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*protecting and restoring natural ecosystems and imperiled species through
science, education, policy, and environmental law
via electronic mail and hardcopy*

March 5, 2010

CCMA RMP/EIS Comments
Attention: Planning Coordinator
Bureau of Land Management
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RE: Comments on the Clear Creek Management Area Draft Resource Management Plan and Draft Environmental Impact Statement. 74 FR 63764.

Dear Planning Coordinator,

These comments on the Clear Creek Management Plan Draft Resource Management Plan and Draft Environmental Impact Statement (“DRMP/DEIS”) are submitted on behalf of the 240,000 staff, members and e-activists of the Center for Biological Diversity (hereinafter “Center”). The Center is a non-profit, public interest conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 200,000 members and online activists including people in San Benito County and surrounding counties adjacent to the Clear Creek area. In the past, our staff and members have visited the Clear Creek Management Area (CCMA) for wildflower viewing, photography and general hiking purposes.

In general, the Center is supportive of Alternative G, because of the benefits to the biological resources and public health. The current 30,000-acre closure that was implemented on May 1, 2008 to protect public health and safety was determined to be necessary at that time, and to our knowledge, nothing has changed on the ground regarding this issue. The CCMA Asbestos Exposure and Human Health Risk Assessment (2008) concludes that “the asbestos exposures that EPA measured at CCMA are high and the resulting health risks are of concern” (at pg ES-7) and that “Reducing exposure will reduce the risk of developing asbestos related cancers and debilitating and potentially fatal non-cancer disease” (at pg. ES-7). That BLM is putting forth multiple alternatives that would continue to endanger human life is unimaginable! In our review of the CCMA Asbestos Exposure and Human Health Risk Assessment, it does appear that limited non-motorized uses as presented in Alternative F would not endanger human health, so the Center is somewhat supportive of Alternative F, because of the benefits to the threatened, endangered and rare biological resources of the CCMA and the public health benefits, while still implementing BLM’s multiple use mandate. Clearly any motorized vehicle use including touring still endangers not only the motorized vehicle users, but the non-motorized users also

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using the site, from the soil disturbance. Therefore, we find the remainder of the alternatives unsupportable.

General Legal Requirements

In managing public lands and developing resource management plans, the Bureau of Land Management (hereinafter "BLM") must adhere to a number of important statutory requirements, including the following:

- The National Environmental Policy Act (hereinafter "NEPA") requires agency environmental impact statements (hereinafter "EIS") to contain a discussion and analysis of the direct, indirect and cumulative environmental impacts from the relevant projects or actions. 42 U.S.C. § 4332(C); 40 C.F.R. 1508.7. In addition, NEPA requires that EISs identify and discuss alternatives to the proposed action. 42 U.S.C. § 4332(C). NEPA also mandates, as essential to the fulfillment of the former two requirements, that EISs describe the existing environmental conditions in the affected area. 40 C.F.R. 1502.15.
- The Federal Land Policy and Management Act (hereinafter "FLPMA") requires that the BLM "take any action necessary to prevent unnecessary or undue degradation of the lands" and "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved." 43 U.S.C. §§ 1732(b), 1732(d)(2)(a).
- The Endangered Species Act (hereinafter "ESA") provides that each "Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior], insure that any" agency action "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of such species' critical habitat. 16 USC § 1536(a)(2).

General Comments

Instead of an actual draft management plan (and associated EIS), very little baseline conditions and management guidance are actually identified or evaluated in the DRMP/DEIS. The document fails to identify any qualitative or quantitative desired condition criteria for the resources, and instead reads primarily as a single issue off-road vehicle plan with five of seven alternatives incorporating ORV use, despite the fact that the CCMA Asbestos Exposure and Human Health Risk Assessment (Risk Assessment) indicates that all activities except day-use hiking significantly disturbed soils and increased the risk of airborne asbestos. In fact the Risk Assessment states that "Motorcycle riding, ATV riding, and SUV driving/riding had the highest exposure concentrations, in some cases exceeding even the U.S. Occupational Safety and Health Administration (OSHA) 30-minute Excursion Limit for asbestos. Only hiking was near ambient asbestos concentrations." (Risk Assessment at pg. ES-2).

While one of the goals of the management plan is to "Restore, maintain or improve ecological conditions, natural diversity, and associated watersheds of high value, high-risk, native plant communities and unique plant assemblages", the document fails to identify 1) which ecological conditions, natural diversity, communities and assemblages will actually be evaluated

(all of the 50 plant alliances? Wildlife habitat values?), 2) how they will be monitored (no methodologies or guidance is given), or 3) when and how often they will be monitored (with the exception of the *Camissonia benitensis* [CABE] monitoring plan which lays out monitoring protocols). Importantly criteria for the desired condition are not identified (including the CABE Compliance Monitoring & Adaptive Management Plan). While the DRMP/DEIS notes that the 1984 Hollister RMP provides goals and objectives, it also states that “the 1984 Hollister RMP and CCMA RMP Amendments (1986, 1999, 2006) lack detailed direction and are generally outdated” (DRMP/DEIS at pg. I). This DRMP/DEIS is the appropriate place to identify these essential metrics including the CABE Compliance Monitoring & Adaptive Management Plan. Triggers for action if monitoring indicates deterioration of the ecological conditions, natural diversity, watershed condition, native plant communities or unique plant assemblages are also not included. Monitoring strategies and triggers for action must be included in the DRMP/DEIS in order to be able to evaluate the conditions of the CCMA, detect change and implement strategies to properly address those changes including adaptive management strategies (which again are not addressed in the DRMP/DEIS). Because the DRMP/DEIS fails to include these important components, it currently fails to meet the legal requirements of FLPMA 43 U.S.C. §§ 1732(b), 1732(d)(2)(a).

The DRMP/DEIS lacks important and consequential consistency through out the document. For example, SSS-BC1 (at pg.55) is identified as “Maintain all known special status species habitat”, while SSS-BC1 (at pg. 439) is identified as “prohibiting collection of SSS”. These are two very different issues relating to special status species and the intent of this measure is not clarified elsewhere.

Biological Resources

Vegetation

The CCMA supports unique diversity in plant communities with fifty different plant alliances documented (DRMP/DEIS at pg.156). Because of the rare serpentine soils, a suite of rare plant species occur within the CCMA. In fact the CCMA is home to one federally threatened plant – the San Benito Evening primrose (*Camissonia benitensis*), twelve CNPS listed 1B plant species (List 1B plants are considered rare, threatened or endangered in California and elsewhere), and likely 18 CNPS list 4 species (List 4 are of limited distribution or infrequent throughout a broader area in California and merit monitoring) (DRMP/DEIS at pg.174-184). This recognized high botanical diversity is meritorious and the BLM is obligated to assure its persistence. While we unequivocally support the monitoring of *Camissonia benitensis* (CABE), the DRMP/DEIS fails to present any monitoring strategies for the rest of the rare plants and vegetation alliances. No desired condition criteria are proposed and no triggers for action included. Clearly these components are basic standards in all resource management plans, and need to be included here.

Wildlife

A large number of special status species occur or have potential to occur within the planning area and the BLM-administered lands therein, including federally listed species, state listed species and BLM sensitive species as listed in Tables 3.6-1 through 3.6-8 of the DRMP/DEIS. While the

DRMP/DEIS focuses on the known status of many game species, it gives short shrift to the status of non-game wildlife species in the CCMA including many of the special status wildlife species. As with all other species the BLM must act to minimize adverse impacts to special status species under FLPMA and to prevent undue degradation of habitat. 43 U.S.C. §§ 1732(b), 1732(d)(2)(a). Similarly, as with all other environmental impacts, the BLM must analyze and discuss the DRMP's effects on special status species to fulfill the requirements of NEPA. 42 U.S.C. 4332(C). In addition, however, the BLM has the even higher burden of insuring that the actions proposed in the DRMP are "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of such species' critical habitat under the ESA. 16 USC § 1536(a)(2). The DRMP/DEIS makes some effort to meet these legal requirements, but it fails in numerous respects.

In general, the management decisions in alternative F and G would lead to much greater protection and recovery of special status species than the decisions in any other alternative and the thus the BLM should adopt alternative F or G with some qualifications.

Some of the management actions are still not based on the most recent and best available science. For example SSS-BC4 (at pg. 55) states "Avoid disturbance, including road construction and recreation activities, within a 0.25-mile radius around nesting sites of the California condor, bald eagle, and prairie falcons". This generalized and inaccurate measure is flawed based on unique species specific requirements. It also leaves out golden eagles which are known to or are identified to have potential to occur in the project area (DRMP/DEIS at Table 3.6-7).

For example, the Recovery Plan for the California condor (USFWS 1996) specifically recommends "human disturbance should be restricted within 1.6 km (1 mi) of active nest sites". In addition, the DRMP/DEIS fails to address all of the conservation measures necessary to adequately protect species including the California condor. For example, the document fails to address other California condor conservation requirements including the recommendation for protection of roosting sites from the Recovery Plan "California condors apparently will tolerate more disturbance at a roost than at a nest. Roosting sites and nesting sites are susceptible to similar disturbance threats, and their preservation requires isolation from human intrusion". Despite the DRMP/DEIS acknowledgment that "California condors and bald eagles are expected to increase in frequency of sightings as their populations recover from historical declines" (DRMP/DEIS at pg. 187), appropriate conservation is not identified. Regardless of distance, a straightline view of disturbance affects raptors, and an effective approach to mitigate impacts of disturbance for golden eagles (and other raptors) involve calculation of viewsheds using a three-dimensional GIS tool and development of buffers based on line of site (Camp et al. 1997; Richardson and Miller 1997). The DRMP/DEIS must carefully re-evaluate (or in the above cases accurately evaluate) the proposed management actions for all of the rare species on the CCMA.

Another example is with regards to vernal pool and the rare species that inhabit them. The document makes reference to "A recovery plan, Vernal Pools of Northern California, is under development". (DRMP/DEIS at pg. 184). We bring to your attention the Vernal Pool Recovery Plan - Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon issued by the U.S. Fish and Wildlife Service in 2008 (available at

http://www.fws.gov/sacramento/es/recovery_plans/vp_recovery_plan_links.htm). The appropriate issues and data should be incorporated into the DRMP/DEIS.

While we have provided examples of some of the inadequacies in the DRMP/DEIS, most all of the biological resources identified in the document are not comprehensively addressed and fail to have clear guidance on desired condition criteria, monitoring protocols and triggers for adaptive management. This guidance is often species specific.

Potential Management Decisions

The Center supports the management decisions of alternative G and F over the other alternatives. It is impossible to “insure” the continued existence of a special status species by allowing harm to occur and then relying on *post hoc* mitigation measures to revive the species. 16 USC § 1536(a)(2). It is much more effective to prevent further harm to the species in the first place, a course of action that is much more congruent with the goals and requirements of the Endangered Species Act. 16 USC §§ 1531, 1536(a)(2).

Grazing

BLM’s proposed elimination of all grazing in alternative G is beneficial to resource conservation. Alternative F still includes grazing in non-serpentine riparian despite the fact that a significant amount of scientific literature has established the incompatibility of grazing of riparian areas in semi-arid and arid lands (Koppel et al. 2002) and especially in light of global climate change (Brown et al. 1997).

Off-Road Vehicles

As stated above, the use of vehicles in the CCMA is incompatible with public health concerns. Additionally, FLPMA requires that the BLM “take any action necessary to prevent unnecessary or undue degradation of the lands” it manages. 43 U.S.C. §§ 1732(b). FLPMA further requires the BLM to “give priority to the designation and protection of areas of critical environmental concern” when preparing land use plans. 43 U.S.C. §1712(c)(3). NEPA requires a full discussion and analysis of the direct, indirect and cumulative impacts of all proposed agency actions. 42 U.S.C. § 4332(C); 40 C.F.R. 1508.7. In addition, NEPA requires that EIS describe the existing environmental conditions in the affected area of the proposed action. 40 C.F.R. 1502.15.

Lands and Realty Management – Land Tenure

The Center generally opposes any land disposal and the DRMP/DEIS fails to clearly identify the biological resources on the proposed “3,300-acres available for disposal in the Tucker, San Benito River, and Condon zones” (DRMP/DEIS at pg. 127). In the past, essential conservation lands for rare species were “disposed” of by the BLM. A full inventory of the resources on any proposed disposal lands would need to occur. We do however support land acquisitions with high biologic, geologic or cultural resource values.

Air Resources


While we recognize the importance of the asbestos issue within the CCMA, there are other additional air quality issues associated with the DRMP/DEIR. Here, the BLM fails to meet its NEPA burden of discussing all environmental impacts of the DRMP. 42 U.S.C. § 4332(C); 40 C.F.R. 1508.7. First, it omits from the DRMP/DEIS any discussion or calculation of the greenhouse gas emissions from the activities on BLM-administered land within the planning area. Furthermore, the DRMP/DEIS fails to discuss the environmental impacts from the greenhouse gas emissions, most specifically climate change, that would occur under each RMP alternative. Lastly, the DRMP/DEIS fails to discuss in any meaningful way, the impact on both wildlife and human visitors of the massive amounts of PM 10, an estimated 1,700.5 tons per year, that is produced by ORV use, driving and mining.

The DRMP/DEIS should be revised to include a discussion of the current baseline greenhouse gas emissions from within the BLM-administered lands in the planning area. It should also be revised to discuss the environmental and health impacts from future emissions of both greenhouse gases and particulate matter that would result under the five alternatives, including global warming, asthma and others.

Conclusion

Based on the above issues, the DRMP/DEIS needs to be substantially improved to address all of the resources in the CCMA and provide a path forward to fulfill FLPMA's mandate of "take any action necessary to prevent unnecessary or undue degradation of the lands" and "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved." 43 U.S.C. §§ 1732(b), 1732(d)(2)(a). In light of the failure to address many of the biological and other resource issues in this DRMP/DEIS, we request a recirculated Draft Resource Management Plan and Environmental Impact Statement be issued that includes these issues. Thank you for the opportunity to provide comments on the DEIS. Please fully consider the points listed above. We are happy to discuss any questions, concerns, or responses you have in relation to our comments, or other creative ways to help BLM with this planning effort.

Sincerely



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cc: USFWS – Ventura Office
CDFG – Central Region

References

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