



State of California • The Resources Agency

Arnold Schwarzenegger, Governor

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Ruth Coleman, Director

April 19, 2010

Bureau of Land Management  
Attn. CCMA RMP/EIS,  
Hollister Field Office  
20 Hamilton Court  
Hollister, CA 95023

**RE: CCMA Draft RMP/EIS**

Dear Bureau of Land Management,

The Off-Highway Motor Vehicle Recreation Division (Division) is pleased to provide the following comments on the Clear Creek Management Area Draft Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS). The Division hopes these comments assist the Bureau of Land Management (BLM) in fulfilling its mission "to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."

**Scope of the Draft RMP/EIS**

The Division is concerned by the basic scope of the Draft RMP/EIS. As stated in its Introduction, the Draft RMP/EIS is a "stand alone" document designed exclusively to guide the management of the Clear Creek Management Area (CCMA). Alternatively, the Hollister Field Office Resource Management Plan (Hollister RMP) (2007) provides for management by BLM's Hollister Field Office of the remaining areas beyond the bounds of CCMA. Thus, the BLM presents a mutually exclusive situation in which management actions proposed in the Draft RMP/EIS are limited solely to the CCMA, independent of the surrounding area.

Accordingly, the Division is concerned all relevant alternatives and other impacts are not thoroughly addressed within the Draft RMP/EIS. In particular, the Draft RMP/EIS offers no consideration to viable options or substitutes for the CCMA recreational opportunities. Instead, the establishment of new OHV recreation areas outside the CCMA is relegated to the Section 1.3.3 – "Issues Considered but Not Further Analyzed" (page 8). The subsequent suggestion in the Draft RMP/EIS (page 9) that the Hollister Field Office and OHMVR Division work together at a later date to find additional OHV recreation areas elsewhere in the Hollister Field Office, while a welcome proposal, is seemingly counter to the scope of the document and not a satisfactory solution. In fact, the Hollister RMP offers no OHV recreational opportunity on par with the CCMA. Indeed, few areas in the country offer a OHV experience like that provided at CCMA. The Division believes it essential for the BLM to examine every possibility before this important OHV recreation area is permanently lost.

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### **Regarding the "Purpose and Need" of the Draft RMP/EIS**

The BLM asserts the need for the CCMA RMP/EIS arises from numerous changes in circumstances since the current land use plan decisions were adopted. As evidence, the BLM suggests the existing RMP and subsequent amendments do not address current public health and safety and resources protection issues in CCMA. However, the list of factors that illustrate the "Purpose and Need" for the RMP appear disingenuous:

- First, the BLM claims the May 2008 CCMA Asbestos Exposure and Human Health Risk Assessment (Health Risk Assessment) prepared by the United States Environmental Protection Agency (EPA) "provides significant new information that must be incorporated into a land use plan to evaluate the public health risk associated with BLM land use authorizations."
- Second, the BLM asserts the "current management plan does not specifically address listing and/or additional habitat needs for species protected under the federal 1973 Endangered Species Act (ESA), including the California condor, red-legged frog, and tiger salamander."
- Lastly, the BLM suggests "changes in social and economic conditions in San Benito County, the San Joaquin Valley, and the entire State of California have led to increased demand for use of public lands for recreation and energy production as well as an increased awareness and social value placed on the cultural and natural resources in the Planning Area."

Of the three items listed above, the first (asbestos) is clearly the driving force of the entire document. However, the significance and accuracy of the information presented in the Health Risk Assessment is subject to debate. The second item is irrelevant to the Draft RMP/EIS. The California condor does not exist within the CCMA and is only found to be "potentially present within the CCMA" (pg. 174). The red-legged frog is present fifteen miles or more downstream from the CCMA and has never been recorded in or near the CCMA (pg. 174). Further, the tiger salamander has "never been recorded in the environs of CCMA" (pg. 174). The third item, changes in socio-economic conditions, is poorly supported. The purported increase in demand and social awareness are not demonstrated in the discussion of the affected environment.

### **Uncertainties in EPA report**

The BLM actions are prompted predominantly by the EPA's Health Risk Assessment. The BLM believes the Health Risk Assessment "provides significant new information that must be incorporated into a land use plan to evaluate the public health risk associated with BLM land use authorizations."

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However, the EPA report included substantial caveats regarding the accuracy and assumptions used to develop the report. The following items appear in the "Limitations of the Assessment":

- ". . . there are assumptions and variables that can cause the calculations to either overestimate or underestimate the actual risk."
- "The CCMA assessment may overestimate or underestimate risk if EPA's measurements of exposure and the assumptions of exposure frequency are either greater or less than actual conditions."
- "Additional uncertainty is introduced because both the IRIS and the OEHHA toxicity values for asbestos are based on epidemiological studies of work place exposures to intermittent high asbestos concentrations over extended periods. While the concentrations measured for activities at CCMA are significantly elevated, the exposure is infrequent and episodic."
- "Because there is no clear mode of action for asbestos-induced disease and no threshold for cancer health effects, using a direct time-weighted extrapolation from the longer, chronic occupational exposures to shorter-term, episodic exposures may underestimate or overestimate the risk."
- "The risks could be much lower because the exposures may be too infrequent or the total retained fiber burden too few to initiate the asbestos disease process."

Given the uncertain conclusions of the document, it seems inappropriate for BLM to rely on the document to guide substantial and controversial land management actions. Decisions based on such variable and imprecise studies should be cautiously and conservatively implemented, if at all. Instead, the preferred alternative reduces the acreage available within the Area of Critical Environmental Concern (ACEC) for OHV recreation to 1.5% of the area, defined as a "Scenic Route," and restricts use in the ACEC to single vehicle class during the day. Such a dramatic reduction of opportunity should only be recommended if the supporting documentation is considerably more definitive.

The Division believes serious questions have been raised about the Health Risk Assessment, such as identification and differentiation of chrysotile and amphibole asbestos, asbestos-related epidemiology, appropriateness of risk models, and activity based sampling methods. The Division contends further research and characterization of the potential hazard at the CCMA is warranted. Since the preferred alternative effectively closes the CCMA to OHV recreation, the Division finds it imperative the hazard risk be independently verified before a final decision is made.

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### **Waiver of Liability and Indemnification of Risk**

A waiver of liability has been consistently proposed as an option to allow continued recreational use of the CCMA. However, BLM dismisses the concept of a waiver for recreational users of CCMA in the discussion of Section 4.2.6.2 Mitigation (page 352). In the BLM's view, "developing a waiver of liability, or establishing indemnification of risk, would have no beneficial impacts on public health and safety because neither approach would actually reduce exposure to airborne asbestos or improve overall protection of human health and the environment."

The Division disagrees with this assertion and contends a waiver should be considered as a practical option to mitigate the concerns of the BLM. The prospect of a waiver of liability should give a reasonable individual cause to consider participating in an activity at that location. On an individual basis, potential exposure to airborne asbestos may be reduced or avoided should a person opt not to enter the CCMA due to the waiver and potential hazards identified therein.

The waiver discussion in the Draft RMP/EIS continues, ". . . the potential for waivers of liability or indemnification of risk as 'stand-alone' mitigation measures for human health and safety do not satisfy the purpose and need for the CCMA RMP/EIS."

This statement is contrary to the stated purpose of the Draft RMP/EIS, which is to "establish goals, objectives, and management actions for BLM-administered lands in CCMA that address current issues, knowledge, and conditions." Requiring a waiver is undeniably a management action within the purview of BLM, and there is no obligation that it be implemented on a "stand alone" basis. Furthermore, BLM finds the waiver of liability to be an acceptable tool when used in conjunction with other management circumstances in the Draft RMP/EIS, including the preferred alternative. For example, requiring ". . . signed waivers of liability to indemnify BLM against risk of tort claims associated with CCMA visitor use and exposure to airborne asbestos fibers" is presented in the Management Actions Common to Alternatives B through G (page 41). A similar statement also appears in the presentation of the preferred alternative (page 86) and in the discussion of mitigation measures (page 351).

The Draft RMP/EIS further states, the action of providing waivers of liability or indemnification of risk as "stand-alone" mitigation measures, "would likely have major long-term adverse impacts on human health and the environment due to the perception that exposure to airborne asbestos fibers above the acceptable risk range established under the EPA Superfund Act is permissible and authorized by the Federal government."

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This statement is entirely speculative in nature. The statement also contradicts Table 2.6-2, which presents a comparison of impacts to public health and safety and hazardous materials (page 100). Discussing HAZMAT Mitigation Measures, this table identifies "*moderate* (emphasis added) adverse effects from signed waivers of liability..." The justification for the different level of impact is unknown. Moreover, it is counterintuitive that a waiver disclosing potential risks would serve to lessen the public's perception of the risk.

**Alternative OHV Recreational Management Strategies Not Considered**

The EPA's Health Risk Assessment of CCMA demonstrated that risk regarding exposure to naturally occurring asbestos is present when different recreational activities are conducted at CCMA, including OHV recreation. The Health Risk Assessment did not evaluate how the risk might be lowered if mitigative management measures were implemented. Consequently, mitigative OHV management measures - short of eliminating OHV recreation at CCMA - were not truly given consideration from a risk analysis perspective. The Division believes there are many management strategies that could be implemented that could reduce asbestos exposure risk, such as seasonal operation of CCMA, trail re-routing and reducing trail widths, and limiting single-track trail use to motorcycles only. These and similar strategies should be evaluated from a health-based risk assessment perspective to determine if risk from potential asbestos exposure is reduced to a degree that is acceptable by BLM.

The Division is troubled by the ramifications of this proposed RMP/EIS and its adverse impacts to OHV recreation. As always, the Division is prepared to work closely with the BLM in developing alternatives which will lead to reopening the CCMA to continued OHV recreation.

Sincerely,



Daphne C. Greene  
Deputy Director  
OHMVR Division