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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF NEVADA

7 ROBERT W. HALL,) Case No.: CV-S-03-0542-JCM-RJJ
8 Plaintiff,)
9 vs.)
10 GALE A. NORTON; ROBERT V. ABBEY,)
11 UNITED STATES DEPARTMENT OF)
12 INTERIOR,)
Defendant)

13
14 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
15 **FOR AN EMERGENCY PRELIMINARY INJUNCTION**
16 **OR TEMPORARY RESTRAINING ORDER**

17 **PRELIMINARY**

18 The points and authorities in support of the motion for a preliminary injunction or
19 temporary restraining order include the following.

20 The issues herein involve Bureau of Land Management (“BLM”) Las Vegas Valley land
21 sales that are sold pursuant to the Southern Nevada Public Land Management Act (“SNPLMA”).
22 Senators Harry Reid and John Ensign sponsored the Act and they both have significant political
23 interest in the resulting land sales.

24 The federal agency requirements of our nation’s environmental laws have preceded the
25 SNPLMA by as much as twenty-nine years. The SNPLMA is a parallel statute that does not
26 relieve the BLM of environmental law compliance and conformity. This is the fourth legal action
27 Hall has filed since 1997 in order to cut through a web of BLM misleading statements and
questionable administrative practices for the purpose of getting judicial air pollution relief

1 regarding the BLM's Las Vegas Valley air pollution actions.

2 **Related Actions**

3 **Norton I**

4 The first related action, Hall v. Norton¹, 266 F.3d 969, (CV-S-97-1146-LDG-(RJJ)),
5 (Norton I), resulted in a Ninth Circuit Court of Appeals remand of a key issue to the district
6 court. That action did not involve the Southern Nevada Public Land Management Act of 1998
7 (112 State. 2343) since the action preceded the enactment of the SNPLMA. In the first action
8 which initially involved only a 5,000 acre land exchange known as the Del Webb/Anthem Land
9 Exchange, the BLM slipped a 57,000 acre environmental assessment into the record. EAs are not
10 subject to public notice and hearing requirements. The parsing of major and significant
11 environmental action in order to avoid disclosure requirements is the issue underlying all BLM
12 issues. There is nothing particularly complicated about the fact that a federal agency simply
13 ignores the nation's environmental laws. They do not want to be bothered.

14 In Norton I, the district court (Judge George) granted summary judgment in favor of the
15 federal defendants. Subsequently, the Ninth Circuit Court of Appeals partly affirmed and
16 remanded on the issue of insufficient discussion or justification regarding the 57,000 acres
17 environmental assessment ("EA"). See Norton I, 266 F.3d 969. On remand, the district court
18 again granted summary judgment to the federal defendants. See Exhibit "F" attached hereto. Hall
19 has again appealed the district court's decision to the Ninth Circuit Court of Appeals for appeal
20 number two in that action. Ninth Circuit briefing will commence on June 2, 2003.

21 A key issue on remand was the BLM interposing a 1998 Resource Management Plan
22 ("RMP")/Final Environmental Impact Statement ("FEIS") in a 1997 site specific, judicial review
23 action. While granting summary judgment to the federal defendants the second time, the district
24 court backtracked over the fact that the court denied Hall a preliminary injunction despite his

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27 ¹ Gale A. Norton is substituted for Bruce Babbitt, as Secretary of Interior, pursuant to Fed. R.
App. P. 43(c)(2).

1 objections that the BLM improperly interposed a broad, long range planning RMP/FEIS despite
2 the fact that it did not exist and was not a part of the administrative record in 1997.

3 **Norton II**

4 The second action, Hall v. Babbitt² (Norton II), 2002 WL 506108 (9th Cir. Mar. 28, 2002,
5 Unpublished)³ (No. 01-15157) (CV-98-1645-RLH) was a complaint regarding the BLM's use of
6 the controversial, October 1998 Resource Management Plan ("RMP")/Final Environmental
7 Impact Statement ("FEIS") as a ruse to NEPA compliance in site specific situations. The BLM
8 has argued that Hall had no standing on the narrow issue of the RMP/FEIS being a broad,
9 programmatic, planning document that is not subject to judicial review. The result was an
10 unpublished appeals court decision. The appeals court found that it had no jurisdiction regarding
11 a planning document. Hall was told by the Ninth Circuit Court of Appeals to wait for site
12 specific federal agency actions. The appeals court also made it clear that in the future, Hall
13 would have to attack BLM air pollution actions one by one. That is what Hall has done.

14 **Norton III**

15 The third Hall v. Norton action (CV-S-02-1474-KJD-LRL) (Norton III) involves a
16 November 15, 2002, site specific land auction sale. The BLM has interposed the controversial
17 RMP/FEIS in order to justify a site and air pollution specific SNPLMA land sale auction
18 involving 1,139 acres of Las Vegas Valley, non-attainment area land. Hall moved in the district
19 court for a temporary restraining order and a preliminary injunction which the district could did
20 not grant (Judge Kent J. Dawson). That action is currently subject to a Stipulated Briefing
21 Schedule for summary judgment motions.

22 **Norton IV**

23 Plaintiff Robert W. Hall filed the instant Complaint for Judicial Review and to Enjoin
24

25 ² Same.

26 ³ Hall cites this unpublished appeal pursuant to Ninth Circuit Rule 36-3 for the purpose of
27 impeaching Defendants arguments and pleadings on the issues surrounding that unpublished
affirmation

1 (Norton IV) herein on May 15, 2003 re: a June 5, 2003 Competitive Sale of Public Lands in
2 Clark County, Nevada after requesting that the 1,030 acre land sale be postponed. The proposed
3 sale is supported by a March 26, 2002 Bureau of Land Management (“BLM”) letter to Hall
4 (Exhibit “A” attached hereto), a proposed, draft FR Notice of Realty Action (“NORA”) (Exhibit
5 “B” attached hereto) and an environmental assessment, EA Number NV-050-2003-89 (unsigned)
6 (“EA”), a March 25, 2003 Finding of No Significant Impact (“FONSI”)/Decision Record (“DR”)
7 signed by Mark T. Morse, and appendices all received on April 16, 2003 (all attached hereto as
8 Exhibit “C”). A May 6, 2003 Las Vegas Review-Journal article regarding the June 5, 2003 land
9 sale is attached hereto as Exhibit “D.”

10 The instant motion is also supported by the Hall v. Norton (Norton III), CV-S-02-1474-
11 KJD-LRL, May 12, 2003, Plaintiff Robert W. Hall’s Motion for Summary Judgment, Plaintiff’s
12 Summary Judgment Points and Authorities, Affidavit of Robert W. Hall, Exhibits “A” – “F” and
13 Certificate Service attached herein as Exhibit “E.” Exhibit “E” follows the latest on-point
14 decision by the Ninth Circuit Court of Appeals regarding the issues herein.

15 **General**

16 Regarding this complaint, a certified Subpoena and Complaint were all personally served
17 upon the U.S. Attorney by and through a clerk authorized to accept service. Additional certified
18 Subpoenas and Complaints were served upon the Hon. John Ashcroft, U.S. Attorney General,
19 Defendants Norton and Abbey by Federal Express on May 15, 2003. See the Certificate of
20 Service filed May 27, 2003.

21 Hall has previously met with key BLM executives and BLM counsel on Thursday,
22 November 7, 2002 and again on Tuesday, April 15, 2003 at the Las Vegas BLM offices. The
23 issues herein were discussed at both meetings. Hall has also had numerous telephone and
24 occasionally direct conversations with key BLM executives and counsel that involved a full and
25 free discussion of the issues. Hall has made suggestions as to how the BLM could speed up
26 National Environmental Policy Act (“NEPA”) cumulative impact compliance and Clean Air Act
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1 (“CAA”) conformity determination compliance. Hall has volunteered to assist the BLM in
2 bringing their environmental law compliance and conformity determinations up to date. Hall
3 requested that the November auction sale be postponed pending a resolution of the issues to no
4 avail. Hall has requested that the June 2003 land action sale be postponed pending a resolution of
5 the issues. All discussions with BLM executives and counsel were polite and correct despite the
6 serious nature of the issues. The BLM was not interested in either postponement request. It is
7 Hall’s opinion and belief that the BLM has only one goal, that of selling as much land as
8 possible while delaying environmental law compliance as long as possible.

9 **What Are the Issues?**

10 The complaint contains a definitive list of issues and should be the primary source of this
11 information. In summary, Hall alleges that the BLM has not complied with National
12 Environmental Policy Act (“NEPA”) requirements regarding the agency’s duty to complete and
13 thereafter amend from time to time as necessary, a cumulative impact environmental impact
14 statement (“EIS”). That duty commenced when the since the Act was promulgated in 1969. The
15 BLM has not complied with Clean Air Act conformity to the state implementation plan (“SIP”)
16 requirements since at least when the Act was amended in 1990, and for the most part has ignored
17 the Federal Administrative Procedures Act (“APA”) requirements. The unsigned and undated
18 environmental assessment (EA Number: NV-050-2003-89), is a parsed portion of SNPLMA
19 lands scheduled for disposal by auction sale.

20 The SNPLMA is a major and significant federal agency action requiring a full NEPA
21 environmental impact statement (“EIS”) instead of a parsed EA. In addition, NEPA requires an
22 accounting of all BLM air pollution activities in the Las Vegas Valley non-attainment area. That
23 means all activities, not just land sales. One way to accomplish that goal would be to go back and
24 do an Excel or Access spread sheet that accounts for all BLM direct and indirect air pollution
25 activities Valley as a starting database. The BLM has the information firmly locked in their files
26 in the form of parsed or “little-piece” EAs. The act of parsing non-attainment area, direct and
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1 indirect air pollution hides that information from the public as well as local, state and other
2 federal agencies. Hall alleges that these acts constitute a conspiracy to defeat the language, spirit
3 and intent of our nation’s environmental laws in the Las Vegas Valley.

4 The instant EA itself includes so many misleading and unsupported statements the
5 information therein cannot be quantified. It is not possible for the public to quantify the
6 information in any EA where the document is unsigned, undated, where the processes used to
7 develop the information are not transparent in that document and where the information was not
8 noticed to the public for comment and hearing. The public was not noticed regarding the instant
9 EA and the public has not had an opportunity to comment on it.⁴

10 All references to a Resource Management Plan (“RMP”) long term planning document
11 are unsupported as to evidence of a public notice noticing the public for the site specific, air
12 pollution specific purpose the RMP (and its Final Environmental Impact Statement (“FEIS”)) are
13 referenced herein. See Exhibit “F” attached hereto. Defendants have done everything in their
14 power to avoid RMP/FEIS public oversight including statements that the RMP/FEIS was a
15 broad, planning document where the public involvement for site specific purposes was not only
16 not required but the public had no standing to request a review. That is how the defendants
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19 ⁴ Hall was served with a copy of the EA too late to do anything other than file a complaint and
20 this motion for TRO or a PI. The point of public notice is that the public cannot perform its
21 oversight duty if the best minds in the community do not know what the BLM is doing. Parsing
22 information into EAs is a scheme to avoid the EIS process which does require public notice and
23 public involvement. Hall needs the help of all the public talent a public notice can muster. By
24 parsing EIS responsibilities into EAs, the BLM has successfully avoided public oversight beyond
25 Hall. The BLM would prefer that Hall go away but they have successfully shut down almost all
26 other public oversight. Our environmental laws do not work and cannot be enforced without
27 public oversight. Commercial sources of air pollution would be subject to heavy fines and
possibly jail time if they pulled a stunt like this. It is common knowledge that runaway growth is
the political issue in the Valley. The BLM has escaped more controversy by simply hiding what
it does. A scheme like this is not in the job description of any federal employee. Each federal
employee who is a part of this process is partly responsible for the adverse health effects that
have followed. It is past time for all of these people to visit an asthma or pulmonary ward so they
can see first hand the result of their own bureaucratic malfeasance. Robert W. Hall, M.S. is a
long-time associate of the American Academy of Environmental Medicine.

1 prevailed in Norton II which is now on appeal. The appeals court agreed with defendants that
2 Hall had no standing to complain about long term planning. What the court and the public did
3 not know was that the BLM would subsequently argue the other way and claim the RMP/FEIS as
4 support for a site specific EA. The RMP/FEIS document was not attached to the EA when Hall
5 was served with the EA. Defendants may not rely upon the document for any lawful, site
6 specific, air pollution action purpose herein. Hall objects to all references to that document
7 herein.

8 In the alternative and without prejudice, any reference to the RMP/FEIS must be
9 supported with evidence of public notice, public involvement and hearings for its use in this
10 instance, as support for this site specific, air pollution action purpose. In view of the unpublished
11 decision in Hall II, the entire administrative record for the RMP/FEIS must also be included
12 herein and a separate hearing on the legal status for that document must be held since the
13 document has not undergone scrutiny for the purpose the defendants are attempting to use it
14 herein.

15 Finally, the last time the public had an opportunity to comment on the entire RMP/FEIS
16 for twenty-year planning purposes was 1992. The public was subsequently restricted from
17 commenting on the entire RMP/FEIS when subsequent, narrow amendments were later added.
18 The EPA and the BLM both require five year reviews and revisions to long range plans. There is
19 no evidence before this court that there is any five year review subsequent to the 1992 public
20 notice and comment period on the entire RMP/FEIS. At that time the RMP/FEIS was
21 controversial since the BLM received more than 1,000 comments. The RMP/FEIS document is
22 null and void for any lawful purpose now that the document is six years late regarding required
23 five year reviews.

24 **New Law in the West**

25 There is new, Ninth Circuit, on-point, precedent setting law in the West since the district
26 court denied Hall's previous, November 2002 request for a temporary injunction. See, Public
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1 Citizen v. Department of Transportation, 316 F.3d 1002 (9th Cir. 2003). Public Citizen cites Hall
2 v. Norton, 266 F.3d 969, 976 (9th Cir. 2001). Exhibit “E” is an application of Public Citizen to
3 the issues herein.

4 **Motions for Injunctions**

5 Traditional equitable criteria apply in ruling on motions for injunctions. See generally
6 Hilton v. Braunskill, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119 (1987). In effect, “the concerns of
7 the movant must be weighed against societal interests which will be adversely affected by
8 granting the relief requested.” Gilder v. PGA Tour Inc., 936 F.2d 417, 422 (9th Cir. 1991).

9 **Preliminary Injunction (“PI”)/Temporary Restraining Order (“TRO”)**

10 See Federal Procedure (Lawyers ed.) §§ 47.69-47:79. The focus of the PI or TRO
11 requests is a June 5, 2003 land auction sale. If having established a violation of NEPA, the
12 plaintiff is not allowed to enjoin further activities until the agency complies with NEPA, then
13 NEPA is an exercise in futility.

14 **Probability of Success on the Merits of the Claim**

15 Defendants cannot produce any legally sufficient evidence of NEPA, CAA or APA
16 compliance or conformity herein. Defendants’ claims that they may pollute the air in the Las
17 Vegas Valley with impunity by parsing their Valley activities into “little-piece” EAs is an
18 evasion of the law. Hall should easily succeed on the merits to the extent that the decision is
19 based upon applicable law and a total lack of legally sufficient evidence favoring defendants.
20 There must be no extraordinary equities on the government side. Brooks v. Volpe, 350 F.Supp.
21 269 (W.D.Wash. 1972)

22 **Harm to the Plaintiff if PI or TRO relief is not granted.**

23 By definition, anyone in an EPA serious non-attainment area is in an area where there is
24 too much air pollution. The area is unhealthy. Hall is before this court in a fight for his
25 pulmonary health. Air pollution is **cumulative** and can be deadly. That is irreparable harm.
26 Everyone in the Valley including Hall will be irreparable harmed if federal agencies do not
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1 comply with NEPA. Without an injunction or TRO, the BLM will continue selling land and that
2 land will continue to be developed. That in turn will cause more PM10, CO and ozone air
3 pollution.

4 Hall is fighting for his pulmonary health. Everyone in the Las Vegas Valley serious non-
5 attainment area will benefit from a less air pollution. Hall has standing regarding his pulmonary
6 health and the quality of life and economic issues of pulmonary health. The relief requested is in
7 the public interest. Clark County has never had any designation change since the EPA found the
8 Valley in clean air attainment since the Valley was labeled non-attainment for particle matter ten
9 microns or less (PM10) and the same for carbon monoxide (CO). The Valley is right at the non-
10 attainment mark for ozone (O3) a particularly nasty air pollutant that comes from the additional
11 automobile miles traveled that comes from the chain of causation that starts with BLM land
12 auction sales. Ozone robs the Valley's residents, and particularly Hall, of their and his energy
13 with devastating and quality of life fatigue while slowly robbing everyone of their lung capacity.
14 The harm to tiny babies from air pollution is devastating. By bringing this case, Hall, the
15 environment, the children, the elderly and everyone else will benefit by this court's PI or TRO
16 decision.

17 A year ago, the Centers for Disease Control ("CDC") reported a national survey that
18 included the Las Vegas Valley. The CDC found that 14.3% of those over eighteen that were
19 surveyed in Las Vegas reported having pulmonary disease. Las Vegas has long been listed as
20 having one of the nation's highest incidences of childhood asthma.

21 Releasing more acres of development land in a PM10 and CO serious non-attainment
22 area is the first step in a chain of causation that may be compared to throwing air pollution
23 gasoline on a pulmonary disease epidemic fire. The more man made dust in the valley, the worse
24 the lung disease.
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26 The continuum before the court is more land to feed runaway growth vs. public health
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1 and safety. This action highlights the dilemma valley resident's face. Those who are already here
2 are forced without their informed consent, to participate in a grand medical experiment where the
3 BLM along with development and construction interests are in control of the pulmonary health
4 of a million and a half people. It is not the BLM's destiny to experiment with more than a million
5 people to see how much dust can enter the bloodstream through their lungs before they have
6 serious health problems or worse. The BLM has no lawful authority to experiment with the
7 amount of dust that it takes to incapacitate or terminate the lives of valley humans. The BLM is
8 required by law to comply and conform to the environmental laws of this country that were
9 enacted to protect citizens like Hall from arbitrary and capricious administrative decisions like
10 the ones discussed herein.

12 When the medical bills come due, BLM executives will claim that they cannot be held
13 accountable as government employees, or they will be long gone into retirement on fat pensions,
14 benefits and bonuses. Neither they nor those who profit by the runaway growth the land sales
15 fuel will pay for health insurance or the medical bills that will not be covered by health
16 insurance. For some reason, this discussion is not in the EA.

18 **Harm to the Defendant Agency Should an Injunction or TRO Issue.**

19 The government cannot be in the legal position of doing harm to the country's residents,
20 particularly where there is no full disclosure. Federal agencies are mandated to comply with the
21 environmental laws of this country. They also have an obligation to lead in reducing controllable
22 air pollution. When a federal agency hides what it is doing that increases non-attainment area air
23 pollution, the agency has lost the high ground legally, ethically and morally. NEPA, CAA and
24 APA are a blueprint for public involvement. It cannot be denied that an uninformed public is the
25 result of what the BLM does in Nevada. Runaway growth fueled by greed is the Hallmarks of
26 local politics. The BLM is mandated by Congress to rise above local politics and protect the
27 environment while in this instance selling land. By statute, the BLM must work within the

1 framework of complying with all applicable laws, not just the ones they like. There is nothing in
2 the Southern Nevada Public Land Management Act (“SNPLMA”) that requires the BLM to
3 ignore the nation’s environmental laws. Congress had every right to believe that the BLM was
4 acting lawfully at all times prior to the 1998 SNPLMA. There is no evidence that the BLM
5 informed the Congress otherwise.

6 The BLM has been on notice by Hall since 1997 of adverse results of their policies. It
7 was the BLM’s responsibility to complete its environmental responsibilities before selling land,
8 SNPLMA notwithstanding. NEPA compliance can be accomplished by the development of an
9 Excel or Access spreadsheet listing all BLM air pollution actions year by year using EPA
10 approved modeling or formula techniques. The process is not expensive or daunting. Why don’t
11 they do it? The reason is that they do not want to admit and they do not want the public, local,
12 state and other federal agencies to know, how much direct or indirect air pollution results from
13 their actions. If that information was made public, Hall would not be here alone. He would have
14 a lot of company.

15 **The Public Interest**

16 To the extent that defendants are able to continue to avoid federal environmental laws,
17 there is absolutely no incentive whatsoever to comply with any environmental law requirement.
18 The BLM is counting on their status as a federal agency to shield them in court. By definition,
19 that is against the public interest.

20 By definition, there can be no public interest reason to hide air pollution data from the
21 public. That is exactly what the BLM is doing. The public interest lies in full disclosure, the right
22 to know what federal agency is sending valley residents and their kids to hospital, and the right
23 to a enter a court that allows victims to fight back when they finally realize they are not dealing
24 with a federal agency that really wants to comply with the law. As in any NEPA action, the
25 plaintiff herein sues to protect environmental resources that would be harmed by the
26 governmental agency’s action. When environmental resources are harmed, Hall is harmed. The
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1 courts in NEPA cases consider the harm that would occur to the environment. The environment
2 in the Las Vegas Valley cannot benefit by the fact that the scarcest thing in the Valley is not land
3 but BLM, NEPA compliant, cumulative impact totals and BLM cumulative impact
4 determinations with the Valley's EPA approved 1979/81 SIP. Public notices regarding
5 environmental documents run a close second.

6 Hall is not trying to stop land sales. Hall is trying to protect his lungs which will protect
7 the environment by getting the data he and local agencies need in order to get cleaner air
8 compliance. The BLM will not provide credible data until they have other choice than to provide
9 it. Defendants have argued that Hall is trying to stop land sales. Defendants know that Hall could
10 not even slow the land sale process down until and unless the BLM cannot conform to the EPA
11 approved state implementation plan ("SIP") at their current direct and indirect air pollution
12 levels. Since they know and the public does not know the amount of air pollution they are
13 generating, Hall accepts that argument without prejudice to denying that is his goal, but as a very
14 substantial admission that they are beyond the SIP limits to the point where land sales should
15 have stopped at least until they comply with NEPA, CAA and APA.

16 **The Issues in More Detail**

17 **Environmental Assessment**

18 The following are Hall's objections and the reasons why the environmental assessment
19 ("EA") must be stricken from the record of this action.

20 The instant land sale and the EA that allegedly supports the land sale are part of a scheme
21 to parse SNPLMA disposal land sales in order to avoid NEPA cumulative impact EIS
22 requirements. An EA is inadequate and misleading for this purpose. Without an environmental
23 impact statement ("EIS"), the public is left out of a process that was intended to include them by
24 the use of EAs that are not subject to public notice, comment and possibly hearings.

25 1.2 at 1. Conformance with Applicable Land Use Plan. Hall objects to the statement,
26 "BLM has used the most current information available to complete this analysis of the proposed
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1 action.” The “most current information available” used by the BLM to complete this analysis are
2 not supported by information that enables the public including Hall, to determine whether the
3 information was produced by EPA approved or accepted standards as opposed to simply
4 numbers on paper.

5 1.4 at 2. Relationship to Statutes, Regulations and Agency Jurisdiction. Defendants left
6 out all references to NEPA, CAA or the APA which are also applicable herein. The EA is legally
7 insufficient without reference and discussion regarding the applicable environmental statutes.

8 2.0 at 3. Description of Proposed Action. ... “BLM will not know who the successful
9 purchasers of the property will be, nor will BLM have any knowledge of future proposed uses
10 and/or development, if any, on the subject lands.” At current land sale prices, the BLM knows
11 full well that all of the land sold will be disturbed and developed. The BLM admits as much in
12 the next sentence in that paragraph.

13 2.1 at 3. No Action Alternative. This section is woefully inadequate. The discussion is
14 misleading. The BLM has failed and refused to discuss air pollution health problems and costs,
15 related quality of life issues and costs as well local, state and federal government health and
16 welfare costs. By omission, the BLM gives the creation of sizeable amounts of air pollution the
17 appearance of a health care free lunch. The SNPLMA facilitates runaway growth. That in turn,
18 results in more air and water pollution that the EA fails to credibly discuss and support with data
19 that has a known lineage. The BLM has failed to include saving water during the drought of the
20 century as a no action alternative. Water will be saved by fewer water system hook-ups and less
21 use of water for dust control.

22 3.0 at 3. Affected Environment. The statements are legally insufficient. The discussion
23 alludes to the fact that the desert tortoise, wildlife and migratory birds will be evicted as a direct
24 result of the proposed land sales.

25 D. at 4-5. Air Resources. The first paragraph discussion fails to note that the Las Vegas
26 Valley is on the edge of ozone (O3) non-attainment. The second paragraph contains an
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1 admission that BLM vacant land and in many cases disturbed land parcels are a source of air
2 pollution serious enough to require the BLM to work with the Clark County Department of Air
3 Quality (“CCDAQM”) to stabilize BLM vacant parcels. This particular admission is important
4 since a NEPA cumulative impact statement must include and account for this air pollution. The
5 fourth paragraph admits that pursuant to Section 176(c) of the Clean Air Act, 42 U.S.C. 7401, et
6 seq., the land sales and all other federal agency activity or funding must stop until and unless a
7 legally sufficient conformity determination exists. The next paragraph falsely claims that land
8 sales are exempt from CAA conformity determinations. This issue is fully discussed in Exhibit
9 “E” at 34-40 attached hereto. When this EA was written, the BLM knew that the NEPA
10 cumulative impact requirement was full disclosure of all federal agency Valley direct and
11 indirect air pollution that will result from the land sales, otherwise, the land sales may not
12 lawfully proceed. There is a difference between paper transfers of title and reasonably
13 foreseeable air pollution in a land sale chain of causation. The BLM supports an effort to parse
14 its air pollution activities in a successful attempt thus far to commit a fraud upon the public and
15 the courts.

16 i. PM10 Emissions Inventory. There is no statutory support for any emissions inventory
17 or discussion of a disposal area other than Hydrographic Basin 212, the Las Vegas Valley non-
18 attainment area. Conformity must be Basin 212 or the entire discussion is misleading.

19 ii. Attainment Demonstration Area Emissions Inventory.

20 iii. Entire Basin 212 Non-attainment Area Emissions Inventory.

21 The discussion is absent any information necessary to replicate the data or otherwise aid
22 in determining the credibility of the data. Much more important, the inclusion of “[t]he PM10
23 SIP for Clark County, dated June 7, 2001” is misleading. The EPA approved state
24 implementation plan (“SIP”) for Clark County is the 1979/81 SIP and the BLM knows it. This
25 SIP is much more stringent than EPA standards. The BLM does not like that so they ignore it.
26 The 2001 “SIP” is a submitted SIP that is currently undergoing a review after receipt of public
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1 comments. It is not an EPA, finally approved SIP. The Clark County track record for getting
2 SIPs finally approved has been quite consistent, they haven't since 1981. In all cases except one,
3 the EPA declined to finally approve Clark County SIPs. The one exception was a 1999 SIP
4 submittal that was initially approved by the EPA and was subsequently vacated and remanded to
5 the EPA in 2001 by the Ninth Circuit Court of Appeals in Hall v. EPA, 273 F.3d 1146 (9th Cir.
6 2001). Clark County's credibility with the EPA and the Ninth Circuit Court of Appeals is not
7 very good. Since 1981, every attempt to amend the SIP has failed. That is a remarkable record of
8 failure and the reason centers on a serious lack of credibility. The EPA is now reviewing two
9 new SIP submittals (PM10 and CO). Hall submitted comments during the thirty-day public
10 comment period along with thirty-three pounds of single spaced evidence consisting mostly of
11 very specific facts why Clark County cannot be believed and the current SIP submittals cannot
12 lawfully be approved. The prospects for final EPA approval surviving another Ninth Circuit
13 review are not great. The inclusion of submitted but unapproved SIP information that is not
14 finally approved is misleading at best. At worst, it misrepresents. There is no legal justification
15 for the inclusion of any information that does not come from the EPA approved 1979/81 SIP.
16 Data quoted from submitted SIPs are nothing more than numbers on paper that have no
17 credibility and are legally insufficient for any lawful purpose. The environmental oversight
18 system does not work without public oversight. That is why the BLM avoids public oversight.
19 Data must be subject to public review and comment, the EPA must review and finally approve
20 submitted SIPs and the SIPs must then pass a Ninth Circuit Court of Appeals judicial review if
21 review is requested. Until that time, any use of any SIP that is not finally approved is legally
22 insufficient and ethically wrong. An adverse decision on the submittals could result in a roll-back
23 of benefits wrongly accrued during a period of reliance on a submitted but unapproved SIP. Hall
24 objects to the inclusion of submitted but finally unapproved SIPs herein and that includes data
25 from submitted and finally unapproved SIPs for any purpose. Hall requests that the court note
26 that the defendants failed to discuss any of these issues in their EA despite the fact of Norton I, II
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1 and III actions and appeals.

2 iv. Carbon Monoxide Emissions Inventory

3 Ditto. Unapproved SIP data is legally insufficient since it was not the subject of public
4 oversight and failed to pass a knowledgeable review. The EA includes 1996 carbon monoxide
5 (CO) emissions data, apparently from the June 7, 2001 SIP submittal.

6 Exhibit “H” is a good check against the credibility of that data. On May 14, 2002, Fred
7 Ohene, Assistant General Manager of the Regional Transportation Commission stated the
8 following to the Commission the following.

9 While the CO SIP provides approved mobile source emissions budgets, they were
10 developed to ensure that tailpipe emissions do not exceed the 9.0 parts per million
11 (ppm) air quality standard in geographic “hot spots” in the valley. This was the
12 most expedient and cost effective approach to ensuring that a SIP and budget
13 were approve, since the County was under a very tight sanctions clock by the
14 EPA. The problem facing the RTC is that vehicle miles traveled (VMT) is
15 increasing at a rate twice as fast as population and travel forecasts strongly
16 suggest that emissions are at or near to exceeding the 2020 budget.

17 In 2002, the number two executive in the RTC admits that CO emissions are already “at
18 or near to exceeding the 2020 budget.” Astounding! These data are worthless. These data are
19 also misleading. “Hot spots” are a polite way of saying you would not want to live there. In the
20 next paragraph, the recommendation to “redevelop the budget” by parsing adverse data into
21 smaller parts so that no one would notice leaves all Clark County data suspect. Clearly, accurate
22 totals are to be avoided at all costs. We also note that pushing the pencil is expensive, \$250,000.
23 Getting people to misrepresent data to the public and this instance the courts, does not come
24 cheaply.

25 **Finding of No Significant Impact (“FONSI”)**

26 After not mentioning NEPA cumulative impact requirements, the FONSI relies upon the
27 BLM claim that land sales are exempt from conformity determinations. Public Citizen and
Exhibit “E” at 34-40 attached hereto, provide a very clear, powerful explanation as to why that

1 argument misleads. By its own language the FONSI is limited to a parsed land exchange of
2 1,103.76 acres. Without a SNPLMA FONSI instead of a parsed FONSI, the FONSI is again
3 misleading and legally insufficient for any lawful purpose.

4 **What is Missing?**

5 The point is what is missing? The following federal agency requirements must be met
6 before any parsed land sale may proceed. The BLM has the process upside down.

- 7
8 1. Evidence of NEPA cumulative impact compliance since 1969. This means adding up
9 the direct and indirect emissions from all of the BLM's air pollution actions on a
10 spread sheet and actually totaling the entries. That means all air pollution actions,
11 direct and indirect, not just land sales. There is nothing in the EA that provides that
12 evidence.
- 13
14 2. Evidence of CAA conformity determinations to the 1979/81 EPA approved SIP since
15 1981. We have never seen a BLM conformity determination that ever mentioned the
16 1979/81 EPA approved SIP.
- 17
18 3. Evidence of APA compliance regarding public notice, public involvement and
19 hearings.

20 **Defendants' Land Sale Support**

21 Defendants rely upon three supporting documents. They are an Environmental
22 Assessment ("EA") NV-050-2003-89 (a document that is not signed or dated that Hall first saw
23 on April 16, 2002), the October 1998 Las Vegas Resource Management Plan/Final
24 Environmental Impact Statement ("RMP"), and the March 25, 2003, Finding of No Significant
25 Impact. None on the tree are named in the public notices for that land sale and for that reason
26 alone, the land auction sale may not move forward. The public was not informed of the existence
27 of these documents. As a result, the clock never tolls on the public's right to take action against

1 the environmental impact of the land sales until and unless the public is finally informed and
2 given an opportunity to comment. While the RMP was lawfully adopted for programmatic,
3 broad, planning purposes, it has not been noticed to the public or adopted for the site specific
4 purpose the BLM is using it for in the land auction described herein. The RMP public comment
5 notice was published in 1992. The RMP is subject to a five year review requirement starting five
6 years after the last 1992 public notice. The public has not had an opportunity to comment on the
7 full RMP since 1992. Subsequent amendments to the RMP restricted the public notice,
8 subsequent public involvement and comment to narrow issues that are not relevant herein.

9 Now that the BLM claims the RMP as support for this site specific land sale auction, they
10 are one for the purpose of this site specific review. There were both interposed as site specific
11 support for the land sale auction. They are now both subject to judicial review herein. They are
12 both legally insufficient for any lawful purpose. Past claims that the RMP/FEIS is too broad and
13 programmatic to be subject to challenge just went out the window. When defendants interpose
14 any EIS in support of a site specific, land sale EA, the EIS becomes subject to challenge. Both
15 documents are now subject to judicial review since they are not longer just planning documents.
16 In Norton I, they were not ripe. They are ripe now. Defendants wanted Hall to wait. Hall waited.
17 Hall objects to any consideration of the RMP/FEIS (“RMP”) for any site specific purpose.

18 **Cumulative Impacts**

19 Hall’s NEPA claim challenges the failure and refusal of the BLM to consider the
20 cumulative impacts of all BLM acts in the valley which include all land exchanges and land
21 sales. Hall also claims that the SNPLMA is a major and significant federal action requiring a full
22 environmental impact statement (“EIS”).

23
24 Once an agency has an obligation to prepare an EIS, the scope of its analysis of
25 environmental consequences in that EIS must be appropriate to the action in
26 question. NEPA is not designed to postpone analysis of an environmental
27 consequence to the [**21] last possible moment. Rather, it is designed to require
such analysis as soon as it can reasonably be done. See Save Our Ecosystems v.
Clark, 747 F.2d 1240, 1246 n.9 (9th Cir. 1984).

1 See Kern v. United States BLM, 284 F.3d 1062, 1072 (9th Cir. 2002). See Appendix.

2 The regulations define “cumulative impact” as:

3 the impact on the environment which results from the incremental
4 impact of the action when added to other past, present, and
5 reasonably foreseeable future actions regardless of what agency
6 (Federal or non-Federal) or person undertakes such other actions.
7 Cumulative impacts can result from individually minor but
8 collectively significant actions taking place over a period of time.

9 Id. 1075. 40 C.F.R. § 1508.25(a).

10 In determining the significance of a proposed action an agency must consider

11 Whether the action is related to other actions with individually
12 insignificant but cumulatively significant impact on the
13 environment. Significance exists if it is reasonable to anticipate
14 cumulatively significant impact on the environment. Significance
15 cannot be avoided by terming an action temporary or by breaking
16 it down into small component parts.

17 40 C.F.R. 1508.27(b)(7). See also Churchill County v. Norton, 276 F.3d 1060,
18 1072 (9th Cir. 2001).

19 (“If the cumulative impact of a given project and other planned projects is
20 significant, an appellant can not simply prepare an EA for its project, issue a
21 FONSI, and ignore the overall impact of the project...”); Newton County Wildlife
22 Ass’n v. Rogers, 141 F.3d 803, 809 (8th Cir. 1998).

23 Kern, 284 F.3d at 1076.

24 The delay in complying with NEPA lies squarely with a BLM management decision to
25 avoid NEPA. Hall is not responsible for BLM management decisions and cries of hardship must
26 fall squarely on BLM shoulders. The BLM has had thirty-four years to comply with NEPA
27 (since 1969). That is too long.

Defendants have fought to make Hall wait until a land sale was noticed before requesting
judicial relief regarding land disposals. Hall has asked the defendants to withdraw their land
auction sales.

1 We cautioned additionally that “judicial estoppel” will prevent the Secretaries
2 from arguing they have no further duty to consider their [Port Oxford Cedar]
management policies when the specific programs are challenged.

3 284 F.3d at 1073. Northcoast Env'tl. Ctr. v. Glickman, 136 F.3d 660, 670 (9th Cir. 1998).

4 The Council on Environmental Quality noted in a recent report that “in a typical
5 year, 45,000 EAs are prepared compared to 450 EISs. ... Given that so many
6 more EAs are prepared than EISs, adequate consideration of cumulative effects
7 requires that EAs address them fully.” Council on Environmental Quality,
8 Considering Cumulative Effects Under the National Environmental Policy Act at
4, Jan. 1997, also available at <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>
(last visited Feb. 26, 2002).

9 Kern, 284 F.3d at 1076.

10 We have previously indicated, in cases similar to this one, that cumulative impact
11 analysis is appropriate at the EA level. In Hall v. Norton, the BLM proposed to
12 exchange 4,975 acres of land it owned in the Las Vegas Valley so that a private
13 developer could build approximately 11,200 new homes on the land. The BLM
14 prepared an EA that analyzed the pollution that would result from development on
15 the [**34] land, but that failed to analyze the additional pollution that might result
16 if other [*1077] land it owned in the Las Vegas Valley were also exchanged.
17 Plaintiff had alleged in his complaint that the EA had failed to consider
18 cumulative impacts, but the district had dismissed the complaint without
19 considering the argument. We noted that the BLM owned an additional 57,000
20 acres of land in the Las Vegas Valley. Those lands had already been “identified
21 for disposal” [by the BLM], but the EA did not attempt to quantify cumulative
22 emissions from potential development on these lands. NEPA requires that an
23 agency consider cumulative impacts of an action and the foreseeable related
24 actions.” 263 F.3d at 978. We remanded to the district court for consideration of
25 the plaintiff’s cumulative impact argument.

26 Kern, 284 F.3d at 1076-1077.

27 The BLM cannot reasonably argue that their direct and indirect air pollution activities in
the Las Vegas Valley non-attainment area can be resolved without full NEPA and CAA
compliance in the face directly conflicting regulations.

40 C.F.R. § 1506.1 Limitations on actions during NEPA process. See, Appendix.

§1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in §1505.2 (except as
provided in paragraph (c) of this section), no action concerning the proposal shall

1 be taken which would:

2 (1) Have an adverse environmental impact; or

3 (2) Limit the choice of reasonable alternatives.

4 (b) If any agency is considering an application from a non-Federal entity, and is
5 aware that the applicant is about to take an action within the agency's jurisdiction
6 that would meet either of the criteria in paragraph (a) of this section, then the
7 agency shall promptly notify the applicant that the agency will take appropriate
8 action to insure that the objectives and procedures of NEPA are achieved.

9 (c) While work on a required program environmental impact statement is in
10 progress and the action is not covered by an existing program statement, agencies
11 shall not undertake in the interim any major Federal action covered by the
12 program which may significantly affect the quality of the human environment
13 unless such action:

14 (1) Is justified independently of the program;

15 (2) Is itself accompanied by an adequate environmental impact statement; and

16 (3) Will not prejudice the ultimate decision on the program. Interim action
17 prejudices the ultimate decision on the program when it tends to determine
18 subsequent development or limit alternatives.

19 (d) This section does not preclude development by applicants of plans or designs
20 or performance of other work necessary to support an application for Federal,
21 State or local permits or assistance. ...

22 Despite a total of four actions, the BLM has gone full speed ahead toward the instant land
23 auction sale without ever noticing the FONSI to the public. The BLM simply slapped the FONSI
24 to the back of the unsigned EA hoping that no one would notice. The EA was never noticed by
25 name or identification. There is no evidence to the contrary before this court. There is no
26 evidence of a revised, 40 C.F.R. 1506.1 environmental impact statement and there is no Record
27 of Decision ("ROD") based upon a revised EIS. The FONSI does not even mention an EIS.

28 In the interim, defendants are disposing of lands at a rapid pace while disregarding the
29 environmental health impacts of the chain of causation that starts with their land disposals and
30 ends when all of the BLM's valley air pollution activities are accounted for on a NEPA spread
31 sheet. While disposing of land, defendants have not included a 40 C.F.R. § 1506.3(d) statement

1 specifying that the adequacy of the environmental impact statement (“EIS”) is subject to a
2 second Ninth Circuit Court of Appeals review.

3 The BLM was quick to include a hold harmless agreement in their public notice without
4 providing full or even reasonable disclosure to the public or prospective bidders. Thanks to the
5 BLM, successful bidders have no environmental law authority to proceed once they purchase
6 properties from the BLM because the BLM did not take the important steps necessary to protect
7 successful bidders. The best the BLM could do was to include a tough hold harmless clause. Let
8 the buyer beware when dealing with the BLM. Full disclosure is not a high BLM priority.

9 There is no evidence of a filing of an EIS that covers the cumulative, conformity and site
10 specific issues with the Environmental Protection Agency (“EPA”) in accordance with 40 C.F.R.
11 § 1506.9. There is no evidence of publication in the Federal Register (“FR”) of a draft or final
12 EIS that covers the cumulative, conformity and site specific issues that can only be resolved by a
13 full EIS. There is no evidence that the defendants waited 90 days for a draft EIS or 30 days for a
14 final EIS before making a decision on the proposed action as required by 40 C.F.R. § 1506.10.

15 The parsed, land auction and disposal EAs the BLM drafts and claims are final
16 documents that are not routinely mailed to Hall in a timely manner despite Hall’s status as
17 plaintiff-appellant in four actions, and despite Hall’s numerous written and verbal requests for
18 service by mail of all such environmental documents and decisions. See 40 C.F.R. § 1501.7 and
19 § 1506.6. See Plaintiff’s Exhibit “C.”

20 As the Ninth Circuit has explained,

21 The goal of NEPA is two-fold: (1) to ensure the agency will have detailed
22 information on significant environmental impacts when it makes its decisions; and
23 (2) to guarantee that this information will be available to a larger audience.
Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).

24 In the process of avoiding our nation’s environmental laws, the BLM has not complied
25 with 40 C.F.R. §§ 1502.13, 1502.14, 1502.15 or 1502.16. Evading our laws has the advantage of
26 eliminating the necessity of dealing with all of the environmental statutory and regulatory
27 requirements Congress has placed on Federal agency actions. The public can be such a bother.

1 The BLM likes the SNPLMA so it complies with that Congressional mandate. The BLM does
2 not like Congressionally mandated environmental laws so it ignores them. At least we know who
3 is in charge.

4 In Norton III and herein, Hall brought up the issue of the scarcity of water in the Valley
5 and the current drought. There is no water to support more land development. Water is the way
6 Clark County has told the EPA it will control dust in the Valley. The current drought plan does
7 not include water for the purpose of controlling dust. There is no hard evidence to the contrary.

8 The dust that comes from bulldozing the thousands of acres of land development and the
9 carbon monoxide that comes from construction equipment and later an influx of residents is
10 indirect air pollution. Both are going to increase the non-attainment area air pollutants in
11 violation of NEPA. In the alternative, defendants cannot prove that be selling more and more
12 land, they will make the air cleaner by the subsequent bulldozing and developing thousands of
13 acres of valley land.

14 Without prejudice to the fact that Clark County air pollution estimates are notoriously
15 low, dust coming from development and construction related activities is estimated by Clark
16 County to comprise 62% of the dust (PM10) air pollution problem in the valley. Clark County
17 published a 1993 “Latest Emission Inventory in the Valley” on May 2, 1994 listing 19,000 tons
18 per year of PM10 dust. A March 2001 PM10 State Implementation Plan Draft included a 1998
19 Annual Nonattainment Area PM10 Emissions Inventory of 333,132 tons per year. In five years,
20 the increase in PM10 tons per year is 314,132 or a 17 times increase over the 1993 tonnage. Dust
21 (PM10) coming from development and construction (runaway growth) amounts to approximately
22 206,542 tons of particle matter air pollution per year. These are not EA numbers, they are EIS
23 numbers.

24 **LEGAL SUMMARY**

25 To the extent that the court properly places the health and safety of the public (which
26 includes Hall) over BLM and related development and construction interests, Hall should easily
27

1 prevail on the merits. This remand and motion for a preliminary injunction raises serious legal
2 and practical issues. A resolution of these is past due.

3 The hardship and burden to Hall (and everyone else in the Valley) is the continuing loss
4 of his quality of life and perhaps his life. The slow loss of the ability to breathe is a deadly
5 serious issue. The BLM would rather beckon more and more people to the Valley than take steps
6 to protect the health and safety of those already here.
7

8 Constitutional questions arise regarding any law where more one and one-half million
9 people are required to assume a pulmonary health burden without Fourteenth Amendment equal
10 protection and due process. Hall requests that the constitutional implications of what is
11 happening in the Valley be considered. When those under 18 are included, more than 15 out of
12 every 100 persons already have already lost serious quality in their lives. Hall is already one of
13 the 15 out of 100. The classic definition of an epidemic is 5%. How much air pollution is too
14 much? The first step in the chain of causation is before the court. A no bond TRO and
15 subsequent preliminary injunction are in the public interest.
16

17 Defendants have claimed they will do a dust study in the future. The BLM proposes to do
18 that study outside of any environmental law process. Once again, the public will not be notified
19 and the study will not be subject to public comment or hearing. The study will not be a NEPA
20 compliant environmental impact statement, but a sham to confuse the courts and the public.
21 Defendants do not say when the study will be finished. There is no guarantee that EPA approved
22 or sanctioned methods will be used for monitoring or estimating dust. The public will not be
23 involved as they would be involved if the defendants undertook the study as a part of an EIS.
24 There is nothing straightforward about the defendants. Defendants' idea of an EA is to complete
25 the EA and then toss in a drawer or a file cabinet. The BLM does not routinely notice EAs to the
26
27

