



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 29, 2008

Scott P. Stermer
Assistant Trustee-Procurement
U.S. Department of Justice
Office of the Federal Detention Trustee
4601 North Fairfax Dr., 9th Floor,
Arlington, Virginia 22203

Subject: Draft Environmental Impact Statement - Proposed Contractor-
Owned/Contractor-Operated Detention Facility, Las Vegas, Nevada Area
[CEQ #20070527]

Dear Mr. Stermer:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced document. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508), and our NEPA review authority Section 309 of the Clean Air Act (CAA).

The Draft Environmental Impact Statement (DEIS) assesses a proposal to award a contract to house 1,000 to 1,500 federal detainees within a Contractor-Owned/Contractor-Operated detention facility within a 75-mile radius of Las Vegas, Nevada. Four alternative sites were examined in detail within the DEIS.

We commend the preparers of the document for publishing a clear and thorough analysis of the alternatives. Based on our review of the document, we have rated this DEIS as EC-2, Environmental Concerns – Insufficient Information (See attached “Summary of EPA Rating System”). We are concerned about the potential impacts of the proposed project on water resources and air quality. We recommend that the Final Environmental Impact Statement (FEIS) clarify whether a jurisdictional delineation will be required at each of the sites and discuss the availability of water resources in greater detail, as well as design features that have been incorporated to maximize water conservation. To minimize air quality impacts during construction, we recommend incorporating additional mitigation measures, as described in our detailed comments. We also recommend that the contractor consider incorporating energy efficient, “green” building design and operation concepts.

We appreciate the opportunity to review this DEIS and request a copy of the FEIS when it is officially filed with our Washington, D.C. office. If you have any questions, please call me at (415) 972-3846, or have your staff contact Ann McPherson at (415) 972-3545 or mcpherson.ann@epa.gov.

Sincerely,

/s/

Nova Blazej, Manager
Environmental Review Office

Enclosures: Summary of Rating Definitions
EPA Detailed Comments

Cc: Mike Jewell, U.S. Army Corps of Engineers
Steven Roberts, U.S. Army Corps of Engineers
Tracy Taylor, Nevada State Engineer
Brad Huza, Moapa Valley Water District

**EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT –
PROPOSED CONTRACTOR OWNED/CONTRACTOR OPERATED DETENTION FACILITY,
LAS VEGAS AREA, NEVADA, JANUARY 29, 2008**

Project Description:

During the past two decades, the federal detainee population has experienced unprecedented growth as a result of expanded federal law enforcement initiatives and resources. The U.S. Department of Justice (DOJ), via the Office of the Federal Detention Trustee (OFDT) and the U.S. Marshals Service (USMS) have determined that there is an immediate and long-term need to house federal detainees within a facility located in proximity to Las Vegas, Nevada. The OFDT solicited proposals in early 2007 from contractors interested in housing these individuals. Five contractors offered 11 alternative sites for development of the detention facility. Ten of the eleven sites were located within a 75-mile radius of the United States Courthouse in downtown Las Vegas, Nevada. Four of these sites were determined to warrant further consideration in the Draft Environmental Impact Statement (DEIS).

Water Resources

Clean Water Act Section 404

On page III-23, the DEIS states that, “*Small washes characterized by low volume, infrequent or short duration of flow are not considered jurisdictional waters.*”

Recommendations:

This statement is incorrect. Many ephemeral washes may, in fact, be regulated through the establishment of a significant nexus. In determining whether these waters are jurisdictional, the U.S. Army Corps of Engineers, in consultation with the U.S. Environmental Protection Agency, conducts an analysis according to the *Memorandum Regarding Clean Water Act Jurisdiction Following Rapanos v. United States and the Memorandum for the Field: Coordination on JDs under CWA Section 404 in light of SWANNC and Rapanos Supreme Court Decisions*. We recommend that the Final Environmental Impact Statement (FEIS) clarify whether or not such an analysis has been completed at each of the sites and provide additional information on the determination as to whether a jurisdictional delineation will be required, respectively.

If jurisdictional waters are found at the proposed sites, the FEIS should demonstrate compliance with the Clean Water Act Section 404(b)(1) Guidelines.

Water Supply

EPA is concerned about the general uncertainty of the water supply for this project. For the two sites located within Pahrump, Nevada, the DEIS states that potable water supply service and wastewater collection service is currently unavailable, although

service could be provided by extending a water main and wastewater collection line to the selected site. The majority of surface water resources within Nye County have already been appropriated and existing groundwater allocations exceed the perennial yield of the Pahrump Basin. Based on recent projections, a shortfall of 65,000 to 61,000 acre-feet per year is projected by the year 2050 (pgs. IV-32, 33).

For the Moapa Site, water supply service is provided by the Moapa Valley Water District. The DEIS states that District representatives are confident that the main has sufficient capacity to accommodate the proposed development. However, the DEIS also states that all of the available water rights have been allocated. The basin has an annual yield of 2,200 acre-feet. Presently the active annual duties (approved water use) total approximately 3,100 acre-feet; however, pending annual duty is approximately 42,500 acre-feet (pg. IV-36). The DEIS states that the demand for water service would be mitigated by proper planning, design, scheduling and installation of improvements to the water system required to serve the proposed facility (pg. IV-37).

Recommendations:

EPA recommends the FEIS clearly demonstrate whether there is sufficient water supply for the lifetime of this project and other reasonably foreseeable projects in the study area. We also recommend that FEIS address what measures would be taken, and by whom, should groundwater or surface water resources in the basin become overextended due to additional growth, continued drought, and the utilization of existing or pending water rights in the basin(s).

The FEIS should clarify whether the annual yield is accurately documented for the Moapa Valley Water District, and whether annual duty refers to groundwater, surface water, or some combination thereof.

EPA recommends the cumulative impacts analysis for groundwater include a discussion of the potential effect of future climate change on the proposed project and groundwater development. We recommend this discussion provide a short summary of the climate change studies specific to the project area and Colorado River Basin¹, including their findings on potential environmental and water supply effects and their recommendations for managing these effects.

To clarify the regulatory structure for protecting groundwater and surface water, we recommend the FEIS describe the water right permitting process and the role of the Nevada State Engineer in protecting beneficial uses, human health, and the environment. This would include, for example, describing whether water right permits include special conditions; measures to mitigate direct, indirect, and cumulative impacts; and provisions for monitoring and adaptive management.

¹ A number of studies specific to the Colorado River Basin indicate the potential for significant environmental impacts as a result of changing temperatures and precipitation (Colorado River Basin Water Management: Evaluating and Adjusting to Hydroclimatic Variability, National Research Council, 2007).

EPA recommends that the FEIS detail project design features that demonstrate maximum water conservation strategies².

Air Quality Impacts

The DEIS includes an evaluation of existing air quality within the geographic scope of the project (pgs. III-79 to 81) and examines the potential air quality impacts that may occur from construction activities, routine operations, and traffic. The DEIS states that construction-related impacts are generally limited to fugitive dust emissions and that impacts would be temporary, occurring only while construction is in progress and during certain meteorological conditions (pg. IV-48). To mitigate potential air quality impacts during construction, best management practices would be incorporated within standard operating procedures (pg. IV-48).

Recommendation:

EPA recommends that the FEIS incorporate a Construction Mitigation Plan. All applicable state and local requirements and the following additional and/or revised measures should be incorporated into the Construction Mitigation Plan.

Fugitive Dust Source Controls:

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative where appropriate. This applies to both inactive and active sites, during workdays, weekends, holidays, and windy conditions.
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions.
- When hauling material and operating non-earthmoving equipment, prevent spillage and limit speeds to 15 miles per hour (mph). Limit speed of earth-moving equipment to 10 mph.

Mobile and Stationary Source Controls:

- Reduce use, trips, and unnecessary idling from heavy equipment.
- Maintain and tune engines per manufacturer's specifications to perform at EPA certification levels and to perform at verified standards applicable to retrofit technologies. Employ periodic, unscheduled inspections to limit unnecessary idling and to ensure that construction equipment is properly maintained, tuned, and modified consistent with established specifications.
- Prohibit any tampering with engines and require continuing adherence to manufacturers recommendations
- If practicable, lease newer and cleaner equipment meeting the most stringent of applicable Federal or State Standards.
- Utilize EPA-registered particulate traps and other appropriate controls where suitable to reduce emissions of diesel particulate matter and other pollutants at the construction site.

² For reference, see EPA's Water Sense program at <http://www.epa.gov/watersense/>.

Administrative Controls:

- Identify where implementation of mitigation measures is rejected based on economic infeasibility.
- Prepare an inventory of all equipment prior to construction and identify the suitability of add-on emission controls for each piece of equipment before groundbreaking. (Suitability of control devices is based on: whether there is reduced normal availability of the construction equipment due to increased downtime and/or power output, whether there may be significant damage caused to the construction equipment engine, or whether there may be a significant risk to nearby workers or the public.)
- Utilize cleanest available fuel engines in construction equipment and identify opportunities for electrification. Use low sulfur fuel (diesel with 15 parts per million or less) in engines where alternative fuels such as biodiesel and natural gas are not possible.
- Develop a construction-traffic and parking management plan that minimizes traffic interference and maintain traffic flow.

Energy Efficient Design - Green Building Standards

EPA would like to encourage the DOJ to consider energy efficient design and green building standards in conjunction with the design and construction of the detention facility. Although the facility will be a contractor-owned/contractor-operated facility, the DOJ should have the opportunity to provide input to the contractors regarding the construction of the facility. Site plans and facility renderings can be found Appendix E; however, more detailed information was not included in the DEIS.

The United States Green Building Council (USGBC) is a nonprofit organization committed to expanding sustainable building practices. The USGBC works to advance structures that are environmentally responsible, profitable and healthy places to live and work. The USGBC utilizes the *Leadership in Energy and Environmental Design* (LEED) Green Building Rating System design criteria to help apply principles of sustainable design and development to facilities projects. Using LEED ensures that sustainable strategies are considered in the development of building projects. LEED also serves as a means of evaluating and measuring green building achievements.

Recommendations:

EPA recommends that the DOJ strive for LEED Certification when considering design alternatives for the proposed detention facility. The new facility should incorporate design features that maximize green technology, including the use of recyclable materials, natural lighting, energy conservation, and alternative fuel utilization. The new facility should also include provisions for sustainable landscape design. The DOJ should encourage the facility to provide environmental education on features associated with the project.

For questions on green building, please contact Timonie Hood with EPA Region 9's Solid Waste Office at 415-972-3282.

We also recommend that the FEIS discuss Executive Order 13148, *Greening the Government through Leadership and Environmental Management* (April 21, 2000)³ and demonstrate how the proposed project will be consistent with this Executive Order.

Alternatives Analysis

The DEIS states that the Preferred Alternative is for the OFDT to award a contract to house federal detainees within a Contractor-Owned/Contractor-Operated detention facility. Eleven alternative sites for development of the facility were considered initially; however, only four sites were determined to be worthy of further evaluation in the DEIS. According to a news release on January 23, 2008, one of the four sites (the Apex site) has been withdrawn because it is too close to the Nellis Air Force Base.

Under the National Environmental Policy Act (NEPA), the DOJ is required to identify the agency's preferred alternative in the FEIS, unless another law prohibits the expression of such a preference (40 CFR 1502.14(e)). The Record of Decision (ROD) must state what the decision is (i.e., select an alternative) pursuant to 40 CFR 1505.2(a) and must also identify the environmentally-preferred alternative (40 CFR 1505.2(b)).

Recommendation:

EPA recommends that the FEIS and the ROD clearly identify the agency's preferred alternative, as well as the environmentally-preferred alternative.

³ See <http://www.nepa.gov/nepa/regs/eos/eo13148.html>.