

Missouri, and Kentucky. RCWs nest in cavities constructed in living mature (typically > 60 years old) pine trees. The RCW is a cooperative breeder living in groups of one to nine birds with each bird nesting in a cavity; the aggregate of cavity trees is called a cluster. RCWs prefer longleaf pine forests, but it will also utilize loblolly, pond, slash, shortleaf, and even Virginia pines. Without periodic fire to control hardwoods, RCWs will abandon cluster sites. The decline of the RCW has resulted primarily from loss of its mature southern pine habitat from logging and conversion to non-forest and from fire exclusion.

Recovery activities for the RCW are focused on public lands. However, private lands are also important for the RCW in the Service's recovery strategy by: (1) Providing supplement habitat where the federal land base is insufficient to support recovery; (2) establishing and maintaining connection between and within populations on public lands; and/or, (3) providing a supply of juvenile RCWs for translocation into defined recovery populations. Unfortunately, RCWs on private lands have fared poorly because landowners are not inclined to manage their lands for RCW habitat because the bird's presence might impose restrictions on timber harvesting and development. The Service believes the private land RCW clusters that are geographically isolated will eventually cease to exist if private landowners are not encouraged to manage their lands for these birds.

The applicant, International Paper Company, proposes to sustain RCWs on its lands through the creation of a migration bank on its SEF property in Bainbridge, Georgia. This proposed mitigation bank at SEF currently contains 5300 acres of contiguous forests and the applicant proposes to establish and keep 3000 acres of high quality RCW habitat at this site. This would be enough habitat to eventually support about 25-30 RCW groups. Currently there are about 1500 acres of high quality RCW habitat and two RCW groups at SEF. The applicant is proposing translocation, cavity augmentations, and intensive habitat management at the SEF site to increase the RCW population. The applicant currently has 18 known RCW groups on its lands in Louisiana, Alabama, Georgia, and South Carolina, and they will keep their baseline responsibility of 18 RCW groups at the proposed mitigation bank at SEF, with the Service and state concurrence. The Service believes the applicants' extant RCW population will ultimately benefit from

this proposed mitigation bank in that a more stable RCW population will be created and the applicant will be better able to intensively manage the RCWs at SEF.

The EA considers the environmental consequences of three alternatives, in addition to the proposed action. The no action alternative may result in loss of habitat and individual groups of *Picoides borealis* due to fragmented habitat, geographic isolation of the groups, and lack of intensive management. The proposed action alternative is issuance of the ITP with mitigation on the applicant's property. To compensate for the proposed taking of RCW groups, the applicant proposes to establish RCW groups on SEF before any taking occurs. The applicant also proposes to sell mitigation credits to third parties seeking incidental take permits for RCW on other private lands should additional groups above baseline be created during the life of the mitigation bank. The third alternative is to issue the ITP and mitigate for the taking of RCW groups on federal, state, or other private lands. The fourth alternative is for the Service to provide financial incentives to the applicant to intensively manage the RCW clusters on their lands.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
2. This HCP contains provisions which sufficiently minimize and mitigate the impacts to the extent practicable.
3. Issuance of an ITP would not have significant effects on the human environment in the project area.
4. The proposed take is incidental to an otherwise lawful activity.
5. Adequate funding will be provided to implement the measures proposed in the submitted HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-

Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: January 13, 1998.

**H. Dale Hall,**

*Deputy Regional Director.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of an Environmental Assessment and Receipt of an Application for an Endangered Species Act Incidental Take Permit for the U.S. Borax Project in Kern County, CA

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of availability.

**SUMMARY:** U.S. Borax, Incorporated has applied to the Fish and Wildlife Service for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). In the 1,940-acre project area near the town of Boron, Kern County, California, the Service proposes to issue an incidental take permit and provide assurances to the applicant for the threatened desert tortoise (*Gopherus agassizii*) and the following Federal species of concern: Mojave ground squirrel (*Spermophilus mohavensis*), American badger (*Taxidea taxus*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), desert kit fox (*Vulpes acrotis arsipus*), greenest tiger beetle (*Cicindela tranquebarica viridissima*), Mojave spineflower (*Chorizanthe spinosa*), and sagebrush loeflingia (*Loeflingia squarrosa* var. *artemisiarum*). The proposed permit would be effective upon issuance for species currently listed under the Act. The permit would become effective for unlisted species included in the permit upon their listing under the Act. This notice opens the comment period on the Environmental Assessment and permit application package, which includes a Habitat Conservation Plan and Implementation Agreement. The Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in section V.C.1 of the Implementation Agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

**DATES:** Written comments on the Habitat Conservation Plan, Environmental Assessment, and Implementation Agreement should be received on or before February 20, 1998.

**ADDRESSES:** Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644-3958.

**FOR FURTHER INFORMATION CONTACT:** Kirk Waln, Fish and Wildlife Biologist, at the above address; telephone (805) 644-1766.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address, or by telephone at (805) 644-1766. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

**Background Information**

U.S. Borax proposes to enlarge its open pit borate mining operation and expand its overburden disposal piles near the town of Boron in Kern County, California. This site is known to support a population of the threatened desert tortoise and may support populations of Mojave ground squirrel, American badger, Le Conte's thrasher, loggerhead shrike, burrowing owl, desert kit fox, greenest tiger beetle, Mojave spineflower, and sagebrush loeflingia, all Federal species of concern.

Federally listed, threatened, and endangered species are protected pursuant to section 9 of the Act against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act.

The Environmental Assessment considers the environmental consequences of four alternatives: the proposed action, no action, use of existing overburden pile areas, and

backfilling. The no action alternative was found to be economically infeasible because U.S. Borax would be required to cease operations before the existing borate ore body was fully removed. The use of existing overburden pile areas was found infeasible because it would result in overburden piles approximately 1,200 feet in elevation above the surrounding landscape and be wholly incompatible with the existing landscape. The backfilling alternative was found infeasible because mineable calcium borate ores underlie the sodium borate ores that are the current focus of mining operations. At this time it is not economically feasible to mine calcium borate ores; however, backfilling of the pit would prevent their later use should economic conditions change. The no action, use of existing overburden pile areas, and backfilling alternatives would result in the loss of significantly less habitat than the preferred alternative. However, none of the mitigation measures under the proposed alternative would occur, including protecting and providing a management endowment for approximately 2,274 acres of high quality creosote bush scrub habitat.

The proposed action would result in the loss of 1,525 acres of disturbed creosote bush scrub habitat and 415 acres of land heavily degraded by past mining activities. This action could directly and indirectly affect the species described above. The Service proposes to issue an incidental take permit to the applicant for the incidental take of desert tortoises, and for the incidental take of other covered species should such authorization be necessary (i.e., should unlisted covered species be listed as threatened or endangered in the future, or should take authorization for plants become necessary). In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the Habitat Conservation Plan. To accomplish this, all species covered in the Plan would be included in the incidental take permit on the condition that all permit issuance criteria are met and that the provisions of the Plan and Implementation Agreement are executed.

The proposed Federal action would authorize the incidental take of all desert tortoises within the project area. The Service anticipates that all Mojave ground squirrels, American badgers, burrowing owls, Le Conte's thrashers, loggerhead shrikes, greenest tiger beetles, and all individual Mojave spineflowers and sagebrush loeflingias

would be removed or displaced from the project area through implementation of this action. Because habitat loss associated with this action would occur in small increments over many years, individual Mojave ground squirrels, American badgers, burrowing owls, Le Conte's thrashers, and loggerhead shrikes may avoid injury or death by moving to appropriate habitats off-site.

To minimize the effects of the proposed project, the proponent would undertake the following measures: An education program would be presented to all personnel working in the project area; preconstruction surveys by qualified biologists would be conducted and listed species removed from harm's way; a berm would be built to prevent desert tortoises from re-entering the area; vehicular traffic would be restricted to designated routes and a 25-mile-per-hour speed limit enforced; trash would be contained; and no firearms or pets would be permitted on site.

To mitigate the effects of the proposed project, the applicant proposes habitat reclamation and compensation. Following completion of mining, the applicant would reclaim the overburden piles through appropriate grading and revegetation. To mitigate for remaining adverse effects, the proponent would protect approximately 2,274 acres of high quality creosote bush scrub habitat and provide a management endowment for that habitat.

This notice is provided pursuant to section 10(c) of the Endangered Species Act and the regulations of the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act and section 10(a)(1)(B) of the Endangered Species Act. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the covered species. The final permit decision will be made no sooner than 30 days from the date of this notice, notwithstanding a temporary moratorium on issuing permits with "No Surprises" assurances.

Dated: January 9, 1998.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*  
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