

Director's Protest Resolution Report

**Clear Creek Management
Area
Resource Management Plan
and Final EIS**

February 4, 2014



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CA-ESD-08-0020-10
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

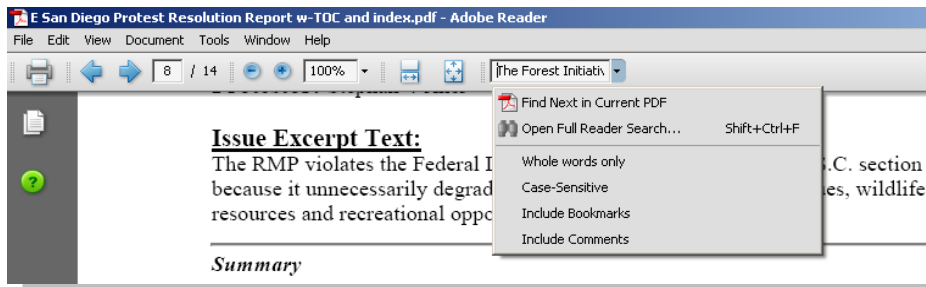
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

Summary
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	FWS	U.S. Fish and Wildlife Service
BA	Biological Assessment	GIS	Geographic Information Systems
BLM	Bureau of Land Management	IB	Information Bulletin
BMP	Best Management Practice	IERF	International Environmental Research Foundation
BO	Biological Opinion	IM	Instruction Memorandum
CAA	Clean Air Act	KOP	Key Observation Points
CCMA	Clear Creek Management Area	MOU	Memorandum of Understanding
CEQ	Council on Environmental Quality	NEPA	National Environmental Policy Act of 1969
CFR	Code of Federal Regulations	NHPA	National Historic Preservation Act of 1966, as amended
COA	Condition of Approval	NOA	Notice of Availability
CSP	Concentrated Solar Power	NOI	Notice of Intent
CSU	Controlled Surface Use	NRHP	National Register of Historic Places
CWA	Clean Water Act	NSO	No Surface Occupancy
DEIS/DRMPA	Draft Environmental Impact Statement /Draft Resource Management Plan Amendment	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
DM	Departmental Manual (Department of the Interior)	PA	Preliminary Assessment
DOI	Department of the Interior	PPA	Power Purchase Agreement
EA	Environmental Assessment	RFDS	Reasonably Foreseeable Development Scenario
EIR	Environmental Impact Report	PRMP	Proposed Resource Management Plan
EIS	Environmental Impact Statement	RMP	Resource Management Plan
EO	Executive Order	ROD	Record of Decision
EPA	Environmental Protection Agency	ROW	Right-of-Way
ESA	Endangered Species Act	SO	State Office (BLM)
FEIS	Final Environmental Impact Statement	T&E	Threatened and Endangered
FEIS/PRMPA	Final Environmental Impact Statement /Proposed Resource Management Plan Amendment	USC	United States Code
FLPMA	Federal Land Policy and Management Act of 1976	USGS	U.S. Geological Survey
FO	Field Office (BLM)	VRM	Visual Resource Management
		WA	Wilderness Area
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
William Spence	Individual	PP-CA-Clear Creek-13-01	Denied
Terry Pederson	Timekeepers Motorcycle Club	PP-CA-Clear Creek-13-02	Denied
Ray Iddings	Individual	PP-CA-Clear Creek-13-03	Dismissed; comments only
Judy Burson	Coalinga Rockhound Society	PP-CA-Clear Creek-13-04	Denied
Peter Turcke	Moore Smith Buxton & Turcke, Chartered	PP-CA-Clear Creek-13-05	Denied
Edward Tobin	Individual	PP-CA-Clear Creek-13-06	Denied
John Stewart	California Association of 4 Wheel Drive Clubs	PP-CA-Clear Creek-13-07	Dismissed; comments only
Paul Slavik	California Off-Highway Motor Vehicle Recreation Commission	PP-CA-Clear Creek-13-08	Denied
Dennis Huggins	Individual	PP-CA-Clear Creek-13-09	Denied
Anthony Botelho et al	San Benito County Board of Supervisors	PP-CA-Clear Creek-13-10	Denied
Amy Granat	Individual	PP-CA-Clear Creek-13-11	Denied
Robert A. Hale	Individual	PP-CA-Clear Creek-13-12	Denied
Jennifer Schreck	Individual	PP-CA-Clear Creek-13-13	Denied
Ken Deeg	Timekeepers MC, Friends of Clear Creek Management Area, AMA-District 36, Blue Ribbon Coalition, The Off Highway Vehicle Defense Council	PP-CA-Clear Creek-13-14	Dismissed; comments only
Curt McDowell	Individual	PP-CA-Clear Creek-13-15	Denied
Bruce Brazil	California Enduro Riders Association	PP-CA-Clear Creek-13-16	Denied
Randall Johnson	Individual	PP-CA-Clear Creek-13-17	Denied
Justin Hensley	Individual	PP-CA-Clear Creek-13-18	Dismissed; comments only
Mike Wubbels (2 letters)	Friends of Clear Creek Management Area	PP-CA-Clear Creek-13-19	Denied
Steven Kazan and William F. Ruiz	Kazan, McClain, Satterley, Lyons, Greenwood & Oberman	PP-CA-Clear Creek-13-20	Dismissed (lack of standing)

Issue Topics and Responses

Inadequate Scientific Data

Issue Number: PP-CA-CC-13-02-2

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The FEIS has a serious omission of scientific data. The FEIS relies only on the theoretical risk analysis performed by the EPA, and includes none of the numerous epidemiological studies that state that chrysotile asbestos is either benign or mildly toxic, but significantly less toxic than the amphibole asbestos the EPA report is based upon.

Issue Number: PP-CA-CC-13-02-34

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

In the case of the EPA study, there are numerous epidemiological studies that contradict the EPA studies, and none of these are mentioned in the EPA report, nor the FEIS. The 1992 "Human Health Risk Assessment/or the Clear Creek Management Area" by PTI Environmental Services for the Hollister BLM office, includes a discussion about the various epidemiological reports and conclusions, as does the Ilgren letter to the BLM along with the Ilgren questions to the EPA letter (see attachments). These epidemiological studies are analogous to the ground testing of the airplane. Neither the EPA report, nor the FEIS, includes any discussion of these epidemiological reports, nor does either try to resolve the conflict between the EPA report and the epidemiological studies that

contend that Chrysotile is either benign, or very low in toxicity.

Issue Number: PP-CA-CC-13-02-52

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

In addition, there is no data supplied in the FEIS of the population surrounding the area, indicating that there is any increase or decrease in cancer cases compared to the rest of the state.

Issue Number: PP-CA-CC-13-16-3

Protestor: Bruce Brazil

Issue Excerpt Text:

There is no evidence submitted documenting even a single case of health or death issues due to recreational exposure to the chrysotile form of asbestos in the CCMA or any other area. Neither the Hollister office of the BLM nor the EPA has substantiated their claim that recreational exposure to the chrysotile form of asbestos to be an actual health hazard.

Issue Number: PP-CA-CC-13-16-9

Protestor: Bruce Brazil

Issue Excerpt Text:

Neither the Hollister office of the BLM nor the regional EPA provided any documented cases of deaths or health problems due to recreational exposure to the chrysotile form of asbestos.

Summary:

The Final Environmental Impact Statement (FEIS) has a serious omission of scientific data. The FEIS relies only on the theoretical risk analysis performed by the EPA, and includes none of the numerous epidemiological studies that state that chrysotile asbestos is either benign or mildly toxic, but significantly less toxic than the amphibole asbestos the EPA report is based upon. There are no documented cases of anyone getting sick or dying from their exposure to asbestos in the Clear Creek Management Area (CCMA). No data is supplied in the FEIS regarding the rates of cancer in populations surrounding the CCMA compared to the rest of the state.

Response:

The BLM's analysis of impacts to public health and safety in FEIS for the CCMA Proposed Resource Management Plan (PRMP) is based primarily on the Environmental Protection Agency (EPA) CCMA Asbestos Exposure and Human Health Risk Assessment (2008) because it provides the best available information on the risk associated with exposure to airborne asbestos fibers in CCMA. The CCMA PRMP/FEIS notes that the EPA's CCMA Risk Assessment (2008) identifies all relevant areas of uncertainty in order to provide the public a full understanding of the risk and to enable BLM managers to make informed decisions so as to manage the risk of exposure to asbestos in the CCMA (CCMA PRMP/FEIS, p. 367).

As explained in section 4.2.2.3 of the CCMA PRMP/FEIS, in the Record of Decision for the Atlas Asbestos Mine Superfund Site (1991), the EPA addressed comments from the public questioning the lack of asbestos-related health and epidemiological studies of the local population.

Risk Analysis

Issue Number: PP-CA-CC-13-02-26**Organization:** TMC**Protestor:** Terry Pedersen**Issue Excerpt Text:**

Page 365 lists 1 hour for driving in, and another 1 hour for driving out for alternative A. This is totally inaccurate, especially if according to earlier statements in the FEIS all staging areas within CCMA are closed. If that is the case, Oak Flats is only about 0.6 miles from the paved road, and Jade Mill is only about 1.0 mile from the paved road. The speed average on the road from the paved road is 20 mph, but the usual speeds are usually well below that. If we assume average speeds of 12 mph, it would only take 5 minutes to drive from the paved road

to Jade Mill, not 1 hour. Thus the drive times are overestimated by a factor of at least 6. If someone maintained the speed limit of 20 mph, it would take only 3 minutes to get from the paved road to Jade Mill, or a factor of 1/20th of the time stated in the risk analysis. This overestimate would apply to all use scenarios for OHV, where they would be required to stage out of either Jade Mill, or Oak Flat. Day use hiking or hunting may be underestimated as it would be highly unlikely that hikers or hunters, or rockhounds would park in either of the staging areas. Thus their drive times may be considerably higher. Thus, the FEIS violates CEQ requirement 1500.1(b) on accurate scientific analysis.

Issue Number: PP-CA-CC-13-06-5

Protestor: Ed Tobin

Issue Excerpt Text:

Failure to Analyze Mitigation Measures Already Taken: I protest that the BLM has failed to analyze the impact of mitigation measures already taken to reduce exposure to naturally occurring chrysotile. The BLM has had almost five years to have the risk assessment prepared by the EPA updated to

take into account the seasonal closure ordered in June, 2005 and the impact of the removal of the staging areas in 2009 inside the hazardous asbestos area. Over 60% of air samples taken by the EPA and included in their risk assessment report were done during months included in the seasonal closure. These samples should be removed from the analysis and the risk recalculated.

Summary:

The FEIS violates Council on Environmental Quality (CEQ) requirement 1500.1(b) on accurate scientific analysis, overestimating the Off-Highway Vehicle (OHV) drive times from the paved roads to Jade Mill, and underestimating the drive times for day using hiking and hunting. The BLM should have the risk assessment prepared by the EPA updated to take into account the seasonal closure ordered in June, 2005 and the impact of the removal of the staging areas in 2009 inside the hazardous asbestos area.

Response:

The CEQ regulations state that environmental “information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA [National Environmental Policy Act].” (40 CFR 1500.1(b)).

In regards to the estimated drive times for OHV users and hikers/hunters to access recreational opportunities within the Serpentine Area of Critical Environmental Concern (ACEC), it is important to note that “Alternative A represents the ‘No Action’ alternative required by NEPA, and...does not take into account the temporary closure of the Serpentine ACEC. Management of recreation opportunities, special status species habitat, and other resources would be maintained at existing levels prior to the May 1, 2008 closure order.” (CCMA PRMP/FEIS, p. 34).

Therefore, Alternative A considers staging areas within the Serpentine ACEC that were open prior to the temporary closure of 2008 to remain open. On the other hand, Section 4.1.4 of the Clear Creek Management Area (CCMA) Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS), titled “Impacts to Recreation Common to Alternatives B, C, D, E, F, and G,” explains that “each of these alternatives would prohibit staging for recreational activities and overnight camping in the ACEC, with the exception of visitor use at Jade Mill for camping under all alternatives.” (CCMA PRMP/FEIS, p. 348).

Table 4.2-1 of the CCMA PRMP/FEIS presents the visitor use scenarios and average time estimates used to analyze human health risk associated with conducting various types of recreation activities in the ACEC (CCMA FEIS, p. 365). The general principles and assumptions that were used for calculating the human health risks associated with Table 4.2-1 are presented on pages 363 and 364 of the CCMA PRMP/FEIS. One assumption is that drive time and duration of non-motorized use (hiking/hunting) would vary by access location and

destination, which is why average time estimates increase under Alternatives D and E to four hours for drive time for hikers and hunters. On the other hand, for the different scenarios under Alternative A (i.e., the “No Action” Alternative) in Table 4.2-1, a lower total average drive time of two hours is used for driving into/out of staging areas within the ACEC. (CCMA PRMP/FEIS, pp. 363-5).

The BLM’s analysis of impacts to public health and safety in FEIS for the CCMA Proposed PRMP is based primarily on the Environmental Protection Agency (EPA) CCMA Asbestos Exposure and Human Health Risk Assessment (2008) because it provides the best available information on the risk associated with exposure to airborne asbestos fibers in CCMA. The CCMA PRMP/FEIS notes that the EPA’s CCMA Risk Assessment (2008) identifies all relevant areas of uncertainty in order to provide the public a full understanding of the risk and to enable BLM managers to make informed decisions so as to manage the risk of exposure to asbestos in the CCMA. (CCMA PRMP/FEIS, p. 367). The areas of uncertainty include “the representativeness of the areas used for the sampling as accurate models of typical CCMA conditions.” (CCMA PRMP/FEIS, p. 367). The EPA’s CCMA Risk Assessment (2008) explains that “The level of exposure to asbestos dust during activities at CCMA will depend to some extent on the actual concentration of asbestos in the soil at the location of the activity... However, exposures were calculated from an average of samples collected during activities that occurred over large areas and the potential that this is a significant area of uncertainty is relatively small.” (EPA, 2008, p. 7-2).

In regards to seasonal closures, restricting the season of use would have negligible impacts on asbestos exposure and human health risk because the EPA’s CCMA Risk Assessment (2008) explains that wet weather reduces but does not eliminate exposure (CCMA PRMP/FEIS, Chapter 4, p. 382). Additionally, because precipitation is so variable in the project area, it would be difficult to predict when conditions would typically be wet enough to reduce risk. (CCMA PRMP/FEIS, p. 382).

Best Available Science

Issue Number: PP-CA-CC-13-02-31
Organization: TMC
Protestor: Terry Pedersen

Issue Excerpt Text:

The FEIS, pages 12 and 13 states that the EPA report provides significant new information. It further states on page 12 that the BLM would prepare the EIS "to consider the information in the EPA report..." It doesn't address any other reports, so one has to assume the BLM ignored all other scientific data in their evaluation, and only went with what was provided in the EPA report. The entire FEIS is based upon this

single theoretical report, violating NEPA requirement 1502.24, Methodology and Scientific accuracy. This requirement requires the agency to be held to professional integrity, including scientific integrity and accuracy.

Issue Number: PP-CA-CC-13-02-53
Organization: TMC
Protestor: Terry Pedersen

Issue Excerpt Text:

NEPA section 1502.24 states the "Agencies shall insure the professional integrity, including scientific integrity..." which the BLM has failed to do since they know there

have been no illnesses nor deaths in almost 160 years of extensive use of the area, and that the EPA report is in conflict with both the PTI and IERF report, both of which indicate the level of risk is acceptable.

Issue Number: PP-CA-CC-13-02-54
Organization: TMC
Protestor: Terry Pedersen

Issue Excerpt Text:

The IERF study and the PTI report both indicate there is an acceptable risk for use of the area, which corresponds to the actual historical data from the area with zero illnesses or deaths from the area. Only the EPA report indicates there is a problem. The BLM is ignoring the actual science and historical data in favor of the flawed EPA report, and needlessly closing CCMA.

Issue Number: PP-CA-CC-13-02-56
Organization: TMC
Protestor: Terry Pedersen

Issue Excerpt Text:

Page 11 states there are "concerns about the technical deficiencies of a 1992 health risk assessment that BLM used to evaluate CCMA visitor's exposure to airborne asbestos fibers in the area." This is the PTI study, but never is it stated what the

technical deficiencies are with study, so this statement is invalid as it may just be an opinion. It is definitely not backed up with any facts.

Issue Number: PP-CA-CC-13-05-4
Organization: Moore Smith Buxton & Turcke, Chartered
Protestor: Paul Turcke

Issue Excerpt Text:

The IERF findings, particularly given the history here, qualify as significant new information that should require preparation of a supplemental EIS. 40 CFR § 1502.9(c).

Issue Number: PP-CA-CC-13-19-4
Organization: Friends of Clear Creek Management Area
Protestor: Mike Wubbels

Issue Excerpt Text:

The EPA and BLM would lead the public to believe that the test results from EPA and IERF are nearly identical and, for lead riders, this appears to be the case. However, the results for trailing riders are significantly different. This fact has not been mentioned. During public meetings Dr. Nolan, from IERF, has stated that the EPA has overestimated risk considerably.

Summary:

The FEIS does not identify the technical deficiencies in the 1992 PTI study that prompted the EPA's Clear Creek Management Area (CCMA) Asbestos Exposure and Human Health Risk Assessment (2008). The BLM violated NEPA by relying only on the EPA's 2008 Risk Assessment. The International Environmental Research Foundation (IERF) findings qualify as significant new information that should require preparation of a supplemental EIS.

Response:

The Environmental Protection Agency (EPA) was active in asbestos remediation activities in the region of Clear Creek Management Area (CCMA) for many years, as explained in Section 1.7.1 of the CCMA Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS). The EPA initiated the CCMA Asbestos Exposure and Human Health Risk Assessment study in 2004 in connection with the clean-up of the Atlas Asbestos Mine Superfund Site, also in CCMA, and concerns about the technical deficiencies of a 1992 health risk assessment that the BLM used to evaluate CCMA visitor's exposure to airborne asbestos fibers in the area. (CCMA PRMP/FEIS, p. 11). With the assistance of the EPA as a cooperating agency, the BLM has incorporated the results of the CCMA Asbestos Exposure and Human Health Risk Assessment (2008) into this RMP/EIS for the purpose of developing management strategies for the CCMA that will minimize human health risk to users and maintenance workers. (CCMA PRMP/FEIS, p. 27). Please refer to the Protest Response for Section 5.1 for further discussion of the areas of uncertainties associated with the EPA study.

The CCMA PRMP/FEIS explains that "The goal of the EPA's risk assessment for CCMA was to use current asbestos sampling and analytical techniques to update a 1992 [PTI] BLM Human Health Risk Assessment and provide more robust information to BLM on the asbestos exposures from typical CCMA recreational activities and the potential cancer risks associated with those exposures. In addition, as families are frequent visitors to CCMA, the assessment estimated exposures and potential risks to children as well as adults." (CCMA PRMP/FEIS, p. 27). The BLM responses to public comments on the CCMA Draft RMP/Draft EIS provide greater detail regarding the EPA's concerns about the technical deficiencies of the 1992 PTI Human Health Risk Assessment. (CCMA PRMP/FEIS Volume II, p. 220).

The IERF Report was released on March 22, 2011. Both the EPA and the California Department of Toxic Substances Control's Human and Ecological Risk Office (HERO) prepared comment letters that identified significant concerns about the IERF report. (CCMA PRMP/FEIS Volume II, pp. 249-50). The results of the IERF study indicated that "the lead rider had a 36% higher exposure than the trailing rider." (IERF, 2011, p. 2). By contrast, the results from the CCMA asbestos exposure studies reported by Cooper in 1983, by PTI in 1992, and by the EPA in 2008 all indicated lower exposure concentrations for the lead rider (EPA, 2008, pages 6-3 and 6-4). The California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (OHMVR), which had commissioned the IERF study, met with BLM staff on May 29, 2012, in order to discuss the CCMA and the scientific issues underlying the CCMA studies. One of the areas of agreement reached between the BLM and OHMVR at the meeting was that the "Lead Rider is exposed to much less risk." (CCMA PRMP/FEIS, Attachment 3, p. 7 of PDF).

The CCMA PRMP/FEIS states, on page 19, "Upon evaluation of the IERF study and comments prepared by the US Environmental Protection Agency and the California Department of Toxic Substances Control, BLM determined that the results of the report are consistent with the values reported in the CCMA Asbestos Exposure and Human Health Risk Assessment (2008) under similar meteorological conditions and with similar riding positions." The EPA commented, in their review of the IERF study, that because the IERF study asked the trailing rider to maintain a greater distance from the lead rider and avoid or minimize exposure to dust generated by the lead rider, the IERF results for both the lead and trailing riders are comparable to the EPA lead rider data. (EPA, 2011, p. 2).

The BLM acknowledges that controversy exists regarding the human health risks associated with exposure to naturally occurring asbestos. The EPA risk assessment and the IERF report both highlighted the need for further research to determine effective strategies to reduce risk to CCMA visitors. (CCMA PRMP/FEIS, p. 29). Therefore, the Proposed Action identifies “adaptive management criteria” that would allow the BLM to make changes to designated route systems and addresses how routes may be modified within the transportation network in the future. The adaptive management criteria were developed in response to the issues and concerns identified in the IERF study and public comments on the CCMA Draft RMP/EIS (2009). If one of these criteria are met, the BLM would reassess CCMA RMP land use decisions associated with human health risks from exposure to airborne asbestos fibers, and potentially apply adaptive management should significant new information become available that warrants modifications to the limits on annual visitor days or the total miles of routes available for motorized use in the ACEC. At a minimum, the BLM will re-examine the body of peer-reviewed data available on this subject within three years following issuance of a record of decision for the CCMA RMP and determine if the BLM should amend the management direction in the plan through a new planning process with appropriate NEPA analysis. (CCMA PRMP/FEIS, p. 29).

NEPA - Response to Public Comments

Issue Number: PP-CA-CC-13-06-2

Protestor: Ed Tobin

Issue Excerpt Text:

I protest that the BLM has completely ignored the substantial comments I made regarding the Draft EIS. Upon review of the FEIS document, I discovered that NONE of my comments that I submitted on March 5, 2010 (copy included with this protest) had been addressed directly and that there was no mention of me as either an individual commenters or in relationship to one of the organizations to which I belong.

Issue Number: PP-CA-CC-13-11-2

Protestor: Amy Granat

Issue Excerpt Text:

One of the critical problems with this document is the refusal of the BLM to consider any critique by the public of the Environmental Protection Agency's (EPA) Asbestos Exposure and Human Health Risk Assessment, released in 2008. Even though the BLM acknowledges in the Executive Summary, on page 2, that analysis for the

Resource Management Plan was developed in response to;"...significant new information that must be incorporated into a land use plan to evaluate the public health risk associated with BLM land use authorizations" i.e., the EPA report; in their response to comments in Appendix X, on page 210, the BLM dismisses all questions regarding methodology, definitions, and conclusions found in the EPA report as non-substantive issues, outside the scope of the project, and not applicable under NEPA.

Issue Number: PP-CA-CC-13-11-4

Protestor: Amy Granat

Issue Excerpt Text:

This statement describes the actions pursued by the Hollister Field Office of the BLM in regards to CCMA. Once the EPA study was released in 2008, the end result of the Resource Management Plan was already predetermined. No amount of questioning, calls for re-evaluation or critique of the EPA report had any possibility of changing the end result of the management plan, because the core document was not open to question

or comment by the public. This predetermination has now been solidified by the labeling of all such comments regarding the EPA report as non-substantive comments. This is a clear violation of NEPA.

Issue Number: PP-CA-CC-13-12-2

Protestor: Robert Hale

Issue Excerpt Text:

I protest the failure to include all of my comments in the FEIS and to fail to even identify my participation as a commentator.

Issue Number: PP-CA-CC-13-15-2

Protestor: Curt McDowell

Issue Excerpt Text:

The BLM did not address a number of my Substantive Comments submitted March 5, 2010, in any way, including by any form of communication or any modifications to the EIS document. The BLM has inflicted great damage to me and people they're meant to serve, particularly the OHV community, as well as on the businesses and local economy of the San Benito and Bay Area regions. I insist that the BLM take my comments into account in a meaningful way.

Issue Number: PP-CA-CC-13-15-8

Protestor: Curt McDowell

Issue Excerpt Text:

In my Substantive Comment #20, I outlined why these flawed techniques and overly conservative assumptions lead to excessive risk assessments and what more reasonable assessments would be. However, my comment was completely ignored.

Issue Number: PP-CA-CC-13-16-10

Protestor: Bruce Brazil

Issue Excerpt Text:

The attached appeals document to Clear Creek Management Area (CCMA) Nov. 2009, Draft RMP/EIS was not addressed in the Hollister field office's RMP and FEIS.

Issue Number: PP-CA-CC-13-17-6

Protestor: Randall Johnson

Issue Excerpt Text:

I contend that BLM has violated policy in preparing the current RMP by ignoring my substantive comments, in which the validity is readily apparent and except for comments regarding children as a special concern, the BLM responses to my comments talk around the issues but do not directly challenge my assertions. In the current RMP, the response to my substantive comment again states that EPA 2008 "...provided significant new and complete information..." (Table X-4; Individual Comment Summary: & Response: Proposed RMP & Final EIS, Vol. II, Appendix X, page 438).

Issue Number: PP-CA-CC-13-23-2

Organization: SFGMS

Protestor: Michael Smith

Issue Excerpt Text:

We observe that the current DEIS and PRMP gives broad consideration in this manner to OHV, trail-riding, and other concerns, but has dismissed without response most of the comments submitted by organizations and individuals with rockhounding and mineral study interests.

Summary:

The BLM violated NEPA by failing to respond to substantive comments. The BLM either ignored comments made on the Draft EIS or failed to address them directly. Comments critical of the EPA report are categorized as non-substantive, and comments from rockhounding and mineral study interests were dismissed without response.

Response:

The NEPA directs that an agency preparing a final EIS shall assess and consider comments both individually and collectively and respond by one or more listed responses, stating its response in the final statement. 40 CFR 1503.4. Responses may: “1) Modify alternatives including the proposed action. 2) Develop and evaluate alternatives not previously given serious consideration by the agency. 3) Supplement, improve or modify its analyses. 4) Make factual corrections. 5) Explain why the comments do not warrant further agency response...” 40 CFR 1503.4 NEPA also directs that all substantive comments, or summaries where the response has been exceptionally voluminous, should be attached to the final EIS, whether or not the agency thinks the comment merits individual discussion in the text of the statement. 40 CFR 1503.4 Appendix X to the PRMP/FEIS contains a summary of comment letters received and responses to these comments (40 CFR 1503.4.). The comment summaries provide a brief overview of the comments for the reader’s convenience in reviewing the responses, and are not intended to provide a complete representation or interpretation of the comment’s meaning. The BLM’s responses are based on the comments in the letters themselves. Some of these public comments resulted in changes or modifications to the PRMP/FEIS. A summary of major changes made in response to public comment is provided in FEIS Chapter 1.9, pgs. 28 - 31.

Comments were assessed both individually and collectively. Some letters from individuals were categorized as organizational letters if the authors attributed their comments to an organization. In such cases, the name of the individual letter writer may not appear in the list of commenters. Frequently, more than one commenter submitted identical (or form letter) comments; in those cases, comments were grouped together, summarized, and given a single response. Common Responses to Public Comments in Chapter I provide example comments to summarize the issues, followed by a “Common Response” prepared by the BLM (40 CFR 1503.4).

As explained on page 210 (App. X, Section 1), statements that represent an opinion and/or do not raise a specific environmental issue under BLM’s authority, and within the scope of the CCMA RMP, are not considered substantive. The BLM received several public comments on the draft EIS that were determined not to be substantive. Although not required, Appendix X in the PRMP/FEIS includes a summary of many comments the BLM determined not to be substantive to provide an overview of the concerns expressed during the comment period and to demonstrate that BLM decision-makers are aware of these concerns. For example, in responding to public comments on the CCMA Draft RMP/Draft EIS, the BLM did respond to questions regarding methodology, definitions, and conclusions found in the EPA report, as evidenced on pages 210 through 216 of the CCMA PRMP/FEIS, Volume II. All comments received during the public comment period on the CCMA Draft RMP and EIS are included in the project record for this planning effort and are available for review at BLM’s Hollister Field Office (page 207).

NEPA - Range of Alternatives

Issue Number: PP-CA-CC-13-02-17

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The BLM is responsible for managing the lands for multiple use, including recreation and cultural values. They also state that over 70 percent of the recreation within CCMA is within the serpentine area, and the overwhelming majority of public scoping comments identified CCMA's unique recreation opportunities as the number one issue. Yet the FEIS gives only alternatives that go against the will of the people and their mission statement. None of the alternatives expand recreational opportunities, they reduce them.

The whole FEIS goes against the BLM's mission statement, and violates CEQ regulations requiring the FEIS to be responsive to public input.

Issue Number: PP-CA-CC-13-02-47

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

Page 341 states the "alternatives provide a reasonable range of recreational opportunities", yet none of the alternatives expand OHV use, including reevaluating the areas previously closed to OHV due to the San Benito Primrose, which is now known to have a vastly expanded range, and its main habitat is at the serpentine interface, not inside CCMA as previously stated, and used as a reason for closing areas to OHV.

Issue Number: PP-CA-CC-13-11-6

Protestor: Amy Granat

Issue Excerpt Text:

I requested that the public be allowed to access the Clear Creek Management Area for specific time periods at specific times of the year. All requests for an alternative that speaks to these requests have been ignored. Throughout the document the public is presented with an all-or-nothing approach, using the justification of a 30 year exposure risk analysis as stated in the EPA report.

Issue Number: PP-CA-CC-13-11-9

Protestor: Amy Granat

Issue Excerpt Text:

From limiting time periods, to allowing visitors to assume any potential to harm by signing waivers before entry into the Clear Creek Management Area, nothing that would meaningfully allow off-road access was considered. The BLM therefore did not consider all possible alternatives, which is a clear violation of NEPA. The public, once again, was faced with an all or nothing scenario.

Issue Number: PP-CA-CC-13-13-11

Protestor: Jennifer Schreck

Issue Excerpt Text:

There are plenty of other ways to mitigate the risk of asbestos exposure which do not include denying access to the land. One very simple way would be to have visitors to the CCMA sign a waiver acknowledging the risks of asbestos exposure and agreeing not to hold the BLM responsible for exposure. This would not be very different from the waivers that I sign every time that I arrive at an AMA motorcycle race or at a private motocross track. I agree to the inherent risks and not to hold the property owners liable for anything that may happen to me while recreating there.

Issue Number: PP-CA-CC-13-15-12

Protestor: Curt McDowell

Issue Excerpt Text:

My Substantive Comment #12 was not addressed in any way. The EIS acknowledges there are increased demands for recreation on public lands, but none of the alternatives provides for the expansion of recreation. As a whole, the EIS provides for a very dramatic reduction in recreation

opportunities. Nearly all opportunities are lost and the public's right to use the land, especially the primary modes of recreation prevalent in the area, is almost completely nullified. My Substantive Comment #22 was ignored. None of the proposed alternatives meet the stated Purpose and Need to address the "increased demand for use of public lands for recreation", and so only Alternative A should be a preferred alternative.

Summary:

The BLM did not consider a reasonable range of alternatives for recreation. None of the proposed alternatives meet the stated Purpose and Need to address the "increased demand for use of public lands for recreation."

Response:

The NEPA regulations provide that agencies evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for eliminating them. 40 CFR 1502.14. As stated on FEIS page 13, the purpose of the CCMA RMP/FEIS is to provide management direction to achieve the following:

- 1) minimize asbestos exposure;
- 2) reduce asbestos emissions;
- 3) designate areas in CCMA for motorized, mechanized, and non-motorized/non-mechanized recreation opportunities;
- 4) protect sensitive natural and cultural resources from impacts due to recreation and other land uses;
- 5) provide guidance for mineral and energy development; and
- 6) make other land use authorizations and tenure adjustments.

Appendix X of the FEIS (page 227) explains, "the CCMA Draft RMP/EIS also includes a range of alternatives that considers viable options for motorized recreation opportunities both inside and outside the Serpentine ACEC based on the purpose and need described in Chapter 1."

Consistent with NEPA, the BLM's Hollister Field Office conducted multiple public scoping meetings and interdisciplinary team discussions to rigorously explore, develop, and objectively evaluate all reasonable alternatives in the CCMA Draft RMP/EIS. Numerous interested parties, including a consortium of OHV organizations and clubs participated in the public scoping meetings and helped develop the range of alternatives analyzed in the CCMA Draft RMP/EIS.

As a result, five out of the seven alternatives analyzed in the CCMA Draft RMP/EIS (Alternatives A - E) varied with respect to access for recreation throughout the planning area, including OHV access, and incorporated technical and administrative measures to improve monitoring of meteorological conditions, airborne asbestos emissions, and CCMA visitor use in

order to enable limited OHV use in the planning area. Although an alternative designating the entire CCMA an “open area” was not analyzed in detail, the BLM did consider alternatives that designate areas as limited. In the PRMP/FEIS Alternative C emphasized limited OHV recreation opportunities and Alternative D considered new OHV recreation opportunities outside of the ACEC.

The CCMA Proposed RMP/Final EIS explains on page 36 (Chapter 2.1.1.1) that the alternative to designate CCMA an ‘open’ area for OHV use was considered, but not analyzed, because "this type of designation would not meet the purpose and need for this RMP/EIS to minimize human health risks from exposure to asbestos and reduce airborne asbestos emissions from BLM management activities." The Federal Government has concluded that exposure to chrysotile asbestos fibers is hazardous to humans and may cause fatal cancer and non-cancer diseases.

Final EIS section 2.1.1 – Alternatives Considered but Not Analyzed in Detail (FEIS pages 36 to 38) evaluates several alternatives for expanded recreational opportunities, including a CCMA "Open" Area designation, and the use of personal protection equipment (PPE) to minimize risks of asbestos exposure. The BLM determined such an alternative was not practicable and would not meet the stated purpose and need due to increased health risk and the potential damage to other resources, and therefore neither was analyzed in detail.

NEPA - Purpose and Need

Issue Number: PP-CA-CC-13-02-10

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

CEQ 1500.5(d) requires the agency to use the scoping process to identify the issues. From page 43: CCMA's unique recreation opportunities, which were overwhelmingly identified as a priority in the public scoping process.

The document and the BLM acknowledge that the public overwhelmingly identified continued use of the area for recreation as the overwhelming number one issue, yet the agency failed to include that priority in the purpose and need. The document also fails to address the public's number one issue, which is continued access to CCMA for recreation.

Also on page 44, the FEIS states: In accordance with the National Environmental

Policy Act (NEPA), alternatives must: meet the purpose and need, as identified in Chapter 1; be viable and reasonable; provide a mix of resource protection, management use, and development; be responsive to issues identified in scoping; and meet the established planning criteria (also identified in Chapter 1), federal laws and regulations, and BLM planning policy.

NEPA states the agency must be responsive to issues identified in scoping, but the BLM and the FEIS fail in this regard. They state they are required to be responsive, and state that the public overwhelmingly demanded continued use of the area, but the entire document omits anything other than the fact that this was the public's number one issue.

Issue Number: PP-CA-CC-13-02-32

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

Page 36 states: "a large portion of the CCMA has been managed for decades as the Serpentine ACEC due to the health risk from exposure to asbestos," again stating that the new EPA report did not bring any new information that is driving the BLM to close CCMA. They acknowledge that they have known about the issue for decades. They always required an asbestos waiver for organized events, further proof they knew about the issue and highlighting that the EPA report brought no new information.

Issue Number: PP-CA-CC-13-02-5

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The Purpose and Need fails to set forth a problem that needs to be resolved, it only states that there is a new EPA risk analysis. There has been no discussion of the problem to be solved, which is whether anyone is or has ever been harmed by the Chrysotile mineral present in the CCMA environment, i.e. is it a health hazard to the public while recreating within CCMA. There is absolutely no data supplied within the FEIS indicating anyone has been harmed, or that the surrounding communities have higher incidences of disease of any kind. The two attached documents give a thorough discussion of the issues, referencing a wealth of studies.

Summary:

The Purpose and Need fails to set forth a problem that needs to be resolved.

Issue Number: PP-CA-CC-13-15-4

Protestor: Curt McDowell

Issue Excerpt Text:

My Substantive Comments #1, #2 and #5 (a copy of all my comments are enclosed) indicate that the BLM misstates their mandate as "Protecting human health and the environment," when this is in fact the directly stated mandate of the EPA not the BLM. It's neither the BLM mandate, nor is it one of the goals listed in the Purpose and Need of the EIS.

Issue Number: PP-CA-CC-13-17-7

Protestor: Randall Johnson

Issue Excerpt Text:

The only portion of the response that could fall under the category of "new information" would be "...exposure information at two different breathing heights....," of which the samples collected for "child" riders was not sampled in previous studies and only this could be claimed as "new information" and could only affect land use decisions based upon a rider's age. All other aspects of the asbestos exposure data provided by EPA's 2008 risk assessment is at most, additional information regarding previously known and understood asbestos exposure risk but in no way rises to the level of "significant and new," in the obvious context of being previously unknown.

Response:

The NEPA regulation provides the “purpose and need shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR 1502.13. The BLM’s purpose and need for this action is reasonable.

The Federal Land Policy and Management Act of 1976 (FLPMA) requires that the BLM "develop, maintain, and when appropriate, revise land-use plans" (43 United States Code [U.S.C.] 1712 [a]). In general, the purpose of this RMP is to provide a comprehensive framework for the BLM's management of the public lands within the CCMA and its allocation of resources pursuant to the multiple-use and sustained yield mandate of FLPMA. The preparatory planning effort identified regional issues through public, interagency, and intra-agency scoping efforts:

- 1) minimize asbestos exposure;
- 2) reduce asbestos emissions;
- 3) designate areas in CCMA for motorized, mechanized, and non-motorized/non-mechanized recreation opportunities;
- 4) protect sensitive natural and cultural resources from impacts due to recreation and other land uses;
- 5) provide guidance for mineral and energy development; and
- 6) make other land use authorizations and tenure adjustments.

The need to develop the CCMA RMP arose from numerous changes in circumstances since the current land use plan decisions were adopted in 1984. Several amendments to the 1984 RMP over the years addressed public health and safety and resources protection issues, and those amendments were consolidated in this revision. Many other issues that are emerging on CCMA public lands have not yet been addressed. The following list of specific factors illustrates the need for preparation of an updated management plan:

- The EPA’s CCMA Asbestos Exposure and Human Health Risk Assessment (2008) provides significant information that must be incorporated into a land use plan to evaluate the health risk associated with BLM land use authorizations.
- The current management plan does not consider new information and/or additional habitat needs for species protected under the Federal 1973 Endangered Species Act.
- Increased demand for use of public lands for recreation and energy production must be addressed. (FEIS page 13, Chapter 1.1).

Protest Process

Issue Number: PP-CA-CC-13-17-25**Protestor:** Randall Johnson**Issue Excerpt Text:**

I protest that I have only 30 days to review the 1,373 pages, plus 24 maps contained

within the 2 volumes of the current RMP.

Issue Number: PP-CA-CC-13-17-27**Protestor:** Randall Johnson**Issue Excerpt Text:**

To add insult to my injury, I ordered a hard-copy of the current RMP from the BLM

Hollister Field Office (HFO), as I find it far easier to study a lengthy document when I can move rapidly between pages marked with post-it notes, but unfortunately it did not arrive at my home in a timely manner. A week after ordering, I contacted the HFO and was informed that a number of hard-copies had been returned to HFO as

undeliverable (even though I did receive a separate invoice in the mail, 2 days after placing my original order). The HFO was gracious enough to send me a new copy via Fed-Ex which arrived 2 days later but by the time I received my copy, 10 days of review time had been lost.

Summary:

The 30-day protest period was inadequate for the public to review and protest the lengthy, two-volume Final EIS. The BLM also failed to provide a requested hard copy of the document in a timely manner.

Response:

The BLM planning regulations establish the timeframe for filing a protest and provide that all protests shall be filed within 30 days of the date the EPA publishes the notice of availability of the FEIS in the Federal Register. The 30-day protest period is prescribed under the land use planning regulations at 43 CFR 1610-5-2 and cannot be extended. The BLM assured that the document was available on the BLM's website on the day the EPA published the CCMA FEIS Notice of Availability in the Federal Register, and distributed CDs and available hard copies as well as having the document available at the BLM Hollister Field Office (Hollister, CA), the BLM California State Office (Sacramento, CA), and the California Governor's Office of Planning & Research State Clearinghouse (Sacramento, CA). Hardcopies were also available at the Fresno County Central Library, Santa Cruz Public Library, San Benito County Free Library, Monterey Public Library, King City Branch Library, Coalinga State Library, the Steinbeck Library, and the Colorado State University Library on the day the EPA published the CCMA FEIS Notice of Availability in the Federal Register.

Although the BLM is not required to deliver paper copies on request to every individual within a prescribed time frame, the BLM tried to be accommodating and sent paper copies upon request to individuals in a timely manner. By posting the entire FEIS on the BLM website, as well as distributing copies in CD and paper format, the BLM allowed the majority of stakeholders a full 30 days to review the document and submit protests.

The length of an FEIS reflects the analyses results from the depth of analyses necessary required and reported on to fully inform the decision makers and the public of the reasonable alternatives which would minimize adverse impacts or enhance the quality of the human environment. It also reflects the complex issues in this planning effort including large-scale recreational use in an area of geologic hazards to public health. The CCMA EIS describes the components of, reasonable alternatives to, and environmental consequences of, the Proposed Action and further incorporates compliance with provisions of other State and Federal laws and regulations. The CCMA Proposed RMP/FEIS is significantly longer than the Draft EIS because it includes the Summary: texts and responses to the multitude of comments received submitted on the DEIS. The BLM has little leeway in determining the length of comprehensive NEPA documents,

particularly those dealing with issues as complex as those involved with large-scale recreational use in an area of geologic hazards to public health.

Failure to Consider Local Cultural Use Area

Issue Number: PP-CA-CC-13-02-12

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

While it does appear that the BLM and the FEIS have recognized CCMA for the value

the public places on the area, and have acknowledged its cultural value to the OHV community, they have failed to protect our traditional cultural use and value in any of the alternatives presented.

Summary:

The PRMP/FEIS does not protect traditional cultural use and value in any of the alternatives.

Response:

Throughout the land-use-planning process, the BLM strictly adheres to planning regulations and policies. With regards to cultural values and historic properties, these are protected under the National Historic Preservation Act (36 CFR 800). Consultation on cultural resources is specifically aimed at a wide range of stakeholders including the State Historic Preservation Officer, Native American tribal governments, local governments, and interested publics. “The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development” (36 CFR 800.2(c)(1)(i)).

Initiation of consultation on a particular undertaking involves: “Conducting consultation. The agency official should consult with the SHPO/THPO (Tribal and Historic Preservation Officer) in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties” (36 CFR 800.3(c)(3)). Consultation is undertaken to identify historic properties per 36 CFR 800.4(b), leading to evaluation of historical significance and a determination of eligibility for inclusion on the National Register of Historic Places (NRHP) as defined at 36 CFR 800.16, to wit: “The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.”

Criteria for evaluation of eligibility for inclusion on the NRHP are provided by National Park Service National Register Bulletin 15. There are four criteria for evaluation that exhibit “The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and [include]: “A. That are

associated with events that have made a significant contribution to the broad patterns of our history; or B. That are associated with the lives of significant persons in the past; or C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or D. That have yielded or may be likely to yield, information important in history or prehistory.” (National Register Bulletin 15, page 2).

Note that the recreational activities of off-road vehicle riding and/or rockhounding in the CCMA do not approach any of the criteria for NRHP eligibility. In fact, throughout the scoping for the CCMA planning effort, no suggestion of nomination for such significance was raised.

Special Status Species

Issue Number: PP-CA-CC-13-02-43

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The BLM's previous botanist was a member of the California Native Plant Society, and even though the public complained numerous times about conflict of interest, the BLM would not listen. Under the previous botanist, the evening primrose was determined to be a threatened and endangered species, and only grew where the motorcyclists rode. The new BLM botanist has found the main area for this plant is not where the previous botanist reported, and is not threatened, but just hasn't got the plant de-listed yet. This FEIS is still not talking about this issue, when this issue was used to close parts of CCMA for the plant. Since this is new information, why isn't it talked about in the FEIS, and why isn't there an alternative proposing to reopen areas previously closed due to the plant at the time believed to be threatened and endangered?

Issue Number: PP-CA-CC-13-02-45

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The new botanist now finds the main populations are in different locations than previously reported, and there are now 231 known locations instead of the previously reported 63 locations, or almost 4 times the number previously reported. With this new information, why is the BLM not reviewing the previous decisions that are now known as being based on incorrect data and reversing, or at least considering reversing the closures which are now known as being unnecessary.

Issue Number: PP-CA-CC-13-15-10

Protestor: Curt McDowell

Issue Excerpt Text:

As stated in my Substantive Comment #10, the BLM includes discussion of endangered species such as the Condor and Red Legged Frog, whose habitats are not found in the ACEC. I believe such inclusion is intended only to muddy the waters and hide the true subject of the EIS, banning OHV from CCMA beyond all reason.

Summary:

The BLM failed to consider populations of evening primrose in its decisions to close certain areas to OHV use. With this new information, the BLM should review the previous decisions to consider reversing the closures which are now known as being unnecessary.

The Condor and Red Legged Frog habitats are not found in the ACEC and should not be used as a basis for closing areas to OHV use.

Response:

The threatened and endangered issues are not the “basis for closing areas to OHV use.” All proposed vehicle use restrictions in the ACEC are based on public health and safety issues.

The BLM’s response to comments regarding listed species identified in the Draft RMP/EIS purpose and need statement is provided on pages 224 to 225 (Appendix X). As noted, the purpose and need was modified in the PRMP/FEIS to emphasize the need to consider new information regarding the San Benito evening primrose and habitat needs for California condor (Volume I, page 13).

The FEIS acknowledges the growth in known populations of the San Benito numbers in FEIS and the BLM considered this information when making decisions regarding OHV use. Section 3.6.5.1 Plants and Habitats. As stated on page 216: "Prior to spring 2010, there were 63 known populations (sub occurrences) of San Benito evening primrose. Following the discovery of the geologic transition zone habitat and subsequent intensive survey of that habitat type, there are now approximately 231 known populations of the species." Table 3.6-1 shows distributions of these populations with regard to habitat type, land ownership, and location.

The FEIS Table 3.6-1 shows that 154 populations of the San Benito evening primrose lie in the "geologic transition zone." As stated on page 216, "most of the geologic transition zone occupied and potential habitat, being either outside of the core OHV use area or being located entirely outside of the CCMA, has experienced little to no impacts from OHV or other human-related activities such as livestock grazing. In comparison, most of the occupied and potential habitat of San Benito evening primrose on stream terraces [70 populations] has a long history of impacts from human activities, including road construction, logging, mining, and OHV use."

The FEIS, Volume I: Chapter 3, page 229, identifies potential for California condor to occur in the planning area. Page 229 states: “California condors and bald eagles are expected to increase in frequency of sightings as their populations recover from historical declines.

The CCMA Draft RMP/EIS [Chapter 3, page 174] and the CCMA PRMP/FEIS [Volume I: Chapter 3, page 214] both acknowledge that there are no known occurrences of the California red-legged frog or the California tiger salamander on public lands in the decision area.

Recreation, Visitor Services

Issue Number: PP-CA-CC-13-02-28

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

The BLM Manual 1601, Planning, requires the agency to perform and disclose Benefits-Based Management. In the case of CCMA, this would require the agency to disclose the

benefits of the activities supported by CCMA, which include rock and gem collecting, 4 wheeling, and dirt bike riding.

This is a major omission that was not performed, or at least is not included in the FEIS. The risks and benefits need to be compared and analyze and balanced to determine if one outweighs the other, or if the risk is acceptable.

Summary:

The FEIS omits disclosure of the benefits of recreational activities available at the CCMA including rock and gem collection and off-road vehicle use. The BLM must compare and analyze the risks and benefits of management decisions per BLM Manual 1601 – Land Use Planning.

Response:

The BLM has analyzed both potential benefits and risks associated with the range of management decisions affecting recreation within the CCMA. In the impacts analyses in the PRMP/FEIS, the BLM presented information on the costs and benefits of potential management options within the CCMA. In analyzing the socioeconomic impacts of potential CCMA management decisions, the BLM proceeded with a “focus on local population pressures and local socioeconomic impacts, [wherein] two analysis areas were defined within the larger population and economy of the HFO – the Central Coast and the Diablo Range. The Central Coast focuses on Santa Clara, Monterey and Santa Cruz counties. The Diablo Range analysis area focuses on San Benito, Fresno, and Merced Counties and is where CCMA is located” (PRMP, page 605). Additional socioeconomic input was provided through public participation in a facilitated workshop designed to solicit input from stakeholders on local impacts of changes in management of the CCMA.

Regarding recreational gem and mineral collection, FEIS Chapter 3, pages 299 through 308 provide a lengthy discussion of the benefits and values of CCMA recreation opportunities to the Gem and Mineralogical Society and the Off-Highway Vehicle Recreation Community. Chapter 3, page 174 reports that the CCMA is a popular destination for recreation activities including OHV use and hobby gem and mineral collection. The FEIS Chapter 3, pages 319 through 321 identifies social and economic values associated with recreation (including rockhounding) and OHV use. Chapter 3, pages 323 identifies other socioeconomic contributions of CCMA public lands, including “OHV Recreation and Family Values.”

Restriction on Recreational Opportunities

Issue Number: PP-CA-CC-13-01-6

Protestor: William Spence

Issue Excerpt Text:

Age Discrimination/Americans with Disabilities Act. Generally speaking, rockhounds are almost entirely over the age of 40, and many are over 65. While we recreate by hammering and prying at rock outcrops, many of us have joint, heart or other health issues that counsel against extended hiking with heavy backpacks in rough terrain. Under the Proposed RMP, hiking from the approved Loop to rockhounding sites would typically involve hiking between two to six miles with elevation changes of up to 700'. In most cases the outbound trip would be downhill, and the return trip, to be completed 2 hours before sunset, would be uphill. Such an ordeal would be unworkable for 65-year olds. CCMA has historically provided a rockhounding venue where collectors can use the established network of roads to essentially drive up to collecting sites. Without such access, we are essentially foreclosed from recreation in CCMA. For the majority of rockhounds the Proposed RMP is unworkable without access provisions like the one proposed in section 1 above. Denial of such access would be tantamount to age discrimination by BLM. Similarly certain collectors of any age may have physical disabilities that make cross-country hiking impossible. Closing access to the roads network in CCMA may constitute a violation of the Americans with Disabilities Act with respect to such rockhounds.

Issue Number: PP-CA-CC-13-02-15

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

Page 173 states "The objectives of the BLM's outdoor recreation program are to: (1) provide a broad spectrum of resource-dependent recreational opportunities to meet the needs and demands of visitors to public lands". The public's number one demand from the scoping according to the BLM was to preserve "CCMA's unique recreation opportunities". Thus the FEIS is in violation to BLM Manual 8300. They continue with "(3) maintain high-quality recreation facilities to meet public needs and enhance the image of the agency." Closing and destroying the unique recreational opportunities within CCMA is neither maintaining high-quality recreation facilities, nor enhancing the image of the agency when they are clearly totally ignoring the will of the public for which they supposedly work.

Issue Number: PP-CA-CC-13-02-20

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

Just prior to this on FEIS page 319, it states: The major share of recreation use in the CCMA is concentrated in the Serpentine ACEC, with over 78,000 visits in 2006 and 2007 combined.

78,000 visits in 2 years is not inconsequential. In addition, there are no other major blocks of public lands in Central California available for OHV use. Even if there was a large block that could be dedicated for OHV use, it would have no

established trails, which would take decades to develop to replace those lost at CCMA.

Issue Number: PP-CA-CC-13-04-2

Organization: Coalinga Rockhound Society

Protestor: Judy Burson

Issue Excerpt Text:

I am writing to express our club's displeasure. The Proposal contains such harsh restrictions on access that field collecting of mineral specimens and lapidary materials would effectively be prohibited, despite provisions in the November 2009 Draft that there would be "negligible impact" on rock collecting in the ACEC. [section 4.1.8.1].

Issue Number: PP-CA-CC-13-04-3

Organization: Coalinga Rockhound Society

Protestor: Judy Burson

Issue Excerpt Text:

In addition to the 5-day annual limit on activities in the ACEC, the Proposal:

- Restricts all activities, including driving, hiking, collecting, return hiking and return driving, to the hours between sunrise and sunset of a single day.
- Embarkation points for hiking must be adjacent to the "Loop" comprised primarily of San Benito County roads, which are in most cases miles distant from collecting sites. The largely vertical terrain in Clear Creek makes hiking strenuous at best.

Issue Number: PP-CA-CC-13-04-5

Organization: Coalinga Rockhound Society

Protestor: Judy Burson

Issue Excerpt Text:

Together these restrictions make field collecting virtually impossible. We urge BLM to comply with the requests made by Bill Spence of the Bay Area Mineralogists and ALAA to commit to permitting access on request to other portions of the Clear Creek road and trail network to enable a Record of Decision that truly has negligible impact on mineral collecting in this special area.

Issue Number: PP-CA-CC-13-08-10

Organization: Off-Highway Motor Vehicle Recreation Commission

Protestor: Paul Slavik

Issue Excerpt Text:

By limiting OHV recreational access in the Serpentine ACEC to the wetter winter months, limiting visitors to a certain number of visits per year and providing staging outside the Serpentine ACEC, the RMP could allow for continued OHV recreation in the Serpentine ACEC.

Issue Number: PP-CA-CC-13-08-11

Organization: Off-Highway Motor Vehicle Recreation Commission

Protestor: Paul Slavik

Issue Excerpt Text:

As demonstrated by the 2011 IERF Study, "Preliminary Analysis of the Asbestos Exposures Associated with Motorcycle Riding and Hiking in the Clear Creek", presented at the April 2011 Commission public meeting, asbestos related risks associated with OHV recreation in the Serpentine ACEC could be reduced below the stringent EPA levels through management actions.

Issue Number: PP-CA-CC-13-08-8
Organization: Off-Highway Motor Vehicle Recreation Commission
Protestor: Paul Slavik

Issue Excerpt Text:

The decision is wrong because the PRMP failed to include OHV recreational access in the Serpentine ACEC by expanding the proposed permit system to allow day-use OHV recreation in the wetter winter months, with staging outside the ACEC. In these wetter winter months the conditions are ideal for OHV recreation and risks associated with asbestos are minimized.

Issue Number: PP-CA-CC-13-09-7
Protestor: Dennis Huggins

Issue Excerpt Text:

Visitors can only access the clear creek management area from 1/2 hour before sunrise to 1/2 hour after sunset this is unduly restrictive I cannot see why this management area cannot be open to partial night activities. I believe the BLM could devise a system that would let a visitor clock out at 12 midnight or 1:00 AM are 2:00 AM in the morning. If a visitor stopped hunting at 12:00 AM it would take 1 or 2 hours to exit the management area. Also the day use designation curtails the hours used in the pursuit of your hobby with excessive driving time in an out of the clear creek management area. I'm sure this factor alone is restrictive to where or how far a person can enter into the clear creek management area.

Issue Number: PP-CA-CC-13-13-11
Protestor: Jennifer Schreck

Issue Excerpt Text:

There are plenty of other ways to mitigate the risk of asbestos exposure which do not include denying access to the land. One very simple way would be to have visitors to the CCMA sign a waiver acknowledging the risks of asbestos exposure and agreeing not to hold the BLM responsible for exposure. This would not be very different from the waivers that I sign every time that I arrive at an AMA motorcycle race or at a private motocross track. I agree to the inherent risks and not to hold the property owners liable for anything that may happen to me while recreating there.

Issue Number: PP-CA-CC-13-13-14
Protestor: Jennifer Schreck

Issue Excerpt Text:

To cram every single camping visitor into one single campground in an area encompassing 75,000 acres is wrong. It defeats the entire purpose of getting out of the city and into nature, my entire reason for visiting. It does not allow for any privacy or peaceful enjoyment of the splendor that is Clear Creek.

Issue Number: PP-CA-CC-13-13-16
Protestor: Jennifer Schreck

Issue Excerpt Text:

Limiting staging to the Jade Mill Campground is wrong and adversely affects everyone visiting the CCMA. By limiting staging to the Jade Mill Campground, access to the CCMA land is inherently limited to an extremely small radius around Jade Mill, thus disallowing access to a majority of the 75,000 acres available. This will adversely affect anyone who chooses to visit CCMA: If they are a hiker, their access will be limited to a few short miles worth of hiking before they will be forced to turn around and return.

If they are a motorcycle or ATV rider, they will be limited to a few miles of riding before they too will have to turn around and return before running out of gas.

Forcing all individuals to stage in the same area will cause crowding in the surrounding area.

Visitors will have no opportunity to enjoy any of the other surrounding 75,000 acres in the CCMA, thus denying public access to public land.

Overcrowding creates a far less enjoyable experience with nature.

Overcrowding can cause potential safety issues by placing more riders in a smaller area and a greater likelihood of on-trail collisions.

Overcrowding defeats a large portion of why people choose to visit CCMA in the first

place-being there to enjoy nature and to get away from everyone else and the crowds.

Issue Number: PP-CA-CC-13-17-23

Protestor: Randall Johnson

Issue Excerpt Text:

I protest the limitations upon hours of entry into the ACEC, which were not included in BLM's preferred alternative in the draft RMP/EIS. When coupled with the limitation on miles of routes designated as open, as proposed in the current RMP, rock collecting at sites that are not nearby routes designated as open in the current RMP could very well cease to exist as a recreational activity at CCMA.

Summary:

The PRMP unreasonably limits recreational rockhounding by closing access to the roads network, violating the Americans with Disabilities Act with respect to this affinity group.

The PRMP fails to carry forward the November 2009 Draft EIS Preferred Alternative provision that there would be "negligible impact" on rock collecting in the ACEC [section 4.1.8.1].

The FEIS is in violation of BLM Manual 8300 as it clearly and totally ignores the will of the public.

By limiting staging to the Jade Mill Campground, access to the CCMA land is inherently limited to an extremely small radius around Jade Mill, thus disallowing access to a majority of the 75,000 acres available. The limitations upon hours of entry into the ACEC were not included in BLM's preferred alternative in the draft RMP/EIS.

Response:

The BLM has no operational mandate that requires all resources at all locations to be made freely accessible, nor that the BLM provide for activities that are inherently unsafe to the public. Moreover, the BLM makes management decisions based on the best available science and in the best interests of balancing resource protection and visitor use.

As noted on FEIS 1.1, Purpose and Need, page 13: "The CCMA RMP shall guide the management of the lands and resources administered by the Hollister Field Office in CCMA to achieve the following:

1) minimize asbestos exposure;

- 2) reduce asbestos emissions;
- 3) designate areas in CCMA for motorized, mechanized, and non-motorized/non-mechanized recreation opportunities;
- 4) protect sensitive natural and cultural resources from impacts due to recreation and other land uses;
- 5) provide guidance for mineral and energy development; and
- 6) make other land use authorizations and tenure adjustments.” These comprise the purpose of the CCMA RMP.

Historically, the BLM has limited OHV use within the Serpentine ACEC. New scientific information provided in connection with a designated EPA Superfund Site within the ACEC has led the BLM to reassess its responsibilities in land use planning to provide for public safety. In these efforts, the BLM proposed to further reduce access to the Serpentine ACEC by changing route designations and other visitor use restrictions. Based on thorough analyses, the BLM has determined the PRMP provides for the most prudent resource use allocations to protect natural and cultural resources and to provide for safe public access.

Limited vehicle use area designation is necessary to administer public access to destinations in the Serpentine ACEC that provide numerous non-motorized recreation opportunities, while minimizing impacts to public health from exposure to airborne asbestos. By establishing limits on vehicle types, speed, and the miles of designated routes in the CCMA route network, the designated routes would provide motorized access to areas that support a wide range of non-motorized recreation opportunities and experiences. Route designations would be designed to minimize user impacts to the environment and public health; foster outreach and education to increase public awareness of health issues related to exposure to airborne asbestos and sensitivity to resources; and allow for adaptive management of travel across the CCMA public lands (page 49).

The BLM used the best available data for decisions on process and evaluation of resource conditions and impacts, implementation of monitoring, enforcement, route restoration and route maintenance. Assessments of route condition and soil loss support decisions used in route designations. Information gathered in the future may lead to a re-evaluation of, and possible change in, route and area designation. An additional subset of routes would be available for “administrative use” by permittees, licensees, rights-of-way holders, and the Federal Government and authorized representatives (page 50).

Travel restrictions enacted on public lands by the BLM are not in conflict with the American’s with Disabilities Act (ADA). In fact Title 42, Chapter 126, Section 12101(b)(1) states “It is the purpose of this chapter to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The inability of an individual to hike distances in rough terrain is not addressed in the ADA. Furthermore, recreational rockhounding cannot be considered a “major life activity” under the ADA (see Title 42, Chapter 126, Section 12102(2)(A)).

Soil

Issue Number: PP-CA-CC-13-02-29

Organization: TMC

Protestor: Terry Pedersen

Issue Excerpt Text:

There is no data supporting the assertion that there is accelerated erosion from human activities within the CCMA. There is also no supporting data indicating there is accelerated erosion of any kind. BLM photographs of the area from the 1930's show the area to look nearly identical to what it currently looks like. Most of the erosion within CCMA since 1984 occurred during the last EI Nino, which caused

considerable erosion. This EI Nino was around 1997.

Page 44 states "an opportunity to reduce soil loss and erosion in areas that are contributing to water quality issues in Clear Creek and the San Benito River", yet the BLM has previously stated the soil loss issues are mainly the main roads, not the OHV trails in the area, so unless they close all the main roads, this objective will not be met. Page 190 states: A 1995 study by a BLM contractor identified roads within the CCMA as the primary contributor of sediment into watersheds within the area."

Summary:

There is no data supporting the assertion that there is accelerated erosion from human activities within the CCMA or, for that matter, indicating there is accelerated erosion of any kind.

Response:

The construction, maintenance, lack of maintenance and the use of roads is the human activity contributing to accelerated erosion in the CCMA. Erosion Assessments conducted by PTI Environmental Studies (1993) and Dynamac (1998) have provided BLM data specific to the Serpentine ACEC as well as recommendations for Best Management Practices (BMP) for the area (FEIS pages 240 and 536). Forty percent of the accelerated erosion is caused by poorly designed and unmaintained roads in the Serpentine ACEC. This erosion contributes between approximately 1,000 and 3,000 cubic yards of sediment into the Pajaro Watershed annually (1993 PTI Study, FEIS page 240).

The FEIS, Chapter 3, page 240 states:

i. "Erosion assessment of serpentine barrens within the CCMA was conducted by PTI Environmental Services (1993) and Dynamac Corporation Environmental Services (1998). The PTI (1993) study focused exclusively on the Clear Creek watershed. Clear Creek is classified as an impaired watershed due to excessively high sediment rates and elevated mercury levels. Erosion factors including soil type, slope, vegetative cover, and road/trail type and concentration per unit area were used to estimate erosion rates for subwatersheds within the Clear Creek watershed. That study identified nine subwatersheds out of a total of forty-one, which had estimated erosion rates of more than 3,000 yd³/year (Figure 1). Most of the subwatersheds were rated at between 1,000 and 3,000 yd³/year. PTI's best management practice recommendations for erosion and sediment control included limiting OHV access to soils having high erosion risk

and structural erosion controls such as water energy dissipaters and sediment retention catchments.”

As noted in Chapter 4, “Under the Proposed Action, reclamation or restoration of closed roads in the Serpentine ACEC on routes with stream crossings, or other areas with high potential for sedimentation of waterways would have the potential to create moderate to major long-term beneficial impacts to water resources through decreased soil erosion, vehicle-related contaminant introduction to water bodies, and enhanced watershed functions.” (CCMA PRMP/FEIS, p. 426).

Travel Management

Issue Number: PP-CA-CC-13-10-4

Organization: Office of the County Counsel

Protestor: Barbara Thompson

Issue Excerpt Text:

The roads being closed by the Bureau of Land Management are not under BLM jurisdiction but in fact are roads falling under the purview of San Benito County. The BLM does not have the authority to close County roads. The County of San Benito has affirmed its right to open the

roads through the action taken by the San Benito County Board of Supervisors on April 6, 2010.

Issue Number: PP-CA-CC-13-17-20

Protestor: Randall Johnson

Issue Excerpt Text:

I protest the taking of county roads in the current RMP, which was not explicitly included in the preferred alternative detailed in the draft RMP/EIS.

Summary:

The taking of county roads was not explicitly included in the preferred alternative detailed in the draft RMP/EIS. The BLM does not have the authority to close County roads.

Response:

The issues related to R.S. 2477 are outside the scope of BLM’s land use decisions for transportation and travel management on CCMA public lands because the U.S. Ninth Circuit Court of Appeals ruled that the validity of R.S 2477 claims can only be determined through the courts. Therefore, the Proposed RMP does not address the extent of these rights on public lands in the CCMA.