

Rob Winthrop's revision of Issue/Response #2 (socio-economic), 12/30/05,

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul A. Turcke
Moore Smith Buxton & Turcke
225 North 9th 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 (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 12 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.

(b) Issue 1: "... 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."

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Response 1: The BLM did review and analyze a proposal submitted by private recreational groups that included an increased trail/barren network of routes. See response to Comment 3.

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Lawyers: Prepared in anticipation of litigation: Attorney-Client Privilege

[Issue 2 description and response prepared by Rob Winthrop, WO-210, 12/30/05]

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Issue 2: “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 2: The protesting party claims that the socio-economic assessment presented in the CCMA Proposed RMP Amendment and FEIS is deficient. The socio-economic assessment was also criticized in comments on the Draft RMP Amendment/DEIS (see FEIS, App. K-35). The CCMA Proposed RMP Amendment and FEIS describes existing social and economic conditions and characteristics of recreational users on pages 3-30 to 3-35 and 3-42 to 3-44, and analyzes socio-economic impacts from the Proposed Action on pages 4-28 to 4-31 and 4-40. We find this protest issue to be valid. The Hollister Field Office will be directed to prepare a supplemental socio-economic assessment consistent with Bureau guidance.

The description of existing conditions and analysis of impacts in the CCMA Proposed RMP Amendment and FEIS are not consistent with guidance in effect when the document was prepared, specifically Instruction Memorandum 2002-167 (Social and Economic Analysis for Land Use Planning, issued May 9, 2002) and Instruction Memorandum 2003-169 (Use of the Economic Profile System in Planning and Collaboration, issued May 19, 2003). It is also inconsistent with current Bureau guidance, as provided in the BLM’s Land Use Planning Handbook (H-1601-1), Appendix D (Social Science Considerations in Land Use Planning Decisions). In particular, the CCMA Proposed RMP Amendment and FEIS fails to describe socio-economic conditions and impacts in communities surrounding the planning area, limiting analysis primarily to a 21-county “visitor shed” 150 miles in radius and a 5-county North Central Coast region. It also fails to provide any basis for comparing the social and economic tradeoffs between OHV and non-OHV uses for the various alternatives.

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We do not find it likely that a more complete socio-economic assessment would alter the decisions proposed in this plan amendment and EIS. We will therefore allow the protest review to proceed and a record of decision to be prepared. There are, however, several ways in which a more adequate socio-economic assessment can support effective management of the CCMA. These include identifying issues to be treated in project implementation; providing an estimate of fiscal impacts and effects on public services; providing a basis for more effective collaboration with state and local governments; providing a baseline for monitoring socio-economic effects, particularly in an adaptive management context, and providing a basis for mitigating the human consequences of the proposed action.

This issue was responded to in the Final EIS, Appendix K, page 35: “Page 3-48 of the DEIS (Draft EIS) describes the social and economic conditions in the region surrounding CCMA, and page 4-54 presents an evaluation of the impacts to social and economic conditions as required by 40 CFR 1502.22.” An analysis of the existing social and economic conditions and impacts from the Proposed Action are also included in the Final EIS (pages 3-42 to 3-44, pages 4-28 to 4-31, and page 4-40). The protesting party has not raised any specific information not included in the original analysis nor provided any reason why the existing analysis and information are incorrect.

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Issue 3: “The agency has not conducted any meaningful effort at evaluating recreational demand.”

Response 3: 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 4: “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 4: 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 Draft and Final EISs. The protesting party raises no specific reason or information to suggest why this method should be changed.

Issue 5: “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 5: 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 6: “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 6: 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. The current planning effort establishes the specific boundaries of the 4,082-acre area.

Comment 1: “The Amendment fails to meet the requirements of section 7(a)(1) of the ESA [Endangered Species Act] and may additionally lead to violations of the ‘non-jeopardy’ and ‘take’ provisions of the ESA. Specifically, the Amendment would lead to excessively concentrated travel in limited areas of the CCMA, as opposed to travel dispersed within a broader area.”

(e)Response: The issue of excessively concentrated trails leading to ESA violations was not previously raised in the planning process, nor was this identified as an issue during the section 7(a)(2) consultation process. The Proposed Action 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 ESA.

Comment 2: “...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 3: 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: 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 are addressed as follows:

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- (a) 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 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.

Comment 4: 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 5: 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.

Comment 6: "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: This comment was not previously raised in the planning process. Cumulative impacts are included in the Final EIS, section 4.10.

Comment 7: "... 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 8: 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 9: "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))."

Comment 10: "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.

Comment 11: "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 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, BLM will work with EPA and the public to appropriately respond to the new information. If the information is significantly different than the 1992 risk assessment, 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 12: “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.

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 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