

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

AMANDA DAVIS, et al,

Plaintiffs,

vs.

CANYON COUNTY, IDAHO, et al,

Defendants.

Case No. 1:09-cv-00107-BLW

THIRD AMENDMENT TO CONSENT
DECREE, ORDER AND JUDGMENT

The Court has reviewed and considered the Stipulation and Motion for Order Approving Modification of Consent Decree, Order and Judgment entered into by the parties and is of the opinion that it represents a fair and reasonable resolution of the issues pending between them. Based thereon, the Court hereby approves and adopts this Third Amendment to Consent Decree, Order and Judgment.

Defendant's Motion for Order Approving Third Amendment to Consent Decree, Order, and Judgment (Dkt. 46) is GRANTED.

I.
PRELIMINARY STATEMENT

1. The parties to this agreement stipulate that this Court has jurisdiction over the parties and subject matter of this action.

2. This class action was initiated by six named Plaintiffs: Amanda Davis, Alisha Baker, Troy Fenster, Desiree Comingo, Parnell Williams, and Pedro Martin on their own behalf and on behalf of all other persons similarly situated, and was brought against Canyon County, Idaho, the Board of County Commissioners of Canyon County, Idaho (the "Board"), and Chris Smith, the Sherriff of Canyon County, Idaho (the "Sheriff"). These Defendants shall be collectively referred to herein as "the County."

3. This action seeks declaratory and injunctive relief relating to conditions of confinement for prisoners held in the Canyon County Jail.

4. The agreement of the parties and these provisions are not to be construed as establishing or modifying any standard of civil or criminal liability of any official, employee, agent or representative of the County, other than for the sole and limited purpose of this Consent Decree, Order and Judgment.

5. The parties hereto agree that with the exception of the issue of attorney fees and costs, which the parties have resolved by separate agreement, this Third Amended Consent Decree, Order and Judgment fully resolves all issues raised in the Complaint by the named Plaintiffs and the class they represent. The parties further agree that this action may be dismissed with prejudice pursuant to Rule 23(e) and 41 (a)(2), Federal Rules of Civil Procedure, subject to the agreements set forth herein.

6. Unless otherwise agreed herein, all terms, conditions, and agreements set forth in this Consent Decree, Order and Judgment that do not obligate the County to physically alter, construct, or make installations in the existing facility are to be implemented within thirty (30) days from the date on which the Court enters final approval of this Consent Decree, Order and Judgment. Unless otherwise agreed to herein, all terms, conditions or agreements set forth herein that obligate the Defendants to physically alter, construct, or make installations in any part of the existing facility, such as improvements to and/or maintenance of the ventilation system, shall be initiated with all deliberate speed. Moreover, they shall be completed within sixty (60) days from the date on which the Court preliminarily approves this Consent Decree, Order and Judgment unless the contractor is unable to complete the process within that period of time and the County notifies counsel

for Plaintiffs at least 10 days prior to the deadline and sets forth legitimate reasons for the delay.

7. This Consent Decree, Order and Judgment shall be ongoing in nature and shall continue in full force and effect. All parties to this agreement recognize and submit to the continuing jurisdiction of this Court for the limited purpose of carrying out the intent of this Consent Decree, Order and Judgment.

8. This Consent Decree, Order and Judgment shall remain in effect for a minimum of one year from the date of approval hereof by the Court. Thereafter, this Consent Decree, Order and Judgment is susceptible to being terminated pursuant to 18 U.S.C. § 3626(b) of the Prison Litigation Reform Act (PLRA).

9. The following sections of this Consent Decree, Order and Judgment address specific issues raised by Plaintiffs in this action relating to alleged deficient conditions of confinement in the Canyon County Jail and the resolution of these issues. The parties stipulate that the terms of this Consent Decree, Order and Judgment extend no further than necessary to satisfy the requirements of 18 U.S.C. § 3626(a)(1)(A).

10. Neither the fact of this Consent Decree, Order and Judgment or any statements contained herein may be used in any other case or administrative proceeding, except that the County and its employees may use this Consent Decree, Order and Judgment to assert issue and/or claim preclusion and to preserve the jurisdiction of this Court in other litigation.

11. Plaintiffs currently allege unconstitutional conditions in the jail relating to (1) inadequate ventilation, (2) sanitation (with respect to laundry and mattress sanitization), (3) plumbing (with respect to water temperature control at delivery points), (4) provision of

outdoor recreation, and (5) staffing and arbitrary rule enforcement. As originally signed by the Court in 2009, the Consent Decree covered many other conditions of confinement, including overcrowding, sanitation, bedding, and temperature control. The parties have stipulated that the County has substantially complied with those provisions of the 2009 Decree and that those sections may be terminated from the Court's supervision. The only sections of the original Decree still subject to the Court's jurisdiction are the ones contained in this amended Decree.

II. **VENTILATION**

12. The County agrees to obtain an air quality engineering report regarding airflow and ventilation rates within the Canyon County Jail once every six months. The report will be generated by an independent air quality engineering professional. The independent professional will determine whether the HVAC system is operating sufficiently to provide adequate heating, air conditioning, and ventilation to prevent the accumulation of humidity, odors, smoke, dust, carbon dioxide and other contaminants. The inspection shall include a check for mold in the ducts, vents, and the overhead ceiling grates.

13. In the event that such inspection reveals material deficiencies that inhibit the proper operation of the ventilation system, the County will have the deficiencies promptly corrected by competently trained personnel or professionals. Upon recommendation of the independent air quality engineering professionals, such corrective measures may include non-routine duct cleaning.

14. The County shall have the HVAC system in the DHDC and Annex inspected by HVAC professionals on a quarterly basis. The quarterly inspection shall be

supplemented by an annual cooling mode system inspection. The County shall perform such maintenance as necessary to maintain the HVAC system in proper functioning order.

15. The County shall maintain a log/file of all inspections and work performed on the HVAC system, including the changes of filters in the system, and work related to maintaining a temperature range of 65 and 80 degrees F in each living unit.

III. **SANITATION**

16. The County shall implement procedures to ensure that washing machines are operated consistent with manufacturer's instructions and are not overloaded with clothing and bedding, thereby preventing these items from being properly cleaned and dried. All prisoner laundry workers will be trained in the proper operation of the laundry scale, washers, and dryers.

17. The County will sanitize each mattress between each use by a different prisoner. Cracked mattresses in which the inner stuffing is visible and cannot be repaired shall be discarded.

IV. **PLUMBING**

18. The County will perform weekly checks of the faucets, sinks, toilets and showers to determine whether they are functioning properly and report to maintenance any apparent problems. There shall be one functioning sink with hot and cold water for every 15 prisoners or fraction thereof in each living unit. See Idaho Jail Standards 18.50.

19. Reported problems with plumbing fixtures must be addressed and fixed within 48 hours, unless the repair requires parts or services that have been ordered but not yet

available or unless there is at least one shower or sink for every 15 prisoners in that living unit. See Idaho Jail Standards 18.50.

20. Defendants will ensure that the temperature of the hot water leaving shower heads and sink faucets is within the range of 100 to 115 degrees F. At least one shower and one sink per housing unit will be tested each day at approximately 0700, 1400, and 2100 hours, and the results documented in a separate log. Whenever such testing indicates that the hot water temperature at any sink or shower falls outside the range of 100 to 115 degrees F, a request for maintenance will be generated and responded to within 24 hours. In addition, if a prisoner reports that the water temperature is too hot or too cold in a particular shower or sink, the temperature will be tested in that shower or sink as soon as reasonably possible and the results memorialized. If that temperature falls outside the range of 100 to 115 degrees F, a request for maintenance will be generated and responded to within 24 hours. Shower curtains will be cleaned periodically and kept free of mold. These curtains shall be long enough to restrict the spray of water outside of the showers.

V.
OUTDOOR RECREATION

21. The County shall make outdoor recreation available to each prisoner, except as noted below, for one hour each day. The County will allow prisoners to run, jog or engage in calisthenics in the outdoor recreation area. The scheduled outdoor recreation times will be posted in each living unit. During colder weather, the County will make available a sufficient number of clean and usable coats so that all prisoners who choose to go outdoors will have one.

22. Prisoners may be refused access to outdoor recreation if the Jail Commander determines that inclement weather (such as excessive rain or snow) prohibits the use of

outdoor facilities or a natural disaster or jail lockdown or other emergency occurs.

Whenever a prisoner or a housing unit is denied recreation to which he, she, or they are otherwise entitled under this Decree, the County will document in a separate log the reasons why. If, for instance, recreation is not offered to the entire jail because of snow, it will be sufficient to state: "Recreation for the entire Jail canceled due to snow."

23. The County will maintain outdoor recreation logs sufficient to memorialize the time such recreation was offered and the name of prisoners who participated. Whenever each inmate of any living unit declines the opportunity for outdoor recreation, Jail staff must document such circumstances. Outdoor recreation must be scheduled such that no one housing unit is scheduled to go outdoors during the same portion of the day every day; to illustrate, G-Unit will be offered recreation in the morning on some days of the week and in the afternoon on other days of the same week. Inmate workers may have to be offered recreation at the same time each day due to the nature of their work.

VI. **STAFFING AND RULE ENFORCEMENT**

24. The County agrees that it will maintain staff levels to accommodate all terms of this Consent Decree.

25. The County agrees to train and instruct detention officers to provide equitable and consistent application of policies and procedures in the Canyon County Jail.

26. The County agrees to physically post the Inmate Handbook, including grievance procedures, in each living unit so that it is accessible for prisoners to review. Staff will enforce these rules fairly and appropriately.

VII. **IMPLEMENTATION AND ENFORCEMENT**

27. This Consent Decree, Order and Judgment is binding upon the parties hereto and, in the event that any provision causes a result unintended by the parties, or causes an ambiguous interpretation, the aggrieved party shall notify the other party in writing of the unintended result or ambiguous interpretation. Such written notification shall include a statement of facts sufficient to identify the unintended result or ambiguous interpretation. Upon receipt of said written notice, the parties shall have 20 days to make a good faith effort to negotiate a settlement of the problem. If the parties are unable to reach an agreement within 20 days, the issue may then be submitted to the Court.

28. The parties agree that in the event of a dispute between them regarding the terms and conditions of this Consent Decree, they will provide written notice to the other of the alleged dispute, including a statement of facts sufficient to identify their dispute and make it possible for them to attempt to resolve the matter through negotiation. In the event that they are unable to resolve the matter within 20 days, each party has the option of seeking the Court's assistance to resolve the issue.

29. No action may be brought by either party to enforce this Consent Decree until 20 days after written notification of recognition of an unintended result, an ambiguous interpretation, or a dispute regarding the terms, conditions of or compliance with this Consent Decree, Order and Judgment. The parties agree to exhaust these administrative remedies prior to requesting assistance from the Court and the parties expressly agree that neither shall be entitled to attorney fees or costs if they fail to negotiate and/or exhaust these administrative remedies prior to seeking the Court's assistance. The sole exception to the 20-day notice provision is that in cases of emergency involving immediate health and safety issues, the 20-day provision is reduced to 5 days after notice is sent to the other

party and a good faith effort is made by the party sending notice to resolve the issue during that time.

30. It is expressly understood and agreed by the parties hereto that the object of this Consent Decree, Order and Judgment is to obtain compliance herewith, and the County expressly agrees to provide adequate funding to assure compliance with the provisions set forth herein.

31. In the event that the County learns that any portion of this Consent Decree, Order and Judgment is totally impossible to implement or impossible to implement within the time allowed, the County shall notify Plaintiffs' counsel as soon as the County becomes aware of such impossibility and shall include in such notification the following:

- a. The precise provision of this Consent Decree, Order and Judgment that it cannot fulfill.
- b. The reason why said fulfillment cannot take place or cannot take place on time.
- c. A statement of an alternative plan to satisfy the requirements of the provision, if possible.
- d. An estimate of the time necessary to fully satisfy the requirements of the referenced provision.
- e. If it is contended that any such provision cannot, under any circumstances, be fully satisfied, an explanation of the reason why full satisfaction is impossible.
- f. Upon receipt of such notification, the parties will attempt to resolve such issues in accordance with the negotiation process set forth previously herein. In the

event they are unable to resolve the issue within 20 days, the issue may be submitted to the Court for resolution.

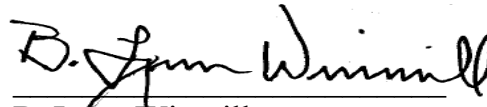
32. The parties agree they are obligated to attempt to resolve issues involving proposed modifications of this Consent Decree, Order and Judgment through use of the dispute resolution procedure set forth in this "Implementation and Enforcement" provision.

VIII.
VERIFICATION AND INSPECTIONS

33. In the event that either of the parties desires verification of any information pertinent to this Consent Decree, Order and Judgment, counsel for the parties agree to attempt to develop the necessary information, and if necessary, to select an expert or other qualified individual who shall be permitted to make the necessary inspections and provide the parties and the Court with information necessary to resolve any questions relevant to this Consent Decree, Order and Judgment. It is understood by the County that counsel for the Plaintiff class have a need to conduct reasonable monitoring of this Consent Decree to ensure continued compliance. Therefore, Defendants must timely produce such records and answer such questions as reasonably requested by Plaintiffs' counsel, at no cost to Plaintiffs. (If at any time Defendants believe that Plaintiffs' requests are unreasonable or unnecessary, Defendants will follow the process outlined above in an effort to resolve the dispute.)



DATED: January 8, 2013


B. Lynn Winmill
Chief Judge
United States District Court