



April 12, 2010

CCMA RMP/EIS
Attention: Planning Coordinator
Bureau of Land Management
Hollister Field Office
20 Hamilton Court,
Hollister, CA 95023

<mailto:cahormp@ca.blm.gov>

Please accept these comments regarding the Draft Resource Management Plan and Environmental Impact Statement for the Bureau of Land Management's (BLM) Clear Creek Management Area (CCMA). Please incorporate these comments as part of the public record so the undersigned will retain legal standing for the California Association of 4 Wheel Drive Clubs, Inc., all individual and associate members, and member clubs.

We contend that the Proposed Action in the DRMP/EIS will serve to substantially close the entire recreating area of CCMA, along with the public highways offering access to and from CCMA, is irrational and arbitrary, and derived from questionable science. The Proposed Action serves only to deny access to that portion of the American public that enjoys motorized recreation, or uses motorized vehicles as a means to access other forms of activity, such as rock or mineral collecting, mining, hunting and residential access among many other uses.

We base our contention on the following issues:

1. Disregard for the standards set by the CEQ for the no-action alternative
2. Disregard for the public right to passage on R.S. 2477 roads within San Benito County

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3. No evidence of actual harm to resident and visitors for over a 50 year period of time
4. Misrepresentation of “typical” motorized recreation use scenarios
5. Information in document "outside the scope"
6. Non-compliance with 2001 BLM National Travel Management Direction
7. Latest and best science not used in the evaluation
8. Failure to disclose the indirect, long-term effect of the Proposed Action
9. Misuse of terminology in DRMP/EIS
10. Failure to consider cumulative effects of proposed action

Because of the above listed issues, the DRMP/EIS and the Proposed Action has no rational connection to the Purpose and Need as stated in the DRMP/EIS, and no connection to continuing the Bureau of Land Management's multiple use mandate in the Clear Creek Management Area.

In comparison, the BLM has undertaken actions in other areas of California that may have apparent health risks by using various mitigation measures, a method not proposed or seemingly considered for CCMA. Taken from a report prepared for the August 2009 meeting of the California State OHMVR Commission; *“The BLM has developed short and long term actions plans to address the health and safety risks.....Approximately 80 physical mine hazards were remediated and a BLM designated trail was re-routed to avoid mill tailings containing high levels of arsenic”*. This is an explanation of mitigation measures currently being used in the Rand Mountain area near Randsburg, California.

The BLM had taken appropriate action regarding a risk of arsenic contamination affecting 3,000 acres in the Randsburg area. The BLM concluded that needed action in this case included; *“These include fencing, warning signs, access controls, education and outreach, air monitoring....”*.

In this case, the BLM took action which included rerouting a BLM OHV designated trail, but in the Clear Creek Management area, they are no proposed plans for fencing, warning signs or education and outreach, etc. If it worked for the Ridgecrest area, why wouldn't this work for Clear Creek as well? By not offering or proposing ANY mitigation measures, including rerouting OHV routes or creating new OHV routes outside the BLM defined "Area of Critical Environmental Concern (ACEC), the BLM has abdicated it's mandate to provide a variety of uses to the public on lands under it's jurisdiction.

Relief we seek

We ask that the BLM revisit an obviously flawed document that has lead to obviously flawed conclusions. The BLM must return the 2008 study that has lead to the concusions presented in this DRMP/EIS to the EPA and demand accountability for the numerous mistakes and miscalucluations contained in the document. We also demand the removal of all concusions based on material that is outside the scope of the decision to be made, and irrelevant to the purpose and need as stated in the DRMP/EIS.

Tthe Hollister Field Office is offering only one option in this DRMP/EIS - closure of the CCMA to motorized recreation. We ask that CCMA be reopened immediately, and that the BLM appropriately manage any perceived risk through other mitigation techniques, warning signs, education and outreach, rerouting and creating new OHV trails. The BLM has an extensive amount of land outside of the ACEC, particularly in the Tucker Mountain area that could be developed for motorized recreation trails, but the Hollister Field Office has summarily dismissed this scenario.

Prepared on behalf of the Board of Directors

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Comment # 1

Per the CEQ Forty Questions, (CEQ 40 CFR 1502.14), a no-action alternative must contain the following: *“This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. Section 1502.14(c)”*.

There is little to nothing in this document that qualifies under a no-action alternative because every piece of evidence contained in the document is contaminated by the results of the 2008 EPA study and its conclusions. All alternatives in the document contain the assumption of risk implied in the EPA report. A true no-action alternative would not be prejudiced by questionable conclusions contained in the aforementioned report.

Please rewrite the document reflecting a true no-action alternative not prejudiced or biased against motorized access to the CCMA because of the 2008 EPA study.

Alternative A, represented in the document as the no-action alternative actually incorporates changes due to the assumption of risk. Therein lies the crux of the problem - there is no true no-action alternative, therefore the document does not comply with CEQ regulations. Please rewrite the document to show a true no-action alternative not tainted by the 2008 EPA study.

Comment #2

Per Congressionally enacted Revised Statute 2477, the public has a right of access of roads and highways to facilitate their right-of-way. This document presents various scenarios that would inhibit the right of the public to travel over previously designated public and county roads and highways, in opposition to all rights and privileges granted to members of the public. The BLM has no right to impede or restrict access over and or all the roads and highways mentioned in the DRMP/EIS, and the document must be rewritten to reflect this fact.

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Comment #3

In speaking before the OHMVR Commission on February 25, 2010, Rick Cooper, Field Manager of the BLM Hollister Field Office, presented testimony that no epidemiological studies exist or were conducted by the BLM or EPA in regard to the alleged health risk at the Clear Creek Management Area. And yet, the DRMP/EIS emphasizes over and over again the inordinate risk involved in recreating or even walking in the area of CCMA containing Serpentine rock, otherwise known as the Area of Critical Environmental Concern, or ACEC.

So the public is presented with a study strictly using hypothetical modeling to prove that a health risk exists, yet neither the BLM nor the EPA have pursued the next logical next step to find evidence for their conclusions. Under every statute of law, evidence is a primary need to establish and prove a legal case. But since neither agency pursued on-the-ground, concrete evidence of the health risk, we must conclude that no evidence actually exists that directly links recreating at the Clear Creek Management Area with any increased health risk for the over 50 years+ of recreation activity in the area.

The figure represented on page 15 of the document clearly states that a 1 in 10,000 defines the EPA acceptable range to a carcinogen. Using that analysis, a cancer cluster would be evident in the CCMA, especially due to the annual estimation of visitors to the CCMA in the table on page 135. With the number of visitors ranging from 28,000 to 50,000 estimated per year, certainly some small proportion of these visitors would fall ill, especially since this includes visits during the dry/moist season. Modeling shown in the report indicated that motorized recreation during the dry/moist period is just as harmful, allegedly, as motorized recreation during the wet season.

We have the following questions in regard to the health risk:

- What were the health results of continued OHV activity in Clear Creek between 2004 and 2008, during the time the EPA study was being conducted?

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- Grazing is still allowed currently, and will be allowed in areas surrounding the Serpentine rock deposit in the Proposed Action. Why isn't the health risk to the livestock investigated?

According to the risks outlined in the EPA 2008 study, windy days should be time in the ACEC when the health risk is greatest. Are masks being distributed to local residents on windy days, when the risk of inhaling the asbestos fibers would be likely? Have the local residents been asked to move away from the area?

The questions remain, because there is no evidence to support the conclusions as stated in the DRMP/EIS. Although information is given in the DRMP/EIS that dismisses the lack of epidemiological studies as irrelevant because “the local population is of insufficient size”, this is no more than an excuse to explain the absence of a critical piece of information.

We reject these supposed findings outright because they present no true information, only excuses why critical information is missing.

Unless and until epidemiological studies definitely prove a risk that is beyond a supposition, the Clear Creek Management Area must be reopened to motorized recreational use. Please strike from the document all reference to health risk until such time as the appropriate epidemiological studies are conducted and prove any other than the current evidence shows – that there is no risk for motorized recreation in the Clear Creek Management Area.

Comment #4

We contend that the typical activity as measured in the DRMP/EIS is actually atypical activity for the Clear Creek Management Area in regards to motorized recreation.

For many years motorcycle enthusiasts and 4WD enthusiasts have taken air samples as part

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of the regular activities during events. And yet these air samples have never indicated any health risk, motorized recreational activity was never stopped because of dangerous levels, nor were any closures issued because of evidence gathered during these activities. We would conclude that these air sample represent the true “typical” activity for motorcycle use in CCMA because these samples were gathered by the riders themselves .

Contrast the methodology during the EPA study and you will find evidence in the document of riders of unproven ability and experience riding, in an atypical manner either too closely to one another, or off designated trails, or in exclusively lower elevations. Also, is the question of the moisture in the soil present during the air sampling. Please reference the photo below as evidence showing a number of violations of typical riding behavior:

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To be true to a typical riding scenario, samples should be used for the basis of the DRMP/EIS taken only during the then-current open riding season, which did not include the dry months of the year. In fact, this methodology was not followed, and the conclusions that have been presented in the document do not represent “typical” riding activities.

The BLM's own Asbestos Health and Safety Plan prohibits motorcycle riding during the dry season in the ACEC, yet the photo very clearly shows the abundant dust on the road, leading to the conclusion that this photo was taken during a time of year prohibited to both members of the public and even BLM employees themselves from motorcycle riding.

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Also evident in the photo are blade marks made from 'dragging' the route prior to the EPA riders measuring the dust in the air . This is not typical of off-road recreation, which enjoys and treasures the idiosyncrasies of the bumps and dips present on an off-road trail. Therefore, this leads us to question why the road was dragged prior to the testing done by the EPA, as this would most assuredly lead to increased dust particles in the air, and alter the testing results.

Please remove all references to typical motorized recreation use until the time that the air samples collected during actual activity, by the motorcycle and 4WD enthusiasts themselves during typical activities at CCMA, are used and referenced.

Comment #5

Any and all conclusions based on data collected during the time of the dry season closure must be removed from the DRMP/EIS. The fact that data from the period of the dry season closure was used in the document is a fatal flaw for the document – because there is no alternative that proposes allowing riding during that time period.

Only data that is relevant to the alternatives presented in the DRMP/EIS can be included in the document, and all other data must be removed.

This includes any reference to dry season riding, all data collected during dry season riding, and all conclusions derived from data collected during this time. All data referred to in the document, and/or conclusions derived from such, are outside the scope of the document, i.e. data during a dry season closure (closure being the operative word).

Comment #6

Strictly looking at the evidence that present itself in the DRMP/EIS, it is clear that the Hollister Field Office has purposely excluded one specific form of motorized recreation; motorcycle riding. This is in opposition to the 2001 BLM National Travel Management

Direction because it restricts use by vehicle type.

The Purpose and Need clearly states on page 2 the need to; “*The CCMA RMP shall guide the management of the lands and resources administered by the Hollister Field Office in CCMA to achieve the following:.... 3) designate areas in CCMA for motorized, mechanized, and non-motorized/non-mechanized recreation opportunities;*”. But the preferred alternative does not allow for motorcycle riding at all. Therefore the BLM has not adhered to it's Purpose and Need, and the DRMP/EIS is fatally flawed, and a supplemental DRMP/EIS must be issued.

The DRMP/EIS provides little, if any, explanation why motorcycle riding has been excluded from the preferred alternative. Per the aforementioned 2001 direction, BLM policy does not allow for restriction by vehicle type, and the direction is clear in the non-discrimination between types of off-road vehicles, or uses for off-road vehicles (*36 CFR 8340.0-5*). The preferred alternative clearly excluding motorcycle riding represents a new policy direction that the Hollister Field Office is not entitled to establish.

Comment #7

The latest and best science is not used in the 2008 EPA report, therefore the BLM must not use that study as the basis of a management plan. Other scientific evidence , by the BLM's own admission, was not used or considered by the BLM.

All scientific conclusions are subject to peer review, and yet the BLM took this EPA study as outright fact, without conducting due diligence. Progressing from the fact that the best possible science was not used, is that fact that the DRMP/EIS was developed with alternatives that are unfairly restricted, contrary to CEQ regulations. From one misstep to another, this BLM prepared document represented a series off-ill-conceived calculates in an attempt to conduct a true scientific analysis.

This is in direct opposition to the Data Quality Act, and the BLM's own internal guidelines to adhere to that Congressionally passed legislation. Please remand this document, and redo the RMP to include both the best possible science, and comply with all aspects of the Data

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Quality Act.

Comment # 8

The DRMP/EIS fails to evaluate the need for motorized recreation counter to visitor needs. In the Purpose and Need of the DRMP/EIS clearly states; “*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.*”, but then reversed the need indicated in this sentence to present a preferred alternative that does not correspond to the “*...increased demand for use of public lands for recreation...*”.

It then follows, that the preferred alternative does not adhere to the Purpose and Need as stated in the DRMP/EIS, and therefore should not be designated as the “Preferred Alternative” since it decreases access for public lands for recreation.

Public scoping information is also clearly listed in the document, and indicates a very clear need for increased motorized recreation opportunities. So this document does not flow from scoping.

The Social and Economic meeting held on February 22, 2010 in Hollister clearly indicated the need from the local areas greatly affected by the closure for a reopening of the Clear Creek Management Area.

Comment #9

Much of the terminology used in the document is mistaken and inappropriate. The Purpose and Need of the document, which should represent a clear plan of what the agency hopes to accomplish, is misleading in this DRMP/EIS. Quoting from the document, the purpose is to: “*1) Minimize Asbestos exposure 2) minimize asbestos emissions....*”.

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No less than the United States Geological Survey defines asbestos as; ... *“Asbestos is a commercial-industrial term with a long history, and is not a mineralogical definition”*. As the discussion in this document does not refer to an industrial setting, but rather a natural setting, all references to “asbestos” in this article must be removed and replaced with more accurate terminology. The discussion at the forefront for this document is Serpentine rock, which contains the mineral chrysotile.

Comment #10

Cumulative effects not evaluated. Any or all of the effects of closing the Clear Creek Management Area are not evaluated by the DRMP/EIS. Besides the economic effects on local businesses in the affected areas, including Coalinga, King City and Hollister, there are the effects of travel for recreational opportunities to other areas, and impacts their facilities, whether it be State and County owned, such as the Hollister Hills SVRA, or Metcalf Motorcycle Park in Santa Clara County.

It is a well-known axiom that every action has an equal and opposite reaction. The reaction to the closure of Clear Creek Management Area has to be evaluated in order for this DRMP/EIS to be compliant with CEQ regulations.