

In Reply Refer To:  
PP-CA-ClearCreek-05-07  
1617.2 (210)P

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Vicky Hoover  
Sierra Club  
85 Second Street, Second Floor  
San Francisco, CA 94105-3459

Dear Ms. Hoover:

The Bureau of Land Management (BLM) has carefully reviewed and considered your letter of October 31, 2005, regarding the Clear Creek Management Area (CCMA) Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (EIS). 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 six comments which are not considered valid protest issues, either because they represent an opinion not substantiated with a concise statement of why the State Director's proposed decision is believed to be wrong, or because they address matters outside the scope of the Plan Amendment itself, or because they represent an attempt to raise for the first time an issue that the protestor did not raise before, and are therefore not protestable here. The issues and comments are addressed below.

**Issue 1:** “Monitoring and Enforcement. The FEIS [Final EIS] states that BLM and FWS [Fish and Wildlife Service] will evaluate the intensity and extent of disturbances annually. Then it states that the two agencies will get together when BLM notices damage and they will decide what to do. Each of these points, and especially taken in combination, makes the entire CABA [San Benito evening-primrose] monitoring plan suspect and of negligible value. It is simply not enough to do annual evaluations and then figure something out. Monitoring of CABA sites, meaning occupied sites as well as CABA habitat sites, needs to be much more frequent. I agree with the recommendation of CNPS [California Native Plants Society] that ‘Evaluations between BLM and FWS must be at least 4 times a year or each time a disturbance is recorded.’ And as far as enforcement, or deciding what to do to prevent more problems, by getting together after damage is noted, that is useless, as it will be after the fact. There must be (again referred to

CNPS, a recognized expert on CAGE) ‘There must be automatic thresholds that close trails, sub-watersheds, or the whole CCMA when damage occurs.’ Automatic, of course, means pre-determined, (by consultations and probably an MOA between the agencies.)”

**Response 1:** Section 2.3, General Policies and Guidance, of the Final EIS states:

Compliance monitoring will be conducted for the protection of San Benito evening-primrose (CAGE) to document the condition of the species, habitat, and the protective measures in place. Monitoring will record direct disturbance to CAGE, CAGE habitat, and CAGE potential habitat by off-highway vehicle use, including but not limited to tire tracks, trampling of plants, soil compaction, soil displacement, seed displacement, and soil erosion and sedimentation. Biologists will visit occurrences monthly from October to May and on a less frequent basis during the off-season. Additional BLM staff will monitor integrity of protective measures on a more frequent basis. The intensity and extent of disturbance at each occurrence will be evaluated annually with FWS to determine adaptive management. BLM will coordinate with FWS in revising the compliance monitoring plan to promote the long-term conservation of the primrose. Annual population census monitoring will be conducted and reported to FWS.

Because off-season recreational use of the planning area drops by about 80 percent (see Final EIS, page 3-30), monthly monitoring was determined to not be necessary.

Therefore, the CAGE monitoring plan provides for much more frequent monitoring of occupied and potential CAGE habitat and protective measures than the protestant claims. When viewed in its entirety, the Proposed Plan Amendment goes above and beyond the Section 7 consultation requirements of the Endangered Species Act, by committing the BLM and FWS to annual evaluations of disturbances to determine the adaptive management necessary to promote the long-term conservation of the primrose.

With regard to automatic thresholds for closure of areas in the CCMA, the BLM maintains the authority to implement Special Rules on public lands in accordance with 43 CFR 8341.2.

**Issue 2:** “CAGE protection could be amplified by the expansion of the SBMRNA [San Benito Mountain Research Natural Area], and it is good that BLM expanded the boundary. However, this expansion is likely to remain little more than a potential benefit to the CAGE habitat, as there is nothing to assure that OHV [off-highway vehicle] riders will respect the new, expanded boundary, and stop illegally using the area. The FEIS [Final EIS], Appendix E, states BLM will ‘Continue ORV [off-road vehicle] compliance monitoring and increase enforcement as necessary to halt unauthorized vehicle use in the SBMRNA.’ Sounds good but what kind of monitoring is done now and how often? And HOW is BLM increasing enforcement?”

“It is also unclear how much OHV use will be allowed with the expanded SBMRNA, or how the expanded RNA [Research Natural Area] boundaries will be marked. The FEIS, p. 2-8, states, ‘The boundaries will be delineated using identifiable landmarks such a routes to the extent possible.’ . . . That sounds like delineation of questionable value, as what is an identifiable

landmark to one person may not be so to all. Also, what is really needed to keep illegal OHV use out of the expanded SBMRNA is fencing, and I am unable to find reference to fencing as a way to deter illegal activity.

(My comments on the DEIS [Draft EIS] urged attention to fencing as a needed management action, but I cannot see that has been done at all in the FEIS.)”

**Response 2:** With regard to delineation of the expanded SBMRNA boundary, Appendix E of the Final EIS states that “The BLM policy for its Research Natural Areas is to ‘Permit natural processes to continue without interference’ and to ‘Determine the boundaries for all vegetation series representatives. In order to preserve the greatest diversity possible, the boundaries will include a variety of slope exposures and elevational features, and should follow natural boundaries.’” Therefore, the proposed delineation of the expanded SBMRNA boundary based on identifiable landmarks is consistent with BLM policy. The proposed delineation is described on page 2-8 of the Proposed Plan as follows:

The San Benito Mountain RNA will be expanded to 4147 acres as shown on the Map 1-1. This boundary incorporates areas containing unique vegetation communities, habitats, and species into the Research Natural Area, benefiting their long-term protection. Expansion of the boundaries of the SBMRNA will be based on:

- Protection of the San Benito evening primrose (*Camissonia benitensis*), sensitive species, potential, and occupied habitat,
- Inclusion of the unique vegetation communities (forest, T&E, and sensitive species),
- Inclusion of watersheds/sub-watersheds to the extent possible, for protection of riparian habitat,
- Inclusion of the transition zone between the serpentine and non-serpentine soils,
- Delineation using identifiable geographical landmarks (routes, trails, ridges, etc.),
- Reducing the impacts of OHV use and other conflicting uses,
- Authorizing only those trails and areas, as determined by the authorizing officer, which will not adversely affect the natural, scenic, esthetic or other values for which established.

Delineation of the boundaries of the expanded SBMRNA will include signage, as described in Appendix C, page 5, Sign Implementation Plan, 7. “Identification of route designations, open play areas, and Research Natural Area boundaries.”

With regard to fencing, page 2-8 of the Proposed Plan includes the following management action: “Fences and barriers will be constructed to preclude OHV access into the SBMRNA.”

In consideration of all these factors, the BLM’s proposed interim management strategy for the expanded SBMRNA boundary will avoid impacting the area in ways which could adversely affect the natural, scenic, or ecological values for which it was established.

**Issue 3:** “the types of soils within the CCMA are extremely erodible on disturbance, and while this is of concern everywhere in the CCMA, it is a particular concern on the barrens which are such a special feature of the area. Since BLM appears to have no baseline study on which to document pre dirt-bike conditions, it is impossible to know how much soil has already been lost from barrens? I still affirm that no barren should be designated as ‘open’ until adequate soil-depth and organic layering surveys and a vegetation protection plan are prepared.”

**Response 3:** Chapter 3, Affected Environment, describes the soil conditions in the CCMA. On page 3-4, the Final EIS states:

The [serpentine] soils are extremely sensitive to manmade disturbances, such as OHV use. The properties of serpentine soils (low calcium/ magnesium ratio, high Ph, low organic matter and the presence of toxic elements such as nickel, cobalt, mercury, chromium, and lead) are such that plant growth is stunted or inhibited, resulting in the barren slopes, common to the CCMA. In [these areas], serpentine soils are being physically removed faster than they are being naturally replenished.

Furthermore, on page 2-12 of the Final EIS, the BLM describes the barren designation methodology, which was partially based on the Geomorphic Field Evaluation of Serpentine Soil Barrens, CCMA (Dynamac, 1998):

The objectives of this field evaluation were: to determine the degree of soil erosion and sedimentation taking place within the barrens; to evaluate natural and human influences on sedimentation and erosion within the barrens; and to develop a barren inventory and ranking system. Key information from this study used in this designation process include; stream orders present, hydrographic position, vegetation cover, vegetation boundary/buffer, amount of gullying, slope, armoring present, sediment trapping features, and contribution of sediment to sub-watersheds with high erosion rates.

The BLM has considered the issues raised by the protestant with regard to the soil types that make up “the barrens” and incorporated the appropriate soil information with other data to meet the soil loss standards developed jointly by BLM and California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division.

**Issue 4:** “One provision of the CA State Soil Loss Standards is ‘evidence of unauthorized use of designated route.’ Motorcycle tracks provide such evidence, and can be used for soil loss monitoring as well as to offer deterrents to illegal activity . . .”

**Response 4:** Section 2.3, General Policies and Guidance, of the Final EIS states:

BLM will continue to monitor water quality, soil erosion, and sediment conditions within the watersheds of the CCMA . . . . The BMPs [Best Management Practices] will incorporate the soil loss standards for OHV areas, developed

jointly by BLM and California Department of Parks and Recreation, Off-Highway Motor Vehicle Recreation Division.

Therefore, the provision of the California State Soil Loss Standards for motorcycle tracks as “evidence of unauthorized use of designated route,” identified by the protestant, will be incorporated into BLM soil loss monitoring surveys.

**Issue 5:** “Monitoring as proposed by the FEIS is inadequate. On p. 2-6, the FEIS states that State Soil Loss Standards will be monitored on an annual basis . . . ‘This is completely inadequate. Not only do the state standards require monitoring for unauthorized use they also require monitoring for 9 other items. Monitoring once a year will not catch damage before it is too late. Monitoring once a year cannot tell if there has been – or how many times there has been – unauthorized use. Monitoring must be done at least every 2 months during the high-use season and interested parties must be able to submit documented reports.’”

**Response 5:** The reference to “California State Soils Loss Standards and Monitoring” and “surveys completed on an annual basis,” as described on page 2-6 of the Final EIS, is specific to “open routes” and includes ALL the standards that apply to soil loss monitoring requirements, not just monitoring for unauthorized use (i.e., tracks). The determination to conduct surveys on an annual basis for “open routes” is consistent with the guidance outlined in the California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division’s 1991 Soil Conservation Guidelines/Standards for Off-Highway Vehicle Recreation Management (a.k.a. California State Soil Loss Standards). In particular, Sections C, D, and G of the 1991 Standards/Guidelines address monitoring needs as follows:

Section C; Monitoring Plan for New Projects

I. Establish and maintain a Monitoring Plan file for each specific off-highway vehicle project. The purpose of the Monitoring Plan is to provide for timely inspection and maintenance of every off-highway vehicle area.

IV. Annually submit a monitoring report prepared by qualified personnel trained in the use of the Erosion Hazard Rating System (Section F) and the Monitoring System (Section G). This report is to evaluate the status of all off-highway vehicle use areas (roads, trails, tracks, hillclimbs, open ride areas, staging/parking/camping areas or any other) using both the Monitoring System and the Erosion Hazard Rating System.

Section D; Design Criteria and Monitoring/Maintenance Requirements

I. Roads/Trails/Firebreaks/Fuelbreaks; Management/Monitoring:

- A. Follow Erosion Control/Vegetation Management Plan (Section B) and the Monitoring Plan (Section C).
- B. The Monitoring System (Section G) shall be used and followed annually.

### Section G; Monitoring System

The intent of these guidelines is to provide a process to collect data to meet monitoring needs, prioritize maintenance, program funds, and give Land Managers information for use in making decisions on how off-highway areas will be managed and maintained.

All areas rated Yellow must be repaired before the next annual monitoring. All areas rated Red must initiate action to repair, close and rehabilitate within six months and a new monitoring evaluation entered into the file stating the status of the segment.

Therefore, the BLM's proposed soil loss monitoring system, as outlined in Chapter 2, is adequate and will "provide for timely inspection and maintenance" of the designated OHV use areas in the CCMA.

**Issue 6:** "It is difficult to interpret the FEIS's statement (on p. 2-7, under 2.4 management actions) that 'Stopping and Parking will be allowed within 40 feet of the centerline of an open or limited route' as *not* leaving a wide 8-foot swath of open area available to ORV users.

As Brian LeNeve of CNPS says: 'This is contrary to BLM's stated goals of reducing air and water pollution, erosion, sedimentation, and protection of CAGE as well as other sensitive plants and animals . . . I do not believe the FEIS analyzed a single-track trail 80 foot wide and I am sure the 2005 Biological Opinion did not analyze such wide sources of sedimentation. There is no way BLM can maintain a route 80 feet wide with rolling dips and other needed erosion control measures.'"

**Response 6:** The Proposed Action will be changed. The following will not be included in the Proposed Action: "Stopping and Parking will only be allowed within 40-feet of the centerline of an open or limited route except for within the SBMRNA and specifically restricted areas (sensitive habitat, mines, private lands, etc.)." BLM will develop provisions for the stopping and parking of OHVs in CCMA in accordance with 43 CFR 8365.1-6; Supplementary Rules.

**Comment 1:** "Under definitions, **Authorized Use** lists organized events requiring a recreation permit as one class that would be authorized to use closed route. The problem is that including recreational permittees as an exception to use of closed routes allows a great and undefined, maybe virtually unlimited amount of use on closed routes! This could open up these closed routes to the already presently scheduled Enduro rides plus others. Virtually any rider on a closed route could claim to be preparing for an upcoming Enduro; it would make it even more difficult for BLM to prevent others from using such closed routes."

**Response:** 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." Also, 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))."

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.

All proposed event routes will be evaluated through the NEPA process with input from the public. 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 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 2:** “Types of impacts. On page 2-3 **General Policies and Guidance**, the FEIS discusses CAFE monitoring, and refers to disturbances to sites. This implies that OHV impacts are the only disturbances to watch out for; this should be expanded to include foot traffic. CAFE sites can be very sensitive (especially in the spring) even to trampling by human feet., although in general such impact is minor compared to OHV. In addition, grazing has a significant effect on both the survival of CAFE in occupied sites and the likelihood of establishment in potential habitat.”

**Response:** This issue is outside the scope of the Proposed Action and Final EIS. These impacts were considered in the 1995 Final EIS.

**Comment 3:** “I am unable to find any discussion of deterrents. That is to say, *effective* deterrents that will discourage riders from illegal activity. At the moment there’s nothing that happens if an ORV rider uses a ‘closed route’. Well, he can be fined, but that depends on being caught, and then the fine is likely to be small; and the size of the CCMA is such and law enforcement presence so limited that likelihood of actually being caught is small.”

**Response:** Law enforcement and criminal penalties are beyond the scope of the Proposed Plan Amendment and Final EIS.

Appendix C, page 3, addresses implementation of patrols for law enforcement.

Pursuant to 43 CFR 8340.0-7, “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 4:** “For a longer term view of the sustainability of ORV recreation within the CCMA, it is desirable to develop a carrying capacity study. How many ORV users *can* the area sustain, under some differing scenarios of use-intensity, over 5, 10, 20, or more years? Also, how may other types of recreational activity fit into the CCMA as well?”

BLM claims there is other, or non-motorized recreational use within the CCMA. FEIS, p.1-1, states, ‘A variety of other recreation activities also occur with CCMA including hunting, rock-

hounding, wildlife watching, and hiking.’ I take issue with this comment, as I doubt there is much of those activities occurring, since, in practice . . . OHV use tends to drive out *all* quiet recreation. If BLM wishes to encourage quiet recreation activity, something else is going to have to change.”

**Response:** These issues are outside the scope of the Proposed Plan Amendment and Final EIS. These issues were addressed in the 1995 Final EIS and 1999 Record of Decision.

**Comment 5:** “. . .in consideration of a new asbestos study by EPA [Environmental Protection Agency] expected out soon, the results of which are likely to alter quite a few route determinations, etc. of the Proposed Action in the FEIS, it would be prudent for BLM to delay a Record of Decision until after the availability of that study. . . . Otherwise you may have to go to immediate great new expense (of taxpayer funds) to prepare an amendment to this plan. Please let me know how you will address this issue.”

**Response:** This issue is outside the scope of the current EIS. Chapter 1, Section 1.11 “Human Health Risks and Naturally Occurring Asbestos” describes the BLM’s agreement with EPA to incorporate the results of the EPA’s health risk study into future CCMA management decisions.

**Comment 6:** “The large, detailed map 1-1 . . . provides admirable detail, but it is confusing to iron out the different vehicle routes . . . . Wider markings for main vehicle routes . . . would be helpful.”

**Response:** Comment noted.

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. BLM will change the Proposed Action as described in the response to Issue 6 above. However, there is no further basis for changing the Proposed Resource Management Plan Amendment and Final EIS as a result of your protest.

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 Interior Board of Land Appeals (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 BLM 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