In all 14 DWMAs were proposed. The cost of funding this grandiose plan of acquiring 14 DWMA'S of a proposed 1000 square miles each could be astronomical. Assuming each DWMA encompassed 1000 square miles, an average perimeter of 220 miles of fencing would be required per DWMA. The 14 DWMAs would require 3,080 miles of fencing. With an estimate of $12 dollars per foot of fence, almost $195.1 million would be required to provide fencing around the estimated 3,080 miles of DWMA perimeter. ($12.00 x 5280 ft = $ 63,360 per mile of fence).

The above costs do not include the additional law enforcement personnel that would be required to enforce the boundary violations or the cost of personnel to monitor the status of tortoise populations.

Clearly smaller thinking should be considered, with a primary focus on funding required to implement a cost effective and viable program.

*The Recovery Plan recommended that DWMAs should: (a) be "...somewhere between 200 and 5,000 square miles..." with "...at least 1,000 square miles...recommended as the target size" (page 33); (b) have "...boundaries ... drawn to include the best examples of desert tortoise habitat in specific vegetation regions ... heterogeneous terrain, soil types, and vegetation within DWMAs will best provide protection for the entire ecosystem upon which healthy desert tortoise populations depend" (page 48); (c) contain "...the largest possible blocks of good tortoise habitat in an area, containing the most dense desert tortoise populations, should be included within DWMA boundaries" (page 48); and (d) consist of "...round or square patches of habitat are more likely to retain desert tortoise populations than elliptical or rectangular ones. Long, linear strips are least desirable" (page 49).*

The recommended size of DWMA's was based on healthy tortoise populations. Studies cite claims of declining tortoise populations resulting from inter specific (i.e., raven predation) and intra specific (i.e., disease) causes. The infectious disease is assumed to result from human-induced changes in the ecosystem. This theory is presupposing that the disease was introduced by man, a theory that has not been established to be factual or tested by science. The infectious disease is causing declines in tortoise populations in some parts of the defined DWMAs.

The infectious disease can be spread between sub-populations in a region of a DWMA. Research on captive tortoise shows that cross contamination of disease occurs from other species. The disease can be spread from wild populations of birds, rodents, reptiles and other animals that occur within the Desert Tortoise habitat.

The size and number of DWMA"S in a recovery unit should be revisited because the agencies neglected to deal with the Infectious disease factor.

***Existing Areas of Relatively Higher Tortoise Densities:*** *The preceding discussion pertains to official designations by one or more of the federal or State agencies. Based on surveys between 1998 and 2002, regions were identified as having "above average" or "higher density" tortoise occurrence. Although not an official designation, the differentiation between "higher density" and "lower density" tortoise areas is an important one relative to the plan's effectiveness of minimizing and mitigating take.*

These areas of "above average" or "higher density" tortoise occurrence are areas designated as open for recreation. As they now show an increase in population, it indicates that the current management strategy used in these areas is working and no further restrictions are needed.

Due to the neglect of funding studies of infectious diseases, infectious disease management, and quarantine management, the decrease in population densities in other areas is likely due to disease. During population surveys, a common practice is to mark and release tortoises. These tortoise are not treated for disease and are potential culprits for further spread of disease.

It is recommended that the agencies implement a health survey of the tortoise population and implement steps to identify and treat infected tortoise through a disease management and quarantine program.

### *3.3.2.5.1 Direct and Indirect Anthropogenic Mortality Factors*

***Indirect Anthropogenic Mortality Factors:***
*Chapter 3 p.3-99*
*Ravens represent a direct impact to juvenile tortoise populations, but they are also an indirect impact (or symptom) of urbanization. Ravens are as common as they are because of increased opportunities provided by humans. Roads provide a ready source of raven food in the carcasses of small mammals and reptiles that result from vehicle collisions; increased nesting opportunities are provided by human structures; water is readily available at pastures, farmlands, sewage ponds, and wildlife guzzlers. Yet, ravens are often identified as "natural" predators of tortoises. In fact, ravens are subsidized predators, possibly preying on tortoises and other animals to get them through the summer and winter when resources are less plentiful (Boarman 1993) .*

*The denuded hillsides that result from OHV hill climbs are extremely susceptible to erosion (indirect mortality factor), particularly if mechanized vehicles continue to frequent the area (a direct mortality factor). Both forage and shrub cover, which are critical to tortoise nutrition and denning, respectively, are adversely affected. In time, tortoises may abandon the area or suffer ill side effects from poor nutrition (i.e., malnourished, suppressed immune systems, etc.) or reduced denning potential (i.e., resulting in more exposure to predators and additional vehicle impacts).*

*Indirect mortality factors may occur far into the future and are often unforeseen. For example, the direct impact of a water pipeline is immediately mitigated and compensated, tortoises are moved from harm's way with appropriate take permits, and the project is effectively complete, but the indirect effects are just beginning. Dozens of residents each year excavate their own ancillary pipeline trenches to connect into the main water line; these go unmonitored and tortoise protection is relegated to whoever is digging the trench. Such projects are the infrastructure that is intended to promote human population growth that will eventually eliminate animals from those regions. Mechanically denuded rights -of-way are often used for vehicle travel and may provide new access to tortoise populations*

*that were not previously accessible to non-four-wheel drive vehicles. This was the case for extensive stretches of the Meade -Adelanto transmission line that was installed in 1995. Not only were 174 tortoises handled and 3 accidentally killed (LaRue 1996), but the line passed through areas where no previous utilities had passed, thereby opening new access to many areas.*

Ravens represent a direct impact to juvenile tortoise populations:

Ravens are an invasive (non-native) species that can be controlled. Previous predator control efforts in the region were halted due to litigation.

We recommend that a predator control program be established.

Tortoise do not use slopes as habitat in the Mojave. The majority of the referenced hill climb areas are in areas that are unlikely tortoise habitat. This observation was stated in a report by (Jennings 1993): "Tortoises concentrate their foraging activities around washes..."

The indirect mortality rationale applied to maintenance roads for public water ways and power ways overlooks the relative small area impacted with assumed maximum risk applied. As noted elsewhere, the management prescription focuses on the statistically insignificant factors while ignoring the major mortality factors of predation and disease.

We recommend that an active program for disease control be implemented for the Desert Tortoise.

*3.3.2.6 Tortoises and Off Highway Vehicles*
*3.3.2.6.1 Dispersed Casual OHV Use*
*3.3.2.6.2 Direct Impacts of OHV's on Desert Tortoise Populations*
*3.3.2.6.5 Off-Highway Vehicle Open Areas*
*3.3.2.6.6 Organized Competitive OHV Events*
*3.3.2.7 Current Effectiveness of Existing Protected Areas*

The above sections assume that Desert Tortoise thrives best where density of access routes is low, traffic is low and human access is limited. On the contrary, some lands closed for years now have sustained large tortoise population crashes. In one case at Chocolate Mountain Bombing Range, no significant human activity has occurred for over 50 years and one of the

largest tortoise population declines has occurred. There are several other regions that have experienced large die-offs within the last four years throughout the entire Superior-Cronese tortoise population.

The above are observations and are outdated as is the majority of the data pertaining to Desert Tortoise. A reference in the Desert Tortoise Recovery Plan was to limit all travel in a DWMA. Motorized access is listed as the major cause of the decline of tortoise populations throughout the CDCA. This is a hypothesized theory lacking peer-reviewed scientific data for support. What is known is that disease and predation are the major causal factors for the decline of Desert Tortoise.

It is recommended that a study be developed to list each factor and tabulate each tortoise death over a period of time through drought and wet years. This takes into account population fluctuation and the tortoise demographics of age, sickness, hydration and location in the Mojave.

Each factor has a mortality rate and yearly total. After a carcass is discovered, it should be examined for cause of death and what factor could have caused its demise. It should be assigned to that factor category, logged in to a data base with site pictures, measurements, and weather data.

This approach will aid the managers to develop mitigation steps for each factor in a management area.

Including all off highway vehicles in one encompassing category does not adequately address the risks or mitigation factors. Each type of vehicle has a different impact. That impact will vary depending on geographic conditions and type of use. Each will have separate factors of vehicle mortality. Including all vehicle types in one category falsely inflates the impact of any single vehicle type.

Separating off highway vehicles into possibly two categories, recreation use and commercial use could help facilitate a better management strategy. Each would require a vastly different administrative, management or law enforcement strategy, each have different purposes.

Recreation use

- exploring
- hunting
- camping
- hiking
- horseback riding
- rock hounding

Commercial uses

- exploration (geothermal, oil, wind, mineral and hydro )
- construction of new facilities (geothermal, oil, wind, mineral and hydro)
- maintenance of existing facilities(geothermal, oil, wind, mineral and hydro)
- Transportation (Rail, Interstate, highway, municipal)

Factors of vehicle mortality that should be categorized, studied and considered

- paved road
- highway- interstate
- county or federally maintained dirt roads
- off road vehicle routes and trails ( 4x4, ATV'S, dune buggies , motorcycles)
- competition and events (motorcycles, off road cars trucks, buggies and ATV'S and chase vehicles)
- construction and waste disposal vehicle traffic (earth movers, transport vehicles, trash trucks and service vehicles)
- Agencies motorized access for official duties (Bureau of Land Management, Border Patrol, National Park Service, U.S. Fish and Wildlife Service, county, state and federal law enforcement, fire and rescue)
- rail traffic (train cars, motors, service vehicles)
- vandalism ( shooting, taking for pets, taking for food or ceremony by ethnic groups (Asian, Native American)
- military (track, tire, rail, vehicles)
  recreation (state parks, national monuments, public land)
- public leased land (grazing allotment, mining claims )
- commercial resources exploration for energy (geothermal, oil, wind and hydro )

Unsubstantiated assumptions are made regarding vehicle access

- poaching would be reduced, not necessarily poaching can be accomplished
- pet collecting can be accomplished on the limited routes designated open
- taking for food or ceremony by ethnic groups (Asian, Native American)
  dumping
- fugitive dust
- food sources would be greater

Impacts of prohibiting vehicle access

- Excluding Motorized Vehicle Access of the public would not give the agencies the heads up from public visitors on conditions arising in desert areas when noticeable changes have taken place ( die-offs, vandalism, illegal activity). The agencies could not possibly cover the 25 million acres of publicly owned land affected under these management strategies.
- No vehicular access to the center portions of these areas would deny access to the handicapped public -- this would be grounds for further litigation.
- Loss of vehicle access to these areas will force users to go to the BLM open areas adversely impacting the open area to a higher degree.
- To eliminate competitive and organized events is to deny competitors a bona fide, historical use. Documentation demonstrating little impact to tortoise exists in the form of incidental take reports required of event holders in recent years.

### *3.3.2.6.2 Direct Impacts of OHV's on Desert Tortoise Populations*

Fails to state that the roads and trails existed prior to the declines in tortoise population and its listing as threatened in 1990. The purpose of the surveyed areas was to locate suitable habitat to implement the recovery plan. The Agency admits that due to the lack of baseline data to which comparison can be made, the current distribution suggests nothing about population trends.

*Vehicle collisions are responsible for tortoise injury and mortality on dirt roads (Berry 1996)*

Fails to state whether by recreation OHV use or Commercial use, or other vehicular use.

***Tortoise and Burrows Crushed:***

Fails to state whether by recreation OHV use or Commercial use.

*Prevalence of Vehicle Crushing:*

No data shows that the tortoise were alive before they were crushed nor whether its shell had been discarded due to vandalism or other cause.

***OHV Impacts to Soils:***

Some observations show that the depressions left by vehicles catch spring and summer rainfall and wind blown seeds allowing for further growth periods of food sources for the tortoise. Depressions in the soil are used by the agencies to facilitate habitat restoration.

***3.3.2.6.6 Organized Competitive OHV Events***

OHV competitive events in the past allowed the promoter to choose the route they would follow. Promoters routinely employed alternate routes to allow for natural restoration adjacent to prior courses. Since the BLM rule has changed that and specific routes must be followed, impacts of running the same course show larger impacts. Post event take surveys show no tortoise take or any other species.

*CHAPTER 4*
*ENVIRONMENTAL CONSEQUENCES*

***4.2.2.2 Desert Tortoise***

*Establish Four DWMAs: Alternative A would result in a CDCA Plan amendment creating four new DWMAs, which would be managed for the conservation and recovery of tortoises and provide a means to achieve regulatory minimization and mitigation standards. The benefits and residual*

*impacts associated with the proposed configuration of the four DWMAs are summarized in Table 4-6.*

The tortoise recovery plan states that at least one DWMA should be formed in each recovery area. It also states a DWMA could be 1.000 square miles or a number of smaller ones totaling approximately 1,000 square miles.

One DWMA in each of the Mojave desert management areas is a good place to start. Establishing a DWMA that encompasses 1000 square miles is excessive and does not address the needs of the tortoise and other "sensitive" species. The tortoise recovery plan does not mandate a single DWMA of 1000 square miles. It does indicate that up to 1000 square miles MAY be needed. Each area has varied factors (populations of tortoise, weather and human impacts) which could allow the agencies to test different management models to recover the species. The claimed 100 other species could be studied if separate funding could be secured. This seems the fairest for the public and species.

We recommend that DWMAs be reviewed for smaller size with consideration being given to tortoise population, forage available, water source, tortoise health and predator population. The other listed "sensitive species require separate management plans to determine impacts and required mitigation. Assigning one "all encompassing" DWMA for multiple species does not address the requirements of the individual species nor the impacts on the individual species.

*Establishing and managing DWMAs for tortoise conservation and recovery would constitute a significant beneficial impact. These areas would be specifically identified for tortoise conservation, which would better serve to direct BLM management relative to current management (see next table and discussion that follows). Since this designation would be in place for at least the next 30 years, the designation would provide for better adaptive management. This is extremely important in light of recent information suggesting that, even within DWMAs, tortoises are susceptible to catastrophic declines that have been shown to decimate the population. The designation would facilitate head starting programs, which may be essential to repopulate areas that been heavily impacted by both recent and less recent declines.*

The tortoise recovery plan stated that 25 years maximum or specific trigger mechanisms could be used to de-list the tortoise and return land back to

pre-listing management, open for the public best interest. Assigning a 30 year trigger plan contradicts the stated objective to implement the tortoise recovery plan.

*The alternative provides for maintained communication with the MOG and, except for contingency funding, would provide no new means of counteracting URTD, herpesvirus, and other tortoise disease. This is not a failing of the alternative, so much as a statement of how little is known, and how little can therefore be done with regards to addressing disease threats. The Disease Management Trust Fund is considered one of the most pragmatic ways to ensure that break-through disease management tools (presently unidentified) could be implemented expeditiously. Spending money at the present time in the guise of "disease management" would detract from other conservation programs with more-or-less known results (i.e., highway fencing, increased law enforcement), and result in premature expenditure of limited funds without any scientific basis to support the expenditure. "Disease research," on the other hand, remains a high priority item needed to identify pragmatic management tools.*

The 1994 desert tortoise recovery plan found disease management a priority. Local BLM, CDFG, and USFWS staffs participate in MOG TAC programs and meetings on disease, but still have no on the ground policy.

Other states, such as Nevada, Georgia and Arizona have disease management plans, and extensive experience with this.

The Trust Fund is a good idea however dramatically under funded. It should be used only for research of disease.

The statement "disease management would detract from other conservation programs with more-or-less known results (i.e., highway fencing, increased law enforcement)" shows the lack of common sense when comparing cost versus benefit. The high cost of fencing has already been addressed elsewhere in these comments.

With this paragraph, the Agencies are assigning priority funding to what has been defined an minimal impact to tortoise population. The GAO Report and other studies have shown the predation management and disease control will have significant impact on enhancing the population of desert tortoise.

*Drought: Alternative A does not directly address the threat of either short- or long-term drought. However, some prescriptions would enhance tortoise conservation during drought periods. Benefits and residual impacts are summarized in Table 4-15.*

Studies have shown that population counts are dramatically affected by drought. Data confirm that tortoises are likely to be undercounted during dry years and call into question earlier studies conducted during droughts. Insufficient attention is given to establishing and maintaining water sources to enhance the population of desert tortoise and other species during periods of drought.

***Motorized Vehicle Access* [Table 4-15]**

***BENEFITS***

*Route reductions in higher density tortoise areas in DWMAs would serve to alleviate human-induced stresses during drought periods*

Without motorized vehicle access, the drought could not be mitigated by trucking in water relief for affected species. Excluding motorized vehicle access of the public would not give the agencies the heads up of public visitors on conditions arising in desert areas when noticeable changes have taken place (die-off, vandalism, illegal activity). The agencies could not possibly cover the 25 million acres.

Many of the proposed route reductions to "benefit" the tortoise are not in preferred tortoise habitat area; hence, the reductions are superfluous to the intent of "protecting" desert tortoise habitat.

***RESIDUAL IMPACTS***

*Alternative fails to identify specific measures that would be implemented in higher density tortoise areas, which are most likely to benefit from additional protection than would be implemented during periods of prolonged drought; temporary, emergency closures of additional routes in higher density tortoise areas would have resulted in less stress than would occur with Alternative A.*

The only effect that is clamed is that vehicles stress the desert tortoise. No good peer-reviewed science confirms this. Wash travel is minimal during

the tortoise season and restricting access to the public could adversely affect BLM in early detection of concerns (die off, vandalism, and other illegal activity).

Many of the proposed route reductions to "benefit" the tortoise are not in preferred tortoise habitat area; hence, the reductions are superfluous to the intent of "protecting" desert tortoise habitat.

*Tortoises concentrate their foraging activities around washes (Jennings 1993), often burrow in wash banks or on adjacent slopes (Baxter 1988), and may occupy burrows closer to washes during periods of drought (Circle Mountain Biological Consultants 2002). Where OHV use in washes is common, tortoises are more at risk. They are already physiologically stressed by lack of both food and water. Since they are less active during drought but often lay at least one clutch of eggs, both animals and nests are in harm's way where heavy vehicle use occurs. Shrubs often take on a dull appearance and desiccate (dry out) during a single year of low rainfall. Because wash-side growth is denser than growth in adjacent open lands, there is increased risk of fire in washes where camping, shooting, and vehicle use is more common. Minimizing these and numerous other impacts (see Chapter 3) is perhaps the only practical thing that managers can do to minimize impacts associated with drought, and is a significant beneficial impact.*

The statement "They are already physiologically stressed by lack of both food and water" is misleading. Lack of food and water leads to disease and resource stress. Female tortoises that are dehydrated will forgo reproduction or lay smaller clutches of eggs to conserve their own resources. This occurs in all the tortoise habitats, not only washes. Tortoises get most of their water from foods eaten, mostly from annual grasses and forbs. Properly marking washes open will be costly; funds should be spent on disease research. Cost versus species recovery should be a heavily weighed factor on any action taken.

*Feral Dog Management: The alternative identifies the need to draft a Feral Dog Management Plan to address this persisting threat, which is likely to increase as urban development and casual desert use increases. Management would be facilitated if it was implemented on both private and public lands, but the mechanism to do this (perhaps an MOU among appropriate entities) has not been identified (see Table 4-18).*

This could be accomplished with close rapport with counties, cities and military bases. Each has animal control programs. This issue ignores the impact of other natural predators on the tortoise population. Coyotes, badgers, foxes, and ravens are natural predators that are more abundant than feral dogs. Any predator control program needs to address the total predator problem; not limit actions to a single predator.

*Motorized Vehicle Access: The new route network would be adopted by CDCA Plan amendment upon issuance of the BLM's Record of Decision. Effective implementation of the network would require signing open and limited use routes, physically obstructing roads identified for closure, and other actions. An aggressive, focused education program that targets all vehicle user groups would facilitate the success of the program. The assumptions inherent to this analysis are given in Table 4-26.*

Prohibiting vehicular access to internal portions of these areas would deny access to the handicapped public. This reference in the Desert Tortoise Recovery Plan was to limit all travel in a DWMA. Motorized access was listed as a major cause of the decline of tortoise population desert wide. Very little peer-reviewed science has been produced to substantiate this. Many of the routes slated for closure are in non-tortoise habitat.

Some assumptions are made regarding vehicle access:

- -- poaching would be reduced
  This is a false assumption as poaching can be accomplished on the limited routes designated open and along the public highways.

- -- pet collecting would be reduced
  This is a false assumption as pet collecting can be accomplished on the limited routes designated open and along the public highways.

- -- taking for food or ceremony by ethnic groups
  This is a false assumption as taking for food or ceremony can be accomplished on the limited routes designated open and along the public highways.

- dumping can be accomplished on the limited routes designated open

As previously noted, many of the route closures are not in tortoise habitat areas; hence, would have no impact on the population of tortoise. Loss of vehicle access to the desert areas will force users to other areas with fewer restriction; hence, a potential for adversely impacting those area. Concentrating more users into smaller areas may create larger environmental impacts.

*Given the assumptions identified above, there are likely to be both benefits and residual impacts associated with the motorized vehicle access network, as summarized in Table 4-27.*

The statement in Table 4-27: "Designating and implementing a motorized vehicle access network is the single most important action needed" is a conservationist point of view not supported by science. Available data stipulates that disease and predators are the most significant impacts on the populations of desert tortoise. Assigning an invalidated cause as a major factor when the available data indicates otherwise is a prejudicial action that is based on assumption not scientific fact. The disease is the first major factor and predation second.

*Recreation: Though managed for tortoise conservation, DWMAs would still be available for a multitude of recreational activities. Non-consumptive recreational activities such as hiking, birdwatching, horseback riding, and photography would be expressly allowed. Hunting and target shooting would continue as currently regulated by law. Dual sport events would continue as regulated by existing USFWS biological opinions. New regulations would restrict the available area for camping, stopping, and parking to areas adjacent to designated open routes that are much narrower than current management allows. Benefits and residual impacts associated with these measures are summarized in Table 4-30.*

Gunshot impacts have not been "well-documented" due to lack of knowledge of ballistics and tortoise deaths. Studies of tortoise shells have not documented the "cause" of death as being gunshot, vehicle, or predator. A review of competitive events sanctioned with tortoise monitoring have not resulted in a single take of a tortoise. Assigning the cause of tortoise deaths to be gunshot and motorized recreation is a prejudicial assumption regarding cause of tortoise deaths.

Increased law enforcement could be a plus, however funding is a problem. Most of BLM's field staff do not have the costly law enforcement training required to cite offenders.

Most hunters are not shooting tortoises.

We recommend the Agency review the available date concerning tortoise deaths and establish disease management and predator control programs instead of the prejudicial recreation management actions listed.

*4.2.4 Motorized Vehicle Access Network*

*Most of the recreational needs and opportunities identified by the public take place in the more mountainous terrain of the planning area, such as the Gravel Hills in the Fremont subregion and the more mountainous areas of the Red Mountain subregion, while many of the more sensitive desert tortoise areas are located on the bajadas and in washes. The proposed network would take account of this by leaving relatively more routes open in the more mountainous terrain (e.g. Kramer Hills, Iron Mountain, Gravel Hills, Hamburger Mill, Red Mountain, the Superior sub region hills north and east of Rainbow Basin), and impose relatively more closure in the flatter (e.g. characterized by bajadas and washes) surrounding areas (e.g. in portions of the El Mirage, Kramer, Fremont, Red Mountain, and Superior subregions). The network would address other sensitive species concerns (which included many immobile plants) by avoidance.*

This plan prohibits the public from routes used for years. It should not lock in a 25-year term. This time schedule was originally intended to see a tortoise population increase in order to justify de-listing.

It is not true that most of the use occurs in the mountainous regions. This statement makes it clear that more communication between BLM and user groups is needed. Closing more areas in the flatter regions based upon this false premise is not good management.

This management action is assuming that actions to benefit the tortoise would also benefit other species. The other species need to be identified and appropriate habitat and mitigation factors established as a single species.

### *4.5.2.2 Desert Tortoise*

*Marginal or Neutral Advantages of Alternative D: Although the Alternative A and C DWMAs would be expanded by 68 mi2, the protection provided by this expansion would be marginal, for reasons given in the table. Erecting a fence along Highway 62 to preclude urbanizing impacts from the north into the Pinto Mountain DWMA would have little or no benefit. Establishing Experimental Management Zones to study effects of sheep grazing, recreation, and urbanization on tortoises in the Brisbane Valley and Copper Mountain Mesa areas would have marginal benefits, if any, to tortoise conservation in the expanded DWMA; limited funds would be better spent implementing protective measures in the DWMA. Protecting riparian areas would do little to enhance tortoise conservation. Potential impacts associated with the habitat credit component would be avoided under this alternative. Minimizing the camping, stopping, and parking distances from approved routes would provide slightly more protection, but this would not likely be substantial.*

The goal is—or should be—to try to recover the desert tortoise while minimizing negative impacts upon the public. This should be accomplished by aggressive disease research and predation control. The WEMO Plan is replete with examples such as those above for marginal effects of the planned management actions.

## 3. NEPA VIOLATIONS

3.1 The Draft Environment Impact Statement ("DEIS") violates National Environmental Policy Act ("NEPA") in failing to "provide a clear basis for choice amongst options."[1]

Alternative G (the no action alternative) "adopt[s] existing motorized vehicle route networks. No redesign." All other alternatives, Alternatives A-E, "Redesign network for tortoise critical habitat for Middle Knob, Juniper Flats," and "adopt existing designated network elsewhere."[2]

The "redesign" portion of Alternatives A-E are identical.[3] There is no meaningful choice of motorized vehicle route networks in Alternatives A-E. There are two choices, the no-action alternative and the motorized vehicle route network outlined in alternative A and repeated in Alternatives B-E.

The agency is requested to consider in detail, at a minimum, the following two alternatives:

1) Routes in higher density tortoise population areas should not be reduced until closures are determined on a case-by-case basis supported by site-specific analysis to determine the detrimental effects of route use, if any. Other mitigating measures besides route closure should be considered as part of the site-specific analysis.

Routes in ACECs should not be reduced until closures are determined on a case-by-case basis supported by site-specific analysis to determine the detrimental effects of route use, if any. Other mitigating measures besides route closure should be considered as part of the site-specific analysis.

2) Alternative G: NO ACTION with the following modifications: a) Implement the Species Conservation Measures with respect to tortoise disease and predator control identified in Alternative F; b) Implement a consistent "Open unless posted closed" policy within Alternative G, Section 2.8.7; and c) Complete the unfinished route inventory and analysis prior to designating any routes as closed.

The agency must analyze in detail a variety of alternatives for motorized vehicle route networks. Failure to do so violates agency regulation and NEPA and its implementing regulations. We ask that two such alternatives be based on the choices indicated above. A supplemental DEIS must be prepared to afford the public meaningful opportunity to comment on an analysis that provides a clear basis for choice amongst options.

3.2 The DEIS violates NEPA in failing to "devote substantial treatment to each alternative considered in detail so that reviewers may evaluate their comparative merits."[4] The DEIS fails to provide analysis or data to support a proposal to reduce open routes in higher density tortoise population areas from 439 miles to 384 miles, and to reduce open routes in ACECs from 427 miles to 406 miles.[5] There is no documentation provided within the administrative record indicating the methodology or analysis used to determine which routes would be eliminated, nothing in the record indicating the location or identification of the routes proposed for

elimination, and nothing in the record as to any scientific justification of the routes proposed for elimination.

Therefore, the agency must provide documentation for the record which supports a proposal to reduce open routes in higher density tortoise population areas and in ACECs. This documentation must include, at a minimum, an explanation of the methodology used to determine which routes would be eliminated, a written list of the routes to be eliminated, and the scientific justification relied upon in proposing such routes for elimination. A supplemental DEIS must be prepared that provides an administrative record upon which the public can have meaningful opportunity to evaluate the comparative merits of various alternatives.

[1] 40 U.S.C. §1502.14
[2] Draft Environmental Impact Report/Statement, page 2-202, table 2-32.
[3] Id.
[4] 40 U.S.C. §1502.14(b)
[5] Draft Environmental Impact Report/Statement, page 2-140.

## 4. "CLOSED UNLESS POSTED OPEN" POLICY (2.2.6.8 Implementation)

This section defines a policy of only those routes designated as open would be signed. Instead, routes should be signed closed only where environmental concerns are more profound. Our concern is that a policy whereby a route or road is determined as legally open and navigable by the public, only if "signed (posted) open", is in direct opposition to the freedom of travel all Americans have rightfully enjoyed throughout the history of the United States.

America was founded as and still is an open country. On city streets, freeways, or in rural areas, the public expects that they can travel down an established path unless it is posted "No Trespassing" or otherwise gated or marked "Closed, No Access." The "right to pass" is not by express permission, but by implied permission - meaning that you can pass over an established unblocked path across private or public land if the area allows passage. In general, the area itself is not closed and unless the established path (or route, or trial, or road) is posted as being closed (no trespassing), or physically blocked by a latched or locked gate, fence, or other obvious physical barrier.

The common, rational individual expects that while traveling on a road or byway of any sort in the United States, that such route is open unless obvious signage indicates differently. Imagine how ludicrous it would be to legally have to post signs at every intersection of every road in the United States stating the route is open. We think that same logic applies to the West Mojave.

All routes should be open for vehicle travel unless specifically posted closed. This is a more fiscally prudent policy as the number of signs required to post and maintain an "open unless posted closed" would be less annual maintenance costs for an already stressed budget. The country travel should be allowed anywhere providing it can be done without resource damage. There are numerous areas where travel on sand, rock, or in washes should be unrestricted unless there are special circumstances, such as a riparian area. Travel in washes is an excellent way to traverse an area while having no resource impact. Travel in washes is also a necessary occurrence for some forms of recreation, such as hunters and gem and mineral prospectors.

The Stanislaus National Forest, in their EA about five years ago, published the same "Closed Unless Signed (Posted) Open" policy. The policy was officially protested by several access groups (CA4WDC, CORVA, AMA, and others). The Stanislaus National Forest appealed the protest to its Chief in Washington, D.C., who ultimately supported the protest.

Subsequently, the federal magistrate in Lake Tahoe, who would have administered the law regarding any citations in the Stanislaus Forest, declared upon interrogation that he would throw any tickets out of court involving citations for traveling "Unsigned" roads/routes. He stated that a reasonable person would believe a road or route was open unless identified differently. Consequently, compliance and enforcement also present serious obstacles in the implementation of this policy.

It is recognized that some routes may exist in areas where environmental concerns are more profound. These should be treated as the exception and signed "closed" thereby specifically delineating the sensitive environmental impact. Such routes should only be signed

"closed" after a review and analysis has validated the sensitive environmental impact.

Our recommendation is that the West Mojave Plan should adopt the policy that: "All Routes are Considered Open Unless Signed (Posted) Closed." Certainly this would be easier for the public to understand and abide with. Furthermore; hopefully, in our "land of the free," more routes will remain open than closed - so less expense would be involved in signage.

## 5. COMMENTS ON PROPOSED ALTERNATIVES [CHAPTER 2]

### *2.2 ALTERNATIVE A: PROPOSED ACTION: HABITAT CONSERVATION PLAN* [Page 2-8]

This Alternative is unacceptable as written for the future use of the Plan area. This Alternative ignores the future multiple use of the lands for multiple use discussed later in this chapter.

### *2.2.1.1.2 Desert Tortoise Component of HCA* [Page 2-12]

This Alternative ignores the real causes of the decline of the Desert Tortoise.

### *2.2.1.1.3 Mojave Ground Squirrel Component of HCA* [Pages 2-12 and 2-13]

This Alternative does not place any new restrictions of Los Angeles County.

### *2.2.1.2.8 Mojave River Wild and Scenic River Eligibility Determination* [Pages 2-27 and 2-28]

How can this be designated as a wild and scenic river where most of the flow is underground? It may be a scenic location and protected. This was not the intent of the act. The site should be protected as a recreation area or under some other code provision to protect the area as scenic.

### *2.2.1.2.8 Inyo County Land Disposal Tracts* [Page 2-28]

There have been many studies that prove that these land disposal tracts attract Crows, Magpie and Ravens. These birds prey and destroy all young Desert Tortoises and have a flight range of many miles. The land disposal tracts must not be permitted to provide food for these birds if the Desert Tortoise is to survive and multiply.

### *2.2.1.3 Allowable Ground Disturbance (AGD)* [Pages 2-28 through 2-30]

This cannot be enforced. It is a wasted regulation. The provisions of Appendix I should be inserted as far as it covered the basic needs of the Desert Tortoise. In addition, ground disturbance must be limited to the inactive Desert Tortoise season when many of the restrictions can be lifted. A biologist then needs only to identify the location of the burrows of the hibernating Desert Tortoise. They should either be marked or the Tortoise relocated to another nearby suitable burrow.

### *2.2.2.1 Administrative Structure* [Page 2-31 ]

The section does not address the government agencies that were not a party of the 1992 Memorandum. Will their representatives be allowed to be admitted to the Implementing Authority Governing Board?

### *2.2.2.2 Mitigation Fee* [Pages 2-32 through 2-36]

How can the BLM impose a separate mitigation fee on private land? The BLM is not supposed to have any jurisdiction over private lands. Private Lands are subject to the jurisdiction of the County or City governments.

### *2.2.3.1 Covered Activities and Terms of Permits.* [Pages 2-40 and 2-41]

It is interesting that the BLM is not selling any land. They may have the right to recover it later. This is a basic term of leases on Rancho Lands. However, by allowing a lease for 30 years, the lessee will have to pay State and County property Taxes as if they owned the land. Farmers are exempt for this provision and may obtain a lease in which they do not have to pay County or State Taxes.

### *2.2.3.3 Take Authorized by Incidental Take Permits.* [Pages 2-42 and 2-41]

The permitting incidental take permits of the Desert Tortoise appears to be in conflict with other State and Federal Statutes. This section needs to be consistent with other Code provisions.

### *2.2.4.1 Species Conservation Measures Applicable throughout the HCA.* [Pages 2-50 to 2-53]

This report must include the effect of agriculture on the Desert Tortoise. Many irrigated fields have food that the Desert Tortoise prefers over its sparse food supply. This report must include regulations to protect Desert Tortoises that graze in these irrigated fields. This includes limiting planting and harvesting of the fields during Desert Tortoise active season. A good example is Alfalfa. It is nutritious and the tortoises have protection among the alfalfa from predators and they burrow within the fields. Many are killed if the Alfalfa is cut during the active season. Alfalfa is a good substitute for replacing food supplies that were lost because of habitat development and can increase the density of the Tortoise within their protected habitat.

Existing highways within the Desert Tortoise Habit areas need to have protective fencing and crossover culverts as was done on Interstate 15. The report cannot assume that new paved roads will never be built. Again population increase pressures will force new road construction in the Plan area.

Additional Wildlife Water Sources are needed to replace sources taken by human development. For the Desert Tortoise, the water sources should provide nourishment for the Desert Tortoise food supply.

### *2.2.4.2.1 Take Avoidance Measures.* [Pages 2-54 to 2-56]

Under Commercial Activities Appendix I should also be included. Also as previously mentioned, the BLM has no jurisdiction over private, State and County, city and local agency lands. They can only request cooperation and provide education to the users of the lands.

Throughout the entire section, Appendix I should apply.

### *2.2.4.2.2 Survey and Disposition Protocols* **[Pages 2-57 to 2-62]**

This report should recognize that Desert Tortoises are known to travel long distances when possible. They may wander off the protected habitat areas. It is also very difficult to tag and identify a specific Tortoise. Surveys should be limited to an analysis of the general population or when the study site is to be disturbed. Appendix I is presented in part but the entire Appendix I plus these comments should be included.

### *2.2.4.2.3 Proactive Tortoise Management Programs* **[Pages 2-62 to 2-70]**

The Disease problems facing the Desert Tortoise have not received adequate attention. We know the Desert Tortoise has a very primitive immune system. It has been decimated by diseases imported by nonnative animals including birds. This primitive immune system is probably due to the thousands of years of isolation from any new forms of life. Of all the items suggested in Table 2-14, Research and Monitoring make the most sense. Promoting a healthier food supply would also help improve the Desert Tortoise strength. However, even healthy captive tortoises have succumbed to the diseases that are wiping out the native populations.

Under Headstarting, the report fails to note the UCR research program of this time. It is our understanding it was a complete failure because tortoises found better nourishment in areas planted by humans and then did not adapt well to consuming the sparse desert foliage.

Under Landfills, the limitation of them to the Desert Tortoise habitats may not be adequate. More research is needed. However, The Sheephole Study by the Needles office indicated that raptors known to prey on young Desert Tortoises have a range over at least 12 miles.

Ravens, Magpies and Crows are not native to the desert or to mainland Southern California. They have multiplied due to irrigation of lawns, road kills and landfills. They prey on the young of all species. They have few known predators. More information is needed to bring these birds into balance with nature. The report's recommendations regarding the destruction of nests should be implemented throughout Southern

California. Some Hawks may kill these birds. However, they may feed upon hatchlings and young Desert Tortoises as well.

### *2.2.5 Public Land Livestock Grazing Program* **[Page 2-106]**

The report fails to note the benefit of this Grazing Program in keeping nonnative and native brush under control and therefore preventing wildfires. The other features appear to be reasonable.

### *2.2.5.2 Cattle Grazing Outside Tortoise Habitat and the MGS Conservation Area* **[Pages 2-113 to 2-114]**

This section must apply to areas in which the possibility of Desert Tortoises being present is not possible due to topography, geography and climate.

### *2.2.5.3 Cattle Grazing Within Tortoise Habitat and the MGS Conservation Area* **[Page 2-114]**

As noted in the Appendix, livestock grazing should be limited beginning with the inactive Desert Tortoise season and ending after the first of the spring rains bringing new growth. Grazing should be encouraged to remove excessive brush to prevent wildfires. Other conditions appear to be applicable.

### *2.2.5.5 Sheep Grazing Within All Allotments* **[Pages 2-119 to 2-121]**

The conditions described above to protect the Desert Tortoise for Cattle grazing should also apply to Sheep.

### *2.2.6 Public Land Motorized Vehicle Access Network* **[Page 2-124]**

### *2.2.6.1 Background* **[Pages 2- 124 and 2-125]**

*The West Mojave Plan would designate routes on public lands managed by the BLM as open or closed to motorized vehicle access, or as open on a limited basis. This designation of motorized routes is a requirement of federal regulation, BLM policy and the BLM's CDCA Plan, and is one of the recommendations of the USFWS Desert Tortoise Recovery Plan. Two steps are involved in this process: (1) the designation of routes as open,*

*closed or limited, and (2) amendment of the CDCA Plan to incorporate the network of open and limited routes as a component of the CDCA Plan.*

The criteria for designating routes have not been presented in this report and need to be established to prevent unnecessary road closures.

### *2.2.6.2 Criteria* [Pages 2- 126 to 2-128]

In addition to the listed process components, the process must include the Desert Tortoises Active and Inactive Season. It should be noted that most recreation uses occur when the Desert Tortoise is inactive. Appendix I should be utilized in this section.

In the second paragraph of Page 1-128 it is written "Generally, it was found that there was a higher density of routes in areas with topography than those without it," does not make sense. This phrase needs to be clarified to define the intent. The word, topography, could include Desert Tortoise habitat or not include Desert Tortoise habitat.

### *2.2.6.3 Route Designation Methodology* [Pages 2- 128 to 2-140]

The entire section needs to be revised. Only those portions of roads within the Desert Tortoise Habitat should be initially surveyed and classified. Other roads not within the Desert Tortoise Habitat should be left alone. Appendix I notes that needed roads within the Desert Tortoise habitat should have a speed limit of 20 mph. However, we challenge that recommendation. During the inactive season, there should be not speed limit on established roads. The BLM could reroute roads out of most dense Desert Tortoise habitats to protect them from motor vehicles.

Most of the listed subregions do not appear to be within the Desert Tortoise habitat. The routes need to be better defined within the Desert Tortoise habitat.

Traveling off established roads within the Desert Tortoise habitat should be forbidden during the Desert Tortoise Active Season. It may, under controlled circumstances, be permitted during the inactive season.

The BLM must designate experts in locating Desert Tortoise Burrows to survey any route or site where the ground is to be disturbed as discussed in Appendix I.

### *2.2.6.4 Take-Avoidance Measures* [Pages 2- 140 and 2-141]

Most Desert Tortoise Habitats are located on relatively flat topography that is of little interest to the recreation camper. Motorcycles may prefer such flat topography. Most recreation occurs during the inactive season during which only the burrows need to be protected. The BLM must provide an extensive education program and post areas of the Desert Tortoise habitats including their burrows. Organized off road races must be limited to routes during the inactive Desert Tortoise Season and surveys made to mark burrows to protect the hibernating Desert Tortoises.

Some washes my have Desert Tortoise Burrows on the banks of the dry washes. Certified experts must identify these sites and restrict travel up the banks where the Desert Tortoise might be in danger.

### *2.2.6.5 Competitive Event Corridors and Race Courses* [Page 2- 142 ]

The listed corridors are inadequate to meet the recreation needs of our expanding population. More corridors must be established that do not do major harm to the desert environment. As previously noted, the Desert Tortoise has an active season and inactive season. This season depends upon the radiation of the sun that the tortoise senses. Off road races should be limited to the Desert Tortoises' inactive season and the trails clearly marked by experts including the center of the route and the outer boundaries of the route. Within this area, certified experts must search for all occupied burrows and mark their locations. The routes in and out of washes must be checked carefully for occupied burrows.

### *2.2.6.6 El Paso Collaborative Access Planning Area* [Pages 2-142 and 2-143]

This section fails to also mention that other interests have private property in the El Paso Mountains and that there is some mining activity present along with private land for cabins. Usually vehicles for recreation purposes use the mining and other access roads. The existing maps in the area have been proven to be very inaccurate. It will take time, labor and funding to

continually update these maps. The plan must not be finalized until the entire plan area has more route surveys.

The report should also note that the permitted big game guzzlers are replacements for lost water sources due to human development within the groundwater basin and collecting surface water runoff. Many natural water sources are gone or their water quality deteriorated to such a point that most native species do not have adequate water supplies. Therefore, the lack of adequate food and water has adversely affected the survival of many native species. These artificial water sources are vital for the survival of many species because they replace lost water sources. More innovative facilities may be required in the future to assure the survival of desired native species. This plan must be continually revised periodically to protect the desired native flora and fauna. The existing official maps must be updated for better accuracy as more land surveys are conducted.

### *2.2.6.8 Implementation* [Pages 2-144 to 2-147]

Most the steps noted in this section sound good and reasonable. However, the plan fails to note that interested parties privately maintain most of the open routes with little BLM participation. Government funding may be required to prevent destroying certain routes in canyons due to flash flooding and to provide facilities for camping and for maintaining signage.

The BLM needs to work with all interests in establishing cleanup programs and route maintenance such as a " Adopt a Trail program" and "Moose Anderson Days." Creative funding and labor assistance must be noted in this section.

### *2.2.6.9 Modification of Route Network* [Pages 2-147 and 2-148]

As previously discussed the existing maps within the plan area are inadequate and routes incorrectly noted. The improvement of route locations and plotting on maps should not require an amendment of the CDCA. This is costly and time consuming. The local BLM office must be given the authority to add routes after a reasonable investigation is conducted to protect and enhance all interests requiring such change. The local native flora and fauna must be impacted as little as possible. Reasonable mitigation measures must be incorporated in any new route designation. The plan must recognize the increased population in California

and recognize the need for expanded recreational facilities and supporting enterprises.

### *2.2.7 Education Program* **[Page 2-148]**

The failure of the BLM to obtain the acceptance and cooperation of all interests using the West Mohave Plan Area will result in so many violations that the plan will be unenforceable. The result would be the destruction of the goals of this Plan.

### *2.2.7.1 Goals* **[Pages 2-148 and 2-149]**

The goals are vague and could mean anything. What is missing is funding these goals. The report must make recommendations regarding funding of the recommended programs. Without specific funding the goals are meaningless.

Goal 4 will require considerable funding and the report must recommend sources of funding including requesting funding from Congress.

### *2.2.7.2 Targets* **[Page 2-149]**

Without proper funding, the BLM will be unable to reach its targets.

### *2.2.7.3 Delivery* **[Pages 2-149 and 2-150]**

Again none of this delivery comes free. Some may volunteer to deliver the message. However, the report must request funding for Delivery.

### *2.2.7.4 Means* **[Pages 2-150 to 2-152]**

This section sounds wonderful. However, there must be recommendations for obtaining a funding source and for volunteers to spread the message.

### *2.2.8 Monitoring* **[Pages 2-153 to 2-157]**

Again funding for monitoring the recommended program is omitted. As an introductory section the specifics are not present and this may have to be revised when the following subsections are revised.

### *2.2.8.1 Supplementary Discussion* **[Page 2-157]**

If the Military were not signatures to the 1992 Memorandum, how can they be forced to comply with the requirements of this subsection? How will these studies be funded? This report must recommend priorities for use of available funds. The goal is to achieve the best use of the plan area that insures the most likely survival of desired native species.

### *2.2.8.2 Alkali Seeps, Springs and Meadows* **[Pages 2-158 and 2-159]**

How will these surveys be funded? Also the survey should include investigating the changes in the conditions of these sites over the last 50 years or more due to human development.

### *2.2.8.3 Little San Bernardino Mountains Gilia* **[Page 2-159]**

Again, the National Park Service was not a signatory to the 1992 Memorandum. Who will perform these studies and how are these studies to be funded? What is the priority of these studies?

### *2.2.8.4 Prairie Falcon* **[Page 2-160]**

Is this a native species? How will this be funded? Is this predator a danger to the Desert Tortoise? If so, are the numbers increasing due to more available food due to human activities?

### *2.2.8.5 Tortoise Distance Sampling Transects* **[Pages 2-160 to 2-166]**

*(M-98) A line distance sampling program (or other scientifically credible method, if distance sampling proves ineffective) would be implemented in the Fremont-Kramer, Superior- Cronese, Ord-Rodman, and Pinto Mountain DWMAs. To date, this is the only method that has been identified to determine tortoise densities and population trends on a regional basis. It has full endorsement of the Management Oversight Group, consisting of the resource managers responsible for lands and resource protection throughout the listed range of the desert tortoise (i. e., USFWS, BLM, National Park Service, Department of Defense, and state wildlife agencies).*

*Although there are five delisting criteria given in the Recovery Plan, the primary criterion for delisting tortoises in the West Mojave Recovery Unit, which corresponds to the Plan area, is:*

*As determined by a scientifically credible monitoring plan, the population within the recovery unit must exhibit a statistically significant upward trend or remain stationary for at least 25 years (one desert tortoise generation).*

*Although there are limitations associated with the data gained through distance sampling, it remains the best available method to determine if the Recovery Plan criterion is being met or not.*

*Each of the four DWMAs identified in the western Mojave Desert was surveyed by distance sampling in 2001 and 2002. Current proposals by the USFWS are to survey each recovery unit every year for five years, every other year during the next five years, then every year for five years, and so on, for the duration of the Plan, which is given as 30 years. As such, distance sampling would occur in the western Mojave Desert during the following years: 2003, 2004, 2005, 2007, 2009, 2011, 2012, 2013, 2014, 2015, 2017, 2019, 2021, 2022, 2023, 2024, 2025, 2027, 2029, 2031, and 2033.*

Many researchers have speculated that the Desert Tortoise can roam as far as 100 km. under favorable topography and climate. The shapes of the shell make identification of specific adult tortoises very difficult and hatchlings and young adults nearly impossible. The State of California had an identification program for captive tortoises and it was terminated because of the difficulty of tagging them. Therefore, this expensive distance sampling program may not be too practical in insuring the survival of the Desert Tortoise.

The only practical procedure for measuring Desert Tortoise recovery is establishing density sampling areas and providing a food supply that will produce a more permanent population that need not wander so far to survive.

Captive tortoises have lost their desire to wander very far once they have a good food supply that they like. They also tend to develop burrows or homes in which they develop safe and satisfactory over night sleeping and hibernating during the cold inactive season. They develop many habits in

which daily climate does not seem to be a factor. This has even been observed at Organ Pipe Cactus National Monument where resident tortoises have expanded their density because of the nutritious lawn. This would be a good subject of a Masters Degree in which all areas with lawns within Desert Tortoise habitats should be surveyed as a means to expanding their numbers. The California City Alfalfa fields were known to attract a large Desert Tortoise Population.

Unfortunately while humans can do a lot to save this species, man has attracted predators that are destroying the gains made by providing a better food supply for this species. We now have more information on how destructive certain animals and birds can be to the young population. This will be discussed later.

Regarding URTD, there has been little or no research on a cure for this fatal AIDS like virus. This virus is said to have been brought into this area by the importation of Tortoises from other Countries, mainly South America. It has also affected songbirds and other reptiles. It has killed large captive Desert Tortoise populations. As noted in the report, there has been no funding to study this fatal disease. It has been recognized for over 20 years and is now epidemic among wild Desert Tortoise populations and other species. This should be a high priority project with adequate funding for it affects many animals with similar blood types.

I recommend that the studies of the factors that kill Desert Tortoise and other native population must have higher spend priorities than monitoring studies that tend to be inaccurate.

### *2.2.9 Adaptive Management* **[Pages 2-166 to 2-170]**

This Section ignores the Desert Tortoise and yet there are many types of potential adaptive management plans that could be implemented to save this population.

### *2.2.9.1 Supplementary Discussion* **[Pages 2-170 to 2-172]**

The Bighorn Sheep comments do not appear valid because if protected from hunting like in Death Valley National Park, they do lose their fear of humans. The size of the lambing areas could be reduced and possibly coexist with mining and other activities. Most believe the Puma is

responsible for the population decline. Unfortunately the voters of California voted to ban Puma hunting. Research funding priorities must be established where the funds will do the most good to preserve this species.

### *2.2.9.2 Alkali Wetland Plants* [Page 2-172]

Add another Adaptive Management item stating as follows:

"Additional investigations need to be performed to determine if it is feasible to upgrade many wetlands to produce higher quality plants that will enhance the Desert ecosystems. Many alkali wetlands may be of recent origin and not part of the overall need of protecting the Desert environment. Some wetlands plants may have little social value or benefit to the overall Desert ecosystems and would not be missed."

### *2.2.9.4 Raptors* [Page 2-173 ]

Before any raptor protection program is funded or is established, the report must establish which raptors are native to the plan area and which ones are not. Also the report must establish if the population of each raptor is less than, equal to, greater than the need to keep nature in balance. A selective program must be funded according to priorities on each species of raptors.

The recommended programs must be justified on this basis and not in general as presented in this report.

The Mojave Ground Squirrel may be considered a pest because it burrows into slopes protecting engineered structures. When rains come, the burrows fill with water and saturate slopes. These slopes fail causing extensive damage that results in the significant loss of public health, safety, and welfare. Los Angeles County has had an eradication program designed to eliminate this rodent from hillside developments. This squirrel thrives on the plants and roots in developed areas.

Los Angeles County did not sign the 1992 Memorandum and is not obligated to enforce this plan.

## *2.3 ALTERNATIVE B: BLM ONLY* **[Page 2-174]**

### *2.3.1 Overview* **[Page 2-174]**

The comments in 2.2 Alternative A apply to Alternative B where applicable.

### *2.3.5 Species Conservation Measures* **[Pages 2-175 and 2-176]**

The BLM should cooperate with local agencies in eradicating feral dogs from the entire plan area. They are not native to the area and the do considerable harm to all aspects of the ecosystems within the plan area.

The BLM should cooperate with other local agencies in the raven, crow and magpie eradication programs as these raptors are not native to the desert and also do considerable harm in developed areas as well as the Desert ecosystem.

### *2.3.6 Monitoring, Adaptive Management and Implementation* **[Page 2-176]**

There is no reason for the BLM not to have a citizens advisory group whose advisory capacity is limited to BLM lands only. This group could also work to obtain cooperation from other jurisdictions in controlling common problems. The BLM needs the cooperation and goodwill from all interests and jurisdictional authorities within the plan area. This includes the National Park Service.

## *2.4 ALTERNATIVE C: TORTOISE RECOVERY PLAN* **[Page 2-177]**

### *2.4.1 Overview* **Page 2-177**

*The Desert Tortoise (Mojave Population) Recovery Plan (Tortoise Recovery Plan) was adopted in 1994. Prepared for USFWS by a "Desert Tortoise Recovery Team," it presented a set of actions that the recovery team concluded were needed to recover tortoise populations. Although its recommendations are not binding on the agencies with jurisdictions over lands within desert tortoise habitat, the Recovery Plan's conservation strategy has served as a starting point in the process of developing conservation strategies for the West Mojave and other regional plans.*

*The USFWS is currently initiating a two-step review of the Recovery Plan. During 2003, a team assembled by USFWS will conduct an assessment of the plan in light of new information collected since 1994. If the assessment indicates that a revision of the Recovery Plan is warranted, that revision could occur during 2004.*

*The 1994 Tortoise Recovery Plan's strategy was relatively general (for example, the locations of recommended DWMAs were identified on regional maps but precise boundary identification was left to future planning). The interagency collaborative planning process that led to Alternative A used the Recovery Plan as a starting point, adding details and modifications based upon more recent data. Accordingly, Alternative C uses many of the more specific proposals of Alternative A to "flesh out" many of the relatively more general recommendations of the Tortoise Recovery Plan. Alternative C combines the tortoise conservation strategy suggested by the Tortoise Recovery Plan with the conservation program developed by Alternative A for the Mohave ground squirrel and other sensitive plants and animals. All aspects of this alternative's conservation strategy would be as described for Alternative A, except as specifically described below. These include Alternative A's motorized vehicle access network and education outreach program. The West Mojave Plan would be a habitat conservation plan, and incidental take permits would be sought from CDFG and USFWS by local jurisdictions (see foldout Map 2-16).*

However, it has become obvious that the Desert Tortoise Recovery Plan is not working. After many studies, we have a better knowledge of where the problem is and what research needs to be implemented. We even have an idea of what expenditure priorities are to be established. What detailed protective measures need to be taken?

### *2.4.2 Habitat Conservation Area* [Pages 2-177 and 2-178]

Again, the Plan must include review of all sites likely to have Desert Tortoises. The DWMA should indicate where large concentrations of the Desert Tortoises are likely to be found. Measures must be taken so that humans can coexist with the Desert Tortoise as discussed in Alternative A.

### *2.4.4 Species Conservation Measures* **[Page 2-178]**

In addition, the BLM should work joint powers and joint conservation agreements with adjacent jurisdictions within the plan area.

### *2.4.4.1 Desert Tortoise Take-Avoidance Measures* **[Pages 2-178 and 2-179]**

*The following desert tortoise take-avoidance measures would be adopted:*

[(AC-1) through (AC-9)]

This is a utopian approach. All goals are desired but impossible without adequate funding and the support of the public and especially the special interests using the plan area.

AC-2 is also fallacious. As previously noted and in Appendix I, detailed controls make desert racing feasible in any area that might have a Desert Tortoise.

AC-4 should include controlled use of existing routes and trails. As previously noted and in Appendix I, such controls are feasible.

AC-6 is ridiculous. If proper measures are taken to mitigate the protection of the Desert Tortoise, mining could be permitted. As previously noted, humans can do a lot to increase the Desert Tortoise populations. Mining operations could provide food, shelter, and protection for the Desert Tortoise outside of the disturbed area to be mined.

AC-7 is almost impossible to control without education. Just look at the uncontrollable vandalism done in urban areas.

AC-8 is inadequate as previously discussed. Feral dog packs and domestic dogs without the presence of their owners do nearly all the destruction to the Desert Tortoise. Usually dogs in the presence of their owners are not a threat.

AC-9 is inadequate because the predators of the Desert Tortoise can come a long distance to consume all new hatchlings and what juveniles that survived past years.

DWMAs are artificial boundaries and do not necessarily reflect a line between the presence and non-presence of Desert Tortoise. This report must recognize this fact and apply the rules and regulations accordingly.

### *2.4.4.2 Desert Tortoise Survey and Disposition Protocols* [Page 2-179]

AC-11 must be justified. Maybe Desert Surveys can be justified and maybe not.

AC-13 is too restrictive. The word, "research" is too broad of a meaning. In any case, no Desert Tortoise should be injured in the name of research. Also Desert Tortoises that can't be returned to the wild should be placed in adoptive homes. The California Turtle and Tortoise Club has had a very successful adoption program that would provide a good life for any Desert Tortoise. If there could be a male and female in the adoptive home, many years of hatchlings could be produced to satisfy the desires of adoptive homes.

### *2.4.4.3 Proactive Tortoise Management Programs* [Pages 2-179 and 2-180]

*(AC-15) Sign or fence DWMA boundaries adjacent to communities and settlements such as Barstow, the small settlements north of Barstow, Kramer Junction, California City, Cantil, Galileo Hill, Randsburg, Johannesburg, Atolia and Helendale, and other areas with conflicting uses.*

The report must consider that many of these communities have a nutritious food supply for the Desert Tortoise and that if conditions were met, the Desert Tortoise should have access to the good food supply. Negative aspects such as road kills and raptors must be mitigated.

*(AC-16) Fence the periphery of the Superior-Cronese DWMA as needed to enforce regulations and protect desert tortoises from human impacts. Along the boundary with the Fremont-Kramer DWMA, a double row of desert tortoise barrier fencing may be necessary to prevent the spread of URTD into the Superior-Cronese DWMA.*
Again the URTD must be eradicated through research and a vaccine developed to save this Desert Tortoise and other native birds from extinction.

***Raven Management:*** *(AC-20) Reduce populations of the common raven to lessen destruction on juvenile tortoises and ensure recruitment of juveniles into the subadult and adult populations.*

This is the most important priority for the protection of the entire species. Recent studies indicate that throughout Southern California these raptors have increased 10 fold in the last few years. They are a nuisance in all areas where humans exist. Now we find that they carry the West Nile Virus. Will this virus spread to the Desert Tortoise population? More research is needed as this is a very deadly disease for those with weak immune systems such as the Desert Tortoise.

***Tortoise Translocation:*** *(AC-21) Desert tortoises from adjacent lands should be experimentally trans-located into DWMAs, such as from the El Mirage Open Area into the Fremont-Kramer DWMA and from the Johnson and Stoddard Valley Open Areas into the Ord- Rodman DWMA, to increase the density of desert tortoises and salvage breeding stock.*

The word "salvage" is not a proper use. The goal is to diversify the breeding stock.

***Headstarting:*** *(AC-22) Initiate a semi-wild breeding program to rebuild and restore tortoise populations. The DTNA would be an ideal place to begin this program.*

Again, this report ignores the UCR studies. This information from the UCR studies must be used as a basis for further research. It is our understanding that the results of reintroducing captive tortoises back into the wild were a complete failure. Other means must be explored to make this program a success.

***Administration:*** *(AC-23) Each DWMA may require a reserve manager, additional staff, and law enforcement personnel; in some cases, the same staff may manage adjacent DWMAs. The formation of local advisory committees is encouraged. As funds become available, each DWMA or group of DWMAs should have an associated visitor center or set of interpretive sites and panels.*

This is just a utopian dream. It should have the lowest priority in funding. We must save the species first.

### *2.4.5 Public Land Livestock Grazing Program* **[Page 2-180]**

All livestock grazing programs on public lands that have Desert Tortoise populations must be regulated as previously discussed. The programs must protect the food supply for the Desert Tortoise and at the end of the Active Season of the Desert Tortoise, active grazing could remove excess brush that could cause a destructive fire.

### *2.4.6 Public Land Motorized Vehicle Access Network* **[Pages 2-180 and 2-181]**

*This alternative is based on the assumption that tortoises thrive best where density of access routes is low, traffic is low and human access is limited. To achieve this:*

*(AC-25) Alternative A's motorized vehicle access network would be adopted and implemented. Routes not designated open would be restored to their pre-disturbance condition. Limited speed travel would be allowed in tortoise DWMAs on designated signed roads. Implement closure of DWMAs to vehicular access with the exception of designated routes, including Federal, State and County maintained vehicle routes.*

*See previous comments. We must develop safe multi-use regulations.*

*(AC-26) Restrict the establishment of new roads in DWMAs.*

The word "Discourage" should be used instead of "Restrict."

*(AC-27) Implement emergency closures of dirt roads and routes as needed to reduce human access and disturbance in areas where human-caused mortality of tortoises is a problem.*

Closures of routes are an extreme case. As previously noted in Appendix I and other comments herein, protective measures can be instituted and route use restricted during the Desert Tortoise active season.

### *2.4.7 Education Program* **[Page 2-181]**

*(AC-28) Construct a visitor education center at the DTNA that would include facilities for research as well as a drop-off site for unwanted captive desert tortoises. Develop programs to promote use of unwanted captives for research and educational purposes.*

This is a repeat of earlier proposals and prior comments apply.

### *2.4.8 Monitoring, Adaptive Management and Implementation* **[Page 2-181]**

*Establish a research program and focus research on the following topics:*

*Fremont-Kramer DWMA: (AC-29)*
*Superior-Cronese DWMA: (AC-30)*
*Ord-Rodman DWMA: (AC-31)*

This program is not needed. There already exists plenty of research data that determine basic research needs in protecting the Desert Tortoise from URTD and from specific predators that are not native to the area and are out of balance with the Desert Ecosystem. There are several native raptors that require studying as to their effect on the killing of hatchlings and young adults. These research programs must be of high priority. Mitigation recommendations, including funding therefore, must be determined to protect these vulnerable Desert Tortoises.

Once this is mitigated adequately, other research programs may be justified to reduce the other hazards to the Desert Tortoise.

## *2.5 ALTERNATIVE D: ENHANCED ECOSYSTEM PROTECTION* **[Page 2-182]**

All prior and subsequent comments also apply to this Alternative D.

### *2.5.6 Public Land Motorized Vehicle Access Network* **[Pages 2-186 to 2-188]**

This is a good place to make a comment that this Plan cannot be considered a permanent plan. This applies to Vehicle Access Networks, research priorities, etc. This Plan must be constantly reviewed and updated

by revisions. This plan must consider available funding and establish program priorities. These issues are not addressed in this Plan.

### *2.6 ALTERNATIVE E: ONE DWMA - ENHANCED RECREATION ACTIVITIES* **[Page 2-188]**

All prior and subsequent comments will also apply to this Alternative E. Again, the access to DWMA must be based on the season. This section provides little additional recreational areas to meet the increasing demand.

### *2.7 ALTERNATIVE F: No DWMA - AGGRESSIVE DISEASE AND RAVEN MANAGEMENT* **[Page 2-191]**

All prior and subsequent comments will also apply to this Alternative F.

#### *2.7.1 Overview* **[Page 2-191]**

This the most cost effective Alternatives in this plan.

This section is deficient as it defines no specific research programs in eradicating the known diseases that are killing the Desert Tortoise population. In addition, we learn that the crow population is succumbing to the West Nile Virus. What will this virus do to the Desert Tortoise and other endangered fauna?

A series of specific research programs must be established immediately and all available funds should be devoted to this program to eradicate the URTD and the West Nile Virus.

A series of specific research programs must be established to replenish food supplies that were lost due to human developments in the habitat area.

A raven, crow, and magpie eradication program must be instituted to bring populations levels back to the 1940's as indicated by earlier studies.

#### *2.7.2 Habitat Conservation Area* **[Page 2-191]**

Again the plan fails to recognize the two seasons of the Desert Tortoise or even explains the Desert Tortoise's primitive metabolism system that

requires different management techniques. The Desert Tortoise is not a reptile, bird, nor is it a mammal. It has different life patterns. Until this is understood by the planners, their Habitat Conservation Area is full of flaws and ineffective.

There have been many early publications on this subject that require updating and implementation.

### *2.10 COMPARISON OF ALTERNATIVES* **[Page 2-199]**

This comparison did not detail the benefits to the endangered species and just reiterates the report's deficiencies. Alternative F appears to be the most effective alternative in protecting and expanding the numbers of Desert Tortoises. If this Alternative is combined with all known data, perhaps a detailed research plan in eradicating the diseases that have destroyed both the captive and the wild Desert Tortoise populations, it would be acceptable. Also we must make sure that the West Nile Virus does not reach the existing Desert Tortoise populations if they are found vulnerable to this deadly virus. Eradicating the nonnative and excessive populations of raptors is another essential program. This Alternative must recognize the human demands for use of the Desert. Programs that increase health, safety, welfare, and food supply for all endangered faunas must be implemented as soon as possible. This BLM report failed to go into detail on this subject. The rest of this Alternative F seems reasonable. This plan must be continually updated as more information is collected.

## 6. SUPPLEMENTAL COMMENTS REGARDING SPECIFIC CHAPTERS

6.1 *Chapter 2.2.4.1, Page 2-53. Paragraph beginning with "(HCA-41) BLM would continue to implement the existing biological opinion on dual sport events, subject to the following guidelines:"*

The bullet points address "dual sport events" and should be changed to read "dual sport and enduro events" in the descriptions.

6.2 *Chapter 2.2.4.1, Page 2-53. The specific bullet point: "Dual Sport events in those portions of the MGS Conservation Area outside of the DWMA would be allowed in the period of September through February*

*only. The prescriptions given in the biological opinion for tortoises would apply."*

The language should be modified to read: "Dual sport events in MGS conservation areas outside of tortoise DWMA`s would be allowed year round."

6.3 *Chapter 2.2.6.5, Page 2-142 Barstow to Vegas Race Course.* The Barstow to Vegas Race ("B to V") is an historical and extremely popular race event to the public. Although the Northern and Eastern Mojave Plan (NEMO) eliminated this race route from its plan, we encourage the Agency to include the portion of this race course that lies within the WEMO planning area for a period of not less than three (3) years in order to afford the public the time to pursue an amendment to the NEMO plan that would reinstate the portion of the race course covered by that plan.

6.4 *Chapter 3.4.4.3 Off-Highway Vehicle Use; Table 3-54, Page 3-241:* Under Column "COMMENTS" for category Enduro: Add the following sentence:
"Enduro riders are spread out to such an extent that the last loop can be in a DWMA."

6.5 *Chapter 4.2.2.2 Desert Tortoise, Table 4-8, Page 4-19, Column "RESIDUAL IMPACTS,"* ACEC Prescriptions Supersede Class M and unclassified public lands: The phrase "...recreational events on "existing" routes of travel as opposed to "approved" routes of travel..." should be changed to read: "...permitted recreational events on existing routes of travel..."

6.6 Page 2-241, "Open Routes" must include simply referenced language stating that the open route system is programmatically available for the uses stated in the paragraph, thereby negating the necessity for any form of EA required when routes for commercial or permitted events are selected for a proposed event such as Dual Sport, bicycle, 4 wheel drive, and touring events.

6.5 Page 2-241, "Speed Limits" references the Basic Speed Law (38035) of the 2001 Vehicle Code. The second paragraph of this section specifically addresses DWMA's stating that "...if monitoring or studies show that certain unimproved roads are causing increased tortoise mortality, the

Implementation Team should coordinate with the BLM, county road departments, and others to consider ways, including speed regulators, to reduce or avoid that mortality."

The "speed limit" of 35 miles per hour is an arbitrary speed limit forced upon ONLY the participants of a permitted event in tortoise habitat areas on the day of the event. This speed limit does not apply to other allowed uses; only "permitted" events.

It is understood that the original number (35 mph) was an arbitrary figure arrived at by the agencies and "experts" that did nothing more than satisfy a "comfort zone" for protecting the tortoise and appeasing tortoise protection advocates. The original number initiated was not based on any scientific studies regarding traffic on dirt roads during the hibernation season; only an arbitrary "comfort zone." Seventeen years of running a 450+ mile Dual Sport ride across the ENTIRE California Desert Conservation Area including the Southern Nevada district, has indirectly accomplished the necessary science required to revisit and change the arbitrary and unnecessarily low speed limit restriction.
AMA District 37 has documented the following:

- Each year the annual tour is attended by 200 to 320 participants (permit is for 500) with a mean value approximately 260.
- Miles traveled in the CDD average 320, including what is now NPS managed land.
- Miles traveled across critical desert tortoise habitat is estimated 100 miles per year.
- Total participant miles in the CDD over 18 years: 1.4 MILLION MILES (estimated)
- BLM pre-ride course sweep for tortoises: 0
- Total take allowed by permit per year: 1
- Total take as surveyed by the BLM in Post Use Reports over 17 years: 0
- Habitat disturbance or habitat destruction attributed to the annual event: Little or NO impact per BLM post tour reports.
- Tortoises observed on the designated route of travel as a result of the Post Event Sweep by the BLM: 0

The BLM observations on the day of the event constitute 17 years of observation evidence that support rationale for reevaluation of the 35 MPH speed limit on all of the approved routes for Dual Sport events.

In summary, there have been NO tortoises seen out of burrows on the last weekend of November, there have been NO tortoise carcasses in evidence after the event, NO tortoises observed as having been awakened by the event and roaming after the passing of vehicles on the day of the event, and NO incidental "takes" as a result of 17 years of collecting data on the annual tour. All this data is of public record after approximately 1.4 million miles for this Tour alone of participant miles in the CDD.

The arbitrary 35 MPH speed limit in tortoise habitat areas during the hibernation season should be removed and replaced with a statement that when traveling on average dirt roads all motor vehicle operators will abide by Basic Speed Rule, Sec. 11-801, of the Uniform Vehicle Code, which requires vehicle operators to drive at a speed that is reasonable and prudent.

# EPA
# Route Identification & Management
## Position of Support

The California Off-Highway Vehicle Leadership (the Leadership) supports an **Encourage, Prohibit and Allow** (EPA) route identification and management policy (an EPA Route Policy).

An EPA policy identifies established dirt roads and trails (routes) which can sustain regular use, that provide needed access and provide a desired recreational experience as Encouraged routes. Encouraged routes are signed, mapped and appropriately advertised to encourage responsible use. Encouraged routes receive regular maintenance appropriate for their level of use and design. Encouraged routes may vary from lightly used single-track motorcycle trails to graded primary access roads.

Routes that warrant closure are identified as Prohibited routes, are closed, rehabilitated as quickly as possible and monitored to insure recovery. When immediate rehabilitation is not possible every effort is made to block use until such time that rehabilitation can be accomplished.

Routes determined to be inappropriate for Encouraged use but by design, use or location pose no significant environmental concern are identified as Allowed routes, are inventoried but are not signed and at the discretion of the local managing agency may or may not be indicated on popular maps. Allowed routes are monitored to determine use and to provide maintenance should use or natural causes require improvement.

An EPA Route Policy supports aggressive collaborative efforts to prevent unauthorized route development.

An EPA Route Policy requires that the managing agency:

- Develop an inclusive advisory group
- Develop and maintain a complete inventory of all established dirt routes
- Establish a data base of Allowed routes
- Develop criteria through consensus with the advisory group
    - to determine those routes that can sustain Encouraged use
    - to determine those routes where recreational use should be Prohibited
- Develop with the Advisory Group effective methods and aggressive management:
    - to prevent unauthorized route development and side-by-side route proliferation
    - to close and rehabilitate Prohibited routes
    - to increase enforcement and peer pressure
    - to monitor Encouraged, Prohibited and Allowed routes
    - to improve signing, mapping and promotion of the EPA policy

The goal of an EPA policy is to focus agency work, public attention and resources on Encouraged and Prohibited routes. The goal addresses social concerns, meets environmental demands and can be accomplished

# Encourage, Prohibit, Allow (EPA) Routes

## Inventory of Encourage Routes

| te Name / # | Type (MC/ATV/FWD) | Length (MI) | Start Point | End Point | Signed (1) | On Map (2) | Maintenance Schedule (3) | Date Last Checked |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

) Yes or Date to be signed
) Yes or No identified on map
) Checked (Monthly etc.)