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

8 ROBERT W. HALL,)
9 Plaintiff,)
10 vs.)

11 UNITED STATES DEPARTMENT OF)
12 TRANSPORTATION an Agency of the)
13 United States, NORMAN Y. MINETA, as)
14 Secretary of Transportation, WILLIAM H.)
15 KAPPUS, as Acting Administrator Nevada)
16 Division, Federal Highway Administration,)
17 RANDY J. BELLARD, as FHWA Planning)
18 and Research Engineer, and LESLIE T.)
19 ROGERS, as Regional Transit Administrator,)
20 Nevada Division, Federal Transit)
Administration,)
Defendants)

CV-S-03-0477-RLH-RJJ

21 **FIRST AMENDED COMPLAINT FOR JUDICIAL REVIEW AND TO ENJOIN**

22 Pursuant to Fed. R. Civ. P. 15(a), Plaintiff amends the original Petition for Review
23 Complaint in this action as a matter of course as follows:
24

25 **NATURE OF THE ACTION**

26 This is an action by a resident of a Clean Air Act serious non-attainment area to compel
27 Federal Defendants to comply and to conform to the environmental laws of this country in order
to protect and retain his environmental quality of life.

1 8. Plaintiff Robert W. Hall is a citizen of the State of Nevada. Hall lives, works, devotes
2 time to public service, recreates, and owns property in the Las Vegas Valley.

3 9. Defendant United States Department of Transportation (including its Federal Highway
4 Administration and Federal Transit Administration), is an agency of the United States.

5 10. Defendant Norman Y. Mineta as the Secretary and Administrator of the United States
6 Department of Transportation (“DOT”) is sued in his official capacity.

7 11. Defendant William H. Kappus as the Acting Division Administrator, Nevada
8 Division, Federal Highway Administration (“FHWA”), U.S. Department of Transportation is
9 sued in his official capacity.
10

11 12. Defendant Randy J. Bellard as an FHWA Planning and Research Engineer, U.S.
12 Department of Transportation (“DOT”) is sued in his official capacity.
13

14 13. Defendant Leslie T. Rogers as the Regional Administrator, Nevada Division, Federal
15 Transit Administration (“FTA”) is sued in his official capacity.
16

17 14. Defendants will be collectively referred to herein as the “DOT or Defendants.”

18 **FIRST CLAIM FOR RELIEF**

19 15. Plaintiff Hall lives, works, recreates, travels throughout the Las Vegas Valley serious
20 non-attainment areas for particle matter ten microns or less (PM10) and carbon monoxide (CO).
21 Ozone is also fast becoming a serious problem in the Valley. Hall has developed a sensitivity to
22 air pollution since he has moved to the Valley. Hall becomes short of breath, particularly when
23 there is dust or ozone in the air. Hall has had panic attacks as a result of his difficulty breathing.
24 Hall has had to change his plans from time to time to avoid areas of the Valley that experience either
25 visual or reported (by Clark County hourly monitoring) air pollution. Hall has been harmed by
26
27

1 the failure of defendants to fully disclose and discuss the part that DOT plays in the serious, air
2 pollution non-attainment area status of the Valley.

3
4 16. Hall alleges that before legally sufficient compliance and conformity with and to
5 NEPA, CAA and APA requirements, before providing Hall with his repeatedly requested
6 administrative due process and his Fourteenth Amendment to the Constitution of the United
7 States due process rights, the DOT noticed Hall with a Letter dated March 21, 2003 and a March
8 3, 2003 Conformity Finding for RTC's January 9, 2003 Transportation Improvement Program
9 and Plan. The Conformity Finding was signed by Leslie T. Rogers, FTA Regional Administrator
10 and Randy J. Bellard, FHWA Planning and Research Engineer. William H. Kappus is Mr.
11 Bellard's senior level supervisor in Nevada. See attached letter dated March 21, 2003 (Plaintiff's
12 Exhibit "A") and the March 3, 2003 Conformity Finding (P. Exhibit "B").
13

14
15 17. Plaintiff alleges that as structured and when all of the Valley air pollution activities of
16 the Defendants are considered, the Transportation Improvement Plan ("TIP") constitutes a major
17 federal action and a significant source of air pollution subject to the cumulative impact,
18 environmental impact statement ("EIS") requirements of NEPA as defined by CEQ regulations.
19

20
21 18. From the outset of NEPA, NEPA has required the preparation of a detailed
22 Environmental Impact Statement ("EIS") for all "major Federal actions significantly affecting
23 the quality of the human environment." 42 U.S.C.A. § 4332(2)(C), NEPA 102(2)(C), 40 C.F.R.
24 §§ 1501.4, 1508.9 (2001). NEPA regulations and case law require disclosure of all foreseeable
25 direct and indirect impacts. 40 C.F.R. § 1502.16. This requirement commenced with the
26 enactment of NEPA in 1969, as amended in 1975.
27

19. NEPA requires that agencies such as the DOT must adequately consider the direct
and indirect environmental impacts all of their air pollution causing projects cause where those

1 projects cause more than de minimis air pollution, individually and collectively. The
2 consideration given must amount to a “hard look” at the environmental effects of all of their
3 environmental activities. The public must be kept informed and made a part of the environmental
4 oversight process.

5
6 20. NEPA requires that an environmental analysis for a major and/or significant federal
7 agency air pollution causing project must consider the cumulative impacts of that project
8 together with all past, present and reasonably foreseeable future actions. NEPA is designed to
9 publicly consider the environmental impacts of federal agency air pollution actions and any other
10 environmental issues **before going forward**. 40 C.F.R. §§ 1508.7, 1508.27(b) (7) (2001); Hall v.
11 Norton, 266 F.3d 969, 978 (9th Cir. 2001).

12
13 21. NEPA responsibilities such as cumulative impact determinations are those where the
14 federal agency is responsible and may not lawfully delegate that responsibility to any local, state
15 or other federal agency.

16
17 22. CEQ regulations specifically admonish agencies that cumulative impacts can result
18 from individually minor but collectively significant actions taking place over a period of time. 40
19 C.F.R. §§ 1508.7 (2001).

20
21 23. In Public Citizen v. Department of Transportation, 315 F.3d 1002 (9th Cir. 2003), the
22 Ninth Circuit Court of Appeals interpreted NEPA to require a legally sufficient environmental
23 analysis before any irreversible and irretrievable commitment of resources.

24
25 24. Hall alleges that the DOT made a commitment of Federal Highway Administration
26 approvals and funding as a result of its Conformity Finding before it prepared any legally
27 sufficient NEPA document and before it complied with CAA conformity requirements, while
avoiding APA compliance.

1 25. The Conformity Finding at issue herein was made without reference to any NEPA
2 environmental document.

3 26. The Conformity Finding was made without reference to Nevada's and Clark County's
4 only, finally approved State Implementation Plan ("SIP"), the EPA approved 1979/81 SIP.

5 27. Defendants' Conformity Finding was made without reference to any legally sufficient
6 APA compliance including but not limited to public notice, a public comment period, hearings
7 and an opportunity thereafter for judicial review.

8 28. The Conformity Finding does not mention any Finding of No Significant Impact or
9 Decision Record.

10 29. Hall alleges that the DOT has never complied with NEPA, CAA or APA regarding
11 any of its Las Vegas Valley air pollution activities since the federal agency requirements were
12 first mandated.

13 30. Hall alleges that all Conformity Findings the DOT has issued in Nevada and Clark
14 County are misleading and are legally insufficient for any lawful purpose.

15 31. Hall alleges that the DOT has conspired with Nevada and Clark County local and
16 state agencies in order to parse DOT's Las Vegas Valley major and significant air pollution
17 activities in order to avoid NEPA, CAA and APA compliance or conformity.

18 32. Hall alleges that in the process of dividing its NEPA responsibilities into piles of
19 parsed EAs, the DOT intended to mislead the courts, Hall and the public for the purpose of
20 avoiding its NEPA responsibilities.

21 33. Plaintiff alleges that the DOT has failed and refused to prepare a Las Vegas Valley
22 current, up-to-date, detailed Environmental Impact Statement ("EIS") for all "major Federal
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1 actions significantly affecting the quality of the human environment for all of the projects it
2 authorizes and funds in Nevada and Clark County.” 42 U.S.C. § 4332(2) (C) (2001).

3 34. Plaintiff alleges that the DOT has failed and refused to determine and disclose all of
4 its foreseeable direct and indirect environmental impacts caused directly or indirectly by its Las
5 Vegas Valley air pollution actions including but not limited to those in the January 9 and 15,
6 2003 Transportation Improvement Program and Plan.

7
8 35. Plaintiff alleges that the DOT has failed and refused to consider the increased air
9 pollution that has resulted and will continue to result not only from the 2003 TIP, but
10 cumulatively from all of DOT’s ongoing air pollution activities in the Las Vegas Valley non-
11 attainment area from previous Conformity Findings.

12
13 36. Plaintiff alleges that judicial review is available to Hall pursuant to NEPA and the
14 APA. *See also*, 43 U.S.C.A. §§ 1701(a)(6), 1712(c)(7)-(8) and 1740.

15
16 37. For the foregoing reasons, plaintiff Hall is entitled to a review of his claims brought
17 pursuant to NEPA pursuant to the standards set out in the APA. Hall is entitled to have DOT
18 legal actions reviewed under the reasonableness standard, and to have DOT actions found to be
19 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and then
20 set aside.

21
22 **SECOND CLAIM FOR RELIEF**

23 Paragraphs 1-37 are incorporated herein by reference.

24 38. Defendants’ acts have proximately contributed to the serious air pollution of
25 Hydrographic Area 212, the Las Vegas Valley. The acts are alleged to be a first step in a chain of
26 causation that has caused and threatens to cause a deterioration of Plaintiff’s health. The
27 proximate acts of the DOT are expected to further deteriorate Hall’s health as a resident of

1 Valley (Hydrographic Area 212). Hall is not able to work, traverse or recreate the Valley in the
2 same manner as he would if the Valley's serious air pollution and Defendants' share of that air
3 pollution did not exist. Dust control in the Valley is by the application of water.
4

5 39. For the foregoing chain of causation reasons, plaintiff Hall is entitled to a review of
6 Defendants' actions or inaction in relation to NEPA and the CAA, all pursuant to the standards
7 set out in the APA.

8 40. Hall is entitled to have DOT legal actions reviewed under the reasonableness
9 standard, and to have DOT actions found to be arbitrary, capricious, an abuse of discretion, or
10 otherwise not in accordance with law, and then set aside.
11

12 **THIRD CLAIM FOR RELIEF**

13 Paragraphs 1-40 are incorporated herein by reference.

14 41. Plaintiff alleges that the Conformity Finding fails to discuss or otherwise deal with
15 the current drought or any of the current water shortage issues well known to everyone in the Las
16 Vegas Valley. There is no NEPA document that discusses that issue in any legally sufficient
17 way.
18

19 42. For the foregoing reasons, plaintiff Hall is entitled to a review of Defendants' actions
20 in relation to the agency's NEPA, CAA and APA responsibilities. Plaintiff is entitled to have
21 DOT's actions reviewed under the reasonableness standard, and to have DOT actions as
22 described herein found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
23 accordance with law, and then set aside.
24

25 **FOURTH CLAIM FOR RELIEF**

26 Paragraphs 1-42 are incorporated herein by reference.
27

1 43. The Conformity Finding does not include a statement of the adverse costs of air
2 pollution proximately caused by DOT's actions. One of those costs is health care, the price tag
3 for a deterioration of quality life or death. That involves both short term and long term costs. The
4 discussion is a requirement of NEPA.
5

6 44. For the foregoing reasons, plaintiff Hall is entitled to a review of his claims brought
7 pursuant to NEPA pursuant to the standards set out in the APA. Hall is entitled to have DOT
8 legal actions reviewed under the reasonableness standard, and to have DOT actions found to be
9 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and then
10 set aside.
11

12 **FIFTH CLAIM FOR RELIEF**

13 Paragraphs 1-44 are incorporated herein by reference.

14 45. Plaintiff alleges that from May 11, 1999, Defendants approved and funded projects in
15 Nevada and the Las Vegas Valley serious non-attainment area on the basis of a submitted but not
16 finally approved SIP submittal. See the three letters attached hereto, one dated March 6, 2003 (P.
17 Exhibit "C") and two dated March 17, 2003 (P. Exhibits "D" and "E").
18

19 46. Plaintiff alleges that at least from August 29, 2001, Defendants knew (because Hall
20 told them) and should have known that the May 11, 1999 submitted SIP approval was vacated
21 and remanded to the EPA by the Ninth Circuit Court of Appeals in Hall v. EPA, 273 F.3d 1146
22 (9th Cir. 2001).
23

24 47. Plaintiff alleges that either from May 11, 1999 or at the latest, August 29, 2001,
25 Defendants knew and should have known that the basis for all of their Nevada, Clark County
26 funding and approvals of actions that caused any direct or indirect air pollution during that
27 period was at best misleading. The basis for the approvals and funding was misleading from May

1 11, 1999 and doubly misleading from August 29, 2001. The Defendants knew or should have
2 known that the preliminary approval of the SIP was subject to public comment, Ninth Circuit
3 Court of Appeals judicial review and the vacating and remand of the submitted SIP that actually
4 occurred.

5
6 48. Plaintiff alleges that from at least May 11, 1999 Defendants cooperated with local,
7 state and other federal authorities to fund, permit and approve air pollution projects that kept the
8 Las Vegas Valley in serious non-attainment in violation of the National Ambient Air Quality
9 Standards (“NAAQS”) which are less stringent than the EPA approved 1979/81 SIP.
10

11 49. Plaintiff alleges that the people of the Valley including him, are entitled to an order
12 requiring Defendants a disclosure to the court and Hall of all of the air pollution activities
13 Defendants approved and funded by and through Conformity findings and a subsequent order
14 rolling back each and every action Defendants took that is expressly prohibited in 42 U.S.C. §
15 7506(2), CAA § 176(c). The legal basis for this request includes but is not limited to misleading
16 federal funding Conformity Findings as early as May 11, 1999 and as late as August 29, 2001.
17

18 50. Defendants, at all times relevant, failed and refused to consider the human quality of
19 life or the economic impact of the resulting air pollution on the citizens of the Las Vegas Valley,
20 one of whom is Plaintiff Hall.
21

22 51. In the alternative, Plaintiff requests such other roll-back relief as may be just in the
23 premises that will make it clear to the Defendants that approvals and funding decisions based
24 upon misleading or missing environmental law compliance or conformity requirements is not
25 favored by law.
26

27 **RELIEF REQUESTED**

Wherefore plaintiff and petitioner Hall respectfully requests that this Court:

- 1 1. Find the defendants "DOT" in violation of the laws, regulations and duties cited above;
- 2 2. Find that the defendants have denied plaintiff Hall his constitutional due process rights
- 3 regarding his NEPA, CAA and APA rights described herein;
- 4
- 5 3. Find the above-named federal agency air pollution actions that were authorized by
- 6 misleading Conformity Findings be found to be null and void for any lawful purpose;
- 7
- 8 4. Stay and enjoin all further acts prohibited by NEPA, CAA and APA pending summary
- 9 judgment or trial and judgment in this action;
- 10
- 11 5. Order a final injunction directing Defendants to terminate all proceedings anticipated
- 12 by them, or any other Las Vegas Valley direct or indirect air pollution causing action until the
- 13 Court finds that all the requirements of NEPA, CAA and the APA are completed in good faith
- 14 according to those standards;
- 15
- 16 6. Retain jurisdiction over this matter for the purposes of enforcing and effectuating the
- 17 Court's orders, stays, injunctions and judgments;
- 18
- 19 7. Grant the plaintiff his reasonable costs of litigation, including but not limited to expert
- 20 witness fees, if any, and;
- 21
- 22 8. Grant such further relief as the Court deems just and proper in the premises.

23 DATED: Las Vegas, Nevada, this 15th day of May, 2003.

24 _____
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