

1 ROBERT W. HALL. Pro Se
10720 Button Willow Drive
2 Las Vegas, Nevada 89134
(702) 360-3118
3 FAX: (702) 360-3119
4

5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF NEVADA
7

8 ROBERT W. HALL,)

9 Plaintiff,)

10 vs.)

11 GALE A. NORTON; ROBERT V. ABBEY,)
12 UNITED STATES DEPARTMENT OF)
INTERIOR,)

13 Defendants.)
14

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

BASE FILE

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

CONSOLIDATED

15 **PLAINTIFF’S RESPONSE TO FEDERAL DEFENDANTS’ MOTION FOR**
16 **SUMMARY JUDGMENT; DECLARATION OF ROBERT W. HALL;**
17 **EXHIBITS “S” – “T”; CERTIFICATE OF SERVICE**

18 **ISSUE SUMMARY**

19 Defendants are attempting to tier insufficient environmental assessments (“EAs”) to a
20 Resource Management Plan and Final Environmental Impact Statement (“RMP/FEIS”), long
21 range, programmatic planning documents that were never intended to support site specific
22 National Environmental Policy Act (“NEPA”) cumulative impact determinations. The
23 RMP/FEIS process was started thirteen years ago in 1990. The last opportunity the public had to
24 comment on the RMP/FEIS without restrictions placed on the commenting process that made
25 certain there would not be substantive commenting was 1992, eleven years ago. The plan was
26 finally approved in 1998 without an unrestricted opportunity for public commenting on the entire
27 plan subsequent to 1992. There is no evidence of a NEPA compliant environmental impact
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1 statement since 1992 based on the lack of an unrestricted opportunity to comment, or 1998
2 regardless of commenting. The plan has not been subject to a five year review even the
3 Defendants admit is required despite the arrival of the Southern Nevada Public Land
4 Management Act (“SNPLMA”) as amended by the Clark County Conservation of Public Land &
5 Natural Resources Act of 2002 (“CCCPLNRA”). Combined the two acts represent 74,000 acres
6 of land disposal. Defendants then pronounce themselves categorically excluded using a Clean
7 Air Act (“CAA”) definition out of context that in context, leads to the opposite conclusion. At
8 the same time Defendants ignore NEPA regulations that are separate and parallel. Even out of
9 context, NEPA does not support a claim of categorical exclusion considering the facts herein
10 such as 74,000 land disposal acres. In the process, the Las Vegas Valley continues in serious air
11 pollution non-attainment. Defendants cannot seem to grasp the parallel statutory and regulatory
12 requirements. The solution is to complete a late five year RMP review and then complete a
13 NEPA compliant EIS for all of the Defendants’ direct and indirect air pollution activities without
14 any claims of categorical exclusions. In the interim, Defendants have no lawful support for land
15 disposals.

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19 **RMP/FEIS ISSUES**

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21 Defendants filed two Reference Documents regarding the 1998 Resource Management
22 Plan (“RMP”)/Final Environmental Impact Statement (“FEIS”). The first document was filed as
23 a part of the Administrative Record For the November 15 2002 Land Sale and Direct Sale to
24 North Valley Enterprises (“N-AR”) in Volume 7, 87, 003438 and again in the Administrative
25 Record For the June 5, 2002 Land Sale (“J-AR”) in Volume 2, 27, 000516 (Consolidated). The
26 first document is titled, “Chapter 4 – Environmental Consequences section of the Las Vegas
27 Proposed RMP/FEIS.” See Exhibit “S” attached hereto.
28

1 The second document which is the same document with two different titles was filed as a
2 part of the Administrative Record For the November 15 2002 Land Sale and Direct Sale to North
3 Valley Enterprises in N-AR Volume 8, 88, 003498. The second document is titled, “Record of
4 Decision (ROD) for the Approved Las Vegas Resource Management Plan and Final
5 Environmental Impact Statement; Land Management section (pp. 16-19) of the ROD tiered to in
6 EA No. **NV-050-2002-135**¹ (See Tab 41 for EA) for the November 15, 2002 Land Sale and
7 Direct Sale. See Exhibit “T” attached hereto.
8

9 The second document (the same document as above) was also filed as a part of the
10 Administrative Record in the Administrative Record for the June 5, 2002 Land Sale in J-AR
11 Volume 2, 28, 000572 (Consolidated). The second document is titled, “Record of Decision
12 (ROD) for the Approved Las Vegas Resource Management Plan and Final Environmental
13 Impact Statement; Land Management section (pp. 16-19) of the ROD tiered to in EA No. **NV-**
14 **050-2003-89**² (see Tab 9 for EA) for the June 5, 2003 Land Sale.
15
16

17 The two different environmental assessment documents tier to the same RMP ROD
18 document, only the AR names are different. Defendants may lawfully “tier” to any reference
19 document, but not for the purpose of evading NEPA compliance. In this instance, Defendants
20 have “tiered” environmental assessments to the RMP/FEIS for the improper purpose of evading
21 compliance with the National Environmental Policy Act (“NEPA”) in general, and more
22 specifically NEPA environmental impact statement (“EIS”) and cumulative impact
23

24
25 ¹ N-AR at 001996. Exhibit “B” attached to Plaintiff Robert W. Hall’s Motion for Summary
Judgment dated May 12, 2003.

26 ² J-AR at 000014. Exhibit “C” attached to Plaintiff Robert W. Hall’s Points and Authorities in
27 Support of Motion for an Emergency Preliminary Injunction or Temporary Restraining Order
28 filed May 27, 2003; See Affidavit of Robert W. Hall attached thereto dated May 27, 2003 at 4-6
for the certification of Exhibits “A” – “P.” See the Affidavit of Robert W. Hall attached to
Plaintiff Robert W. Hall’s Motion for Summary Judgment dated August 22, 2003 for the
certification of Exhibits “A” – “R.”

1 determination compliance. See *Plaintiff Robert W. Hall's Consolidated Motion for Summary*
2 *Judgment and Consolidated Summary Judgment Points and Authorities* dated August 22, 2003.
3 (“Pl. Cons. S.J. P&A.”) Defendants did not file the May 1998 Proposed Las Vegas Resource
4 Management Plan and Final Environmental Impact Statement, Volumes I – II or a final version
5 of the proposed RMP in the consolidated AR. Defendants did not file evidence of Federal
6 Register (“FR”) or other public notices regarding any phase of RMP/FEIS process.³

8 Defendants claim approved RMP incorporation by reference without telling the public
9 where a copy of the document was available. “The approved RMP ... displayed as Appendix A,
10 consists of the proposed decisions described in the Proposed Las Vegas RMP.” *Id.* at N-AR
11 003501. The statement is misleading since Appendix A is not “the approved RMP.” If in the
12 alternative Appendix A is the RMP, Defendants are in serious trouble on the basis that Appendix
13 A does not meet any NEPA compliance requirement. Among other deficiencies, there is no site
14 specific air pollution NEPA data in Appendix A. There is no mention of the SNPLMA in any of
15 the above-named documents.

18 “This record of decision for the Las Vegas RMP, fulfills the requirements of the Federal
19 Land Policy and Management Act (FLPMA) of 1976 (43 CFR 1600). This document meets the
20 requirements for a Record of Decision as provided in 40 CFR 1505.2.” *Id.* at 003501. Once
21 again, a certification of compliance with NEPA, CAA and APA are missing. This statement is
22 yet another example of Defendants disdain for the environmental laws of this country.

24 Defendants simply ignore the environmental laws of this country.

25 “Although decisions described in this record of decision are not appealable in accordance
26 with BLM regulation 43 CFR 1610.5-2(b), citizens are encouraged to participate during
27

28 ³ In judicial review, the parties must deal with the administrative record(s) Defendants have filed.

1 implementation of these decisions.” *Id.* at 003501. The statement is misleading. The statement
2 along with many others like it, demonstrates how the BLM has evaded public notice and public
3 involvement requirements by giving misleading legal advice to the public without mentioning
4 the requirements and rights of NEPA, CAA and APA. The statement provides further evidence
5 of federal agency excess while misleading the public.
6

7 In their ROD Introduction, Defendants describe the RMP as “a comprehensive
8 framework.” We agree. That is all that it is, a framework. The document is useless for site
9 specific compliance. It is too old and too vague and ambiguous. “The new plan will guide the
10 management of the public land resources for the next 20 years for portions of Clark County and
11 Southern Nye Counties [sic] southern Nevada.” *Id.* at 003502. That has nothing to do with site
12 specific NEPA, CAA and APA requirements.
13

14 Defendants admit that,

15 ... development of this land-use plan began early in **1990** when the public was
16 invited to become involved through participating in several scoping meetings.” “It
17 was published and sent to the public for review in May of **1992**. A supplement to
18 the draft was developed to provide an alternative which would address
19 implementation of the Desert Tortoise Recovery Plan, as well as analyze range
20 reclassification, corridors and future management of Wilderness Study Areas
21 following Congressional release or designation. This document was released to
22 the public in May of **1994**. Following BLM review of over 400 comment letters
23 on the Draft and Supplement, the Proposed Plan and Final Environmental Impact
24 Statement was developed and sent to the public for the 30 day protest period [sic]
25 June of 1998. Fourteen letters of protest were subsequently filed with the BLM
26 Director. The resolution of these protests involved many phone calls and meetings
27 with some of those who protested and the Nevada State Clearinghouse. The final
28 resolution of these protests and State concerns were completed in September of
1998. Copies of the protest and BLM response letters addressing specific points
of protest are available for public review at the BLM Las Vegas Field Office. As a
result of the protests, we are adjusting the proposed disposal boundary for Sandy
Valley. The concerns of the State were noted. (Emphasis added.)

Id. at 003502.

1 **IMPEACHMENT OF DEFENDANTS**

2 The above statement is misleading. The reader cannot tell how many protests or
3 comments Defendants received from government agencies who are noticed a different way than
4 the public. Government agencies are notified by direct mail. The Public Involvement Statement
5 and Protest Issues and Responses statements are misleading. *Id.* at 003507-003510. There is no
6 evidence in the AR supporting the statements made therein. By publishing summaries instead of
7 evidence, Defendants make certain that the identity and affiliations of those who commented are
8 not revealed. The summary gives the impression that the comments are all from the public. That
9 is not true. There is no way to match the comments with a particular FR or local notice. There is
10 no indication of the substance of the comments or whether Defendants responses are reasonable
11 or unreasonable in relation to the comments where summaries are used in place of actual
12 comment or protest documents. Defendants do not want anyone to see the comment or protest
13 documents because they are embarrassing. To the extent that Defendants make unsupported
14 statements, they have waived their right to support them in judicial review.

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18 Defendants published several FR notices which are not in the AR. The missing
19 documents are embarrassing to the Defendants. Plaintiff requests that the Court take judicial
20 notice of their absence and grant summary judgment. In the alternative, Plaintiff requests leave
21 for discovery in order to impeach the Defendants. Plaintiff alleges that if the following FR
22 notices were in the AR, they would not support Defendants' claims. The FR documents would
23 support the following allegations:

24
25 55 FR 60, 11445 (03-28-90) – Intention to Prepare Stateline Resource Management Plan
26 and Environmental Impact Statement; Stateline Resource Area, Nevada. The public was invited
27 to participate in identification of issues, review of planning criteria and formulation of
28

1 alternatives. The public was invited to nominate or recommend for consideration in this
2 RMP/EIS “Area of Critical Environmental Concern” ACECs).

3 55 FR 89, 19110 (05-08-**90**) – Resource Management Plans, etc.: Stateline Resource
4 Area, NV. Extends the time for public scoping period to May 31, 1990.

5 57 FR 138, 31730 (07-17-**92**) - Draft Stateline Resource Management Plan and
6 Environmental Impact Statement; Nevada. Responds to public requests for a hearing scheduled
7 for August 5, 1992 and extends the public comment period to September 15, 1992.

8 57 FR 179, 42596 (09-15-**92**) – Draft Stateline Resource Management Plan and
9 Environmental Impact Statement. Responds to agency and public requests to another extension
10 of time to comment to December 31, **1992**.

11 59 FR 59, 20420 (06-01-**94**) – Notice of Availability of the Supplement to the Draft
12 Stateline Resource Management Plan and Environmental Impact Statement. Notices a
13 Supplement to the Stateline Resource Management Plan and Environmental Impact Statement
14 for a 90 day review period. **Written comments were requested only on the Supplement which**
15 **restricted comments to (1) Ephemeral/perennial rangeland classification; (2) utility**
16 **corridors; (3) mineral management in Wilderness Study Areas not designated by Congress;**
17 **and (4) implications of the U.S. Fish and Wildlife Service’s (FWS) Draft: Tortoise Recovery**
18 **Plan and Proposed Critical Habitat. Comments were restricted to these four issues.**
19 (Emphasis added.)

20 63 FR 99, 28410 (05-22-**98**) – “Notice of availability of the Proposed Las Vegas
21 Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS) is available
22 to the public for a 30 day protest period.” “**The proposed Plan and Supplement may be**
23 **protested by any person who participated in the planning process, and who has an interest**
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1 **which is or may be, adversely affected by the approval of the Proposed Plan. A protest may**
2 **raise only those issues which were submitted for the record during the planning process**
3 **(see Code of Federal Regulations 1610.5-2)."** (Emphasis added.)
4

5 63 FR 108, 30745 (06-01-98) – “Environmental Impact Statements; Notice of
6 Availability. EIS No. 980207, Final EIS, BLM, NV, Las Vegas Land and Resource Management
7 Plan, (formerly known as Stateline Resource Area, Land and Resource Management Plan),
8 Implementation, Clark and Nye Counties, NV, Due: July 14, 1998. Contact: Jeff Steinmetz (702)
9 647-5097.” **There is no other information in the text.** There is no evidence that the EIS was
10 noticed to the public by a scoping list, direct mail despite requests from Plaintiff and there is no
11 evidence of a solicitation of public comment on the proposed RMP/FEIS document by
12 publication in the local newspapers.
13

14 Defendants made a decision to comply only with Department of Interior regulations
15 despite their duty to also comply with NEPA, CAA and APA. By failing to submit evidence of
16 NEPA, CAA and APA compliance, Defendants have waived their right to do so in judicial
17 review. This is only a small sample of the impeachment evidence Plaintiff Hall would have
18 submitted and argued if Defendants had included AR evidence in support of their decision to
19 base their support on an RMP/FEIS that restricted the public from commenting on the complete
20 RMP/FEIS after **1992**.
21

22 The comments Defendants claim they received are not separated as to whether they are
23 governmental agency comments or public comments. The issue is that Defendants do not
24 notice governmental agencies when they do not notify the public. Almost all of the public comments
25 are from **1992**. Comments after **1992** were restricted by Defendants after they were traumatized
26 by the hundreds of comments they received in response to their **1992** notices. Defendants
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1 subsequently made certain that the public would not have an opportunity to comment like they
2 did in **1992**. Without challenge to the regulation at all, Defendants cannot have it both ways.
3 Defendants cannot claim the RMP/FEIS was lawfully adopted if Defendants restricted
4 commenting only to those who participated in the planning process. The issue is NEPA
5 regulations, not Department of the Interior (“DOI”) regulations.
6

7 “After preparing a draft environmental impact statement and before preparing a final
8 environmental impact statement the agency shall: ... (4) Request comments from the public,
9 affirmatively soliciting comments from those persons or organizations who may be interested
10 and affected.” 40 C.F.R. § 1503.1(a) (h). See also 40 C.F.R. § 1506.6. The issue was thoroughly
11 discussed in Pl. Cons. S.J. P&A. at 28-34.
12

13 The RMP/FEIS is not and never was intended to be a NEPA compliant document that
14 justified the cumulative environmental impacts of the BLM’s air pollution activities in the Las
15 Vegas Valley non-attainment area, noticed to the public for that purpose. The RMP/FEIS from
16 1990 on certainly does not justify the disposal of 74,000 Southern Nevada Public Land
17 Management Act acres. The document lapsed after there were no five year reviews in 1997. A
18 NEPA compliant cumulative impact determination comes before, not after land is sold or
19 exchanged. Plaintiff believes that the issue is moot since a complete RMP/FEIS document is not
20 in either the November (“N-AR”) or the June (“J-AR”) consolidated AR.
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23 **DEFENDANTS’ INTRODUCTION AND SUMMARY**

24 Re: Defendants’ Memorandum of Points and Authorities in Support of Federal
25 Defendants’ Motion for Summary Judgment at 2. Defendants’ Introduction and Summary of
26 Argument misconstrues Plaintiff’s claims by attempting to limit their scope. Plaintiff’s motion
27 and memoranda speak for the Plaintiff and are much broader than Defendants’ “summary.”
28 Plaintiff’s claims regarding Defendants’ failure to comply with the National Environmental

1 Policy Act (“NEPA”) go back to the Act’s inception regarding all NEPA compliance, not simply
2 one requirement at one very stale point in time. Plaintiff’s NEPA claims are not tied only to the
3 Southern Nevada Public Land Management Act (“SNPLMA”). Plaintiff was very specific about
4 Defendants’ failure to conduct or produce a NEPA compliant cumulative impact determination
5 from the inception of the Act along with the failure to keep a cumulative impact determination
6 current since that time. Further, Plaintiff’s claims lack citations to claims of supporting
7 documents in the administrative record (“AR”). Most of the documents Defendants rely upon are
8 not in any AR.
9
10

11 **DEFENDANTS’ OBFUSCATION**

12 Defendants like to shift back and forth between NEPA and CAA requirements in order to
13 confuse the reader to the maximum extent possible. This consolidated action is primarily a
14 NEPA action with NEPA statutes, regulations and definitions. Only after those issues are
15 decided do we turn to CAA requirements. See, the National Environmental Policy Act
16 (“NEPA”), 42 U.S.C. §§ 4321-4370e and 40 C.F.R. §§ 1500-1508 and the Clean Air Act
17 (“CAA”) §§ 7401-7671q.
18

19 **RMP/FEIS OBJECTIONS**

20 There is no evidence in the AR of an environmental document that complies with the
21 NEPA required “scope” of Defendants’ actions. See 40 C.F.R. § 1508.25. As but one example
22 from 40 C.F.R. § 1508.25(a), NEPA requires that an environmental impact statement (“EIS”) for
23 site specific air pollution actions that must cover “connected actions, which means they are
24 closely related and therefore should be discussed in the same impact statement.” Actions are
25 connected if they, “(iii) Are interdependent parts of a larger action and depend on the larger
26 action for their justification. (2) Cumulative actions, which when viewed with other proposed
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1 actions have cumulatively significant impacts and should therefore be discussed in the same
2 impact statement.”

3 Re: Defendants’ Memorandum of Points and Authorities in Support of Federal
4 Defendants’ Motion for Summary Judgment at 11-14. The discussion of the 1998 Resource
5 Management Plan and Final Environmental Impact Statement (“RMP”) is seriously misleading
6 for the reasons that are in Pl. Cons. S.J. P&A at 28-31. Once again Defendants discuss an
7 average land disposal rate. There is no discussion citing statutes that hold the BLM to that
8 average land disposal argument when actually disposing of land.
9
10

11 **CATEGORICAL EXCLUSION CLAIM DISCUSSION**

12 In the November EA, CO is admitted at 153.26 tons/year and the PM10 at 185.62
13 tons/year “if all the assumptions prove true.” Id. 16. “BLM concludes that, “[a]ll emission
14 estimates for this land sale are within emission estimates contained in the” RMP. That statement
15 has nothing to do NEPA cumulative impact requirements or CAA conformity requirements. In
16 the June EA, CO is admitted at 137.87 tons/year and the PM10 at 176.67 tons/year. The
17 consolidated totals are 291.13 for CO and 362.27 for PM10.
18

19 As Plaintiff discussed in Pl. Cons. S.J. P&A at 40, when Defendants claim categorical
20 exclusion” they leave out the modifying sections of the C.F.R. section. There are limits to the
21 claim of categorical exclusion. The limit is 100 tons per/year for CO and 70 tons/year for PM10.
22 They are estimates of a tiny fraction or 2,276.26 acres of the 74,000 acres. Both NEPA and the
23 CAA require estimates for the entire 74,000 acres for the major federal action SNPLMA. NEPA
24 requires a cumulative impact determination for all of the agency’s Las Vegas Valley air pollution
25 actions.
26

27 NEPA’s definition of a categorical exclusion may be found at 40 C.F.R. § 1508.4.
28

1 *Categorical exclusion* means a **category of actions which do not individually or**
2 **cumulatively have a significant effect on the human environment** and which
3 have been found to have no such effect in procedures adopted by a Federal agency
4 to in implementation of these regulations (§1507.3) and for which, therefore,
5 neither an environmental assessment nor an environmental impact statement is
6 required. An agency may decide in its procedures or otherwise, to prepare
7 environmental assessments for the reasons stated in § 1508.9 even though it is not
8 required to do so. **Any procedure under this section shall provide for**
9 **extraordinary circumstances in which a normally excluded action may have**
10 **a significant environmental effect.** (Emphasis added.)

11 The SNPLMA at 74,000 acres is an extraordinary circumstance that obviously has
12 significant environmental effect.

13 See Pl. Cons. S.J. P&A. at 31-34. Defendants offer arguments involving Clean Air Act
14 (“CAA”) issues when they are pressed to provide evidence of **NEPA** compliance. NEPA issues
15 and CAA issues are entirely different issues. The intention of NEPA is that it precedes CAA
16 compliance. The big lie is Defendants’ claim of “categorical exclusion,” a Clean Air Act issue
17 that has nothing to do with NEPA compliance.

18 **JURISDICTION, RES JUDICATA**

19 Argument involving jurisdiction issues and res judicata in the Clean Air Act context are
20 not relevant to the facts of the consolidated actions. Defendants are attempting to set up a straw
21 issue to knock down.

22 Id. at 21. Defendants’ claim a lack of jurisdiction by citing a small, moot section of *Hall*
23 v. *Norton*, 266 F. 3d. 969 (9th Cir. 2001) and CV-S-97-01146-LDG (RJJ) (D. Nev.), that is not
24 relevant to the consolidated NEPA actions. Plaintiff Hall requests that the Court take judicial
25 notice of all of *Hall*, not just one part of it. *Hall* was a victory for Plaintiff Hall on the key issues
26 of NEPA compliance and standing.

27 The district court found that if Plaintiff wanted to challenge the validity of 40 C.F.R. §
28 93.153(c) (2) (xiv), he had to go to the United States Court of Appeals for the District of

1 Columbia. Plaintiff Hall knows that the United States Court of Appeals for the District of
2 Columbia has jurisdiction over a direct challenge to an EPA regulation and has no problem with
3 that fact. The point is moot and not relevant therein and herein.⁴ “... **Hall’s challenge**
4 **necessarily must be considered as a challenge to the validity of the exemption.**” The court
5 stated the obvious. That is a non-issue therein and herein.
6

7 Id. at 21. Re: Jurisdiction. Plaintiff discussed *Hall v. Norton*, 266 F. 3d. 969 (9th Cir.
8 2001) and CV-S-97-01146-LDG (RJJ) (D. Nev.) in his summary judgment motion points and
9 authorities at 11, 13, 24, 32 and 34. Defendants have failed to make any attempt to show parallel
10 with the facts of Ninth Circuit Court appeals and the district court cases cited therein with the
11 facts of these consolidated actions. *Norton* involved a land exchange with one corporate entity,
12 not a land auction sales to many bidders. *Norton’s* EA was noticed as slightly less than 5,000
13 acres despite the fact that 57,000 acres is buried in the text.
14

15 There is no evidence in the AR of this action that Plaintiff has alleged any claim against
16 the validity of 40 C.F.R. § 93.153(c) (2) (xiv) or any other regulation. To the contrary, Plaintiff
17 has argued that Defendants did not comply with the combined requirements of 40 C.F.R. §§
18 51.850-860 and 40 C.F.R. §§ 93.150-160, an argument that seeks to uphold the validity of the
19 regulation in its entirety.
20

21 Defendants simply will not acknowledge the sections of 40 C.F.R. that modify and limit
22 any claim of categorical exclusion.
23

24 40 C.F.R. § 51.853 (7-1-96) Applicability. ...

25 (b) For Federal actions not covered by paragraph by paragraph (a) of this section,
26 a conformity determination is required for each pollutant where the total of direct

27
28 ⁴ Hall briefly considered a request for en banc consideration in *Hall* until he realized the Court was merely re-stating the jurisdictional rule regarding direct challenges to the validity of EPA regulations, a moot point since Hall was not claiming otherwise.

1 and indirect emissions in a nonattainment or maintenance area caused by a
2 Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2)
3 of this section.

4 (1) For the purposes of paragraph (b) of this section, the following rates apply in
5 nonattainment areas (NAAs): ... Carbon monoxide: All NAA's.....100 tons/year;
6 PM-10: Serious NAAs.....70 tons/year. ...

7 (c) The requirements of this subpart shall not apply to: (1) Actions where the total
8 of direct and indirect emissions is below the emissions are below the emissions
9 levels specified in paragraph (b) of this section.

10 (2) The following actions which would result in no emissions increase or an
11 increase in emissions that is clearly *de minimis*:

12 (xiv) Transfers of ownership, interests, and titles in land, facilities, and real and
13 personal properties, regardless of the form or method of the transfer.

14 This is not an action against transfers of ownership (pushing paper across a table),
15 interests, and titles in land, facilities, and real and personal properties, regardless of the form or
16 method of the transfer. This is not an action against a paper transfer of ownership after a land
17 auction sale. This is first a NEPA action and secondarily after NEPA compliance, an action
18 against parsed, major, significant land auction and direct sales that by Defendants' own
19 admissions in their legally insufficient EAs are not *de minimis* by the explicit 40 C.F.R. § 51.853
20 (b) and (c)(1) standards. All of the emissions from the BLM actions complained of herein exceed
21 70 tons of PM10 per year and 100 tons of CO per year despite the BLM's misleading parsing of
22 their actions into little-piece EAs. When Defendants' air pollution actions go beyond 70 tons per
23 year of PM-10 or 100 tons per year of CO, their air pollution is not *de minimis* and they are not
24 exempt from Clean Air Act compliance.

25 Defendants' following statement is not supported. "Because the claims are the same as
26 those in the cited cases, Mr. Hall's Clean Air Act claim must be dismissed for lack of
27 jurisdiction." That statement is misleading. After the bald assertion, Defendants failed to produce
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1 supporting evidence that shows that the claims are the same. The decision conclusion of the
2 Ninth Circuit Court of Appeals in *Norton* which Defendants failed to include is: “The dismissal
3 of Hall’s Clean Air Act claim is AFFIRMED, and **summary judgment in favor of the**
4 **Secretary on the NEPA claim is REVERSED.** We REMAND to the district court for further
5 proceedings consistent with the opinion.” (Emphasis added.) Hall prevailed on the issues of
6 standing and NEPA compliance. In the alternative and without prejudice, if the claims are the
7 same then Hall should prevail on both the NEPA claims and the CAA claims since Hall
8 prevailed on his NEPA claim and this consolidated action involves conformity in relation to
9 74,000 acres of land auctioned or sold for development. Defendants neglected to mention that the
10 *Norton* case is currently on its second appeal to the Ninth Circuit Court of Appeals.
11

12
13 As Plaintiff has made it clear in the consolidated actions, NEPA conformity
14 determinations precede Clean Air Act compliance. Data from NEPA compliance is the door that
15 opens Clean Air Act compliance and Plaintiff prevailed on the NEPA issue. He prevailed on the
16 important issue. The CAA decision was not relevant to the issues in that action and that decision
17 is not relevant to the issues herein. Plaintiff is not trying to set aside 40 C.F.R. § 51.853. That
18 regulation section support Plaintiff Hall’s CAA claims in its entirety. Defendants have a Fed. R.
19 Civ. P. 11 duty to cite all of the 40 C.F.R. § 51.853 section and deal with all of that section
20 herein. Regardless, that is a separate, secondary issue from the NEPA issue. In the alternative,
21 Defendants may claim compliance or categorical exclusion, one or the other. Defendants do not
22 comply when they repeat “categorical exclusion” with misleading statements that should not be
23 believed by anyone. Defendants are making a claim of environmental law exclusion which on its
24 face is absurd. See *Public Citizen v. Department of Transportation*, 316 F. 3d. 1002 (9th Cir.
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1 2003) as the most leading case on these issues.⁵

2 In *Hall v. Norton*, CV-S-97-01146-LDG (RJJ) (D. Nev.) the district court refused to
3 respond to the Ninth Circuit Court of Appeals remand, found that the land exchange was not a
4 “major federal action” and again granted summary judgment on the basis of the facts of that
5 1997 land exchange. The district court did not make any attempt to seriously comply with the
6 remand from the Ninth Circuit Court of Appeals. Hall has appealed again. The appeal number
7 03-15719. That action dates from 1997. The action precedes the enactment of the Southern
8 Nevada Public Land Management Act (“SNPLMA”) and the Clark County Conservation of
9 Public Land & Natural Resources Act of 2002 (“CCCPLNRA”) which are at issue herein. Hall
10 could not argue either major federal action in 1997 because they were not law in 1997.
11
12

13 **SNPLMA-CCCPLNRA DISCUSSION**

14 Id. at 2-5. Defendants’ SNPLMA and Clark County Conservation of Public Land &
15 Natural Resources Act of 2002 (“CCCPLNRA”) discussion fails to admit that Congress did not
16 waive compliance with NEPA, the CAA or the federal Administrative Procedures Act (APA”)
17 when either the SNPLMA or the CCCPLNRA were promulgated. Defendants’ brought politics
18 and money into the discussion. Defendants emphasized the claimed benefits while ignoring
19 discussion on the environmental issues, the issues that are actually before the Court. Defendants
20 cannot bear to discuss lung disease caused by air pollution much less quality of life or medical
21 cost issues.
22
23

24 Plaintiff has not and does not challenge the validity of the SNPLMA or the CCCPLNRA.
25 Plaintiff merely points out that environmental law compliance must precede any of the acts
26 authorized by SNPLMA or the CCCPLNRA.
27

28 ⁵ Errata. *Public Citizen v. Department of Transportation*, 316 F. 3d. 1002 (9th Cir. 2003) was inadvertently left out of the Pl. Cons. S.J. P&A (at 6) Table of Authorities.

1 Id. at 5-6. Defendants admit that the Clark County Conservation of Public Land &
2 Natural Resources Act of 2002 (“CCCPLNRA”) discloses that the actual disposal acreage has
3 now jumped from approximately 52,000 acres to a whopping 74,000 acres, all without evidence
4 of NEPA, CAA and APA environmental law compliance. That admission alone is sufficient for a
5 summary judgment finding in favor of the Plaintiff. There is no AR evidence regarding 74,000
6 acre NEPA, CAA or APA compliance.
7

8 **FONSI DISCUSSION**

9 Id. at 6-8. The statement at 7 regarding a “finding of no significant impact” (“FONSI”) is
10 thoroughly refuted in Plaintiff’s memorandum, particularly at 39-44. Defendants’ EA discussion
11 may also be read to confirm a “parsing” scheme in order to evade NEPA cumulative impact and
12 CAA conformity compliance. The discussion at 8 notes an “EIS prepared by BLM in 1998”
13 without reference to any AR exhibit. There is no complete EIS in the AR.
14

15 **SIP DISCUSSION**

16 Id. at 8-9. Defendants’ Clean Air Act discussion includes “SIP” conformance with a
17 “SIP” that does not exist. There is no AR evidence of a finally approved EPA SIP that meets the
18 1990 amendments to the Clean Air Act. The document does not exist, that is why it is not in the
19 AR. The exemption discussion at 9 was again refuted in Plaintiff’s memorandum, particularly at
20 39-44. There is no federal law, NEPA or CAA, permitting federal agencies to categorically
21 exclude themselves from the air pollution activities Defendants conduct in the Las Vegas Valley
22 serious non-attainment area. Defendants cannot cite any such law section in Defendants
23 summary judgment motion and memorandum.
24

25 **DROUGHT ISSUES**

26 The discussion at 14 and 17-18 regarding water consumption during the current drought
27
28

1 is stunning in the number of words it took Defendants to say absolutely nothing relevant to the
2 issues herein.

3 **DEFENDANTS' ARGUMENT**

4
5 Clean Air Act arguments are not relevant to summary judgment issues regarding a NEPA
6 complaint. When and if the Defendants ever comply with NEPA, which is never according to
7 their categorical exclusion arguments, then Clean Air Act arguments become relevant. Until
8 then, Defendants admitted failure to comply with NEPA alone prevents Defendants from going
9 forward at all, for any reason. Defendants have offered a series of misleading statements
10 claiming compliance with anything but NEPA. Defendants have not demonstrated compliance
11 with NEPA section by section. Defendants have not produced evidence that they caused public
12 notices clearly and explicitly noticing NEPA compliance actions in the Federal Register or in the
13 local newspapers. Defendants have no intention of ever complying with NEPA. Defendants'
14 strategy is to mislead and stall without regard to public health and safety.
15
16

17 **ERRATA**

18 Pl. Cons. S.J. P&A. starting with the last paragraph at 22 are a repeat of the preceding
19 three paragraphs and should be ignored. The words "NRPA compliant" at 2, Fn. 1 should read
20 "NEPA compliant. Plaintiff Hall regrets the errors."
21

22 **SUMMARY**

23 Summary judgment is warranted in favor of the Plaintiff on each of the major issues
24 herein. Defendants know they have never complied with NEPA, the CAA or the APA.
25 Defendants' claims and argument are best described as one long Fed. R. Civ. P. 11 violation
26 interposed without shame. Defendants should have faced their situation a long time ago. They
27 should have taken the steps necessary to achieve NEPA, CAA and APA compliance. NEPA is a
28

1 full disclosure requirement. Federal agencies operating in the Las Vegas Valley serious non-
2 attainment area have had a duty since 1970 to add up their direct and indirect air pollution and
3 simply report it. They could have accomplished most of the task by simply entering their EA
4 data from piles and piles of EA documents into an Excel or Access spreadsheet. Instead the
5 public, along with local, state and other federal agencies, has had to deal with the BLM's
6 absolute refusal to deal with their situation. The result has been a stunning deterioration in the
7 quality of life of everyone in the Valley including Hall at epidemic levels.⁶ Unfortunately, some
8 have lost more than the quality of their lives.
9
10

11 This honorable Court could relieve the suffering of many including Hall, by a careful
12 examination of the facts and a proper application of the law. It is long past the time for justice
13 regarding environmental health issues in Southern Nevada. Plaintiff Hall does not come to this
14 honorable court for money; he comes for the right to breathe cleaner air than seriously polluted
15 air. That goal cannot be achieved as long as federal agencies refuse to accept their environmental
16 law responsibilities.
17

18 Dated: September 23, 2003 at Las Vegas, Nevada.

19 Respectfully submitted,

20 /s/ Robert W. Hall
21 ROBERT W. HALL, Plaintiff, pro se
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23
24
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28 ⁶ The classic definition of an epidemic is 5% of a population. Southern Nevada's incidence of lung disease runs in the 13-15% range for those eighteen or over. Those below eighteen are believed to be higher than 15%.