

**Statement of  
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Director  
U.S. Department of the Interior, Bureau of Land Management  
Senate Energy and Natural Resources Committee  
H.R. 1838, Clear Creek National Recreation Area and Conservation Act  
September 22, 2016**

**Introduction**

Thank you for the opportunity to testify on H.R. 1838, which would establish the Clear Creek National Recreation Area and designate the Joaquin Rocks Wilderness on public lands in San Benito and Fresno Counties in California. The Bureau of Land Management (BLM) supports the designation of the Joaquin Rocks Wilderness. By establishing a National Recreation Area, the bill seeks to expand recreational opportunities in the BLM's existing Clear Creek Management Area (CCMA), including in an area that has been identified by the Environmental Protection Agency (EPA) as containing naturally occurring asbestos, a well-known carcinogen. This action has the potential to expose the public to increased cancer risks and is unsafe. As a result, the BLM cannot support the National Recreation Area provisions as currently written because they would prevent us from managing these lands to adequately protect public health and safety.

**Background**

The BLM manages approximately 63,000 acres of public lands in the 75,000-acre CCMA in southern San Benito and western Fresno Counties, California. The CCMA offers a variety of settings and landforms that host many diverse natural and cultural resources, and offers recreation and other multiple-use opportunities, including grazing. The CCMA also contains a 30,000-acre area of serpentine rock containing naturally occurring asbestos. Until 1979, asbestos was mined in parts of the CCMA at the Atlas Asbestos Mine and mill, which is now a Superfund site.

Since the 1970s, Federal and state health agencies have expressed concerns about how recreational use in the CCMA by hikers, campers, hunters, botanists, rock collectors, and OHV users disturbs soils containing asbestos and creates the potential for exposure to and inhalation of airborne asbestos-laced dust, increasing the risk to human health. As a result of this concern, as well as the presence of the San Benito evening primrose (a special status plant species), the BLM has designated this 30,000-acre area within the CCMA as the Serpentine Area of Critical Environmental Concern (Serpentine ACEC). ACEC designations highlight areas where special management attention is needed to protect and prevent irreparable damage to important historical, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards.

Based on the concerns for the health of recreational visitors, the EPA initiated a risk assessment study in 2004 in connection with the clean-up of the Atlas Asbestos Mine Superfund Site to evaluate visitors' exposure to airborne asbestos fibers in the CCMA. The EPA's Clear Creek Management Area Asbestos Exposure and Human Health Risk Assessment (completed in May 2008) concluded that asbestos exposure for many recreational activities in the ACEC may result in excess lifetime cancer risks. The study noted that children are at greater risk than adults

because they are exposed to these high levels of asbestos at an earlier age. The study also showed that visiting the CCMA for a period of more than one day per year can put adults and children above the EPA's acceptable risk range for exposure to carcinogens and increase excess lifetime cancer risk from many typical CCMA recreational activities, including OHV use and hiking.

As a result of the EPA study, the BLM implemented a temporary closure of the Serpentine ACEC in May 2008 to all forms of entry and public use in order to protect public health and safety. The BLM collaborated with the EPA, stakeholders, and the public to incorporate the EPA's health risk information into land-use decisions for the CCMA. Through an extensive planning process, with full opportunity for public comment, the BLM determined that limiting an individual's time spent in the Serpentine ACEC is the most effective way to mitigate the health risks from asbestos exposure. Thus, the BLM limits high-risk activities within the Serpentine ACEC through its Clear Creek Resource Management Plan (RMP), which was finalized in February 12, 2014. Under the management plan, the BLM allows for a range of recreational uses and other activities in portions of the CCMA. It also limits the types of uses and places time restrictions during which an activity can take place within the Serpentine ACEC to minimize asbestos-related risk to public health and safety. Specifically, the RMP strictly limits vehicular and pedestrian access to the Serpentine ACEC. The BLM will reassess recreation opportunities and travel management decisions if significant new information becomes available concerning human health risks from exposure to airborne asbestos fibers in the CCMA.

### **H.R. 1838**

As noted earlier, H.R. 1838 would establish the Clear Creek National Recreation Area and designate the Joaquin Rocks Wilderness on public lands in San Benito and Fresno Counties in California.

#### ***Clear Creek National Recreation Area***

Section 3 of H.R. 1838 establishes the Clear Creek National Recreation Area, to be managed by the Secretary of the Interior, to promote motorized and non-motorized recreation, including OHV use, scenic touring, hunting, and gem collecting. Under the bill, the Secretary would open the CCMA to a variety of uses, including motorized recreation, mountain biking, hiking, hunting, and camping. The bill provides direction for developing a comprehensive management plan that would provide for these activities.

While we appreciate the sponsor's work on new language from previous versions of this legislation clarifying that the Secretary may still close any area, trail, or route from use for the purposes of public safety or resource protection under a future permanent management plan, we are still concerned that the bill's provisions for interim management leave the agency's ability to close areas for the protection of public health and safety in doubt. As mentioned above, certain activities in these areas are currently limited for health and safety reasons due to the risks from the carcinogen asbestos in the area. Public and employee health and safety has guided the BLM's approach in managing the area, and the agency would like to work with the sponsor to ensure the bill provides adequate authority for the BLM to manage the recreation area, including for the risk of exposure to asbestos, and on language addressing the significant potential risks to the public and employees.

Even though section 4 of H.R. 1838 provides the BLM an exemption from responsibility for the public's exposure to asbestos while recreating at the CCMA pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9605), the bill does not reduce risk to the public; it only attempts to reduce liability to the BLM. As determined by the EPA, the potential public health risks are high in the Serpentine ACEC of the CCMA, especially with respect to young children. In addition, the BLM is required to meet Occupational Safety and Health Administration standards for employees working in a designated hazardous asbestos area within the Serpentine ACEC, as well as meet Federal, State, and local air and water quality regulations designed to protect public health and safety from uncontrolled releases of hazardous airborne pollutants.

Finally, the National Environmental Policy Act, the Federal Land Policy and Management Act (FLPMA), and the BLM's implementing regulations and land use planning guidance already provide for collaborative processes designed to involve Federal, State, Tribal, and local government agencies, as well as the public and local stakeholders, in the planning process. The BLM would like the opportunity to work with the sponsor on technical modifications to the bill to ensure consistency with these existing land use planning authorities.

#### ***Joaquin Rocks Wilderness Area***

Section 5 of H.R. 1838 proposes to designate 20,500 acres of public land in Fresno and San Benito Counties as the Joaquin Rocks Wilderness. The core of this area – more than 7,000 acres – has already been designated for special protection by the BLM as an ACEC. The centerpiece of the proposed wilderness area is the three large sandstone monoliths, known locally as Las Tres Piedras, which tower 4,000 feet above the southern San Joaquin Valley. The rocks are home to a number of raptors, including the prairie falcon and the majestic California condor. Vernal Pools at the top of the rocks provide important seasonal habitat, and are also an important water source for wildlife in this arid region. Rock art sites throughout the proposed wilderness attest to earlier occupation and may even include ancient astronomical references. The BLM supports the wilderness designation in H.R. 1838, and would like the opportunity to work with the sponsor on minor boundary modifications and mapping issues and on minor modifications to management language to be consistent with usual wilderness management language.

#### ***Release of San Benito Mountain Wilderness Study Area***

Section 7 of H.R. 1838 proposes to release nearly 1,500 acres of BLM-managed land in the San Benito Mountain Wilderness Study Area (WSA) from WSA status. This small area does not contain lands that meet the basic requirements for wilderness. If the San Benito Mountain WSA is released from WSA status by Congress, it would be managed consistent with the goals and objectives and resource management actions for the Serpentine ACEC and the San Benito Mountain Research Natural Area, as described in the Record of Decision and Approved RMP for CCMA. The BLM supports this provision.

#### **Conclusion**

The BLM appreciates the work by Congressman Farr on H.R. 1838. Lands in the CCMA present complex resource management and public health and safety issues. While we support the proposed designation of the Joaquin Rocks Wilderness, we cannot support provisions in the

bill that could increase the exposure of public land users and employees to naturally occurring asbestos. We would like to continue working with Congressman Farr and this Committee to address future uses at the CCMA, including the growing and popular activity of responsible OHV use in California and across the West. Thank you for the opportunity to testify. I would be glad to answer any questions.