

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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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 because they represent an opinion not substantiated with a concise statement of why the State Director's proposed decision is believed to be wrong. 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."

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.

Issue 2: "The Disclosure and Analysis of Socioeconomic Impacts is Deficient." The substance of the Amendment's analysis on socioeconomic issues is deficient. As noted above, the agency has an obligation to analyze "economic or social" impacts associated with the proposed action. 40 CFR 1508.14. Such discussions with the resulting conclusions must "articulate a satisfactory

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explanation for [the] action including a rational connection between the facts found and the choice made....” Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Automobile Ins. Co. 463 U.S. 29, 43 (1983). The Recreational Groups acknowledge the Amendment contains some analysis of these issues. See e.g.; Proposed Plan Amendment and FEIS at 3-42 to 3-44; 4-28 to 4-29. These are extremely important and complex issues requiring careful analysis and creative solutions. Four or five pages of general and conclusory discussion do not satisfy the agency’s obligations.

Response 2: In the protest letter, the Recreational Groups acknowledge the Amendment contains an analysis of the existing social and economic conditions and impacts from the Proposed Action on pages 3-42 to 3-44, pages 4-28 to 4-31, and page 4-40. However, the protesting party has not identified any specific information not included in the original analysis, nor provided any reason why the existing analysis and information are incorrect.

40 CFR 1502.1 provides the following guidance for preparing an environmental impact statement: “Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.”

40 CFR 1508.14 states, “the *human environment* shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impacts statement. When an environmental impact statement is prepared and economic or social and natural or physical effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”

Pursuant to 40 CFR 1502.1, BLM is only required to consider social and economic data and that is relevant to proposed action. Therefore, the Affected Environment chapter of the CCMA Proposed Plan Amendment and Final EIS (pp. 3-42 to 3-44) provides an overview of the social conditions in the planning area, including census data and regional land use patterns. This section also provides baseline data for analysis of the potential economic effects of the proposed action by characterizing the regional employment data and the contribution of off-highway vehicle recreation opportunities to the California economy and to the regional economy. Additional information on social and economic conditions in the planning area that is related to OHV recreation is presented in the recreation resources section of the Affected Environment (pages 3-30 to 3-36). This information includes annual visitor use at CCMA, recreation-related expenditures, revenues, and jobs in the surrounding region; as well as distribution of green-sticker registrations by community size, located within the visitor use region, and a brief discussion of non-OHV recreation opportunities.

Pursuant to 40 CFR 1508.14, the Environmental Consequences chapter (pages 4-28 to 4-31, and page 4-40) contains an analysis of the economic and social effects of the proposed action based on the information described in the Affected Environment. Based on the general assumptions that “the proposed action would support current user levels and visitation with slight increases” (pg. 4-29) and “the trails system proposed provides access to the majority of the CCMA that is commonly used today” (pg. 4-20), BLM concluded that the proposed action would not result in a curtailment of OHV related activities, and “economic impacts are not expected to negatively

affect current local or regional sales and purchases of OHV equipment or related supplies” (pg. 4-30).

The conclusion that the proposed action would not negatively affect social conditions (ie; “curtail OHV related activities”) is based on the assumption that “recreation users would still be able to experience solitude, the wildlands character, and a sense of exploration, due to the size of the area and the extensive open route network that would be provided”, and “this reduction of routes would benefit the non-motorized recreation experience and reduce user conflicts between motorized and non-motorized recreation use” (4-30).

The conclusion that the proposed action would not negatively affect economic conditions in the planning area was based on studies conducted by the State Off-Highway Vehicle Commission and California State Parks to determine expenditures by visitors to OHV recreation areas. As noted on page 4-30 of the Proposed Plan and Final EIS, “Much of the economic benefit for income and employment from people’s expenditures for motorized recreation appears closer to the urban homes of visitors to the Management Area than in the communities near the Management Area. Purchases of vehicles for recreation use are prime examples are big-ticket expenditures that occur at considerable distances from the Area. Motorcycles are popular vehicles for motorized recreation in the Management Area. Within the visitor use region, motorcycle retail outlets concentrate close to their customers and frequently cluster as the result of zoning.” Therefore, BLM considers the analysis of economic and social effects of the proposed action to be adequate, and the information referenced herein constitutes a “satisfactory explanation for [the] action including a rational connection between the facts found and the choice made.”

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:

- (a) Proposed decisions on **individual** routes are not protestable; however, it should be noted that 24 additional miles of routes were added to the Proposed Action, many of which were submitted in comments on the Draft EIS by the Recreational Groups.
- (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) socioeconomic; (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