

## Written Testimony of Don Amador

### Subcommittee on National Parks, Forests and Public Lands Oversight Hearing on "Opportunities for Outdoor Recreation on Public Lands"

Wednesday, June 22, 2011 10:00 AM

Testimony – Statement by Donald Amador that questions the BLM’s decision-making process associated with the ongoing landscape level functional closure of the 75,000 acre Clear Creek Management Area (CCMA) to all user groups on May 1, 2008. This unit is managed by the Hollister Field Office (HFO) and is located in Fresno and San Benito Counties in the Central Coast Mountain Range of California.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today to share my views, the views of the BlueRibbon Coalition, and views of other multiple-use interests about the single largest public land closure of its kind in U.S. history.

My name is Don Amador; I am a native of Humboldt County in Northern California. I currently live in Oakley, California in the Delta Region of the Central Valley. I am a recreation and public land advocate who has championed responsible access to public lands for the last 21 years. I am owner of Quiet Warrior Racing, a recreation and public land consulting company. As a contractor to the BlueRibbon Coalition, I serve as its Western Representative. In addition, I currently serve as a member of Region 5’s California Recreation Resource Advisory Council.

Recently, I served on the Del Norte County/Forest Service stakeholder group, which successfully brought diverse interest groups together to try and resolve contentious issues surrounding a recent Forest Service Travel Management Decision. Based on that experience and experience derived from service on other recreation-based stakeholder groups, I am confident that with your help a solution to the Clear Creek closure saga can be found.

Mr. Chairman, before getting into the substance of my concerns, I want to give the committee a quick overview of CCMA. In 2002, *Dirt Rider Magazine* listed Clear Creek as one of the top 10 OHV recreation sites in the country. It is located mostly in southern San Benito County in the Coastal Mountain Range that separates the Salinas Valley from the Central Valley. While the closure only “technically” closed 33,000 acres, it functionally closed 75,000 acres since practically all route networks originate in the closure area. Before the emergency closure in May 2008, the unit was open for OHV use on approximately 242 miles of designated routes from October 16th to May 31. This unit also contains approximately 25 miles of county roads.

Clear Creek has been a historic mining area since the 19th century. California's official state gem, Benitoite, is found only in this area. In the 1950's and 1960's, the primary mineral extracted was naturally occurring asbestos (NOA). Today, the major mining operations that produced asbestos have ceased operations. Yet, before the May 2008 emergency closure, the area remained a popular site for gem and mineral collectors. The area is also a popular venue for the hunting community.

I have operated OHVs in CCMA since the early 1980s. As part of the land stewardship program at BRC, I assisted the HFO from 2001-2008 at numerous amateur motorcycle events by performing the SAE-J1287 20-inch sound test to make sure attendees complied with state sound laws.

I consider many BLM employees on various units to be both personal friends and professional colleagues who work hard to fulfill the agency's multiple-use mandate, protect natural resources, and jealousy guard public trust.

Sadly Mr. Chairman, unlike other BLM units in California, I believe the HFO with support from EPA has failed to fulfill its congressional multiple-use mandate via its current effort to use junk science in a scheme to create de-facto Wilderness without Congressional approval or direction.

Ultimately, I believe that Congress is the appropriate legislative body that can help the public get answers to the many unanswered questions regarding the bizarre and historic closure of CCMA to all human uses and the ongoing decision-making process surrounding the May 2008 emergency closure.

### **ISSUE ONE - Scientific Integrity of the Decision/Science Used to Issue the May 1, 2008 Emergency Closure Order**

Based on the attached email (**Exhibit A**) obtained by FOIA, it appears the Department of Interior's scientific integrity policy has been compromised by HFO/EPA. When HFO questions EPA as to why HFO should make an emergency land management closure decision based on a risk analysis model so low that it is "perhaps zero", EPA responded by simply removing the phrase in the final report.

In an urgent April 2008 pre-closure meeting between BRC representatives and the agency, BRC urged the HFO to not use flawed science to effect the May 1, 2008 emergency closure. Despite our substantive pleas, HFO decided to use flawed science and personal agendas as a foundation for the closure and the subsequent NEPA planning process.

NOA occurs on various public and private lands in 43 counties in California many of which contain popular local, county, state, and federal recreation sites. Because many of those areas are important for multiple-use activities, the California State Park Off-Highway Motor Vehicle Recreation Commission requested that the Off-Highway Motor

Vehicle Recreation Division (OHMVR) of California State Parks complete an independent NOA health study.

On March 22, 2011, the Off-Highway Motor Vehicle Recreation Division of California State Parks released an independent report analyzing naturally occurring asbestos exposures associated with OHV recreation and hiking at Clear Creek. The report was completed by scientists from the International Environmental Research Foundation (IERF), the Department of Physics at Harvard University, and the Center for Applied Studies of the Environment at the City University of New York.

2011 IERF Report

[http://ohv.parks.ca.gov/pages/1140/files/ierf\\_ccma\\_final\\_3\\_8\\_11-web.pdf](http://ohv.parks.ca.gov/pages/1140/files/ierf_ccma_final_3_8_11-web.pdf)

The OHMVR Division commissioned the IERF report to gather more data to determine if management and operational strategies could be employed at the CCMA to mitigate risk while still allowing access to this premier off-highway vehicle recreation.

*According to the report, "...this risk [health risk from NOA] is similar to the lifetime risk of death from smoking less than one cigarette over the same one year period [riding season]. Other recreational activities, such as swimming, hiking, and snow skiing are over a 100-fold more dangerous.*

*The percentage of mesothelioma deaths predicted among the CCMA motorcycle riders for both sexes (0.000016%) is more than 6,500-fold lower than percentage of mesothelioma deaths in the US general population (0.11%).*

*Based on the IERF analysis, the results of which are included herein, there is clearly an opportunity to allow OHV recreation at CCMA. Under the conditions we observed, and similar seasonal conditions. OHV enthusiasts would not be exposed to unacceptably high levels of airborne asbestos."*

According to IERF, EPA Region 9 continues to refuse access to their air sample and seasonal asbestos background datasets.

As you might expect, the BLM and EPA continue to inexplicably defend their decision to close CCMA to all human uses with the basis of that decision cast on the tenets of what many users, other publics, and IERF scientists consider flawed science. It appears the agency continues to favor a permanent ban on OHV recreation as articulated in the current CCMA NEPA planning process.

IERF May 23, 2011 Response to BLM/EPA Defense of Flawed Science/Closure

<http://ohv.parks.ca.gov/pages/1140/files/ierf-epa-rebuttal-ccma.pdf>

## **ISSUE TWO: Faux Liability Issue**

BRC is concerned HFO created an artificial liability for itself (and hence the taxpayer) in its initial decision to issue an emergency closure order and in subsequent planning documents without any consideration for other viable and reasonable means of addressing what, if any risk, may exist. BRC is also concerned this faux liability issue, if not addressed, could be used by the agency as justification to prohibit pro-OHV/access alternatives from being selected.

BRC April 19, 2010 Letter on Liability Issue

[http://www.sharetrails.org/uploads/CCMA\\_DEIS\\_Turcke\\_Comments\\_Supplementa\\_4-19-10.pdf](http://www.sharetrails.org/uploads/CCMA_DEIS_Turcke_Comments_Supplementa_4-19-10.pdf)

As BRC stated, it believes the Hollister Field Office continues to chart its own and strangely unique course with its decision-making framework. HFO's continues to believe that CCMA lands ought to be rendered inaccessible based wholly on a now disproved assumption that a public health risk from NOA will impact OHV recreationists.

BRC believes HFO should review management prescriptions such as signs and public outreach currently being used by sister land management agencies to caution the recreation public about the life threatening hazards of rock climbing, snow skiing, swimming, and boating.

## **ISSUE THREE – County Asserts Access Rights**

On April 6, 2010 San Benito County passed a resolution that reopened approximately 25 miles of county roads within CCMA.

April 6, 2010 San Benito County Resolution

[http://www.sharetrails.org/uploads/San\\_Benito\\_County\\_Road\\_Resolution\\_2010.pdf](http://www.sharetrails.org/uploads/San_Benito_County_Road_Resolution_2010.pdf)

Just as many user groups and other stakeholders questioned the decision-making process used by the BLM/EPA to close roads and trails within CCMA, the County of San Benito reviewed options to assert its right to manage their own roads within CCMA.

Ken Deeg, a local law enforcement officer and member of the Friends Clear Creek Management Area and TimeKeepers Motorcycle Club, states **(Exhibit B)** “... in early 2010 after viewing the email information and photos I received through [a] FOIA that the BLM and EPA manipulated and embellished the September 2005 dust sampling test, San Benito County Board of Supervisors realized they were misled by the BLM's Hollister

*Field Office and voted to take back their roads inside Clear Creek and re-open them to the public....”*

Again, after reviewing Deeg’s information, relevant laws, regulations, impacts of the closure to the local economy, and science, the county came to the conclusion that its roads do not present a health risk and that they should be open for public use.

#### **ISSUE FOUR: Willful Obliteration of Existing Recreation Facilities Paid for by Taxpayers and with User Fees**

In its effort to create a non-motorized ecotopia, the HFO is erasing all evidence of OHV recreation that has existed on this unit for the last 60 years; the agency has ripped up relatively new public restroom facilities along the main access road. It has also obliterated and/or rendered useless many traditional family camping sites in this same area.

Between 1981 and 2007, OHV recreationists through the OHMVR grants program contributed approximately \$7 million dollars to CCMA for trail and facility construction, route maintenance, resource protection, and law enforcement. No doubt during that time period, millions of dollars of appropriated funds have also been spent to manage multiple-use recreation on that unit.

My assertions are substantiated by a June 17, 2011 letter (**Exhibit C**) from Commissioner Eric Leuder, Chairman of the California Off-Highway Motor Vehicle Recreation Commission. On April 6, 2011, he witnessed in person the destruction of historic recreation facilities. The destruction of property was authorized in a previous environmental assessment based on the false assumption that the Evening Primrose was a threatened species. Subsequently, new agency biologists have found that species to be abundant. Yet, the HFO with this new information continues on its path to erase any evidence that OHV recreation staging areas existed on the unit.

While the HFO works hard to destroy all vestiges of its multi-million dollar recreational infrastructure, it has found the time to waste over \$2 million dollars of taxpayer funds to construct its much vaunted “decontamination center” at the entrance to CCMA.

Based on the aforementioned issues and concerns, I believe the HFO and EPA should answer the following questions.

1 – Is the HFO and EPA’s decision-making process and supporting documents in compliance with the March 9, 2009 Memorandum (**Exhibit D**) on Scientific Integrity issued by President Obama that states the ... *public must be able to trust the science and scientific process informing public policy decisions?*

2 – Is the HFO and EPA decision-making process and supporting documents in compliance with subsequent memos (**Exhibit E**) from EPA Administrator, Lisa Jackson,

and Interior Secretary Ken Salazar, reaffirming the need to foster honesty and credibility in science conducted and used by the Agencies?

3 – Why has the EPA refused to share requested information from their study with other scientists?

4 – Why does the HFO continue to destroy and obliterate the existing recreation infrastructure – paid for with state OHV grants and appropriated funds - when it knows the premise for the authorization is flawed?

5 – Why did the HFO construct an unneeded multi-million dollar decontamination center?

6 – Did the HFO investigate any management tools that would have allowed the unit to stay open during the planning process?

7 – Does the HFO/EPA intend to incorporate the IERF study into the planning process?

8 – Does the HFO intend to lift the emergency closure order?

### **Summary:**

After reviewing hold harmless laws, federal statutes, and new science, I believe that Congress and reasonable people will come to the conclusion that CCMA should be open for public use. Unfortunately, it appears the HFO/EPA continue to base the ongoing closure and closure-oriented planning alternatives on flawed science, illogical decision-making, and personal agendas that are in conflict with the multiple-use mission of the BLM.

I urge Congress to investigate the decision-making process that ranges from the initial process to issue an emergency closure in 2008 to the current planning effort. I believe that the continued closure of CCMA is unwarranted and should be lifted immediately. Also, the planning process is seriously flawed since it is based on what has been clearly demonstrated to be inaccurate data and false assumptions. The planning process should be put on hold until the scientific discrepancies between EPA and IERF are resolved.

What makes this closure so puzzling is that since recreationists started using CCMA after WW2, there is not one documented case of mesothelioma caused by recreational exposure to NOA at Clear Creek. In fact, there is not one documented case of mesothelioma caused by recreational exposure to NOA anywhere in California.

According to BRC member Ed Tobin who served on the Central California Resource Advisory Council (1995-2000), he had a number of conversations with then BLM State Director Ed Hastey about CCMA as the BLM was in the process of completing an EIS to guide the use of the area (ROD signed in Jan 1998). During one of these conversations Hastey told Tobin that despite EPA concerns about the asbestos risk and Fish and Wildlife concerns about a T&E species, he felt that Clear Creek was the ideal location for

the BLM to promote motorized recreation. He backed up these comments by approving the EIS/ROD that allowed motorized recreation to continue. BRC agrees with Hastey's vision and decision.

Based on the decisions made by the HFO over the last 4-5 years, I believe that HFO has veered away from Director Hastey's vision for Clear Creek and will create a defacto-Wilderness area at CCMA unless Congress intervenes

**Recommendation:**

Congress should consider bipartisan legislation that designates the 70,000-acre CCMA as a National Recreation Area with OHV recreation and other multiple-use recreational activities codified as "prescribed uses." Congress could base the route network on the 242 miles of routes and 400 acres of open areas identified for motorized use in the 2005 CCMA Travel Management Plan.

On behalf of myself, BRC, and other access stakeholders, I thank the subcommittee for allowing me to testify on this all too important issue. I look forward to working with Congress and the agency to find a way to reopen CCMA for OHV recreation and other multiple-use activities. At this time, I would be happy to answer any questions.

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Attachments: Exhibits A, B, C, D, and E

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