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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ROBERT W. HALL,	)	No. 03-15719
	)	
Plaintiff-Appellant	)	D.C. No. CV-97-01146-LDG (RJJ)
	)	(District of Nevada, Las Vegas)
	)	
v.	)	(Second Appeal)
	)	
GALE A. NORTON, et al.	)	<b>PLAINTIFF APPELLANT’S REPLY</b>
	)	<b>TO FEDERAL APPELLEES’</b>
Defendants-Appellees.	)	<b>RESPONSE IN OPPOSITION TO</b>
	)	<b>APPELLANT’S MOTION TO STRIKE</b>

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**ERRATA**

Re: Motion to Strike. Id. at 3. First paragraph, second sentence. “Even worse than including this May 1998 document at all [in the] supplemental excerpts of record is the fact that the document is a **proposed** document, not a **final** document.” Id. at 3. Second paragraph, third sentence, “relief” should be “relied.” Id. at 3. Third paragraph, first sentence. “Throughout all of the proceedings herein, Plaintiff Hall has objected [to] Appellees’ introduction of documents dated after August 27, 1997 that are not a lawful part of the AR herein.”

## **ADMISSION**

Appellees admit “As a preliminary matter, BLM concedes that the first declaration of James W. Abbott certifying the administrative record, SER 1-3, is from a different case (albeit with an identical administrative record) and was thus included in error. Accordingly BLM does not oppose Hall’s motion as to this document.”

## **FEDERAL APPELLEES’ RESPONSE ARGUMENT OBJECTIONS**

1. *Id.* at 2, first Argument paragraph. Hall does not object to the filing of “phases” that were noticed to the public prior to May 9, 1997, the date the original EA and Del Webb land exchange were noticed and August 27, 1997, the date the original complaint was filed. The only “phase” noticed was Phase I.

It is my decision to approve Phase I of the BLM-Webb land exchange as identified in Alternative A of the attached EA, subject to equal value provisions of 43 CFR 2201.5 et seq. [Decision Record “DR” at AR 005383, SER 253].

Phase I was all that was approved. Hall has consistently objected to references and argument regarding Phase II, Phases 1A, 1B and 1C, since they were not approved in the DR and they came well after May 9 and August 27, 1997.

2. *Id.* at 3, continued paragraph. “Hall asks this Court to strike these documents, the entire SER, and/or BLM’s response brief.” Hall actually requested relief by striking specific documents. Only in the alternative for the imposition of sanctions did Hall state: “3. In the alternative, strike both Volumes I and II, Federal

Appellees Supplemental Excerpts of Record along with the Brief of the Federal Appellees dated September 15, 2003, all as sanctions.” Appellees’ statement is misleading by not stating that the request was in the alternative.

3. Id. at 3, first paragraph, third sentence. “...Hall fails to demonstrate how their inclusion is prejudicial to him.” Packing an administrative review with prohibited documents is unlawful, an obvious prejudice.

4. Id. at 4, first paragraph. “With regard to the second declaration of James W. Abbott, SER 4-6,” Appellees neglected to mention that the date of the second declaration is January 26, 1999; sixteen months after Hall filed his complaint. Appellees then admit that their declaration was not timely filed constituting the full administrative record as of the date the complaint. It was filed at the time “of the dismissal of protests as to Phases 1A, 1B and 1C of the land exchange between the BLM and the Del Webb [Corporation].” Appellees then have the chutzpah to state they filed this extraneous material “despite having no obligation to do so.” Appellant Hall agrees that Appellees had no obligation to do what the Ninth Circuit rules prohibit. The issue herein is that Plaintiff Hall was primarily filing against the EA part of the land exchange that including an authorization for 56,638 acres of disposable lands and the reason for the remand to the district court. The Appellees acts are an admission that Phases 1A, 1B and 1C came after Hall filed his Complaint. That is an admission that the notice to the public did not include Phases

1A, 1B and 1C. That is an admission the public was not properly noticed regarding the May 9, 1997 Environmental Assessment, Del Webb Land Exchange Proposal. The original Del Webb Land Exchange Proposal did not mention Phases 1A, 1B and 1C. Appellees did not know what they were exchanging on May 9, 1997. They wrote an EA that covered 56,638 acres while noticing a 4,756 acre land exchange involving Del Webb without knowing what the noticed land exchange actually involved. Appellees clearly had the cart well before the horse. The EA was remanded and the Appellees exchanged lands designated before **and after** August 27, 1997 without any NEPA legally sufficient compliance. That is why they are packing the administrative record (AR) or SER herein. They want to court to find for them and in that process make lawful what is clearly not lawful and never has been lawful. The public including Hall had no way of knowing what they were doing on May 9, 1997, and for a long time thereafter.

5. Id. at 4 including footnotes. “It is irrelevant that this declaration certifies the administrative record for all of Phase I of the Del Webb land exchange, including Phase IC, which is not the subject of Hall’s suit.” The entire 4,756 acre land exchange and its 56,638 acre EA were the subject of Hall’s complaint. See, Plaintiff’s Preliminary Injunction Motion Reply, May 3, 2002, at 7, ¶ 1. No matter how the Appellees rename the parts, Hall filed for judicial review regarding the land exchange and its accompanying 56,638 acre EA. All “phases” are the subject of

Hall's 56,638 acre complaint and this appeal.

A close examination of the Appellees response reveals that the number 1 in Phases 1A, 1B and 1C above switch back and forth to Roman numeral IC above. The discussion is interposed to mislead. Appellees are engaged in an administrative shell game.

It is relevant that Hall and the rest of the public knew nothing about Phases 1A, 1B and 1C on May 9, 1997. There is no public notice that notices Phases 1A, 1B and 1C for public review and comment prior to May 9, 1997 the date of the original EA/Del Webb land exchange notice or prior to August 27, 1997, the date the original complaint was filed herein. It is relevant that Hall filed a complaint against the land exchange and its accompanying EA regardless of the Appellees later use of the word "phases" to cover up a highly misleading public notice. This appeals Court remanded on the basis of 57,000 acres and that covered any subsequent "phase" names or attempts to parse the land exchange into "little piece" total confusion to cover up the fact that on May 9, 1997, the did not know what they were exchanging for 4,756 acres of Las Vegas Valley, serious non-attainment area land. The only environmental document supporting the Del Webb land exchange is the 56,638 acre EA. Are the Appellees arguing that they exchanged lands in a land exchange that is not supported by an appropriate environmental document? The Appellees are caught in their own web. That is exactly what they are arguing.

Appellees want this court to make lawful what is not lawful regarding their exchange of lands for development that were very adequately described in the remand order but not adequately described by the Appellees on the dates that are legally significant herein. The exchange is a major federal action that has not been subject to a NEPA cumulative impact determination environment impact statement (EIS). Federal agencies are not supposed to commit resources to projects until after NEPA compliance is completed on judicial review. See Plaintiff Hall's motion to strike at 8-9.

6. Id. at 5. The first paragraph discussion regarding the "Notice of Filing of Administrative Index admits the notice describes documents dated after May 9 and August 27, 1997. See, Appellees' SER, Vol. 1, 17:615:008192-008209 at 64 [SER 80A].

7. Id. at 5. "Hall never communicated to BLM or the district court any of the objections he now raises to this notice, and he has not demonstrated how this document is prejudicial to him or misleading to the Court." The district court found in its April 1, 2003 Order that is the subject to this appeal at 4, ¶ 2 that "Hall makes much of the fact that the federal defendants had introduced into the litigation the findings of the PRMP/FEIS completed in May 1998..." "As Hall contends, and as the federal defendants concede, this study was not part of the administrative record of the proposed action that was originally challenged by Hall, and may not be used

to support in determining whether the BLM properly considered the cumulative impacts of the Del Webb land exchange.”

8. Id. at 5. “It is irrelevant that the Index includes entries for documents related to subsequent phases of the land exchange that are not the subject of this suit...” That is an admission that the Index includes entries for documents related to subsequent phases of the land exchange that are not the subject of this suit.

9. Id. at 5, fn. 4. What the BLM expected Hall to do that Hall did not do is not relevant herein. There was no need for Hall to amend his complaint to cover Phase IC. Hall’s complaint was filed against an EA that covered 56,638 acres. The 56,638 acre complaint was intended by the BLM to cover the May 9, 1997 and all future “phases.”

10. Id. at 5, fn. 4. The following statement that is even more astonishing. “Because there was a complete administrative record on all subphases of Phase I of the exchange, the 1999 certification superseded the one prepared in 1998 on Phases IA and IB alone.” That is a clear admission that Phases IA and IB were not a lawful part of the first administrative record and Appellees were adding documents that they hoped the courts would add to an order covering their tails after-the-fact. The evidence of bad faith herein is increasing.

11. Id. at 6, fn. 6. Here we have an admission that the Appellees were adding to the undated index on or about February 27, 1998, the first time they revealed the

date. Hall's references and emphasis is on the fact that the additions to the AR had to stop at some point and the lawful point is August 27, 1997.

12. Id. at 6-7, last paragraph. The Appellees argument regarding the presence of a 1998 [Proposed] PRMP/[Final] FEIS in the AR confirms Hall's claim that the date of that document which was not noticed to the public for the use Appellees claim herein, exceeds the AR date limit cutoff of August 27, 1997.

12. Id. at 6-7, last sentence. What "makes sense" to the BLM is unfathomable to this Appellant and possibly to the Court. Appellees' "makes sense" argument is interposed without citations to law. It does not "make sense" to pack the administrative record of a judicial review with post filing documents while the Appellant is held to the date the complaint was filed, August 27, 1997.

13. Id. at 7, second paragraph. If the district court and the BLM have not relied on the PRMP/FEIS, they why is it there? Their own decision record states,

The answer is that it is there to impress any court that does not check the dates carefully. Hall would not have argued the PRMP/FEIS if Appellees had not interposed it. Hall referenced the copy Appellees improperly filed in their excerpts in rebuttal. Hall has no intention of including documents in his excerpts that he complains should not be there from the outset.

14. Id. at 8, first paragraph. Appellees admit they used data from the PRMP/FEIS in its response brief. Appellees admit their response brief "briefly

discusses the 1998 PRMP/FEIS to clarify certain figures used in the EA and to underscore the adequacy of the EA's analysis. Brief at 35-36." That is exactly what Hall has been complaining about and Appellees have admitted it.

15. *Id.* at 8-9, Section II. Once again Appellees admit they have improperly argued Phases IA, IB IC, and II of the proposed land exchange. They have failed, however, to cite any public notice noticing phases that are in documents dated after the EA and Del Webb land exchange was noticed and after Hall filed his original complaint. Where are the public notices that support Appellees' argument? They are not referenced because they did not exist on May 9 and August 27, 1997. The only history Appellees' have provided to the Court is the one they keep rewriting, a misleading act in its most charitable sense.

16. *Id.* at 9, continued paragraph. The claim "that Hall had standing to challenge only Phases IA and IB of the land exchange." This is the reason Appellees have interposed a misleading record on the district court and this Court. Appellees launched their land exchange well before they knew what they were going to do and how they were going to do it. Then they got greedy and wanted more. They then slipped a 56,638 acre EA past everyone in the public except Hall by noticing a 4,756 acre land exchange. This is more than misleading. This is a very serious air pollution issue.

17. *Id.* at 9, continued paragraph. "Hall's objection might have some merit if

BLM improperly focused on the phases of the land exchange to avoid discussing the cumulative impacts of the entire exchange.” That is exactly what they did, that is what the remand was all about.

18. Id. at 9, continued paragraph. “However in its response brief, BLM did not restrict its discussion to only one phase but instead discussed the cumulative impacts, and the EA’s analysis of cumulative impacts, and the EA’s analysis of cumulative impacts, of all 4,756 acres that were proposed to be exchanged in Phases IA, IB, IC and II. See Brief at 9-13, 25-34.” That is another admission that the “BLM improperly focused on the phases of the land exchange to avoid discussing the cumulative impacts of the entire land exchange which is exactly what the remand is all about.

The Motion to Strike goes to the heart of a land exchange that from the outset was misrepresented to the public. This Court granted a remand on the key 56,638 acre cumulative impact issue. In response Appellees have continued to obfuscate and mislead. The Appellees have not come to this Court with clean hands.

Respectfully submitted

Executed on October 15, 2003

/s/ Robert W. Hall  
ROBERT W. HALL, Pro Se

PROOF OF SERVICE

Case Name: Hall v. Norton, *et al.*

Case No.: No. 03-15719

I certify that one copy each of Plaintiff Appellant's Reply to Federal Appellees' Response in Opposition to Appellant's Motion to Strike and this proof of service were served by First Class Mail to the persons listed below on October 30, 2003.

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