

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT W. HALL,

Plaintiff and Appellant,

Versus

UNITED STATES DEPARTMENT OF TRANSPORTATION, NORMAN Y.
MINETA, WILLAIM H. KAPPUS, RANDY J. BELLARD AND
LESLIE T. ROGERS,

Defendants and Appellees.

Appeal from a Judgment of the
United States District Court for the District of Nevada,
Case No. CV-S-03-0477 (RLH),
Honorable Roger L. Hunt, United States District Judge

PLAINTIFF'S OPPOSITION TO FEDERAL APPELLEES' MOTON FOR
SUMMARY AFFIRMANCE

INTRODUCTION

Pursuant to Ninth Circuit Local Rule 3-6(b), Plaintiff Robert W. Hall moves with Plaintiff's opposition to Federal Appellees' Ninth Circuit LR 3-6(b) Motion For Summary Affirmance ("MSA") on grounds of Appellees' failure and refusal to address Appellant's First Amended Complaint ("Complaint")

issues in Hall's own words without paraphrasing, assumptions, or straw issues that have no basis in fact.

Appellees relied upon Appellant's Opening Brief ("AOB") in drafting their MSA. Appellant adopts the AOB herein including its reference sources and Plaintiff's Excerpts of Record, and makes them all a part hereof for all purposes in their entirety. Each and every rebuttal regarding the allegations of the instant MSA is already before this appeals Court in the documents including the declarations of Robert W. Hall.

The issues on appeal are substantive, not procedural. The parties do not agree on Appellees' facts or Appellees' issues for the reasons already in the record and included in these condensed twenty-pages. With the page limit for motion responses, Appellant Hall requests that the appeals Court take judicial notice of all the documents he has filed herein. That includes the Appellant's Opening Brief and the accompanying Excerpts of Record with exhibits and declarations attached. The Hall declarations may be found at ER 00064-00068, 00141-00142 and 00218-00222.

STATUTORY AND REGULATORY BACKGROUND

The key document in this review is the March 3, 2003 "Conformity Finding," the actual document. [ER 00013.] The Complaint issues before the district court involve the federal Appellees' failure to comply with National

Environmental Policy Act of 1969 (“NEPA”), 42 U.S.C.A. §§ 4321 to 4370f, the Clean Air Act (“CAA”), 52 U.S.C.A. 7401 to 7671q, the Administrative Procedures Act (“APA”), 5. U.S.C.A. 551, *et seq.* and their corresponding Code of Federal Regulations sections. [ER 00002-00011.]

The issues before the appeals Court do not involve a metropolitan planning organization (“MPO”), Clark County’s Regional Transportation Commission (“RTC”), the allegedly “exempt” Regional Transportation Plan (“RTP”) and its included Transportation Implementation Plan (“TIP”) and other local or State issues except for purposes of impeachment and as evidence of Appellees’ misleading actions and statements.

This is an action against the United States Department of Transportation (“USDOT”), its Federal Highway Administration (“FHWA”) division and the related responsible officials regarding the their 5 U.S.C. §§ 701-706 failure and refusal to comply with the language, spirit and intent of NEPA, CAA and APA. The Complaint in its four corners is believed to be a case of first impression in this jurisdiction.

FACTUAL BACKGROUND

Each substantive factual statement or argument in Appellees’ MSA is misleading. Each supports a misleading motion statement and each is interposed for the purpose of reaching an unjust decision by this appeals Court.

Appellees “Facts” and a web of straw issues that do not reasonably relate to the claims and allegations of the Complaint are not relevant “facts” in this review. Appellant objects to Appellees’ alleged “facts. Appellees’ “facts” have no credibility for the reasons that follow and are fully discussed in the record of this review.

It is a fact that Appellant Hall wrote a Complaint that concentrated on federal agency compliance with the NEPA, CAA and APA. It is a fact that most of what Appellees claim Appellant Hall said or did cannot be reconciled with his actual words in the Complaint.

V. ARGUMENT

Plaintiff’s five Complaint claims for relief must be read in their entirety in order to reach a just result. Appellees’ attempt to have this Court act on a little Complaint piece here and a little piece there is part of a scheme to mislead. Environmental law is inherently complex. The way Appellees prevailed in the district court was to fill their documents with straw issues to the point where the district court gave up in confusion and deferred to them.

An example of this pattern is repeated in Appellees’ MSA at 7. “The first four claims asserted that both the RTC’s Program and USDOT’s conformity determination were “major Federal actions” subject to NEPA’s requirement to prepare an EIS, Complaint §§ 17-25, 33-37 (ER 4-7), and that an EIS was required

to discuss certain issues such as allegedly Plan-related water shortages, health care costs, and air quality impacts, Complaint ¶¶ 38-44 (ER 7-9), 5 U.S.C. §§ 701-706. Complaint § 27 (ER-6).”

The first half of that claim sets the stage to mislead. It is the FHWA actions that Appellees approved by their Conformity Finding that constitute the “major federal action.” There is no list of the FHWA actions Appellees approved that is included in or attached to the Conformity Finding. Appellees did reference “Transportation Improvement Program & Plan approved by the RTC on January 9, 2003 and by NDOT on January 15, 2003” while claiming that as part of a RTP/TIP, the TIP is “exempt” from NEPA, CAA or APA review.

Nothing in the Conformity Finding provides any information that indicates what the Appellees were really doing when they put the TIP list of projects they were approving in an “exempt” RTP/TIP. What they were doing and did not admit was that they were evading NEPA, CAA and APA review. Appellees did not reveal the size and “major federal action” status of their Conformity Finding approvals. There is no indication of federal agency Conformity Finding public involvement in the record of this action. The public involvement duty is a federal agency duty and burden that cannot lawfully be shifted to any other agency, particularly a non-federal agency.

There is no evidence of a NEPA compliant, cumulative impact EIS. There is

no evidence of a Nevada, Clark County pollution specific SIP that meets the 1990 amendments to the Clean Air Act. There is no evidence of a Finding of No Significant Impact (“FONSI”). With these evidence omissions, Appellees cannot legal comply or conform to NEPA, CAA and APA.

The issues that were before the district court concerned issues of what Appellees did not do that they are required to do. Appellees’ knew they did not and could not lawfully comply or conform to NEPA, CAA and APA. The Conformity Finding document alone is enough to end this review in favor of Appellant Hall. NEPA, CAA and APA were crafted by Congress to work together in harmony. Appellees claims from the outset are a classic model of disharmony.

NEPA AND CAA REVIEW STANDARDS

In a review of agency action to determine its conformity with NEPA and the CAA provisions of the APA, 5 U.S.C. §§ 701-706, the CAA review uses the same standard as the NEPA standard. *Hells Canyon Alliance v. United States Forest Serv.*, 227 F.3d. 1170 (9th Cir. 2000) (NEPA).

CONFORMITY DETERMINATION UNDER THE CAA

Each State is required to adopt and submit for EPA approval a State Implementation Plan (“SIP”) for each pollutant. 42 U.S.C. § 7410(a)(1). In non-attainment areas SIPs must contain emissions limitations and other measures designed to bring “nonattainment” areas into attainment. 42 U.S.C. § 7410(a)(2).

To ensure compliance with these plans, the CAA contains a “conformity” requirement, mandating that “[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit any activity which does not conform to [a SIP].” 42 U.S.C. § 7506(c)(1). Most federal actions affecting levels of pollutants in non-attainment areas require that the responsible agency conduct a “conformity determination.” 40 C.F.R. § 93.150-.160.

Appellees’ March 5, 2003 “Conformity Finding” is a final document that authorizes site specific actions and funding. A list of those actions are included in the responsible local agency’s Transportation Improvement Plan (“TIP”). The list of agency actions was not mentioned in the Conformity Finding. There was no Federal Highway Administration (“FHWA”) action list attached to the Conformity Finding.

NEPA ENVIRONMENTAL IMPACT REPORTING COMPLIANCE

By its own terms, the intent of NEPA was to reorganize the priorities of the federal government, to integrate “environmental amenities and values” alongside more traditional more traditional “economic and technical considerations.” 42 U.S.C. § 4332(2)(B). To achieve this goal of including environmental concerns in governmental decisionmaking, NEPA requires that an EIS be prepared for all “major federal actions significantly affecting the ... human environment.” 42

U.S.C. § 4332(2)(C). The Council on Environmental Quality (“CEQ”) defines “major federal action[s]” as “actions with effects that may be major and which are potentially subject to Federal control and responsibility,” including “[a]doption of official policy, such as rules, regulations, and interpretations.” 40 C.F.R. § 1508.18. “Major” reinforces but does not have a meaning independent of “significantly,” meaning that a federal action is “major” whenever it has “significant” environmental effects. 40 C.F.R. § 1508.18. *City of Davis v. Coleman*, 521 F.2d 661, 673 n. 15 (9th Cir. 1975). 42 U.S.C.A. § 4332(2)(C), NEPA 102(2)(C), 40 C.F.R. 1501.4, 1508.9 (2001). NEPA reporting disclosures form the basis for CAA conformity certifications. Where there is no NEPA compliance, there is no federal agency administrative sunshine.

NEPA EIS requirements include strong public notice, public involvement and public hearing requirements. The federal agency pattern in the West is that whenever a federal agency wants to by-pass NEPA and the problem of reporting a “major federal action,” agencies simply find ways around NEPA compliance. This review is a classic example of federal agency environmental law evasion and is also a classic example of the importance of citizen oversight.

Local agencies can legally stuff their TIP into any document. The issue is the federal agency’s burden when a local agency hides serious air pollution actions from the public and other agencies by making the TIP a part of a long range,

programmatic planning (exempt) document. They do not have to do that. The pattern is then to ignore the EIS requirement. Appellant Hall's claims have concentrated on federal agency compliance with the language, spirit and intent of NEPA, CAA or APA. Instead of complying, Appellees misled the public, other agencies, the district court and this honorable Court.

The only legally sufficient procedure Appellees had available was to prepare a NEPA compliant, cumulative impact EIS. They knew that their approval actions for highway constructions listed in the TIP were a "major federal action." Instead of complying, they hid the information. Public scrutiny was avoided by simply ignoring federal public notice requirements. The entire scheme to mislead is described in the Complaint starting with the First Claim for Relief and progressing through a total of five claims for relief. The document must be read in its four corners in order to reach a just conclusion. [ER 00003-00010.]

THE ADMINISTRATIVE PROCEDURES ACT ("APA")

The district court and this appeals Court had and have responsibilities pursuant to the Administrative Procedures Act ("APA"), 5 U.S.C., §§ 701-706. Section 706(2) of the APA authorizes courts to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or "short of statutory right." (Emphasis added.) See, 5 U.S.C. § 706 (2)(A) and (C) Jurisdiction under section

706(2) is appropriate here because the petitioner has identified a final “agency action” as defined by the APA. CAA § 706 (1) of the APA authorizes judicial review to compel agency action unlawfully withheld or unreasonably delayed. See, 5 U.S.C. § 706 (1). Judicial review is appropriate as a result of petitioner’s showing of agency recalcitrance . . . in the face of clear statutory duty or . . . of such a magnitude that it amounts to an abdication of statutory responsibility. (Emphasis added.) *ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1137 (9th Cir. 1998) (quoting *Public Citizen Health Research Group v. Comm’r, Food & Drug Admin.*, 740 F.2d 21, 32 (D.C. Cir. 1984)).

See, 5 U.S.C. § 706 (1) – (2), (A) – (F), *infra*.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the

whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

The CAA and the APA provide more than a mere policy statement or general guidance. Both acts establish a management directive requiring the Appellees to administer the CAA in order to reach cleaner air attainment as expeditiously as practicable. That duty is a nondiscretionary, mandatory duty that the Appellees may be compelled to carry out under CAA § 706 (1). Appellees citation of 5 U.S.C. §§ 551 and 553 misleads to the extent that Appellees did not include Hall's CAA § 701-706 claims. [ER 00118-00119.]

THE “CONFORMITY” FINDING

Appellees' have attached as AR excerpts the March 3, 2003 “Conformity Finding” and nineteen pages from the RTC's 2003-20025 Regional Transportation Plan (“RTP”) and 2003-2005 Transportation Improvement Plan (“TIP”). The citation to the RTP/TIP misleads to the extent that Appellees' cannot lawfully transfer their NEPA, CAA and APA burden to a local or state agency.

Appellees conformity determination is fatally deficient. The problem is that Appellees failed to include RTC's data and determinations in a NEPA compliant, cumulative impact EIS. Without that EIS there was no federally sufficient citizen review. The allegations of the instant complaint are limited to federal agency duties and responsibilities. The duty to prepare a SIP lies squarely with the responsible federal agency, not with any local, state or other federal agency. Local and state

agencies are not subject to NEPA or APA review. Appellees know that and that is why they they accept local agency, highly conflicted data and decisions.

Without a NEPA compliant EIS that must deal with the cumulative air pollution from all of the projects approved and funded by the Conformity Finding, the FHWA Conformity Finding is legally insufficient for any lawful purpose. Appellees' have based their Conformity Finding on "our evaluation of the Metropolitan Planning Organization's finding of conformity and related documentation...." [ER 00013.]¹ By that act, Appellees unlawfully transferred their burden to the local MPO. That act had the advantage of evading NEPA and the APA. There is no mention of a NEPA EIS in the "Conformity Finding" much less a citizen opportunity for a NEPA EIS, APA review.

Worse, there is no Conformity Finding mention of any EPA, finally approved, pollution specific SIPs that meet the 1990 amendments to the CAA. There is no mention of any specific SIP. There isn't any mention of the only Nevada, Clark County SIP the EPA has ever finally approved, the 1979/81/82 SIP.² There is no mention that the Clark County portions of the 1979 Nevada SIP are much more stringent than federal standards. There is no mention of serious

¹ The document was attached to Appellees' motion without reference to the AR and with Excerpts of Record Bates stamped numbers.

² The SIP not mentioned in the Conformity Finding was an Appellant exhibit. [ER 00160-00169.]

non-attainment areas. There is no mention of a NEPA cumulative impact determination. There is no basis for a federal Conformity Finding.

Basically Appellees are saying they read the RMP/TIP, accepted it and that was it. NEPA, CAA and APA require more of a federal agency than simply accepting an “exempt,” long range, programmatic, planning document from a local or state agency that is hiding the air pollution actions Appellees subsequently approve and fund. There is no evidence of a NEPA, CAA or APA mandated public notice, comment period or any other APA federal agency compliance that would provide the public including Hall with his federal public participation rights. The alleged Conformity Finding misleads. See, ER 00005, ¶¶ 18-25. Appellant Hall made it clear that “the allegations of the complaint are not limited to the most recent conformity finding.” See, CR #27, ¶ (h) & (i) and ¶ (l). [ER 00094-98, 00199-00203.]

STRAW ISSUES

RE: APPELLEES’ MSA STRAW ISSUE ARGUMENT

Id. 2. Appellant’s Complaint does not mention the Federal-Aid Highway Act (“FAHA”). Appellant’s Complaint does not mention a metropolitan planning organization (“MPO”). Neither is relevant to the NEPA, CAA and APA issues the Complaint does address.

Id. 3. Appellees’ discussion regarding National Ambient Air Quality

Standards (“NAAQS”) is not a Complaint issue. The reason is that the only remotely relevant SIP is the 1979/81/82 EPA approved SIP. That SIP is based upon State standards that are more stringent than federal standards. Each time Appellees’ reference federal air pollution standards they mislead if the more stringent State standards are not the basis for federal agency action. The CAA’s anti-backsliding regulations make all references to federal standards moot since they are opposite to the Reasonable Further Progress (“RFP”) goal of reaching cleaner air attainment. See, CAA §§ 116, 119 and 193.

Id. 3-4. “The Act requires each state to adopt and submit to EPA for approval a state implementation plan (“SIP”) that provides for the attainment, maintenance, and enforcement of the NAAQS for each listed pollutant.” By the date of the Complaint, the EPA has not finally approved a pollution specific SIP for Nevada and Clark County since 1979. There is no finally approved air pollutant specific SIP that meets the 1990 amendments to the Clean Air Act. The Conformity Finding does not name the SIP that is the basis for the Conformity Finding. Appellees did not and could not name any finally approved SIP because there wasn’t any finally approved SIP on May 2, 2003 when the first complaint was filed. [ER 000026, ¶ 26.]

Id. 7. “Hall also alleged that in issuing its conformity determination, USDOT did not meet the procedural requirements of the Administrative

Procedures Act (“APA”), 5 U.S.C. §§ 701-706. Complaint ¶ 27.” [ER 000006.]

Hall actually said, “Defendants’ Conformity Finding was made without reference to any legally sufficient APA compliance including but not limited to public notice, a public comment period, hearings and an opportunity thereafter for judicial review.” There is no evidence in the Conformity Finding of any public notice or involvement.

Id. 7-8. “The Court also ruled that USDOT’s conformity determination was not a rulemaking subject to APA notice and comment requirements, ER 95, and that, under EPA’s regulations, USDOT could properly base that determination on a proposed SIP, ER 96-97.” [ER 00095-00097.] Hall actually said at ¶ 26, “[t]he Conformity Finding was made without reference to Nevada’s and Clark County’s only, finally approved State Implementation Plan (“SIP”), the EPA approved 1979/81 SIP.” [ER 00006.] The statement was limited to the Conformity Finding. It is a fact that Appellees did not name either the 1979/81/82 SIP or any submitted SIP in the Conformity Finding. The Conformity Finding reader has no idea what SIP Appellees used. [ER 00013.]

Id. 8. “The Court takes these allegations to be an assertion by Plaintiff that the conformity process itself is a major federal action, since the requirement that NEPA statements and determinations be created is triggered by an agency’s “major federal action.” The district court misapprehended the allegations with the help of

the Appellees. The actual statements were, “24. Hall alleges that the DOT made a commitment of Federal Highway Administration approvals and funding before it prepared any legally sufficient NEPA document and before it complied with CAA conformity requirements, while avoiding APA compliance.” The NEPA and CAA issues were distinctly separate in that allegation. “25. The Conformity Finding at issue herein was made without reference to any NEPA environmental document.” Hall never said that “the conformity process itself is a major federal action.” [ER 00025-00026, 00093-94.]

Id. 8. The district court made the statement that “neither RTC’s Program nor the conformity determination process itself was subject to NEPA.” Appellant never said that the TIP was subject to NEPA. The First Claim for Relief must be read in its entirety. The succeeding paragraphs continue the allegations of the claim including the requirement for a NEPA SIP which is required. The “as structured” phrase referred to the fact that the only list of air pollution actions is in the TIP. To the extent that Appellees reference the TIP at all, it must be by and through a NEPA EIS. See, ¶¶ 24-37, particularly 35. While making that statement, the district court failed to discuss the absence of NEPA EIS compliance. [ER 00004-00007.]

[ER 000096 at 8:9-11.] The district court admitted that “Defendants failed to perform an EA with a resulting FONSI determination,” while claiming the omission “is of no moment.” The omission is of considerable moment. The district

court admitted that by not doing the EA, Appellees could not have lawfully determined whether they needed a NEPA compliant EIS or not.

Id. 10. “First, dismissal of Hall’s NEPA claims was proper because applicable federal laws unambiguously state that MPO plans and programs under FAHA, as well as actions taken under the Clean Air Act, including conformity determinations, are exempt from NEPA.” There is no Complaint citation to any such straw claim. These are Appellees’ words, not Hall’s. Hall’s claim involves federal agency actions and responsibilities, not MPO actions under FAHA.

Id. 10. “Second, dismissal of Hall’s claim that USDOT’s conformity determination had to satisfy the rulemaking requirements of the APA was proper because conformity determinations are not rules.” There is no Complaint citation to any such straw claim. The claim is an Appellees’ claim. The conformity determination is a final agency action subject to 5 U.S.C. § 701-706.

Id. 10. “Third, dismissal of Hall’s claim that USDOT could not rely on motor vehicle emissions budgets that EPA has deemed adequate but that are part of a proposed SIP was proper because the Clean Air Act and EPA’s regulations clearly allow such reliance.” There is no Complaint citation to any such straw claim. This is an Appellees’ claim. Clark County was in a SIP lapse that was not resolved during the period at issue. [ER 00181-00183.] There was no SIP to conform with. For that reason, the Conformity Finding cannot move forward. [ER

00145-00152, 00155-00159.]

Id. 10. “Finally, the district court properly rejected on summary judgment Hall’s argument that USDOT improperly bases its conformity determination on a proposed SIP allegedly invalidated by this Court in Hall v. EPA.” There is no Complaint citation to any such straw claim. These are Appellees’ straw claims. Not all proposed SIPs are finally approved.

Id. 11. “Hall’s first claim for relief alleges that the RTC’s Program is unlawful because it was never subjected to the environmental analysis provided for by NEPA. See, Complaint ¶ 17 (ER 4).” The actual Complaint paragraph states, “17. Plaintiff alleges that as structured and when all of the Valley air pollution activities of the Defendants are considered, the Transportation Improvement Plan (“TIP”) constitutes a major federal action and a significant source of air pollution subject to the cumulative impact, environmental impact statement (“EIS”) requirements of NEPA as defined by CEQ regulations.” There is no comparison between the Complaint’s ¶ 17 and Appellees’ characterization of it. The statement is factually incorrect. Hall Complaint does not mention “RTC’s Programs.” The issue Hall raised was that Appellants’ were hiding their Conformity Finding approvals and air pollution actions in a document that was not included in a NEPA EIS. Worse the TIP was a part of a RTP/TIP that Appellees’ claim is “exempt.” That left the approvals and air pollution actions outside of APA review. The issue

is an absence of a NEPA EIS, not the TIP. The First Claim for Relief includes ¶¶ 15-37. All 28 paragraphs must be read together. One paragraph does not make the First Claim for Relief.

SUMMARY AFFIRMANCE

The nature of the review that properly applies is the traditional one articulated in *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962), that courts should draw on factual inferences “in the light most favorable to the party opposing the motion.” Summary judgment is appropriate where only issues of law are involved. There is no evidence that key documents are in the record of this action. The facts are in dispute. For that reason alone summary affirmance is not appropriate.

The district court did not review the petition according to APA standards and requirements. There is no evidence that the district court conducted the “Scope of Review” required by 5 U.S.C. § 701 to 706 or made the findings required thereby. “In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.” See, 5 U.S.C. § 706 (last paragraph).

The district court noted that Plaintiff had opposed Appellees’ motion “[i]n his Opposition to Defendants’ Motion.” (CR #29.) [ER 00225:11.] The district court switched from dismissal to summary judgment without prior notice despite

the fact that Appellant is pro se, without a hearing.

VII. CONCLUSION

Appellees have ignored, marginalized or misrepresented the NEPA, CAA and APA federal agency requirements. The result is a *de facto* rescinding of the nation's environmental law protections and safeguards for the Appellant and Southern Nevada. Appellees and the district court seized jurisdiction to nullify NEPA, CAA and APA without any lawful right to deprive the citizens of the Las Vegas Valley, one of whom is Hall, with their protection. Should the appeals Court agree with the district court, the effect will be just that, the nullification of federal agency compliance with NEPA, CAA and APA. No court in the West has that jurisdiction.

Appellant requests that the Court decline to grant summary affirmance to the Appellees on the basis of a deficient Conformity Finding and the absence of evidence of federal agency NEPA EIS and CAA SIP compliance and conformity. By law the federal agency may not lawfully proceed as long as there is no NEPA EIS and much worse, no legally sufficient SIP for both PM-10 and CO.

DATED: Las Vegas, Nevada, December 9, 2004.

Respectfully submitted.

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