



United States Department of the Interior

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Instruction Memorandum No. NV-2011-079

To: District Manager, Southern Nevada
District Manager, Ely
District Manager, Battle Mountain

From: Amy Lueders
State Director, Nevada

Subject: Management and Use of Desert Tortoise (*Gopherus agassizii*) Compensation Fees

Program Area: Threatened and Endangered Species, Wildlife, Renewable Energy, Land Use Planning, Realty (Right-of-Way Management)

Purpose

This Instruction Memorandum (IM) is broken into three parts. Part #1 renews and updates IM NV-2010-062, providing guidance and direction to ensure a consistent use of Desert Tortoise Section 7 compensation fees as mitigation for residual impacts to desert tortoise habitat from actions authorized by the U.S. Bureau of Land Management (BLM). Part #2 provides direction on the process for submitting and approving project proposals seeking funding from the compensation account. Part #3 describes implementation of the Memorandum of Understanding between the BLM and the U. S. Fish & Wildlife Service (FWS) to Coordinate the Management of Compensation Fees to Benefit the Mojave Population of the Desert Tortoise in Nevada, May 2010 (MOU). This IM is in accordance with the Management Oversight Group (MOG) Report on Compensation for the Desert Tortoise (Hastey et al. 1991) (Attachment 1), and the MOU between the BLM and the U. S. Fish & Wildlife Service (FWS) to Coordinate the Management of Compensation Fees to Benefit the Mojave Population of the Desert Tortoise in Nevada, May 2010 (Attachment 2).

Policy/Action

Desert tortoise compensation funds shall be used for the sole purpose of implementing action(s) that benefits desert tortoise populations over time, including management and recovery in Nevada. Compensation funding will be used to fund the highest priority actions in Nevada. BLM and FWS will identify and give priority to actions that directly tie to the impacts that lead to the need for compensation. Compensation funds shall not be used when appropriated funds are otherwise identified for a particular action. This IM establishes a process for submitting

compensation fees to the Section 7 Compensation account, as well as a process for submitting, reviewing, ranking, and awarding project proposals.

Background

The Endangered Species Act of 1973 (ESA), as amended, and its implementing regulations, require Federal agencies to determine whether their actions may affect listed species.

Compensation is a mitigation technique used to make up for residual impacts of an action that remain after other mitigation measures are incorporated. FWS Biological Opinions issued to BLM pursuant to Section 7 of the ESA for various proposed actions by BLM including land use plans and applicant proposed projects include, as reasonable and prudent measures, requirements that BLM collect compensation fees to mitigate disturbance to desert tortoise from activities authorized by the BLM.

The 1991 MOG Report on Compensation for the Desert Tortoise outlines the process for determining compensation:

“Compensation is to be used to offset the residual impacts after all reasonable on-site mitigation measures are incorporated into an action. This is determined through the Environmental Analysis and the Biological Assessment (or Evaluation) process. The goal of compensation is to make an action’s net result neutral or positive to the desert tortoise. If an action can be fully mitigated (no net impact to the tortoise) without compensation, then no compensation need be required. Likewise, if a “no effect” determination is appropriate for an action in threatened desert tortoise habitat, then compensation for the tortoise is not necessary.”

The 1991 MOG Report also provides guidance on appropriate uses of compensation funding:

“Compensation funds will be used for management actions expected to provide a benefit to the desert tortoise over time. Actions may involve habitat acquisition, population or habitat enhancement, increasing knowledge of the species biological requirements, reducing loss of individual animals, documenting the species’ current status and trends, and preserving distinct population attributes.”

PART ONE

Guidance and Direction on Management of the Desert Tortoise Section 7 Compensation Account

Desert tortoise compensation funds shall be used for the sole purpose of implementing action(s) that benefits desert tortoise populations over time, including management and recovery in Nevada. Compensation funding will be used to fund the highest priority actions in Nevada. BLM and FWS will identify and give priority to actions that directly tie to the impacts that lead to the need for compensation. Compensation funds shall not be used when appropriated funds are otherwise identified for a particular action.

When mitigation funds are received from a non-BLM source the following steps are to be taken:

1. Complete the Section 7 Land Disturbance Fee Payment Form (Attachment 3). Instructions for filling out the form are included in the second tab on the spreadsheet. The Project Proponent should fill out the amount paid in each County (Lincoln and/or Clark), date, and check, money order, or credit card number.

2. The Project Proponent will submit the payment with the Fee Payment Form to the BLM Nevada State Office Information Access Center (IAC) either in person, by mail, or fax (credit card payments can be made over the phone after faxing the Disturbance Fee Payment Form). Funds will be deposited into the Desert Tortoise Conservation Program Account.

a. Lincoln County funds will be deposited into: LLNV934000 L71220000
JP0000 LVTFFX103800

b. Clark County funds will be deposited into: LLNV9340000 L71220000
JP0000 LVTFFX000800

3. The IAC will provide a copy of the Fee Payment Form and payment receipt to the BLM Nevada State Office Threatened and Endangered Species Program Lead, who will then provide copies of both documents to the appropriate District Office(s). The District Office(s) will provide documentation of the payment to the appropriate agencies (Fish and Wildlife Service, Counties, etc).

Section 7 fees generated from BLM actions

The BLM occasionally takes actions that also require payment of Desert Tortoise Section 7 compensation fees. However, the BLM budget system does not currently have a process in place for transferring funding from a BLM account into a 7122 BLM account. Therefore, the BLM Office taking the action will complete the BLM Section 7 Land Disturbance Fee Payment Form (Attachment 4). Instructions for filling out the form are included in the second tab on the spreadsheet. The BLM Office should fill out the amount paid in each County (Lincoln and/or Clark), date, and account number from which the fees will be paid. The completed form will be submitted to the Nevada State Office Threatened and Endangered Species Program Lead. When BLM Offices complete the Section 7 Land Disturbance Fee Payment Form, the amount of funding indicated on the form must be left in the account to be used for the FWS payment through the IAA (see Part Three of this IM for further information on how the funding will be processed).

PART TWO

Direction on the Process for Submitting and Approving Project Proposals Seeking Funding from the Desert Tortoise Section 7 Compensation Account

Project Submission and Approval Process

The goal for the use of Section 7 compensation funding is to implement projects that best meet the objective of desert tortoise population and habitat conservation and enhancement. Projects may be proposed by any federal, state, or local agency, or a non-governmental organization. Although all projects will be ranked through the process identified below, projects located within the northeastern and eastern Mojave Recovery Units will be given first consideration. The project submission and approval process:

- Project Proposals must be submitted using the standard format provided in Attachment 5 no later than October 31 of each calendar year. Project Proposals may be submitted in electronic format to the FWS Desert Tortoise Recovery Coordinator at 1340 Financial Blvd, Suite 234, Reno, NV 89502 or Roy_Averill-Murray@fws.gov.

- The FWS Desert Tortoise Recovery Coordinator will work with the BLM Nevada State Office Threatened and Endangered Species Program lead to review and rank each proposal. When the Recovery Implementation Teams (RITs) are in place, they will help inform the ranking process by establishing top priorities and may be active participants in the ranking of individual project proposals. At this time the RITs are not in place; once established this IM may be revised to more clearly define their role. Projects that are noted to have significant design flaws during the proposal review may be disqualified before going through the ranking process.

1. Project proposals will be divided into two categories: 1) Research and Monitoring, and 2) Restoration and Habitat Improvement.
2. Research and Monitoring projects will be evaluated by the FWS Desert Tortoise Recovery Coordinator, BLM Nevada State Office Threatened and Endangered Species Program lead, and, as appropriate, other FWS and BLM staff and RITs separate from restoration and habitat improvement projects and will be based on the merits of the proposal. Ranking factors will not be used for research and monitoring.
3. Restoration and Habitat Improvement projects will be ranked according to the criteria established in Attachment 6 (Ranking Factors for the Desert Tortoise Compensation Funds). The FWS Desert Tortoise Recovery Coordinator, BLM Nevada State Office Threatened and Endangered Species Program lead and, as appropriate, other FWS and BLM staff and RITs will complete this attachment for each applicable project (this form is not completed by the applicant).

- Recommendations for both types of projects described above will be provided to the BLM Deputy State Director of Natural Resources and the FWS State Supervisor for approval. Funding decisions will be made no later than December 15 of each calendar year. Although the Desert Tortoise Section 7 Compensation account is the main focus for funding project proposals, the BLM Deputy State Director and FWS State Supervisor may fund projects through other funding opportunities as appropriate.

Projects will be considered regardless of land ownership but must have land-owner concurrence to be considered. The goal is to have an inter-agency project submission which is supported by the local BLM and FWS offices. BLM and FWS may consider funding projects that expand upon existing or proposed HCP projects; however, this funding is not available to supplement or fund projects that should be funded through the HCP process.

Emergency Funding Needs

Urgent issues occur throughout each year that are appropriate to resolve through use of the Section 7 Desert Tortoise Account, but that cannot wait for the approval process described above. Funding for these emergencies will be handled on a case-by-case basis. The BLM District Office or Fish and Wildlife Service Office where the emergency is occurring will submit a completed Emergency Funding Form (Attachment 7) to the BLM Nevada State Office Threatened and Endangered Species Program Lead as soon as possible. If submitted by a BLM Office, the form must be signed by the District or Field Manager. If submitted by a Fish and Wildlife Service Office, the form must be signed by the FWS State Supervisor.

Reports:

Interim Reports for multi-year projects:

The project-managing entity will submit, no later than January 31 of each year the project is not completed, an Interim Project Report describing the work that has been accomplished to date and the work that is remaining. The interim project report format is provided in Attachment 8.

Reports will be submitted in electronic format to the FWS Desert Tortoise Recovery Coordinator at 1340 Financial Blvd, Suite 234, Reno, NV 89502 or Roy_Averill-Murray@fws.gov.

Project Completion Reports for all projects:

The project-managing entity will submit, no later than January 31 of each year, a Project Completion Report. For multi-year projects, this will be the final report submitted at the completion of the project. For single-year projects this will be the only report submitted. Note that “completion” of the project is not necessarily conclusion of implementation; if, for example, the project had two years of implementation and five years of post-implementation monitoring, this Project Completion Report would be submitted at the end of the seventh year. The project completion report format is provided in Attachment 9. Reports will be submitted in electronic format to the FWS Desert Tortoise Recovery Coordinator at 1340 Financial Blvd, Suite 234, Reno, NV 89502 or Roy_Averill-Murray@fws.gov.

Annual Project Summary Report:

Working jointly with the BLM, the FWS Desert Tortoise Recovery Coordinator will prepare an annual project summary report which will be provided to the DSD and Field Supervisor no later than March 31 of each year. At a minimum, the summary report will address by calendar year and County, the number of projects approved, initiated, and completed and the total dollars approved and expended by project. Information depicted in the annual project summary report will be based upon project-specific expenditure information received from the project-managing entity not later than January 31 of each year.

PART THREE

Implementation of the BLM-FWS MOU to Coordinate the Management of Compensation Feed to Benefit the Mojave Population of the Desert Tortoise in Nevada

In accordance with Attachment A of the Memorandum of Understanding between the BLM and the FWS to Coordinate the Management of Compensation Feed to Benefit the Mojave Population of the Desert Tortoise in Nevada, the BLM Deputy State Director, FWS State Director, and the Desert Tortoise Recovery Coordinator will meet annually to collectively allocate funding to appropriate sources, including projects submitted through this IM.

No later than June 1 of each year, the FWS will submit an annual request for funding from the Desert Tortoise Section 7 Compensation account. This funding is used by FWS for Desert Tortoise Recovery Office functions, monitoring, and Desert Tortoise Conservation Center activities managed by the FWS. The funding request is submitted to the Nevada State Office Threatened and Endangered Species Program Lead. The BLM will then submit a PR to modify the existing IAA (Agreement #L11PG00059) with additional funding.

With respect to Section 7 payments resulting from BLM actions, the first funding lines and amounts identified on the PR to modify the IAA will be those from the submitted Section 7 Land Disturbance Fee Payment Form, and the remaining balance will be taken from the 7122 Compensation account. When BLM Offices complete the Section 7 Land Disturbance Fee Payment Form, the amount of funding indicated on the form must be left in the account to be used for the FWS payment through the IAA.

Timeframe: Effective immediately upon receipt.

Contact: Any questions concerning the content of this IM should be directed to BLM Nevada State Office, Division of Natural Resources, Lands and Planning. Points of contact include Kim Dow at (775) 861-6681 or Sandra Brewer at (775) 861-6626.

Signed By:
Amy Lueders
State Director, Nevada

Authenticated By:
Ellyn Bryans-Darrah
Administrative Assistant

Attachments:

1. Management Oversight Group (MOG) Report on Compensation for the Desert Tortoise (Hastey et al. 1991)
2. Memorandum of Understanding between the BLM and the FWS to Coordinate the Management of Compensation Feed to Benefit the Mojave Population of the Desert Tortoise in Nevada (May 2010)
3. Section 7 Land Disturbance Fee Payment Form
4. BLM Section 7 Land Disturbance Fee Payment Form
5. Project Proposal Format
6. Ranking Factors for the Desert Tortoise Compensation Funds
7. Emergency Funding Form
8. Project Interim Report
9. Project Completion Report