



January 28, 2011

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Mr. Brian Croft  
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Subject: Annual Status Report for 2010 for the Copper Mountain Community College District (CMCCD) Expansion Project, CDFG Incidental Take Permit No. 2081-2005-028-06 and USFWS Incidental Take Permit No. TE143444-0

Dear Ms. Jones and Mr. Croft,

This letter and attachments are intended to serve as an annual status report of activities and compliance issues for the above-noted Permit during the 2010 calendar year. This status report includes the following three items.

- 1) A general description of status of Project site and construction activities, including actual or projected completion dates, and an inventory of habitat disturbed by construction activities.
- 2) An assessment of the effectiveness of mitigation measures in minimizing and compensating for Project impacts. An updated Mitigation and Monitoring Reporting Program (MMRP) table (see Attachments) documents the District's compliance with the requirements of the MMRP.
- 3) Status of the tortoise population in the Translocation Area (TA) is documented by a) analysis of twenty-five monthly surveys for desert tortoise sign inside the TA fenceline by Delaney, and b) a report by Circle Mountain Biological Consultants, Inc. (CMBC) dated 24 January 2011 entitled, "Second annual, 2010 census of tortoise occurrence in the Copper Mountain College Translocation Area, San Bernardino County, California (CDFG Permit #2081-2005-028-06; USFWS Permit #TE143444-0)".

## 1) General Description Of Status Of Project Site and Construction Activities

The twelve monthly compliance reports sent to the Department in 2010 documented successful implementation of protective measures for impacts associated with authorized expansion activities at the Project site. The inspection forms from those reports are included to provide an overview of monthly mitigation activities in 2010 (see Attachments).

Campus expansion activities effectively began on 15 September 2008 with the blading of the fenceline right-of-ways for the Translocation Area (TA) and Impact Area (IA). Subsequently the TA and IA were separately fenced, followed by grading and blading of the IA. Critical ground disturbance effectively culminated on 24 November 2008 when approximately 43 acres of the 50-acre± Impact Area were completely bladed and grading began. Although active construction continues within the Impact Area, the main likelihood of taking tortoises effectively ended on 24 November 2008.

Construction of the Multi-Use Sports Complex (MUSC) began with the building of a gymnasium (the Bell Center), which was finished in 2010. Completion of the MUSC will entail construction of a running track, soccer and baseball fields around the Bell Center. In 2010 the District also completed construction of a Solar Parking Structure (SPS) over the previously developed main parking lot, and re-paved the main parking lot. The District began a “Remodel For Efficiency” (RFE) project to renovate the Science Laboratories, Library and Student Services buildings, and these projects will likely be completed in 2013.

## 2) Effectiveness Of Mitigation Measures

Herein, the District reports compliance with the Mitigation and Monitoring Reporting Program (MMRP) outlined in the Department’s permit, which lists each mitigation measure required of the District. The MMRP table includes updated information since the last annual report of January 2009. The mitigation measure number (MM#) given in the MMRP table and Permit Condition (Condition#), which correspond to the subsection in the incidental take permit are given below where the information has been updated. Unless otherwise indicated, mitigation measures were considered to be effective in minimizing and compensating for Project impacts.

**MM17, Condition 4.3.12.** *All tortoises removed from the construction area and translocated into the Translocation Area will be marked and monitored for a period of at least 5 years. A monitoring plan shall be prepared and submitted to the Department for approval prior to translocation of any tortoise into the Translocation Area.*

In 2008 five tortoises rescued from the Impact Area and two others found inside the fenced Translocation Area (TA) were marked “CMC1” through “CMC7.” The Translocation Area will be surveyed each year in the spring to monitor marked tortoises and to find and mark any unmarked tortoises. During the first annual survey of the TA in April 2009 (see report in Attachment 5), seven additional tortoises were found and

marked. During the second annual survey of the TA in 2010 four more tortoises were marked. Of the eighteen tortoises marked since 2008, one was raven-predated in 2009 (CMC9), one was removed because it was evidently a pet (CMC15), and one (CMC2) may have been poached, pending further surveys. Except for raven-predated CMC9, no other marked tortoises have been found dead, which we cite as evidence that translocation thus far is considered successful.

**MM22, Condition 4.3.11.** *Following the establishment of the Translocation Area, the District will develop a monitoring program for tortoises resident in the Translocation Area. The Authorized Biologist will work with the District to establish an appropriate monitoring program. The monitoring program shall be submitted to the Department for approval no later than 36 months after the effective date of this Permit. In the fourth year and beyond, appropriate college staff would carry on the responsibilities until the expiration date of this Permit. Permittee shall ensure that the following actions are taken:*

- *Both resident and translocated tortoises within the Translocation Area shall be permanently marked following the methodology described in “Guidelines for Handling Desert Tortoises During Construction Projects” (Desert Tortoise Council 1999).*
- *There shall be annual surveys of the area to identify the total number of tortoises present, to be carried out at roughly the same time each year (i.e., early spring).*
- *As part of this survey, each animal shall be weighed and measured, and a visual assessment of the health of the animal carried out to detect evidence of disease.*
- *The District shall maintain records of all activities, and make them available to the Department and Service upon request.*
- *A monitoring report shall be submitted to the Department no later than January 31<sup>st</sup> of each year.*

The attached CMBC report “Second Annual 2010 Census Of Tortoise Occurrence In The Copper Mountain College Translocation Area, San Bernardino County, California”, documents at least fifteen to sixteen tortoises known to occur inside the fenced Translocation Area as of April 2010.

**MM23, Condition 4.3.4.** *Permittee shall be responsible for maintaining the desert tortoise-proof fence throughout construction. Breaks in the fence that may allow immigration of tortoises into the area shall be repaired immediately. The fence shall be checked daily by Permitted Biologists during clearing, grubbing, and construction, and particularly after each major rainstorm to ensure that it will continue to exclude tortoises from the site.*

During the December 2010 compliance inspection, Delaney noted that the northern fenceline of the Translocation Area had been undercut by erosion from recent rains. FCR Dan Cain had a tractor immediately repair the fenceline (see Compliance Inspection Report 24 for December 2010 in Attachments).

**MM24, Condition 4.2.4.** *The Designated Biologist shall be on-site daily while grubbing and grading are taking place to minimize take of the Covered Species, to check for compliance with all mitigation measures, and to check all exclusion zones to ensure that signs, stakes, and fencing are intact and that human activities are restricted in these protective zones. Compliance inspections shall be conducted a minimum of once per month after clearing, grubbing, and grading are completed. A monthly compliance report shall be submitted to the Department's Palmdale office at: Ms. Rebecca Jones, 36431 41<sup>st</sup> Street East, Palmdale, CA 93552, PH/FAX (661) 285-5867.*

The first part of this measure was accomplished and reported in the first annual report on January 2009. Monthly compliance reports have been submitted to the Department (Ms. Rebecca Jones) as required (see 2010 compliance report forms in Attachments).

**MM25, Condition 4.2.5.** *Beginning with issuance of the Permit and continuing for the life of the Permit, Permittee shall provide the Department an annual Status Report no later than January 31<sup>st</sup> of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a running inventory of habitat disturbed under terms of this permit; 3) number of tortoises translocated out of harm's way and their final destination; 4) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; and 5) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.*

This 28 January 2011 report is considered the annual status report for activities in 2010. Previous annual status reports have been submitted to the Department and the Service by CMBC and the District.

1) Most of the ground-disturbing activities associated with early phases of the Multi-Sports Complex, athletic fields, parking areas, and Jerry Lewis Drive were accomplished between 16 September 2008 when the fence lines were brushed and 24 November 2008. Current construction is scheduled to be completed in 2013.

2) As of 24 November 2008 approximately 42.85 acres of the 50-acre± Impact Area were bladed and grubbed, and considered permanently lost to construction impacts.

3) In 2008 five tortoises rescued from the Impact Area and two others found inside the fenced Translocation Area (TA) were marked "CMC1" through "CMC7." The Translocation Area has been surveyed each year in the spring to monitor marked tortoises and to find and mark any unmarked tortoises. During the first annual survey of the TA in April 2009, seven additional tortoises were found and marked. During the second annual 2010 survey (see Attachments) four more tortoises were marked. Of the eighteen tortoises marked since 2008, one was raven-predated in 2009 (CMC9), one was removed after consultation with the Service because it was evidently a pet (CMC15), and one (CMC2) may have been poached, pending further surveys. The tortoise removed during the April 2010 survey (CMC15) was obviously a pet released into the tortoise preserve,

and it subsequently tested positive for antibodies to *Mycoplasma testudineum*. Except for CMC9, no other marked tortoises have been found dead, which is evidence that translocation is thus far successful.

4) An MMRP table updated for 2010 follows in the Attachments.

5) The supplemental information given herein is intended to provide the Department feedback on the effectiveness of these measures.

**MM26, Condition 4.2.3.** *The Permittee shall immediately notify the Department in writing if it determines that any of the mitigation measures were not implemented during the period indicated here or in the Permit, or if Permittee anticipates for any reason that measures may not be implemented within the time period indicated.*

The District is not aware of any measures that were not implemented in a timely manner.

**MM27, Condition 4.2.6.** *All observations of Covered Species and their sign during Project activities shall be conveyed to the Permittee's Field Contact Representative or Designated Biologist. This information shall be included in the next monthly compliance report submitted to the Department by the Permittee.*

All observations of the Covered Species and its sign have been reported in twenty-five monthly compliance inspection reports, summarized in Table 1 and Graphs 1-6, as well as in the annual survey reports of April 2009 and 2010 (see Attachments). Subsequent information, including the absence of sightings, will be given in future monthly compliance reports.

**MM31, Condition 4.1.10.** *All Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities shall be confined to the Project site. Off-site Covered Species habitat shall not be used. Project-related vehicle traffic shall be restricted to established roads, staging, and parking areas. Permittee shall post signs; place posting stakes, flags, and/or rope or cord; and place fencing as necessary to minimize the disturbance of Covered Species habitat. Vehicle speeds shall not exceed 20 miles per hour in order to avoid desert tortoises on or traversing the roads.*

Construction contractors were compliant with each of these measures. Due to the small size of the Impact Area and limited access, excessive speeding was not an issue. All construction in currently occurs inside fenced areas in buildings constructed many years ago. After fencing the Translocation Area (TA) the District placed signs at strategic points along the TA fence-line which caution the public to respect the tortoise conservation area, prohibit the illegal drop off of pet tortoises, and prohibit unauthorized personnel. In 2010 four additional signs proscribing release of pet tortoises were placed along the TA fence-line. The District also made announcements on local radio stations asking the public not to release unwanted tortoises in the TA, but to instead use the local tortoise adoption agencies.

**MM32, Condition 4.2.8.** *If a desert tortoise is killed by Project-related activities during construction, or if a desert tortoise is otherwise found dead, the Designated Biologist shall be immediately notified and a written report will be sent to the Department within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.*

Two instances of raven predation were documented in 2009 and none documented in 2010. Since one raven was removed from the campus by Wildlife Services on 17 June 2009, no raven-predated tortoises have been found in the TA or IA. Currently a pair of ravens roost in the trees on private property at the corner of Rotary Way and Highway 62, and periodically emerge to fly around the college campus, including both the Impact Area and Translocation Area.

Delaney constructed five shelters for juvenile desert tortoises along the northern TA fenceline in September 2009 and has monitored them during weekly raven/predator surveys. In the annual report for 2010 (see Attachments) CMBC recommended additional tortoise shelters along the fence-lines because of the evident concentration of tortoise activity there. The District will add additional shade shelters as suggested, and will continue to focus weekly raven surveys on the TA fence-lines to check for raven-predated tortoises and minimize predator subsidies or attractants.

Two tortoise carcasses were found during the 2010 annual population survey. One of these was an adult that had been dead for more than four years, and the other was an unmarked 60 mm subadult tortoise which did not show evidence of predation (for more details, please refer to CMBC's annual report in the Attachments).

Note: The above descriptions are provided as clarification for the Department's requirements given in the MMRP tables that follow in the Attachments.

### **3) Status Of The Tortoise Population In The Translocation Area**

#### **A) Analysis of Monthly Surveys**

Beginning in 2009 and continuing to the present, the District biologist (Paul Delaney) has performed twenty-five monthly surveys for tortoises and their sign along the fencelines of the Translocation Area (TA). The GPS (NAD 27) locations of any tortoises and sign were reported in monthly compliance reports sent to the Rebecca Jones of the Department (CDFG) and Brian Croft of the Service (USFWS).

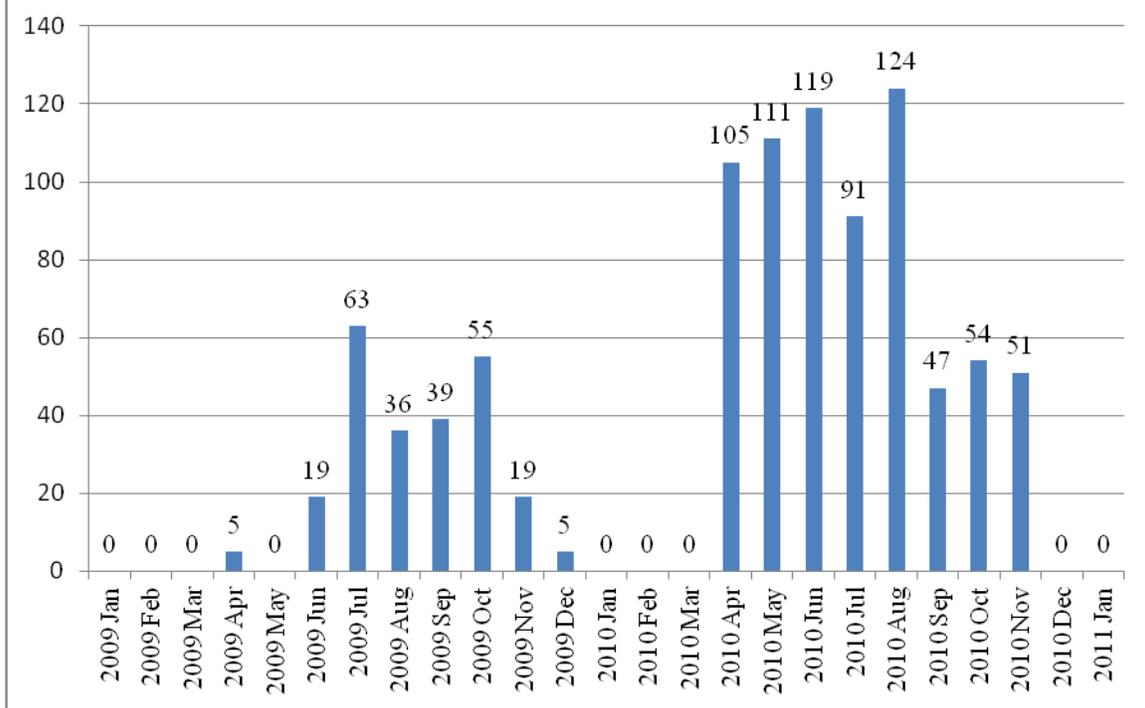
The methodology used for these surveys was as follows. Delaney walked 10-meter wide transects just inside the fenceline and recorded the location of tortoises, scat, burrows, burrow starts and sets of tortoise tracks. Circles were drawn in the sand around the scat to denote they had been counted. During the subsequent monthly compliance surveys these circles were often still visible around scat, and they were then excluded from the count. Burrows and burrow starts were marked by drawing an X in the sand next to the burrow

or start. The cumulative data for these 25 surveys is shown in Table 1 and Graphs 1-6 below. The data indicate increased adult and subadult tortoise activity along the TA fencelines from 2009 to 2010. Despite substantial quantities of scat near fencelines, there were relatively few tortoise burrows found there. This indicates that tortoises are active along the fencelines but maintain their burrows in the interior of the TA. This has important management implications and is corroborated by CMBC's analysis of the 2010 annual census (see Appendix).

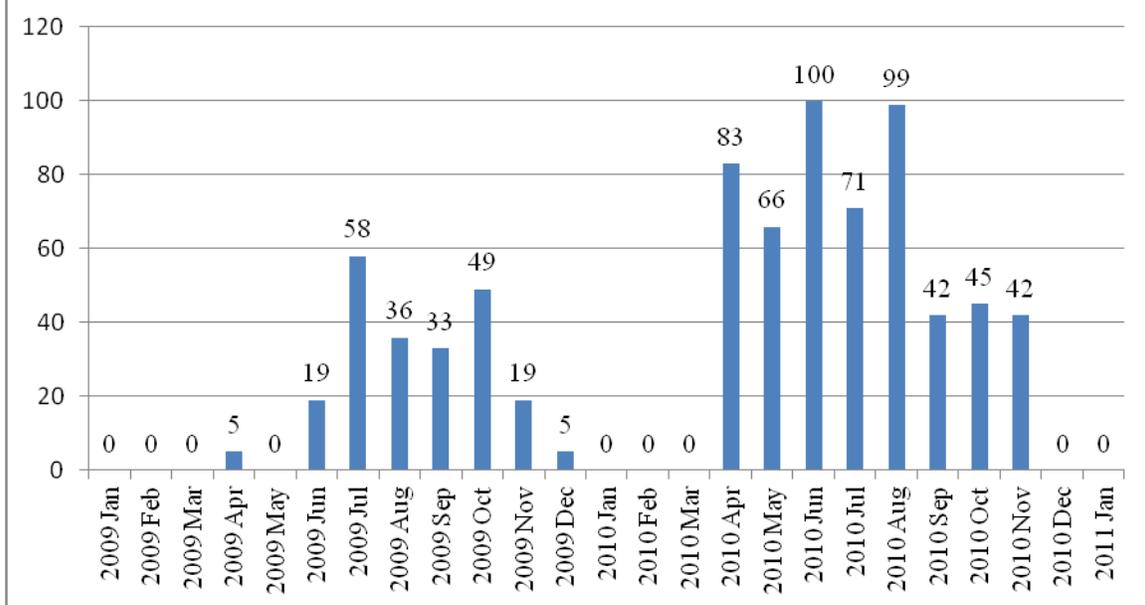
Table 1. Desert Tortoise Signs Observed on Monthly Surveys of the CMC Translocation Area Fencelines, January 2009 through January 2011.

<b>Month</b>	<b>Total Scat</b>	<b>Adult Scat</b>	<b>Subadult Scat</b>	<b>Tracks</b>	<b>Burrows</b>	<b>Burrow Starts</b>	<b>Tortoises</b>
<b>2009 Jan</b>	0	0	0	0	0	0	0
<b>2009 Feb</b>	0	0	0	0	0	0	0
<b>2009 Mar</b>	0	0	0	7	0	0	0
<b>2009 Apr</b>	5	5	0	4	1	0	0
<b>2009 May</b>	0	0	0	1	1	0	3
<b>2009 Jun</b>	19	19	0	5	0	0	0
<b>2009 Jul</b>	63	58	5	1	0	0	0
<b>2009 Aug</b>	36	36	0	0	0	0	0
<b>2009 Sep</b>	39	33	6	2	0	0	0
<b>2009 Oct</b>	55	49	6	0	0	0	0
<b>2009 Nov</b>	19	19	0	2	1	0	1
<b>2009 Dec</b>	5	5	0	0	0	0	0
<b>2010 Jan</b>	0	0	0	0	0	0	0
<b>2010 Feb</b>	0	0	0	0	0	0	0
<b>2010 Mar</b>	0	0	0	3	0	0	0
<b>2010 Apr</b>	105	83	22	0	1	4	2
<b>2010 May</b>	111	66	45	8	2	0	3
<b>2010 Jun</b>	119	100	19	6	1	5	0
<b>2010 Jul</b>	91	71	20	3	0	3	0
<b>2010 Aug</b>	124	99	25	3	1	0	1
<b>2010 Sep</b>	47	42	5	4	4	1	0
<b>2010 Oct</b>	54	45	9	1	3	0	1
<b>2010 Nov</b>	51	42	9	0	2	0	1
<b>2010 Dec</b>	0	0	0	0	0	0	0
<b>2011 Jan</b>	0	0	0	0	0	0	0

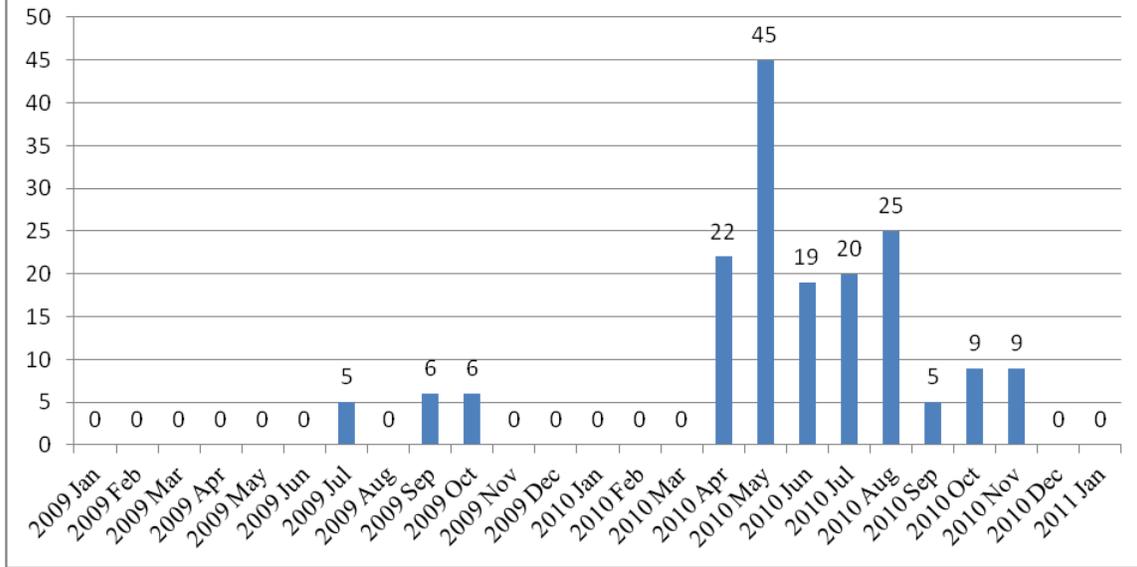
**Graph 1. Total Tortoise Scat From Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



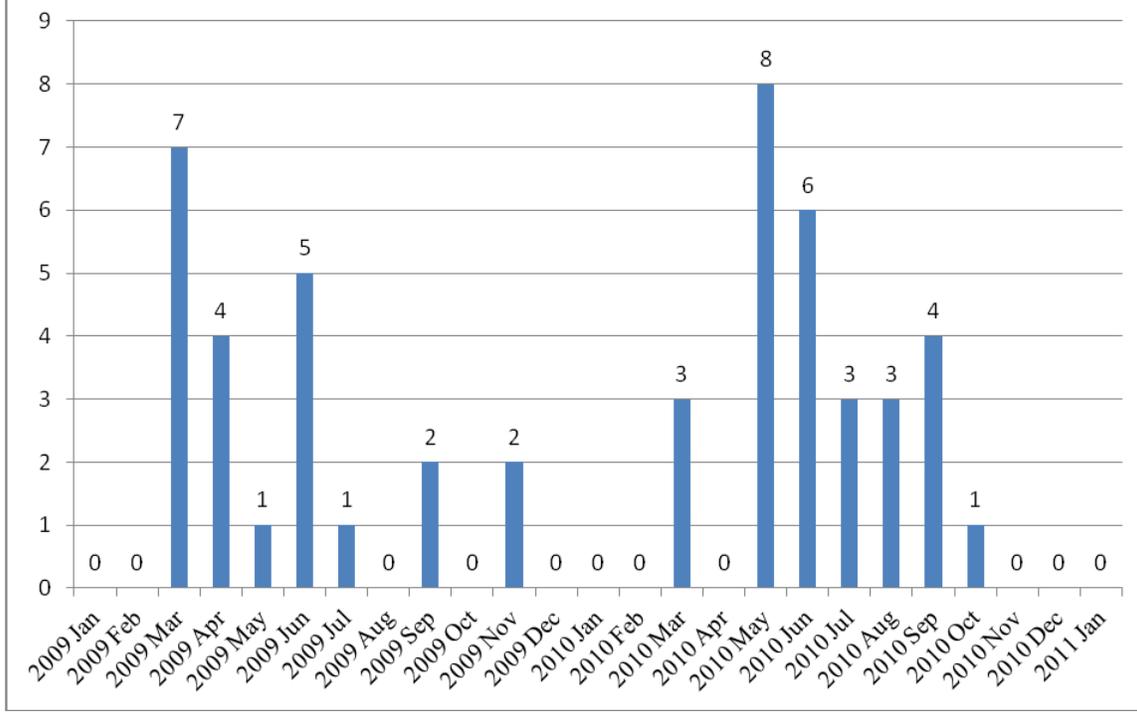
**Graph 2. Adult Tortoise Scat From Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



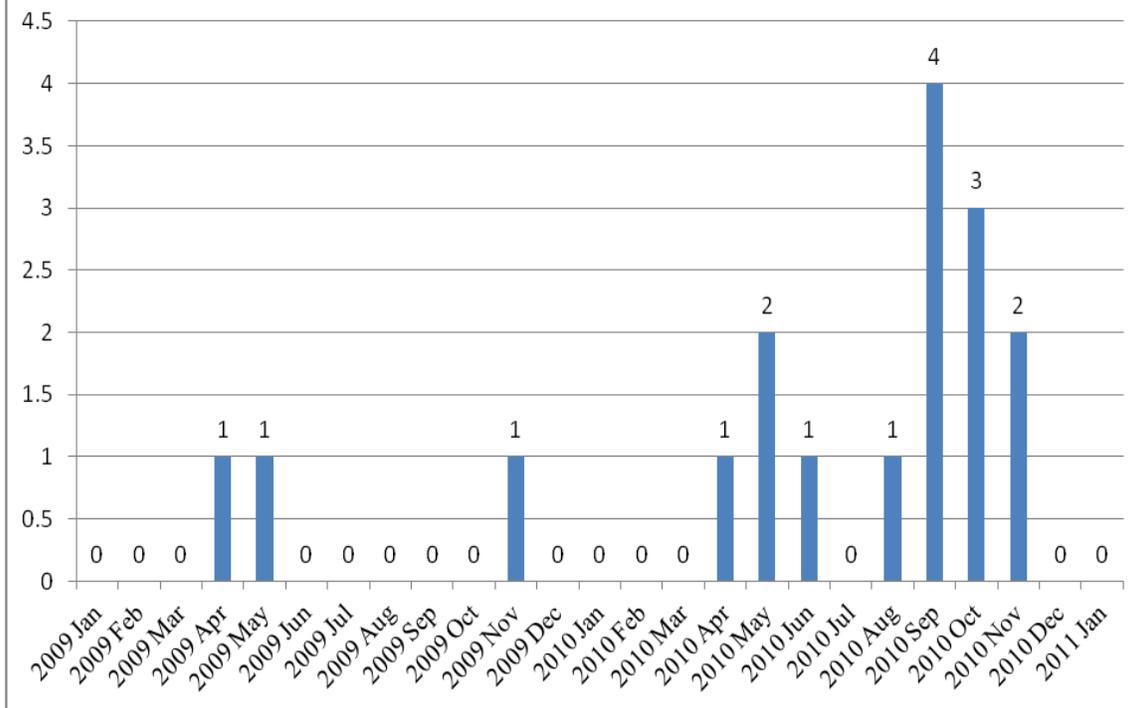
**Graph 3. Subadult Tortoise Scat Found On Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



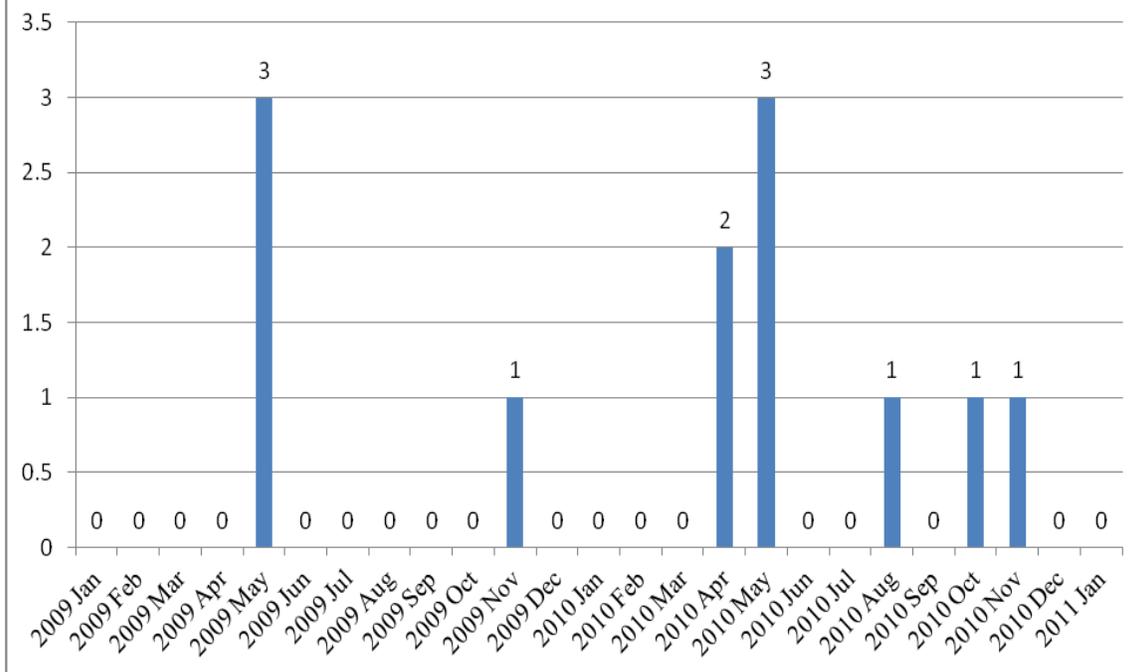
**Graph 4. Sets of Tortoise Tracks Found on Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



**Graph 5. Tortoise Burrows Found on Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



**Graph 6. Tortoises Observed During Monthly Surveys of CMC Translocation Area Fencelines, 2009-2010.**



## **B) Annual Census of Tortoise Population.**

As described in the attached CMBC report “Second Annual 2010 Census Of Tortoise Occurrence In The Copper Mountain College Translocation Area, San Bernardino County, California”, at fifteen to sixteen marked tortoises are known to occur inside the fenced Translocation Area (TA) as of May 2010. Please see the report for detailed biologic information supporting the following CMBC recommendations:

- 1) Tortoise activities concentrated along TA fencelines may facilitate raven predation, so additional shade shelters are warranted for the predominantly (75%) subadult tortoise population.
- 2) Tortoise activities concentrated along fencelines may facilitate pet collection (poaching) and release of captive tortoises. In 2010 the District placed additional advisory signs around the TA and made public information radio announcements to discourage pet collection or release of captive tortoises.
- 3) Following the release of a *Mycoplasma*-antibody-positive pet tortoise into the TA, the District took steps to prevent additional releases (see above). Blood testing of the tortoise population may be advisable to detect Upper Respiratory Tract Disease.
- 4) Telemetry should be used to longitudinally track individual tortoise movements, and to statistically describe changing tortoise spatial distribution in the TA.
- 5) The persistence of markings applied to tortoises by surveyors, especially subadults, has been problematic and will be re-assessed during the 2011 annual survey.
- 6) CMBC considered a two-pass survey of 10-meter wide transects to be the most efficient and effective methodology because it took less time, allowed comparisons of surveyor ability to detect tortoises and sign, and allowed tracking of tortoises over several days. The USFWS (2010) survey protocol, in this case, was relatively good at finding fresh tortoise scat and tortoise burrows, but not as good detecting old scat.

## **Summary**

In summary, implementation of the mitigation measures has been effective and successful to date based on the following considerations:

- 1) No desert tortoises were obviously harmed or killed by construction or mitigation activities, and all impacts were successfully contained within the designated Impact Area.
- 2) The Translocation Area (TA) was successfully established in 2008, its tortoise population monitored, and additional tortoises were marked in the 2009 and 2010 annual surveys.

- 3) Monitoring and mitigation activities have been implemented in a conscientious manner, and all required compliance reports have been submitted in a timely fashion.
- 4) Information to date indicates that tortoise translocation into the area and subsequent monitoring activities have not adversely affected the persistence of tortoises in the conservation area (TA).

This concludes the annual status report for 2010 for CDFG Permit No. 2081-2005-028-06 and USFWS Permit No. TE143444-0. Please contact me if you have questions or comments.

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate and complete.

Sincerely,

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Annual Status Report 2010: Copper Mountain Community College District Expansion Project, CDFG Incidental Take Permit No. 2081-2005-028-06 and USFWS Incidental Take Permit No. TE143440-0.

List of Attachments

Attachment 1: Twelve monthly compliance inspection forms for 2010 from Dr. Paul Delaney at Copper Mountain College.

Attachment 2: Mitigation and Monitoring Reporting Program (MMRP) table.

Attachment 3: “Second annual 2010 census of tortoise occurrence in the Copper Mountain College Translocation Area, San Bernardino County, California (CDFG Permit #2081-2005-028-06, USFWS Permit #TE143444-0).”  
Circle Mountain Biological Consultants Inc., 24 January 2011.