

# Office of the County Manager



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October 13, 2011

(Certified Mail No. 91 7108 2133 3937 4851 7248)

Penny Woods  
Bureau of Land Management  
1340 Financial Blvd  
Reno, NV 89502

REC'D - BLM - NSO  
9:00 OCT 18 2011  
A.M.

RE: Draft Environmental Impact Statement for the Clark, Lincoln and White Pine Counties Groundwater Development Project

Dear Ms. Woods:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Statement (DEIS) for the Clark, Lincoln and White Pine Counties Groundwater Development Project (Groundwater Development Project). We encourage the Bureau of Land Management (BLM) to complete the necessary environmental review in a timely manner and grant the requested rights-of-way. The following comments are provided to help BLM improve the necessary environmental review.

Overall, the DEIS is a thorough and well organized document. However, there are a number of key shortcomings that should be addressed before a Final EIS is submitted for review.

***The DEIS fails to adequately address the impacts of the no action alternative for Southern Nevada.*** The most apparent inadequacy is the failure of the document to discuss in sufficient detail the catastrophic impacts of a water shortage for Southern Nevada. The analysis presented in the DEIS is incomplete at best and presupposes that most of the impacts of the proposed project will be negative and limited to rural counties. The reality is that Southern Nevada is almost entirely dependent upon a single water source and the effects of the drought on the Colorado River over the past decade have greatly amplified Southern Nevada's need to diversify its water resource supply. Unfortunately, the DEIS gives short shrift to this reality and fails to adequately discuss the real impacts that will result from even a short-term water shortage. These potential and quantifiable impacts range from the economic costs associated with skyrocketing short-term borrowing costs, to long-term impacts associated with broad economic decline, not unlike what Nevada is currently enduring.

***The DEIS fails to adequately describe the economic impacts of the no action alternative for rural communities.*** A related inadequacy is the extent to which the economies in Lincoln and White Pine counties are largely dependent upon tax revenue generated in Clark County, not to mention the remainder of the state. This dynamic should be reflected and quantified in the analysis, including a comparison of the amount of tax revenue generated by the major industries in each county in comparison to the relative tax receipts. The analysis must also address the projected financial impacts to these rural counties if the project does not move forward. As noted above, a downturn in Clark County will inevitably mean a downturn in all of Nevada. But for the economic support provided by Southern Nevada, many rural communities in other parts of the state would be unable to provide even the most basic of services, such as roads, schools and medical facilities. The potential loss in revenue resulting from the development and construction and operation of the proposed project is dwarfed by the loss in potential revenues if a major economic downturn were to occur in Clark County if Southern Nevada were unable to meet *existing* demands as a result of potential shortages on the Colorado River. The analysis also fails to address the financial assurances in place within the Nevada-Utah agreement, the stipulated agreements or the proceeds that are required to be paid to the counties where the diversion originates. Given these assurances, it is unclear why additional compensation is necessary.

***The impacts analysis goes beyond the scope of what is required under NEPA and the recommended mitigation measures exceed the authority of the BLM.*** A substantial portion of the discussion of the potential impacts concerns impacts for which BLM's issuance of the ROW is not the legal cause. The BLM's reference to the BLM NEPA Handbook (3.18-46) notwithstanding, recent case law regarding the appropriate scope of agency review makes it clear that in completing NEPA review, agencies are not required to analyze effects for which the agency action is not the legal cause (see *Department of Transportation v. Public Citizen*, 541 U.S. 752). In the case of the ROW, BLM has no ability to countermand or otherwise

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refuse to grant the ROW provided that the conditions of the LCCRDA are satisfied. Despite the Supreme Court's guidance, the draft EIS strays far from an analysis of effects that are caused by BLM's action.

Similarly, NEPA does not expand the authority a federal agency has under its enabling act. As a result, any mitigation measures mandated by BLM must be within BLM's authority under FLPMA and P.L. 108-424. In many instances, the proposed mitigation in the DEIS would appear to go beyond the scope and authority of the BLM to consider and recommend. Overall, the additional "recommended" mitigation measures outlined DEIS should be re-evaluated and removed if BLM does not have the authority to require them. As a result, the public may be left with the false impression that these are measures that the BLM can in fact require. In addition, it serves to undermine the longstanding primacy of state regulation of water in Nevada.

In reviewing the proposed mitigation, the BLM must consider: 1) whether the mitigation measures are required by the Las Vegas or Ely RMPs; 2) whether they reflect the applicant committed measures, signed stipulations and/or other processes or agreements (such as Nevada water law or the Nevada-Utah agreement); and 3) whether the mitigation is commensurate with potential impacts and are consistent with other similar ROW projects (such as gas pipeline and powerline projects). There are a number of specific mitigation measures defined in Chapters 2 & 3 that do not appear to be required in any other consultation for a linear project in this region.

The mitigation outlined in the stipulations and that will be included in the Nevada-Utah agreement, including provisions for cessation of pumping where necessary, should be considered more than sufficient, particularly given that these agreements were negotiated and agreed to by the agencies of the Department of the Interior. The EIS should not be used to overburden the project with mitigation that is not commensurate with the impact, that is overly expensive when compared to overall effectiveness of the measures, and are not normally required of applicants for other similar linear-type ROW applications. As it is currently conceived, the mitigation requirements outlined in the DEIS will make the proposed project economically infeasible.

***The emissions factor used to estimate potential emissions resulting from potential drawdown is not representative of likely future conditions.*** The estimation of additional windblown dust emissions resulting from groundwater drawdown outside of Clark County is not representative of likely future conditions. While we generally concur with the technical approach used to estimate these emissions, we do not believe that the emission factor selected to represent plant communities affected by groundwater drawdown, which was developed from western surface coal mining emissions, is representative. As a result, the analysis significantly overestimates potential emissions. We believe that the emission factor developed for native desert areas of Clark County, based on a series of wind tunnel studies conducted by UNLV, would better represent the bare soil/sparse vegetation and phreatophyte/medium vegetation areas affected by groundwater drawdown and produce more accurate emission estimates

The wind tunnel test sites used to develop the Clark County native desert emission factor consisted of areas of desert paving with limited coverage of small native grasses, resulting in very conservative emissions data. The small size of the wind tunnel did not permit collection of emissions data from areas containing larger native plants. The larger plants provide wind sheltering to the surrounding areas, reducing effective ground-level wind speeds and emission rates. Clark County surface soils are supplied by annual average rainfall of 4.2 inches whereas the areas of groundwater drawdown will receive 8-10 inches of annual rainfall.

The Clark County wind tunnel study documents are available at the following URL:

<http://www.clarkcountynv.gov/Depts/daqem/Pages/ResearchProjects.aspx>

To obtain a tons/acre/year emissions factor from the above wind tunnel data, Clark County staff used Las Vegas Valley (McCarran Airport) meteorological data for the year 2008. The Clark County native desert annual PM10 emissions factor is 0.015 tons/acre/year. We believe that this emission factor is appropriate for bare soil/space vegetation areas affected by groundwater drawdown. This is a conservative emission factor for phreatophyte/medium vegetation areas. We note that this emission factor could be further refined by using local meteorological data in place of the Las Vegas Valley data.

The following additional revisions should also be made to the document:

Table 3.1-1 should be updated to reflect current National Ambient Air Quality Standards. Tables 3.1-2, 3.1-3, and 3.1-4 are not applicable to Clark County. The accompanying narrative to these tables should be modified appropriately. Within Clark County the proposed Project crosses Hydrographic Areas 210, 217, 218 and 212. Please refer to the map on the County web site:

<http://www.clarkcountynv.gov/Depts/daqem/Pages/StateImplementationPlans.aspx>

- Hydrographic area 210 is in attainment of all criteria pollutants, i.e., it meets the National Ambient Air Quality Standards for all the criteria pollutants.
- Hydrographic Areas 217 and 218 are “nonattainment” for ozone.
- Hydrographic Area 212 is designated “attainment” for carbon monoxide, “nonattainment” for particulate matter with an aerodynamic diameter less than 10 microns (PM10) and “nonattainment” for ozone.

The proposed project is subject to the Clark County Air Quality Regulations (AQR) and the Federal Endangered Species Act, which are implemented and enforced by this department.

- All applicants must complete and submit an Authority to Construct Permit application for emission units capable of emitting regulated pollutants, in accordance with Section 12 of the AQR (including all subtitles).
- All applicants must comply with the appropriate AQRs. Sections 90 through 94 address PM10 emissions from fugitive dust sources, including construction activities. Dust permits must be obtained prior to commencing construction activities within Clark County.
- Best Available Control Measures—i.e.; those that are the best available, using current technology, for reducing or eliminating the release of PM into the atmosphere from construction activities—must be followed. These are described in the “Construction Activities Dust Control Handbook,” which is available on the Clark County Web site.

Clark County’s air quality specialists are available to the BLM and their contractor to provide further assistance with the air quality and emissions analysis should it be helpful. Additional background data and information can also be provided as necessary.

*The DEIS does not adequately discuss the uncertainty associated with potential impacts and the subsequent NEPA analysis that will be conducted prior to any conveyance of groundwater to Southern Nevada.* The DEIS does not sufficiently explain to the reader the level of uncertainty and limitations of the impacts analysis. As a result, the reader is left with the impression that the impacts described in Chapter 3 are a foregone conclusion. While the various modeling and analyses incorporated into the document reflect the best available information, the project will inevitably be subject to substantial additional data collection and refinement in the future. This additional data will be used to further refine the project and minimize potential impacts. There is little to any discussion in the DEIS as to either the limitations of the analysis or the process for incorporating additional data in the future.

The analysis also fails to describe how the proposed mitigation measures will offset the projected impacts in a clear and concise manner. The reader is left to “hunt and peck” for information on the individual measures without being provided a comprehensive assessment of the effectiveness of the mitigation strategy writ large. The DEIS is the first step in the NEPA process and the fact that project specific analyses will be conducted will further delineate the impacts and mitigation measures as the project progresses.

We appreciate the opportunity to comment. Thank you for your consideration. If you have any further questions, please contact me at (702) 455-3520.

Sincerely,



DONALD G. BURNETTE

County Manager

/DGB:rmt