



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

March 30, 2015

U.S. Department of Justice
Bureau of Prisons
Attn: Isaac Gaston, Site Selection Specialist
320 First St., NW
Washington, DC 20534
VIA EMAIL (igaston@bop.gov)

Re: Proposed USP/FPC Letcher County
Draft Environmental Impact Statement

Dear Mr. Gaston:

Please accept the following comments concerning the environmental impact statement (“EIS”) issued by the Bureau of Prisons (“BOP”) in February 2015.

The Human Rights Defense Center (“HRDC”) is a non-profit organization that advocates on behalf of the human rights of people held in U.S. prisons, jails, detention centers, civil commitment facilities, and other institutions. As an advocate for incarcerated people throughout the United States, HRDC is particularly concerned about the environmental impacts of prisons—both the impacts felt by prisoners themselves, as well as impacts on the “external” social and ecological environment.

As discussed in more detail below, the EIS fails in numerous respects to adequately identify environmental impacts and describe mitigation efforts. The proposed activity cannot proceed unless BOP complies with the requirements of the National Environmental Policy Act (“NEPA”).

The BOP proposes to construct a mixed security facility, housing approximately 1,200 prisoners, in the Eastern Kentucky Coalfields. In the words of Harry Caudill, this is a region that has long suffered from an “economic malaise” due in large part to the fact that

It has exported its resources, all of which—timber, coal, and even crops—have had to be wrested violently from the earth. The nation has siphoned off hundreds of millions of dollars’ worth of its resources while returning little of lasting value. For all practical

P.O. Box 1151
Lake Worth, FL 33460
Phone: 561.360.2523 Fax: 866.735.7136
Paul Wright, Executive Director: pwright@prisonlegalnews.org

purposes the [Cumberland Plateau] has long constituted a colonial appendage of the industrial East and Middle West, rather than an integral part of the nation generally. The decades of exploitation have in large measure drained the region.¹

The EIS announces BOP's plans to continue with a new type of extractive activity. BOP's proposed project would take 1,200 prisoners, extracted from their homes and neighborhoods, and import them into Letcher County. Despite the EIS's glib promises of employment and economic activity, Letcher County and surrounding environments would be forced to absorb the substantial environmental consequences of importing 1,200 people into a highly concentrated group quarters. Meanwhile, the prisoners themselves would be exposed to various adverse environmental conditions that are entirely unaddressed in the EIS.

As discussed in more detail below, the EIS fails in numerous respects to adequately identify environmental impacts and describe mitigation efforts; therefore proposed activity cannot proceed until BOP complies with the requirements of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act.²

I. BOP Has Not Examined a Sufficient Range of Alternatives

The BOP alleges that this facility is needed to reduce national prison overcrowding. According to the EIS, high-security facilities operated by the BOP "are currently 52 percent overcrowded and are operating at above rated capacity."³ The other four Mid-Atlantic USP facilities referenced in the EIS are on average between 400 – 600 people over capacity, totaling 2,400 prisoners (not including prisoners in special programs).⁴

While the BOP presents this as if it is an urgent matter, it has actually come to represent a standard state of affairs for the BOP. Even with BOP's Letcher County proposal being the largest of its kind in the region, potentially warehousing over 1,216 people to the cost of \$200 - 300 million for pre-construction activities alone,⁵ this still leaves the Mid-Atlantic facilities overcrowded by over 1,200 prisoners.

Building new prisons to alleviate overcrowding has followed a similar trend as building new roads to alleviate heavy traffic or building more cemeteries to remedy infectious disease. Without proper analysis and assessment of alternatives, these costly measures rarely address the intended problems, and more prisons, like roads and cemeteries, are claimed to be needed at a constant pace which cannot be managed responsibly.

The assessment of alternatives is one of the primary reasons for the existence of the EIS process.

¹ Harry M. Caudill, *Night Comes to the Cumberlands: A Biography of a Depressed Area* (1962), at 325.

² See generally 5 U.S.C. § 702 (providing for judicial review of agency action).

³ EIS § 1.3

⁴ EIS Table 1-1

⁵ EIS Table ES-1

BOP's refusal to discuss alternatives to imprisonment is not just indicative of the agency's lack of imagination, but also flies in the face of NEPA's requirement to "study, develop, and describe appropriate alternatives to recommended courses of action."⁶

Recent innovations have shown that alternatives to incarceration can be reasonably implemented and can save scarce financial and human resources,⁷ as well as reduce the epidemic levels of recidivism,⁸ by developing programs that truly keep people charged with crimes closer to their families and communities, providing specialized treatment and assistance rather than incarceration. Viewed in this light, the problem is not overcrowding but over-incarceration.

Such alternatives could avoid the negative environmental impacts which would arise from either of BOP's proposed alternatives. Accordingly, BOP's failure to consider such alternatives is grounds for finding the EIS insufficient, because the agency's analysis appears to be little more than "a pro forma ritual."⁹

II. BOP's Stated Need for the Proposed Action Is Suspect

At the outset, the EIS seems to distort or deviate from BOP policies concerning prisoner placement. As part of the stated justification for the proposed project, the EIS claims that "[w]hen considering placement of an individual, the Bureau considers the origin of the inmate and attempts to place the inmate in an institution that is within the region of the inmate's origin."¹⁰ The EIS then attempts to justify BOP's proposed project by stating that "[t]he opportunity to provide additional [prison] bedspace in Letcher County would . . . afford the Bureau continued management of inmates originating from the region, and allow those inmates to remain close to family and friends."¹¹

While the BOP alleges that the Mid-Atlantic Region was chosen in an attempt to place prisoners in Letcher County in order to provide "greater opportunity for visitation with family, which aides in the rehabilitation process," the EIS did not provide and demographics or geographic analysis of where the existing prisoners in overcrowded facilities in the Mid-Atlantic would be coming from, and what affordable transportation options are available to them for visitation. There is no public transportation, bus station, train station, or airport within a 90 mile radius of Whitesburg, KY, making it virtually impossible for families that do not own, or cannot afford to rent, a private vehicle, to make the trip. Building prisons in remote rural areas far from the urban areas that generate most prisoners only serves the further isolate and alienate prisoners from their families by making visitation difficult or impossible for the mostly impoverished families of prisoners.

⁶ 42 U.S.C. § 4332(E).

⁷ For example, drug offenses accounted for 48.5% of BOP prisoners as of 2012. Reforms surrounding how these types of charges are dealt with could substantially alleviate the overpopulation of BOP facilities.

⁸ [The Congressional Research Service \(CRS\) Report on Offender Reentry](#), by Nathan James, published January 2015

⁹ See *Southern Utah Wilderness Alliance v. Norton*, 237 F.Supp.2d 48, 52 (D.D.C. 2002) ("Considering environmental costs means seriously considering alternative actions to avoid them.").

¹⁰ EIS § 1.3.

¹¹ EIS § 2.3.

BOP's professed interest in family unity comes as somewhat of a surprise in light of BOP's published management procedures. The EIS claims that the proposed facility would serve prisoners from the BOP's Mid-Atlantic Region. This region is comprised of Kentucky, West Virginia, Tennessee, Virginia, Maryland, Delaware, and North Carolina.¹² Yet BOP's Program Statement 5100.08 does not specify that prisoners should be housed close to family and friends, but rather provides that placing a prisoner within *500 miles* of his or her anticipated release area is one of dozens of factors that determine where a prisoner is placed.¹³ The 500-mile radius surrounding Whitesburg, Kentucky includes numerous areas that are not "close" (under any reasonable definition) to the proposed prison, including Detroit, Michigan; St. Louis Missouri; Philadelphia, Pennsylvania; Buffalo, New York; Jacksonville, Florida; Montgomery, Alabama; Scranton, Pennsylvania; and Chicago, Illinois.¹⁴

It is troublesome enough that BOP proposes importing 1,200 people into housing constructed on an abandoned mine site. For the agency to claim it is implementing this plan in the name of family unity is disingenuous. If BOP has developed a new program to emphasize placement of prisoners close to their families, then the EIS should reference that program; otherwise, the BOP should not use families and loved ones as pawns in a public relations charade.

III. Lack of Consideration for Public Involvement During Scoping Period

The EIS states that public involvement is an extremely valuable tool in the successful completion of NEPA documents." It also states that "scoping comments were in support of the project with no major issues or concerns raised." From reviewing the media reports published in close proximity to the scoping period of this BOP proposal, it appears that the presentation of public input from the scoping period is being skewed, if not outright falsified. HRDC has confirmed that at least three individuals who formally submitted critical comments during scoping which are reflected *nowhere* in the presentation of public input in the EIS.¹⁵ We are disturbed that a federal law enforcement agency would lie and distort comments made during the public hearings process. Such behavior undermines respect for authority and calls into question the legitimacy of the agency who would commit and condone such behavior.

In other examples, a regional news source based in Whitesburg, KY, *The Daily Yonder* (produced by the Center for Rural Strategies), published an article during the scoping period which included the following comments:

"People have been promised pie in the sky," says Sylvia Ryerson, a [former] Letcher County resident and a journalist for WMMT-FM. The jobs involved in building a prison

¹² See Fed. Bureau of Prisons, [Map of Mid-Atlantic Region](#).

¹³ PS 5100.08, ch. 5 at 3.

¹⁴ Locations within the 500-mile radius are based on a [map generated by FreeMapTools.com](#).

¹⁵ Sylvia Ryerson, Elizabeth Sanders and Stephen Raheer all confirmed submitting written comments which were not supportive of the project. Ryerson stated that she believed others did as well. Raheer's comment, filed on August 26, 2013, stated among other points that "[t]he Letcher County EIS should thoroughly explain the types of settings in which BOP houses different inmate populations, and should give meaningful consideration to community-based alternatives to incarceration." This was not even remotely addressed in the Draft EIS.

are temporary, she says, and they can't transform the economy in a meaningful way. By taking short term jobs, she claims Appalachia is harming its community in the long term. "I think it is helpful to think of prison construction as a continuation of the industrial recruitment strategies of the 1990s, where economic development officials looked outside the region, for some new big thing to come in and fix everything that's wrong. And just as industrial recruitment failed to bring the region out of poverty, so will prison recruitment. It's a race-to-the-bottom strategy, not based on meeting the needs and cultivating the skills of a particular community, but rather forcing marginalized communities to compete for the kinds of industries that no one else wants. And the effects are disastrous."

Some might argue that even if the jobs are temporary, they are a stopgap solution that otherwise wouldn't exist. Ryerson maintains that the evidence shows the opposite to be true. "[F]rom looking at studies as well as our neighboring counties, ... prisons make poor communities poorer." Appalachia needs a vibrant, diversified and skilled economy. Prisons discourage those businesses, making Appalachia a less attractive place. "Many prison host communities have seen increases in drug abuse, domestic violence and divorce rates following the prisons opening." Additionally, in a region struggling to keep its young people at home, she worries about the unspoken message building a prison sends. "Is this what we want to be telling young people may be their best option if they want to stay home and have a good paying job?"

Furthermore, prisons create their own very dangerous economy. In order for a prison to become economically viable, it needs more and more prisoners. "[M]ass incarceration targets poor people of all colors," Ryerson says. "The more our economy here in eastern Kentucky depends on insanely high incarceration rates nationwide, the more people from here in eastern Kentucky will end up going to prison."¹⁶

In an excerpt from another *Daily Yonder* article, the author provides background on other prison facilities in the region and the failing economic impacts they continue to have:

It's been 21 years since the federal prison opened in Clay County, a decade since the prison opened in Martin County, and nine since opening day at the McCreary prison – and none of the promises of Dorworth [the federal prison official] have been fulfilled. Clay, McCreary and Martin remain three of the poorest counties in one of the nation's poorest Congressional districts.

Central Appalachia's experience is not unique. Prisons don't work as economic development engines, researchers say. One study analyzed data on every rural county in the United States, with or without a prison, from 1969-2004. The report concluded: "We find no evidence that prison expansion has stimulated economic growth. In fact we provide evidence that prison construction has impeded economic growth in rural counties that have been growing at a slow pace."¹⁷

¹⁶ April 30, 2013 <http://www.dailyyonder.com/region-worth-more-its-mountaintops/2013/04/30/5876>

¹⁷ The Prison Industry: Carceral Expansion and Employment in U.S. Counties
<http://onlinelibrary.wiley.com/doi/10.1111/j.0038-4941.2004.08501004.x/abstract>

The same study found that counties facing the toughest economic conditions are the ones most likely to be hurt, not helped, by prison construction. These counties are more willing to offer up scarce financial resources to entice the prisons to come, yet have the lowest number of residents who meet the job qualifications. They also are less likely to offer the amenities that attract transferring prison employees to stay within the county.¹⁸

The notice for the public comment period regarding this Draft EIS¹⁹ states that “interested groups and individuals are encouraged to provide comments in person at the public meeting or in writing anytime during the public comment period. At the public meeting, attendees will be able to submit comments in writing and orally to a stenographer who will transcribe comments. All comments received during the public comment period will be given equal consideration.” Additionally it states, “All statements, both written and oral, submitted during the public comment period will become part of the public record[.]”

Yet this has not been the case for comments submitted during the scoping period.²⁰

Issues raised in this comment have been raised before and ignored. Not only has this cost us much of our faith and trust in the public process surrounding this project, it also places the EIS in the category of insufficient, and possibly in violation of NEPA’s requirement of public involvement.

IV. The EIS Fails to Consider Environmental Impacts on Prisoners Housed in the Proposed Facility

It is important to remember that the EIS is prepared under NEPA, a law that requires federal agencies to “use all practicable means” to “assure for *all* Americans safe, *healthful*, productive, and esthetically and culturally pleasing surroundings.”²¹ In addition, NEPA requires that an environmental impact statement address impacts on the “human environment,”²² and agencies are required to “comprehensively” interpret the phrase “human environment” to “include the natural and physical environment and the relationship of people with that environment.”²³

NEPA explicitly references human health, and covers all people—there is no “prisoner exclusion”—thus the BOP must consider potential health impacts on prisoners as part of the EIS. This is especially true in light of BOP’s legal responsibility to provide for the health and welfare of the prisoners in its custody.²⁴

¹⁸ Feb 20, 2013, [Speak Your Piece: Prison Progress](#)

¹⁹ [Federal Register notice of public meeting on BOP Draft EIS for Letcher County](#)

²⁰ HRDC staff person Panagiotti Tsolkas was told by BOP representative, Isaac Gaston, on March 30 11:51 a.m. that the 2013 scoping period public comments were not available for review.

²¹ 42 U.S.C. § 4331(b)(2).

²² 42 U.S.C. § 4332(2)(C).

²³ 40 C.F.R. § 1508.14.

²⁴ BOP has both a constitutional and statutory duty to provide inmate healthcare. U.S. Const., amdt. 8 (prohibition on cruel and unusual punishment); *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004) (deliberate indifference to the serious medical needs of prisoners violates the Eighth Amendment); 18 U.S.C. § 4042(a)(2), (3) (statutory responsibilities of the bureau); *accord U.S. v. Jones*, 91 F.3d 623, 624 (3d Cir. 1996) (recognizing legal duty of BOP to provide care for inmates).

A. Impact of Mining Activities

Both of the BOP's proposed sites are at locations that once hosted mining activities.²⁵ The EIS does not directly address mining activity elsewhere in the local area, but certain statements suggest that mining activity is widespread in the vicinity of the proposed sites.²⁶ Despite the self-evident concerns that arise from housing over 1,200 people at a former mining site surrounded by active coal mines, the EIS is completely devoid of any discussion on potential impacts to prisoners.

Prisons located near coal mining waste facilities can result in widespread prisoner health problems including respiratory illness, gastrointestinal problems, dermatological conditions, and thyroid disorders,²⁷ yet the EIS gives no indication that BOP conducted research concerning the proximity of such waste facilities. More generally, numerous studies have indicated that communities hosting coal mining in general, and mountaintop removal mining in particular, are susceptible to increased health hazards. For example, a 2011 study of Appalachian localities found that even after controlling for socioeconomic factors, residents of counties with mountaintop removal mining suffered significantly higher rates of poor physical and mental health than other Appalachian communities;²⁸ while another study concluded that chronic cardiovascular disease mortality is more prevalent in mountaintop removal areas.²⁹ A water-quality study published in 2011 found increased concentrations of selenium, sulfate, magnesium, and other inorganic solutes in rivers downstream from active and reclaimed mining sites.³⁰ A 2010 study of coal mining counties in West Virginia found that, even after controlling for cigarette smoking, cancer mortality rates increased for residents who lived near mining operations.³¹

Scientific literature makes clear that there are health risks connected with simply living in proximity to coal mining, especially surface mines that are common in Eastern Kentucky. Despite this substantial body of scientific evidence, the EIS does not even make passing mention of possible health impacts on residents of the proposed prison. An environmental impact statement must contain a “reasonably thorough discussion of the significant aspects of the

²⁵ EIS, at §§ 4.2.1 (Alternative 1: “The topography at Payne Gap has been significantly affected by strip mining activities, which historically occurred on site.”) and 5.2.1 (Alternative 2: “The topography at the Roxana site has been significantly impacted by mountaintop removal coal mining.”).

²⁶ See e.g., EIS § 4.3.1.2 (“Letcher County is part of the largest coal producing area in eastern Kentucky.”).

²⁷ Dustin S. McDaniel, et al., [No Escape: Exposure to Toxic Coal Waste at State Correctional Institution Fayette](#) (Feb. 2015).

²⁸ Keith J. Zullig & Michael Hendryx, [Health-Related Quality of Life Among Central Appalachian Residents in Mountaintop Mining Counties](#), 101 Am. J. of Pub. Health 848 (May 2011); see also Michael Hendryx, [Mortality from Heart, Respiratory, and Kidney Disease in Coal Mining Areas of Appalachia](#), 82 Int'l Archives of Occupational Env'tl Health 243 (2009).

²⁹ Laura Esch & Michael Hendryx, [Chronic Cardiovascular Disease Mortality in Mountaintop Mining Areas of Central Appalachian States](#), J. of Rural Health (2011), at 1-8.

³⁰ T. Ty Lindberg, et al, [Cumulative Impacts of Mountaintop Mining on Appalachian Watershed](#), 108 Proc. of the Nat'l Acad. of Sciences 20929 (Dec. 27, 2011).

³¹ Michael Hendryx, Evan Fedorko, & Andrew Anesetti-Rothermel, [A Geographical Information System-Based Analysis of Cancer Mortality and Population Exposure to Coal Mining Activities in West Virginia, United States of America](#), 4 Geospatial Health 243 (2010).

probable environmental consequences” of a proposed project.³² Highlighting positive economic benefits of a proposed prison while utterly ignoring probable health dangers does not satisfy BOP’s statutory duty to analyze and balance environmental impacts, costs, and alternatives in good faith.³³

Indeed, the EIS is inadequate on its face due to the BOP’s failure and refusal to candidly discuss opposing viewpoints. The “Enhanced Utility Investigation Report” attached as Appendix D to the EIS states that “[t]he *Site Investigation Trip* memo (KCI 2010) recommended that the Payne Gap site be removed from consideration due to ‘significant concerns with its locations, past mining, and excavation.’”³⁴ The EIS’s discussion of the Payne Gap site does not contain any disclosure of concerns related to past mining and excavation activity, even though the site investigation memo indicates that such concerns have been directly presented to BOP. Oblique reference to the site investigation memo is not an acceptable substitute for a candid disclosure of risks.³⁵

Other potential impacts to incarcerated populations which the EIS should be considering look like the December 2008 dike failure at TVA’s Kingston Fossil Plant, where 5.4 million cubic yards of coal ash cascaded into the Emory and Clinch rivers and smothering about 300 acres of land. The breach released a slow-moving wave of toxic sludge and polluted water into the river in what remains the nation’s largest coal-ash spill in history.³⁶ Or like the January 2014 chemical spill related to a coal processing facility in West Virginia which resulted in prisoners of a county jail being forced to drink contaminated water long after other area residents in the surrounding region were relieved with clean water deliveries.³⁷

Indeed, the existence of the site investigation memo proves that qualified professionals have expressed concern about the dangers posed by former mining activity. BOP has subsequently published the EIS, blithely ignoring this contrary viewpoint and without providing any hard data or analysis that suggests mining activity will *not* have a negative impact on the proposed facility. As federal courts have explained, “NEPA requires that the public receive the underlying environmental data from which” government experts derive their opinions.³⁸ In addition, NEPA requires agencies to directly address potential impacts—although the agency may opine on the

³² *Seattle Audubon Society v. Espy*, 998 F.2d 699, 703 (9th Cir. 1993) (quoting *Idaho Conserv. League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992)).

³³ *Calvert Cliffs’ Coordinating Comm. v. U.S. Atomic Energy Comm.*, 449 F.2d 1109, 1115 (D.C. Cir. 1971) (“NEPA mandates a particular sort of careful and informed decisionmaking process and creates judicially enforceable duties. . . . [I]f [an agency] decision was reached procedurally without individualized consideration and balancing of environmental factors—conducted fully and in good faith—it is the responsibility of the courts to reverse.”).

³⁴ EIS, appx. D, at 10.

³⁵ See 40 C.F.R. § 1502.21 (“No material may be incorporated [into an EIS] by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment.”).

³⁶ [“5 years after coal-ash spill, little has changed”](#) USA Today, Dec. 22, 2013.

³⁷ [“The Untold Story Of What Happened At An Overcrowded West Virginia Jail After The Chemical Spill”](#) Think Progress, May 21, 2014.

³⁸ *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998); see also 40 C.F.R. § 1502.24 (agencies must insure the scientific integrity of the discussions and analysis in a NEPA analysis).

probability of negative impacts, it “may not omit the analysis only because it believes that the worst case is unlikely.”³⁹

Accordingly, BOP cannot proceed with the proposed project until it provides a full and fair discussion of mining-related health risks and reopens the comment period to allow for an informed public discourse.

B. Water Quality

The EIS states that both proposed alternative sites would receive water from the Letcher County Water & Sewer District (“LCWSD”).⁴⁰ Yet the EIS is curiously uninformative concerning the quality of water that will be delivered to the hundreds of prisoners who would be housed at the new facility. The EIS indicates that water service to at least one of the proposed sites would come from LCWSD’s Whitesburg treatment plant.⁴¹ The Whitesburg plant draws from the North Fork of the Kentucky River.⁴²

The public record indicates that there is valid reason for concerns about the water quality in the North Fork of the Kentucky, which:

originates in Letcher County and supplies water to Whitesburg and many downstream communities in the state. Advisories against swimming in the river, prompted by high levels of fecal coliform bacteria, have been in place since intensive testing began in 1991. Even simple contact with the river water is considered a health hazard. Health statistics indicate that the average annual incidence of hepatitis A, a waterborne disease, is significantly higher in Letcher County than in Kentucky and nearly double the national incidence. The leading sources of the bacterial contamination are defective septic systems and illegal straight pipes.⁴³

In addition, a 2000 study sponsored by Eastern Kentucky PRIDE⁴⁴ concluded that “Letcher County has significant water quality problems related to both straight pipes and AMD [acid mine drainage] sites.”⁴⁵

Although the area (particularly through the efforts of the LCWSD) has improved water quality over time, the EIS fails to address the *current* level of risk posed to water users and how that risk would change with the increased demand associated with the proposed action. Recent testing shows that LCWSD water contains four contaminants (total trihalomethanes, total haloacetic acids, aluminum, and lead) in amounts that exceed health guidelines.⁴⁶ The LCWSD’s own

³⁹ *Southern Ore. Citizens Against Toxic Sprays v. Clark*, 720 F.2d 1475, 1479 (9th Cir. 1983).

⁴⁰ EIS §§ 4.8.1.1 and 5.8.1.1.

⁴¹ EIS, appx D. § 4.0 (alternative site 2 is served by LCWSD’s Whitesburg wastewater treatment plan).

⁴² Letcher County Water & Sewer Dist., [Water Quality Report for year 2013](#).

⁴³ Jeff Hughes, et al., [Drinking Water and Wastewater Infrastructure in Appalachia: An Analysis of Capital Funding and Funding Gaps](#) (Jul. 2005), appx. E, at 61 (footnotes omitted).

⁴⁴ Eastern Kentucky PRIDE (“Personal Responsibility in a Desirable Environment”) was launched in 1997 by Rep. Hal Rogers and Gen. James Bickford, see <http://kypride.org/about/>.

⁴⁵ Univ. of Kentucky Water Research Institute, *Letcher County Water Quality Assessment* (Feb. 2001), at 27.

⁴⁶ Env’tl Working Group, [Drinking Water Quality Report: Letcher County Water District – Jackhorn, KY](#) (2009).

reporting states that “[t]he susceptibility of contamination for the Whitesburg treatment plant is high based upon recent fuel leaks which impacted water quality.”⁴⁷

In the same report, LCWSD explains that water quality is threatened by numerous activities including: “roads and bridges; railroad; mining activities, oil and gas wells, untreated sewage; and solid waste,”⁴⁸ yet the EIS contains no meaningful discussion of these activities and their impact on water quality. In addition, as discussed below, LCWSD purchases water from the neighboring Knott County Water & Sewer District,⁴⁹ and in 2012 that district was twice found in violation of applicable drinking water standards for turbidity exceedance.⁵⁰

In addition to the water quality concerns related to coal mining activity, HRDC is concerned about the impacts on water quality associated with the fifteen gas wells currently active on the Roxana site, and other gas wells in the vicinity,⁵¹ which were not assessed in the EIS.

Despite LCWSD’s candid admissions of risks associated with drinking water, the BOP apparently feels no need to acknowledge these issues or discuss potential impact or mitigation measures in the EIS. Without such a discussion, the BOP has not provided a “thoughtful and probing reflection of the possible impacts associated with the proposed project . . . provid[ing] a reviewing court with the necessary factual specificity to conduct its review.”⁵²

Along with the broad protections provided by NEPA’s review process, the EIS also indicates that prisoners’ drinking water is protected by Safe Drinking Water Act.⁵³

C. Radon Intrusion

The EIS states that the U.S. Environmental Protection Agency (“EPA”) classifies Letcher County as having potential for radon intrusion.⁵⁴ This may be from the coal mining and/or gas extraction under and surrounding both proposed sites, but the EIS does not identify the source of this intrusion or address mitigation.⁵⁵

D. Environmental Justice

The proposed prison facility is a heavy industrial use comprised of human warehouses which are very demanding of local utility resources, including a massive quantity of water use and sewage discharge, along with a diesel-burning power-generating facility and a UNICOR factory.⁵⁶

⁴⁷ LCWSD, Water Quality Report, *supra* note 42.

⁴⁸ *Id.*

⁴⁹ *Infra*, note 72 and accompanying text.

⁵⁰ LCWSD, Water Quality Report, *supra* note 42.

⁵¹ “4 states confirm water pollution from drilling: Associated Press review of complaints casts doubt on industry view that it rarely happens.” *USA Today*, Jan. 5, 2014.

⁵² *Comm. to Preserve Boomer Lake Park v. Dept. of Transp.*, 4 F.3d 1543, 1553 (10th Cir. 1993).

⁵³ EIS § 3.10.3, 42 USC §§ 300 et seq.

⁵⁴ EIS § 4.12.1.3

⁵⁵ “[C]oal . . . and natural gas contain[] radon” <http://www.radon.com/radon/granite.html>

⁵⁶ The EIS does not include any information on the sort of operations it will conduct in the UNICOR facility.

Under the Environmental Justice guidelines of NEPA⁵⁷, and according to the EIS, the people most probable to be in BOP custody if this facility was built are very likely to meet the criteria for recognition as Environmental Justice communities.

Inside the prison, the racial demographics and income of prisoners can be reasonably projected to populate the facility based on the demographics of other BOP facilities in the country. Racial minorities are disproportionately represented in the nationwide prison population to such an extreme extent that the incarceration trends have been referred to as *the new Jim Crow*.⁵⁸ The BOP reports 41% percent of its population to be of non-white “minority” status,⁵⁹ whereas this racial demographic only makes up approximately 25% of the entire US population.⁶⁰

The EIS also says nothing of prisoners’ status as an almost entirely low-income population.⁶¹

While mass incarceration in its current form represents an environmental justice dilemma that can stand alone, there have been several additional incidents in recent years that point to some of the unique health and safety hazards related to environmental conditions in Appalachian coal mining regions as previously mentioned. The EIS must look at the probability that incidents like this will impact people who will be residing in the custody of the BOP at the proposed Letcher County facility. The EIS must review environmental risks such as this in a thorough manor, uninfluenced by the industry interests in the region, in order to assess the impacts to the incarcerated population who will be considered residents of the facility by the Census Bureau.⁶²

E. BOP’s Failure to Discuss Mitigation

As detailed in the preceding sections, the proposed action will likely result in adverse environmental effects for the hundreds of residents of the proposed prison. Federal agencies must use all practicable means to restore and enhance the quality of the environment and to avoid or

⁵⁷ “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (Executive Order 12898) directs each Federal Agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” In light of Executive Order 12898, the Council on Environmental Quality’s (CEQ) issued [Environmental Justice; Guidance Under the National Environmental Policy Act \(December, 1997\) \(PDF\)](#)

⁵⁸ “Now and then a book comes along that might in time touch the public and educate social commentators, policymakers, and politicians about a glaring wrong that we have been living with that we also somehow don’t know how to face. [The New Jim Crow: Mass Incarceration in the Age of Colorblindness](#) by Michelle Alexander is such a work.”

⁵⁹ [Current BOP statistics](#) do not include specific numbers for Latino or Hispanic prisoners, though they do report 19% of BOP prisoners are citizens of Latin American countries. A 2010 report stated that 33% are “Hispanic from any race.”

⁶⁰ U.S. Census Bureau, “[The White Population 2010](#).”

⁶¹ This is in large part due to the fact that the BOP views prisoners as slave-laborers, as per the U.S. Constitution’s 13th Amendment, as they are unable to earn sufficient wages to provide for themselves of their families.

⁶² “[A]lthough people in prison can’t vote, and remain legal residents of their home communities under the laws of most states, the Census Bureau currently tabulates people in prison as residents of their prison cells, not their homes.” [The Census Count and Prisoners: The Problem, The Solutions and What the Census Can Do](#), by Ben Peck, Oct. 2012.

minimize any possible adverse environmental effects of their actions.⁶³ Mitigation includes avoiding the adverse impacts altogether, minimizing impacts by limiting the degree or magnitude of the action, rectifying the impact by repairing, rehabilitating, or restoring the affected environment, reducing or eliminating the impact over time, and compensating for the impact by replacing or providing substitute resources or environments.⁶⁴

The EIS utterly fails to discuss mitigation with respect to any health related impacts. The most obvious shortcoming of the EIS is the lack of any discussion of potential environmental impacts that arise from housing upwards of a thousand people at a reclaimed mine site. Without identifying the health risks, the BOP is in no position to propose a meaningful mitigation plan.

V. The EIS Does Not Adequately Discuss Broader, “External” Environmental Impacts

A. Wastewater

The EIS contains contradictory or incomplete information concerning wastewater treatment at both sites, especially the first alternative site.

In regards to the Payne Gap site, the utilities report states that the site would be served by the City of Jenkins’ wastewater treatment plant and that the city has reported is “has sufficient capacity to handle the proposed volume from the proposed BOP Facility.”⁶⁵ Yet the body of the EIS states that operation of the prison would cause the City of Jenkins to exceed its treatment plant’s design capacity and “[a]s a result, the proposed action would result in significant impacts.”⁶⁶ Despite having identified this substantial negative impact, the EIS is bereft of any discussion of mitigation plan, in derogation of BOP’s duties under NEPA.⁶⁷

As to the Roxana site, wastewater treatment would be provided by LCWSD’s Whitesburg wastewater treatment plan. The EIS claims that no adverse impact would occur because the prison would increase usage of the Whitesburg plant to 524,000 gallons per day, out of a total permitted capacity of 600,000 gallons.⁶⁸ These figures indicate that the prison would bring the Whitesburg plant to nearly 90% of its permitted capacity. While the prison alone *may* arguably not have a substantial impact, the significance of the prison can only be determined by reference to anticipated future demand for wastewater treatment in Whitesburg, as is required by NEPA’s cumulative impact review.

Notably, one of the catalysts for the creation of LCWSD was the plethora of problems arising from the estimated three to six thousand illegal straight-pipe discharges in Letcher County.⁶⁹ To the extent that local leaders intend to mitigate the impact of straight pipes by expanding

⁶³ 40 C.F.R. § 1500.2(f); *see also id.* §§ 1502.14(f) (requiring alternatives section to include all appropriate mitigation measures), and 1502.16(h) (requiring the environmental consequences section to include a discussion of the means to mitigate adverse environmental impacts).

⁶⁴ 40 C.F.R. § 1508.20.

⁶⁵ EIS, appx D, at 10.

⁶⁶ EIS § 4.8.2.2.

⁶⁷ *See supra*, text accompanying notes 63 and 64.

⁶⁸ EIS § 5.8.2.2.

⁶⁹ Hughes, *supra* note 43, at 61-62.

homeowner access to the LCWSD sewer system, these plans could be thwarted to the extent that a new prison brings the system dangerously close to its maximum capacity.

Because the EIS does not address the substantial negative impacts associated with the first alternative site, nor acknowledge the potential for negative impacts resulting from the second alternative site, the EIS is not adequate.

B. Water Quality

When addressing water-related impacts, the EIS focuses exclusively on “existing permitted capacity” without defining that term or discussing water sources. For example, the EIS states that “The existing permitted capacity for water is 4,000,000 gallons per day.”⁷⁰ The unanswered question is: the capacity of what? This statement is contained in a paragraph discussing LCWSD, which is a system that purchases water from three sources that rely on separate treatment facilities.⁷¹ Thus, it is unclear whether the “permitted capacity” refers to the entire system, the specific facility that will provide water to the proposed sites, or some other unit of reference.

Because of inadequate local water supply, LCWSD obtains excess water supply from neighboring Knott County.⁷² The EIS contains no information concerning the quality of Knott County water, the impact of increased draw on that water source, or how much water LCWSD can realistically obtain from external sources. Simply stating there is available permitted capacity to handle the proposed action does not adequately discuss the specific impact of increasing LCWSD’s water usage by approximately 264,160 gallons per day.⁷³

C. Endangered Species

Indiana bats and gray bats are found in second growth forests in Letcher County,⁷⁴ and both species are listed as endangered.⁷⁵ The proposed project would entail clearing substantial forest acreage at either proposed site.⁷⁶ The Payne Gap site is home to second growth forests and has been identified as housing summer and winter habitat.⁷⁷ The EIS does not include a survey of potential habitat at the Roxana site,⁷⁸ and BOP has therefore failed to comply with Endangered Species Act (“ESA”).⁷⁹ Nonetheless, given the prevalence of both species in the area, the Roxana site should be presumed to house habitat unless proven otherwise.⁸⁰

⁷⁰ EIS § 4.8.1.1.

⁷¹ LCWSD, Water Quality Report, *supra* note 42.

⁷² LCWSD, Water Quality Report, *supra* note 42; *see also* Hughes, *supra* note 43, appx E at 69 (at the formation of LCWSD, local water supplies were “nearly strained to capacity,” thus the agency required external water, and eventually joined the Carr Creek Water Commission to obtain water from Knott County).

⁷³ *See* EIS § 4.8.2.1.

⁷⁴ Lindsay R. Conley, *Bat Species Diversity in Old-Growth vs. Second Growth Forests in Lilley Cornett Woods, Letcher County, Kentucky* (2011), at 13.

⁷⁵ EIS, appx. A at 3.

⁷⁶ EIS §§ 2.4 & 2.5.

⁷⁷ EIS §§ 2.4 & 4.11.2.3.

⁷⁸ EIS § 5.11.2.3.

⁷⁹ 16 U.S.C. § 1536(c)(1) (when listed species is present in area, agency must prepare a biological assessment to determine whether the species or their critical habitat may be affected by action).

⁸⁰ *See generally*, Conley, *supra* note 74.

Additionally, being that Appalachia is home to some of the most biodiverse forest ecosystems in the U.S., both sites are providing potential habitat for approx. 60 other species of plants and animals also listed for varying levels of state and federal protection.⁸¹

1. BOP Must Disclose and Mitigate Impacts to Listed Species

The ESA requires *every* agency of the federal government to refrain from harassing, harming, pursuing, wounding, or killing endangered species.⁸² In addition, the ESA provides that “[a]ll . . . Federal agencies shall . . . utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of endangered species and threatened species.”⁸³ The legislative history behind this statute “reveals an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species. The pointed omission of the type of qualifying language previously included in endangered species legislation reveals a conscious decision by Congress to give endangered species priority over the ‘primary missions’ of federal agencies.”⁸⁴

2. Indiana and Gray Bats Are Subject to Severe Threats

Indiana bats and gray bats are among the six species of bat that are lethally affected by white-nose syndrome (“WNS”). WNS is a devastating new disease of bats that originated in upstate New York in 2006, and has since spread to bat populations in 19 states and 4 Canadian provinces. Bats’ decline in states afflicted the longest with WNS has been staggering. Biologists estimate that 70 percent of the Indiana bat population in the Northeast has been lost to WNS since 2007.⁸⁵ Rangewide, the Indiana bat population has held steady the last few years, but substantial losses will almost certainly occur in the next few years, as the disease takes hold in the core range of the species, in states like Indiana, Kentucky, and Missouri.

On January 17, 2012, the U.S. Fish and Wildlife Service (“FWS”) issued a press release estimating that “at least 5.7 million to 6.7 million bats have now died from white-nose syndrome. Biologists expect the disease to continue to spread.”⁸⁶ The same press release quoted agency director Dan Ashe as saying “This startling new information illustrates the severity of the threat that white-nose syndrome poses for bats, as well as the scope of the problem facing our nation. Bats provide tremendous value to the U.S. economy as natural pest control for American farms and forests every year, while playing an essential role in helping to control insects that can spread disease to people.”⁸⁷

The FWS has promulgated a national plan for managing WNS, which states:

⁸¹ EIS Table 4-17

⁸² *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184-185 (1978).

⁸³ 16 U.S.C. § 1536(a)(1).

⁸⁴ *TVA v. Hill*, 437 U.S. at 185.

⁸⁵ Gregory G. Turner, et al., *A Five-Year Assessment of Mortality and Geographic Spread of White-Nose Syndrome in North American Bats and a Look to the Future*, 52 *Bat Research News* 13 (2011).

⁸⁶ U.S. Fish & Wildlife Serv., “[North American bat death toll exceeds 5.5 million from white-nose syndrome](#)” (Jan. 17, 2012).

⁸⁷ *Id.*

White-nose syndrome (WNS) is a disease responsible for unprecedented mortality in hibernating bats in the northeastern U.S. This previously unrecognized disease has spread very rapidly since its discovery in January 2007, and poses a considerable threat to hibernating bats throughout North America.⁸⁸

Indiana bats have a tendency to return repeatedly to the same area. They may use the same roost trees in successive years as long as they remain standing and are known to move from one roost tree to another if the previously used tree is no longer useable.⁸⁹

Working in Illinois, James Gardner and his colleagues raised concerns that disturbing roosts may cause bats to expend additional energy searching for new roosts at a time when the bats energies should be used for rearing young. They found a high degree of within-season site fidelity to specific trees by individual bats.⁹⁰

Meanwhile, utilizing data from Kentucky, researcher Mark Gumbert found both roost tree and roost site fidelity.⁹¹ Specific roost trees may be used repeatedly by a colony for several years until the trees are no longer available or suitable; but the colony will continue to use the general area for years. One prevailing belief is that in addition to providing a variety of thermal conditions, Indiana bats may frequently use other roost trees to locate future roost sites for when their existing roosting trees become unsuitable.

3. The EIS Fails to Explain Proposed Mitigation Measures

Both sites are home to endangered bat habitat, and the proposed project would destroy habitat at a time that the bats are under substantial threat from WNS. Thus, BOP is under a duty to refrain from destroying habitat or to aggressively mitigate any adverse impacts to the species. Instead, BOP has issued an EIS that cursorily discusses that mitigation measures *could potentially* be taken, without discussing what BOP actually intends to do.⁹² Making matters even worse, the EIS mentions a “mitigation fund,” but provides no information on what this money would be spent on.⁹³ These types of vague “plans” do not discharge BOP’s duties under NEPA.⁹⁴

⁸⁸ U.S. Fish & Wildlife Serv., [A National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats](#) (May 2011).

⁸⁹ U.S. Fish & Wildlife Serv., *Recovery Plan for the Indiana Bat* (1983); James E. Gardner, et al., [Summer Roost Selection and Roosting Behavior of Myotis sodalis \(Indiana Bat\) in Illinois](#) (Feb. 1991).

⁹⁰ Gardner, *supra* note 89.

⁹¹ Mark W. Gumbert, et al., “Roost Fidelity in Kentucky,” in *The Indiana Bat: Biology and Management of an Endangered Species* (Allen Kurta & Kim Kennedy, eds.) (2002).

⁹² EIS § 4.11.4 (“Mitigation measures *may include*. . .” (emphasis added)).

⁹³ EIS § 4.11.4.

⁹⁴ See *Foundation on Economic Trends v. Weinberger*, 610 F.Supp. 829, 841 (D.D.C. 1985) (“Merely reciting the safety features of a proposed facility without carefully analyzing the possible environmental dangers associated with the proposal does not constitute the type of environmentally informed decisionmaking that the drafters of NEPA had in mind. An environmental assessment must offer something more than a ‘checklist’ of assurances and alternatives. It must indicate, in some fashion, that the agency has taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns.”).

Most shockingly, even though the Payne Gap site has been identified as containing *both* summer and winter habitat, the EIS proposes establishing a “[m]itigation fund for habitat removal *based on time of year habitat is removed*”⁹⁵ and the BOP’s budget for ESA mitigation is “based only on summer habitat impacts.”⁹⁶ To be clear, the season in which habitat is destroyed is irrelevant—if both summer and winter habitat are destroyed, then BOP must provide mitigation for *both* types of destroyed habitat, regardless of whether construction occurs in June or December.

Until such time as the BOP, in consultation with FWS, develops a meaningful mitigation plan, it cannot proceed with the proposed project due to the near-certain negative impacts on endangered bats.

D. Community Facilities and Public Services

While the EIS does review impacts on local law enforcement agencies, social service providers, and healthcare facilities, it does not contain a thorough description of some of the most significant impacts.

Local law enforcement agencies are often called upon to assist in responding to large-scale incidents at federal facilities. The EIS cursorily states local law enforcement agencies are “willing to discuss” a memorandum of understanding on interagency coordination, and that local officials “indicated” that there would be no impact from the proposed project.⁹⁷ These vague assurances do not provide sufficiently definite information. To discharge its duty under NEPA, BOP should answer obvious questions regarding the potential impact of the proposed facility on local law enforcement agencies, particularly by discussing historical rates of facility-related offenses, riots, escapes, and prosecutions at BOP-operated prisons.

Court systems are also impacted by local prison-related caseloads. Not only are facility-based criminal charges tried in local courts, but prisons also bring related civil litigation, such as civil rights complaints, malpractice actions against prison healthcare providers, and negligence or wrongful death claims against prison employees. The EIS must discuss historical rates of prison-related criminal and civil court filings for comparable BOP facilities. In addition to total filings, the BOP should provide additional information on case dispositions and the resources necessary for local courts, prosecutors, and public defenders to handle such cases.

The EIS also fails to address the impact of job-related stress among correctional officers, and the impact that such stress will have on medical and social service providers in the communities surrounding the three alternative sites. The U.S. Department of Justice has noted that correctional officer occupational stress can lead to physical illness, substance abuse, and domestic problems including abuse.⁹⁸

What programs (if any) are available for employees in BOP facilities? How are these programs

⁹⁵ EIS § 4.11.4 (emphasis added).

⁹⁶ EIS at ES-iii (tbl. ES-1).

⁹⁷ EIS § 4.4.2.1.

⁹⁸ Peter Finn, U.S. Dept. of Justice, Nat’l. Inst. of Justice, *Addressing Correctional Officer Stress: Programs and Strategies* 16 (Dec. 2000).

evaluated and what are their success rates? What external resources are available for prison staff and their families? To take NEPA's required "hard look" at the human environment, the EIS does not answer these questions.

E. UNICOR Activities Have Not Been Addressed

The EIS indicates that the proposed prison will include a 14,800 square foot UNICOR warehouse, but makes not mention what sort of industrial activity will occur there or how its hazardous materials will be handled.

UNICOR has a documented history of importing toxic waste for processing in their facilities,⁹⁹ including violations resulting in the endangerment of people in their facilities and in surrounding communities. According to the U.S. Office of Special Counsel:

Despite s stated policy of "provid[ing] a safe and healthful environment for all employees and inmates," the Federal Bureau of Prisons (BOP) and Federal Prison Industries. (FPI) managers recklessly, and in some cases knowingly, exposed inmates and staff to unsafe levels of lead, cadmium, and other hazardous materials over a period of years.¹⁰⁰

EPA inspections of prison facilities conducted in Region 3 (which shares states with the BOP's Mid-Atlantic Region) have indicated a steady stream of environmental violations comes from prison-related industrial activities over the past fifteen years, including BOP facilities, specifically regarding regulations on the containment and disposal of hazardous materials covered in the Resource Conservation and Recovery Act (RCRA), Spill Prevention Control and Countermeasure (SPCC), along with Clean Air Act (CAA) violations.¹⁰¹

F. Environmental Justice in Surrounding Community

External impacts will be felt primarily by low-income communities. As the EIS indicates, Letcher County, and the city of Jenkins particularly, have higher levels of poverty than the state of Kentucky's average.¹⁰² They also display a higher rate of unemployment.¹⁰³

All of the above-mentioned concerns must be reviewed in the context of NEPA's Environmental Justice guidelines.¹⁰⁴

⁹⁹ ["A Review of Federal Prison Industries' Electronic-Waste Recycling Program."](#) U.S. Dept of Justice, October 2010.

¹⁰⁰ [OSC File No. DI-04-2815](#)

¹⁰¹ "Region III has over 100 prisons which have been found to commonly violate RCRA-C, SPCC and other environmental regulations. The Office of Enforcement, Compliance and Environmental Justice has targeted overcrowded, older facilities with industrial shops suspected of causing environmental damage."

http://www.epa.gov/region03/compliance_assistance/prisons.htm

¹⁰² EIS Table 4-7

¹⁰³ EIS Table 4-3. Additional sources: ["How the census measures poverty"](#) and ["Poverty Guidelines, 2013"](#)

¹⁰⁴ *Supra* note 53

G. Additional Socioeconomic Impacts

In accordance with the requirements that NEPA assess the socioeconomic impacts as part of the environmental review, HRDC is including concerns regarding electoral accuracy as a socioeconomic impact of great concern which has not been addressed by the BOP in this EIS.

Specifically, BOP should address the census crediting of incarcerated persons from all over the country to an impoverished, predominately white rural congressional district that contains large prisons in order to enhance the weight of a vote in those districts, diluting all other votes in the state. Incarcerated populations are disproportionately Black and Latino; most prisons are built in disproportionately white areas. Using Black and Latino prisoners to pad the populations of white legislative districts dilutes minority voting strength state-wide.”¹⁰⁵

V. Cumulative Impacts

Many of the issues addressed by HRDC above, but not by the EIS, trigger additional and deeper review of the cumulative nature of each issue. Several examples include:

- Assessing the severity of increased water pollution in areas where water has already been contaminated by previous mining, gas and other operations, and identifying how long these activities are anticipated to continue;
- Assessing UNICOR operations contributing towards an overall increase in the base level of hazardous materials and pollution over the projected lifespan of the facility;
- Assessing air emission calculations which include the indirect sources, such as the fuel source for the significant requirement of electricity for constant lighting, electric fencing, etc. (including greenhouse gases).¹⁰⁶

VI. Conclusion

The only stated attempt at providing any semblance of mitigation for the above-listed concerns (aside from monetary compensation for loss of endangered species) appears to be the socioeconomic benefits that the BOP is alleging to take place as a result of this project.¹⁰⁷ In doing so, they must provide a comparative analysis based on the socioeconomic benefits alleged during the EIS process for the neighboring Martin, McCreary and Clay facilities, in order to fulfill the duties of a “reasonably thorough discussion of the significant aspects” of the project.¹⁰⁸

After reviewing the site alternatives presented, assessing alleged need for the project and the analyzing the benefits intended to mitigate impacts, HRDC views the No Action Alternative as the only responsible option presented in the EIS.

¹⁰⁵ *Supra* note 51

¹⁰⁶ See Appendix C “Air Emission Calculations,” the assessment of emissions associated with “operations” only appear to include use of back-up generators and boilers, but overall power supply for daily operations.

¹⁰⁷ See EIS Table ES-1

¹⁰⁸ *Supra* note 32

The BOP wrongly states that the No Action Alternative would leave existing USPs overcrowded and that it is “not considered a viable alternative.” The population numbers presented in the EIS indicate clearly that the BOP will remain over-crowded even if the proposed facility is built. Addressing the issue of over-incarceration would be a more time efficient and cost efficient manner to address over-crowding than providing a short-term Band-Aid solution by building this facility in a location that has suffered long-term environmental degradation and which should not have to contend with a prison at a time when ecological and economic health is a regional priority.

The BOP should not only be considering No Action as a viable option, but as the preferred option for this site, based on the BOP’s research that has been presented in the EIS, and based on the questions presented in this comment which remain unanswered.

Finally, for the reasons stated herein, the EIS does not contain a detailed discussion of environmental impacts as required by law, and therefore the proposed alternatives of this project cannot proceed until BOP issues an environmental impact statement that complies with applicable law.

If you have questions or require additional information please do not hesitate to contact me.

Sincerely,



Paul Wright.
Executive Director, HRDC
(561) 360-2523

The HRDC submits this comment, along with the support of the individuals and organizations listed below:

Kentuckians For The Commonwealth

Dana Beasley Brown, chairperson
250 Plaza Drive, Suite 4
Lexington, KY 40503
(859) 276-0563

Abolitionist Law Center

P.O. Box 8654
Pittsburgh, PA 15221
(412) 654 9070
abolitionistlawcenter.org

Center for Biological Diversity

Lori Ann Burd, Environmental Health Director
Portland, OR
(971) 717-6405
laburd@biologicaldiversity.org

Virginia Organizing

Sandra A. Cook, Chairperson
703 Concord Avenue
Charlottesville, VA 22903-5208
(434) 984-4655 ext. 222

Architects / Designers / Planners for Social Responsibility

Raphael Sperry, President
(415) 519-7027
raphael@adpsr.org

Global Justice Ecology Project

Anne Petermann, Executive Director
Buffalo, NY
(716) 931-5833
anne@globaljusticeecology.org

Stories from South Central WV

Chris Gang
chrisgang@gmail.com,
681-214-0884

Radical Action for Mountain Peoples' Survival (RAMPS)

Kim Ellis
PO Box 121,
Rock Creek, WV 25174
info@rampscampaign.org,
304-854-0956,

Prison Books Collective

Chapell Hill, NC
(919) 443-9238
prisonbooks@gmail.com

Working Narratives

1512 Orange Street
Wilmington, NC 28401

Individual Signers

Preston Elrod, Ph.D.
Professor and Division Chair,
Undergraduate Studies
School of Justice Studies
Eastern Kentucky University
Richmond, KY 40475 USA
(859) 622-1160

Bill McClanahan
Louisville, KY, USA
wwmcl@essex.ac.uk

Victoria E. Collins, PhD
Co-Director, International State Crime Research Center
Assistant Professor
School of Justice Studies
Eastern Kentucky University
Richmond, KY 40475
Victoria.Collins@eku.edu

Judah Schept, PhD
Assistant Professor
School of Justice Studies
Eastern Kentucky University
Judah.schept@eku.edu

Jordan E. Mazurek
3401 Gatewood Ct. Apt 56
Lexington, KY 40517
Eastern Kentucky University
Criminal Justice, MSc (2016)
(817) 944-0966
j.e.mazurek12@gmail.com

Dan Berger, PhD
School of Interdisciplinary Arts and Sciences
University of Washington Bothell
daberger@uw.edu

Stephen Raher
Portland, OR
stephen.raher@gmail.com

Panagioti Tsolkas
HRDC's Prison Ecology Project,
Lake Worth, FL
(561) 360-2523
ptsolkas@prisonlegalnews.org