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

6 ROBERT W. HALL,)

7 Plaintiff,)

8 vs.)

9 GALE A. NORTON; ROBERT V. ABBEY,)
10 UNITED STATES DEPARTMENT OF)
INTERIOR,)

11)
12 Defendants.)

Case No.: CV-S-02-1474-KJD-LRL

BASE FILE

Case No.: CV-S-03-0542-KJD-RJJ

CONSOLIDATED

13 **PLAINTIFF'S REPLY TO FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFF'S**
14 **MOTION FOR SUMMARY JUDGMENT**

15 **28 U.S.C. § 1927 AND/OR FED R. CIV. P. 11(b) VIOLATION NOTICE RE:**
16 **NONDISCLOSURE OF MATERIAL FACTS; FEDERAL EVIDENCE RULES 607-608**
IMPEACHMENT OF DEFENDANTS.

17 Defendants' have neglected to inform us that they have acknowledged that Plaintiff Hall
18 was right all along regarding the National Environmental Protection Act ("NEPA") issue which
19 is the central issue herein. On September 29, 2003¹ Defendants (Bureau of Interior and Bureau of
20 Land Management) caused a Federal Register ("FR") notice to appear announcing "Notice of
21 Intent To Prepare an Environmental Impact Statement for the Las Vegas Valley Disposal Area as
22 Expanded by the Clark County Conservation of Public Land and Natural Resources Act of 2002,
23 Pub. L. 107-282, November 6, 2002, as Well as Other Designated Disposal Areas Within the

24 _____
25
26 ¹ The notice was dated August 14, 2003 by Angie C. Lara, Acting Field Manager at 3. The notice
appeared in the FR on September 29, 2003.

1 **Las Vegas Valley.**” See, 68 FR 55991, Exhibit “U” attached hereto.

2 Summary: This document provides notice that the BLM intends to prepare a
3 comprehensive EIS with the specific purpose to authorize transfer of title disposal
4 actions or uses of public land in the Las Vegas Valley. The project area consists
5 of all lands currently identified for disposal within Las Vegas Valley, including
6 the Las Vegas Valley disposal area, the Valley West Disposal area and other
7 legislatively authorized disposal areas. ... The EIS will fulfill the needs and
8 obligations set forth by the National Environmental Policy Act (NEPA), the
9 Federal Land Policy and Management Act (FLPMA), and BLM management
10 policies. Completion of this EIS effort will ensure the intent of Congress as
11 portrayed in the Southern Nevada Public Lands Management Act is met by
12 providing land for organized local community development. The BLM will work
13 collaboratively with all the interested public. The public scoping process will help
14 identify issues and concerns based on potential build-out of the Las Vegas Valley
15 as well as other potential uses of lands within Hydrographic Area 212. This is
16 critical as Basin 212 is currently classified as a serious non-attainment area for
17 Particulate Matter 10 microns or less in size (PM10) and Carbon Monoxide (CO).

18 ...
19
20 Supplementary Information: Public Law 107-282 added approximately 22,000
21 acres to the existing Las Vegas Valley Disposal Area, by amending the existing
22 boundary defined and approved in the Southern Nevada Public Lands
23 Management Act, Pub. L. 105-263. Shortly after approval of Pub. L. 107-282, the
24 BLM experienced a rapid increase in the requests for public land disposal. Public
25 Law 107-282 significantly increased the amount of land available for disposal in
26 the Las Vegas Valley. This created an immediate need to augment the impact
analysis, especially the cumulative impact analysis contained in the Las Vegas
Resource Management Plan, signed October 5, 1998.

The changing needs and interests of the local governments and public relating to
land for growth within the Las Vegas Valley necessitates a comprehensive update
to the analysis in the existing Las Vegas Resource Management Plan, EIS. The
major issue themes that will be addressed in the EIS include; Impacts to air
quality; impacts to surface water hydrology and water quality; impacts to water
use based on increased population; protection of federally-listed species, state-
listed species, and BLM sensitive species; analyze development land use plans;
minimizing visibility impacts; balancing conflicting and compatible land uses;
protection of cultural and paleontological resources; environmental justice, social
and economic impacts, cumulative impacts of the project for the entire 212
hydrologic basin based on build-out (build-out will include sales, and other land
use authorizations); and assessment of land surface conditions....

27 In a BLM News release dated September 10, 2003 (Exhibit V attached hereto at 1), the
28 BLM admitted as follows:

1 The Clark County lands act, potentially adds 22,000 acres of land for sale by the
2 BLM to the highest bidder at public auction. **BLM must study the land for**
3 **potential impacts prior to any sale of the additional acreage.** Shortly after
4 approval of the Clark County lands act, Public Law 107-282, the BLM
5 experienced a rapid increase in the requests for public land disposal. The new law
6 significantly increased the amount of land available for disposal in the Las Vegas
7 Valley. This created an immediate need to augment the impact analysis,
8 especially the cumulative impact analysis contained in the Las Vegas Resource
9 Management Plan, signed October 5, 1998.... (Emphasis added.)

10 The statements made in the above-named exhibits acknowledge both the factual and the
11 legal merits of the nexus Plaintiff Hall's complaint. The statements made by the Defendants as
12 apply to all BLM land sales and exchanges, particularly at the acreages Defendants admit are
13 involved. Plaintiff Hall agrees that "**BLM must study the land for potential impacts prior to**
14 **any sale of the additional acreage.**" (Emphasis added.) There is no site specific NEPA
15 compliant cumulative impact EIS determination for PM10 and CO before this court for any of
16 the 74,000 acres of the Southern Nevada Public Land Management Act ("SNPLMA") or the
17 Clark County Conservation of Public Land & Natural Resources Act of 2002 ("CCCPLNRA").
18 Plaintiff also agrees that an environmental impact statement ("EIS") is required.

19 The above statements constitute a series of admissions that Defendants have denied the
20 Court and Plaintiff Hall throughout the briefing process. By failing to make these admissions
21 earlier, Defendants caused the Court to deny Plaintiff Hall's request for a preliminary injunction
22 and their subsequent motion for summary judgment. See, Federal Defendants' Motion For
23 Summary Judgment dated August 22, 2003 and Federal Defendants' Response to Plaintiff's
24 Motion For Summary Judgment dated September 23, 2003. Both were dated after the August 14,
25 2003 date of the FR notice. Id. at 3. There is no excuse for Defendants' failure to come forward
26 and admit the obvious a long time ago. They clearly have known for some time that their
statements and arguments were not simply misleading, they were and are knowingly and

1 deliberately false.

2 Plaintiff Hall's discussion in his September 23, 2003 response memorandum at 1-11 is
3 clear that the last time the public had an opportunity to comment on the full RMP/FEIS as
4 opposed to little pieces of that document was in 1992. No one had heard of the SNPLMA or the
5 CCCPLNRA in 1992. Id. at 1. A complete copy of the RMP/FEIS is not a part of the
6 Administrative Record. Without an AR copy of the RMP/FEIS, Plaintiff Hall is denied an
7 opportunity to challenge the Plan. Defendants may not lawfully rely on a plan that is not in the
8 AR, There is no AR evidence that the RMP/FEIS that the document was ever noticed to the
9 public for SNPLMA or CCCPLNRA purposes. The RMP/FEIS has lapsed without a five year
10 review assuming solely for the sake of argument that there is anything in that document that has
11 any application in this site specific action at all. Data and information from 1990 or 1994 or 1998
12 are clearly stale and inadequate.

14 Defendants admissions listed above put an end to the charade that little-piece EAs
15 substitute for NEPA compliance for any SNPLMA or CCCPLNRA purpose. Defendants admit
16 that an EIS is required. There is nothing but misleading, inadequate and legally insufficient EAs
17 in the AR. The requirement has not changed since 1969 when NEPA was first promulgated or
18 1970 when the President signed NEPA into law.

20 Defendants had and have a duty to timely make the above admissions herein. Arguing
21 opposite to their FR notice and news release until the Plaintiff Hall discovered this 28 U.S.C. §
22 1927 and/or Fed. R. Civ. P. 11(b) violation is not the Defendants' finest hour. The Defendants
23 are ethically challenged. Nondisclosure of material facts to the Court are sanctionable under 28
24 U.S.C. § 1927 and/or Rule 11. See, *Pipes Trades Council v. Underground Contractors Ass'n*,

1 835 F.2d 1275, 1280-1281 (9th Cir. 1987).² Plaintiff Hall requests those sanctions against the
2 Defendants.

3 If, after further investigation a party learns its contention is not warranted, it must not
4 pursue the matter further. Although Rule 11 does not require that pleadings be amended to
5 withdraw such matters, sanctions may be imposed if the litigant reaffirms or renews the
6 allegation or denial in subsequent “presentations” to the court. *Committee Notes on Amendments*
7 *to Federal Rules of Civil Procedure* (1993) 146 FRD 401, 586. The purpose of Rule 11 is to
8 deter baseless filings. Since August 14, 2003 and obviously for a period of preparation time
9 earlier, Defendants have filed baseless filings in this Court by their own FR admissions, *supra*.
10

11 Defendants have moved for summary judgment without an affidavit or a proper
12 declaration. A motion for summary judgment filed without an affidavit or declaration of facts to
13 support the motion (as required by FRCP 56) is “not well grounded in fact’ and merited
14 sanctions.” *Mossman v. Roadway Express, Inc.*, 789 F.2d 804, 805. Under the circumstances
15 described herein, Plaintiff Hall is not surprised that there is no signed affidavit in this action.
16

17 Under the circumstances presented herein, the summary judgment motion and subsequent
18 papers filed by the Defendants were filed for the improper purpose of unnecessary delay in order
19 to prevail by any means. The motions and papers such as the summary judgment motion and
20 subsequent papers are certifications both as to the factual and legal merits as well as the proper
21 purpose involved. Fed. R. Civ. P. 11. By the Defendants own admissions they fail to meet the
22 test of their certifications.
23

24 ² Since governmental agencies may impose substantial restrictions on the discretion of their
25 attorneys, the allegation is against the Defendants. *Committee Notes on Amendments to Federal*
26 *Rules of Civil Procedure* (1993) 146 FRD 401, 589. 28 U.S.C. § 1927 sanctions however, are
against the attorneys which Plaintiff Hall claims only if counsel had relevant prior knowledge of
the information in Exhibits U and V.

1 Defendants cannot produce the following from the AR:

- 2 1. The required site specific NEPA compliant SNPLMA and CCCPLNRA EIS
3 (particularly for site specific cumulative impact purposes).
- 4 2. An RMP/FEIS that is not stale or legally insufficient and has not lapsed.
- 5 3. Evidence of a legally sufficient Administrative Procedures Act (“APA) compliance
6 regarding RMP/FEIS and NEPA public notice and public involvement compliance for all of the
7 environmental support they claim herein.
- 8 4. An EPA approved Nevada/Clark County SIP that meets the requirement of the 1990
9 amendments to the Clean Air Act (“CAA”) for conformity or any other applicable purpose
10 herein.
- 11 5. Credible citations to law that support the contention that Defendants have the lawful
12 statutory and regulatory support to proceed with the processing of the land auction sales that are
13 the subject of this action after the fact of their admissions cited herein.
- 14 6. Evidence that Defendants corrected their motion and other papers from the time when
15 they knew that their statements and arguments before this Court were without a factual or legal
16 foundation at a date well prior to August 14, 2003.

17
18
19 Plaintiff Hall is entitled to summary judgment and an injunction as originally requested. In
20 the alternative, nothing herein limits the power of the Court to impose sanctions sua sponte nor
21 does it bar the Court from issuing a show cause order.

22 Dated: October 10, 2003, Las Vegas, Nevada.

23 Respectfully submitted,

24 /s/ Robert W. Hall

25 ROBERT W. HALL, Plaintiff, pro se