	Case 3:18-cv-00569-MMD-CBC Document 2	23 Filed 01/02/19 Page 1 of 3
1		
2		
3		
4		
5		
6	UNITED STATES DISTRICT COURT	
7	DISTRICT OF NEVADA	
8	* * *	
9	STATE OF NEVADA,	Case No. 3:18-cv-569-MMD-CBC
10	Plaintiffs,	ORDER
11	V.	
12	UNITED STATES; et al.,	
13	Defendants.	
14	Defendant United States of America ("government") on behalf of all Defendants	
15	moves for a stay of Plaintiff State of Nevada's motion for preliminary injunction ("PI	
16	Motion") (ECF No. 2) ("Motion"). (ECF No. 20 at 2.) The government contends that this	
17	action must be stayed due to the recent lapse of funds to the Department of Justice ("DOJ")	
18	because under 31 U.S.C. § 1342 DOJ attorneys are prohibited from working, even on a	
19	voluntary basis, except in very limited circumstances, including "emergencies involving	
20	the safety of human life or the protection of property." See 31 U.S.C. § 1342. The State of	
21	Nevada ("state") opposes the Motion. (ECF No. 21.) For the reasons below, the Court will	
22	deny the Motion.	
23	The Court finds that granting the requested stay would be inappropriate given the	
24	urgency of the matter before the Court. This is not the run of the mill case. The state has	
25	sought preliminary injunctive relief because the government proposes to ship by trucks	
26	one metric ton of plutonium from a Savannah River Site in South Carolina to the Nevada	
27	National Security Site ("NNSS") located approximately 90 miles northwest of Las Vegas.	
28	(ECF No. 1 at 2-3; ECF No. 2.) The state contends that the proposed action will result in	

Case 3:18-cv-00569-MMD-CBC Document 23 Filed 01/02/19 Page 2 of 3

increased radiation doses to Nevada citizens and would, in some circumstances, lead to
contamination of the state's lands and groundwater with radioactive materials. (ECF No.
1 at 6.) The state further asserts that "[I]acking any assurance against the imminent risk,
Nevada (and this Court) must assume that the shipments could reach Nevada any day
now." (ECF No. 2 at 9.)

The Court has set a hearing on the state's PI Motion for January 17, 2019. (ECF
No. 19.) The state argues that with the present Motion the government seeks to indefinitely
stay the scheduled hearing without providing any assurance to the state that it will not
begin its plutonium shipments to NNSS before this Court renders a decision on the PI
Motion. (ECF No. 21 at 4–7; see also ECF No. 21-1 at 4, ECF No. 21-2.)

11 The Court finds the state's contentions persuasive and will deny the Motion in light 12 of the alleged irreparable harm and the government's refusal to assure that it will not 13 proceed with the asserted harmful conduct before the PI Motion is resolved. See, e.g., 14 Priests for Life v. U.S. Dep't of Health and Human Servs., 2013 WL 5572730, at *1 (D.D.C. 15 Oct. 2, 2013) (declining the DOJ's requested stay after a lapse of appropriations because 16 "in light of the irreparable harm alleged, the impending time sensitive mandate, and 17 defendants' refusal to delay enforcement of the mandate as to the plaintiffs in this case, 18 the Court finds that an indefinite stay would be incompatible with the fair administration of 19 justice"). Moreover, granting a stay here is likely to prejudice the state in exercising its 20 vested interest in protecting its residents and lands by having this Court proceed with the 21 scheduled hearing regarding the impending transport of plutonium. See, e.g., Native 22 Songbird Care & Conservation v. Foxx, 2013 WL 5609320, at *3 n.3 (N.D. Cal. Oct. 11, 23 2013) ("Given the fact that time is of the essence in this case, and the fact that an indefinite 24 stay could potentially prejudice Plaintiffs, the Court will not stay this case because of the 25 lapse of appropriations."). The government has not argued that it would be likewise 26 prejudiced if this Court denies its Motion.

27 ///

28

///

	Case 3:18-cv-00569-MMD-CBC Document 23 Filed 01/02/19 Page 3 of 3	
1	It is therefore ordered that the government's motion to stay (ECF No. 20) on behalf	
2	of all Defendants is denied. ¹	
3	DATED THIS 2 nd day of January 2019.	
4	1 ch	
5	MIRANDA M. DU	
6	UNITED STATES DISTRICT JUDGE	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27 28	¹ This order does not preclude the parties for further conferring with each other about a possible stay of this matter on agreeable terms that would accommodate the DOJ's limitations on its attorneys' professional obligations and the state's concern that the first shipment would occur during the stay.	
	3	