

Substantive comments submitted by Troy Collins, March 3, 2010 in response to
U.S. Department of the Interior, Bureau of Land Management, Hollister Field Office document titled
Draft Clear Creek Management Area Resource Management Plan & Environmental Impact Statement dated November 2009.

**Substantive Comments
in Response to the

Bureau of Land Management
Clear Creek Management Area
Draft Resource Management Plan
&
Draft Environmental Impact Statement**

Released November 2009

These Comments are Submitted by

Troy V. Collins

14 Highlands Ct. Belmont, CA 94002

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
HOLLISTER FIELD OFFICE
10 MAR -4 PM 6:14

**Substantive comments submitted by Troy Collins, March 3, 2010 in response to
U.S. Department of the Interior, Bureau of Land Management, Hollister Field Office document titled
Draft Clear Creek Management Area Resource Management Plan & Environmental Impact Statement dated November 2009.**

**Submitted by: Troy Collins, Timekeepers MC
14 Highlands Ct. Belmont, CA 94002**

The Respondant: Troy Collins

I am an active outdoors person with a family of 3 young boys who engage in outdoor activities regularly. I have been visiting the Clear Creek Management area for the past 10 years quite often taking my family there on camping excursions.

A friend and I had started mining various rocks in 2007 and shortly after filed a mining claim, which I believe it our right to continue to use.

In addition to other outdoor activities such as hiking, fishing, and rock collecting, my family is engaged in recreational motorcycle trail riding. I have used the trails at clear creek for ten years now and profoundly effected by this closure.

Due to this closure, I believe my rights are significantly impacted and I will be one of many to fight for my legal use to mine my claim and fight for the right to use the lands in the most logical way...which is to continue to allow OHV use in the CCMA.

Comment 1

I obtained copies of the *Clear Creek Management Area Draft Resource Management Plan and Draft Environmental Impact Statement* by downloading a version from the Agency's website. The document contains 735 pages total, 690 numbered pages, and contains 260,000 words. The printed version weighs 1.8 kilograms (4 pound) and is 3.8 centimeters (1.5 inches) thick. The highly technical content is difficult to read, evidenced, in part, by the fact that the Agency's team of professionals took 18 months to prepare.

If a team of professionals takes 18 months to create a document, how does the agency expect an individual to reply to them within 90 days? They don't. It is my belief that they have "cleverly" made it as inconvenient as possible for the public to make a response by making it overly complicated and playing tricks with their timing of it's release. I have conversed with many other people who are also reviewing the document, and there is a clear and overwhelming consensus among the involved public that the review period is entirely too brief.

I have requested an extension of time from the Agency, but such requests have fallen of death ears and have been denied. Thus, the 884 substantive comments contained in this submittal, although many, are far short of the review and comments that I wish to submit, but must settle for, because I am seriously constrained by the allotted review period, which is far too short.

Comment 2

Various parts of the Agency's 2009 *Clear Creek Management Area Draft Resource Management Plan & Draft Environmental Impact Statement* propose to decommission or vacate public highways and to otherwise impair public use of historically established road and ways within the subject area. Schemes put forth by the Agency include charging private property owners fees for right-of-way access to their property, prohibiting access of their property to limited days, and dictating terms of use. By proposing such schemes, the Agency ignores the people's inalienable rights that are protected by the United State Constitution, California Constitution, California State law, Federal law, and/or Presidential authority affixed with the original land patents, and possibly even rights protected by the *Treaty of Guadalupe Hidalgo*. All of the main arterial highways passing over the subject public lands were clearly established before Congressional passage to the Federal Land Policy Management Act of 1976, which repealed Federal Revised Statute 2477. Many of these highways were, in fact, established during the prehistoric era and continued in use during the Spanish and Mexican Periods, were protection of the Treaty of Guadalupe Hidalgo and later perfected under Revised Statute 2477 and the California *Act Granting to Roads and Highways a Right of Way over the Public Lands of this State* (California 1866:855).

Revised Statutes 2477 states as follows:

Sec. 2477. The right of way for construction of highways over public lands, not reserved for public uses, is hereby granted. (U.S. 1875:456.)

An early California legal definition for the term highway clearly included a broader interpretation than might be considered today. The 1911 Highway Code define Highway as follows:

§ 2618. In all counties of this State public highways are roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such in actions for the partition of real property.

The Act Granting to Roads and Highways a Right of Way over the Public Lands of this State, approved by the sixteenth session of the California Legislature, states:

Section 1. Whenever any corporation, company or individual shall, in accordance with the general laws of this State, lay out and construct any road or highway over any unoccupied public lands of this State, or over any lands that the State by donation of Congress, otherwise, may hereafter acquire, such corporation, company or individual, and their respective assigns, are hereby granted the right of way for such roads or highways over such public lands. This act shall apply to roads heretofore as well as hereafter laid out and constructed. (Approved April 2, 1866. Statutes 1865-66:855.)

The United States Constitution, ninth and tenth amendments provide addition explanation regarding the rights and powers of the Unites States, the State, and the people:

Based upon historic documentation, Table 3 on page 6 and Table 4 on page 11 tabulate partial lists of historically established public highways, roads, ways, and rights of ways that were established and granted by laws, treaties, rights, and court decisions that supersede the Agency's authority to grant other right of way. The Agency lacks authority to convert preexisting rights into privileges.

Comment 3:

The Agency has very failed to articulate the purpose and need of the proposed action. This section of the document, which should address the purpose and need for the action, instead describes the "Purpose and Need for the CCMA Resource Management Plan" (see section heading). It is unnecessary for the Agency to describe a purpose and need for documenting resource management plan or an environmental impact statement for the proposed action because that purpose and need for such documentation is clearly defined by the *National Environmental Policy Act* (NEPA), and by regulation which stipulates:

40 C.F.R. § 1502.13 Purpose and need.-The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Even the BLM's *National Environmental Policy Act Handbook H-1790-1* cautions against describing the purpose and need for the document (see bottom of page 35):

The purpose and need statement should explain why the BLM is proposing action.

Note that you must describe the purpose and need for the action, not the purpose and need for the document.

The fact that this critical section of the *Clear Creek Management Area Draft Resource Management Plan Draft Environmental Impact Statement* (2009) describes the document, and not the action, is self-evident by use of the following phrases within the section:

- The need to develop the CCMA RMP arises from ...
- ... the need for preparation of an updated management plan:
- The purpose of the CCMA RMP is to ...
- The CCMA RMP shall guide ...
- This planning effort is intended ...

As this section clearly states, the "Purpose and Need for the CCMA Resource Management Plan" is to initiate a "planning effort" for which the BLM "needs to develop the CCMA RMP." This purpose and need section has absolutely nothing to do with any initiating NEPA action, which remains absent from the document.

In the absence of a required purpose and need statement, the entire document is mute, without legal standing, and the initiating action is *void ab initio*.

Comment 4

The Agency erroneously asserts that EPA's report titled, *Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment* (EPA 2008) mandates "significant new information that must be incorporated into a land use plan." However, the EPA report asserts no such action or requirement that it "*must* be incorporated into a land use plan," nor does the EPA report contain any statement that could be misinterpreted to imply such action or requirement. The Agency's assumption of such mandate is arbitrary and capricious in that it asserts a willful and unreasonable action that disregards the facts.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement (40 C.F.R. § 1502.24).

The Agency must retract its erroneous assertion that information from the EPA report (2009) must be incorporated into a land use plan. The Agency must also delete such erroneous assertions from the purpose and need statement. In the absence of an mandated requirement, the purpose and need statement is erroneous, the entire document is null, without legal standing, and the initiating action is *void*. Therefore, the Agency is required to reassess the entire action. The Agency must rewrite the subject document to remove the discrepant issue from the document. The original discrepancy must not be included or propagated in the final resource management plan, the final environmental impact study, or the record of decision. The final documentation should include corrected recommendations.

Comment 5:

The Agency's BLM (2009) *Clear Creek Management Area Draft Resource Management Plan Draft Environmental Impact Statement* places significant emphasis on the EPA's 2008 report titled, *Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment*. Throughout the document, and including the Purpose and Need statement and the list of Major Planning Issues, the Agency relies heavily upon the EPA's 2008 report titled, *Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment*, to the exclusion of any opposing or diverse scientific opinion.

40 C.F.R. § 1502.24 Methodology and scientific accuracy. -- Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action (40 C.F.R. § 1502.9).

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking (40 C.F.R. § 1502.22).

Although the Agency may exercise liberty in selecting which scientific authority or opinion upon which they wish to base their final determination, the Agency is obligated to exhibit professional and scientific integrity during the discussion and analysis in the environmental impact statement. However, the Agency has ignored any and all scientific research and opinion contrary to the EPA's 2008 report, thus creating an illusion of scientific consensus regarding human health risk associated with asbestos, and specifically with the chrysotile mineral natural to the serpentine deposit found within the subject area. There is a diversity of scientific opinion regarding the lack chrysotile etiology to which the public is entitled to know about, and which should be considered by the Deciding Officer. Omission of diverse and credible scientific opinion sways, and even biases, the scope of alternative presented to the Deciding Officer, and thereby impairs the Deciding Officer's ability to fairly, reasonably and objectively select an appropriate alternative.

However, the Agency has purposely chosen to conceal the diversity of scientific opinion by excluding it from the draft resource management plan and the draft environmental impact statement. This accusation is directed because this author provided such references and copy during the public scoping comment period and the Agency chose to exclude or otherwise ignore that information. Therefore, the Agency's continued omission is arbitrary and capricious in that it asserts a willful and unreasonable action that disregards the facts.

In the interest of professional and scientific integrity, and in the interest of serving public good, a synthesis of some of those diverse scientific opinions are listed below:

As predicted by the recent biopersistence studies on chrysotile, this study clearly shows that at an exposure concentration 5000 times greater than the U.S. threshold limit value of 0.1 f/cm³ chrysotile produces no significant pathological response in a subchronic inhalation toxicology study.

David M. Bernstein, Rick Rogers, Paul Smith, Jörg Chevalier, 2006, "The Toxicological Response of Brazilian Chrysotile Asbestos: A Multidose Subchronic 90-Day Inhalation Toxicology Study with 92-Day Recovery to Assess Cellular and Pathological Response," *Inhalation Toxicology*, 18:313.

(Comment 5 Continued)

Calidria chrysotile cleared from the lung with a half-time of 0.3 days, 7 hours, which is faster than any other commercial mineral fiber.

... ..

These findings provide an important basis for substantiating both kinetically and pathologically the differences between chrysotile and the amphibole tremolite. This has been demonstrated for three different chrysotile samples from Canada, the United States, and Brazil. As Calidria chrysotile has been certified to have no tremolite fiber, the results of the current study together with the results from toxicological and epidemiological studies indicate that this fiber is not associated with lung disease.

David M. Bernstein, Jörg Chevalier, Paul Smith, 2005, "Comparison of Calidria Chrysotile Asbestos to Pure Tremolite: Final Results of the Inhalation Biopersistence and Histopathology Examination Following Short-Term Exposure," *Inhalation Toxicology*, 17:427.

No treatment-related lesions were observed in 9 monkeys maintained for 11.5 years following an 18-month inhalation exposure to short (<5 μ m long) chrysotile asbestos at a concentration level of 1.0 mg/m³.

Lloyd E. Stettler, Douglas D. Sharpnack, Edward F. Krieg, 2008, "Chronic Inhalation of Short Asbestos: Lung Fiber Burdens and Histopathology for Monkeys Maintained for 11.5 Years after Exposure," *Inhalation Toxicology*, 20:72.

Epidemiological studies investigating mesothelioma risk from exposures of cohort members to chrysotile asbestos fibers not known to be contaminated with amphiboles do not justify a conclusion of causality at this time. Whenever mesothelioma cases have been observed in cohort studies, the presence of amphiboles has not been ruled out.

Charles M. Yarbrough, 2006, "Chrysotile as a Cause of Mesothelioma: An Assessment Based on Epidemiology," *Critical Reviews in Toxicology*, 36:181.

The Agency must exercise professional and scientific integrity and serve the public interest by offering an honest review of the various credible peer-reviewed scientific opinions regarding potential health risk, or lack of health risk, associated with possible inhalation of chrysotile mineral which is natural to the serpentine deposit within the subject area. The Agency must rewrite the draft resource management plan and draft environmental statement to explore the diversity of credible scientific opinion regarding the lack of chrysotile etiology so that it can be balanced against the EPA opinion expressed in their report. Even though they may conflict with the EPA report, the Agency must include references to these credible scientific opinions in the final resource management plan, the final environmental impact study, or the record of decision.

Various US Agencies have concluded that the New Idria deposit contains exclusively chrysotile. The Agency for Toxic Substances Disease Registry (ATSDR) has said that "only chrysotile is of importance to the Atlas and the JM Coalinga mill site". Woodward Clyde Consultants under contract to EPA Region IX prepared an inventory of potential asbestos sources in the New Idria Coalinga Study Region for the Atlas and the Coalinga Superfund Sites (US EPA Contract: 68-01-6939; Doc. No. 239-RI1-RT-EYJX: 15 September 1987, Appendix A) and stated: "Chrysotile asbestos is the only asbestos mineral found in the (New Idria) region."

(Comment 5 Continued)

E.B. Ilgren, 2004, "Coalinga Chrysotile: A Short Fibre, Amphibole Free, Chrysotile: Part V - Lack of Amphibole Asbestos Contamination," *Indoor Built Environment*, 13:325.

We found no measurable excess risk of death due to lung cancer among women in two chrysotile-asbestos-mining regions. The EPA's model overestimated the risk of asbestos induced lung cancer by at least a factor of 10.

Michel Camus, Jack Siemiatycki, Bette Meek, 1998, "Nonoccupational Exposure to Chrysotile Asbestos and the Risk of Lung Cancer," *The New England Journal of Medicine*, 338(22):1565.

In contrast to amphibole asbestos, chrysotile asbestos fails to accumulate in human lungs.

Churg A and DePaoli L., 1988, "Clearance of chrysotile asbestos from human lung," *Experimental Lung Research*, 14(5).

Advances in risk assessment methodology and analytical techniques, together with reevaluation of historical data, reveal that the current Environmental Protection Agency (EPA) approach for risk assessment of asbestosis is not in step with current scientific consensus, particularly for chrysotile fibers.

ACSH (2007) "Asbestos Exposure: How Risky is it?," Ruth Kava, coordinator, American Council on Science and Health, New York, NY. P. 4.

Comment 6:

The Agency failed to include the "date by which comments must be received" (40 C.F.R. § 1502.11) and instead substituted the procedure for calculating the date (40 C.F.R. § 1506.10) for the comment period. However, the regulation clearly does not intend for a period to be specified as a substitution for a specific date as indicated for the regulation:

40 C.F.R. § 1502.11(f) - The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

Failure to provide a specific date, as required by regulation, confounds the entire comment period, and since no other dates appear on the cover sheet, the public is left to believe that the comment period is open-ended. Had the Agency included a date on the cover sheet then public would know upon what day, month and year that the comment period ends, or if the Agency had at least included a release date on the cover sheet, then the public might have been able to calculate when the comment period ends based upon an issuance date. While the latter would still fail to comply with regulation, it might have, at least, provided a discussion point from which to measure the 90-day period. However, the Agency offered no reference and no date, hence the public cannot know upon which date or day, month or year upon which the comment period ends.

The agency must rewrite the document with a date by when the public written comments must be received.

Comment 7

The Environmental Study for Clear Creek Management Area failed to take into account the many studies showing Chrysotile should not be grouped in with other types of asbestos fibers when looking at potential carcinogenic properties.

Experts on the subject in more recent studies have shown that the short fibers of Chrysotile do not have the same harmful effect as other long fibered asbestos.

There have NEVER been any cases shown, not here in the CCMA or anywhere else for that matter where there have been cases of Mesothelioma or any other harmful disease shown to be caused by Chrysotile.

For this reason alone... the lack of evidence. CCMA should be re-opened.

Troy Collins

--	--

Comment 8

The DEIS does not contain the Cumulative Effects of the impact on other local OHV recreation. This must be added to the DEIS with supporting documentation.

The impact on external businesses has not been taken into impact. A study of local businesses in Hollister would show that many gas stations, restaurants, motorcycle stores as well as grocery stores and other family businesses have been severely impacted.

The DEIS does not take into account all of the "impact" that has been made from this temporary closure.

Troy Collins

Comment 9

The Government should not be in the business of determining what is good for us. The last time I checked this was the land of the free. The United States was founded on principles of freedom of choice. If I choose to expose myself to potentially harmful conditions, I should have the right to do so.

If the government had the authority to enforce laws based on protecting us, Automobiles would be outlawed, riding on an airplane would be illegal and they should close all of the beaches in California. The risk of being attacked by a shark far exceeds the chances of harm from the dust at clear creek. Further, the conditions of the water after runoff from rain are harmful as well. Yet I can choose to surf where and when I want.

This is not an issue of whether there is harmful asbestos or not, it is an issue of freedoms.

Troy Collins

Comment 10

OSHA standards allow the rangers to work in the CCMA, however you use the EPA study to say it is "too dangerous" for recreational use. Let's explore this a little bit.

Levels of asbestos, (as you call the Chrysotile) are safe enough by OSHA standards to work their 8 hours per day 5 days per week but not safe enough to ride there for say 4-6 hours one day or two days per week? This is ridiculous. If OSHA standards are applied to employees of the Hollister Field office and CCMA, then why use a different standard for recreational use which is clearly less?

Troy Collins

Comment 11

The BLM has offered only one Alternative (D) proposing new single-track trails. However the BLM did not choose this alternative and needs to provide the reason why.

Single track trails would be the least harmful as far as producing dust, and the more single track there is, the less people would be riding the same trail at the same time, thus removing some of the risk associated with inhaling dust from a previous rider.

Furthermore, the sampling of the air quality was flawed as it was not properly documented and it was broadly applied.

The speed averages on fire roads could very likely be 20-30 mph but as an avid Enduro rider I know that the speed averages of tight single track trails are most often below 15 mph. 10-12 mph is very common. Less dust is stirred up on single track than on fire roads and wider trails. Therefore the solution is more single track not less.

Troy Collins

--	--

Comment 12

The studies used to justify the closure of Clear Creek Management Area are based on 40 hour work week occupational exposure to asbestos. The visitors at CCMA are recreational users with possible exposure of only a couple of hours to a couple of days at a time. The BLM needs to consider the vastly lesser exposure of recreational visitors compared to the studies daily workplace exposure.

Furthermore

Troy Collins

**Substantive comments submitted by Troy Collins, March 3, 2010 in response to
U.S. Department of the Interior, Bureau of Land Management, Hollister Field Office document titled
Draft Clear Creek Management Area Resource Management Plan & Environmental Impact Statement dated November 2009.**

--	--

Comment 13

There is additional BLM land adjacent to the CCMA that could be opened for OHV recreation. Considering the drastic measures the DEIS proposes this possibility must be considered and added to the DEIS.

--	--

Comment 14:

The BLM used an EPA report based mostly on theoretical analysis of potential asbestos exposure hazards. There have been no documented cases of lung cancer or any other asbestos related health problems related to recreational exposure at Clear Creek. The BLM should not cite reports which are not supported by actual health cases at Clear Creek.

There appear to be no documented cases of BLM employees diagnosed with cancer due to exposure at CCMA to the Chrysotile form of asbestos. These employees spend far more time in the area than recreational visitors, so if the employees are not experiencing related asbestos health problems then there must not be any real health risk.

Troy Collins

--	--

Comment 15

The study from the EPA did not document the actual trails and geography covered; only general area. This should nullify the entire study. It appears that most of the samples were taken from dusty fire road and well known industrial mining areas and places where buildings were that contain human made asbestos.

Further, IF Chrysotile is harmful, (to which I believe there to be no evidence) it would be more beneficial to close down traffic on the dusty fire roads and wide trails versus single tracks suited more for motorcycles. Further, offering options that disallow motorcycles but allow 4 wheel drive vehicles, car traffic, etc, are exactly opposite of what the data would tell us. The dust created by two wheel vehicles (motorcycles) is proven to be less than that that comes from quads and 4 wheel vehicles.

You have no proposals that make sense other than to leave the area as it was prior to the closure and to that effect, even creating MORE trails would reduce dust inhalation as there would be room for more people to ride away from the dust created by riders in front.

All of this is irrelevant as there is no proof that Chrysotile even causes harm but if you continue to take that as fact, MORE TRAILS, not less, Single-Track, not wide roads and two wheel vehicles not four makes the most logical sense.

**Substantive comments submitted by Troy Collins, March 3, 2010 in response to
U.S. Department of the Interior, Bureau of Land Management, Hollister Field Office document titled
Draft Clear Creek Management Area Resource Management Plan & Environmental Impact Statement dated November 2009.**

--	--

Comment 16:

The EPA report is flawed and should not be relied upon for the agency's decision to enact a closure of the CCMA to all public use.

Troy Collins

--	--

Comment 17

Coming from the Freedom of Information Act, emails between Rick Cooper and the EPA were discovered that show that there is more to this closure: The original report had language to the effect that "This uncertainty could mean that the actual risks could be much lower than those estimated in the CCMA assessment and perhaps zero."

The final EPA report (the version we have) reads: "This uncertainty could mean that the actual risks could be much lower than those estimated in the CCMA assessment," due to Rick Cooper's request to remove the statement, "and perhaps Zero."

Mr. Cooper is not an expert on Chrysotile or Asbestos and by leading the paragraph not only illegitimizes the entire study, but borders on illegality.

You cannot fabricate reports so that they say what you want them to. You must follow the evidence, and there is none.

Troy Collins

Comment 18

In the alternatives, only the ones that would allow OHV use in the CCMA call out for user fees. This is discriminatory double taxation. The DEIS must be changed to either eliminate all user fees or apply them to all users.

Comment 19:

The EPA's risk assessment report was the main trigger for the development of the CCMA EIS. The risk assessment did not adhere to any of the riding tips referenced on the Hollister BLM website as shown below. This non-adherence fatally flawed the EPA's report.

The following is taken directly from the Hollister BLM's website regarding recreation at CCMA.

1. Avoid areas where it is dusty or windy.
2. If riding on OHV in a group, spread out along the trail, and don't ride in another rider's dust.

The following is taken directly from the EPA's Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment dated May 2008.

Motorcycle Riding: "Motocross" type bikes with rock and hand guards were used. A group of 2-3 riders wore personal air samplers while riding in single file along a specified route. The distance between riders varied depending on visibility, terrain, and safety considerations, with the ultimate objective to realistically simulate the behavior of recreational riders. **The second and third trailing riders rode in the dust cloud of the lead rider**, to the extent safe and practical. The average speed was approximately 18 mph, although this speed varied considerably due to rough terrain, which included serpentine barrens, stream crossings, steep hills, flat roads, and gullies. (Page B-1) (Bolded for clarity)

ATV (All Terrain Vehicle): Two to three 4-wheel-drive ATVs (also referred to as "quads") were used. The vehicles were driven in single file on approximately 15-20 mile loops at an average speed of about 15-20 mph. The distance between riders was based on terrain, visibility, and safety considerations. **The trailing rider(s) remained in the dust cloud of the leading rider**, to the extent safe and practical. (Page B-2) (Bolded for clarity)

CEQ regulations emphasize interagency **cooperation** before an environmental impact statement is prepared. The regulations also emphasize cooperative **consultation** among agencies. The above paragraphs show a serious omission of cooperation and consultation between the BLM and the EPA regarding the recommended riding habits of OHV users at CCMA. The EPA failed to adhere to the BLM's own recommendations for dispersed group OHV riding. This non-adherence would unquestionably lead to elevated fiber counts in the EPA's risk assessment for trailing riders.

Recommendation

The EPA's risk assessment has not been conducted with proper cooperation and consultation with the BLM. The EPA's risk assessment needs to be discarded/voided.

Troy Collins

Comment 20:

The statement, "serpentine soils high in asbestos fibers within the CCMA" is erroneous because there is no commercial asbestos product found within the CCMA. Using the word "asbestos" is confusing because it implies that the subject Serpentine ACEC contains a large volume of all of the asbestos mineral, which is erroneous. The subject Serpentine ACEC is known for its naturally occurring chrysotile deposit, and is known to be free of natural amphibole asbestos fiber. The word "asbestos" is being misused as a substitute term when the reference to a specific mineral is more appropriate and technically correct. According to the United States Geological Survey, "Asbestos is a generic name given to six fibrous minerals that have been used in commercial products." The definition is expanded further in the USGS Open-File Report 02-149 as, "These fibers belong to two mineral groups: serpentines and amphiboles. The serpentine group contains a single asbestiform variety: chrysotile. There are five asbestiform varieties of amphiboles: anthophyllite asbestos, grunerite asbestos (amosite), riebeckite asbestos (crocidolite), tremolite asbestos, and actinolite asbestos." (Virta 2002:5). The EPA asbestos risk assessment is based on 1986 data (EPA 1986) and fails to consider the current EPA opinion which admits that chrysotile is much less potent (EPA 2008), and may, in fact, not be a human health risk.

The Agency must not imply that the Serpentine ACEC contains a large volume of the asbestos mineral spectrum. Solve this discrepancy by replacing the generic term "asbestos" with the technically accurate, mineral specific, term "chrysotile." The Agency must rewrite the subject document to remove the discrepant issue from the document. The original discrepancy must not be included or propagated in the final resource management plan, the final environmental impact study, or the record of decision. The final documentation should include corrected recommendations.

Comment 22:

Using the word "asbestos" is confusing because it implies that the subject Serpentine ACEC contains a large volume of all of the asbestos mineral, which is erroneous. The subject Serpentine ACEC is known for its naturally occurring chrysotile deposit, and is known to be free of natural amphibole asbestos fiber. The word "asbestos" is being misused as a substitute term when the reference to a specific mineral is more appropriate and technically correct. According to the United States Geological Survey, "Asbestos is a generic name given to six fibrous minerals that have been used in commercial products." The definition is expanded further in the USGS Open-File Report 02-149 as, "These fibers belong to two mineral groups: serpentines and amphiboles. The serpentine group contains a single asbestiform variety: chrysotile. There are five asbestiform varieties of amphiboles: anthophyllite asbestos, grunerite asbestos (amosite), riebeckite asbestos (crocidolite), tremolite asbestos, and actinolite asbestos." (Virta 2002:5). The EPA asbestos risk assessment is based on 1986 data (EPA 1986) and fails to consider the current EPA opinion which admits that chrysotile is much less potent (EPA 2008), and may, in fact, not be a human health risk.

The Agency must not imply that the Serpentine ACEC contains a large volume of the asbestos mineral spectrum. Solve this discrepancy by replacing the generic term "asbestos" with the technically accurate, mineral specific, term "chrysotile." The Agency must rewrite the subject document to remove the discrepant issue from the document. The original discrepancy must not be included or propagated in the final resource management plan, the final environmental impact study, or the record of decision. The final documentation should include corrected recommendations.

Reference

Virta, Robert L. (2002) "Asbestos: Geology, Mineralogy, Mining, and Uses," U.S. Department of the Interior, U.S. Geological Survey, Open-File Report 02-149.

Comment 23:

The statement, "... the study concluded that visiting CCMA more than once per year can put adults and children above EPA's acceptable risk range for exposure to carcinogens and found an increased long-term cancer risk from engaging in many of the typical recreational activities at the CCMA" is erroneous because the study did not conclude as stated, but instead concluded the following:

Reference: EPA (2008) "Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment," U.S. Environmental Protection Agency, page 8-1.

Asbestos is a known human carcinogen. Despite the uncertainties inherent in risk assessment, the EPA evaluation of asbestos exposures and risks at the Clear Creek Management Area has led to some important conclusions.

- **The Activity Causes the Exposure –** The concentration of asbestos in the breathing zone is directly related to the degree that an activity disturbs the soil and creates dust.
- **Children Are of Special Concern –** In a majority of the samples, the concentration of asbestos measured in the child's breathing zone exceeded the asbestos concentration in the companion adult sample. Further, a child's life expectancy exceeds the latency period for asbestos-related disease.
- **The Higher the Exposure, the Higher the Risk –** The activities with the highest exposure - motorcycling, ATV riding, and SUV driving/riding - had the highest corresponding excess lifetime cancer risk.
- **Reducing the Exposure Will Reduce the Risk –** The risk of developing asbestos-related disease is dependent on the level of exposure, the duration of exposure, and the time since first exposure. Reducing exposure will reduce the risk of developing asbestos related cancers and debilitating and potentially fatal non-cancer disease. In summary, the asbestos exposures that EPA measured at CCMA are high and the resulting health risks are of concern.

There is no evidence of any increased long term cancer risk being found.

Comment 24:

The DEIS 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.

This paragraph is misleading because the CCMA is not an "energy production" area so no increased demand for energy production has occurred in the CCMA. This statement asserts needless detail that fails to concentrate on the issues that are truly significant to the action in question (40 CRF 1500.1).

Comment 25:

Referring to the following paragraph:

The purpose of the CCMA RMP is to establish goals, objectives, and management actions for BLM-administered lands in CCMA that address current issues, knowledge, and conditions. The CCMA RMP shall guide the management of the lands and resources administered by the Hollister Field Office in CCMA to achieve the following: 1) minimize asbestos exposure 2) reduce asbestos emissions 3) designate areas in CCMA for motorized, mechanized, and non-motorized/non-mechanized recreation opportunities; 4) protect sensitive natural and cultural resources from impacts due to recreation and other land uses; 5) provide guidance for mineral and energy development; and 6) make other land use authorizations and tenure adjustments. This planning effort is intended to be comprehensive, evaluating existing management plans and identifying regional issues, and resolving those issues through public, interagency, and intra-agency scoping efforts. This effort also identifies the area's "vision", long-range management goals, intermediate objectives, and actions and options for meeting those objectives.

The greatest impact on cultural resources has been BLM "reclamation" work which has totally destroyed historic archaeological sites. Examples of this are the Aurora Mine, Alpine Mine, Picacho, the Almaden Furnace foundation at Staging Area two, the Brick Kiln near Oak Flat, the cabins at Indian Hill, the "Swimming hole" at original Jade Mill. Additionally, past BLM cultural research and preservation efforts within the CCMA and surrounding area has been minimal. The greatest impact since the cessation of area mining has not been from recreation, but rather from the BLM.

Further, more environmental impact has come from the result of the "enhancement" of the Jade Mill area with the construction of new fences and posts and logs as well as the construction of the decontamination area than would be made by the impact of off road vehicles over 20 years.

Comment 26

Referring to the Following Paragraph:

The Planning Area for this RMP/EIS includes all federal, state, and private lands in southern San Benito County and western Fresno County in Central California shown on Map 1 in Appendix I regardless of jurisdiction; however the BLM will only make decisions on lands that fall under the BLM's jurisdiction (including subsurface minerals). These are referred to as "BLM-administered lands" (or "public lands"), and include the subsurface Federal minerals, or "split estate", underlying State Trust Lands and some privately- owned properties. The BLM-administered land for which the HFO has authority and will make decisions in this Resource Management Plan (RMP) is referred to as the "Decision Area".

The statement, "The Planning Area for this RMP/EIS includes all federal, state, and private lands ... is erroneous because the Agency has no authority to include State and private lands in their "planning."

Comment 27:

The RMP/EIS has as its preferred option of land use an option that does not allow off road motorcycle use. As can be seen from the survey, the most common use of the CCMA is for that purpose. How can you propose an RMP that eliminates it. It can be argued that other than the occasional hunter and gem collector that there is no other REAL users of this land other than off road users.

Therefore it is not in the best interest of the public to eliminate the option of OHV use.

Comment 28:

Referring to the Following Paragraph

Within the CCMA boundary is the Serpentine Area of Critical Environmental Concern (ACEC) covering approximately 30,000 acres. It was designated as an ACEC upon approval of 1984 Hollister RMP, based on the human health risk associated with the naturally occurring asbestos and the occurrence of special status plant species endemic to area. The boundaries of the ACEC were defined by mapping of asbestos-laden soils derived from the New Idria serpentine formation. This ACEC is sometimes referred to as the Hazardous Asbestos Area (HAA). Human disturbance to the soils and plants in the serpentine ACEC is a special management concern, because throughout the ACEC, soil formation tends to be slow and the topsoil shallow. Plant regeneration is also slow, and accelerated erosion from human activities has negatively impacted soil and vegetative resources over the years. Minimizing soil erosion and minimizing the damage to vegetation is a management priority.

Historically, between 1860 and 1970, this area had a much higher population density during the 120 years of active mining. Although ORV recreation has affected portions of the area, the general trend has been natural environmental restoration since cessation of mining activity and associated road building and prospect assaying. Currently, "accelerated erosion from human activities" is isolated to a few places, while over trend has been natural restoration.

Comment 29:

If there is consideration to the closure of CCMA due to unnecessary erosion due to off road vehicles and the impact on the watershed then consider the impact of one mud slide along one of the many creeks passing through the area. The impact of EVERY motorcycle through the area in a year would not create the same impact.

Therefore any reference or mention should be removed.

Further, there is NO evidence of any impact on water quality from OHV use in the area.

Comment 30:

Referring to the Following Paragraph

The public lands in CCMA are typically steep and mountainous. Some lands within the planning area consist of chaparral and oak woodland vegetation. Other areas (primarily on the eastern slopes of the Diablo Range) consist of annual grassland and half-shrub vegetation. However, the majority of the planning area is dominated by the serpentine soil formation known as the New Idria formation, which is characterized by sparse vegetation, large barren complexes on hillsides and ridgelines, and a unique forest assemblage of foothill, Jeffrey and Coulter pine. Elevations range from 1,100 -- 5,000 feet.

CCMA lands equal 63,000 to 75,000 acres: Serpentine ACEC equal 30,000 acres: Therefore $63,000 - 30,000 = 33,000$ non-ACEC. Therefore the serpentine soil formation is smaller, or minority portion of the planning area, not the majority.

Comment 31:

Some portions of this RMP propose to acquire private land and vacant county roads to unlawfully void preexisting rights and right of ways. Many of the existing rights-holder and private property owners have rights superior to Bureau of Land Management's authority to regulate and hence their rights may not be impaired. Inalienable rights are protected by the United State Constitution, California Constitution, California State law, Federal law, and/or Presidential authority affixed in the original land patent. Additionally, private property rights may also protected by the Treaty of Guadalupe Hidalgo.

Comment 32:

Referring to the Following Paragraph

Chapter 2 of this RMP/EIS describes seven possible alternatives for a new resource management plan. Under the No Action Alternative (Alternative A), the provisions of the 1984 RMP and associated CCMA Amendments would remain in place and current resource management would continue as is. Alternative B also considers continuing to allow existing uses with an emphasis on dust suppression and limiting annual visitor use days to mitigate asbestos exposure and human health risks within the Serpentine ACEC. Alternative C aims to improve public health and safety by prohibiting access into the ACEC for children, restricting certain vehicle types, and reducing the miles of designated routes available for OHV recreation. Alternative D would limit motorized access in the ACEC to full-size vehicles and emphasize OHV use opportunities on other BLM-administered lands in CCMA outside the Serpentine ACEC. Alternative E emphasizes non-motorized recreation in CCMA while continuing to provide for vehicular access and scenic touring opportunities in the ACEC. Alternative F would only authorize foot traffic for CCMA visitors inside the ACEC, and Alternative G would prohibit all public use and access into the area.

This paragraph illustrates access and motorized use bias that is generally not clearly obvious in Chapter 2, and exceed the degree of scope discussed in the "Purpose and Need" section (page 4).

Comment #33:

Referring to the Following Paragraph

- Questions with regard to chrysotile asbestos and EPA Risk Assessment

The natural mineral is "chrysotile" the marketed ore is "chrysotile asbestos." Using the word "asbestos" is confusing because it implies that the subject Serpentine ACEC contains a large volume of all of the asbestos mineral, which is erroneous. The subject Serpentine ACEC is known for its naturally occurring chrysotile deposit, and is known to be free of natural amphibole asbestos fiber. The word "asbestos" is being misused as a substitute term when the reference to a specific mineral is more appropriate and technically correct. According to the United States Geological Survey, "Asbestos is a generic name given to six fibrous minerals that have been used in commercial products." The definition is expanded further in the USGS Open-File Report 02-149 as, "These fibers belong to two mineral groups: serpentines and amphiboles. The serpentine group contains a single asbestiform variety: chrysotile. There are five asbestiform varieties of amphiboles: anthophyllite asbestos, grunerite asbestos (amosite), riebeckite asbestos (crocidolite), tremolite asbestos, and actinolite asbestos." (Virta 2002:5). The EPA asbestos risk assessment is based on 1986 data (EPA 1986) and fails to consider the current EPA opinion which admits that chrysotile is much less potent (EPA 2008), and may, in fact, not be a human health risk.

Comment 34:

Referring to the Following Paragraph

Several comments received by the Hollister Field Office requested that BLM reverse (i.e. remove) the Temporary Closure order issued on May 1, 2008 that closed the 30,000-acre Serpentine ACEC to all public use during the development of the RMP/EIS to allow public use during that period. However, BLM determined that the Temporary Closure order was appropriate in response to new information provided in the EPA Asbestos Exposure and Health Risk Assessment (2008). The EPA study determined that visitor use on public lands in CCMA can increase the long-term risk of cancer from exposure to asbestos.

This paragraph is erroneous because the Bureau of Land Management did authorized a motorcycle recreation event after knowing about the EPA report. Additionally, the EPA report did not provide "new information" since the alleged risk has been known since the area was designated an ACEC.

Therefore: there must not be enough evidence, or any at all to justify this "Emergency Closure of CCMA" and must be reopened.

Comment 35:

The statement, "although the chrysotile form may be less potent than the amphibole family in causing mesothelioma" is erroneous because research clearly shows that chrysotile is not a cause of mesothelioma at all. Recent research show that mesothelioma is associated with inhalation of amphibole fiber and that with serpentine fiber (Berman & Crump 2008, Bernstein et al 2005 2006, Camus et al 2002, Carbone et al 2007, Gibbs et al 2007, Marchevsky et al 2003, McDonald & McDonald 1996, Stettler et al 2008, Walkin & Lloyd 2006, Yarborough 2006).

Comment 36

Since previous geological and mineralogical studies have shown the area is free of naturally occurring amphibole asbestos mineral, the EPA must produce some explanation for finding amphibole asbestos in their study, otherwise the best explanation for the material is contamination from historical deposition. In the absence of better information artificial deposition is the best explanation since the EPA study area was historically industrialized. Thus removing the deposits from the specific areas should be considered. And as these samples are likely found in only industrialized areas there is no need to close the entire area.

Comment 38

The phrase, "naturally occurring asbestos" is misleading because it implies the area is dangerously contaminated with the full spectrum of amphibole asbestos mineral, which it is not. This should read "naturally occurring chrysotile," since this the predominate subject mineral. Using the word "asbestos" is confusing because it implies that the subject Serpentine ACEC contains a large volume of all of the asbestos mineral, which is erroneous. The subject Serpentine ACEC is known for its naturally occurring chrysotile deposit, and is known to be free of natural amphibole asbestos fiber. The word "asbestos" is being misused as a substitute term when the reference to a specific mineral is more appropriate and technically correct. According to the United States Geological Survey, "Asbestos is a generic name given to six fibrous minerals that have been used in commercial products." The definition is expanded further in the USGS Open-File Report 02-149 as, "These fibers belong to two mineral groups: serpentines and amphiboles. The serpentine group contains a single asbestiform variety: chrysotile. There are five asbestiform varieties of amphiboles: anthophyllite asbestos, grunerite asbestos (amosite), riebeckite asbestos (crocidolite), tremolite asbestos, and actinolite asbestos." (Virta 2002:5). The EPA asbestos risk assessment is based on 1986 data (EPA 1986) and fails to consider the current EPA opinion which admits that chrysotile is much less potent (EPA 2008), and may, in fact, not be a human health risk.

The Agency must not imply that the Serpentine ACEC contains a large volume of the asbestos mineral spectrum. Solve this discrepancy by replacing the generic term "asbestos" with the technically accurate, mineral specific, term "chrysotile." The Agency must rewrite the subject document to remove the discrepant issue from the document. The original discrepancy must not be included or propagated in the final resource management plan, the final environmental impact study, or the record of decision. The final documentation should include corrected recommendations.

Comment 39:

Regarding Paragraph:

The purpose and need for this RMP/EIS includes minimizing human health risks from exposure to asbestos and reducing airborne asbestos emissions from BLM management activities. ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to important historic, cultural, and scenic values, fish, or wildlife resources or other systems or processes or to protect human life and safety from natural hazards.

The statement, "where special management attention is needed to protect, and prevent irreparable damage to important historic, cultural, and scenic values, fish, or wildlife resources" is misleading because the Bureau of Land Management has failed to protect important historic, cultural, and scenic values, fish, and wildlife resources in the past. In fact, past Bureau of Land Management action or inaction has led to the destruction of important historic, cultural, and scenic values, fish, and wildlife resources. The Agency has failed to address preservation historic and cultural resources in previous resource management plans and environmental impact statements, and continue to ignore preservation plans for these resources in this document.

Further, there has been no evidence that the use of off road vehicles has impacted any of these significantly within the CCMA.

Comment 40:

Referring to the Following Paragraph

- Prohibit mineral leasing or sales on all public lands in the CCMA. Withdraw all BLM administered lands in CCMA from locatable mineral entry.

“Withdraw public lands in the Serpentine ACEC from locatable mineral entry.” The Agency is not authorized to “Withdraw public lands ... from locatable mineral entry.” Authority to withdraw public lands from locatable mineral entry is reserved by Congress. This statement is misleading and erroneous because it attempt to undermine Congressional authority and misrepresent Agency jurisdiction under color of law.

Comment 41:

Referring to the Following Paragraph

TRANS-FG3. Decommission Clear Creek Road (R1), and reclaim closed roads to protect sensitive resources, reduce sediment transport, and control erosion.

Clear Creek Road is a California public highway that supports trade and commerce in southern San Benito County and western Fresno County. This public highway was clearly established as a graded road under Revised Statute 2477 as delineated on the 1897 San Benito County map. This public highway provides public right-of-way access to private lands within the subject area and connects between the Coalinga Road in Hernandez Valley and the New Idria Road in Vallencitos. Closing this public highway increases the travel distance between those destinations by nearly 100 miles, thus adding significantly to travel time and cost. It is inappropriate for a Federal agency to close an historic California Public Highway.

Comment 42:

Referring to the Following Paragraph

As managers of the nation's public lands, the BLM is responsible for the health and safety of visitors to public lands. The HFO engages in hazardous material emergency response actions, hazardous waste site evaluations, and prioritization of site remediation activities in accordance with Federal, State, and local laws and regulations. Remediation is typically done in coordination with the U.S. Environmental Protection Agency, California environmental regulatory agencies such as the Department of Toxic Substances Control and the Regional Water Quality Control Boards, counties, and potentially responsible parties (both public and private). This section addresses hazardous materials management on BLM public lands in CCMA, as well as associated risks to the public health and safety.

The statement "... BLM is responsible for the health and safety of visitors to public lands" is erroneous because no statutory authority assigns general "health and safety responsibility to the Bureau of Land Management (43 USC § 2).

Comment 43:

The statement on page 142, "When the sampling results were evaluated by the general meteorological conditions of the dates sampling was conducted, 'dry', 'moist', and 'wet', it was observed that asbestos air concentrations were only reduced when it was actively raining" is erroneous because the "moist" designation refers to their November (2nd & 3rd) event (EPA 2008:4-8) during which period soil conditions were actually dry (EPA 2008:Appendix F). Note that the EPA used the United States Department of Agriculture Natural Resource Conservation Service "Estimating Soil Moisture by Feel and Appearance" method (EPA 2008:4-6). The meteorological data shows that although the humidity increased on November 3rd, it did not begin to rain until the evening after the EPA was finished (HDZC1 2004). These conditions cannot be designated as "moist" because the air and soil were dry on the first day of EPA testing and the soil remained dry throughout the second (final) day.

Comment 44:

The statement on page 144, "Over the years, substantial marijuana garden encampments have been discovered by law enforcement authorities in CCMA." is misleading because it fails to mention that the increased marijuana cultivation is directly proportional to recreational restrictions. That is, restrictions on recreational access to certain areas, make those areas safer, and hence more attractive to marijuana growers

Comment 45:

The statement, "The 2002 Estimated Annual Average Emissions (CARB) for San Benito County, indicate a total of 6.31 tons per day of PM10 emissions from unpaved road sources, however it is likely that these estimates do not account for emissions from the CCMA" contains an unsubstantiated comment that appears to be speculation by the author.

Comment 45:

Referring to the Following Paragraph

Most streams within the Cantua Creek watershed are ephemeral with a few reaches of intermittent flows also occurring. Runoff from these drainages has historically resulted in transport of sediment and selenium, boron, salts, and other trace elements during large runoff events onto the alluvial fan area and into the California Aqueduct. Localized areas of incision, bank failures and gullying increase erosion within the watersheds.

This implies that these conditions would not exist without OHV use. When in fact they do due to normal precipitation and erosion. No evidence has been established that shows increased measureable amounts of these elements occur when OHV use is present.

Comment 46

The concept of Bureau of Land Management land ownership is erroneous because the Constitution of the United States and the Treaty of Guadalupe Hidalgo prohibit the federal ownership of land except as provided in Article 1, Section 8 of the Constitution of the United States.

I.e. this is the people's land and must be made accessible.

Comment 45:

The DEIS/RMP has not been conducted in compliance of the NEPA guidelines in that it is a document of over 700 pages and is complex and difficult to understand. A new RMP should be made that more closely follow the guidelines or it is impossible to get an average citizen of the United States to read, understand, and especially respond to such a document which makes this document unfair and prejudiced.

Comment 46:

Referring to the Following Paragraph

Allowable uses would be somewhat restricted with access limited to the county road system under alternative D. CCMA private landowners would be able to utilize the county roads to drive all or most of the distance to their property. The landowners who are not able to drive the entire distance to their private property on county roads would be required to obtain a ROW from BLM for driving on non-county roads across BLM land. Driving on non-county roads would be limited to ingress and egress of private property owned by the ROW holder. Use of the county roads under alternative E would be limited to R11. R11 is that portion of the county road from New Idria straight through to the locked gate accessing Joaquin Rocks. Landowners accessing their property through Clear Creek would require a ROW for all or most of the distance to their private property.

This entire paragraph is erroneous because it confesses the Agency's intent to ignore State and Federal laws, and principles of law, to violate private property rights. Impairment of the road network would impair existing right of ways and easements associated with vehicular access to private property within the following Townships and Ranges:

Township 17 South, Range 11 East, Mount Diablo Meridian
Township 17 South, Range 12 East, Mount Diablo Meridian
Township 18 South, Range 11 East, Mount Diablo Meridian
Township 18 South, Range 12 East, Mount Diablo Meridian
Township 18 South, Range 13 East, Mount Diablo Meridian
Township 19 South, Range 13 East, Mount Diablo Meridian

Public highways over these lands were established before the Treaty of Guadalupe Hidalgo or by the United States Congress, and the public's rights to use these ways was clearly established before passage of the Federal Land Policy Management Act of 1976 (FLPMA). Within the FLPMA, Congress expressly preserved R.S. 2477 rights-of-way that already had been established. In its entirety, R.S. 2477 provided that:

"the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The existing private property within the CCMA have rights superior to Bureau of Land Management's authority and hence, BLM authorization is unnecessary or illegal, and violates their inalienable rights protected by the United State Constitution, California State law, Federal law, and Presidential authority affixed by signature on the original land title.