Reading File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901
April 23, 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: Final Environmental Impact Statement - Proposed Contractor-Owned/Contractor-Operated Detention Facility, Las Vegas, Nevada Area [CEQ #20080104]

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).

EPA reviewed the Draft Environmental Impact Statement (DEIS) for the Proposed Contractor-Owned/ Contractor-Operated Detention Facility and provided comments to the Office of the Federal Detention Trustee on January 29, 2008. We rated the DEIS as EC-2,"Environmental Concerns - Insufficient Information," due to concerns about potential impacts on water resources and air quality. We recommended 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. We also recommended incorporating energy efficient, "green" building design and operation concepts, including features to maximize water conservation, and air quality mitigation measures.

EPA is pleased that some of these issues have been addressed in the FEIS. In response to our comments, the Office of the Federal Detention Trustee has incorporated air quality mitigation measures into the FEIS. We urge that you to commit to these measures in the Record of Decision (ROD).

With regards to water resources, EPA continues to disagree with the statement rewritten as follows: "*Swales or erosional features (i.e., small washes characterized by low volume, infrequent or short duration of flow) are typically not considered jurisdictional waters.*" In determining whether these waters are jurisdictional, the U.S. Army Corps of Engineers, in consultation with the EPA, should conduct an analysis according to the *Memorandum Regarding Clean Water Act Jurisdiction Following*

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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*. Although the FEIS describes jurisdiction at the site, the FEIS does not clarify whether such an analysis has been completed at each of the sites, nor does it provide additional information as to whether a jurisdictional delineation was finalized by the Corps. If jurisdictional waters are found at the proposed sites, the ROD should demonstrate compliance with the Clean Water Act Section 404(b)(1) Guidelines.

Regarding water supply, EPA notes that the FEIS omitted two integral paragraphs dealing with that subject in the DEIS. We believe that this information should have been included in the FEIS. We encourage the Office of the Federal Detention Trustee to compensate for this in the ROD. We also recommend that the ROD discuss Executive Order 13148, *Greening the Government through Leadership and Environmental Management* (April 21, 2000) and encourage the Office of the Federal Detention Trustee to elaborate on how your office will communicate this information to the Contractor. Finally, EPA recommends that the ROD clearly identify the environmentally-preferred alternative as well as the agency's preferred alternative.

We appreciate the opportunity to review this FEIS. When the ROD is signed, please send one copy to the address above (mail code: CED-2). 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,

Nova Blazej, Manager
Environmental Review Office

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