



DESERT TORTOISE COUNCIL

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Via email only

Date: 20 March 2013

Maya Rohr
Sespe Consulting
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Robin Eliason, District Wildlife Biologist
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From: Desert Tortoise Council

RE: Joint notice of preparation and notice of intent to prepare an Environmental Impact Statement/Environmental Impact Report for Omya Sentinel and Butterfield Quarries Expansion Project

Dear Ms. Rohr and Ms. Eliason,

The Desert Tortoise Council (Council) is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

The Council received the notice for the proposed project from the U.S. Forest Service on 15 March 2013, and we understand from the Federal Register notice that we have until 1 April 2013 to provide comments. As our name implies, we are most concerned about the potential impacts of the mine on the federally- and state-listed, threatened desert tortoise (*Gopherus agassizii*). Your web page is well organized and supplies a wealth of information, including about a dozen appendices to the proposed plan of operations, several of which were reviewed by our board in support of the comments given herein.

Unless there are other materials available that are not included in the appendices, we assume that you have followed the recommendation of Scott D. White Bioservices (2007; herein "consultant") that a focused desert tortoise survey is not required for your proposed project. The following excerpts are taken from page 5 of the consultant's 2007 report:

"...habitat on the quarry property is not suitable, and there is no potential for occurrence of desert tortoise ... Although reliable sources have reported tortoises up to 7,300 feet elevation ... desert tortoise populations generally do not occur above about 4000 feet. Habitat on the site is very steep, and much of it is made up of bedrock outcrops, talus, or actively eroding sandy soil which would not permit burrowing. We did not carry out formal desert tortoise surveys for the project, but we observed no tortoise sign (e.g., burrows, palates [sic, "pallets"], scat, live tortoises, or tortoise remains) during our field surveys. Because tortoise habitat is very poor, the site is above the normal elevational range, and because they have not been observed on the site or reported in the area, we conclude that desert tortoises are absent."

Although in the West Mojave Desert tortoises are mostly found between about 1,000 and 3,500 feet elevation, they have also been found as low as 500 feet and as high as 6,500 feet elevation. Whereas the consultant's generalization is more or less accurate, the proponent is still obligated to avoid take of desert tortoises or, if take is likely to occur in spite of protective measures, to obtain federal and state incidental take permits.

We note in the consultant's report that the northern portions of the project boundary and – particularly – all of the "Existing White Knob Haul Road" occur at and below about 5,000 feet elevation. In Lucerne Valley where tortoises are largely extirpated from urbanizing areas, they are still found both to the north and south in foothill areas. There is some likelihood that they may occur on the northernmost portions of the mine site and even higher likelihood that they may occur along the haul road.

The latest guidance from the U.S. Fish and Wildlife Service (USFWS) in their 2010 survey protocol is that areas up to 5,000 feet elevation, including low hills and rolling mountains, should be surveyed. The northeastern areas within the project boundary and the entire White Knob haul road are within the elevational range requiring formal desert tortoise surveys. Additionally, the USFWS 2010 survey protocol recommends that zone of influence transects and the "action area" be included within focused tortoise surveys. Since both the mine site and haul road are likely to generate dust that would blow well outside the project footprint including areas at or below 5,000 feet elevation, the "action area" for this project is likely much larger than the direct impact footprint.

Given this information, the Council understands that focused, protocol-level surveys are needed for those portions of the mine site at and below 5,000 feet elevation; zone of influence surveys along the entire length of the haul road between the southern project boundary and the pavement; and within the action area, which should be determined with technical assistance from the USFWS Ventura Field Office. Alternatively, the proponent should receive written confirmation from USFWS that surveys are unnecessary.

We expect that the results of these studies, which would need to be performed in the April-May or September-October time frames to be in compliance with USFWS 2010 survey protocol, will be published as baseline information in the Draft EIS/EIR. Further, if these surveys reveal that tortoises do occur within or adjacent to either the mine footprint or the haul road, we assume the U.S. Forest Service will recommend a "may affect" determination to the USFWS and that formal consultation would be appropriate for the project.

As an "affected interest," the Council looks forward to reviewing the Draft EIS/EIR when available to ensure that appropriate surveys, as identified herein, have been performed and that incidental take authorization, if required, has been acquired.

Thank you for your consideration,



Desert Tortoise Council
Ecosystems Advisory Committee
Edward L. LaRue, Jr.