

In Reply Refer To:  
PP-CA-ClearCreek-05-03  
1617.2 (210)P

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul A. Turcke  
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225 North 9<sup>th</sup> Street, Suite 420  
Boise, Idaho 8370

Dear Mr. Turcke:

The Bureau of Land Management (BLM) has carefully reviewed and considered your letter of October 25, 2005, regarding the Clear Creek Management Area (CCMA) Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (FEIS). As the Assistant Director for Renewable Resources and Planning, I am responsible to the BLM Director for reviewing and resolving all protests of BLM's land use plans. The purpose of this letter is to inform you of the results of my review.

As stated in the Dear Reader letter for the proposed plan, the planning regulations at 43 CFR 1610.5-2 outline the requirements for filing a valid protest. I find that you meet these requirements, in part; therefore, portions of your protest letter are considered a valid protest. I have determined that your letter also contained comments which are not considered valid protest issues, because the comments contain issues not previously raised in the planning process, or the issues you raised are not germane to the planning process. The issues and comments are addressed below.

**Issue 1:** "... The Amendment fails to meet the requirements of section 7(a)(1) of the ESA and may additionally lead to violations of the 'non-jeopardy' and 'take' provisions of the ESA. The BLM should at least analyze, if not adopt, alternatives to the Proposed Action which allow for a trail/barren network well beyond that considered which will reasonably address visitor demand for the CCMA."

**Response 1:** The Proposed Amendment was developed in consultation with the U.S. Fish and Wildlife Service, who determined in a Biological Opinion that the Proposed Action would result in no jeopardy to species listed under the [Endangered Species Act \(ESA\)](#). In addition the BLM analyzed [the following](#) additional trail/open area network proposals from the recreation groups:-

- (a) ~~The~~ BLM included twenty-four miles of additional routes to the Proposed Action, many of which were submitted under Alternative E. However, proposed decisions on individual routes are not protestable.

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- ~~(b) T(b)~~ The proposal for barren designations submitted by the Recreational Groups ~~\_\_\_\_\_~~ was within the range of alternatives analyzed in the 2004 Draft EIS pages ~~\_\_\_\_\_~~ 2-~~\_\_\_\_\_~~ 17 to 2-25.

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**Issue 2:** The BLM did not address "...a proposed 'Alternative E' which would have addressed species and resource protection issues while better addressing visitor satisfaction and safety issues;..."

**Response 2:** As stated in Appendix J, page 73, of the ~~Final~~ EIS, the alternative developed by private Recreational Groups was reviewed and considered. The issues presented in the "Alternative E" submitted by the Recreational Groups ~~were~~ addressed as follows:

- (a) ~~The~~ BLM included twenty-four miles of additional routes to the Proposed Action, many of which were submitted under Alternative E. However, proposed decisions on individual routes are not protestable.
- (b) Camping is outside the scope of the proposed action and is not protestable.
- (c) The proposal for the boundary of the ~~San Benito Mountain Research Natural Area (SBMRNA)~~ submitted by the ~~\_\_\_\_\_~~ Recreational Groups was analyzed in Alternative B of the 2004 ~~Draft~~ EIS on ~~\_\_\_\_\_~~ Page 2-23.
- (d) The proposal for barren designations submitted by the Recreational Groups was within the range of alternatives analyzed in the 2004 ~~Draft~~ EIS pages 2-17 to 2-25.

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**Issue 3:** "The Cumulative Impacts Analysis is Deficient." in that it does not "...adequately discuss the impact of restricting vehicle access...on numerous issues, including (1) socioeconomics; (2) visitor recreation experience and safety; (3) satisfaction of demand for vehicle-based recreation; and (4) unjustified resource impacts resulting from concentrated use at the few remaining areas and/or routes designated for vehicle travel."

**Response:** ~~The~~ BLM met its obligations to analyze cumulative effects in the ~~Final~~ EIS, ~~S~~section 4.10, including impacts on socio-economic resources (page 4-40), recreation resources (pages 4-36 through 4-39), and impacts to various physical and biological resources.

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**Issue 4:** "The Disclosure and Analysis of Socioeconomic Impacts is Deficient . . . . [The BLM] must 'articulate a satisfactory explanation for [the] action including a rational connection between the facts found and the choice made. . . .' Four or five pages of general and conclusory discussion do not satisfy the agency's obligations."

**Response 4:** ~~The~~ BLM has met its obligation to analyze the economic and social impacts associated with the proposed action as required by 40 CFR 1508.14. In addition, the FEIS analysis articulates a satisfactory explanation for the action, including a rational connection between the facts found and the choice made. The relevant discussions can be found at pages 3-42 to 3-44, 4-28 to 4-31, and 4-40 in the ~~Final~~-EIS, and at pages 3-46 to 3-48, 4-51 to 4-56, 5-9 and 5-10 in the ~~Draft~~-EIS. In addition, the BLM has responded to comments on this subject at Appendix K, page 35 of the ~~Final~~-EIS.

**Issue 5:** “The agency has not conducted any meaningful effort at evaluating recreational demand.”

**Response 5:** The ~~Final~~-EIS contains an analysis of recreational demand and off-highway vehicle (OHV) demand (~~Final~~-EIS, pages 3-30 to 3-37). The protestor does not specify any dispute or additional information to lead the BLM to determine the existing analysis to be incorrect.

**Issue 6:** “The interdisciplinary team lacks members with necessary off-highway vehicle planning background, leading to inadequate and illogical conclusions. For example, one or more play areas supposedly surround ‘closed’ areas such as mine sites or private property.”

**Response 6:** The interdisciplinary team was composed of professionals from a variety of fields, including recreation management and planning, OHV management and planning, and a range of other natural resource disciplines. A complete list of preparers is contained on page 5-8 of the ~~Final~~-EIS. This team developed criteria in conjunction with a Technical Review Team to use for designating barrens as open or closed to OHV use. The criteria used to designate barren areas as open or closed are in Appendix B of the ~~DEIS~~~~raft~~ and ~~Final~~-EISs. The protesting party raises no specific reason or information to suggest why this method should be changed.

**Issue 7:** “The Amendment Improperly Suggests Routes Must be Signed to be Available for Travel. The Amendment requires or implies that vehicle access will only be authorized on route segments or at areas that are physically signed as ‘open’ to access.... This approach is not necessary, will result in unjustified practical complications, and presents opportunities for abuse. ... opponents to vehicle access,... have an incentive to remove signs... in the hopes of arguing that any route lacking a sign is effectively closed....the onus on understanding the management prescriptions and facts necessary for compliance (such as one’s physical location) is on the user. Agencies enforcing similar requirements, such as hunting or fishing regulations, do not attempt to post signs on every tree outlining applicable season, bag limit and harvest rules... Instead,... The amendment must clarify that general public travel is authorized only on designated routes and in designated areas, but should avoid any specific requirements.”

**Response 7:** ~~The protesting party raised this issue as a comment on the Draft EIS.~~The ~~Final~~ EIS contains the response on page 25 of Appendix K. The ~~Draft~~-EIS on page 1-12 and the ~~Final~~ EIS state that “It would be a formidable task to attempt to sign or physically close all routes or areas within the CCMA where OHV use would not be authorized.” The remainder of the section provides a rationale of the proposed CCMA signage policy, including the following points: (1) the BLM wants to emphasize what routes are available versus those that are unavailable; (2) the

cost of signing all closed routes would be prohibitive; and (3) the fact that the user is responsible for being aware of which routes are open for OHV use. In addition, the proposed route signage strategy will allow visitors to become familiar with the open route network and reduce the likelihood of OHV users becoming disoriented and getting lost on unmarked/unsigned routes. The protestor proposed a signing scenario that not only has the potential to endanger lost visitors, but professional emergency personnel on search and rescue missions as well because users would not have any way to identify their location on a map. The signing of all closed routes would also detract from visitor experience, as the signs would begin to dominate the landscape. The proposed method of route marking is used widely in travel management planning and has proven effective in other Limited Use Areas.

For all of these reasons, the BLM continues to believe that the proposed strategy for implementing the route designations is the best course of action for the CCMA. The BLM will continue to provide visitor education materials, including user maps, bulletins, informational kiosks, and the phone-in hotline.

**Issue 8:** “The Agency Has Not Properly Disclosed Expansion of the San Benito Mountain Natural Area.... This action was not previously disclosed and has not been subject to necessary public input.”

**Response 8:** Expansion of the San Benito Mountain Research Natural Area (SBMRNA) is discussed in the Draft-EIS and Final-EIS as part of the purpose and need (Draft-EIS, pages 1-5 to 1-6; Final-EIS, pages 1-4 to 1-5) and analyzed throughout both documents. The 1995 CCMA Final-EIS and corresponding 1999 Record of Decision (ROD) also addressed the expansion of the RNA Resource Natural Area. The current planning effort establishes the specific boundaries of the 4,082-acre area.

**Comment 1:** “...the Proposed Amendment/FEIS represents the agency’s final and most comprehensive analysis of project-level, or site-specific, decision making on individual routes. The Amendment lacks sufficient analysis and/or procedures to support this level of site-specific action.”

**Response:** As discussed in the Dear Reader letter at the front of the Final-EIS, proposed decisions on specific routes are implementation decisions. These decisions are not protestable, but are appealable to the Interior Board of Land Appeals (IBLA) upon adoption of the ROD.

**Comment 2:** The BLM assumes “...that all routes which eventually cross private property must be closed back to the nearest intersection with a route designated ‘open’ for travel. There is no legal requirement to manage in this fashion, and such an approach actually violates applicable law where rights-of-way have been established across the properties in question.”

**Response:** As discussed in the Dear Reader letter at the front of the Final-EIS, proposed decisions on specific routes are implementation decisions. These decisions are not protestable, but are appealable to the IBLA upon adoption in the ROD. The BLM is in compliance with all appropriate Federal and State right-of-way laws.

**Comment 3:** The BLM "...failed to consider alternatives that would close, relocate, or limit use of the historical camping and staging areas, which direct and concentrate use within areas like Clear Creek Canyon that present the most significant and complex resource protection issues."

**Response:** This comment is outside the scope of the project. Camping and staging were addressed in the 1999 ROD, page 10.

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**Comment 4:** "... the proposed 100 miles or less of single-track trail is wholly inadequate for recreation demand. This proposed mileage will not allow for reasonable conduct of historically-approved events ... and ... might lead to unjustified impacts due to concentration of travel."

**Response:** As discussed in the Dear Reader letter at the front of the Final EIS, proposed decisions on specific routes are implementation decisions. These decisions are not protestable, but are appealable to the IBLA upon adoption of the ROD.

**Comment 5:** The "...BLM has improperly failed to consider authorizing travel on routes crossing private property, regardless of the existence of historical use along established rights-of-way."

**Response:** As discussed in the Dear Reader letter at the front of the Final EIS, proposed decisions on specific routes are implementation decisions. These decisions are not protestable, but are appealable to the IBLA upon adoption in the ROD.

**Comment 6:** "BLM Should Clarify that Undesignated Routes May be Available for Permitted Use."

**Response:** ~~A request for clarification is not a protestable issue. Pursuant to 43 CFR 8340.0-5(h), "Closed area means an area where off road vehicle use is prohibited. Use of off road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer." By regulation, closed routes and areas may be authorized for use, after appropriate environmental review, by the BLM Field Manager. Permittees may be required to post a bond to ensure that corrective maintenance activities take place following the authorized use. Designations for OHVs do not apply to "any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved (43 CFR 8340.0-5(a)(3))."~~

The permitting of special events is outside the scope of this planning process. By regulation, closed routes and areas may be authorized for use, after appropriate environmental review, by the authorized officer. Pursuant to 43 CFR 8340.0-5(h), "Closed area means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer." All proposed event routes will be evaluated through the NEPA process with input from the public. The BLM would analyze the potential impacts of authorized use on closed routes and develop mitigation measures to protect natural and cultural resources. Authorized use of closed routes will not occur in areas where the BLM determines that mitigation of potential impacts to sensitive resources is not possible. Permittees may be required

to post a bond to ensure that corrective maintenance activities take place following the authorized use.

**Comment 7:** “The Recreational Groups support aggressive and effective enforcement of reasonable and properly-implemented travel restrictions....The Amendment does not specifically address enforcement issues....clarification should include a commitment to budget support, a substantial increase in enforcement personnel and training, physical resources such as maps and signing necessary to effective prosecution of citations, and creative options such as outreach to organized visitor groups and the presence of ‘citizen patrols’ to improve compliance with travel prescriptions.”

**Response:** ~~Law Enforcement staffing levels, BLM budget allocations, and the establishment of citizen patrols are outside the scope of the planning process. Resources such as route maps and signing are addressed in the Final EIS, Appendix C.~~

Law enforcement staffing levels, BLM budget allocations, and the establishment of citizen patrols are outside the scope of the Proposed Plan Amendment and Final EIS. However, the Proposed Action states, on page 2-9, that “The current Compliance Monitoring Plan will be revised to improve the BLM’s ability to manage the CCMA in a manner that promotes the long-term conservation of Camissonia benitensis and makes efficient use of staffing and funding.” The designation of a route network will help to improve enforcement of illegal use. Once a network is identified, the Field Office can sign and provide maps to raise the users awareness of what is legal and illegal use, and to make the area more enforceable. The OHV users found not to be in compliance are subject to 43 CFR 8340.0-7, which states “Any person who violates or fails to comply with the regulations of subpart 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than \$1,000 or imprisonment for not longer than 12 months, or both.

**Comment 8:** “There is No Reasonable Basis for ‘Asbestos’- Related Closures.”

**Response:** This issue is outside the scope of this ~~Final~~-EIS and will be addressed, if necessary, in a separate National Environmental Policy Act (NEPA) planning process after release of the Environmental Protection Agency’s (EPA) Final Risk Assessment, as described in the ~~Final~~-EIS, page 1-10, as follows:

The ~~U.S. Environmental Protection Agency-EPA~~ is currently conducting an asbestos exposure evaluation study in the Clear Creek Management Area. This study will provide further information on the exposure levels from various types of activities in the CCMA. Upon completion of this study, the BLM will work with the EPA and the public to appropriately respond to the new information. If the information is significantly different than the 1992 risk assessment, the BLM will expeditiously initiate a NEPA process to consider the new information and potential management responses at the CCMA in light of any new findings.

**Comment 9:** “The Proposed ‘Wet Season’ Closure Procedure is Too Inflexible.” as the “...prescriptions fail to properly address the unique characteristics of the CCMA.”

**Response:** Wet season closures are outside the scope of this planning process. Wet season closures were adopted in the 1999 ROD as follows:

. . . road closure to vehicle use during periods of extreme wet weather will be enforced. The BLM will implement wet season closures when road conditions are such that sustained vehicle use will compromise the integrity of the road surface and/or when BLM patrol persons determine that accessing the area will be unsafe for employees or visitors.

After careful review of your protest letter, I conclude that the BLM California State Director and the Hollister Field Manager followed the applicable planning procedures, laws, regulations, and policies and considered all relevant resource information and public input in developing the CCMA Proposed Resource Management Plan Amendment and ~~Final~~-EIS. There is no basis for changing the Proposed Resource Management Plan Amendment and ~~Final~~-EIS as a result of your protest. ~~Therefore, your letter of protest is, and these protests are he~~reby dismissed.

This completes my review and is the final agency action for the Department of the Interior on the issues and concern you raised in your letter. The IBLA does not review appeals from a decision by the Director of the BLM on protests concerning resource management plans. Any person adversely affected by a decision of a BLM official to implement some portion of the CCMA Resource Management Plan Amendment may appeal such action to the IBLA at the time the action is implemented.

Thank you for your participation in the Clear Creek Management Area planning effort. I encourage you to stay involved in the BLM's resource management activities and to provide information and input during implementation of the Amendment. If you have any questions, please feel free to contact Mr. George Hill, Hollister Field Manager, at (831) 630-5036.

Sincerely,

Edward Shepard  
Assistant Director  
Renewable Resources and Planning

Cc: Official-210, LS1075  
SD, CASO  
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