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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BARTELL RANCH LLC, *et al.*,  
Plaintiffs,

v.

ESTER M. MCCULLOUGH, *et al.*,  
Defendants.

WESTERN WATERSHEDS  
PROJECT, *et al.*,  
Plaintiffs,

v.

UNITED STATES DEPARTMENT  
OF THE INTERIOR, *et al.*,  
Defendants.

Case No. 3:21-cv-80-MMD-CLB  
Related Case No. 3:21-cv-103-MMD-  
CLB  
(Consolidated)

**FEDERAL DEFENDANTS'  
OPPOSITION TO MOTION FOR  
STAY PENDING APPEAL**

1 Federal Defendants oppose the motion for a stay pending appeal filed on  
2 January 3 by Intervenor-Plaintiffs Reno-Sparks Indian Colony (RSIC) and the Burns  
3 Paiute Tribe. Intervenor-Plaintiffs' motion should be denied because Intervenor-  
4 Plaintiffs fail to meet their burden on any element of the four-factor test for a stay or  
5 injunction pending appeal.

6 A court has the discretion to "suspend, modify, restore or grant an injunction  
7 on terms for bond or other terms that secure the opposing party's rights" during the  
8 pendency of the appeal. Fed. R. Civ. Pro. 62(c); *Regents of the University of California v.*  
9 *ABC*, 747 F.2d 511, 522 n. 7 (9th Cir. 1984); *F.T.C. v. Publishing Clearing House, Inc.*,  
10 Civ. No. 94-S-623-PMP, 1995 WL 792074 at\*1 (D. Nev. 1995). Though Plaintiff-  
11 Intervenor characterize their request as one for a "stay," they actually ask the Court  
12 to impose an injunction against ground-disturbing activities during the pendency of  
13 their appeal. *See Nken v. Holder*, 556 U.S. 418, 428 (2009) ("A stay pending appeal  
14 certainly has some functional overlap with an injunction," but a stay "simply  
15 suspend[s] judicial alteration of the status quo," while injunctive relief "grants judicial  
16 intervention that has been withheld by lower courts." (internal citations and  
17 quotations omitted)). Like any injunction, an injunction pending appeal is "an  
18 extraordinary remedy that should be granted sparingly." *Ariz. Contractors Ass'n v.*  
19 *Candelaria*, No. CV07-2496-PHX-NVW, 2008 WL 486002, 1 (D. Ariz. Feb. 19, 2008)  
20 (Wake, J.) (collecting cases).

21 "To determine whether to grant an injunction pending appeal," courts apply  
22 "the test for preliminary injunctions." *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th  
23 1173, 1176 (9th Cir. 2021).<sup>1</sup> That familiar test requires the Court to consider "whether  
24 the moving party has demonstrated (1) that they are likely to succeed on the merits"  
25 of their appeal, (2) "that they are likely to suffer irreparable harm in the absence of  
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27 <sup>1</sup> The same analysis applies for stays pending appeal. *See Lopez v. Heckler*, 713 F.2d  
28 1432, 1435 (9th Cir. 1983).

1 preliminary relief, (3) that the balance of equities tips in their favor, and (4) that an  
 2 injunction is in the public interest.” *S. Bay United Pentecostal Church v. Newsom*, 959  
 3 F.3d 938, 939 (9th Cir. 2020) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,  
 4 20 (2008)) (enumeration added).

5 Plaintiff-Intervenors cannot satisfy that test. Their motion is extremely brief  
 6 and, as grounds for their requested injunction, Plaintiff-Intervenors merely  
 7 “incorporate and reallege the arguments” submitted in support of their motion for a  
 8 preliminary injunction and motion for reconsideration. They add only the vague  
 9 proviso that this motion should be granted because of “the important legal and factual  
 10 issues involved in this case.”<sup>2</sup>

11 Federal Defendants opposed Intervenor-Plaintiffs’ motion for a preliminary  
 12 injunction<sup>3</sup> and the Court denied it on September 2, 2021, concluding that Intervenor-  
 13 Plaintiffs had not demonstrated a likelihood of success on the merits of their claims  
 14 or a likelihood of irreparable harm.<sup>4</sup> Federal Defendants likewise opposed Intervenor-  
 15 Plaintiffs’ motion for reconsideration of that order,<sup>5</sup> which the Court denied on  
 16 November 8, 2021.<sup>6</sup>

17 Intervenor-Plaintiffs’ motion for an injunction pending appeal—however  
 18 characterized—provides no basis for the Court to revisit or alter its earlier  
 19 conclusions, or issue an order enjoining any ground-disturbing activities. It should  
 20 also be denied.

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22 <sup>2</sup> ECF No. 156 at 2.

23 <sup>3</sup> ECF Nos. 65, 84.

24 <sup>4</sup> Order of September 3, 2021, ECF No. 92.

25 <sup>5</sup> ECF No. 105.

26 <sup>6</sup> Order of November 8, 2021, ECF No. 117. In light of Federal Defendants’ oppositions and  
 27 the Court’s conclusions that Intervenor-Plaintiffs have not demonstrated irreparable harm, it  
 28 is not “beyond dispute,” as Intervenor-Plaintiffs argue, ECF No. 156 at 2–3, that ground-  
 disturbing activities would cause such harm.

1 Respectfully submitted this 4th day of January, 2022.

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