

DESERT TORTOISE COUNCIL

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Via email only

February 6, 2020

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San Bernardino County
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RE: Comment Letter on the U.S. Forest Service and San Bernardino County Final Environmental Impact Statement/Final Environmental Impact Report for the Proposed Butterfield Sentinel Quarry Expansion Project, San Bernardino County, California (SCH# 2013021015)

Dear Mr. Moore:

The Desert Tortoise Council (Council) is a 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 desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

We appreciate this opportunity to provide comments on the above-referenced proposed action. Given the location of the proposed action may affect animals and habitats of Agassiz's desert tortoise (*Gopherus agassizii*) (synonymous with "Mojave desert tortoise"), our comments pertain to enhancing protection of this federally and state threatened species during activities authorized by the U.S. Forest Service (USFS) and San Bernardino County (County).

Description of the Proposed Action: Omya, Inc. (Omya) has submitted applications to the USFS and the County to expand Omya's existing Butterfield and Sentinel Limestone Quarries and related processing facilities in the San Bernardino National Forest, California. The proposed expansion would include 30.6 acres of new disturbance at the Butterfield Quarry, and 64.3 acres of new disturbance at the Sentinel Quarry area. The proposed expansion would be added to the existing 141.5 acres already mined for limestone, resulting in 232.4 acres of total direct disturbance from quarry operation. No new haul roads would be created outside the quarry footprints.

Quarry expansion would be phased and reclamation would occur concurrently. Mining activities would vary through the year, and could occur 24 hours/day, 7 days/week depending on operational requirements. Blasting would be restricted to daylight hours. The proposed quarry expansion areas would add an additional 40 years of mining activities to the Butterfield quarry and an additional 20 years to the Sentinel quarry. The Project would allow continued mining of these reserves to be extended until approximately 2055.

The quarries are located approximately 7.5 miles south of the community of Lucerne Valley and 5 miles north of Big Bear Lake.

Summary of Council Comments Provided during Scoping: The Council provided comments to the USFS and Sespe Consulting of San Diego, the consultant for the USFS and the County, during the scoping period for the proposed action that terminated June 3, 2013 (USFS 2019, page 5). In our comments, we requested that (1) the EIS/EIR comply with the most recent USFWS protocol survey requirements for the Mojave desert tortoise in the "action area," including timing and elevation; (2) the information collected during these surveys be published in the EIS/EIR; and (3) if survey results indicate the presence of tortoises or tortoise sign in the "action area," the USFS and County would complete section 7 consultation under the Federal Endangered Species Act (FESA). This process would ensure that appropriate avoidance/minimization measures would be implemented and any incidental take that occurred would be authorized.

Our intent in providing these comments was to assist the USFS and the County in (1) determining the extent of direct and indirect impacts to the tortoise and its habitats and thereby develop and implement appropriate mitigation to fully offset those impacts; and (2) to aid these agencies in complying with the FESA and California Endangered Species Act (CESA).

Specifically, in our letter we noted:

"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."

Requests 1 and 2 – Protocol Surveys for the Tortoise and Survey Results: In reviewing the EIS/EIR, we were unable to locate a discussion of the implementation of protocol level surveys for the Mojave desert tortoise or the results of these surveys. Some may consider the project footprint to be higher in elevation than the range of the tortoise. However, protocol surveys for the tortoise are to include the “action area” for the species, and not necessarily be restricted to the project footprint. *Action area* means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). We contend the action area includes the indirect and cumulative effects (e.g., decades of dust deposition on vegetation and seedbanks, etc.) of the proposed action, and these effects extend to locations beyond the project footprint and into habitats suitable for tortoises.

The Council believes the FEIS/FEIR has disregarded issues raised in our 2013 comment letter resulting in an incomplete document. The FEIS/FEIR should discuss how the USFS has complied with USFWS survey protocols for the Mojave desert tortoise, has defined the action area in the FEIS/FEIR per 50 CFR 402.02 with the USFWS’s concurrence, and provide the results of these surveys and qualifications of the persons who conducted the surveys.

The County should provide similar documentation of its compliance with California Department of Fish and Wildlife survey requirements, results, and qualifications of persons conducting the surveys for the tortoise.

Request 3 – Completion of Section 7 Consultation for the Proposed Action: On page 117 of Appendix F – Biological Resources of the FEIS/FEIR, the USFS and County state “2. *Desert Tortoise*. The SBNF initiated consultation with USFWS on December 10, 2012. A BO [biological opinion] (FWS-SB-13B0290-13F0277) was issued on May 10, 2013 (USFWS 2013a).” The FEIS/FEIR further states, “The conditions for re-initiating consultation set forth in the Section 7 regulations are:

- The amount or extent of incidental take is exceeded;
- New information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in [the biological] opinion;
- The agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in [the biological] opinion; or
- A new species is listed or critical habitat designated that may be affected by the action.

We note the biological opinion for the tortoise was issued to the USFS in May 2013. In 2018, the USFS and the County released their Draft EIS/Draft EIR for expansion of the Butterfield and Sentinel Limestone Quarry Expansion Project. Given the biological opinion pre-dated the release of the Draft EIS/Draft EIR by five years and pre-dated the close of the scoping period for the Draft EIS/Draft EIR, we conclude that the 2013 biological opinion for the tortoise did not include a description of the proposed quarry expansion or an analysis of the effects of other activities that are interrelated to, or interdependent with, that proposed action (50 CFR 402.02; USFWS and NMFS 1998).

When a federal agency is preparing an EIS, it usually includes a copy of the biological opinion or amendment to the biological opinion in the FEIS. Unfortunately, we were unable to find a biological opinion or an amendment that analyzed the effects of the proposed quarry expansion on the tortoise. To ensure that it has a complete record of its environmental compliance with the FESA, we recommend that the USFS include a copy of its request for formal consultation for the selected alternative and a copy of the USFWS biological opinion or opinion amendment in the FEIS. In addition, the Record of Decision should address the results of section 7 consultation. We request that the FEIS and draft Record of Decision be revised to include this information and re-released to the public so they have an opportunity to review and comment on these documents as part of the National Environmental Policy Act (NEPA) process.

National Environmental Policy Act Compliance: With respect to NEPA compliance, we assert the indirect impacts from the proposed project would affect an area larger than the project footprint. Thus, the impacts of the proposed action may include impacts to tortoise habitats. We contend the USFS should explain in the FEIS how it has complied with 50 CFR 402.02 in its analysis of impacts and avoidance, minimization, and mitigation for the tortoise, especially with respect to dust deposition. In addition, the USFS and the County should explain the long-term impacts of dust deposition on the growth and availability of vegetation needed by the tortoise for food, reproduction and recruitment, and shelter from temperature extremes and predators.

Compliance with the California Endangered Species Act: Because the proposed action is subject to CESA, we request that the County include a copy of the permit or other authorization issued by the CDFW for the tortoise in the FEIS and address this permit/authorization in its decision document.

Fully Mitigate Requirement of the California Fish and Game Code: We found a few mitigation measures in the FEIS/FEIR for the tortoise. These were education of Omya employees about tortoises (Mitigation Measure 6), guidelines for driving in tortoise habitat (Mitigation Measure 11), and a requirement to report sightings of tortoises to the USFS (Mitigation Measure 12). We request that the FEIS/FEIR provide mitigation measures for the tortoise that will comply with California Fish and Game Code 2081, that is, take must be minimized and fully mitigated.

We understand that the proposed action is on the edge of the known range of the Mojave desert tortoise. However, we believe that the FEIS/FEIR has not addressed some fundamental issues and regulatory requirements regarding the tortoise. We request that the issues/requirements stated above be addressed in the FEIS/FEIR and decision documents.

Specific Comments on the FEIS/FEIR: Appendix F, pages 148-149, discusses the split of the desert tortoise to two species, the Mojave and Sonoran desert tortoise. Please note that in 2016, Edwards et al. identified a third species of desert tortoise, Goode's thornscrub tortoise (*Gopherus evgoodei*). Thus, there are three species of tortoises from California east and south to western Sinaloa, Mexico. We suggest that you update this information.

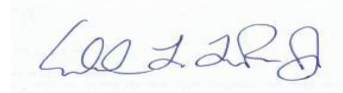
Request to Update the Desert Tortoise Council's Mailing Address: Please note that the address for the Desert Tortoise Council changed several years ago. Our current address is:

Desert Tortoise Council,
4654 East Avenue S #257B
Palmdale, CA 93552.

We request that the USFS and the County update their mailing lists to reflect this change. We look forward to receiving future correspondence from you, as we have previously notified the USFS and County that the Council be identified as an Affected Interest for this and all other USFS and County projects that may affect species of desert tortoises, and that any subsequent environmental documentation for this proposed action is provided to us at the contact information listed above.

We appreciate this opportunity to provide input and trust that our comments will further protect tortoises during authorized activities for the proposed action.

Regards,



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

Literature Cited

Desert Tortoise Council. 2013. Comment letter on “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. Letter dated March 20, 2013.

Edwards, T., A. Karl, M. Vaughn, P.C. Rosen, C. Meléndez Torres, and R.W. Murphy. 2016. The desert tortoise trichotomy: Mexico hosts a third, new sister-species of tortoise in the *Gopherus morafkai*–*G. agassizii* group. *ZooKeys* 562: 131–158 (2016). doi: 10.3897/zookeys.562.6124

[USFWS] U.S. Fish and Wildlife Service. 2017. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service Desert Tortoise Recovery Office. Dated 21 August 2017. Reno, Nevada.

[USFWS & NMFS] U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Consultation Handbook. Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act. Final. March 1998. https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

[USFS] U.S. Forest Service. 2019. Butterfield-Sentinel Quarry Expansion Project. Record of Decision Mountaintop Ranger District, San Bernardino National Forest, San Bernardino County, California December 2019 (Draft).