

Save San Onofre Coalition

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SAVE SAN ONOFRE COALITION FILES SUIT IN FEDERAL COURT CHARGING FLAWED FEDERAL TOLL ROAD ENVIRO REPORTS

Lawsuit Asserts that FWS Underestimated Impacts at TCA's Request

SAN DIEGO – Eleven national and California environmental organizations, all members of the Save San Onofre Coalition, filed a lawsuit today at the Federal District Court in San Diego. The lawsuit alleges that the U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service (NMFS) violated the Endangered Species Act when they determined that the Foothill-South Toll Road – a proposed new highway that will run through the heart of San Onofre State Beach and the largely unspoiled San Mateo Creek watershed – is not likely to jeopardize any endangered species. The suit claims that the Agencies' decisions are severely flawed and biased, and could open the door for an ecological disaster if the toll road were built.

The lawsuit charges that the agencies ignored or downplayed the threats the Toll Road poses to seven species, rather than relying on the best available science as required by law. The lawsuit also alleges that the FWS, in its Biological Opinion on the Toll Road, unlawfully relied upon the "voluntary, vague and untested mitigation measures" promised by the TCA, and that NMFS failed even to prepare a Biological Opinion on the adverse impacts of the Toll road on the endangered southern steelhead trout in San Mateo Creek – despite the substantial threats the Toll Road poses to that species.

The lawsuit notes that FWS, at Transportation Corridor Agency's (TCA) behest, selectively deleted scientifically damaging passages of the Agency's draft Biological Opinion.

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For example, in the draft Biological Opinion, FWS predicted significant adverse effects to the endangered arroyo toad, including the destruction of more than 520 acres of prime toad habitat. TCA objected to FWS's quantification of those impacts, and as a result the final Biological Opinion now states the Toll Road will only impact 101 acres of habitat – less than one fifth the amount of habitat destruction predicted in the draft.

“The toll road would permanently harm sensitive riparian habitat and numerous threatened and endangered species that live there,” stated Brian Segee, staff attorney with Defenders of Wildlife, and a plaintiff in the lawsuit. “The latest scientific evidence absolutely contradicts the agencies' conclusions, so this looks like yet another crucial environmental decision that has been made by politics rather than science.”

Due to severe harm to species, the FWS suggested that an alternative route may be more appropriate. Specifically, the FWS admitted that the proposed Toll Road would:

- Destroy more than 100 acres of upland habitat near two populations of the endangered arroyo toad and permanently isolate other habitat by creating insurmountable barriers to dispersal;
- Eliminate more than 300 acres of coastal sage scrub habitat occupied by up to 50 breeding pairs of the threatened California gnatcatcher;
- Destroy and fragment high quality habitat for one of the handful of remaining populations of the critically imperiled Pacific pocket mouse;
- Disturb almost 50 percent of aquatic habitat for the endangered tidewater goby in San Mateo and San Onofre Creeks;
- Destroy more than 22 acres of the remaining habitat for the endangered least Bell's vireo;
- Wipe out at least one of the limited number of remaining populations of the threatened thread-leaved brodiaea; and
- Pose substantial additional threats to these species, including increased fire risks, noise, dust and light impact from construction and operation of the road, and habitat fragmentation and mortality risks for species that may attempt to cross the road.

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“Rather than find that the Toll Road would jeopardize the continued existence of these threatened and endangered species, FWS relied on undeveloped and untested mitigation plans that the Agency had no scientific basis to conclude would provide the requisite protection,” added Damon Nagami, staff attorney with the Natural Resources Defense Council, also a plaintiff in the lawsuit. “The Biological Opinion neither detailed how these measures would work nor analyzed whether they would be likely to succeed in sufficiently mitigating the Toll Road’s adverse impacts.”

According to documents obtained by environmental groups through the Freedom of Information Act , the FWS also provided TCA, the project proponent, with an opportunity to review and comment on its draft Biological Opinion. TCA requested a number of specific excerpts be removed from the opinion pertaining to the Pacific pocket mouse and several other species, and FWS significantly revised the final opinion in response to these requests. TCA then used the final FWS Biological Opinion in its public relations materials to misleadingly proclaim that the Toll Road would not jeopardize any endangered species.

See attached document, “The Foothill South Toll Road: Endangered Species Act Consultation Process and TCA Undue Influence,” for additional examples of questionable changes to FWA’s draft and final Biological Opinions.

The plaintiffs in the suit are represented by attorneys from the plaintiff groups and the Washington D.C. public-interest law firm Meyer Glitzenstein & Crystal.

Background:

The proposed Toll Road, if built, would run through some of the last undeveloped areas in Southern California. This enormous project will involve extensive pre-construction investigations, including archeological surveys; massive constructive operations to create the road, including placing bridges over San Mateo Creek, San Onofre Creek and several other creeks with sensitive riparian areas; and perpetual maintenance of the new highway, including mowing, vegetation removal, herbicide applications to maintain fences, access roads, and safety devices such as extensive lighting.

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About The Save San Onofre Coalition:

The Save San Onofre Coalition is a diverse coalition of individuals and groups that includes four former state parks commissioners, local, regional, state and national environmental organizations, cities, counties and elected officials statewide. For more information about the Save San Onofre Coalition, visit www.savesanonofre.com.

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Editors Note: For a copy of the lawsuit or to interview Brian Segee or Damon Nagami, contact Matt Klink at (310) 283-6267.