



DESERT TORTOISE COUNCIL

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Via email only

28 April 2023

Attn: Laura Goff, Mace Crane
Bureau of Land Management
St. George Field Office
345 East Riverside Drive
St. George, Utah 84790
lgoff@blm.gov, mcrane@blm.gov

RE: Western Rock Products Sorenson Pit Mineral Sale (split-estate) (DOI-BLM-UT-C030-2021-0039-EA) and EA Checklist

Dear Ms. Goff, Mr. Crane,

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.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer that the Bureau of Land Management (BLM) email to us future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

We appreciate this opportunity to provide comments on the above-referenced project and thank you for contacting us via email on April 18, 2023. Even so, we question the truncated, 10-day comment period and ask why the BLM did not have the typical 30-day comment period?

Given the location of the proposed project adjacent to habitats potentially occupied by Mojave desert tortoise (*Gopherus agassizii*) (synonymous with Agassiz's desert tortoise), our comments pertain to enhancing protection of this species during activities funded, authorized, or carried out by the BLM, which we assume will be added to the Decision Record for this project as needed. Please accept, carefully review, and include in the relevant project file the Council's following comments and attachments for the proposed project.

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population reduction (decreasing density), habit loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (*sensu stricto*) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses had been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (*sensu stricto*) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units."

This status, in part, prompted the Council to join Defenders of Wildlife and Desert Tortoise Preserve Committee (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from threatened to endangered in California.

Unless otherwise noted, referenced page numbers are from the Sorenson Pit Mineral Sale Environmental Assessment (EA) (DOI-BLM-UT-C030-2021-0039-EA), dated April 2023. The summary of the proposed project given on page 1 reads, The BLM "...is considering whether to approve a 33-acre mineral sale request from Western Rock Products (WRP) at the Sorenson Pit aggregate operation [located] approximately seven miles northeast of St. George, Utah (Figure 1-1 [in the EA]). WRP owns all 250-acres of the surface rights at the Sorenson Pit, and 217 acres of subsurface mineral rights. The BLM owns the mineral rights to approximately 33 acres on the north boundary, creating a split-estate. Coal and other minerals were reserved to the United States in the 1925 patent (patent 957390). WRP is currently mining along the northern boundary of the Sorenson Pit and proposes to mine minerals on the 33 acres of splitestate to produce a variety of crushed aggregates for construction purposes, with a portion of the aggregate materials produced in the pit to be sold to outside customers. As a result, WRP wishes to enter into a Contract for Sale of Mineral Materials Agreement (Proposed Action) with the BLM for the sale of the minerals on the 33 acres of split-estate (Project Area). The yearly anticipated production from the 33 acres is approximately 400,000 tons of sellable product per year. Mining would continue until approximately 1,800,000 tons of mineral materials are produced. This is estimated to take a total of five years to complete."

We note the title of the file for the EA located on the BLM National Environmental Policy Act (NEPA) website is “FINAL_WesternRockSorensen Pit_EA.” We presume this file name is incorrect, that this is a draft EA, and that BLM will consider comments from the public during the comment period before developing the final EA.

Assuming that this is a draft EA and that a final EA will be produced that responds to concerns identified by Affected Interests, including the Council, we ask that Table 1-2. Relationship to Statutes, Regulations, and Policies beginning on page 5 be amended to include compliance with the Clean Water Act of 1977. We ask this as BLM states on page 1 that “WRP owns the 250-acre Sorensen Pit aggregate operation and is operating under local, state, and federal regulations, with the required environmental plans and permits.” The maps included in the EA and the Interdisciplinary Team EA Checklist (Checklist) show the parcel owned by WRP with a boundary that follows the Virgin River or encompasses both sides of the river. The maps suggest that WRP’s mining operations may have been/continue to be located immediately adjacent to or in the Virgin River. Such activities would likely have resulted in the deposition of dredged or fill material into the Virgin River. Therefore, we request that BLM contact the U.S. Army Corps of Engineers (ACOE) to determine whether WRP’s operation of the Sorensen Pit complies with sections 404 and 401 of the Clean Water Act.

We believe that this request is relevant given that the proposed project is less than a quarter mile from the Virgin River with portions of the larger mine pit bordering the river. We ask that the final EA assess the known or potential impacts of existing mining operations on the nearby Virgin River to help us understand if the contributory impact of 33 acres would add to impacts that may already be occurring. Although there may not be direct discharge into the Virgin River, there may be runoff of contaminated soils and there is clear evidence that mining may result in the aeolian deposition of toxic materials such as arsenic and mercury into nearby water resources (Chaffee and Berry 2006). The ACOE should be provided with a copy of the draft EA and be asked to make a determination as to whether the proposed action and ongoing actions by WRP complies with the Clean Water Act. As such, the ACOE should be added to the List of Agencies and Organizations Consulted in Table 4-1, and the results of this consultation should be included in the final EA.

We have a similar request for WRP’s compliance with the Incidental Take Permits issued to Washington County (March 15, 1996 and January 15, 2021) by the U.S. Fish and Wildlife Service (USFWS). For example, were surveys conducted for the tortoise in potential tortoise habitat prior to surface disturbance on the 250-acre parcel that WRP mines and is now requesting to mine as required since 1996. Please coordinate with the USFWS to determine past/ongoing compliance and provide the results of this coordination in the final EA.

There is no evidence that the Checklist was made sufficiently available to the public when it was being completed (August, 2021); certainly, the Council was not contacted. Given that only four issues were derived from this internal scoping process and other issues were eliminated, a longer and better clarified public comment period is necessary for this EA.

Each of the referenced plans in the EA needs to be made available to the public so that a review can take place to ensure that appropriate measures are being implemented, which is an undisclosed conclusion in this draft EA. The lack of dust control and invasive, non-native plant species plans are pertinent examples of missing information that we would like to have reviewed.

The draft EA raises potential Endangered Species Act issues; for example, Table 4-1 states that informal consultation with the USFWS "is on-going." A biological assessment (BA) was nominally incorporated into the EA identifying potential effects to listed species but we disagree that this draft EA adequately functions as a BA, particularly as it does not address potential direct and indirect impacts to desert tortoises in adjacent areas. This draft EA should not be finalized, and the public's opportunity to comment ended, until the BA is upgraded, consultation with the USFWS has ended, and ensuing conclusions are made available.

The draft EA fails to adequately divulge or analyze the impacts of the surrounding 217 acres of existing disturbance on the environment and on the Virgin River. We believe that this is a reasonable assertion because the future function of the larger pit is interconnected to mining of these 33 acres, and that future impacts may be curtailed if the Proposed Action is not implemented. We note that Section 2.1 on page 7, which purports to analyze the impacts of the No Action Alternative, fails to inform the reader if future mining on the surrounding 217 would continue if the Proposed Action is not implemented.

We appreciate that several known projects (e.g., Southern Utah Shooting Sports Park, construction of a trailhead by Washington City for the Washington City Canal Trail at Shinob Kibe, development of nearby residences) are listed in Section 3.2.2. on page 12 and that there are "Cumulative Impacts" analyses given for each resource in the Affected Environment subsections, but we do not believe that an adequate cumulative effects analysis has been provided in the draft EA and should be presented in the final EA. With regards to cumulative effects, the final EA should list and analyze with supporting references all project impacts within the region including future state, federal, and private actions affecting listed species on state, federal, and private lands.

Please see *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345-46 (D.C. Cir. 2002) in which the court decided that agencies must analyze the cumulative impacts of actions in EAs. In the cumulative effects analysis of the final EA, please ensure that the CEQ's "Considering Cumulative Effects under the National Environmental Policy Act" (1997) is followed, including the eight principles, when analyzing cumulative effects of the proposed action to the tortoise and its habitats. CEQ states, "Determining the cumulative environmental consequences of an action requires delineating the cause-and-effect relationships between the multiple actions and the resources, ecosystems, and human communities of concern. The range of actions that must be considered includes not only the project proposal but all connected and similar actions that could contribute to cumulative effects." The analysis "must describe the response of the resource to this environmental change." Cumulative impact analysis should "address the sustainability of resources, ecosystems, and human communities."

CEQ's guidance on how to analyze cumulative environmental consequences contains eight principles listed below:

1. Cumulative effects are caused by the aggregate of past, present, and reasonable future actions.

The effects of a proposed action on a given resource, ecosystem, and human community, include the present and future effects added to the effects that have taken place in the past. Such cumulative effects must also be added to the effects (past, present, and future) caused by all other actions that affect the same resource.

2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.

Individual effects from disparate activities may add up or interact to cause additional effects not apparent when looking at the individual effect at one time. The additional effects contributed by actions unrelated to the proposed action must be included in the analysis of cumulative effects.

3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.

Environmental effects are often evaluated from the perspective of the proposed action. Analyzing cumulative effects requires focusing on the resources, ecosystem, and human community that may be affected and developing an adequate understanding of how the resources are susceptible to effects.

4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.

For cumulative effects analysis to help the decision maker and inform interested parties, it must be limited through scoping to effects that can be evaluated meaningfully. The boundaries for evaluating cumulative effects should be expanded to the point at which the resource is no longer affected significantly or the effects are no longer of interest to the affected parties.

5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.

Resources are typically demarcated according to agency responsibilities, county lines, grazing allotments, or other administrative boundaries. Because natural and sociocultural resources are not usually so aligned, each political entity actually manages only a piece of the affected resource or ecosystem. Cumulative effects analysis on natural systems must use natural ecological boundaries and analysis of human communities must use actual sociocultural boundaries to ensure including all effects.

6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.

Repeated actions may cause effects to build up through simple addition (more and more of the same type of effect), and the same or different actions may produce effects that interact to produce cumulative effects greater than the sum of the effects.

7. Cumulative effects may last for many years beyond the life of the action that caused the effects.

Some actions cause damage lasting far longer than the life of the action itself (e.g., acid mine damage, radioactive waste contamination, species extinctions). Cumulative effects analysis needs to apply the best science and forecasting techniques to assess potential catastrophic consequences in the future.

8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters.

Analysts tend to think in terms of how the resources, ecosystem, and human community will be modified given the action's development needs. The most effective cumulative effects analysis focuses on what is needed to ensure long-term productivity or sustainability of each resource impacted by the proposed action including the Mojave desert tortoise. The CEQ recognizes that synergistic and interactive impacts as well as cumulative impacts should be analyzed in the NEPA document for the resource issues.

We contend that it is naïve and not based on sound science to restrict the analysis of impacts to threatened and endangered species, as given in Section 3.6.1. on page 16, to the 250-acre Sorensen pit operation; that there are likely to be indirect impacts that may occur outside the pit area. For example, the availability of pooled water and organic refuse associated with mine use may attract common ravens, which are known to travel up to 30 miles from their nest on a daily basis in search of food items (Boarman 2002, 2006).

We see on unnumbered page 6 in the Interdisciplinary Team Checklist that the "USFWS IPaC data shows that the following species may be affected from the proposed action," which includes the desert tortoise. Several paragraphs later, we read "The project is within modeled suitable habitat for the desert tortoise, however, due to the extremely developed landscape (denuded of vegetation) of the area, it is highly unlikely that tortoises use this area. There have been no observations reported for tortoises within a two-mile radius of the proposed project area (UDWR 2021). Therefore, there would be no effects to the desert tortoise." However, we interpret "the extremely developed landscape" to characterize the 250 acres and not the adjacent areas to the east, west, and north, which appear to be vegetated on the unnumbered map on the unnumbered page in the Checklist. Nor is it clear if adjacent undeveloped areas to the east, west, and north were included in protocol surveys referenced as "UDWR 2021," which was a citation not found in the draft EA.

The draft EA fails to disclose if there have been any desert tortoise surveys in adjacent, undeveloped areas within a mile of the subject property, or what the potential may be for tortoises to occur in adjacent areas and immigrate into the pit mine area. Is the existing pit surrounded by a tortoise-proof mesh fence, as described by the USFWS (2009)? If not, have there been any incidences of tortoise immigration into the mine area? Additionally, what is the likelihood that haul trucks loaded with aggregate and traveling throughout the region may encounter and crush tortoises, which would not occur *but for* the Proposed Action?

If there are tortoises within a mile of the proposed Project Area, we contend that, like the conclusions given in Section 3.5.3 relative to dwarf bear-poppy, located "...approximately 0.96 miles away from the Proposed Action Area" (Section 3.5.1.), that there may also be impacts from "...fugitive dust and the introduction of invasive non-native species" (Section 3.5.3) to tortoises, which the draft EA fails to analyze.

Given these observations and the lack of any analysis in the draft EA that would address these and other concerns, we contend that the "Not Considered" determination for desert tortoise given Table 3-1 on page 16 is inappropriate, that it should be changed to a "Considered" species, and that the final EA analyze indirect impacts, including growth inducing impacts. For example, will the use of the aggregate materials result in growth inducing impacts to the region resulting in an increased potential for there to be take of tortoises that would not happen *but for* the Proposed Action? We believe that had the desert tortoise been a "Considered" species, the BLM may have sought for and provided the nearest known locations, the reporting of which may have alleviated some of our concerns given above, like the potential for immigration onto the site.

Given this information, we judge that Section 3.6.3. on page 18 is deficient, that the potential indirect, growth inducing, and cumulative impacts to tortoises have not been fully addressed and that this section needs to be rewritten in the final EA. We ask that the BLM consult with impartial USFWS biologists to determine what the “action area” for the Proposed Action should have been. The USFWS defines “action area” in 50 Code of Federal Regulations 402.2 and their Desert Tortoise Field Manual (USFWS 2009) as “all areas to be affected directly or indirectly by proposed development and **not merely the immediate area** [emphasis added] involved in the action (50 CFR §402.02),” which we contend extends beyond the 250-acre active pit area.

We appreciate this opportunity to provide comments on this project and trust they will help protect tortoises during any resulting authorized activities. Herein, we reiterate that the Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BLM that may affect species of desert tortoises, and that any subsequent environmental documentation for this project is provided to us at the contact information listed above. Additionally, we ask that you respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.
Ecosystems Advisory Committee, Chairperson
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cc.

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