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

Substantive Comments

on

Clear Creek Management Area
Draft RMP/EIS

Copy 1
Submitted in Adobe PDF format via email to **cahormp@ca.blm.gov**
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Substantive comment #1

Subject: Misleading statements

Referring to the following statement on page III, § ES.2:

"The overall vision for management of BLM-administered lands in CCMA, derived from public scoping, inter-agency dialogue, and BLM's interdisciplinary team, is 'to improve natural, cultural, and open space values across the landscape for the protection of human health and the environment; and pursue recreation opportunities through partnerships and collaboration for the enjoyment and use of a growing and diverse populations of current and future generations.'"

and the following statement on page 16, § 1.7:

"The overall vision for management of BLM-administered lands in CCMA, derived from public scoping, inter-agency dialogue, and BLM's interdisciplinary team, is 'to improve natural, cultural, and open space values across the landscape for the protection of human health and the environment; and pursue recreation opportunities through partnerships and collaboration for the enjoyment and use of a growing and diverse populations of current and future generations.'"

Discussion:

"Protection of human health and the environment" is the mission statement of the EPA, not the BLM.[1] Therefore these statements are misleading and likely to be misconstrued as an attempt by the BLM to expand their mission and duties beyond their legal mandate and/or usurp the responsibilities and powers of other agencies.

(continued)

1 http://www.epa.gov/epahome/aboutepa.htm#mission

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Recommendation:

The DEIS must be edited to change these statements to reflect only the official and true mission of the BLM:

"It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."[2]

Additional instances throughout the EIS must also be changed similarly. For example:

- Alternative F description on page 19.
- Alternative G description on page 20.
- § 4.1.1, Introduction to § 4.1, "Recreation".
- § 4.2.2.4, last sentence of page 329.
- § 4.2.3, last paragraph of page 329.
- § 4.2.3, second paragraph of page 330.
- § 4.9.3.1, last sentence of the text under the title "Watershed Function."
- § 4.12.5.1, last sentence.
- Page 294, last sentence.
- Appendix V, second paragraph.
- Item 9 paragraph, last sentence on page 656.
- Et cetera

2 http://www.ntc.blm.gov/leadership/leader_blm_mission.html

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Substantive comment #2

Subject: Misleading statement

Referring to the following statement on page 22, § 2.2.3:

BLM's rationale for this determination is that the intended use of the conveyed Federal lands would significantly conflict with management objectives for overall protection of human health and the environment, and would not meet the purpose and need for the CCMA RMP/EIS identified in Chapter 1.

Discussion:

"Protection of human health and the environment" is not one of the goals listed in the Purpose and Need required by 40 C.F.R. § 1502.13, and in accordance with Comment #1 is not a mission of the BLM, it therefore cannot be one of the management objectives being addressed in the EIS.

Since the "overall protection of human health and the environment" is not a valid management objective for purposes of the EIS, the BLM's rationale for the determination that land tenure adjustments for the serpentine ACEC would conflict with management objectives is not valid.

Furthermore, since land tenure adjustments (excluding those to acquire private property in or next to the CCMA) are valid alternatives but have not been addressed in any Alternative, the BLM has failed to "inform the decision makers and the public of the reasonable alternatives" (40 C.F.R. § 1502.1).

Recommendation:

Remove § 2.2.3 from § 2.2, "Alternatives Considered but Not Analyzed in Detail".

Analyze the concept of Serpentine ACEC Land Tenure Adjustments in detail.

Include relevant discussion and analysis in the EIS of land tenure adjustments.

Add Alternative(s) and/or amend existing Alternative(s) which include Serpentine ACEC Land Tenure Adjustments.

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Substantive comment #3

Subject: Invalid statement

Referring to the following statement in the paragraph entitled "Waivers of Liability and Indemnification of Risk" on page 352:

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

Discussion:

"Protection of human health and the environment" is not one of the goals listed in the Purpose and Need required by 40 C.F.R. § 1502.13, and in accordance with Comment #1 is not a mission of the BLM, and it therefore cannot be one of the management objectives being addressed in the EIS.

Since the "overall protection of human health and the environment" is not a valid management objective for purposes of the EIS, the BLM's statement that "potential for waivers of liability or indemnification of risk as 'stand-alone' mitigation measures for human health and safety do not satisfy the purpose and need for the CCMA RMP/EIS" is not valid.

Recommendation:

Remove the invalid statement from the EIS and replace it with the following text:

"Despite this, if implemented with due care, waivers of liability or indemnification of risk constitute viable means to permit the continuation of existing levels of activity within the ACEC while acknowledging that, although fraught with uncertainty, studies and reports on the postulated health risks of asbestos in CCMA still have value."

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Substantive comment #4

Subject: Incorrect statement

Referring to the following statement in the paragraph entitled "Waivers of Liability and Indemnification of Risk" on page 352:

"Furthermore, these actions would likely have major long-term adverse impacts on human health and the environment due to the perception that exposure to airborne asbestos fibers above the acceptable risk range established under the EPA Superfund Act is permissible and authorized by the Federal government."

Discussion:

This sentence says that a mere perception, presumably in the minds of the public, would likely have major long-term adverse impacts on human health and the environment. Unless the BLM can corroborate the existence of ESP and/or telekinesis, this statement is certainly incorrect.

Recommendation:

Remove the entire incorrect statement referred to above from the EIS.

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Substantive comment #5

Subject: Misleading statement

Referring to the following two paragraphs on page 190, § 3.7.1:

"As identified in the purpose and need (§ 1.1) for this RMP/EIS, the major air quality concern in the CCMA is the release of airborne asbestos emissions that pose a risk to human health and the environment when CCMA soils are disturbed from visitor use activities in the Serpentine ACEC. Six types of 'asbestos' are classified as a hazardous air pollutant under the Clean Air Act Amendments of 1990, Section 112(b), including chrysotile, which is the type of asbestos most commonly found in CCMA soils."

"In order to evaluate overall protection of human health and the environment in this RMP/EIS, hazardous air pollutants and the human health risk from exposure to airborne asbestos emissions are addressed under 'Hazardous Materials and Public Health and Safety' in Sections 2.4.2, 3.2, and 4.2. The remainder of the affected environment discussion for air quality is based on the total Vehicle Miles Traveled (VMT) by approximately 35,000 visitors/year in the 75,000-acre CCMA and is not directly related to the selection of a particular route network."

Discussion:

"Protection of human health and the environment" is not one of the goals listed in the Purpose and Need required by 40 C.F.R. § 1502.13, and in accordance with Comment #1 is not a mission of the BLM, it therefore cannot be one of the management objectives being addressed in the EIS.

Since the "overall protection of human health and the environment" is not a valid management objective for purposes of the EIS, it is not appropriate to analyze Air Quality impacts on human health and the environment in the EIS.

(continued)

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Recommendation:

Remove the following from the EIS:

- § 2.4.7
- § 3.7
- § 4.7
- Box containing impacts AIR-BG1, AIR-BG2, and AIR-BG3
- Page 115
- Table 2.6-4
- § 4.17.2.2 (first title and paragraph only)
- § 1.3.5.1 (Model 2 only)

Also remove other references throughout the document that are thereby made extraneous.

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Substantive comment #6

Subject: Incorrect statement

Referring to the following statement on page 16, § 1.7:

The BLM is responsible for the sustainable management of public lands and resources and their various values so that they are considered in a combination that will best serve the needs of the American people. Management is based upon the principles of "multiple use", which direct BLM to provide for a combination of uses that takes into accounts the long-term needs of future generations for renewable and nonrenewable resources. These resources include: public health and safety, recreation, range, timber, minerals, watershed, fish and wildlife, wilderness, and natural, scenic, scientific, and cultural values.

Discussion:

The list of resources is inaccurate and the term resource[3] is used loosely.

"Public health" is not a resource that could derived or extracted from the CCMA unless potential medications were found there, or physical exercise were obtained. Even if it were a resource as such, it would be far from #1 on the list that the BLM is responsible for.

"Safety" does not meet the definition of a resource. Safety cannot itself be derived or extracted from the CCMA in any way.

"Recreation" is not a resource, although resources are necessary for recreation.

Recommendation:

Public health and safety must be removed from the list of renewable and nonrenewable resources. Recreation must be replaced with "recreational," as "recreation" is almost meaningless as a resource but "recreational resources" is very meaningful.

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3 http://www.merriam-webster.com/dictionary/resource

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Substantive comment #7

Subject: Misleading phrase

Referring to the following paragraph on page IV, § ES.5:

"Alternative F restricts public access in the ACEC to non-motorized travel only. Allowable use restrictions would significantly reduce risk to public health and safety; and BLM management activities would lower risk to human health and the environment."

Discussion:

Within the paragraph, the phrase "Allowable use restrictions would significantly reduce risk to public health and safety" is misleading because it implies that actual risk would be reduced definitively. To date, there is no absolute, quantifiable knowledge of the actual risk, but rather only estimates of risk that have a wide margin of error based on theoretical approaches.[4]

Recommendation:

Replace the misleading phrase with "Allowable use restrictions would significantly reduce estimates of risk to public health and safety".

4 According to DEIS page 327, § 4.2.2.2, "...the major uncertainties inherent in the assessment of exposure to asbestos at CCMA and the resulting estimate of risk include factors that may cause the EPA calculated risks to be overestimated or underestimated."

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Substantive comment #8

Subject: Missing "no action" alternative

Referring to the list of management alternatives on page 19, § 2.0

Discussion:

NEPA requires that a "no action" alternative be provided (40 C.F.R. § 1502.14(d)). However, the "no action" alternative provided ("Alternative A") incorporates actions.

"Alternative A" on page 19 indicates that "it would incorporate new human health information into BLM's public outreach and education asbestos hazard information program" and other programs.

Recommendation:

Split Alternative A into a true no-alternative action and a second alternative which includes the offending actions listed in Alternative A. Alternatively, remove the actions from Alternative A and incorporate them into later EA process(es).

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Substantive comment #9

Subject: Missing "no action" alternative

Referring to the list of management alternatives on page 25, § 2.4, table 2.4-1(a)

Discussion:

NEPA requires that a "no action" alternative be provided. However, the "no action" alternative provided ("Alternative A") incorporates actions, including

- Use of dust suppressant on roads.
- Installing a public vehicle wash facility.
- Acquiring lands from private sellers.
- Withdrawing the RNA and Clear Creek Canyon from locatable mineral entry.

Recommendation:

Split Alternative A into a true no-alternative action and a second alternative which includes the offending actions listed in Alternative A. Alternatively, remove the actions from Alternative A.

If any these actions are permitted under a prior EIS or EA, then the appropriate document must be referenced to indicate that the action is officially permitted.

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Substantive comment #10

Subject: Invalid assertion of Purpose and Need

Referring to the following statement on page III, § ES.3, "Purpose and Need":

"The current management plan does not specifically address listing and/or additional habitat needs for species protected under the federal 1973 Endangered Species Act (ESA), including the California Condor, red-legged frog, and tiger salamander."

Discussion:

The CCMA comprises 0.3% of the present range of the California Condor[5], and there is no evidence or reason to believe that OHV activity would affect the any effort to re-introduce the California Condor, or that it would not improve condor habitat, such as by providing more rodent carcasses.

The red-legged frog and tiger salamander do not exist within the CCMA as stated on DEIS page 185, § 3.6.5.4. Therefore there is no need to specifically address these issues in an EIS.

This part of the purpose and need is invalid.

Recommendation:

Remove the paragraph "The current management plan does not specifically address listing and/or additional habitat needs for species protected under the federal 1973 Endangered Species Act (ESA), including the California Condor, red-legged frog, and tiger salamander."

5 2004 - Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for the Clear Creek Management Area

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Substantive comment #11

Subject: Invalid assertion of Purpose and Need

Referring to the following paragraph on page III, § ES.3:

"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."

Discussion:

The previous EIS was executed very recently in 2006. The EIS process is very expensive to the government in terms of time, money and government employer resources, and very expensive to the people in terms of time and money and legal outlays.

There is no evidence that there are significant changes in social and economic conditions in the stated areas since 2006, nor is there evidence of significant increased awareness and social value placed on the cultural and natural resources in the Planning Area since 2006.

The area has always been valued for decades and continues to be valued in approximately the same ways by the vast majority of interested parties and visitors to the area.

The primary change in social and economic conditions in San Benito County and the San Joaquin Valley as it pertains to CCMA was caused by BLM actions beginning May 1, 2008 and could easily be rectified in one simple move, without requiring an EIS.

The need for an EIS is not sufficiently established by the issues in the referred-to paragraph, and the issues in the referred-to paragraph are not significant enough to be included in an EIS.

Recommendation:

Replace the referred-to paragraph with:

"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 in the Planning Area."

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Substantive comment #12

Subject: Inadequate range of alternatives

Referring to the list of management alternatives on page 19, § 2.0 and on page 25, § 2.4, Table 2.4-1(a)

Discussion:

The Purpose and Need states that there are increased demands for recreation on public lands within the planning area. However, no alternative addresses these needs by enlarging the total available trail mileage and acreage available for OHV use.

If the EIS is not modified the BLM will have failed to "inform the decision makers and the public of the reasonable alternatives" (40 C.F.R. § 1502.1) and will have failed to satisfying the Purpose and Need, which risks causing the corresponding R.O.D. to

- violate the spirit and regulations of the CEQ and NEPA.
- underestimate the public needs in a manner that is severe and foreseeable.
- prioritize unproven scientific estimates of negative consequences over definite, known negative consequences.
- direct BLM personnel in a way that fails to serve the public according to the BLM's stated mission.

Recommendation:

Modify each existing alternative so that each provides for increased recreational opportunities within or near the planning area, such as by designating an equal or greater number of miles of trails and acres for OHV activity than the number of miles and acres that would be closed for each alternative, within reasonable distance of the existing CCMA recreational area and of the central coastal area of California served by the CCMA.

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Substantive comment #13

Subject: Inadequate discussion of negative impacts of reducing OHV opportunities

Referring to the discussions in Table 2.4-1(a), sections 2.4.1, 2.4.13 and 2.4.15; page 97 § 2.6 "Recreation"; page 102 § 2.6, "Travel and Transportation Management"; page 122 § 2.6, "Cultural & Paleontological Resources"; page 123 § 2.6, "Social and Economic Conditions"; pp. 132-133 § 3.1; pp. 147-149 § 3.3; pp. 226-243 § 3.13; pp. 272-273 § 3.15; pp. 498-511 § 4.13; and pp. 520-528 § 4.15.

Discussion:

The negative impacts of reducing OHV recreation opportunities in the CCMA are not adequately discussed in the EIS. These include important impacts to other federal and state lands designated for OHV recreation.

Such impacts are directly relevant and must be included in the CCMA RMP/EIS because the CCMA RMP/EIS process will end with an R.O.D. that

1. has immediate and predictable consequences and impacts to these other lands.
2. directly and significantly affects current and potential users of the CCMA.

(continued)

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Recommendation 1:

The EIS must include discussion of impacts of displacing OHV users to other federal and state lands. Potential impacts include:

- Loss of recreational opportunities due to occupancy limits being exceeded at other OHV areas (e.g., early gate metering on weekday mornings at Hollister Hills SVRA).
- Negative effects of the increasing the travel time to alternate designated OHV areas from the most populous areas of central coastal California from around 3 hours to between 4 to 6 hours each way:
    - Loss of recreational opportunities and duration.
    - Increased fuel consumption, CO_2 release and highway congestion.
    - Increased risk of death from being in traffic longer (see Comment #23).
- Increased incidence of illegal trespass in CCMA and other areas, and of off-trail riding in established OHV parks, by the public whose demands for recreational opportunities have not been met.

Recommendation 2:

The EIS must include discussion of the impacts of displacing OHV users to other federal and state lands that is caused by decreasing the available area at the same time the overall use trend is increasing, thereby increasing density and concentration of OHV use on those lands. Potential impacts include:

- Increased localized environmental impact (trail overuse) leading to additional closures and further exacerbating the root problem and Purpose and Need of not enough OHV recreation opportunities to support the demand.
- Increased potential for injury or death due to head-on collisions and other accidents resulting from higher density use. Such risk may exceed the risks calculated by the EPA for Excess Lifetime Risk of cancer.

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Substantive comment #14

Subject: Improper assumption

Referring to the section "Soil Resources" on page 116

Discussion:

This section makes the unsubstantiated assumption that soil disturbance is undesirable by concentrating on limited aspects of disturbance. It fails to take into account that soil disturbance may benefit CCMA and public lands by several means, including

- Assisting the spread of native vegetation through seed transport.
- Augmenting the variety and availability of habitat for species that grow in disturbed soils on sandy slopes and along roads, including the evening primrose, reducing their probability of going extinct.[6]
- Improving foraging opportunities for avian and small mammals and dependent species.
- Increasing siltation expanding the variety and types of plant and animal habitats available.
- Improving recreational value.
- Improving cultural and historic value.

These benefits may offset many of the impacts deemed negative and yet they have not appropriately been considered in the EIS.

Recommendation:

State in this section that changing the level of OHV recreational activity, which has maintained with care for decades, will have unknown and unstudied effects, including negative consequences including those stated above.

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6 http://www.fws.gov/rockymountainarsenal/habitat/native/wildflowers/evening.htm

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Substantive comment #15

Subject: Excessive assumptions about years of visits

Referring to the following statement on page 322, § 4.2.1.1:

Risk calculations will be performed for the 30-year adult, 30-year combined (12-year child + 18 year adult), and 12-year child exposures.

and the following statement on page 333, § 4.2.4.2:

Calculations were prepared for 30-year adult exposures, as recommended by the Superfund risk assessment guidance. In addition, 30-year combined child and adult exposures (12 years as a child and then 18 years as an adult) and 12-year child exposures (a population which recreates with families from ages 6 to 18) were also evaluated. Risks were calculated for 1 visit per year, 5 visits per year (Reasonable Maximum Exposure), and 12 visits per year (High Estimate) for the recreational scenarios.

Discussion:

In using the 30-year adult, 30-year combined and 12-year child groups, the BLM has used theoretical demographic groups in the DEIS which are not representative of the actual years of use by CCMA visitors.

The EPA Excess Lifetime Risk statistical methods and corresponding conclusions are based on average values. Using the extreme values as input to the risk estimation curve necessarily resulted in outputs incorrectly skewed to an extreme high level. The skewed outputs are representative of the Excess Lifetime Risk for an extreme demographic, not for the true demographic.

A proper average estimation is relatively easy to obtain by polling visitors or polling users in various organizations or internet forms, yet such crucial statistics are omitted from the DEIS. Such overestimation carries a high probability of choosing an inappropriately conservative alternative with severe adverse consequences and must be addressed by modifying the EIS.

(continued)

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Recommendation:

The BLM must determine the actual average length in years of CCMA visitations in order to determine reasonable demographic groups to analyze. If this is not feasible, more realistic estimations must be made. The asbestos exposure fiber counts used in determining Excess Lifetime Risk must be reduced proportionally to the findings as compared to the extreme 30- and 12-year assumptions, as must the Excess Lifetime Risk estimation itself.

Example 1

If the average time a family lives in the vicinity of San Benito or Fresno counties before moving out of the region can be reasonably estimated as 15 years, then average length of visitations could not possibly exceed 15 years.

Example 2

The time of residence in the region must be further multiplied by the fraction of years that the average visitor performs activities in the CCMA, rather than assuming visitation throughout the whole residency. For example, users commonly do not use CCMA while raising a child, or when financially unable to afford it. If the average CCMA user visits CCMA for 2/3 of their residency, the demographic should be adjusted by 2/3.

Conclusion

The estimates above are still quite conservative, and quite reasonable in the absence of appropriate scientific studies that are reasonably expected in an EIS action of this magnitude. The following much more reasonable selection of demographic groups should be incorporated into the EIS:

- 10 years adult (15 years times 2/3)
- 10 years combined (4 years as a child and 6 years as an adult)
- 4 years child

Using these corrections, the fiber count must be corrected by a factor of 0.33, and the interpretation of the Excess Lifetime Risk must be adjusted by an additive value of $\log_{10} 0.33 = -0.50$ orders of magnitude.

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Substantive comment #16

Subject: Excessive assumptions about uniform exposure

Referring to the Figure 2, "Comparison of Different Riding Positions for Adults" on page 336:

Figure 2 shows the results for motorcycle riders in the lead and trailing behind and for ATV and SUV drivers/riders. First trailing drivers/riders encountered higher asbestos air concentrations than lead drivers/riders and second trailing drivers/riders typically encountered higher levels than first trailing drivers/riders. This means that the asbestos levels in the air increased with the larger dust clouds encountered by those riders following one or more riders ahead of them.

Discussion:

The visitors with the highest annual visitation are more likely to be riding solo or to be riding in the lowest-risk lead position, significantly mitigating their average exposure because riding in the lead position is approximately 10 times (-1.00 orders of magnitude) less than riding in a following position.[7] This would lower the average exposure for the population as a whole.

The DEIS does not take this into account when considering the Excess Lifetime Risk exposure. This results in overestimation which carries a high probability of causing an inappropriately conservative alternative to be chosen.

(continued)

7 Asbestos Exposure and Human Health Risk Assessment, Asbestos Air Sampling, Conducted November 2nd and 3rd, 2004, Clear Creek Management Area, Califomia- Part 1: Adult Individual Activities, EPA, November 7, 2005

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Recommendation:

Determine the number of frequent visitors who often ride solo or in the lead position. Subtract a suitable and reasonable percentage of their time and calculate the corrected average riding time. Correct the fiber counts to account for the discrepancy, and adjust the interpretation of the Excess Lifetime Risk accordingly in the EIS.

Example:

There are U users per year.

About 25% of users (0.25U) visit frequently at 52 times per year.

0.25U * 52 visits = 13U visits by frequent users

The remaining 75% (0.75U) visit about 6 times per year.

0.75U * 6 visits = 4.5U visits by infrequent users

Total 17.5U visits by all users

The frequent visitors are solo or in the lead about 50% of the time:

6.5U at lead exposure, which is negligible

6.5U at normal exposure

Therefore about 6.5U / 17.5U (37%) of user-visits are of ten-fold lower exposure and 63% are at normal exposure. The lower exposure visitors contribute equivalent of 3.7%, for a total factor of 66.7%.

Conclusion:

The figures in the example are quite reasonable and provide more accurate estimates than completely discounting the distribution of riding time versus exposure.

Therefore, to more accurately represent the risks among the average rider, multiply the fiber counts by a factor of approximately 66.7%.

Adjust the interpretation of the Excess Lifetime Risk by an additive value of approximately $\log_{10} 0.667 = -0.18$ orders of magnitude.

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Substantive comment #17

Subject: Improper measurement techniques I

Referring to the following statement on page 333, § 4.2.4.1, last sentence:

Sample cassettes were placed to collect air samples representing the breathing zone heights of both adults and children, and samples were collected for both lead riders and those trailing behind them. These activity based air samples were then analyzed for asbestos.

Discussion:

The DEIS relies on measurement data that was taken improperly. Asbestos fiber samples were taken using calibrated air pumps attached to filter cassettes.[8] According to Arnold Den at the Santa Clara CCMA RMP/DEIS public meeting, these air pumps ran continuously.

Dust plumes are not continuous, especially but not limited to when winds are in any direction not closely parallel to the direction of travel, and they are usually plainly visible. Virtually all riders, including younger ones, instinctively hold their breath when traversing a dust plume. Furthermore, the dust plumes are at their greatest at higher speeds along non-technical trails or roads where a rider's attention is not taxed to the point where they might cross a plume without holding their breath.

Improper Technique I(a)

The constant rate air pump does not turn off when traversing a dust plume, and therefore filters fibers that are not representative of what the rider would inhale.

Improper Technique I(b)

The filtering units were not enclosed within a helmet. Therefore the measurements are of limited use for comparison purposes of a rider wearing a helmet inside which the volume of air is not freely exchanged with the ambient environment.

The DEIS does not take these critical considerations into account when interpreting the Excess Lifetime Risk exposure. This results in overestimation which carries a high probability of causing an inappropriately conservative alternative to be chosen.

(continued)

8 TECHNICAL MEMORANDUM, Human Health Risk Assessment - Asbestos Air Sampling, Clear Creek Management Area, California, September 15th, 2004, CH2M Hill

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Recommendation:

The DEIS must be changed to modify the interpretation of the CH2M Hill experimental data to take into account the effects of the improper measurements. If these impacts can't be determined experimentally, then reasonable effort must be taken to estimate these effects.

Example 1:

A rider wearing an air pump and filter cassette apparatus repeatedly traverses dust plumes. Of the fibers trapped by the filter,

- 75% are a direct result of the dust plumes
- 25% are ambient

The rider holds his breath during 70% of the dust plumes. If the total fibers trapped by the filter is *f*, then the number of fibers inhaled by the rider is $0.25f$ (ambient) + (1 - 0.70) * $0.75f$ (plumes) = $0.48f$ fibers. In this example the actual number of fibers inhaled is 48% of the fibers trapped by the filter.

Example 2:

However, the air pump and filter cassette receive a constant stream of air. However, a helmet reduces the air exchange with the ambient environment by a factor of 20%, resulting in 20% less fibers being inhaled. In this example the actual number of fibers inhaled is 80% of the fibers trapped by the filter.

Conclusion:

The figures in the example are quite reasonable and most likely on the conservative side. They are far more reasonable than the results obtained by ignoring these critical factors.

Therefore, to more accurately represent the risks among the average rider, multiply the fiber counts by a factor of approximately 0.48 * 0.80 = 0.38.

Adjust the interpretation of the Excess Lifetime Risk by an additive value of approximately $\log_{10} 0.38 = -0.42$ orders of magnitude.

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Substantive comment #18

Subject: Improper measurement techniques II

Referring to the OHV use assumptions as outlined on page 323, § 4.2.1.1, "Assumptions" and propagated in Table 4.2-1 on pp. 324-325

Discussion:

The following information is reproduced from the Hollister Field Office's CCMA web site:[9]

> **Precautions to take when visiting the Clear Creek Management Area**
>
> - Avoid areas where it is dusty or windy.
> - Never drink the water from the streams or springs.
> - Wash any vehicle that has been used at CCMA before returning home.
> - Wash clothing worn at CCMA separately from you other clothes.
> - If digging in dry dirt, try to minimize the amount of dust that is distributed.
> - Do not ride Off Highway Vehicles (OHVs) around the campground. They create dust.
> - If riding an OHV in a group, spread out along the trail, and don't ride in another rider's dust.
>
> Before visiting call the Hotline at (831) 630-5060 to get recorded information about weather conditions. If the weather is hot, dry and dusty, avoid CCMA. If you would like clarification about asbestos, call the Hollister Office of the Bureau of Land Management at (831) 630-5000.

Armed with this information as communicated by the web site, and additionally by CCMA visitor pamphlets[10], signs at the CCMA entry points, fee stations and kiosks, it is reasonable to assume a significant fraction of users heed the warnings and take one or more precautions.

The EPA scientific methods do not take this into account, but instead unreasonably ensure the study data represents the worst-case conditions where "The second and third trailing riders will ride in the dust cloud of the rider in front as much as safe and practical."[11]

(continued)

9 http://www.blm.gov/ca/st/en/fo/hollister/asbestos.html
10 Sampling and Analysis Plan for Asbestos Air Sampling, Clear Creek Management Area, San Benito County, California, § 1.2.4 "Background", CH2M Hill, October 22, 2004
11 Sampling and Analysis Plan for Asbestos Air Sampling, Clear Creek Management Area, San Benito County, California, Appendix B - Activity Scenario Scripts, "Motorcycle", CH2M Hill, October 22, 2004

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Recommendation:

The DEIS must be changed to modify the interpretation of the EPA scientific data to take into account the effects of the improper measurements. If these impacts can't be determined experimentally, then reasonable effort must be taken to estimate these effects.

Example 1:

75% of motorcycle and ATV riders prefer moist conditions and arrange their visits to CCMA accordingly. They don't get to visit often and want the best experience. Most monitor local forums and rainfall web sites, or attend groups led by an experienced rider who does. Their overall average asbestos exposure is reduced by at least 50% as compared to EPA contractors who intentionally stay within dust plumes.

Analysis: (25% @ 100% exposure) + (75% @ 50% exposure) = 62.5% average exposure, or a factor of 0.625 times the EPA-measured exposure.

Example 2:

Conservatively, 1/3 of motorcycle and ATV riders space out along dusty routes in order to avoid the dust plumes of riders ahead, as compared to EPA contractors who intentionally stay within dust plumes. Their overall average asbestos exposure is reduced by 50% as compared to EPA contractors who intentionally stay within dust plumes.

Analysis: (2/3 @ 100% exposure) + (1/3 @ 50% exposure) = 83.5% average exposure, or a factor of 0.835 times the EPA-measured exposure.

Example 3:

75% of young riders travel behind their parent who is going slow and stopping often to accommodate them, as compared to EPA contractors who average 18MPH for 20-mile loops.[12] The lower speeds entail low turbulence, since turbulence is proportional to the square of the vehicle velocity. Their overall average asbestos exposure is reduced by 25% as compared to EPA contractors who intentionally stay within dust plumes.

Analysis: (25% @ 100% exposure) + (75% @ 75% exposure) = 81.3% average exposure, or a factor of 0.813 times the EPA-measured exposure.

(continued)

12 Sampling and Analysis Plan for Asbestos Air Sampling, Clear Creek Management Area, San Benito County, California, Appendix B - Activity Scenario Scripts, "Motorcycle", CH2M Hill, October 22, 2004

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Conclusion:

The figures in the example are quite reasonable and most likely on the conservative side. They are far more reasonable than the results obtained by ignoring these critical factors. We see that due to EPA strategy, the risk is commonly over-estimated by values ranging from around 63% to 83%, or typically about 75%.

Therefore, to more accurately represent the risks among the average rider, multiply the fiber counts by a factor of approximately 0.75.

Adjust the interpretation of the Excess Lifetime Risk by an additive value of approximately $\log_{10} 0.75 = -0.12$ orders of magnitude.

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Substantive comment #19

Subject: Improper measurement techniques III

Referring to the OHV motorcycle use assumptions as outlined on page 323, § 4.2.1.1, "Assumptions" and in Table 4.2-1 on pp. 324-325

Discussion:

The DEIS contains assumptions which are not unlikely to be valid.

In particular, the average speed of a motorcycle is assumed to be 15-20MPH, and the time riding for a full day is assumed to be 6 hours. Therefore the distance covered would be between 90 and 120 miles (average 105 miles).

This is a very inappropriate characterization of a typical full day of riding in CCMA by a typical visitor because it assumes continuous motion and entirely ignores group dynamics.

The actual odometer distance covered in a full day of riding is well known to be typically

- 10 - 20 miles for a young rider
- 30 - 40 miles for an intermediate rider
- 50 - 60 miles for an accomplished rider

The distance covered is far less than estimated as a result of time spent on

- overcoming strenuous technical obstacles.
- rest periods waiting for other riders in the group to overcome obstacles.
- many stops for enjoyment of nature, photography and analysis of route charts or GPS.
- stops for mechanical difficulties among riders in the group.
- lunch in the field without returning to any main road or staging area.

Therefore the measurement technique overestimates the riding distance by a large factor between 67% at the high end (60 / 90) and 8.3% at the low end (10 / 120).

(continued)

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In addition to less distance covered, the above-mentioned activities result in much lower average speeds for the majority of a ride than 18MPH. This is because OHV operators typically prefer these activities to constant high speed movement along straight or flat trails.

The average speed is significantly overestimated by the EPA contractor and an average speed of not more than 12MPH would be a much more representative estimate. Therefore, the measurement technique overestimates the riding speed by a large factor of at least 50%, and therefore overestimates the amount of asbestos stirred up during the majority of outings.

In addition, much of the distance is registered in barrens areas where OHV operators ride independently, do not follow one another and do not have difficulty avoiding potential dust plumes.

(continued)

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Recommendation:

The DEIS must be changed to modify the interpretation of the EPA scientific data to take into account the effects of the improper measurements. If these impacts can't be determined experimentally, then reasonable effort must be taken to estimate these effects.

The following table illustrate much more reasonable distance coverages by rider ability.

Rider Ability	**Distance** (Full Day / 6 Hours)	**Adjustment** (ratio: miles / 105)	**Additive Adjustment** (log_{10})
Child or inexperienced	15	0.14	-0.85
Intermediate	35	0.33	-0.48
Accomplished	55	0.52	-0.28

In the interest of simplicity, the DEIS should assume a 35-mile average case. This is a conservative estimate to avoid undue overestimation or underestimation of the hazards.

To most accurately represent the risks among the average rider, multiply the extrapolated fiber counts by a factor of approximately 0.33 determined for the 35-mile case.

It should be noted that the factor of 0.33 is conservative and might be lower because the effects of decreasing the average speed estimate from 18MPH to 12MPH have not been incorporated into the factor and a decrease in average speed has the impact of a potentially large impact on turbulence.

Adjust the interpretation of the Excess Lifetime Risk by an additive value of approximately log_{10} 0.33 = -0.48 orders of magnitude.

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Substantive comment #20

Subject: Overly conservative risk assessment

Referring to pp. 340-350, § 4.2.5.1 "CCMA Asbestos Exposure and Human Health Risk" and tables 4.2-2 through 4.2-9

Discussion:

These sections of the EIS cannot reasonably interpret the EPA's data or the EPA's contractors' data verbatim, but must interpret it after adjusting for factors that can reasonably be seen to have been omitted, and for which simple adjustments can be made that improve the usefulness and accuracy of the interpretation.

Failure to do so could result in inaccurate information in the EIS, and consequently an R.O.D. and BLM management actions based on inaccurate and misleading scientific data.

The following table summarizes the adjustments recommended by prior Comments #11 through #15:

Comment Number	**Risk Adjustment**	**Additive Adjustment** (orders of magnitude)
#15	Excessive assumptions about years of exposure	-0.5
#16	Excessive assumptions about uniform exposure	-0.18
#17	Improper measurement techniques I	-0.42
#18	Improper measurement techniques II	-0.12
#19	Improper measurement techniques III	-0.48
	Total	**-1.7**

These factors were very conservatively estimated. Nevertheless, the cumulative factors show that the fiber counts have been overestimated by a factor of approximately 50 compared to realistic OHV activity scenarios and need to be divided by 50, or multiplied by a factor of 0.02 ($\log_{10}$ 0.02 = -1.7), prior to their use in calculating IRIS and OEHHA Risk Summaries and Risk Comparisons.

(continued)

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Recommendation 1:

The BLM must adjust the fiber counts and Risk Units used and recompute the IRIS and OEHHA Risk Summary and Risk Comparison tables and charts shown in the DEIS. It is appropriate to do so by multiplying the assumed and improper Risk Units by a factor of 0.02 according to reasonable adjustments demonstrated above, as shown in the following table:

Model	Improper Risk Unit	Proper Risk Unit
IRIS	2.30E-001	4.60E-003
OEHHA	1.90E+000	3.80E-002

The following tables shows the recalculation of the IRIS Risk Summaries for OHV activities using the IRIS Proper Risk Unit.

(continued)

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1 Visit per year	5 Visits per year	12 Visits per year
1.10E-06	5.51E-06	1.32E-05
2.63E-06	1.31E-05	3.15E-05
1.10E-06	5.51E-06	1.32E-05
2.63E-06	1.31E-05	3.15E-05

Table 1: Scenario 1 - MC Weekend Rider for Alternative A, IRIS Proper Risk Unit

1 Visit per year	5 Visits per year	12 Visits per year
5.35E-07	2.67E-06	6.42E-06
1.01E-06	5.07E-06	1.22E-05
5.35E-07	2.67E-06	6.42E-06
1.01E-06	5.07E-06	1.22E-05

Table 2: Scenario 2 - ATV Day Use Rider for Alternative A, IRIS Proper Risk Unit

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1 Visit per year	5 Visits per year	12 Visits per year
5.21E-07	2.61E-06	6.26E-06
8.75E-07	4.37E-06	1.05E-05
5.21E-07	2.61E-06	6.26E-06
8.75E-07	4.37E-06	1.05E-05

Table 3: Scenario 2 - MC Day Use Rider for Alternative A, IRIS Proper Risk Unit

1 Visit per year	Visits per year	Visits per year
4.31E-07	2.16E-06	5.17E-06
7.23E-07	3.62E-06	8.68E-06
4.31E-07	2.16E-06	5.17E-06
7.23E-07	3.62E-06	8.68E-06

Table 4: Scenario 2 MC Day Use Rider for Alternative B, IRIS Proper Risk Unit

(continued)

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1 Visit per year	5 Visits per year	12 Visits per year
7.77E-07	3.88E-06	9.32E-06
1.29E-06	6.45E-06	1.55E-05
7.77E-07	3.88E-06	9.32E-06
1.29E-06	6.45E-06	1.55E-05

Table 5: Scenario 1 MC Weekend Rider for Alternative B, IRIS Proper Risk Unit

The following chart shows the Adult Excess Cancer Lifetime Risk (ECLR) redrawn for the IRIS Proper Risk Unit (Hiker and Hunter uses may be disregarded since they are not subject to Risk Unit adjustment).

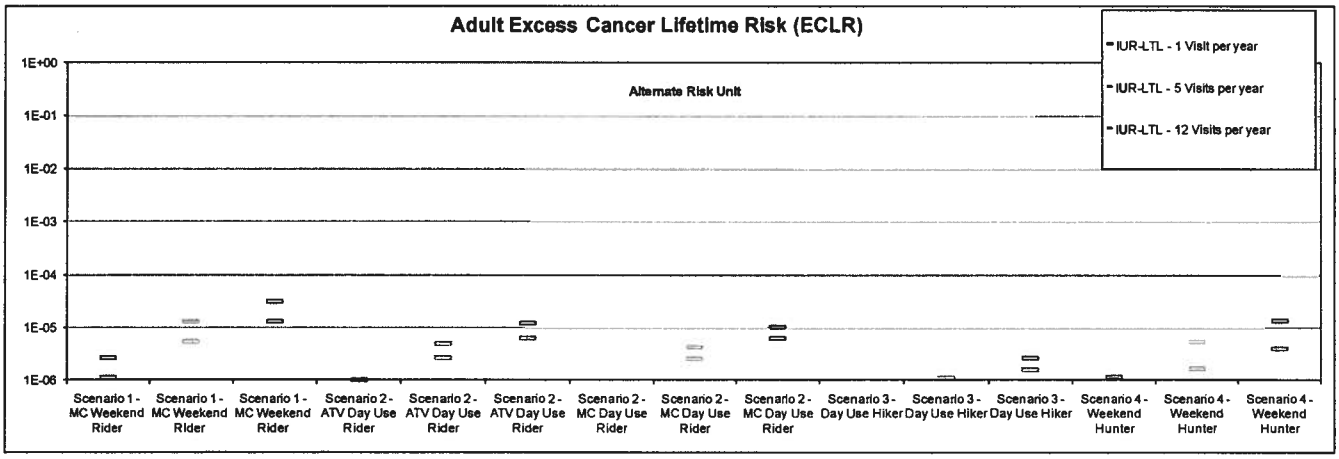

Illustration 1: Adult Excess Cancer Lifetime Risk (ECLR), IRIS Proper Risk Unit

(continued)

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The following illustrations show the IRIS charts for Adult Excess Cancer Lifetime Risk ranges for the EPA's considered activity scenarios, after being redrawn using the IRIS Proper Risk Unit for rather than the improper IRIS Risk Unit value assumed by the EPA. (Hiker and Hunter uses may be disregarded since they are not subject to Risk Unit adjustment).

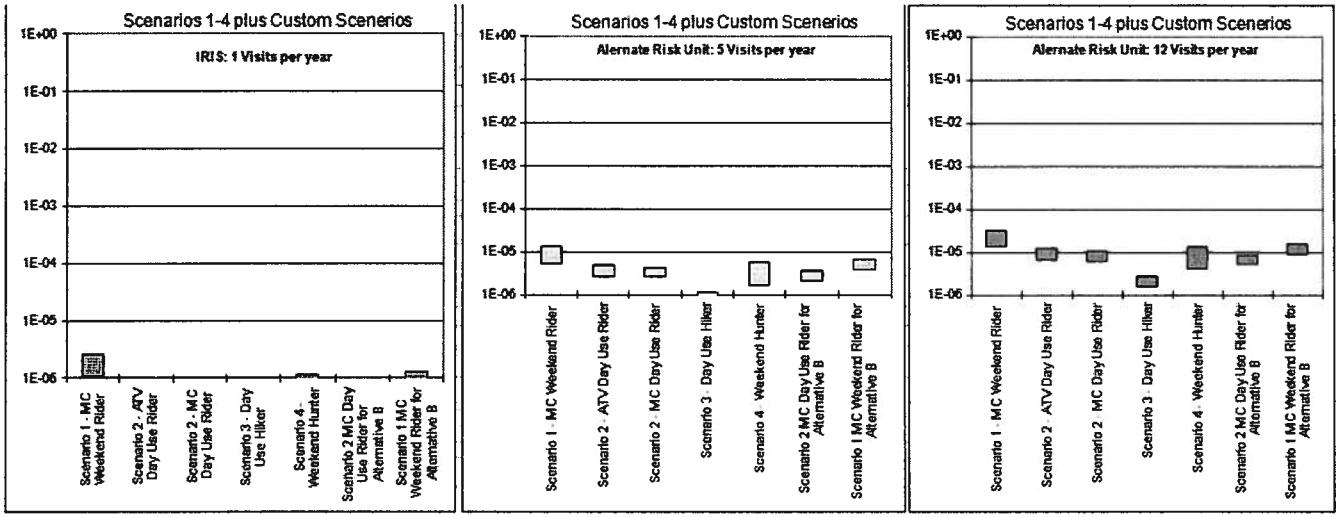

Illustration 2: IRIS Scenarios taking into account Proper Risk Unit

Replace the IRIS diagrams in the EIS which use the Improper Risk Unit with ones that use the Proper Risk Unit as outlined in this Comment.

Recommendation 2:

It should be noted that using the Proper Risk Unit, the risks for all OHV scenarios in Alternatives A and B fall well below the EPA acceptable levels for Excess Lifetime Risk, so the BLM's choice of preferred alternative may be changed to Alternative A without jeopardizing human health and safety according IRIS analysis.

<u>Change the BLM's choice of preferred alternative to Alternative A in the EIS because absent the overestimated risks of acceptable asbestos exposure, there is no reason not to.</u>

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Substantive comment #21

Subject: Inappropriate health standard applied

Referring to the following statement on page 142, § 3.2.3.1:

Using the State of California Office of Environmental Health Hazard Assessment (OEHHA) toxicity value for asbestos, even one visit per year for recreational scenarios of Weekend Riding, Day Use Riding, Weekend Hunting, or Combined Riding/Fence Building put users above EPA's acceptable risk range. The higher risks reflect the fact that the OEHHA asbestos toxicity value is 8 times larger than the value in IRIS. At the high end of the risk range, excess lifetime cancer risk estimations using the OEHHA toxicity value and the 95% upper confidence limit concentration indicate that recreational users riding motorcycles 12 weekends per year could have as much as a 1 in 100 (1 x 10-2) lifetime chance of developing asbestos related cancer.

And the following statement on page 334, § 4.2.4.2:

Using the OEHHA toxicity value, even one visit per year for recreational scenarios 1, 2, 4, and 5, put users above EPA's acceptable risk range. The higher risks reflect the fact that the OEHHA asbestos toxicity value is 8 times larger than the value in IRIS. At the high end of the risk range, excess lifetime cancer risk estimations using the OEHHA toxicity value and the 95% UCL concentration indicate that recreational users riding motorcycles 12 weekends per year could have as much as a 1 in 100 (1 x 10-2) lifetime chance of developing asbestos related cancer.

(continued)

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Discussion:

There have been tens of thousands of unique visitors to and residents of Clear Creek who satisfy the description of having ridden motorcycles 12 weekends per year or more, or who have had performed activities equal or worse in asbestos exposure, including road-building, construction, prospecting, mining, well-drilling, hauling, etc. This "heavily exposed group" must be analyzed in the EIS in order to come to an appropriate ROD.

The heavily exposed group performed these activities in great numbers during the time span from 1900 to 1968 ("period of consideration" for purposes of this Comment). Therefore, tens of thousands of lifetimes are represented with at least 30 years of heavy exposure.

In accordance with OEHHA standards which pose Excess Lifetime Risk values of up to 1.0E-02 of developing cancer for motorcyclists with 12 visits or more, and therefore equal or greater risk for the heavily exposed group, one must expect up to one death per hundred lifetimes; i.e., tens or hundreds of deaths, respectively, as shown in the following table:

Unique Visitor Lifetime Equivalents	**OEHHA Lifetime Excess Risk Value**	**Expected Deaths (lifetimes * risk value)**
1.0E+04	1.0E-02	100
1.0E+04	1.0E-03	10

It is important to note that "Asbestos disease takes years or decades to develop."[13] But since all of those lifetimes within the period of concern have had at least 4 decades pass between the end of the period of concern and the present time, it is quite reasonable to assume the majority of instances of disease would have developed by now.

It is also reasonable to expect that if the OEHHA risk values of 1.0E-03 or 1.0E-02 were valid, tens or hundreds of such cases, respectively, must have poured in during the period between 1968 and the present day.

Furthermore, during this period, health authorities already recognized the dangers and symptoms of asbestosis, mesothelioma and other asbestos-related diseases, so it is reasonable to assume such cases would not have gone unnoticed and that there would have been tens or hundreds of cases including published epidemiological results and autopsies available for study.

(continued)

13 U.S. Environmental Protection Agency – Region 9, Clear Creek Management Area (CCMA) Asbestos Exposure and Risk Assessment, Frequently Asked Questions, 2008.

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Since tens or hundreds of cases are expected, yet no evidence has been uncovered that a single case of asbestos-related disease or death occurred in the heavily exposed group from the period of concern, despite more than ample motivation and research funding to find such cases, it is mathematically certain that the OEHHA risk assessment severely overestimates the asbestos-related health risks in the CCMA. This is not surprising because

- the OEHHA risk assessment was never designed to be applied to cases other than occupational exposure.
- the OEHHA risk assessment was designed specifically with the most sensitive individuals in mind, rather than the average population, and so is not applicable to the average population.

Conclusion:

The EIS should not contain risk assessments based on OEHHA standards. They

- are clearly useless for proper characterization of the risk, and would serve only to bolster incorrect or misleading statements in the EIS.
- may mislead the public and officials from county, state or local government agencies.
- carry a high risk of causing an overly conservative alternative to be chosen in the R.O.D. which would cause avoidable and irreparable harm to the rights of the public and their ability to use public land in a suitable manner.

Recommendation:

Remove bullet point 3 in § 4.2.1.1. Remove related graphs, charts and risk summaries such as Tables 4.2-6 through 4.2-9 on pages 346-350 of the DEIS.

The EIS may mention OEHHA hazard assessments in § 3.2.3.1, but it must add text indicating that they are too conservative, that they will not be applied in consideration of the asbestos-related health risks in the CCMA, and that only the IRIS risk calculations will be used as a means to estimate the risks of asbestos exposure in CCMA.

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Substantive comment #22

Subject: Illogical selection of preferred alternative

Referring to § 2.5, "BLM's Preferred Alternative"

Discussion:

Alternatives B through G fail to meet the Purposes and Needs as stated in the DEIS in at least the following ways:

- They fail to address the "increased demand for use of public lands for recreation"[14]. Thousands of people and families count OHV and other forms of recreational opportunities inside CCMA and inside the ACEC as a critically important part of their quality of life. It is risky to human quality of life and happiness not to increase such opportunities, and especially to reduce them, by overemphasizing unknown risks to public health and safety, and overestimating them due to flawed scientific research.
- They fail to "establish goals, objectives and management actions ... that address current issues, knowledge, and conditions"[15] comprising, among other things, recreational values, partly because they do not analyze the EPA's CCMA Asbestos Exposure and Human Risk Assessment (2008) in a manner appropriately differentiating acceptable risk arising from a *recreational activity* as opposed to acceptable risk according to *public workplace, living place, or passive recreational* standards. Many forms of active recreation carry risks that in general dwarf a 1.0E-04 Excess Lifetime Risk level, making it relatively insignificant. A few examples of such activities include: scuba diving, cave diving, skydiving, car racing, motorcycle racing, street cycling, skiing, rollerblading, skating, snowboarding, rock climbing, parachuting, paragliding, parasailing, surfing, bungee jumping, gymnastics, etc. These higher risks are deemed acceptable as long as they are known by the participant or their guardian and these activities are not banned because they are deemed important to the mental health of participants and it is the participants who evaluate the risk vs. value proposition.

(continued)

14 DEIS page III, § ES.3 "Purpose and Need", third bullet item
15 DEIS page III, § ES.3 "Purpose and Need", last paragraph

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- They fail to "establish goals, objectives and management actions ... that address current issues ..."[16] partly because they do not analyze the EPA's CCMA Asbestos Exposure and Human Risk Assessment (2008) in a manner appropriately differentiating the rights of the *willing participant safety* from *public bystander safety.* Specifically, in nearly all recreational activities, when a third party is not involved, evaluation of the risk vs. value proposition is left up to the participant, and when a third party is involved and providing a service, the third party takes reasonable and appropriate steps to guard against assumption of liability. Examples of that are requiring hiking permits in national parks, requiring liability waivers to be signed by participants at race track events, acquisition of insurance, taking reasonably practical safety and informational measures, etc. Banning of such activities is not normally considered and is inappropriate because of the incommensurate damage to human rights and happiness.
- They fail to meet intentions of "identifying regional issues, and resolving those issues through public, inter-agency, and intra-agency scoping efforts."[17] This is because the primary regional issue has plainly been identified at the BLM scoping meetings and public feedback to be an intense demand by the public to engage in OHV recreational activity that has been denied by the BLM, and which would continue to be denied based on the BLM's choice of the preferred alternative stated in the EIS. Any of the Alternatives B through G are detrimental to resolving this issue as far as they would cause numerous lawsuits, negative feedback, and fighting between the public and the government for years, if not indefinitely.
- They do not address "listing and/or additional habitat needs for species protected under the federal 1973 Endangered Species Act (ESA) ..."[18] because the primary content of the actions within the alternatives is the reduction or elimination of OHV activity, and such reduction does not address species protection in any verifiable way, and may cause more harm than benefit. That the habitat status without OHV activity would be significantly more or less desirable than the habitat status with OHV activity, and that the habitat situation was not adequately addressed by previous environmental assessments and impact statements, are not established facts. Nor is the core idea that "reduced impacts" are "beneficial" an established fact.

(continued)

16 DEIS page III, § ES.3 "Purpose and Need", last paragraph
17 DEIS, page III, § ES.3 "Purpose and Need", second-last sentence
18 DEIS, page III, § ES.3 "Purpose and Need", second bullet item

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- They are unsuitable for use in a BLM EIS as they clearly fail to accomplish the BLM mission to *sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations*[19], comprising BLM responsibilities of which the Purpose and Need must be a subset:
    - That the health of public lands is endangered is not established because only a narrow definition of "health" is considered by the EIS, not including mental health and health benefits of active recreation. Furthermore, EIS Alternatives B through G would not demonstrably address the natural health of public lands in any significant way from a natural perspective because spindly roads, trails and staging areas affect negligible amounts of the total acreage under consideration in the ACEC and CCMA.
    - Alternatives B and C would have no discernible effects on the diversity and productivity of the public lands, while Alternatives D through G would reduce the diversity and productivity of the public lands because they would directly reduce the number and scope of distinct activities within the CCMA while not directly offsetting the reduction with any new distinct activities, introduce new wildlife species, or introduce anything else on a discrete basis that can be considered to be additions to diversity.
    - It would severely reduce the use and enjoyment of public lands by present and future generations, rather than sustaining the public lands in a manner consistent with its use and enjoyment. CCMA is enjoyed by present and future generations, especially with regards to the most popular and dominant activities (OHV recreation, through-riding, prospecting, etc.), and elimination or reduction of these activities will reduce the use and enjoyment of public lands.

(continued)

19 http://www.ntc.blm.gov/leadership/leader_blm_mission.html

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Alternative A is the most effective alternative listed and is preferable because it best satisfies all aspects of the Purpose and Need as follows:

- In consideration of Comments #20, "Overly conservative risk assessment", and #21, "Inappropriate health standard applied", above, the health risks from asbestos exposure are too small to justify selection of an Alternative that includes draconian and incommensurate measures such as reducing or eliminating any form of recreational opportunities on established historic public roads and trails within the ACEC.
- It maintains the historically and culturally significant trail system that has been repeatedly updated through great effort on the parts of many to protect natural resources, instead of allowing them to fall into disrepair or be destroyed.
- It ensures that habitat for varieties of evening primrose are not jeopardized; these species grow best in disturbed soils on sandy slopes and along roads and trails[20]. Restoring conditions to those prior to May 1, 2008 will ensure the delicate balance between habitat creation and destruction remains in effect, while not restoring it would jeopardize *benetensis camissonia* habitat.
- It provides for the greatest level of recreational opportunities reasonably appropriate in CCMA, even though it fails to expand them.
- It takes steps to reduce health risk for all car/SUV visitors driving vehicles in and through CCMA on the main roads and parking areas by treating them with dust-suppression techniques and informing and educating the public of the risk potential.
- It reduces health risk substantially by limiting soil-disturbing activities during the OHV dry season. The determination that such measures reduce health risk sufficiently has been established by voluminous scientific research that supported prior environmental impact statements and records of decision, and has been refuted by one small set of studies from one organization that is a contractor of the EPA, of controversial validity as discussed in Comments #13, "Improper measurement techniques", #14, "Improper measurement techniques II", and #15, "Improper measurement techniques III".
- It reduces erosion by limiting soil-disturbing activities during periods of heavy precipitation.

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20 http://www.nps.gov/band/naturescience/yellow-flowers.htm, ref: "Hooker's evening primrose - Blooms in mid to late summer. Found in disturbed soils such as along trails or roads. "

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Conclusion:

The EIS must not specify a preferred alternative that clearly does not satisfy the Purpose and Need and which is not the best alternative according to the copies evidence discussed in these Comments and those of the vast majority of the public.

Recommendation:

Change the EIS to state that Alternative A is the BLM's preferred alternative. Change the appropriate discussion sections of the document to indicate why.

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Substantive comment #23

Subject: Omitting discussion of risks of eliminating OHV recreation from CCMA

Referring to the following portions of the DEIS: page 5, § ES.5; page 6, § 1.3.2 "Summary of major planning issues"; pp. 28-31, Table 2.4-1(a), § 2.4, "Alternative E" through "Alternative F"; page 42, § 2.4.3; § 2.6, "Comparison of impacts"; pp. 147-149, § 3.3, "Travel and Transportation Management"; pp. 365-369 and page 371, § 4.3.8 through 4.3.11; page 480, § 4.1.50, "Impacts and Mitigation under Alternatives E, F, and G"; and page 482, § 4.10.6, "Off-site and Cumulative Impacts".

Discussion:

The DEIS has overlooked an important aspect that affects the overall health risk by considering only asbestos-related risks and not discussing or taking into consideration other important risks that comprise a similar Excess Lifetime Risk to the Excess Lifetime Risk of developing asbestos-related cancer that would be mitigated by reduction or elimination of OHV recreation within the CCMA.

The CCMA is within a 3-hour drive of populous areas constituting most of the 35,000 visitors per year. Elimination of OHV user will require central coastal CCMA users travel further to reach substitute recreation opportunities. They will have to drive far north to areas such as Stonyford and Middle Creek (4 hours), far west to areas around Tahoe (5 hours), or far south to areas around, for example, Jawbone (6 hours). Conservatively, they will have to drive at least an extra 1.5 hours (90 miles) each way.

The expected increase in miles driven can be calculated as follows: 35,000 visits/year, times 30 years (the EPA's average lifetime assumption of 30 years use of CCMA), times 180 miles/visit (the expected increase in highway miles driven per visit), or 189,000,000 miles.

Based on the NHTSA statistic of 1.05 fatalities per 100 million miles driven[21], 189,000,000 additional miles driven will cause 1.98 additional fatalities over the equivalent lifetime period.

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21 http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/6_CA/2008/6_CA_2008.htm Traffic Safety Performance (Core Outcome) Measures* For California, Federal NHTSA, FARS Fars 2008 ARF

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The corresponding Excess Lifetime Risk may be calculated as follows:

Use Case *V = visits/year*	**Unique visitors/year** *U = 35000 / V*	**Unique visitors per 30 years*** *L = U * (1 * 100% + 29 * 10%)*	**Excess Lifetime Risk** *R = 1.98 / L*
1	35000	136500	1.50E-005
5	7000	27300	7.30E-005
12	2916	11372	1.74E-004**

*Assumes a turn-over rate of 10% per year of unique visitors

**Exceeds the acceptable Excess Lifetime Risk of developing asbestos-related cancer (1.0E-04) determined by the IRIS Risk Calculations for many scenarios. Far exceeds the acceptable Excess Lifetime Risk of developing asbestos-related cancer for all of the scenarios when the Proper Risk Unit (see Comment #20) is utilized in IRIS Risk Calculations.

Because the Excess Lifetime Risk of traffic fatality based on extra miles driven is a significant offsetting factor as compared to the Excess Lifetime Risk of asbestos-related cancer, with the heavy use case of 12 visits per year even exceeding the acceptable Excess Lifetime Risk of asbestos-related cancer, this information is crucial to public health and safety. It should be taken into account in the EIS to avoid omitting a known and calculable danger.

Recommendation:

Incorporate the above information above into one or more of the referred-to sections of the EIS as necessary to convey the risk information crucial to public health and safety.

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Substantive comment #24

Subject: General comment for the record

Referring to the DEIS as a whole

Discussion:

The DEIS is unnecessarily repetitious and leans in a heavily biased direction toward the elimination of OHV use in Clear Creek.

- It is not beyond consideration that BLM staff may be unaware or unwilling to recognize the intense joy and recreational value afforded by OHV use at Clear Creek, of the love and care professed by OHV riders for the area, and that they are blinded by extreme environmentalist viewpoints.
- It is not beyond consideration that Rick Cooper of the BLM Hollister Field Office may have been specifically reassigned to Clear Creek in 2006 for the purpose of eliminating OHV use there after having successfully accomplished that goal in the Kettleman area.
- It is not beyond consideration that Rick Cooper may be emboldened and empowered by surreptitious or implied directives to eliminate OHV from his managers and their managers up through the BLM chain of command.
- It is not beyond consideration that information supporting these speculations may be brought to light in the coming years, and that the BLM may be held liable for gross mismanagement and associated damages, including those resulting from the Temporary Closure Order.

Clear Creek is no Kettleman in that it has a large following to mount a defense. It is rated as one of the top 10 OHV areas in the country. It is in close enough proximity to the Bay Area, Fresno and Southern California, to have a large number of loving and protective supporters who, without OHV access, will most likely cease to enjoy it and will never have the opportunity to see it or to enjoy the natural settings and resources it affords because the prospects for doing that by means other than OHV are bleak.

(continued)

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Recommendation:

The BLM must

- abandon the EIS or proceed with a R.O.D. selecting Alternative A.
- Lift the temporary closure and allow activity in Clear Creek to resume at levels as they were prior to May 1, 2008.
- Issue a public apology and promise not to further compromise the public's trust.
- Ensure that the number of visitors increases commensurately instead of falling precipitously.
- Spend the available budget and effort on improving everyone's experience by managing the land as the public wants instead of engaging in an elitist land grab and dereliction of duty.

Sincerely,

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