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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RESIDENTS FOR THE RELOCATION  
OF THE CLARK COUNTY SHOOTING  
COMPLEX, LLC. V. DEPARTMENT  
OF PARKS AND R,

Plaintiff,

v.

DEPARTMENT OF PARKS AND  
RECREATION, *et al.*,

Defendants.

Case No. 2:08-cv-1131-LDG (RJJ)

**ORDER**

The plaintiffs are residents and homeowners near a shooting complex that defendant Clark County is building on approximately 2900 acres of land located north of Moccasin Road, between Decatur Boulevard and Buffalo Drive. The residents are moving for a preliminary injunction (#44) seeking to halt construction of the shooting complex pending the prosecution of this lawsuit. Both Clark County and the United States Department of the Interior, Bureau of Land Management (BLM) oppose the motion (## 52, 60, 66). In addition, Clark County moves to dismiss the complaint (#53) or, in the alternative, moves for summary judgment (#58). The residents oppose Clark County's motions (## 62, 63).

1 On Wednesday, April 8, 2009, this court received evidence and heard arguments on these  
2 motions.

3 Having considered the papers and pleadings, the evidence received from the  
4 parties, and the arguments, the court will grant in part and deny in part Clark County's  
5 motion to dismiss, and will deny the residents' motion for a preliminary injunction.

6 Background

7 Pursuant to Public Law 107-350 (passed by Congress in December 2002, and  
8 signed by the President in January 2003), the United States executed a Patent on  
9 November 26, 2003, that conveyed all right, title and interest to approximately 2900 acres  
10 of land north of Moccasin Road, between Decatur Boulevard and Buffalo Drive Shooting  
11 Park land to Clark County. Although Public Law 107-350 required BLM to convey this land  
12 to Clark County, section §1(f) of that law authorized the BLM to "require such additional  
13 terms and conditions in connection with the conveyance as the Secretary [of the Interior]  
14 considers appropriate to protect the interests of the United States." The BLM did not  
15 prepare an environmental assessment prior to conveying the land to Clark County.

16 In November 2002, the Clark County Sport Shooting Park Advisory Committee  
17 began meeting regarding the development of a shooting park on the 2900 acres of land.  
18 Clark County noticed each meeting of the Advisory Committee in accord with Nevada's  
19 open meeting law: Nev. Rev. Stat. 241.020(3).

20 In September 2005, Clark County applied to change the zoning of the land from  
21 Rural Open to Public Facility. The County mailed notice of the zone change application,  
22 ZC-1489-05, to all property owners within 3,950 feet of the subject land. Clark County also  
23 published notice of ZC-1489-05 in both the Las Vegas Review Journal and the Las Vegas  
24 Sun, and posted ZC-1489-05 at four locations on the land. The Clark County Planning  
25 Commission held a public hearing on ZC-1489-05 on October 20, 2005. During that  
26 meeting, the Planning Commission approved the zone change. A Notice of Final Action

1 was issued on November 29, 2005. The statute of limitations for seeking judicial review of  
2 the zone change expired on December 24, 2005.

3 In January 2008, Clark County began construction of the first phase of the shooting  
4 park.

5 In August 2008, the residents filed their original complaint, which was subsequently  
6 amended to allege seven claims: (1) Declaratory Relief, (2) Injunctive Relief, (3) Violation of  
7 Due Process Rights, (4) Violation of Clark County Code §30.36 requiring Notice of Official  
8 Zoning Maps and Districts, (5) Violation of Clark County Code §30.68.020 regarding noise,  
9 (6) Nuisance pursuant to Nev. Rev. Stat. 40.140, and (7) Violation of the National  
10 Environmental Policy Act.

11 Legal Standard for Motion to Dismiss

12 Clark County's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6),  
13 challenges whether the plaintiffs' complaint states "a claim upon which relief can be  
14 granted." In ruling upon this motion, the court is governed by the relaxed requirement of  
15 Rule 8(a)(2) that the complaint need contain only "a short and plain statement of the claim  
16 showing that the pleader is entitled to relief." As summarized by the Supreme Court, a  
17 plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face."  
18 *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (U.S. 2007). Nevertheless, while a  
19 complaint "does not need detailed factual allegations, a plaintiff's obligations to provide the  
20 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a  
21 formulaic recitation of the elements of a cause of action will not do." *Id.*, (citations omitted).  
22 In deciding whether the factual allegations state a claim, the court accepts those  
23 allegations as true, as "Rule 12(b)(6) does not countenance . . . dismissals based on a  
24 judge's disbelief of a complaint's factual allegations." *Neitzke v. Williams*, 490 U.S. 319,  
25 327 (1989). Further, the court "construe[s] the pleadings in the light most favorable to the  
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1 nonmoving party.” *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9<sup>th</sup>  
2 Cir. 2007).

3 Legal Standard for Motion for Summary Judgment

4 In considering Clark County’s motion, in the alternative, for summary judgment, the  
5 court performs “the threshold inquiry of determining whether there is the need for a  
6 trial—whether, in other words, there are any genuine factual issues that properly can be  
7 resolved only by a finder of fact because they may reasonably be resolved in favor of either  
8 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a  
9 motion for summary judgment, the moving party must show (1) the lack of a genuine issue  
10 of any material fact, and (2) that the court may grant judgment as a matter of law. Fed. R.  
11 Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

12 A material fact is one required to prove a basic element of a claim. *Anderson*, 477  
13 U.S. at 248. The failure to show a fact essential to one element, however, “necessarily  
14 renders all other facts immaterial.” *Celotex*, 477 U.S. at 323.

15 “[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after  
16 adequate time for discovery and upon motion, against a party who fails to make a showing  
17 sufficient to establish the existence of an element essential to that party’s case, and on  
18 which that party will bear the burden of proof at trial.” *Id.* “Of course, a party seeking  
19 summary judgment always bears the initial responsibility of informing the district court of  
20 the basis for its motion, and identifying those portions of ‘the pleadings, depositions,  
21 answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which  
22 it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S.  
23 at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the  
24 claim or defense that the motion for summary judgment places in issue, the moving party  
25 can meet its initial burden on summary judgment “by ‘showing’—that is, pointing out to the  
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1 district court—that there is an absence of evidence to support the nonmoving party's case."

2 *Celotex*, 477 U.S. at 325.

3       Once the moving party meets its initial burden on summary judgment, the non-  
4 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.  
5 56(e). As summary judgment allows a court "to isolate and dispose of factually  
6 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the  
7 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*  
8 *Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,  
9 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.*  
10 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

#### 11 Legal Standard for a Motion for Preliminary Injunction

12       "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed  
13 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
14 that the balance of equities tips in his favor, and that an injunction is in the public interest."  
15 *Winter v. Natural Resources Defense Counsel, Inc.*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 365, 374 (2008).  
16 In *Winter*, which concerned a National Environmental Policy Act claim, the Supreme Court  
17 reiterated that "plaintiffs seeking preliminary injunction [must] demonstrate that irreparable  
18 injury is *likely* in the absence of an injunction." *Id.*, at 375 (emphasis original). In so doing,  
19 the Court expressly rejected the Ninth Circuit's standard permitting a grant of preliminary  
20 relief upon a showing of a *possibility* of irreparable injury. *Id.*

#### 21 Analysis

22       The residents' complaint alleges four substantive theories: (1) that Clark County  
23 violated the 14<sup>th</sup> Amendment's due process clause by failing to give adequate notice to the  
24 residents of its intention to build the shooting park by (a) failing to provide adequate notice  
25 of the Advisory Committee meetings, and by (b) failing to post an Official Zoning Map within  
26 one assessable mile of the shooting complex land; (2) that Clark County improperly zoned

1 the land as a Public Facility in violation of Clark County Code 30.36, rather than General  
2 Commercial or as Recreational Vehicle Park; (3) that the noise of construction and use of  
3 the shooting complex will violate Clark County Code 30.68.20 and, as such, it will be a  
4 nuisance in violation of Nev. Rev. Stat. 40.140; and (4) that the Bureau of Land  
5 Management failed to complete an Environmental Impact Statement before conveying the  
6 land to Clark County.

7 Due Process/Zoning Law Claims

8 As noted, the resident's due process claim very broadly alleges that Clark County  
9 violated the 14<sup>th</sup> Amendment's due process clause by failing to give adequate notice to the  
10 residents of its *intention* to build the shooting park. The plaintiffs, however, have not  
11 offered any citation to law or statute that suggests a mere *intention* to build a shooting park  
12 triggers a constitutional due process duty. Rather, any such constitutional due process  
13 duty arises from specific events that move the intention toward realization. Construed  
14 broadly, the residents have identified two events in their complaint to which they argue a  
15 due process right attached.<sup>1</sup> First, the Advisory Committee held a series of public meetings  
16 concerning the shooting park. Second, developers sold homes in residential developments  
17 whose border was less than one mile from the boundary of the shooting park land.

18 Regarding the meetings of the Advisory Committee, the residents allege that Clark  
19 County noticed the meetings in local newspapers and in flyers posted in "three zip codes  
20 throughout the city," for which the closest location was the Desert Breeze Community  
21 Center about 10 miles away from their homes. These notices, the residents allege, lacked  
22 "the critical information of the exact location of the [shooting] complex and its robust size in  
23 relation to the surrounding development." Notice of the meetings was not posted at local

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25 <sup>1</sup> While Clark County argues that a due process right did not attach to any of  
26 these events, it further argues that it provided the required notice. As the court finds that  
the required notice was provided, it will not address whether the plaintiffs had a due  
process right to receive that notice.

1 schools, churches, post offices, or community centers. As summarized within their claim  
2 for declaratory relief, the residents claim that Clark County “[f]ailed to provide statutory  
3 requisite disclosures to Plaintiffs . . . in violation of [their] due process rights.”

4 The residents’ complaint does not cite to any specific statutory notice provision that  
5 they allege Clark County violated in providing notice of the Advisory Committee meetings.  
6 In moving to dismiss, Clark County asserts that it complied with Nevada’s open meeting  
7 law codified at Nev. Rev. Stat. §241.020. That statute provides that notice must be posted  
8 at (a) the principal office of the public body or at the meeting place, and (b) at least three  
9 other, separate, prominent locations within the jurisdiction of the governing body. Section  
10 241.020 further provides that the notice shall include (a) the time, place, and location of the  
11 meetings, (b) a list of locations where notice has been posted, (c) and an agenda, including  
12 a clear and complete statement of topics to be discussed and a period devoted to  
13 comments from the public. Clark County has submitted, into evidence, several exemplars  
14 of the notice of Advisory Committee meetings that were posted. These examples clearly  
15 establish that Clark County complied with the requirements of §241.020.

16 The residents’ claim that Clark County did not post Official Zoning Maps within one  
17 assessable mile also fails. Clark County Code §30.36.040 imposes a duty to disclose the  
18 zoning and master plan designations of surrounding properties upon *sellers* of residential  
19 property. Section 30.36 does not impose a duty upon the county to post zoning maps.  
20 Indeed, the residents concede in their opposition that this duty falls upon the developers  
21 and sellers of residential property.

22 Accordingly, the court will grant Clark County’s motion as to the residents’ due  
23 process claim and their zoning claim to the extent that it alleges Clark County failed to post  
24 a zoning map, as such claims are without merit.

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1           Clark County Code §30.36 Claim<sup>2</sup>

2           The residents also allege Clark County violated §30.36 of the County Code by  
3 improperly zoning the land for the shooting complex as a Public Facility rather than General  
4 Commercial and Recreational Vehicle Park. They argue that, because the shooting  
5 complex will *a/so* include a restaurant and pro shop, the land should have been zoned as  
6 General Commercial rather than Public Facility. They further argue that, because the  
7 shooting complex will include an overnight area for recreational vehicles, the land should  
8 have been zoned as Recreational Vehicle Park. The residents have not offered any  
9 argument that the only use of the land will be General Commercial or Recreational Vehicle  
10 Park.

11           As noted by Clark County in moving to dismiss and in opposing the residents’  
12 motion for a preliminary injunction, §30.08.030 defines “Public Facility” as “any  
13 infrastructure facility, building, structure, service, or combination thereof, intended for use  
14 by the general public or land approved for such use, that is owned, leased, operated,  
15 and/or controlled by a local, state, or federal governmental entity.” The definition  
16 elaborates that a public facility may include “facilities such as airports, bus barns, golf  
17 courses, convention centers, and universities.”

18           The plaintiffs have not shown, or even argued, that the shooting complex does not  
19 fall within the definition of Public Facility. Rather, the residents argue only that it should  
20 have been designated differently, such as Commercial because it will also include a

21 \_\_\_\_\_  
22           <sup>2</sup> In their complaint, the residents’ claim that Clark County violated §30.36.040  
23 of the Clark County Code is separate and distinct from their Due Process claim. Further,  
24 the §36.30.040 claim does NOT allege a violation of the 14<sup>th</sup> Amendment Due Process  
25 clause, and the Due Process claim does NOT allege that Clark County violated the 14<sup>th</sup>  
26 Amendment by failing to comply with §30.36.040.

25           Nevertheless, in their motion for a preliminary injunction, the plaintiffs have placed  
26 their §30.36.040 arguments in the same section of their memorandum as their due process  
arguments. They have not, however, provided any argument that these alleged violations  
of §30.36.040 also violated the 14<sup>th</sup> Amendment’s due process clause.

1 restaurant and pro shop. The definition of Public Facility in §30.36.020 makes clear,  
2 however, that the presence of some commercial enterprise does not require that the land  
3 be zoned commercial. Common experience instructs that airports, which the code  
4 expressly identifies as Public Facilities, house restaurants and shops. Similarly, public golf  
5 courses, which are included as a type of public facility, often include pro shops and some  
6 food service. Accordingly, the court will grant Clark County's motion as to the residents'  
7 claim that the shooting complex land was improperly zoned as a Public Facility.

8 Noise Ordinance Claim.

9 The plaintiffs argue that, when the shooting complex becomes operational, the noise  
10 levels created by gunfire at the shooting park will violate Clark County's noise ordinance,  
11 and thus be a nuisance.<sup>3</sup> In support of this argument, the residents rely upon the opinion  
12 of Dr. Douglas D. Reynolds, who performed an "analytical environmental sound analysis of  
13 the potential impact of the impulse sound from weapon discharges" at the Shooting Park.<sup>4</sup>  
14 Dr. Reynolds opined that a discharging weapon in the Shooting Park would, at the location  
15 of the residents' homes, create a sound level exceeding that currently permitted by the  
16 County's noise code.

17 In response, Clark County argues that (a) the claim is not ripe because the Shooting  
18 Range is not yet operational, and thus no noise violations are occurring (or will occur  
19 imminently) because of gun fire, and (b) that the claim is without merit because its own  
20 testing of gunfire, at the location of the shooting park, establishes that gunfire at the

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22 <sup>3</sup> In their complaint, the plaintiffs also allege that construction of the shooting  
23 complex will violate the County's noise ordinances. As pointed out by Clark County,  
24 however, its noise ordinance specifically exempts construction. The residents have not  
25 offered any argument to the contrary. Accordingly, the claim fails to the extent it relies  
26 upon the noise of construction.

<sup>4</sup> Dr. Reynolds did not perform any field tests of gunfire at the shooting park or  
at any other location. Rather, his report indicates that he relied upon some gunfire data  
taken from a website, and that he performed a mathematical analysis upon that data.

1 locations of the shooting ranges inside the park will not cause noise levels exceeding  
2 permitted levels at the residents' homes.

3 The court will dismiss the claim as premature, and will not address the merits of the  
4 sound levels that will occur at the edge of the residential developments. As the shooting  
5 complex is not yet operational, there is not yet any gunfire from any planned shooting  
6 range or any shooting range currently under construction at the complex. The court cannot  
7 agree with plaintiffs that "questions of fact exist regarding the extent of said noise  
8 violations" because, as of yet, the shooting complex is not built.<sup>5</sup> Stated otherwise, while  
9 questions of fact might arise in the future, those questions do not currently exist as there is  
10 not yet any gunfire. A claim that the gunfire *will*, at some future point, violate prescribed  
11 levels is speculative at best. Any effort to resolve the potential questions of fact would  
12 require waiting until the shooting park is constructed. Accordingly, the court will dismiss the  
13 plaintiffs' noise claims.

14 National Environmental Protection Act (NEPA) Claim.

15 Stated succinctly, the plaintiffs argue that the Bureau of Land Management should  
16 have performed an Environmental Impact Statement (EIS) prior to conveying the land or  
17 disbursing federal funds to Clark County to construct the park.

18 Initially, the court would note that the claim must be dismissed to the extent that the  
19 plaintiffs seek monetary damages for the alleged NEPA violations.

20 Clark County contends that the claim should be dismissed because the land  
21 conveyance was at the direction of Congress, which is not an agency of the United States,  
22 and which is not required by the NEPA to perform an EIS. The Bureau of Land  
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24 <sup>5</sup> The Plaintiffs' proffer of evidence regarding gunfire in the desert near their  
25 homes fails for several reasons. First, the plaintiffs failed to provide competent evidence  
26 regarding the location of that gunfire, only that a resident heard gunfire. Second, the  
plaintiffs did not offer any evidence, competent or otherwise, that the gunfire occurred in  
the factual context of the shooting range that Clark County is constructing.

1 Management, however, has indicated that “it agrees that some level of NEPA analysis  
2 should have been conducted” prior to the transfer of land from the United States to Clark  
3 County.

4 The court would also note that, “[u]sually, the federal government is the only proper  
5 defendant in an action to compel compliance with NEPA.” *Laub v. U.S. Dep’t. of the*  
6 *Interior*, 342 F.3d 1080, 1091-92 (9<sup>th</sup> Cir. 2003). The Ninth Circuit, however, has also  
7 recognized an exception, providing that “non-federal defendants may be enjoined if federal  
8 and state projects are sufficiently interrelated to constitute a single federal action.” *Id.* The  
9 evidence presented to the court indicates that Clark County is implementing the shooting  
10 park, but that the land and all or nearly all of the funding is being provided by the federal  
11 government. Accordingly, the court will not dismiss the NEPA claim as against either Clark  
12 County or the BLM.

13 Given the BLM’s acknowledgment that some level of NEPA analysis should have  
14 been performed, the plaintiffs have shown a likelihood of success on the merits of their  
15 NEPA compliance claim. The next issue is whether the plaintiffs can meet their burden of  
16 showing irreparable harm. The residents argue that, as they have shown a strong  
17 likelihood of success on the merits, Ninth Circuit precedent establishes that they need only  
18 show a possibility of irreparable harm. In making this argument, the residents rely  
19 exclusively on Ninth Circuit decisions preceding the Supreme Court’s 2008 decision in  
20 *Winter*. As noted previously, in *Winter* the Supreme Court expressly rejected the Ninth  
21 Circuit’s “possibility of irreparable harm” standard, and instead reiterated that, at a  
22 minimum, the plaintiff’s burden is to show that “irreparable harm is *likely* in the absence of  
23 an injunction.” Further, as stated by the Supreme Court, “[a]n injunction is a matter of  
24 equitable discretion; it does not follow from success on the merits as a matter of course.”  
25 129 S.Ct. at 381.

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1           Having reviewed the arguments and evidence, the court finds that the plaintiffs have  
2 not met their burden of offering evidence establishing that irreparable harm is likely in the  
3 absence of an injunction. The plaintiffs' motion for a preliminary injunction seeks to enjoin  
4 the construction of the shooting complex that was commenced eight months before they  
5 filed the present suit. The "absence" of this injunction is that construction on the initial  
6 phase of the shooting complex will continue through to completion. Accordingly, the  
7 question before the court is what irreparable harm have the residents shown they will  
8 suffer, or imminently suffer, if Clark County continues its construction activities.

9           The first irreparable harm raised in the residents' moving papers concerns flood  
10 control. Even when broadly construed, however, the residents' arguments regarding flood  
11 control and irreparable harm are imprecise and ambiguous. The residents have proffered  
12 only the following facts regarding flood control. Clark County requested \$2 million of  
13 SNPLMA<sup>6</sup> funds to build flood control measures to protect assets of the park, and that this  
14 request was not granted. The residents do not provide any evidence of the reason the  
15 request was denied. In its request for the \$2 million, Clark County noted that, if designed  
16 to meet Regional Flood Control standards, the cost of flood control to protect the site would  
17 have cost \$48 million. Not once, in their moving papers, their complaint, or their arguments  
18 to this court, have the residents identified the imminent, irreparable harm they will suffer  
19 because Clark County was not awarded \$2 million for flood control if construction  
20 continues.

21           While the residents clearly assert their conclusion that they will be irreparably  
22 harmed, they do not identify what that irreparable harm is. Perhaps the plaintiffs intend for  
23 the court to speculate that, because Clark County seeks money for flood control,  
24 construction of the shooting park has increased the risk of flooding to their properties. The  
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26           <sup>6</sup> Southern Nevada Public Land Management Act of 1998.

1 court will not engage in such speculation. The sparse record created by the plaintiffs  
2 concerning flood control does not even permit the court to identify any impact, much less  
3 irreparable harm, that water flowing across the shooting park will impose upon the  
4 residents if construction continues.

5 As best as the court can surmise, and construed broadly, the residents' second  
6 irreparable harm argument is that, if construction of the shooting park continues, they will  
7 be irreparably harmed by their increased risk of being accidentally injured by gunfire once  
8 the shooting park begins operating near to their residences and near to the schools their  
9 children attend. The residents' argument fails for several reasons. First, they have not  
10 offered any evidence that the presence of an operating shooting range near to a residential  
11 neighborhood increases the risk to residents of the neighborhood of accidental injury from  
12 the discharge of firearms. Second, even had the residents offered such evidence, they  
13 seek to halt the ongoing construction of the shooting park rather than the operation of the  
14 shooting park. As the shooting park is not yet operational, no current or imminent risk  
15 exists of an accidental injury resulting from the operation of the shooting park.<sup>7</sup> Stated  
16 otherwise, the residents' argument of irreparable harm is not only unsupported by the  
17 evidence but, even if so supported, the argument is premature.

18 Finally, in their reply and at the hearing, the residents allude to a third irreparable  
19 harm: that the construction of the shooting park may result in unknown and unforeseeable  
20 harm to the environment, which harm would be revealed by the required NEPA  
21 environmental analysis. As noted by the Supreme Court in *Winter*, "[p]art of the harm  
22 NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any  
23 information about prospective environmental harms and potential mitigating measures."  
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25 <sup>7</sup> At the hearing, the residents made clear that their opposition to the shooting  
26 park is not whether it operates at some location, but only whether it operates at the location  
near their homes.

1 129 S.Ct. at 377. The Court also summarized, however, that “[w]hen the Government  
2 conducts an activity, ‘NEPA itself does not mandate particular results.’ Instead, NEPA  
3 imposes only procedural requirements to ‘ensur[e] that the agency, in reaching its decision,  
4 will have available, and will carefully consider, detailed information concerning significant  
5 environmental impacts.’” *Id.*, quoting *Robertson v. Methow Valley Citizens Council*, 490  
6 U.S. 332, 349-350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).

7 The difficulty presented by the residents’ argument is that the record establishes  
8 they are seeking to enjoin further construction activity at the shooting park. As the plaintiffs  
9 have alleged, construction of the shooting park began in January 2008. The underlying suit  
10 was not filed until August 2008. Faced with a motion to dismiss, the plaintiff at that time  
11 (which plaintiff is no longer a party to this suit) moved for leave to amend its complaint.  
12 The court granted that motion, and the residents then substituted themselves as plaintiffs  
13 in the stead of the original plaintiff in a first amended complaint that was filed in February  
14 2009. The plaintiffs then filed their motion for preliminary relief near the end of February  
15 2009.

16 The shooting park has been designed so that, when all phases and modules are  
17 fully built, the shooting ranges and other facilities will occupy 900 of the 2900 acres of land.  
18 Further, of those 900 acres, the funded construction activities that would be halted by an  
19 injunction concern only a fraction of that acreage. That fraction, however, has been under  
20 construction since January 2008. Any harm to the environment of that acreage has  
21 already occurred and will not be averted by enjoining further construction on that fraction.

22 The court also finds that the residents have not shown that a balancing of the  
23 equities and public interest favors a decision to enjoin further construction. In its moving  
24 papers, the residents did not even address the balancing of the equities. In its reply, the  
25 residents cited to a district court decision in *State of California v. Bergland*, 483 F.Supp.  
26 465 (E.D. Cal. 1980), aff’d in part, rev’d and remanded on other grounds, for the

1 proposition that “once a substantial NEPA violation has been shown, an injunction should  
2 issue without detailed consideration of traditional equity principles. . . .” The residents  
3 concluded that, because the BLM acknowledged the need to perform some level of a  
4 NEPA environmental analysis, the balance of equities tipped in their favor.

5 As stated by the Supreme Court in *Winter*, which analyzed the application of the  
6 preliminary injunction test to an alleged NEPA violation, “[i]n each case, courts ‘must  
7 balance the competing claims of injury and must consider the effect on each party of the  
8 granting or withholding of the requested relief.’” *Winter*, 129 S.Ct. at 376, quoting *Amoco*  
9 *Production Co. v. Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).

10 That a NEPA violation may have occurred does not relieve plaintiffs seeking an injunction  
11 to ensure NEPA compliance from their burden of showing that the equities balance in their  
12 favor. In seeking to show that the equities favor the halting of construction, the plaintiffs  
13 cannot rely solely upon the BLM’s statement that it will perform an environmental analysis.

14 The plaintiffs seek to enjoin further construction of the shooting park. During the  
15 evidentiary hearing, Clark County offered evidence of the significant impact that this would  
16 have on those currently employed in constructing the shooting park.

17 The court would note that the only legal claim remaining before the court is that the  
18 BLM must prepare a NEPA environmental analysis. Clark County, a non-federal entity,  
19 remains a defendant only because it is the entity constructing a shooting park with federal  
20 funds, but without any other federal oversight once those funds are disbursed.

21 Nevertheless, a paucity exists in the the residents’ arguments and evidence regarding the  
22 redress available for actions already completed by the BLM, including the conveyance of  
23 the land and the funds already disbursed to Clark County for the design and construction of  
24 the shooting park. The plaintiffs have not offered any argument or evidence that the BLM  
25 can alter its past, completed actions concerning the existing, funded construction of the  
26 shooting park. The only evidence before the court suggests that any impact from the

1 BLM's ongoing involvement in the shooting park will be through future funding. By  
2 contrast, Clark County's current construction activities were commenced in 2008 and rest  
3 upon these prior actions of the BLM. As such, there appears to be little basis to enjoin that  
4 construction to ensure that the BLM completes its environmental analysis before taking any  
5 future action.

6 Rather, the BLM has already filed with this court its proposed schedule for  
7 completing the Environmental Analysis by about August 3, 2009. At that time, a  
8 determination can be made whether an Environmental Impact Statement is required, or  
9 whether the additional 30-day period would commence for review of the "finding of no  
10 significant impact." Accordingly, for good cause shown,

11 THE COURT **ORDERS** that Clark County's Motion to Dismiss (#53) is GRANTED as  
12 to Claims 5 and 6; and is GRANTED as to Claim 7 to the extent such claim seeks  
13 monetary damages; and is GRANTED as to Claims 1 and 2 to the extent the plaintiffs seek  
14 declaratory and injunctive relief for substantive claims made in Claims 5 and 6. The motion  
15 to dismiss is DENIED in all other respects.

16 THE COURT FURTHER **ORDERS** that Clark County's Motion, in the alternative, for  
17 Summary Judgment (#58) is GRANTED as to Claims 3 and 4; and is GRANTED as to  
18 Claims 1 and 2 to the extent the plaintiffs seek declaratory and injunctive relief for  
19 substantive claims made in Claims 3 and 4. The motion for summary judgment is DENIED  
20 in all other respects.

21 THE COURT FURTHER **ORDERS** that Plaintiffs' Revised Motion for Preliminary  
22 Injunction (#44) is DENIED.

23 DATED this 8 day of May, 2009.

24  
25   
26 Lloyd D. George  
United States District Judge