

CANCELLATION OF PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (PEIS)  
FOR BORDER PATROL OPERATIONS AT YUMA AND TUCSON SECTORS, ARIZONA

BACKGROUND:

In 1999, legacy INS and its successor Customs and Border Protection (CBP) initiated a Programmatic Environmental Impact Statement (PEIS) for Border Patrol operations within Tucson and Yuma sectors. The document included facilities and operations. However, in 2002 and after the initial public review and comment period, the facilities portion of the PEIS was removed after discussion with INS Legal Counsel (b) (6). The public asked questions (e.g., you need to address impacts resulting from new border patrol stations), which could not be answered because INS had no plans or station locations at that time.

The PEIS was rewritten and resubmitted to public review. During public and the U.S. EPA review, additional questions were raised regarding why facilities were no longer included as part of the analysis. Shortly thereafter, legacy INS was disestablished by establishment of the Department of Homeland Security and Office of Border Patrol (OBP) and Asset Management were integrated into the CBP.

The completion of the PEIS was further delayed when the Office of Border Patrol (OBP) initiated new and more complex operations such as the Arizona Border Control Initiative (ABCI) and the subsequent ABCI II, Operation Jumpstart required additional rewrites. In addition, the PEIS was only focused on addressing legacy INS operations and did not include existing Customs operations. Subsequently, the PEIS was revised to include ABCI, excluding facilities considerations and Customs operations, and sent to CBP legal for review in late 2005. CBP legal review indicated major deficiencies needed to be corrected before the PEIS could be considered to be legally sufficient. Since the CBP legal review, Operation Jump Start, the Secure Border Initiative, and the (b) (7)(E) agent new station activities have been initiated.

DISCUSSION:

Joint discussions between CBP legal (recent legal opinion attached), Environmental Programs Branch (b) (6) and Laguna Facilities Center (b) (6) have identified significant concerns over the technical content and the contractor's capability to extensively revise the PEIS to achieve an acceptable level of legal sufficiency. The outcome of our discussions identified the following options for consideration:

(b) (5)

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In 2006, in an effort to expedite operations in Coronado National Forest, the Tucson Sector of the U.S. Border Patrol and Coronado National Forest personnel have advised the Chief of the Office of Border Patrol and the Chief Ranger of the Forest Service that the PEIS would cover many of their existing operations. The representative of the Coronado National Forest had indicated that both chiefs had requested that the documents be completed within the year. After several conversations with the Forest Service representative and after reviewing the PEIS, she felt that the final document would not be of much assistance and the action would require an environmental assessment. In addition, once the contractor was told to proceed with corrections to the PEIS it would take at least another year to fix.

Lastly, (b) (6) told (b) (6) in 2006 that SBI wanted to have the PEIS completed so that they could to tier their environmental assessment from the document, even though the PEIS did discuss the supporting infrastructure improvements required to support SBI initiatives.

Please note that there has been little to no public inquiry into the PEIS in the past 24 months. However, the US EPA have contacted (b) (6) regarding the status of the PEIS in 2007. Any additional revisions to the PEIS will also require additional legal review.

In 2006, CBP Environmental Planning Branch initiated a resource gap analysis “conducted on a resource-by-resource” basis (Final Environmental Baseline Compliance Report, Ecosystems 7, 8, 9, October 2006). The report indicated that in

*“many instances the level of resource-specific detail provided in the CBP-provided documents was too general or vague to determine which resources or resource categories ... were to be impacted, the degree of impact, or the necessity to comply with federal or state regulations.”*

The report further indicated that

*“... in cases where there were project-specific actions not tiered from a parent document, the documents typically deferred resource-specific impacts to a future activity or addressed avoidance, minimization, and mitigation in general terms. The CBP-provided NEPA compliance documents did not include compliance documentation, or agency concurrence documentation specific to the CWA, HPA, or ESA.” (Clean Water Act, Historic Preservation Act and Endangered Species Act)”*

The PEIS was written to support the legacy INS operations and leadership direction, both of which have changed since the existing document was prepared. CBP priorities are no longer reflected in the current draft of the PEIS. The PEIS covers only about one-third of CBP component operations in Arizona and operations have changed in the interim since the document was started. Further, the current draft of the PEIS provides no coverage for facilities, fails to address current and future flight operations including UAVs, and expansion of Ports of Entry. Lastly, the PEIS does not provide an integrated vision of border security.

RECOMMENDATIONS:

It is recommended that the current draft of the PEIS not be finished due to the significant legal deficiencies.

CONCURRENCE:

(b) (6), (b) (7)(C)

Acting Executive Director

10/10/06  
Date