

**No. 23-15259**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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WESTERN WATERSHEDS PROJECT, GREAT BASIN RESOURCE WATCH,  
BASIN AND RANGE WATCH, and WILDLANDS DEFENSE,  
*Plaintiffs-Appellants,*

and

RENO SPARKS INDIAN COLONY,  
*Intervenor-Plaintiff Appellant,*

and

BURNS PAIUTE TRIBE  
*Intervenor-Plaintiff Appellant,*

v.

ESTER MCCULLOUGH; UNITED STATES DEPARTMENT OF THE  
INTERIOR; and BUREAU OF LAND MANAGEMENT;  
*Defendants-Appellees,*

and

LITHIUM NEVADA CORPORATION,  
*Intervenor-Defendant-Appellee.*

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On Appeal From the United States District  
Court for the District of Nevada  
(District Judge Miranda M. Du)

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**PLAINTIFFS-APPELLANTS' EMERGENCY MOTION UNDER CIRCUIT  
RULE 27-3  
*RELIEF REQUESTED BY FEBRUARY 28, 2023***

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**EXISTENCE AND NATURE OF EMERGENCY**

WWP brings this motion to stop imminent construction of the nation's largest open pit lithium mine, the Thacker Pass Project, that will obliterate over 5,000 of acres of public land containing BLM-designated Priority habitat for the imperiled sage-grouse, and eliminate the current uses and enjoyment of WWP's members of the highly scenic and wildlife-rich Thacker Pass area of northern Nevada. The project proponent, Lithium Nevada Corp. (LNC), has informed the parties that it plans to begin ground disturbance and construction as soon as February 28, absent relief from this Circuit.

Even though the district court granted WWP summary judgment on its principal claim for relief and held that the Project was unlawfully approved – based upon binding precedent from this Circuit— the court nevertheless refused to vacate BLM’s decision approving the mine or enjoin mine construction pending WWP’s appeal. ER-19-29. Thus, without emergency injunctive relief, LNC will immediately begin clearcutting and stripping of vegetation, construction of waste rock and tailings storage facilities, roads, and other Project infrastructure, among other industrial facilities, spread across 2,660 acres of public land in the first year alone. ER-66.

These activities will permanently and irreparably destroy the area’s important wildlife and cultural values—as well as WWP’s members’ use and enjoyment of the area in its undisturbed state. *See* ER-124-161. They will obliterate thousands of acres of BLM-designated Priority Habitat for the imperiled Greater sage-grouse, a ground-nesting bird famous for its mating dance performed on breeding grounds called leks. The sage-grouse depends upon sagebrush for all of its lifecycle, and LNC “unfortunately will soon begin ripping out sagebrush that will not grow back for a very long time.” ER-6.

Blasting of the huge open mine pit and construction and operation of a molten sulfuric acid chemical processing plant will follow soon after. The mine pit would be 400 feet deep and cover 1,099 acres. At least 230 million cubic yards

(MCY) of ore would be mined, and over 190 MCY of unprocessed waste rock material would be generated during the 41-year mine life. LNC would construct two waste rock storage facilities (WRSFs) covering 190 acres to accommodate permanent storage of approximately 45.9 MCY of excavated mine waste rock material. To dispose of the processed waste, the Project would construct and operate a clay tailings filter stack (CTFS) to permanently store waste materials generated during lithium processing. LNC will place approximately 353.6 MCY of material on the CTFS. The CTFS would be 350 feet high and cover 1,166 acres. Another mineral material stockpile would be 200 feet tall.

Altogether, the Project area covers 17,933 acres of land: 10,468 acres for the mine itself, and 7,465 acres covering the exploration project. The Project would directly disturb 5,695 acres. In the first year alone, over 2,260 acres will be developed, starting immediately.

This development will occur even though LNC has not shown, and BLM never determined, that LNC has any legal right to occupy much of the Project lands. The district court held that BLM violated the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§1701 *et seq.*, when BLM approved the Project's permanent waste rock and tailings storage facilities covering 1,300 acres, based on an erroneous assumption that LNC had statutory rights under the 1872 Mining Law, without ever inquiring or verifying the existence of such rights. This

same federal agency position was held by the Ninth Circuit to violate federal mining and public land law in Center for Biological Diversity v. U.S. FWS, 33 F.4th 1202 (9th Cir. 2022), the “Rosemont Mine” decision. Without valid rights to use this land for necessary the necessary waste facilities and uses, the Project could not legally be approved. Yet, even if the agency on remand finds that LNC holds no valid mining claims allowing it to occupy those lands, the entire Project area will be destroyed—starting immediately—absent relief from this Circuit.

### **WHY THE MOTION COULD NOT BE FILED EARLIER**

WWP could not file this Motion sooner because LNC only informed it about the anticipated date of Project construction on Wednesday, February 15. BLM then informed WWP that it had not yet approved the required reclamation bond, so no construction was authorized and it believed no emergency relief was warranted, as it did not know when the bond would be approved. Nevertheless, as required by Federal Rule of Appellate Procedure 8(a)(1), WWP filed its emergency motion for injunction pending appeal in the district court on February 21, 2023. ER-79. The district court issued an order directing an extremely expedited briefing schedule to allow it time to rule by February 27, but told the parties that if they needed more time, they could agree to a normal briefing schedule and the mining company could agree to hold off on development until the court ruled. ER-78. The parties stipulated to a schedule where briefing would conclude by the end of February and

LNC would delay the onset of Project construction until March 6, 2023 to give the court time to rule. ER-75. The court denied the stipulation because it did not comply with the court's order, and the parties proceeded on the expedited briefing schedule. ER-78.

With its response brief filed on February 22, 2023, BLM also filed its decision, issued the same day, approving the reclamation bond for "Phase 1" (first year construction) of the Mine, which allowed the Project to begin. ER-64.

The district court denied WWP's emergency motion for injunction pending appeal on February 24, 2023, primarily because it held WWP was not likely to succeed on the merits. ER-1-11. WWP asked LNC to adhere to its previous commitment to hold off on development until March 6, 2023, to give the circuit court time to rule on an emergency preliminary injunction motion but LNC refused. LNC has now stated that it intends to start construction on February 28, 2023.

If the motions panel grants a preliminary injunction to prevent the Project's immediate and permanent irreparable harm, WWP would support an expedited briefing schedule on the merits to resolve its appeal.

**NOTIFICATION AND SERVICE OF COUNSEL FOR PARTIES**

On February 24, 2022, WWP notified counsel for BLM, LNC, the Burns Paiute Tribe, the Reno-Sparks Indian Colony, and Bartell Ranch that it intended to file this emergency motion. BLM and LNC oppose the motion. Bartell Ranch stated it intends to file its own emergency motion. The Burns Paiute Tribe and the Reno-Sparks Indian colony did not state their positions on the Motion, but the Burns Paiute Tribe has filed its notice of appeal to this Circuit. WWP believes that all counsel are registered to receive notice of the motion through the CM/ECF system, but will send copies of the motion by email to all parties after it is filed.

**THE DISTRICT COURT DENIED WWP'S MOTION FOR INJUNCTION  
PENDING APPEAL**

The district court denied WWP's emergency motion for injunction pending appeal on February 24, 2023. Order (ER 1-11).

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to FRAP 26.1, Plaintiffs-Appellants Western Watersheds Project (WWP), Great Basin Resource Watch (GBRW), Basin and Range Watch (BRW), and Wildlands Defense (WD) have no parent companies, no subsidiaries or subordinate companies, and no affiliate companies that have issued shares to the public.

## MEMORANDUM IN SUPPORT OF WWP’S EMERGENCY MOTION

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**Exhibit List for WWP’s Emergency Motion**

- 1. Excerpts of Record, Vol. 1.
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## **INTRODUCTION**

Plaintiffs-Appellants Western Watersheds Project (WWP) *et al* (collectively, WWP) seek an injunction to prevent Lithium Nevada Corporation (LNC) from beginning construction of the Thacker Pass Project (Mine or Project) – a massive open pit mine project that will result in immediate and irreparable harm. WWP appeals from the district court’s order and judgment on the cross-motions for summary judgment in their challenge to the Project, Bartell Ranch v. McCullough, No. 3:21-cv-00080-MMD-CLB, 2023 WL1782343 (D. Nev. Feb. 6, 2023)(ER-14-62), as well as from the district court’s February 24, 2023 denial of WWP’s motion for injunction pending appeal. ER-1-11.

The Project would be the first open pit lithium mine in the country, and one of the largest mines in the West, yet it was fast-tracked for approval at the end of the previous Administration. WWP challenges BLM’s 2021 Record of Decision (ROD), ER-240-267, approving LNC’s Plan of Operations for the open pit mine and related operations and associated exploration drilling adjacent to the mine, as well as the Final Environmental Impact Statement (FEIS)(Excerpts in ER as cited below).

In approving the Mine, BLM refused to apply vital environmental protections in the governing Winnemucca Resource Management Plan (RMP), as amended to protect the Greater sage-grouse and its habitat. This was because, as the district court correctly held, BLM erroneously and illegally assumed that LNC holds “valid

rights” under the 1872 Mining Law, 30 U.S.C. §§21 *et seq.*, entitling the company to use and occupy the entire Project area. But BLM never determined whether LNC’s mining claims were valid, especially on 1,300 acres where it will construct its massive waste rock and tailings dump facilities. As this Court recently held in its “Rosemont” decision, Center for Biological Diversity v. U.S. FWS, 33 F.4th 1202 (9th Cir. 2022), to simply assume that valid rights exist is unlawful, since without valid rights to use and occupy public lands for necessary waste facilities, the Project could not legally be approved.

The district court properly applied Rosemont when it held that BLM violated the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§1701 *et seq.* (FLPMA) by approving the Project without determining whether LNC held any rights to the waste dump lands. ER-28. Yet the court declined to vacate the ROD because it believed BLM could later “fix the error—it could find on remand that Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project.” ER-59. This fundamentally misunderstands claim validity review under the Mining Law and controlling precedent.

The district court also held that BLM had not violated other provisions of FLPMA, as well as the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321 *et seq.* (NEPA), even though the Project would violate state water quality standards, technology to “scrub” its emissions of toxic sulfuric acid from the air

does not exist yet, and the FEIS overlooked potentially severe consequences to sage-grouse, pronghorn, and other local wildlife. ER-29-43.

The district court erred and WWP requests injunctive relief pending appeal.

### **STANDARD OF REVIEW and JURISDICTION**

This Court reviews the district court's summary judgment decision and legal conclusions *de novo*. Center for Biological Diversity, 33 F.4th at 1216.

Although the district court's decision not to vacate the illegal ROD is generally reviewed for abuse of discretion, "[a] misapplication of the correct legal rule constitutes an abuse of discretion." Pauma Band of Luiseno Mission Indians of Pauma & Yuima Reservation v. California, 813 F.3d 1155, 1163 (9th Cir. 2015).

This Court has jurisdiction over the district court's decisions under 28 U.S.C. §§1291 and 1292(a)(1).

### **ARGUMENT**

To obtain a preliminary injunction, WWP must show: (1) likely success on the merits; (2) likely irreparable harm; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. Winter v. Nat. Res. Defense Council, Inc., 555 U.S. 7, 20 (2008). The Court focuses on the harms that will result during the pendency of the case if the injunction is not issued. League of Wilderness Defs. v. Connaughton, 752 F.3d 755, 765-66 (9th Cir. 2014).

## **I. IRREPARABLE HARM WILL IMMEDIATELY OCCUR.**

“[E]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often . . . irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” Amoco Prod. Co. v. Vill. Of Gambell, Alaska, 480 U.S. 531, 545 (1987). “Ongoing harm to the environment constitutes irreparable harm warranting an injunction.” Southeast Alaska Conservation Council v. U.S. Army Corps of Engineers, 472 F.3d 1097, 1100 (9th Cir. 2006).

Starting on February 28, in the first year alone, LNC will eliminate the vegetation on over 2,660 acres of public land. LNC will “clear and grub the site,” “strip and stockpile growth media,” construct the west waste rock storage facility, minerals stockpile, and tailings waste facility, construct sediment ponds and a landfill, and bar public access to the site by installing “security fencing” and a “security access point.” ER-66.

This will immediately eliminate WWP’s use and enjoyment of the Project area by destroying the area’s scenic qualities and wildlife habitat. *See* Plaintiffs’ Declarations (ER-125-205). The harm to WWP’s ability to “view, experience, and utilize” the area in its undisturbed state is “actual and irreparable injury” that “satisfies the ‘likelihood of irreparable injury’ requirement articulated in Winter.” All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).



The Project will “completely remove the last, large scale, unburned south facing sagebrush ecosystem in the entirety of the Montana Mountains.” ER-121.<sup>1</sup> “Since sagebrush, once destroyed, can take decades to re-establish, ... destruction of fragile sagebrush habitats is a virtually permanent effect.” ER-215-216, 218-219.<sup>2</sup> “Adverse effects from the mine will destroy the value of habitat at Thacker Pass for generations of sage-grouse,” as well as other wildlife. ER-122.

## **II. WWP IS LIKELY TO PREVAIL ON THE MERITS.**

### **A. The District Court Correctly Applied This Circuit’s Precedent to Hold That BLM Unlawfully Approved the Project.**

The district court ruled in WWP’s favor on its primary legal claim – that BLM violated FLPMA because it approved the Project based on an illegal assumption that LNC had statutory rights to use and occupy its mining claims without first determining whether LNC had “valid rights” under the 1872 Mining Law. ER-18-25.

FLPMA mandates that BLM “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and

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<sup>1</sup> Terry Crawford, a local resident with extensive knowledge of the area, worked for the Nevada Department of Wildlife (NDOW) for 42 years, including over six as agency Director.

<sup>2</sup> The Declaration of Clait Braun, one of the leading experts on sage grouse in the West, was submitted in support of WWP’s initial motion for preliminary injunction.

archeological values” of the public’s land. 43 U.S.C. §1701(a)(8). All activities approved by BLM must comply with the requirements of the binding Resource Management Plan, or “land use plan.” *Id.* §1732(a). All resource management decisions “shall conform to the approved [land use] plan.” 43 C.F.R. §1610.5-3(a). “[W]hen BLM receives a proposed plan of operations under the 2001 [and still current] rules, pursuant to Section 3809.420(a)(3), it assures that the proposed mining use conforms to the terms, conditions, and decisions of the applicable land use plan, in full compliance with FLPMA’s land use planning and multiple use policies.” Mineral Policy Center v. Norton, 292 F. Supp. 2d 30, 49 (D.D.C. 2003).

In 2015, BLM adopted RMP amendments to protect sage-grouse across over 60 million acres of western public lands to avoid the sage-grouse being listed under the Endangered Species Act. *See W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1325-28 (D. Idaho 2019)(summarizing RMPs); Western Exploration v. U.S. Dept. of the Interior, 250 F. Supp. 3d 718, 737 (D. Nev. 2017)(upholding RMPs). The Winnemucca RMP, which governs the Project area, was amended by the Record of Decision for the Great Basin Region (Great Basin ROD) to include binding protective standards for sage-grouse. ER-310. Attachment 2 to the Great Basin ROD, the Nevada and Northeastern California Greater Sage-Grouse Approved 2015 RMP Amendment (ARMPA), established standards for the sage-grouse. *See id.*

The ARMPA designates “Priority Habitat Management Areas” (PHMAs) and “General Habitat Management Areas” (GHMAs). Most of the Project site is designated as a PHMA. ER-280. PHMAs are “BLM-administered lands identified as having the highest habitat value for maintaining sustainable GRSG populations.” ER-290.

To protect PHMA habitat, the ARMPA caps surface disturbance at 3% in each Biologically Significant Unit, here the Lone Willow Population Management Unit (PMU). ER-239, ER-299. BLM must restrict disturbance within certain “buffers” of sage-grouse mating grounds called “leks” as set forth in the ARMPA. ER-301. These standards apply, “subject to applicable law, such as the 1872 Mining Law as amended, and valid existing rights,” or to the extent “consistent” with such rights. BLM also must restrict discretionary surface-disturbing activities that disturb sage-grouse during sensitive seasons, including the March 1 through June 30 “lekking” season. ER-300, ER-301. Nothing in these standards say that they categorically do not apply to mining projects, which was BLM’s position based on its assumption of LNC’s rights under the Mining Law.

BLM did not apply these ARMPA standards, based on an erroneous belief that LNC had “valid rights” to occupy the entire Project site, leaving BLM with no discretion to place conditions on LNC’s use of the area. BLM waived the 3% habitat disturbance cap, based on LNC’s purported “valid rights”: “[A]ny

exceedances of the cap (at both the BSU and project levels scales) do not preclude a locatable mineral resources project **with existing valid rights** from BLM approval.” ER-299 (emphasis added). BLM further exempted the Project from the ARMPA seasonal restrictions, as “[p]roposed locatable minerals resource projects are not subject to the application of seasonal restrictions identified in the [ARMPA].” ER-301. Nor did it require compliance with the lek buffer distances: “Proposed locatable minerals resource projects are not subject to lek buffer distances identified in Appendix B of the GRSG Amendment.” ER-300.

Thus, the issue is whether the Record shows that LNC has the purported “valid rights” on its mining claims under “applicable law” (i.e., the 1872 Mining Law) to justify BLM’s decision not to apply provisions of its own RMP, and to remove BLM’s discretion over the Project. It does not. BLM never determined whether LNC had discovered valuable minerals on lands to be occupied by the waste and tailings facilities. *See* ER-28.

As this Circuit held in Rosemont, “[i]n the absence of a discovery of a valuable mineral deposit, Section 22 [of the Mining Law] gives a miner no right to occupy the claim beyond the temporary occupancy necessary for exploration.” Center for Biological Diversity, 33 F.4th at 1209. The district court correctly applied Rosemont to hold that BLM wrongly presumed LNC had valid rights to its claims, exempting it from compliance with the RMP.

**B. The District Court’s Failure to Vacate the Unlawful ROD Contradicts Precedent as BLM’s Unsupported Assumption of LNC’s Mining “Rights” Was Serious Error Warranting Vacatur.**

Despite finding that the BLM violated its governing statute, FLPMA, and erroneously interpreted the Mining Law contrary to controlling Ninth Circuit precedent, the district court rejected WWP’s request to vacate or enjoin the illegal agency approval. The APA mandates that, when agency action violates the law, “[t]he reviewing court shall ... hold unlawful and set aside [the] agency action.” 5 U.S.C. §706(2). Because BLM’s decisions are “not sustainable on the administrative record made, then the [agency’s] decision[s] must be vacated and the matter remanded to [the agency] for further consideration.” Camp v. Pitts, 411 U.S. 138, 143 (1973).

Vacatur is thus the default and presumptive remedy under the APA for an invalid agency action. All. for the Wild Rockies v. U.S. Forest Serv., 907 F.3d 1105, 1121-22 (9th Cir. 2018). Defendants have the heavy burden to show why anything less than vacating the unlawful agency action is the proper remedy. Id. Remand without vacatur only occurs in “limited” circumstances. Pollinator Stewardship Council v. Vilsack, 806 F.3d 520, 532 (9th Cir. 2015). When determining whether to vacate, the court “weigh[s] the seriousness of the agency’s errors against the disruptive consequences of an interim change that may itself be changed.” Id. at 532.

In deciding not to vacate the illegal ROD, the district court reasoned that BLM could “fix the error” of its illegal assumption of mining “rights” because “it could find on remand that Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project.” ER-59. Yet, BLM could not determine claim validity on **this** Record, which contains at most, evidence of general mineralization in the area, and BLM already determined not to apply several RMP provisions on the assumption that the claims were valid.

The district court’s decision not to vacate the illegal ROD, based on “at least some evidence” of general “mineralization” of the region, ER-59-60, defies a hundred years of precedent establishing demanding requirements for claim validity. “The mere indication or presence of gold or silver is not sufficient to establish the existence of a lode. The mineral must exist in such quantities as to justify expenditure of money for the development of the mine and extraction of the mineral.” Chrisman v. Miller, 197 U.S. 313, 322 (1905). To qualify as a valuable mineral deposit, “it must be shown that the mineral can be extracted, removed and marketed at a profit.” U.S. v. Coleman, 390 U.S. 599, 602 (1968).

Valuable minerals must be discovered on each individual claim. As Rosemont held: “The validity of a claim cannot be established by a discovery of valuable minerals nearby.” 33 F.4th at 1210, *quoting* Waskey v. Hammer, 223 U.S. 85, 91 (1912)(“A discovery without the limits of the claim, no matter what its

proximity, does not suffice.”). Instead, “[e]ach lode [mining] claim must be independently supported by the discovery of a valuable mineral within the location as it is marked on the ground.” Lombardo Turquoise Mining & Milling v. Hemanes, 430 F. Supp. 429, 443 (D. Nev. 1977) *aff’d* 605 F.2d 562 (9th Cir. 1979).

The minerals on each claim must support the objective and reasonable prospect of profitable mining of those claims, which necessarily includes a detailed analysis and computation of all costs. “[T]he finding of some mineral, or even of a vein or lode, is not enough to constitute discovery – their extent and value are also to be considered.” Converse v. Udall, 399 F.2d 616, 619 (9th Cir. 1968). “[P]rofit over cost must be realizable from the material itself and it is that profit which must attract the reasonable man.” Ideal Basic Indus., Inc. v. Morton, 542 F.2d 1364, 1369 (9th Cir. 1976).

LNC cannot demonstrate it meets these strict tests on this Record. “The question is whether valuable minerals have been ‘found’ on the claims, not whether valuable minerals might be found.” Center for Biological Diversity, 33 F.4th at 1222. LNC’s own Technical Report shows that the “known zone of Li [lithium] mineralization” is in the pit and does not extend to the waste dump lands. ER-284. Even if it were true that the area is generally mineralized, the Record contains no evidence of the level of mineralization of each individual mining claim

to be covered in waste and tailings. Nor is there evidence of the costs to extract, process, and develop these minerals showing that they could be extracted and marketed at a reasonable profit.

It makes sense that the lands do not contain valuable minerals, as LNC made the business decision to bury these lands with permanent waste and tailings dumps, and never proposed extracting any minerals from these lands. As in Rosemont, LNC's decision is a significant indication of the lack of valuable minerals on those lands. "As a threshold matter, Rosemont's proposal to bury its 2,447 acres of unpatented mining claims under 1.9 billion tons of its own waste was a powerful indication that there was not a valuable mineral deposit underneath that land." Center for Biological Diversity v. U.S. FWS, 409 F.Supp.3d 738, 748 (D. Ariz. 2019).

Yet, here, just as the Forest Service did in the Rosemont case, BLM "accepted, without question, that those unpatented mining claims were valid. This was a crucial error as it tainted the [agency's] evaluation of the Rosemont Mine from the start." Id. at 747. BLM's decision to exempt the Project from the sage-grouse RMP standards and requirements, as well as its overall review of the Project, was based on its illegal and unsupported assumption that BLM's discretion over the Project was severely limited, indeed non-existent, because LNC held statutory rights to occupy all of public lands at the site.



BLM could not lawfully approve a mine Project with no valid plan for disposing of waste rock and tailings. In the future, on remand, BLM may find LNC has no right to occupy the 1,300 acres slated for the waste and tailings dumps, depending on whether LNC can meet the strict claim validity tests under the Mining Law. But because it already determined not to apply the vital RMP provisions, and the result of its claim validity determination may preclude implementing the Project as currently designed, BLM cannot cure its error on remand without revisiting the entire Decision. In the meantime, thousands of acres of public land will be destroyed. BLM's errors were thus very "serious" and the district court erred when it failed to vacate BLM's Project approval.

### **C. WWP Is Likely To Prevail On Its Other Claims.**

#### *1. BLM's Duty to "Prevent Unnecessary or Undue Degradation" Under FLPMA Requires Compliance with the RMP.*

In addition to FLPMA's RMP compliance requirements under 43 U.S.C. § 1732(a), FLPMA imposes a duty on BLM to "take any action necessary to prevent unnecessary or undue degradation" (UUD) of the public lands. 43 U.S.C.

§1732(b). To prevent UUD, BLM must ensure that all operations comply with the Performance Standards found at §3809.420. *See* 43 C.F.R. §3809.5 (definition of UUD, specifying that failing to comply with the Performance Standards constitutes UUD). These Standards require BLM to ensure that all operations comply with

environmental protection standards, including the applicable RMP and federal and state standards for air and water. *See* 43 C.F.R. §3809.420(a)(3), (b)(4), (b)(5).

BLM cannot under any circumstances approve a mining project that would cause UUD. 43 C.F.R. §3809.411(d)(3)(iii). This duty is “the heart of FLPMA [that] amends and supersedes the Mining Law.” Mineral Policy Center, 292 F. Supp. 2d at 42.

Although the district court held that BLM violated FLPMA when it erroneously assumed LNC held valid mining claims, it ruled against WWP on its UUD claim. Yet, BLM authorized development without mandatory RMP protections on the basis of that unlawful assumption.

BLM has also not shown that the Project will meet state water and air quality standards, failure of which constitutes UUD. *See* 43 C.F.R. §3809.5 (definition of UUD includes “fail[ure] to comply with one or more of the following: ... Federal and state laws related to environmental protection.”). BLM approved excavation below the water table, even though the Record showed that such excavation would cause harmful antimony to leach into the groundwater, in violation of state water quality standards. ER-278; *see also* ER-274.

The district court held that because the ROD contained a general condition requiring LNC to meet water standards, BLM had not authorized UUD. ER-31-32. But a court cannot accept BLM’s unsupported statement that water quality

standards would be met, when the Record shows they would not. Or. Nat. Desert Ass'n v. U.S. BLM, 625 F.3d 1092, 1121 (9th Cir. 2010).

Similarly, the district court ratified BLM's presumption that LNC would meet air quality standards by applying a yet-to-be-determined "scrubbing" process to remove harmful sulfur dioxide that will be produced by the sulfuric-acid processing plant. ER-302. But BLM admitted that "the exact scrubbing system has not yet been determined." ER-302-303. Without details about *how* air quality standards would be achieved in the face of projected emissions of these known pollutants, BLM's statement that they *would* be achieved was unsupported. Approving a Project that will not comply with the RMP and that will violate state air and water quality standards authorizes UUD. 43 C.F.R. §§3809.420, 3809.5.

## 2. *BLM Violated NEPA.*

In the fast-tracked FEIS, BLM failed to take the "hard look" at the Project's impacts, baseline conditions, and other analysis mandated by NEPA. "NEPA establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences." Center for Bio. Diversity v. Dept. of Interior, 623 F.3d 633, 642 (9th Cir. 2010). This review must be supported by detailed data and discussion and include a full analysis of a project's direct, indirect, and cumulative impacts and its alternatives, resulting from all past, present, and reasonably foreseeable future actions. 40 C.F.R. §§1508.7, 1508.8, 1508.9, 1508.25(c).

*a. BLM failed to adequately analyze cumulative effects.*

NEPA requires BLM to analyze cumulative impacts of the Project when “added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. §1508.7. “In a cumulative impact analysis, an agency must take a ‘hard look’ at *all* actions’ that may combine with the action under consideration to affect the environment.” Great Basin Res. Watch v. BLM, 844 F.3d 1095, 1104 (9th Cir. 2016). BLM must include “mine-specific or cumulative data.” Id. at 1105, *quoting* Great Basin Mine Watch v. Hankins, 456 F.3d 955, 973 (9th Cir. 2006).

BLM did not do that here. BLM acknowledges the large “Cumulative Effects Study Areas” (CESA) for critical resources that will be affected by the Project, ER-287, and lists some of the other mining, oil/gas, and activities within the CESAs. ER-288. Yet the FEIS contains little, if any, of the detailed analysis of these and other past, present, and “Reasonably Foreseeable Future Activities” (RFFAs) within the CESAs that may cumulatively affect these resources. BLM simply lists the acreages of these activities in Table 5.2, with no detailed impacts analysis. *See* ER-288.

The Ninth Circuit has repeatedly rejected similarly cursory analyses contained in BLM EISs for mines in Nevada: “listing all relevant actions is not sufficient...some quantified or detailed information is required.” Great Basin Res. Watch, 844 F.3d at 1104. “A calculation of the total number of acres to be

impacted by other projects in the watershed is a necessary component of a cumulative effects analysis, but is not a sufficient description of the actual environmental effects that can be expected.” Hankins, 456 F.3d at 973.

The inadequate analysis of projects/acreages is especially insufficient here because the FEIS does not even mention the ongoing McDermitt lithium drilling project on BLM land just across the Oregon border that will have significant impacts on sage grouse, pronghorn, and other wildlife species. ER-230-233.

*b. BLM failed to analyze baseline conditions and effects to wildlife and air quality.*

BLM also approved the Project without adequate baseline information about sage-grouse, pronghorn, or other wildlife use of the Project area.

“[W]ithout establishing the baseline conditions which exist before a project begins, there is simply no way to determine what effect the project will have on the environment, and consequently, no way to comply with NEPA.” Great Basin Res. Watch, 844 at 1101.

For instance, for pronghorn, the FEIS simply states that the population is “stable,” and lists the available acres of winter and summer range, and two migration corridors. ER-281. For sage-grouse baseline, BLM simply states:

There are 6 known active lek sites... within 3.1 miles of the baseline study area boundary. Male grouse in lek mating systems... exhibit high fidelity to breeding leks. The habitat surrounding lek sites is important for greater sage-grouse because the birds disperse to areas surrounding the leks for nesting.

ER-297. Such cursory statements do not provide a basis on which to assess the Project's effects to these species.

With little baseline to speak of, BLM then relied on broad generalizations about potential wildlife impacts, without specific information or analysis about how they would be affected by the Project's impacts, and therefore failed to take the required "hard look." *See Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 993 (9th Cir. 2004) ("general statements about possible effects and some risk do not constitute a hard look..."). The entire analysis specific to pronghorn is a single sentence: "The construction of Project facilities and the associate loss of habitat is likely to prohibit or impede pronghorn movement between seasonal habitats." ER-281. There is no discussion of the actual effects to the local pronghorn population from destroying roughly 5,000 acres of winter range and cutting off two migration corridors in the Project area. This is a serious oversight since, as the Nevada Department of Wildlife (NDOW) informed BLM, "we consider the loss of 4,960 acres of pronghorn habitat to be a significant loss." ER-305.

In addition, NDOW expressed significant concern about the un-analyzed impacts to wildlife from the Project's groundwater pumping: "We continue to find that the Preferred Alternative will likely result in adverse impacts to wildlife, ground and surface waters, and riparian vegetation ...[and] will likely have

permanent ramifications on the area's wildlife and habitat resources." ER-268. These included "permanent and population-level effects to Greater Sage-grouse," which the FEIS could not understand or anticipate due to an inadequate baseline. ER-308. Instead, the FEIS relied on broad generalizations such as "[w]ater is a critical resource for many species in the Project area, and any impact to water quantity or quality could be a significant impact." ER-283.

BLM also failed to analyze the Project's effects on air quality, relying on an "undetermined" technology to "scrub" the emissions from the processing plant to meet air standards. BLM knew that it did not have enough information on the processing plant. "[T]he process plant is pretty much a black box." ER-304. "Also, to my knowledge the BLM does not employ anyone with that kind of background, which would likely be a chemical or metallurgical engineer." *Id.* Yet, "[i]f there is 'essential' information at the plan- or site-specific development and production stage, [the agency] will be required to perform the analysis under §1502.22(b)." Native Village of Point Hope v. Jewell, 740 F.3d 489, 496 (9th Cir. 2014). BLM cannot rely on unsupported promises.

*c. Failure to adequately analyze mitigation measures and their effectiveness*

NEPA requires BLM to fully analyze mitigation measures and their effectiveness. "Putting off an analysis of possible mitigation measures until after a project has been approved, and after adverse environmental impacts have started to

occur, runs counter to NEPA's goal of ensuring informed agency decisionmaking."

Great Basin Res. Watch, 844 F.3d at 1107.

Yet, BLM approved the Project without mitigation plans in place for impacts to water or wildlife, or analysis of the effectiveness of any proposed mitigation, even though expert federal and state agencies alerted BLM that this was a serious error. For the predicted groundwater pollution, the U.S. EPA determined that the FEIS lacked the required analysis because BLM's mitigation plan had not been developed in adequate detail. ER-274. Instead, BLM only required LNC to "update the groundwater model" every five years and, only if adverse changes had occurred, "adopt mitigation strategies." ER-253.

Moreover, LNC's monitoring and mitigation plan to detect changes that might require mitigation was submitted only after the FEIS process had concluded. "This revised monitoring plan includes a new potential future mitigation option for groundwater quality impacts that was not discussed in the Draft or Final EIS." ER-274. The public never had an opportunity to review and comment upon the new monitoring and mitigation plan.

Likewise, for wildlife, BLM ignored input from EPA and NDOW that it had not provided a mitigation plan for wildlife. "The Final EIS did not include a mitigation, monitoring, and adaptive management plan for wildlife mitigation measures. ... Although the updated Plan of Operations included a monitoring plan



in Appendix H, this did not include information on these measures.” ER-275.

NDOW stressed BLM’s failure to include details about monitoring and mitigation:

The lack of disclosure on how BLM and LNC will be implementing monitoring, mitigation, and adaptive management leaves out the tremendous importance and efforts toward collectively conserving greater sage-grouse and is contrary to the on-going efforts of the BLM to manage for this species.

ER-269. “Such late analysis, ‘conducted without any input from the public,’ impedes NEPA’s goal of giving the public a role to play in the decisionmaking process and so ‘cannot cure deficiencies’ in a [NEPA document].” Or. Nat. Desert Ass’n v. Rose, 921 F.3d 1185, 1192 (9th Cir. 2019).

### **III. THE BALANCE OF EQUITIES TIPS SHARPLY IN WWP’S FAVOR AND AN INJUNCTION IS IN THE PUBLIC’S INTEREST.**

The immediate harm to Plaintiffs from the permanent destruction of the Thacker Pass ecosystem outweighs any harm to LNC from temporary delay of the Project activities while this Court resolves this appeal.

Because the jobs and revenue will be realized if the project is approved, the marginal harm to the intervenors of the preliminary injunction is the value of moving those jobs and tax dollars to a future year, rather than the present. The LOWD plaintiffs’ irreparable environmental injuries outweigh the temporary delay intervenors face in receiving a part of the economic benefits of the project.

Connaughton, 752 F.3d at 765-66.

Although LNC asserts that the need for lithium outweighs all other factors, that there may be some future benefit from using lithium does not override the rule

that “the public’s interest in preserving precious, unreplaceable resources must be taken into account in balancing the hardships.” Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1125 (9th Cir. 2002).

Moreover, to the extent lithium production could eventually provide some general global environmental benefit, that would not occur for at least 3 years. ER-286 (production not beginning until “year three.”)

#### **IV. NO MORE THAN A NOMINAL BOND IS APPROPRIATE.**

In order to obtain an injunction, WWP may be required to post a bond. However, the “court has discretion to dispense with the security requirement, or to request a mere nominal security, where requiring security would effectively deny access to judicial review.” Cal. ex rel. Van de Kamp v. Tahoe Reg’l Plan. Agency, 766 F.2d 1319, 1325-26 (9th Cir. 1985)(no bond where plaintiffs were public interest organizations seeking to protect the environment). The imposition of more than a nominal bond would pose a real financial hardship and prevent Plaintiffs from vindicating their rights and frustrate judicial review. *See* Hadder Decl. ¶¶ 22-23 (ER-167-168), Molvar Decl. ¶¶ 4-8 (ER-236-238), Emmerich Decl. ¶¶ 22-24 (ER-192-193), Fite Decl. ¶¶ 35-36 (ER-204-205).

#### **CONCLUSION**

This Court should grant WWP’s emergency motion and enjoin the Project while it considers WWP’s appeal on the merits.

Respectfully submitted this 27<sup>th</sup> day of February, 2023.

/s/ Talasi Brooks

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### **STATEMENT OF RELATED CASES**

Except for the appeals filed by plaintiff Bartell Ranch and plaintiff-intervenor Burns Paiute Tribe, WWP is not aware of any related cases pending before this Court.

Date: February 27, 2023 s/ Talasi B. Brooks

### **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This memorandum complies with the type-volume limitation of Fed. R. App. P. 27 because it contains less than 5,200 words prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

Date: February 27, 2023. s/ Talasi B. Brooks

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Talasi B. Brooks  
Talasi B. Brooks

**No. 23-15259**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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WESTERN WATERSHEDS PROJECT, GREAT BASIN RESOURCE WATCH,  
BASIN AND RANGE WATCH, and WILDLANDS DEFENSE,  
*Plaintiffs-Appellants,*

and

RENO SPARKS INDIAN COLONY,  
*Intervenor-Plaintiff Appellant,*

and

BURNS PAIUTE TRIBE  
*Intervenor-Plaintiff Appellant,*

v.

ESTER MCCULLOUGH; UNITED STATES DEPARTMENT OF THE  
INTERIOR; and BUREAU OF LAND MANAGEMENT;  
*Defendants-Appellees,*

and

LITHIUM NEVADA CORPORATION,  
*Intervenor-Defendant-Appellee.*

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On Appeal From the United States District  
Court for the District of Nevada  
(District Judge Miranda M. Du)

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**EXCERPTS OF RECORD VOLUME 1 OF 2**

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BARTELL RANCH LLC, *et al.*,

Plaintiffs,

v.

ESTER M. MCCULLOUGH, *et al.*,

Defendants.

Case No. 3:21-cv-00080-MMD-CLB

ORDER

**I. SUMMARY**

Plaintiffs<sup>1</sup> and Plaintiff-Intervenors<sup>2</sup> mostly—but not entirely—unsuccessfully challenged the Bureau of Land Management of the U.S. Department of Interior’s<sup>3</sup> approval of Intervenor-Defendant Lithium Nevada Corporation’s plan to build a lithium mine near Thacker Pass, Nevada and engage in further exploration for lithium (the “Project”).<sup>4</sup> (ECF No. 279 (“Merits Order”).) Environmental Plaintiffs filed an emergency

<sup>1</sup>Bartell Ranch LLC and Edward Bartell (collectively, the “Rancher Plaintiffs”), along with Western Watersheds Project, Wildlands Defense, Great Basin Resource Watch, and Basin and Range Watch (collectively, the “Environmental Plaintiffs”).

<sup>2</sup>Reno-Sparks Indian Colony (“RSIC”) and the Burns Paiute Tribe. The Court refers to both tribes collectively as the Tribal Plaintiffs.

<sup>3</sup>Ester M. McCullough, the District Manager of BLM’s Winnemucca office, along with the Department of the Interior, are also named Defendants. The Court refers to them collectively as the Federal Defendants.

<sup>4</sup>Plaintiffs sought judicial review of BLM’s Record of Decision (“ROD”) under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (“APA”), challenging BLM’s compliance with three federal statutes: the National Environmental Policy Act, 42 U.S.C. §§ 4321-61 (“NEPA”), the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1787 (“FLPMA”), and the National Historic Preservation Act, 54 U.S.C. § 300101, *et seq.* (“NHPA”). (ECF Nos. 1, 46, 83.) *See also Western Watersheds Project, et al. v. Bureau of Land Management of the U.S. Department of the Interior, et al.*, Case No. 3:21-cv-00103-MMD-CLB, ECF No. 1 (D. Nev. Filed Feb. 26, 2021) (since consolidated into this case).

motion for an injunction pending appeal, asking the Court to enjoin Lithium Nevada from proceeding with any construction on the Project until the United States Court of Appeals for the Ninth Circuit resolves their appeal. (ECF No. 284 (“Motion”).)<sup>5</sup> Rancher Plaintiffs (ECF No. 289) and the Burns Paiute Tribe (ECF No. 290) also filed emergency motions for injunctions pending appeal in which they join the arguments Environmental Plaintiffs raise in their Motion and offer a few arguments of their own.<sup>6</sup>

Plaintiffs have failed to make a clear showing of entitlement to the extraordinary remedy of an injunction pending appeal. The Court finds that its recent decision to remand the ROD without vacatur in the Merits Order was the right one. Because Plaintiffs cannot make a strong showing of likelihood of success on the merits—and as further explained below—the Court will deny the pending motions. Accordingly, the Court declines to issue an injunction pending Plaintiffs’ appeal, and in doing so, the Court effectively maintains the status quo—remand without vacatur of the ROD.

## **II. DISCUSSION**

Environmental Plaintiffs seek an injunction pending appeal under Fed. R. Civ. P. 62(d). (ECF No. 284 at 9.) That rule provides that the Court may “suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights” “[w]hile an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction[.]” Fed. R. Civ. P. 62(d). The Merits Order was such an order because all

<sup>5</sup>Given the possibility raised in the Motion that Lithium Nevada intended to start construction on the Project on February 27, 2023, the Court set an expedited briefing schedule on the Motion. (ECF No. 286.) Federal Defendants (ECF No. 293) and Lithium Nevada (ECF No. 294) filed responses, and Environmental Plaintiffs filed a reply (ECF No. 297) on this expedited timeline.

<sup>6</sup>Accordingly, the Court’s discussion below also applies to Rancher Plaintiffs’ and the Burns Paiute Tribe’s pending motions. (ECF Nos. 289, 290.) The Court only specifically addresses their motions below to the extent necessary to note their added points. For the same reasons, the Court did not set a briefing schedule on their motions and found that further briefing was not necessary to decide them.

Plaintiffs sought injunctive relief in their complaints, and the Court directed entry of final judgment that refused to grant them any injunctive relief. See *id.* In considering the Motion, the Court must consider:

(1) whether the [injunction] applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a [injunction]; (3) whether issuance of the [injunction] will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Sierra Club v. Trump*, 929 F.3d 670, 687 (9th Cir. 2019) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). And as the parties who filed the Motion, Plaintiffs bear the burden of showing that the circumstances justify an exercise of judicial discretion to intrude into the ordinary processes of administration and judicial review—which in this case resulted in the Merits Order. See *id.* at 687-88. Said otherwise, the Merits Order would normally be the end of this case at the district court level. This is why Plaintiffs must make a strong showing of likelihood of success on the merits to establish their entitlement to an injunction pending appeal. See *id.* at 687.

The Court also notes at the outset that Environmental and Rancher Plaintiffs characterize their pending, emergency motions as attempts to maintain the status quo, but that is not really accurate. (ECF Nos. 284 at 9, 289 at 2.) The current status quo is that the Court remanded without vacatur in the Merits Order, and this case is closed. (ECF Nos. 279, 280.) There is currently no injunction in place,<sup>7</sup> and Lithium Nevada can proceed towards construction of the Project under the ROD assuming it has satisfied all federal and state requirements not directly before the Court for review. The moving parties are accordingly asking the Court to enter an injunction in this case for the first time

<sup>7</sup>In fact, the Court twice denied motions for preliminary injunctive relief in this consolidated case (and denied reconsideration of one of its orders denying preliminary injunctive relief). (ECF Nos. 92, 117.) See also *Western Watersheds*, Case No. 3:21-cv-00103-MMD-CLB, ECF No. 48. And the Court never entered any sort of permanent injunction.

pending the outcomes of their appeal. Said otherwise, the moving parties are asking for something new, not to maintain the status quo. Relatedly, the Court accordingly uses the phrasing injunction pending appeal below instead of stay pending appeal because that is what the parties are actually seeking.

The Court next addresses the factors that Plaintiffs must demonstrate to obtain an injunction pending appeal. Because the Court finds that Plaintiffs cannot demonstrate a likelihood of success on the merits, the Court denies the pending motions on that basis alone. But the Court will nevertheless address the remaining factors.<sup>8</sup>

#### **A. Likelihood of Success on the Merits**

Environmental Plaintiffs have not made the requisite strong showing of a likelihood of success on the merits of their appeal. Indeed, their first argument—that they have already prevailed on the merits of their primary legal claim<sup>9</sup>—misses the mark. (ECF No. 284 at 11.) Because as Environmental Plaintiffs immediately clarify, they are not appealing the portion of the Merits Order where the Court agreed with them. (*Id.*; ECF No. 297 at 1-8 (focusing on remand without vacatur).) They are instead appealing the Court's decision to remand without vacatur, along with the Court's decision to otherwise deny their motion for summary judgment. (*Id.*) So the pertinent question for purposes of their Motion is whether the Court agrees Environmental Plaintiffs are likely to prevail on the merits of what is apparently their main argument on appeal—that the Court erred when it decided to remand without vacatur.<sup>10</sup> It is not, as Environmental Plaintiffs suggest,

<sup>8</sup>Federal Defendants argue that the analysis of the third and fourth prongs merge when the government opposes a motion for injunctive relief. (ECF No. 293 at 17.) The Court will nonetheless address them separately here.

<sup>9</sup>Environmental Plaintiffs are correct to a point, in that the Court agreed with them that *Rosemont* applies to this case, which meant that BLM had to—but did not—make a determination as to the validity of Lithium Nevada's rights to the federal lands it intends to use for waste dumps and mine tailings. (ECF No. 279 at 2, 6-16.)

<sup>10</sup>To the extent Environmental Plaintiffs argue they were given insufficient opportunities to offer pertinent argument before the Court made its decision to remand

overly pertinent for purposes of the Motion that the Court agreed with them on the *Rosemont* issue. And as explained below, the Court does not find it erred in making the difficult yet considered decision to remand without vacatur.

Moreover, Environmental Plaintiffs' argument that they already succeeded on the merits overlooks what the Court wrote in the portion of the Merits Order where it explained its decision to remand without vacatur. There, the Court wrote that "BLM substantially complied with the applicable legal requirements here[.]" which supported the Court's decision to remand without vacatur. (ECF No. 279 at 47.) Said otherwise, the Court found ultimately unpersuasive the bulk of Environmental Plaintiffs' arguments. Environmental Plaintiffs are thus incorrect when they make the circular argument that they are likely to prevail because they did prevail.

Environmental Plaintiffs' next argument—that BLM's refusal to evaluate claim validity was serious error because it contradicted a century of precedent—also overlooks something the Court wrote in the Merits Order. (ECF No. 284 at 13-14.) The Court specifically noted in the Merits Order that it would be inequitable to remand with vacatur based on *Rosemont* because BLM was following its longstanding regulations when it decided not to evaluate claim validity and *Rosemont* was not even published until after merits briefing began in this case. (ECF No. 279 at 47.) Said otherwise, while the Court agreed in the Merits Order that BLM's longstanding regulations are inconsistent with the Mining Law as interpreted in *Rosemont*, the Court is the first court to make that ruling and

without vacatur, the Court disagrees. Over a month before the merits hearing, the Court advised the parties it expected them to be prepared to address at the hearing, "the scope of any relief that may be appropriate were the Court to agree with Environmental Plaintiffs' arguments based on [*Rosemont*] and remand to BLM." (ECF No. 276 at 2.) Environmental Plaintiffs' counsel presented argument on whether to remand with or without vacatur at the hearing. (ECF No. 277 (hearing minutes).) And only Federal Defendants requested the opportunity to further brief the remand with or without vacatur decision. (See *id.*) In addition, the Court noted in the Merits Order that it found it had received sufficient argument to issue an informed ruling on the remand without vacatur issue. (ECF No. 279 at 46.)

made it for the first time in the Merits Order. Environmental Plaintiffs' attempt to characterize a novel finding favorable to them as long-settled law is unpersuasive.

Environmental Plaintiffs then argue that the analysis BLM now faces on remand—whether there is sufficient lithium mineralization in the waste dump and mine tailings land—is fact-intensive and the fact that such a fact-intensive inquiry was missing from the ROD infects the entire ROD with error. (ECF No. 284 at 14-18.) But these arguments also overlook portions of the Merits Order. Specifically, to start, the ROD approved two different plans of operations, and the Court only found BLM erred as to the portion of the ROD approving the mining plan of operations that covered the waste dump and mine tailings land. (ECF No. 279 at 47.) In addition, there is evidence in the record of lithium mineralization such that BLM may be able to fix its error on remand. (*Id.* at 11-12, 46-47.) And contrary to Environmental Plaintiffs' argument (ECF No. 284 at 15), there need not be a certainty of sufficient mineralization in the waste dump and mine tailings land—there must only be a 'serious possibility.' (ECF No. 279 at 11-12.) The Court found just such a serious possibility. (*Id.*)

This brings the Court to Environmental Plaintiffs' broadest and most persuasive argument pertinent to both the likelihood of success on the merits and irreparable harm prongs of the analysis—that the Court's decision to remand without vacatur causes environmental harm because Lithium Nevada imminently intends to start construction on the Project. The Court again agrees with Environmental Plaintiffs, but only to a point. Specifically, the Court agrees—and understood when it issued the Merits Order several weeks ago—that the Merits Order would mean Lithium Nevada could start construction on the Project, and thus disrupt the sagebrush ecosystem within the Project area. The Court indeed expects that Lithium Nevada unfortunately will soon begin ripping out sage brush that will not grow back for a very long time.

As to Environmental Plaintiffs' specific environmental harm argument presented in their Motion, the Court is aware that the Ninth Circuit decided to remand without vacatur

in more than one case it discussed in the Merits Order because environmental harm would result if it vacated the pertinent decision. But that is not the reason that the Court provided for its decision to remand without vacatur in the Merits Order. (*Id.* at 46-47.) The Court instead decided to remand without vacatur because of the serious possibility that BLM could fix its error on remand,<sup>11</sup> the Court's finding that BLM substantially complied with the myriad legal requirements applicable to the ROD, and the fact that *Rosemont* did not issue until well after BLM published the ROD in any event. (*Id.*) The alternative, acceptable reason for remand without vacatur that Environmental Plaintiffs highlight in their Motion—environmental harm—did not apply to the Court's analysis provided in the Merits Order, as Federal Defendants correctly pointed out in their response (ECF No. 293 at 13). In sum, the Court finds that Environmental Plaintiffs have not made the requisite strong showing that they are likely to prevail on the merits of their contention on appeal that the Court erred when it decided in the Merits Order to remand without vacatur.<sup>12</sup>

Rancher Plaintiffs have not made the requisite strong showing, either. They argue they are likely to prevail on the merits of their argument on appeal that the Court should have extended *Rosemont* even further than it did in the Merits Order to cover any power transmission or water lines (or, indeed, anything outside the mine pit) that Lithium Nevada may use to support the Project. (ECF No. 289 at 4-11.) First, arguing for a further extension of law is not logically compatible with a strong likelihood of success on the merits—because Rancher Plaintiffs do not, and cannot, point to any precedent supporting

<sup>11</sup>Environmental Plaintiffs pointed out in reply that BLM and Lithium Nevada's responses "are contradictory." (ECF No. 297 at 2-3.) But the Court remanded for "BLM to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the ROD." (ECF No. 279 at 48-49.) In other words, it's BLM's responsibility.

<sup>12</sup>For the reasons provided in the Merits Order, the Court does not find that serious questions go to the merits of the other issues Environmental Plaintiffs may present on appeal. (ECF No. 284 at 19 (incorporating by reference the various arguments the Court found unpersuasive in the Merits Order from Environmental Plaintiffs' motion for summary judgment).)



their argument—especially when it is not yet even clear whether the Ninth Circuit will agree with the way the Court extended *Rosemont* in this case. Second, the Court specifically considered and rejected the same argument Rancher Plaintiffs raise here in the Merits Order. (ECF No. 279 at 13.) The Court rejects it here for the same reasons it rejected it there. Third, Rancher Plaintiffs arguably waived this argument in any event because they did not clearly articulate it in their briefs (which were almost entirely focused on other issues), cogently raising it for the first time at the hearing on the summary judgment motions. The Court does not find Rancher Plaintiffs have shown a strong likelihood of success on the merits.

### **B. Irreparable Harm**

Turning to the irreparable harm prong of the analysis, an injunction “is not a matter of right, even if irreparable injury might otherwise result.” *Sierra Club*, 929 F.3d at 687. (citation omitted). As an initial matter, the irreparable harm to the environment that Environmental Plaintiffs raise in their Motion is based on the entirety of the Project and not directly connected to their likelihood-of-success-on-the-merits argument, which is focused on *Rosemont*’s application to BLM’s decision regarding only the 1,300 acres of waste dump and mine tailings land. (ECF No. 284 at 11, 19-20.) Federal Defendants correctly note that Environmental Plaintiffs make no arguments as to irreparable harm arising from planned activity specifically within those 1,300 acres (ECF No. 293 at 15), and the Court thus finds that they have not demonstrated “immediate threatened injury” to those specific areas that would warrant emergency relief, *see Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Because Environmental Plaintiffs contend that the Court erred in not vacating the ROD, the Court will nevertheless address their arguments of generalized harm resulting from the decision to remand without vacatur.

As noted, the Court understands that allowing the Merits Order to stand will likely result in the destruction of sagebrush. However, Environmental Plaintiffs do not discuss

in their Motion how the Court found in the Merits Order that there was insufficient evidence to support their arguments that the Project will cause adverse air and water quality impacts to the local environment, and as to wildlife, that BLM had at least adequately considered the adverse impact the Project will have on them. Considering the totality of the environmental issues discussed in the Merits Order, the Court does not find that the irreparable harm prong of the analysis weighs heavily in Environmental Plaintiffs' favor here. (ECF Nos. 284 at 19-23 (making their irreparable harm argument), ECF No. 297 (expanding on and clarifying irreparable harm argument).)

Burns Paiute Tribe argues it will be irreparably harmed if Lithium Nevada commences construction on the Project while its appeal is pending in a different way from Environmental and Rancher Plaintiffs, but does not specifically explain how construction work on the Project during the pendency of the appeal will cause the harms it describes. (ECF No. 290 at 2-3.)<sup>13</sup> Burns Paiute Tribe discusses the Thacker Pass area, but not the Project area specifically. (*Id.*) The two areas are not perfectly coextensive. Burns Paiute Tribe does not therefore offer a sufficient causal connection between the harms it describes and the Court's potential decision not to enter an injunction pending appeal.

### **C. Substantial Injury to Other Parties**

Environmental Plaintiffs get the third prong of the analysis slightly wrong in their Motion.<sup>14</sup> (ECF No. 284 at 23-24.) Environmental Plaintiffs characterize this prong as the balance of hardships and make the reasonable argument that their environmental interests outweigh Lithium Nevada's economic ones. (*Id.*) But the third prong of the analysis is "whether issuance of the [injunction] will substantially injure the other parties interested in the proceeding[.]" *Sierra Club*, 929 F.3d at 687. Further delay of the Project

<sup>13</sup>This is the only prong of the injunction pending appeal analysis for which Burns Paiute Tribe offers independent argument. (ECF No. 290.)

<sup>14</sup>So do Rancher Plaintiffs. (ECF No. 290 at 13.)

will harm Lithium Nevada, though delay is likely neutral for Federal Defendants. This prong accordingly at least very slightly favors denying the Motion.

#### **D. Public Interest**

As to the fourth prong, Environmental Plaintiffs argue that the public interest strongly favors preventing environmental harm. (ECF No. 284 at 24-25.) But “if saving a snail warrants judicial restraint, so does saving the power supply.” *California Communities Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 994 (9th Cir. 2012) (citations omitted) (deciding to remand without vacatur). This quotation speaks to an important tension also unaddressed in Environmental Plaintiffs’ Motion. Indeed, Lithium Nevada has argued throughout this case that the Project will, on balance, be environmentally beneficial because the lithium produced from the mine will enable various clean technologies. And there is, if nothing else, a tension between the macro environmental benefit that could result from the Project and the micro (relatively speaking) environmental harm that will likely flow from the Merits Order unenjoined. The Court does not resolve that tension here. But the Court notes the tension to find, for purposes of the Motion, that the public interest prong of the analysis does not overwhelmingly favor granting the Motion sufficient to outweigh the insufficiently strong showing of likelihood of success on the merits that Environmental Plaintiffs made in their Motion.

In sum, and on balance, the four applicable factors, *see Sierra Club*, 929 F.3d at 687, do not favor granting Environmental Plaintiffs’ Motion—or the other pending motions.

### **III. CONCLUSION**

It is therefore ordered that Environmental Plaintiffs’ emergency motion for an injunction pending appeal (ECF No. 284) is denied.

It is further ordered that Rancher Plaintiffs’ emergency motion for an injunction pending appeal (ECF No. 289) is denied.

It is further ordered that Burns Paiute Tribe’s emergency motion for an injunction pending appeal (ECF No. 290) is denied.

DATED THIS 24<sup>th</sup> Day of February 2023.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', written over a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BARTELL RANCH LLC, *et al.*,

Plaintiffs,

v.

ESTER M. MCCULLOUGH, *et al.*,

Defendants.

JUDGMENT

Case Number: 3:21-cv-00080-MMD-CLB

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**X** **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

— **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that pursuant to this court's order entered February 6, 2023 (ECF No. 279) the court has rendered a decision as more fully specified within that order (ECF No. 279) as follows:

**ORDERED** the Environmental Plaintiffs' motion for summary judgment (ECF No. 202) is **granted in part, and denied in part.** Ibid.

**IT IS FURTHER ORDERED** that the Burns Paiute Tribe's motion for summary judgment (ECF No. 203) is **denied.** Ibid.

**IT IS FURTHER ORDERED** that Rancher Plaintiffs' motion for summary judgment (ECF No. 204) is **granted in part, and denied in part.** Ibid.

**IT IS FURTHER ORDERED** that RSIC's motion for summary judgment (ECF No. 205) is **denied.** Ibid.

**IT IS FURTHER ORDERED** that Lithium Nevada's counter motion for summary judgment (ECF No. 241) as to Rancher Plaintiffs' claims is **granted in part, and denied in part.** Ibid.

**IT IS FURTHER ORDERED** that Lithium Nevada's cross motion for summary judgment (ECF No. 242) as to Environmental Plaintiffs' claims is **granted in part, and denied in part.** Ibid.

**IT IS FURTHER ORDERED** that Federal Defendants' cross motions for summary judgment (ECF Nos. 227, 237, 238) are **granted in part, and denied in part.** Ibid.

**IT IS FURTHER ORDERED** that Lithium Nevada's cross motions for summary judgment as to Tribal Plaintiffs' claims (ECF No. 230) are **granted.** Ibid.

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**IT IS FURTHER ORDERED** that this case is **remanded** - but without vacatur of the Record of Decision - to BLM to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the Record of Decision. Ibid.

**IT IS FURTHER ORDERED** that judgment is hereby entered accordingly and this case is closed.

Date: February 7, 2023



CLERK OF COURT

A handwritten signature in black ink, appearing to read "Dora K. Kays".

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

BARTELL RANCH LLC, *et al.*,

Plaintiffs,

v.

ESTER M. MCCULLOUGH, *et al.*,

Defendants.

Case No. 3:21-cv-00080-MMD-CLB

ORDER

**I. SUMMARY**

Plaintiffs<sup>1</sup> and Plaintiff-Intervenors<sup>2</sup> challenge the Bureau of Land Management of the U.S. Department of Interior's<sup>3</sup> approval of Intervenor-Defendant Lithium Nevada Corporation's plan to build a lithium mine near Thacker Pass, Nevada and engage in further exploration for lithium (the "Project"). They ask the Court to review BLM's Record of Decision ("ROD") under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"), challenging BLM's compliance with three federal statutes.<sup>4</sup> While this case encapsulates the tensions among competing interests and policy goals, this order does

<sup>1</sup>Bartell Ranch LLC and Edward Bartell (collectively, the "Rancher Plaintiffs"), along with Western Watersheds Project, Wildlands Defense, Great Basin Resource Watch, and Basin and Range Watch (collectively, the "Environmental Plaintiffs").

<sup>2</sup>Reno-Sparks Indian Colony ("RSIC") and the Burns Paiute Tribe. The Court refers to both tribes collectively as the Tribal Plaintiffs.

<sup>3</sup>Ester M. McCullough, the District Manager of BLM's Winnemucca office, along with the Department of the Interior, are also named Defendants. The Court refers to them collectively as the Federal Defendants.

<sup>4</sup>The National Environmental Policy Act, 42 U.S.C. §§ 4321-61 ("NEPA"), the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1787 ("FLPMA"), and the National Historic Preservation Act, 54 U.S.C. § 300101, *et seq.* ("NHPA"). (ECF Nos. 1, 46, 83.) *See also Western Watersheds Project, et al. v. Bureau of Land Management of the U.S. Department of the Interior, et al.*, Case No. 3:21-cv-00103-MMD-CLB, ECF No. 1 (D. Nev. Filed Feb. 26, 2021) (since consolidated into this case).

not somehow pick a winner based on policy considerations. That is not this Court’s role. The Court’s role instead is to carefully apply the applicable standard of judicial review to consider the decision of a federal agency that is generally entitled to deference, based entirely on the contents of the records before the agency at the time of its challenged decision.

This order addresses the parties’ dispositive motions seeking judgment on the merits.<sup>5</sup> (ECF Nos. 202, 203, 204, 205, 241, 242.) The Court explains below its resolution of the pending motions, and, thus, this case. To preview, the Court finds that *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 33 F.4th 1202 (9th Cir. 2022) (“*Rosemont*”) applies. This in turn leads the Court to conclude that BLM’s approval of the Project violated FLPMA as it relates to the approximately 1300 acres of land Lithium Nevada intends to bury under waste rock because BLM did not first make a mining rights validity determination as to those land. The Court otherwise affirms BLM’s decision, rejecting arguments that the Project will cause unnecessary and undue degradation to the local sage grouse population and habitat, groundwater aquifers, and air quality in violation of FLPMA, that BLM failed to adequately assess the Project’s impacts on air quality, wildlife, and groundwater in violation of NEPA, that BLM failed to adequately consider the Project’s impacts as to the area’s contemporary cultural or religious significance to local tribes also in violation of NEPA, and that BLM unreasonably or in bad faith decided not to consult with Tribal Plaintiffs before approving the Project in violation of the NHPA. In sum, the Court concludes that BLM’s decision as it relates to approval of land to be used for waste dumps violated FLPMA (43 U.S.C. § 1732(b)) and is therefore arbitrary and capricious under the APA. But the Court otherwise rejects Plaintiff and Plaintiff-Intervenors’ claims.

<sup>5</sup>These motions are fully briefed, and the Court has reviewed all of the briefing the parties submitted. In addition, the Court held an in-person hearing (“Hearing”) on the pending motions on January 5, 2023. (ECF Nos. 273 (setting hearing), 277 (hearing minutes).) The Court accordingly discusses *infra* some arguments and concessions the parties made at the Hearing.



The Court has also determined this is the rare case where remand without vacatur is appropriate primarily because the records suggest BLM could fix the error the Court identifies and Plaintiffs fail in their other legal challenges to BLM’s decision to approve the Project. The Court will remand for BLM to fix the error—to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project. But the Court declines to vacate the ROD pending BLM’s review of the mining plan of operations portion of the Project.

## II. LEGAL STANDARD

The Court reviews BLM’s decision to issue the ROD based entirely on the contents of the Administrative Record (“AR”) under the APA. “The APA does not allow the court to overturn an agency decision because it disagrees with the decision or with the agency’s conclusions about environmental impacts.” *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1070 (9th Cir. 2010). But “[u]nder the [APA], a reviewing court shall ‘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 the law....’” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994) (quoting 5 U.S.C. § 706(2)(A)). An agency’s decision may be reversed as arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). “To make this finding, the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971).

But in reviewing an agency’s decision under this standard, “the reviewing court may not substitute its judgment for that of the agency.” *Env’tl. Def. Ctr., Inc. v. U.S. Env’tl. Prot. Agency*, 344 F.3d 832, 858 n.36 (9th Cir. 2003); see also *Rosemont*, 33 F.4th at 1216

(same). And the Court’s “review is limited to ‘the grounds that the agency invoked when it took the action.’” *Id.* (citation omitted). Although this review is narrow, “a reviewing court must conduct a searching and careful inquiry into the facts.” *Nw. Motorcycle Ass’n*, 18 F.3d at 1471. “A satisfactory explanation of agency action is essential for adequate judicial review, because the focus of judicial review is not on the wisdom of the agency’s decision, but on whether the process employed by the agency to reach its decision took into consideration all the relevant factors.” *Asarco, Inc. v. U.S. Envtl. Prot. Agency*, 616 F.2d 1153, 1159 (1980).

The Court reviews for substantial evidence the agency’s factual conclusions based on the administrative record. *See Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1068 (9th Cir. 2018). “Where ‘evidence is susceptible of more than one rational interpretation,’ [the Court upholds] the agency’s finding if a ‘reasonable mind might accept [it] as adequate to support a conclusion.’” *Id.* (citation omitted).

### **III. DISCUSSION**

The Court primarily organizes this discussion by plaintiff group, first discussing Environmental Plaintiffs’ claims, then Rancher Plaintiffs’ claims, and then Tribal Plaintiffs’ claims. However, the Court notes when two plaintiff groups have essentially the same claims and considers those claims together. And the Court concludes by explaining its decision to remand without vacatur.

#### **A. Environmental Plaintiffs**

Environmental Plaintiffs argue BLM’s decision to approve the Project in the ROD violates FLPMA and NEPA. The Court addresses below Environmental Plaintiffs’ arguments under both statutes after first describing the pertinent factual background.

##### **1. Factual Background**

Lithium Nevada submitted two plans of operations (one for exploration, and the other for mining and reclamation) to BLM for approval in September 2019. (TPEIS-0452 at AR-052517.) BLM approved both plans in the ROD. (*Id.*)

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The pertinent NEPA process began when BLM issued a notice of intent to prepare an environmental impact statement on January 21, 2020. See Notice of Intent To Prepare a Draft Environmental Impact Statement and Resource Management Plan Amendment, for the Lithium Nevada Corp., Thacker Pass Project Proposed Plan of Operations and Reclamation Plan Permit Application, Humboldt County, Nevada, 85 FR 3413-02, 2020 WL 279646 (Jan. 21, 2020). BLM then went through a scoping period where it held two virtual public meetings in Winnemucca and Orovada, Nevada on February 5 and 6, 2020, and received 26 comment letters. (ECF No. 237 at 11-12.)

BLM provided a draft environmental impact statement with underlying data and analysis to stakeholders including the Nevada Department of Wildlife (“NDOW”) in the spring of 2020, and made the draft environmental impact statement available for public comment on July 29, 2020. See Notice of Availability of the Draft Environmental Impact Statement, 85 FR 45651-01, 2020 WL 4340040 (Jul. 29, 2020). BLM held two additional public meetings in August 2020 and received 63 letters commenting on the draft environmental impact statement. (ECF No. 237 at 12.)

BLM then issued the final environmental impact statement (“FEIS”) on December 4, 2020. See Notice of Availability of the Final Environmental Impact Statement for the Proposed Thacker Pass Project, Two Plans of Operations Submitted by Lithium Nevada Corporation for Mining and Exploration in Humboldt County, Nevada, 85 FR 78349-01, 2020 WL 7075441 (Dec. 4, 2020). BLM considered additional comments submitted in the 30 days that followed, including from Plaintiffs, NDOW, and the United States Environmental Protection Agency (“EPA”). And as noted, BLM issued the ROD approving the Project on January 15, 2021. (TPEIS-0452 at AR-052515.)

## **2. FLPMA**

Environmental Plaintiffs argue BLM violated FLPMA in two different ways: (1) by approving the Project, which does not comply with the Nevada and Northeastern California Greater Sage-Grouse Approved 2015 RMP Amendment (“ARMPA”), the applicable, regional land-use plan, based on the erroneous presumption that Lithium Nevada

possessed valid rights under the Mining Law of 1872 (codified as amended at 30 U.S.C. §§ 21 to 54) (the “Mining Law”) to the land that Lithium Nevada intends to use as waste dumps;<sup>6</sup> and (2) because the Project will cause unnecessary and undue degradation (“UUD”) prohibited by FLPMA in any event. (ECF No. 202 at 15-31, 43-48.) The Court addresses each of Environmental Plaintiffs’ FLPMA arguments in turn.

**a. Mining Law**

More than a year after BLM issued the ROD, and indeed after briefing on the pending motions began, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Rosemont*, 33 F.4th 1202. The Court indicated to the parties that it was interested in hearing argument at the Hearing on the extent to which *Rosemont* controls the outcome of this case. (ECF No. 276.) And, indeed, much of the argument at the Hearing focused on the application of *Rosemont* to this case. As further explained below, the Court finds that *Rosemont* applies, which means that BLM must have, but did not, determine whether Lithium Nevada has valid rights under the Mining Law to occupy the approximately 1300 acres it plans to occupy with waste rock dumps and tailings piles outside the mine pit before issuing the ROD.

*Rosemont* is about a copper mine on Forest Service land, not a lithium mine on BLM land. But the language of the regulations at issue in *Rosemont* is so similar to the language of the regulations at issue here, and the reasoning of *Rosemont* otherwise so applicable to these facts, that the Court finds *Rosemont* controlling. As further explained below, the *Rosemont* court’s analysis focused on the Mining Law. The Mining Law “gives to United States citizens free of charge, except for small filing and other fees, mining rights upon discovery of ‘valuable minerals’ on federal land.” *Rosemont*, 33 F.4th at 1208. The

<sup>6</sup>Rancher Plaintiffs also make this argument so the Court’s analysis of this argument also applies to Rancher Plaintiffs. The Court notes in its discussion any ways in which Rancher Plaintiffs’ argument differs from Environmental Plaintiffs’ argument. In addition, Rancher Plaintiffs joined Environmental Plaintiffs’ motion for summary judgment. (ECF No. 212.) Thus, the Court’s discussion of Environmental Plaintiffs’ NEPA claims also applies to Rancher Plaintiffs’ arguments that overlap with Rancher Plaintiffs’ NEPA claims because Rancher Plaintiffs have joined Environmental Plaintiffs’ motion.

scope of the Mining Law has been reduced since its enactment, following withdrawals of federal land from mining, later statutory declarations that some minerals are not “valuable mineral deposits” within the meaning of the Mining Law, and the enactment of environmental laws such as NEPA. See *id.* at 1208-09. The Mining Law treats exploration and occupation for purposes of mining differently. See *id.* at 1209. To occupy federal land for mining purposes, a miner must have a valid claim. See *id.* at 1209-10.

In approving the copper mine at issue in *Rosemont*, the Forest Service “either assumed that Rosemont’s mining claims on that land were valid or (what amounted to the same thing) did not inquire into the validity of the claims.” *Id.* at 1212. “Based on its assumption that the mining claims were valid, the Service concluded that Rosemont’s permanent occupation of the claims with its waste rock was permitted under the Mining Law.” *Id.*

The *Rosemont* court found the Forest Service erred, instead finding in pertinent part that the Mining Law did not give Rosemont “the right to dump its waste rock on thousands of acres of National Forest land on which it has no valid mining claims.” *Id.* at 1218. As the Forest Service abandoned its rationale based on 30 U.S.C. § 612 on appeal, see *id.*, the *Rosemont* court largely focused its analysis on 30 U.S.C. § 22 (“Section 22”) of the Mining Law. See *id.* at 1218-1221. And the *Rosemont* court found that Section 22 required a discovery of valuable minerals before a project proponent could permanently occupy any land, including with waste dumps or tailings piles. See *id.* at 1220. The *Rosemont* court also rejected the argument that burying land with waste rock was somehow not permanent. See *id.* at 1220-21.

Even more pertinent to this case, the *Rosemont* court went on to reject the Forest Service’s argument that the Forest Service’s founding statute and its own regulations created no implicit requirement that the Forest Service determine whether a proponent of a mining project had discovered valuable mineral deposits in land it planned to occupy with waste dumps and tailings piles before approving those uses because that statute and regulation both referred back to the Mining Law itself. See *id.* at 1221-22. The *Rosemont*

court found that the Mining Law accordingly controls, not the Forest Service's founding statute or its regulation. And the Mining Law only gives a right of occupation to lands within which valuable mineral deposits have been found—the question is “not whether valuable minerals might be found.” *Id.* at 1222. Said otherwise, the *Rosemont* court found that it was only the Mining Law that could permit the project proponent “to dump its waste rock on its mining claims [but] only if those claims are valid[.]” not the Forest Service's contrary interpretation of its founding statute or its regulations. *See id.* at 1221.

More specifically, the *Rosemont* court interpreted the Forest Service's founding statute as generally intended to protect against depredations to National Forest lands while also specifying that it permitted the continuation of mining activities authorized by federal mining laws, including the Mining Law. *See id.* at 1210. And the Part 228A regulations upon which the Forest Service also relied in *Rosemont* to support its view that it did not have to determine mining claim validity applied to uses of National Forest lands ““in connection with *operations authorized by the United States mining laws*[.]” *Id.* at 1211 (citation omitted, emphasis in original). Thus, both the statute and regulation upon which the Forest Service relied to support its approach to approving the copper mine referred back to the Mining Law.

Like the statute and regulation at issue in *Rosemont*, the statute (FLPMA) and regulations that Federal Defendants and Lithium Nevada rely on to argue BLM was not required to determine whether Lithium Nevada had discovered valuable mineral deposits under the approximately 1300 acres of land Lithium Nevada intends to use for waste dumps and tailings piles also refer back to the Mining Law. (ECF Nos. 237 at 14-16, 18-31, 242 at 11-18.) Federal Defendants first rely on FLPMA itself, specifically 43 U.S.C. § 1732(b). (ECF No. 237 at 27.) The pertinent portion of this section of FLPMA is:

Except as provided in section 1744, section 1782, and subsection (f) of section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In

managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

43 U.S.C. § 1732(b). As Environmental Plaintiffs argue, this refers back to the Mining Law, much like the Forest Service's founding statute at issue in *Rosemont*. (ECF No. 264 at 22-23.) Indeed, this portion of FLPMA interacts with the Mining Law in two ways. It applies the prohibition on UUD even to rights of any locators or claims under the Mining Law,<sup>7</sup> but more pertinent here, it otherwise explains that interpretation of rights under the Mining Law controls the analysis of whether an agency violated FLPMA in taking an action not sanctioned by the Mining Law. See 43 U.S.C. § 1732(b). And the *Rosemont* court recently provided a binding interpretation of the Mining Law, finding that its Section 22 requires a discovery of a valuable mineral deposit for a mining project proponent to have rights under Section 22 before that proponent may permanently occupy any land. See 33 F.4th at 1223-24. Thus, contrary to Federal Defendants' argument, 43 U.S.C. § 1732(b) requires BLM to look to Section 22 of the Mining Law, and accordingly make a determination about claim validity, before authorizing a project proponent to occupy non-mill site lands outside a mine pit with waste dumps and tailings piles under *Rosemont*. (ECF No. 237 at 27-28.)

Federal Defendants next proffer BLM's surface-management regulations at 43 C.F.R. subpart 3809 as not requiring any determination from BLM as to whether Lithium Nevada located any valuable mineral deposits under the waste dump land to support BLM's decision not to make any such determination. (*Id.* at 28.) Federal Defendants also point to a BLM handbook interpreting those regulations stating that BLM need not make any validity determination when the land is open to access under the Mining Law.<sup>8</sup> (*Id.* at

<sup>7</sup>This is why Environmental Plaintiffs have a distinct argument discussed *infra* that Federal Defendants' decision to approve the Project caused UUD under FLPMA.

<sup>8</sup>"Provided the subject land is open to entry under the Mining Laws, a validity examination is not required to process a Plan of Operations and the NEPA analysis does not need to address mining claim status or validity. Nor does the NEPA analysis need to



29.) Of course, the *Rosemont* court did not address these BLM regulations or its handbook. And it is also true that the *Rosemont* court did not rule on whether the Forest Service could rely on its analogous regulations to support its decision because the Forest Service had not done so in the decision challenged in that case. See 33 F.4th at 1223-24. Thus, *Rosemont* does not cleanly foreclose Federal Defendants' argument based on its own regulations and handbook in the way that it does Federal Defendants' argument based on FLPMA (43 U.S.C. § 1732(b)) itself.

However, Environmental Plaintiffs point to one of BLM's surface-management regulations, 43 C.F.R. § 3809.420(a)(3), which specifies that a mining plan of operations must comply with applicable BLM land-use plans, "[c]onsistent with the mining laws[.]" (ECF No. 264 at 13.) And the purpose of the surface-use regulations Federal Defendants rely on to make their argument is to, "[p]revent unnecessary or undue degradation of public lands by operations authorized by the mining laws." 43 C.F.R. § 3809.1(a). Moreover, these surface use provisions are all within a subpart titled, "Part 3800—Mining Claims Under the General Mining Laws[.]" In addition, the specific excerpt of the Handbook Federal Defendants rely on also includes the caveat, "[p]rovided the subject land is open to entry under the Mining Laws[.]" (TPEIS-0714 at AR-067896.) So, overall, BLM's surface-management regulations refer back to the Mining Law, much like the Forest Service regulations the *Rosemont* court discussed. See 33 F.4th at 1221 ("The regulations in Part 228A apply to "operations authorized by the United States mining laws.") (citation omitted).

The Court accordingly finds that the appropriate analysis under *Rosemont* looks through BLM's surface-management regulations to the Mining Law itself, and *Rosemont* makes clear that the approving federal agency must evaluate the mining project proponent's rights under lands they intend to use for waste dumps before they approve

discuss how the information gained under a Plan of Operations could support an application to patent a particular mining claim. The issuance of mineral patents is a separate nondiscretionary action not subject to NEPA review." (TPEIS-0714 at AR-067896.)



the use of that land for that purpose. See *generally id.* It is undisputed that Federal Defendants did not do that before issuing the ROD, and indeed Federal Defendants continue to argue they were not required to perform such an evaluation. But the Court cannot simply ignore *Rosemont* even in the face of longstanding BLM policy reflected in its regulations and handbook.<sup>9</sup> Thus, the Court finds that under *Rosemont*, BLM was required to make a validity determination as to the waste dump and mine tailings land before issuing the ROD, regardless of BLM's regulations and handbook.

However, the Court agrees with Federal Defendants and Lithium Nevada that this case differs from *Rosemont* in at least one crucial way that suggests Federal Defendants could cure their issue created by *Rosemont* on remand. In *Rosemont*, there was “no evidence that valuable minerals have been found on Rosemont’s mining claims” covering the waste dump land. *Id.* at 1222. “Because no valuable minerals have been found, the claims are necessarily invalid.” *Id.* But here, as Federal Defendants and Lithium Nevada point out, there is evidence in the record of lithium mineralization throughout the Project area, including the area slated for burial under waste rock and mine tailings. (ECF Nos. 237 at 31, 31 n.52, 242 at 15-17; see *also*, e.g., TPEIS-0702 at AR-065693, TPEIS-0234 at AR-033935, TPEIS-0672 at AR-063882 (“More than 40 drill holes throughout the caldera have encountered lithium-mineralized rocks in caldera-fill sedimentary rocks at grades that are potentially economic (Tetra Tech, 2014). In addition, geochemical anomalies and mineralogical studies reported by Glanzman and others (1977), Rytuba and Glanzman (1979), and Stillings (2012) demonstrate that there are occurrences of lithium-mineralized rocks throughout the caldera-fill sedimentary rocks.”).)

Accordingly, at least as to Federal Defendants’ decision not to analyze whether Lithium Nevada had discovered valuable minerals within the land it plans to bury under waste rock and tailings piles, there is “at least a serious possibility that the [agency would]

<sup>9</sup>The *Rosemont* court seemed poised to find invalid regulations inconsistent with its interpretation of the Mining Law, even if it technically did not reach arguments based on the Forest Service’s regulations in *Rosemont*. Compare *id.* at 1221 with *id.* at 1223-24.

be able to substantiate its decision on remand[.]” *Pollinator Stewardship Council v. U.S. E.P.A.*, 806 F.3d 520, 532 (9th Cir. 2015) (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993)). Said otherwise, BLM simply declined to make any determination as to whether Lithium Nevada had discovered valuable minerals in the land it plans to bury under waste dumps and tailings piles. But BLM could conduct such an analysis on remand, and evidence already in the record suggests that BLM could permissibly allow Lithium Nevada to occupy those land under *Rosemont*, which dealt with the admittedly different situation where no evidence of valuable minerals had been found in the waste dump land.<sup>10</sup>

The Court also finds—based on Environmental Plaintiffs’ clarification at the Hearing as to *Rosemont*’s application—that Environmental Plaintiffs only challenge the land approved for waste dumps and tailings piles as part of the Project, not any prior authorizations that Lithium Nevada is already operating under or the plan of exploration also approved in the ROD. Indeed, based on *Rosemont*, such a challenge to approved exploratory activities would be difficult because the *Rosemont* court found a distinction in the Mining Law between exploration and occupation that formed a key plank of its analysis. See *Rosemont*, 33 F.4th at 1209-1210, 1219-21. But the point here is that Environmental Plaintiffs rely on *Rosemont* to only challenge—successfully, as explained herein—a portion of the activities approved in the ROD, further suggesting that remand without vacatur may be appropriate.

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<sup>10</sup>While it appears that BLM could fix its *Rosemont* issue on remand, the fix would nonetheless further illustrate a key tension discussed in *Rosemont*. As the *Rosemont* court explains, the Mining Law “allows the owner of a valid mining claim on land containing valuable minerals to obtain possessory rights to other land for use as a ‘mill site.’” *Id.* at 1210. And implementing regulations specify that mill sites can be used for waste dumps and tailings piles. See *id.* But unfortunately for mining project proponents like Lithium Nevada, the statute limits mill sites to five acres, though regulations permit the potential authorization of the use of multiple mill sites. See *id.*; see also 30 U.S.C. § 42(b). This is not enough land for modern mining projects like the one Lithium Nevada is pursuing here. However, as the *Rosemont* court explained, that is a problem with the statute best fixed by Congress. See 33 F.4th at 1224.

The Court now addresses some additional arguments it finds unpersuasive. At the Hearing, Rancher Plaintiffs argued *Rosemont* also requires BLM to make a validity determination as to all land required for the Project beyond the mine pit—and hinted at this argument in a cursory way in their brief as well.<sup>11</sup> (ECF No. 204 at 49 (“Moreover, BLM failed to show that mine infrastructure cannot be located outside the PHMA and GHMAs, as required by the 2015 and 2019 ARMPA.”).) The Court does not read *Rosemont* as extending beyond land a mining project proponent intends to cover with waste rock and mine tailings. Such lands were squarely *Rosemont*’s focus. *Rosemont* does not address production wells, water lines, or power transmission lines. Lithium Nevada’s counsel asserted at the Hearing that those facilities are covered under separate authorizations. And Rancher Plaintiffs have not proffered a case to support their argument that *Rosemont* extends beyond land for proposed burial under waste dumps and mine tailings for which no validity determination has first been completed as to the discovery of valuable minerals.

That brings the Court to two of Lithium Nevada’s arguments based on other Ninth Circuit opinions, neither of which the Court finds ultimately persuasive. At the Hearing, Lithium Nevada’s counsel argued the outcome of this case is controlled by *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), not *Rosemont*. Lithium Nevada relies on *Richardson* because it draws a distinction between BLM and Forest Service regulations when it comes to interpretation of the Mining Law. See *id.* at 294 (stating that BLM “regulations do not, however, apply to national forest lands under the jurisdiction of the Secretary of Agriculture”). This aspect of *Richardson* no doubt supports Lithium Nevada’s argument that *Rosemont* is distinguishable. But it would be quite a leap to simply ignore *Rosemont*, binding precedent from this past year—and where the *Rosemont* court’s reasoning clearly applies to the facts of this case—because of a single point in an opinion

<sup>11</sup>Environmental Plaintiffs’ counsel walked a line at the Hearing, agreeing he joined Rancher Plaintiffs’ counsel’s argument on this point, but consistently reiterating that Environmental Plaintiffs’ argument focused on the waste dump and mine tailings land. And indeed, the Court understands Environmental Plaintiffs’ argument based on *Rosemont* as limited to the approximately 1300 acres of waste dump land, and the plan of operations approved in the ROD.

from 1979.<sup>12</sup> Moreover, the difference between the facts of this case and *Richardson* is much deeper than the difference between the facts of this case and *Rosemont*.

The *Richardson* court affirmed the decision of a district court entering an injunction against a couple who was attempting to prospect for minerals on their mining claims on National Forest land using a bulldozer and a backhoe, prohibiting them from continuing to prospect that way, and requiring that they restore the land they had torn up. See generally *id.* In the key portion of its analysis, the *Richardson* court held that the Forest Service had the power under 30 U.S.C. § 612 to prohibit and enjoin ‘excessive bulldozing’ by looking to the legislative history of that statute. See *id.* at 294-25. “In summary,” the *Richardson* court concluded, “we suggest that each case of this kind is controlled by the facts of each particular case.” *Id.* at 295.

Thus, the facts of and analysis in *Richardson*—an opinion explicitly limited to its facts from 1979—are very different from the facts pertinent to this case and the analysis the Court conducted comparing these facts to *Rosemont*, *supra*. For the reasons provided *supra*, *Rosemont* is a much better fit to the facts of this case, and issued this past year. The Court declines to entirely discount the applicability of *Rosemont* because the *Richardson* court stated that BLM regulations do not apply to analysis of Forest Service actions.

Lithium Nevada also relies on *Grand Canyon Trust v. Provencio*, 26 F.4th 815, 824 (9th Cir. 2022) to support its argument that, “[b]ecause the Mining Law does not expressly address whether a validity determination is required prior to authorization of a mine plan BLM’s interpretation is entitled to deference.” (ECF No. 242 at 12.) That is an accurate citation to *Provencio*, but the Court views this as a different situation. The *Provencio* court held that the Department of the Interior’s interpretation of “valuable mineral deposit” was entitled to *Chevron* deference, and was neither arbitrary nor capricious, but the *Provencio* court did not face a situation where the Ninth Circuit had recently offered a conflicting

<sup>12</sup>Incidentally, *Richardson* was authored by the namesake of the Reno Courthouse, Bruce R. Thompson, sitting by designation.

interpretation of “valuable mineral deposit.” See *generally* 26 F.4th 815. Here, and as discussed *supra*, the *Rosemont* court recently held that the Mining Law requires the approving agency to determine whether a mining project proponent has discovered ‘valuable mineral deposits’ before permitting that proponent to permanently occupy those federal lands with waste dumps and tailings piles. Thus, the Court cannot evaluate BLM’s regulations not requiring such a validity determination in a vacuum. And the Court is of course bound by the published opinions of the Ninth Circuit. Said otherwise, the Court must conduct a somewhat different analysis than the *Provencio* court because of *Rosemont*. And the conclusion the Court draws from its analysis is that BLM’s regulations requiring no validity determination are invalid because they conflict with *Rosemont*. The Court accordingly follows *Rosemont*, not BLM’s regulations written before *Rosemont* issued, and does not defer to BLM’s regulations as *Provencio* may otherwise suggest.

In sum, BLM’s approval of the plan of operations portion of the Project specifically regarding the approximately 1300 acres Lithium Nevada intends to occupy with waste dumps and mine tailings—and that land only—was arbitrary and capricious under the APA and violated FLPMA (43 U.S.C. § 1732(b)) because BLM did not first determine whether Lithium Nevada had discovered valuable mineral deposits within those lands—a violation of the Mining Law as interpreted in *Rosemont*.<sup>13</sup> But for clarity, and in line with the allegations in this case, the violation is of FLPMA, not the Mining Law directly,<sup>14</sup> because 43 U.S.C. § 1732(b) does not, in pertinent part, “amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act[.]” *Id.* So as described *supra*, the Court essentially looks through FLPMA to the Mining Law, and finds Federal Defendants violated

<sup>13</sup>For this reason, the Court need not—and does not—address Lithium Nevada’s alternative argument forcefully pressed at the Hearing that the Project complies with the ARMPA in any event. (See *also* ECF Nos. 278, 278-1 (additional AR citations generally offered in support of that argument).)

<sup>14</sup>As Federal Defendants and Lithium Nevada point out, no Plaintiffs or Plaintiff-Intervenors have brought a claim under the Mining Law directly. Environmental Plaintiffs allege a violation of FLPMA as to their *Rosemont* argument.

FLPMA under *Rosemont* in issuing the ROD as it relates to the approval of the land for waste dumps and mine tailings.

**b. UUD**

Regardless of whether Lithium Nevada has valid rights under the Mining Law, Environmental Plaintiffs also argue the Project will cause UUD impermissible under FLPMA in several ways. Specifically, Environmental Plaintiffs argue the Project impermissibly: (1) fails to affect a net conservation gain for sage grouse or improve the condition of their habitat; (2) will eventually degrade the local groundwater aquifer with antimony; and (3) violates air quality standards because the Project includes a ‘black box’ air pollution scrubbing mechanism for compliance with those standards. (ECF No. 202 at 43-48.)

Federal Defendants counter that: (1) BLM was not required—or even permitted to—require additional conservation measures for sage grouse because they are not listed as a threatened or endangered species; (2) as to groundwater, the ROD does not authorize any violation of groundwater contamination standards, BLM reasonably decided that approving the Project would not impermissibly pollute the groundwater, and a potential, future violation of groundwater standards does not constitute a violation of applicable law in any event; and (3) the Project as approved does not violate any applicable federal or state air quality standards. (ECF No. 237 at 31-35.)

Lithium Nevada echoes these arguments and further argues that this Court’s decision in *W. Expl., LLC v. U.S. Dep’t of the Interior*, 250 F. Supp. 3d 718, 747 (D. Nev. 2017) (“*Western Exploration*”) does not support Environmental Plaintiffs’ argument that BLM must require the Project to affect a “net conservation gain” on the local sage grouse population, instead arguing that there, the Court merely concluded that the greater protection for sage grouse included in the ARMPA was not inconsistent with FLPMA’s multiple-use mandate. (ECF No. 240 at 42-44.) As to groundwater, Lithium Nevada supplements Federal Defendants’ argument, insisting that the very documents Environmental Plaintiffs rely on to support their argument instead show that the Project



will comply with—and even exceed—applicable water quality standards. (*Id.* at 44-46.) As to air quality, Lithium Nevada mostly echoes Federal Defendants’ argument in urging the Court to defer to BLM’s reasonable decision finding that Lithium Nevada’s proffered air quality plan will not cause UUD. (*Id.* at 46-47.) The Court agrees with Federal Defendants and Lithium Nevada in pertinent part.

The Court begins with Environmental Plaintiffs’ sage grouse UUD argument. Federal Defendants are correct that BLM’s regulations only require Lithium Nevada to “prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.” 43 C.F.R. § 3809.420(b)(7). Sage grouse are not listed as a threatened or endangered species. (ECF No. 237 at 35.) And Environmental Plaintiffs do not rely on any binding authority to the contrary, instead pointing to a brief that the federal government parties filed in *Western Exploration* and BLM’s Special Status Species Management Manual.<sup>15</sup> (ECF No. 202 at 44-45.) However, as both Federal Defendants and Lithium Nevada argue, the primary source Environmental Plaintiffs rely on to support this argument instead explains that the protections for sage grouse BLM included in the ARMPA are more protective of sage grouse than would be required to prevent UUD. (ECF Nos. 237 at 35, 240 at 42-44.) *See also Western Watersheds*, Case No. 3:21-cv-00103-MMD-CLB, ECF No. 23-16 at 27 (“Seeking a net gain to Sage-Grouse habitat is fully consistent with FLPMA’s guiding principles. The unnecessary or undue degradation standard is a minimum standard for BLM’s land management policy, but it does not restrain BLM’s discretion to implement a mitigation standard that calls for improvements in land conditions beyond the status quo.”). Thus, Environmental Plaintiffs’ sage grouse UUD argument is insufficiently supported to be persuasive.

And the Court’s ruling in *Western Exploration*, where the Court found that BLM could go further than strictly necessary to prevent UUD to protect the sage grouse, further

<sup>15</sup>As to the Special Status Species Management Manual, being listed as a special status species is not the same as being listed as a threatened or endangered species under the federal regulations. Federal Defendants do not dispute that the greater sage grouse is a special status species. (ECF No. 237 at 35.)

supports Federal Defendants' and Lithium Nevada's arguments. Indeed, there, the Court indicated it was persuaded by the federal defendants' argument that, "the 'unnecessary or undue degradation' standard in the statute does not preclude the agency from establishing a more protective standard that seeks improvements in land conditions that 'go beyond the status quo.'" *Western Exploration*, 250 F. Supp. 3d at 747. Thus, failure to require compliance with the ARMPA does not necessarily constitute UUD. And in any event, "FLPMA prohibits only unnecessary or undue degradation, not *all* degradation." *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 78 (D.C. Cir. 2011) (emphasis in original). The Court accordingly rejects Environmental Plaintiffs' argument that Federal Defendants caused impermissible UUD to the pertinent sage grouse population by approving the Project.

As to groundwater, the Court agrees with Federal Defendants and Lithium Nevada that the ROD does not authorize violation of any state water quality standard, and Environmental Plaintiffs do not identify any federal water quality standards that the Project violates. (ECF Nos. 237 at 31-34, 240 at 44-46, 267 at 16-17.) Indeed, the ROD requires Lithium Nevada to maintain water quality and quantity to State of Nevada standards. (TPEIS-0452 at AR-052527.<sup>16</sup>) Thus, regardless of any concerns expressed about potential water pollution by a BLM employee during the process that ultimately culminated in the ROD (ECF No. 202 at 13 (citing TPEIS-1061 at AR-095381)), Federal Defendants did not authorize UUD to water quality in approving the Project because, as noted, the ROD does not authorize Lithium Nevada to violate state water quality standards. (TPEIS-0452 at AR-052527.)

A similar analysis applies to Environmental Plaintiffs' UUD argument regarding air quality because they have not identified a federal or state air quality standard that the Project violates, and BLM's own applicable regulations require compliance with federal

<sup>16</sup>Environmental Plaintiffs refer to another condition of approval included in the ROD in their argument (no. 4), but decline to mention this condition of approval (no. 3). (Compare ECF No. 202 at 41 with TPEIS-0452 at AR-052527.)



and state air quality standards. (ECF No. 237 at 34 (making this argument).) See *also* 43 C.F.R. § 3809.420(b)(4) (“All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act”). Thus, Environmental Plaintiffs have not shown that Federal Defendants’ approval of the Project will cause UUD as to air quality.

In sum, the Court rejects Environmental Plaintiffs’ UUD arguments. Federal Defendants did not violate FLPMA’s UUD requirements in approving the Project.

### 3. NEPA

NEPA is a procedural statute that requires federal agencies to “assess the environmental consequences of their actions before those actions are undertaken.” *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993 (9th Cir. 2004). NEPA provides for public participation in assessing a proposed action’s environmental consequences, enabling the public to “play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Although NEPA lacks a substantive mandate, its “action-forcing” procedural requirements help carry out a “national commitment to protecting and promoting environmental quality.” *Id.* at 348. As part of these action-forcing requirements, NEPA mandates that agencies considering “major Federal actions significantly affecting the quality of the human environment” must, to the fullest extent possible, prepare an environmental impact statement. See 42 U.S.C. § 4332(C).

“NEPA [further] imposes a procedural requirement on federal agencies to “take [ ] a ‘hard look’ at the potential environmental consequences of the proposed action.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011) (citation omitted). To take a sufficiently hard look, federal agencies must have available and carefully consider detailed information concerning significant environmental impacts, and make relevant information available to the wider public. See *id.*

That said, in its NEPA review, the Court must employ “a ‘rule of reason’ that asks whether an EIS contains a reasonably thorough discussion of the significant aspects of

the probable environmental consequences.” *Great Basin Res. Watch v. Bureau of Land Mgmt.*, 844 F.3d 1095, 1101 (9th Cir. 2016) (citation omitted). “Under this standard, once satisfied that a proposing agency has taken a ‘hard look’ at a decision’s environmental consequences, the review is at an end.” *Id.* (citation omitted).

Environmental Plaintiffs argue Federal Defendants violated NEPA in several distinct ways. They first argue the FEIS included claims that the Project’s sulfuric acid processing plant would meet air quality standards based on impossible assumptions regarding an unspecified scrubbing system. (ECF No. 202 at 31-33.) Environmental Plaintiffs next argue Federal Defendants failed to adequately analyze baseline wildlife conditions for sage grouse, pronghorn, and springsnails. (*Id.* at 33-35.) They then argue Federal Defendants failed to adequately analyze the Project’s potential impacts on these wildlife species. (*Id.* at 35-38.) Environmental Plaintiffs next argue Federal Defendants inadequately analyzed the Project’s cumulative impacts on local wildlife considering other proposed activities within the cumulative effects study area. (*Id.* at 38-40.) Finally, they argue Federal Defendants failed to adequately analyze mitigation measures in the NEPA review documents, specifically regarding groundwater and wildlife impacts from the Project. (*Id.* at 40-43.) The Court addresses each of these contentions, in turn, grouped below by air quality, wildlife, and groundwater.

**a. Air Quality**

First as to the FEIS’ alleged assumptions about a tail gas scrubbing system, Federal Defendants respond that they were not required to thoroughly consider the effectiveness of the scrubber because they otherwise reasonably concluded the Project would meet air quality standards even without the scrubber. (ECF No. 237 at 47-48.) Lithium Nevada adds that the FEIS actually did describe the tail gas scrubber, and that emissions limits will be enforced through a state air quality permit that Federal Defendants required Lithium Nevada to obtain as well. (ECF No. 240 at 24-27.) The Court agrees with Federal Defendants.

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Environmental Plaintiffs' primary argument is that BLM did not understand how the tail gas scrubber on the sulfur-burning plant would work—but BLM legally had to understand. They make much of a quote from Ken Loda, the BLM Project lead, but selectively quote the email that it comes from. (ECF No. 202 at 32 (quoting Mr. Loda as saying "[T]he process plant is pretty much a black box.")) However, the full sentence reveals a different meaning and is consistent with Federal Defendants' responsive argument. The full sentence from the email is, "For our regulations, the process plant is pretty much a black box." (TPEIS-0981 at AR-093830.) And Mr. Loda goes on to build on this understanding in the rest of the email that the regulations applying to BLM's environmental review do not require him, or BLM, to know exactly how the scrubber system works. (*Id.*) This is very different than saying you do not understand something. And indeed, Mr. Loda's understanding of the applicable regulations is consistent with Federal Defendants' argument: "[b]ecause BLM reasonably determined that the Project would not cause any exceedance of the NAAQS, and thus would not have significant air quality impacts, BLM was not required to thoroughly examine the effectiveness of Lithium Nevada's additional mitigation plans." (ECF No. 237 at 47.)

And Federal Defendants' argument is also consistent with the FEIS, in which BLM stated no mitigation was required because its air quality analysis demonstrated that all pollutant concentrations with the Project would be less than the NAAQS and Nevada standards, with negligible effects on AQRVs in Class I areas. (TPEIS-0384 at AR-045630.) This is the sort of scientific determination on which the Court must defer to BLM. See *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993; see also *N. Plains Res. Council, Inc.*, 668 F.3d at 1075 ("A court generally must be 'at its most deferential' when reviewing scientific judgments and technical analyses within the agency's expertise.") (citation omitted). Under this highly deferential standard of review, BLM's determination in the FEIS was reasonable. See *Edwardsen v. U.S. Dep't of Interior*, 268 F.3d 781, 789 (9th Cir. 2001) (finding agency's determination that a project would have a negligible to minor impact on air quality reasonable where the analysis was based in part on the fact that the

area will remain in compliance with NAAQS). And because BLM determined that no mitigation was required, it is immaterial how well the tail gas scrubber works, as information about the tail gas scrubber is not essential to a reasoned choice among alternatives. See *Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 496 (9th Cir. 2014) (“If the missing information is ‘relevant to reasonably foreseeable significant adverse impacts’ and is ‘essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant,’ the agency must include that information in the EIS.”). Said otherwise, this is not the situation described in the quote from *Native Vill. of Point Hope*.

That said, and as Lithium Nevada points out (ECF No. 242 at 24), Appendix K of the FEIS does identify that the sulfur-burning plan will use a tail gas scrubber and that Lithium Nevada has committed “to installing a state-of-the-art scrubbing control, which is above customary industry standard.” (TPEIS-0706 at AR-065829.) “While the exact scrubbing system has not yet been determined, LNC has committed to installing a control that, at the minimum, meets the emission levels used in this analysis.” (*Id.* at AR-065829-30.) Again, Environmental Plaintiffs rely on this quote for their argument but omit the second two clauses. (ECF No. 202 at 32.) The full quote further supports the point that it does not matter exactly how the tail gas scrubber works because Lithium Nevada has committed to installing a control system that meets the specified emissions level. See *Great Basin Res. Watch*, 844 F.3d at 1106 (describing “applicant committed practices” as measures that the project proponent “promised to take and that are ‘considered part of the operating procedures’” and crediting them in rejecting a NEPA challenge). In addition, the comment responses included as Appendix R to the FEIS indicate that Lithium Nevada had selected a scrubber system by the time the FEIS issued. (TPEIS-0384 at AR-048044.)

In sum, the Court finds Environmental Plaintiffs’ air quality NEPA argument unpersuasive.

#### **b. Wildlife**

When it comes to wildlife, Environmental Plaintiffs argue that Federal Defendants got multiple steps of the NEPA analysis wrong—that Federal Defendants used inadequate

baselines, misjudged the impacts of the Project on wildlife, inadequately considered the cumulative impact of this Project along with other approved projects in the geographic area Federal Defendants should have used, and inadequately explained how Lithium Nevada could sufficiently mitigate noise impacts from the Project on sage grouse. (ECF No. 202 at 33-43.)

Beginning with the baseline portion of Environmental Plaintiffs' argument, and as noted, they argue that the FEIS contains no information about how sage grouse use the Project area, similarly lacks information about how pronghorn use the area, does not mention the King's River Pyrg's risk of extinction, and more generally does not provide sufficient information about springsnails, including which springs they were found in and how predicted groundwater drawdown will affect them. (*Id.* at 33-34.) Environmental Plaintiffs' inadequate baseline argument is grounded in precedential NEPA cases. "Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA." *Great Basin Res. Watch*, 844 F.3d at 1101 (citation omitted). While an agency need not conduct actual baseline measurements, the agency must assess baseline conditions based on accurate and defensible reasoning. *See id.*

However, as to the sage grouse baseline, Federal Defendants persuasively counter that Environmental Plaintiffs appear to have overlooked Appendix G of the FEIS, which explains that baseline surveys were conducted for sage grouse, along with the results of those surveys. (ECF No. 237 at 37; *see also* TPEIS-0702 at AR-065647.) Thus, Environmental Plaintiffs' statement that "there are no details about sage-grouse use of the area" in the FEIS is simply inaccurate. (ECF No. 202 at 33.) And Federal Defendants' response is similar—and similarly persuasive—as to pronghorn, where Federal Defendants point out that the FEIS included discussion about how pronghorn use the Project area, and explained that the Project will have an adverse impact on local pronghorn. (ECF No. 237 at 37-39.) The Court agrees the FEIS included a sufficient, but

succinct, baseline for pronghorn. (TPEIS-0384 at AR-045586-87; see also TPEIS-0696 at AR-065508 (showing how the Project is basically located at a connection point between summer and winter pronghorn range).)

The same goes for springsnails. In response to Environmental Plaintiffs' argument that Federal Defendants' springsnails baseline was deficient because it did not mention their high risk of extinction and did not list the number of springsnails found in each spring surveyed (ECF No. 202 at 34-35), Federal Defendants counter that they sufficiently described a baseline for springsnails. (ECF No. 237 at 39, 39 n.84, 39 n.85.) The Court agrees. The AR indicates both that BLM had baseline surveys conducted, and springsnails were found in the springs surveyed. (TPEIS-0702 at AR-065642 ("Springsnails common to the region were collected from some of the seeps, springs and wetlands in and around the Project area (WRC 2018a; 2019a)."), *id.* at AR-065646 (describing springsnails surveys conducted).) Environmental Plaintiffs argue for a more detailed baseline, but proffer no pertinent caselaw in support of that argument, and fail to persuasively explain how the springsnails baseline Federal Defendants constructed was statutorily deficient. And here, unlike *Great Basin Res. Watch*, 844 F.3d at 1101, BLM used actual baseline surveys. The Court accordingly finds Environmental Plaintiffs' wildlife baseline NEPA argument unpersuasive.

That brings the Court to Environmental Plaintiffs' related argument that the FEIS did not adequately analyze and disclose the Project's long-term impact on wildlife. (ECF No. 202 at 35-38.) But Environmental Plaintiffs argument here is not that the FEIS did not discuss the Project's potential impacts on wildlife—it did. (*Id.*) Indeed, Federal Defendants point to that discussion—in the FEIS and its Appendix G—in their response. (ECF No. 237 at 39-40, 40 at n.86 (first citing TPEIS-0384 at AR-045581-614, then citing TPEIS-0702 at AR-065641-49).) The Court overall agrees with Federal Defendants that their cited portions of the FEIS contain a "a reasonably thorough discussion of the significant aspects of the probable environmental consequences[.]" *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988), and are thus sufficient under NEPA.

Moreover, this portion of Environmental Plaintiffs' argument is primarily based on comments from NDOW on a preliminary version of the draft environmental impact statement. (ECF No. 202 at 35 (relying on TPEIS-1114 at AR-097080 (though the correct citation would be to AR-097079) and AR-097082-83; TPEIS-1493 at AR-108859).) But as Federal Defendants also point out in response (ECF No. 237 at 40-41), BLM addressed some of these comments during the environmental review process, which NDOW acknowledged in subsequent comments submitted in response to the FEIS. (See, e.g., TPEIS-0384 at AR-048176 ("We appreciate the incorporation of our previous comments and applaud the BLM for recognizing that the direct disturbance will result in loss of habitat, displacement, and indirect effects to wildlife resulting from displacement.")) Thus, Environmental Plaintiffs' argument based on NDOW's comments is somewhat inflated because it relies on comments submitted in response to preliminary documents that NDOW even acknowledged were later (at least partially) addressed.

In addition, to the extent Environmental Plaintiffs and NDOW disagree with BLM's analysis of the longer term impacts of the Project on wildlife, that disagreement does not necessarily constitute a NEPA violation. The Court "must also be mindful to defer to agency expertise, particularly with respect to scientific matters within the purview of the agency." *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993. Analysis of impact of the Project on wildlife over the longer term is also the sort of scientific matter on which the Court must defer to BLM.

Turning to cumulative impacts, Federal Defendants counter that they satisfied their obligations to conduct a cumulative-impacts analysis by identifying, describing, and mapping the cumulative effects study area for each resource, identifying past, present, and reasonably foreseeable future actions, and then describing the impacts of these other projects in its detailed analyses of the Project's cumulative impacts on various resources. (ECF No. 237 at 43-44 (citing TPEIS-0384 at AR-045671-90).) The Court agrees with Federal Defendants that the cumulative impacts analysis BLM provided in the FEIS was sufficient, as BLM provided more thorough analysis in the pertinent portion of the FEIS



than the agencies provided in the decisions reviewed in the two primary cases upon which Plaintiffs rely. (TPEIS-0384 at AR-045671-90; see also ECF No. 202 at 39-40 (relying on *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006) and *Great Basin Res. Watch*, 844 F.3d at 1104).)

For example, the *Great Basin Mine Watch* court found that a handful of “vague and conclusory statements, without any supporting data” in the cumulative impacts section of a final EIS did not constitute the requisite hard look under NEPA. 456 F.3d at 973. But here, BLM provided pages of analysis of the cumulative impacts of the Project on various resources supported by data, and at least did more than BLM did in *Great Basin Mine Watch*. (TPEIS-0384 at AR-045671-90.) Similarly, the *Great Basin Res. Watch* court found BLM erred because it “made no attempt to quantify the cumulative air impacts of the Project together with the Ruby Hill Mine and vehicle emissions[,]” did not “attempt to quantify or discuss in any detail the effects of other activities” affecting air quality, and chose a baseline value of zero for certain pollutants without justification. 844 F.3d 1104-06. In contrast, here, BLM attempted to quantify the air quality impacts of the Project together with estimated emissions from all sources in Humboldt County.<sup>17</sup> (TPEIS-0384 at AR-045682-84 (incorporating by reference discussion and analysis of air quality impacts of the Project (Section 4.9.1.1, Appendix K, and Table 4.12) into the broader discussion).) BLM also did not use baseline pollutant levels of zero without justification. (TPEIS-0384 at AR-045683 (“The resulting pollutant concentrations are reflected in the measured ambient data which support the background concentrations used in the analysis (Section 4.9.1.1 and Appendix K.). Accordingly, the air quality effects of these past and present activities are considered to be captured in the background concentrations.”).) Thus, the cumulative

<sup>17</sup>This discussion may fit more logically under the ‘air quality’ subheading because of the *Great Basin Res. Watch* court’s focus on BLM’s air quality analysis but the Court addresses and distinguishes *Great Basin Res. Watch* here because Environmental Plaintiffs generally rely on this case in the cumulative impacts portion of their argument—as to “wildlife, air quality, and other potentially affected resources.” (ECF No. 202 at 39.)



impacts analysis as to air quality in the FEIS was more detailed than the analysis found insufficient in *Great Basin Res. Watch*.

As to the wildlife portion of Environmental Plaintiffs' mitigation argument, Environmental Plaintiffs argue that BLM ignored input from EPA and NDOW regarding the purported lack of wildlife mitigation measures and noise impacts to sage grouse. (ECF No. 202 at 42-43.) Federal Defendants generally counter that BLM considered and responded to the pertinent comments from both agencies, but was not required to agree with them, and specifically counter that the comments upon which Environmental Plaintiffs rely for this argument were made on the FEIS—so BLM did not have to consider them at all. (ECF No. 237 at 48-49.) The Court again agrees with Federal Defendants. To the general point, NEPA only requires that BLM consider and respond to criticisms and concerns raised by other agencies during the environmental review process, as well as those from the general public—but BLM is not required to agree with other agencies. See *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 833 F.3d 1136, 1150 (9th Cir. 2016). And to the specific point, Federal Defendants are correct that both parties' comments on which Environmental Plaintiffs rely post-date the FEIS, so BLM was not required to consider them.<sup>18</sup> See *Japanese Vill., LLC v. Fed. Transit Admin.*, 843 F.3d 445, 467 (9th Cir. 2016) ("Appellees were not required to accept public comments after publishing the FEIS.") (citing 40 C.F.R. § 1503.1(b)). (See also TPEIS-0695 at 1 ("EPA Comments on the Final Environmental Impact Statement for the Thacker Pass Lithium Mine Project, Humboldt County, Nevada"), TPEIS-0446 at AR-052420 (providing comments on FEIS and noting that they have worked with BLM since 2018 on the planning process for the Project).)

In sum, the Court is unpersuaded by Environmental Plaintiffs' NEPA arguments regarding wildlife.

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<sup>18</sup>Moreover, the Court further addresses BLM's engagement with EPA and NDOW during the planning process in other portions of this order, finding BLM adequately engaged with EPA and NDOW's comments.

### c. Groundwater

Environmental Plaintiffs also attack the adequacy of Federal Defendants' analysis as to the impact of the Project on groundwater, both to the extent that they did not adequately consider the impacts of dewatering on local wildlife, and because Federal Defendants adopted what Environmental Plaintiffs characterize as a 'wait and see' approach to mitigation of potential groundwater pollution. (ECF No. 202 at 35-37, 40-42.) Environmental Plaintiffs further argue that Federal Defendants essentially ignored comments from EPA regarding the insufficiency of the groundwater monitoring plan in the FEIS. (*Id.* at 41-43.) Federal Defendants counter that they—contrary to Environmental Plaintiffs' argument—included a plan for monitoring potential contamination of groundwater resources as an appendix to the FEIS, which also contemplated additional monitoring and mitigation before mining operations could start. (ECF No. 237 at 45-47.) As to the EPA's comments, Federal Defendants argue that they adequately responded to them, because they had no obligation to accept or adopt EPA's comments. (*Id.* at 48-49.) Lithium Nevada goes a bit farther, arguing that the adaptive management approach Federal Defendants blessed in the FEIS is environmentally preferable. (ECF No. 240 at 37.) Indeed, Lithium Nevada argues, this approach makes sense because any impacts on groundwater are speculative and will not occur for years, if at all. (*Id.* at 37-38.) The Court again agrees with Federal Defendants.

Setting aside BLM's responses to NDOW's comments—addressed *supra*—the Court construes Environmental Plaintiffs' pertinent arguments as having two remaining components. First, that the groundwater monitoring and mitigation plan BLM included in the FEIS is inadequate, and second, that BLM did not sufficiently respond to EPA's comments.

Beginning with the groundwater monitoring and mitigation plan, the Court cannot say that it is so inadequate as to violate NEPA under the governing deferential standard of review. See *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993. And contrary to Environmental Plaintiffs' argument, the FEIS does contain a groundwater quality

monitoring and mitigation plan. (TPEIS-0384 at AR-045572-76; see also TPEIS-0711 (Appendix P).) Indeed, as Federal Defendants point out (ECF No. 237 at 46), Environmental Plaintiffs appear to overlook the existence of the primary groundwater quality mitigation and monitoring plan and instead challenge an additional groundwater quality monitoring plan also described in the FEIS. (*Compare* TPEIS-0384 at AR-045572-76 (describing various groundwater quality monitoring and mitigation requirements imposed on Lithium Nevada) *with* TPEIS-0384 at AR-045574-75 (describing an additional groundwater quality monitoring and mitigation plan that Lithium Nevada would prepare “[i]n the event that constituent concentrations exceed established regulatory thresholds at one or more established compliance monitoring points, and the exceedance is attributable to contamination originating from mine facilities or operations.”).) Environmental Plaintiffs’ argument thus appears to miss that there are two groundwater quality monitoring and mitigation plans described in the FEIS, not one—and that omission undermines their argument. Moreover, the Ninth Circuit has upheld a “wait and see” approach to groundwater quality monitoring “given the relatively low probability and temporal remoteness of adverse impacts to ground water.” *Great Basin Res. Watch*, 844 F.3d at 1107. And according to the Water Quantity and Quality Impacts Assessment Report attached as Appendix P to the FEIS, “[b]ecause the projected timeline is long, it is anticipated that any mitigation action, if necessary, would not occur for years to decades after closure.” (TPEIS-0711 at AR-066297.) Thus, *Great Basin Res. Watch*, 844 F.3d at 1107, applies here.

As to BLM’s responses to EPA’s comments, the Court concludes they were sufficient. While Environmental Plaintiffs are correct that an agency may not simply ignore comments from a cooperating agency, see *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492-93 (9th Cir. 2011), an agency’s responses to a cooperating agency’s comments are sufficient when, “the record indicates that BLM did indeed consider and respond to criticisms and concerns raised by other agencies[.]” *Ctr. for Biological Diversity*, 833 F.3d at 1150. And the record here indicates that BLM considered EPA’s comments.

(See, e.g., TPEIS-0384 at AR-048166-68 (responding to EPA's comments on the draft environmental impact statement in an appendix of comments included as part of the FEIS).) Environmental Plaintiffs' citation of a letter EPA sent after BLM issued the FEIS (TPEIS-0695) certainly indicates that EPA did not agree with some of BLM's conclusions and perhaps BLM's decision to approve the Project, but BLM is not required to agree with EPA, see *Ctr. for Biological Diversity*, 833 F.3d at 1150, and Environmental Plaintiffs' focus on EPA's post-FEIS letter does not capture the full scope of the back-and-forth between BLM and EPA throughout the environmental review process. (ECF No. 202 at 41-43 (making the argument).)

The Court is accordingly unpersuaded by Environmental Plaintiffs' NEPA argument regarding groundwater.

#### **4. Summary as to Environmental Plaintiffs' Claims**

Environmental and Rancher Plaintiffs<sup>19</sup> are entitled to summary judgment that Federal Defendants violated FLPMA because BLM failed to first make a validity determination under *Rosemont* before approving Lithium Nevada's use of some 1300 acres of public land for waste dumps and tailings piles. Their motions for summary judgment are accordingly granted on that issue, and Federal Defendants' and Lithium Nevada's corresponding cross motions are accordingly denied. Environmental Plaintiffs' motion for summary judgment is otherwise denied, and Federal Defendants' and Lithium Nevada's cross motions are otherwise granted except as to the *Rosemont* issue.

#### **B. Rancher Plaintiffs**

Having already addressed Rancher Plaintiffs' FLPMA claim in the section addressing Environmental Plaintiffs' FLPMA claims, along with Rancher Plaintiffs' NEPA

<sup>19</sup>Because of Rancher Plaintiffs' joinder and because they make substantially the same argument based on *Rosemont*.

claims to the extent they reflect their joinder of Environmental Plaintiffs' claims,<sup>20</sup> the Court now addresses Rancher Plaintiffs' remaining NEPA claim.<sup>21</sup>

Rancher Plaintiffs make several NEPA arguments that all turn on one core contention—that the water resource baselines prepared by a contractor were inadequate, failing to capture the true impact of the Project on nearby streams, springs, groundwater, and the Lahontan Cutthroat Trout ("LCT"). (ECF No. 204 at 22-48.) Federal Defendants essentially respond that Rancher Plaintiffs are asking the Court to impermissibly flyspeck BLM's environmental analysis, and Rancher Plaintiffs' arguments as to data collection methodologies and purported errors in data collection "do not demonstrate a NEPA violation because the agency is entitled to heightened deference on matters of scientific expertise and reasonably relied on the contractor's analysis." (ECF No. 238 at 13-14.) Lithium Nevada echoes Federal Defendants' basic argument. (ECF No. 241 at 7-9.) As further explained below, the Court agrees with Federal Defendants in pertinent part.

In addition, at the Hearing, Rancher Plaintiffs argued this case is analogous to *Oregon Nat. Desert Ass'n v. Jewell*, 840 F.3d 562 (9th Cir. 2016), and the FEIS and ROD should be vacated and remanded based on *Jewell's* application to this case. The Court disagrees. At the outset, the Court notes that this is not a case like *Jewell* where the pertinent FEIS relied on an assumption that was contradicted by a baseline survey. See *id.* at 568-71. In *Jewell*, the FEIS assumed that no sage grouse were present at the site of a wind farm when in fact that assumption overlooked a survey showing that some sage grouse spent the winter there. See *id.* at 569. The Ninth Circuit accordingly found that

<sup>20</sup>That said, Environmental Plaintiffs also joined Rancher Plaintiffs' motion. (ECF No. 211.) Thus, this discussion of Rancher Plaintiffs' NEPA claim also applies to Environmental Plaintiffs' claim to the extent necessary to reflect that joinder.

<sup>21</sup>The APA and NEPA legal standards summarized *supra* apply to the discussion of Rancher Plaintiffs' NEPA claim *infra* as well. In addition, the factual background pertinent to Rancher Plaintiffs' motion is also the same as the factual background provided towards the beginning of the Court's discussion of Environmental Plaintiffs' claims, with the additional note that Rancher Plaintiffs actively participated in the Project's environmental review process, submitting comments on both the draft environmental impact statement and the FEIS. (TPEIS-0388, TPEIS-0516, TPEIS-1499, TPEIS-0448.)

BLM's assumption of no sage grouse present was arbitrary and capricious, and neither a harmless error nor saved by the mitigation measures also adopted by the pertinent FEIS. See *id.* at 569-71.

Here, in contrast, Rancher Plaintiffs do not argue that the water resource portions of the environmental impact statements and ROD contradict the results of a baseline study, instead arguing that the water resource baseline studies are wrong. (ECF No. 204 at 22-48.) This is also not a case where BLM failed to conduct a baseline study as to water resources, as BLM did (see TPEIS-0384 at AR-046513 - AR-047130, TPEIS-0711 at AR-066146-47, AR-067399-401, and TPEIS-081), and Lithium Nevada even had the water resources contractor prepare memoranda specifically responding to concerns Rancher Plaintiffs raised during the environmental review process similar to the arguments they make now (see TPEIS-0403, TPEIS-0406). Moreover, this is not a case where BLM concluded—like in *Jewell*—that there would be no impact to an important resource without any basis. Indeed, BLM concluded there will be some impact on groundwater resources (and the wildlife that depends on it) from the Project, both explaining those predicted impacts and including mitigation measures intended to remedy them. (TPEIS-0384 at AR-045554 - AR-045581.) The Court accordingly does not find that *Jewell* requires remand and vacatur.

Turning to some of Rancher Plaintiffs' more specific arguments, Rancher Plaintiffs argue that the baseline seep and spring data lacks scientific and professional integrity because the contractor who collected the data did not adhere to something called the Stevens Protocol.<sup>22</sup> (ECF No. 204 at 23, 25-30.) But the contractor, Piteau and Associates, did not state it would follow the entire Stevens Protocol, instead specifying in its work plan that its spring and seep inventory would use certain elements of Level 1 of the Stevens Protocol. (TPEIS-0054 at AR-005702-03.) Thus, Rancher Plaintiffs' argument that the spring surveys did not follow the Stevens Protocol does not really apply and is

<sup>22</sup>The parties agree what the Stevens Protocol is and further explanation of it is not strictly necessary for the Court's analysis.



inconsequential. (ECF No. 204 at 36-40.) The same goes for Rancher Plaintiffs' argument that Piteau should have followed Levels 2 and 3 of the Stevens Protocol (*id.* at 35-36); Piteau never said it was going to (TPEIS-0054 at AR-005702-03).<sup>23</sup> Moreover, Federal Defendants were not required to follow the Stevens Protocol in any event because NEPA, "does not require adherence to a particular analytic protocol." *Oregon Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019) (citation omitted).<sup>24</sup>

Rancher Plaintiffs otherwise argue that the baseline surveys regarding springs, seeps, groundwater, and Pole Creek contain various inaccuracies such that Federal Defendants' environmental review lacks an adequate baseline—and accordingly the FEIS underestimates the negative impact of the Project on local water resources. (ECF No. 204 at 40-46.) The Court finds that—at most—these arguments reflect a technical or scientific disagreement on which the Court must defer to BLM. Indeed, Rancher Plaintiffs largely rely on comments they submitted during the environmental review process, which in turn rely on the comments of their expert, Dr. Erick Powell. (See, e.g., *id.* at 46 n.29 (citing TPEIS-0516 at AR-056387).) Dr. Powell raised substantially the same points in comments submitted to BLM during the environmental review process that Rancher Plaintiffs now proffer, and BLM substantively responded to Dr. Powell's comments, further suggesting

<sup>23</sup>Rancher Plaintiffs' argument about trespass similarly is based on a principle from the Stevens Protocol—consultation with pertinent private property owners before conducting spring surveys (ECF No. 204 at 36-38)—that Piteau did not state it would follow (TPEIS-0054 at AR-005702-03). And in any event, as Federal Defendants point out, Rancher Plaintiffs have not shown, "how any alleged trespass affects the sufficiency or accuracy of the baseline data or rises to the level of a NEPA violation, even if BLM were aware of it—which [Rancher Plaintiffs have] not established." (ECF No. 238 at 24.) There is at most a dispute about whether Piteau trespassed, but even if that were the case, it is unclear to the Court how that necessarily means the measurements collected at the two springs subject to the trespass dispute are inaccurate or unreliable. That said, while trespass is not an issue relevant to the Court's review of BLM's decision in this APA case, the Court of course does not sanction trespass.

<sup>24</sup>Rancher Plaintiffs rely on this case to support their argument that Federal Defendants violated NEPA by failing to comply with the Stevens Protocol (ECF No. 204 at 39-40), but the portion of *Rose* upon which they rely describes a situation where BLM said it would do something—complete a prompt on Route Analysis Forms—but did not. See *Rose*, 921 F.3d at 1192. In contrast, and as noted, Piteau never wrote it would entirely follow the Stevens Protocol.

that Rancher Plaintiffs' argument primarily reflects scientific or technical disagreement on which the Court must defer to BLM. (TPEIS-0713 at AR-067655 - AR-067668.) Indeed, the Court does not sit as a referee on a professional, scientific journal, but as a generalist judge acting pursuant to congressionally delegated authority. See *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 621 (9th Cir. 2014).

An unreported district court case upon which Rancher Plaintiffs rely illustrates why their core NEPA arguments about the unreliability of the water baseline surveys are ultimately unpersuasive, despite the italicization and overheated rhetoric throughout their briefs. (ECF No. 204 at 38, 42 (citing *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, Case No. 3:12-CV-02271-HZ, 2014 WL 6977611, at \*21 (D. Or. Dec. 9, 2014) ("*Blue Mountains*").) The *Blue Mountains* court found that a dispute about the agency's estimated age of implicated Grand Fir trees was, "a situation where experts differ in their testimony and the Court is being asked to guess if public opinion would change based on adding several years to the average age of grand firs. In such a situation, the Court defers to the agency and, therefore, there is no NEPA violation." *Id.* at \*23; see also *id.* at \*21-\*23 (containing the rest of that court's analysis). Similarly, here, the Court can discern nothing more from Rancher Plaintiffs' NEPA arguments than a situation where they and their expert substantively disagree with BLM's scientific and technical conclusions regarding the water resource baselines and the predicted impacts of the Project that flow from those baselines. This does not constitute a NEPA violation.

And to the extent Rancher Plaintiffs argue the ROD must be vacated because BLM did not independently evaluate the data that Piteau collected and analyzed, the Court is unconvinced. (ECF No. 204 at 25-28.) To the contrary, the AR shows that BLM independently evaluated Piteau's work and engaged in an iterative process to improve it. (TPEIS-1022 (requesting underlying model dataset Piteau prepared for review), TPEIS-1205 (providing comments on Piteau report), TPEIS-1131 at AR-097595-96 ("Dan Erbes (BLM geohydrologist) and Patrick Plumlee (hydrology/geochemistry subcontractor to ICF) have been working with Piteau and LNC with regard to these baselines as well as the



issues with the modeled effects on water quality and quantity...”), TPEIS-0986 (organizing in-person meeting between Piteau and BLM employees), TPEIS-1013 (following up on in-person meeting), TPEIS-1072 (passing comments back to Piteau), TPEIS-1330 (“The revised water resources section in the 6/19/2020 Thacker Pass ADEIS constitutes a vast improvement over the previous version and I only have a few comments (included below).”), TPEIS-1411 (describing comments from Rancher Plaintiffs similar to the arguments raised in their briefs, agreeing with Rancher Plaintiffs that some spring data may have been collected from incorrect locations, but providing the opinion that the model Piteau prepared is still useful, though could use some tweaking).)

Rancher Plaintiffs finally argue that BLM did not provide them with sufficient information to engage in meaningful public comment (ECF No. 204 at 28-32), but as Federal Defendants and Lithium Nevada detail in their responses, BLM engaged extensively with Rancher Plaintiffs throughout all stages of the environmental review process, and even after the FEIS issued (ECF Nos. 238 at 36-39, 241 at 16-22). And as for Rancher Plaintiffs’ argument regarding the Biological Assessment about LCT (ECF No. 204 at 28-32), the Court agrees with Federal Defendants that the FEIS discussed the potential impacts of the Project on LCT (FEIS-0384 at AR-045595), concluding the Project would not affect nearby LCT, a conclusion consistent with the conclusion reached and discussed in the Biological Assessment BLM shared with the United States Fish and Wildlife Service (TPEIS-0480). The Court accordingly finds that the FEIS sufficiently discussed the Project’s impacts on LCT such that BLM was not required to provide for public comment on the Biological Assessment as to LCT. *See Cascadia Wildlands v. U.S. Forest Serv.*, 937 F. Supp. 2d 1271, 1278 (D. Or. 2013) (reaching analogous conclusion). Moreover, the AR indicates that Rancher Plaintiffs made their view that the Project would negatively impact LCT clear to BLM (see, e.g., TPEIS-1489 at AR-106684-85), reducing the persuasiveness of Rancher Plaintiffs’ suggestion that they were unable to provide comments to the effect that they believe the Project will have a negative impact on nearby LCT because BLM did not permit them to comment on the Biological Assessment.

In sum, the Court may not “‘fly speck’ an EIS and hold it insufficient on the basis of inconsequential, technical deficiencies[.]” *Ass’n of Pub. Agency Customers, Inc. v. Bonneville Power Admin.*, 126 F.3d 1158, 1184 (9th Cir. 1997) (citation omitted), despite Rancher Plaintiffs’ vigorous invitation to do so. Rancher Plaintiffs’ motion for summary judgment is denied to the extent based on its NEPA arguments, and Federal Defendants and Lithium Nevada’s corresponding counter and cross motions are granted. However, as noted, Rancher Plaintiffs’ motion is granted to the extent necessary to reflect that the Court agrees with the FLPMA argument based on *Rosemont*, and as provided *supra* as to Environmental Plaintiffs’ motion, Federal Defendants’ and Lithium Nevada’s motions are denied to the extent they resist application of *Rosemont*.

### **C. Tribal Plaintiffs**

RSIC and Burns Paiute Tribe bring essentially the same claim under the NHPA—arguing that BLM should have consulted them before issuing the ROD, but did not—but only Burns Paiute Tribe also brings a NEPA claim, arguing that BLM did not take the requisite “hard look” at the impacts of the Project in terms of whether the Project area is an area of contemporary cultural or religious significance to local tribes. The Court accordingly discusses Tribal Plaintiffs’ NHPA claims together, and then addresses Burns Paiute Tribe’s NEPA claim.<sup>25</sup> In addition, the Court incorporates by reference its orders denying Tribal Plaintiffs’ motions for preliminary injunction and denying reconsideration of that decision because Tribal Plaintiffs’ pending motions focus on NHPA arguments the Court has already addressed twice in the context of its likelihood of success on the merits analysis—and Tribal Plaintiffs rely on the same evidence already addressed in these prior orders to support their NHPA arguments.<sup>26</sup> (ECF Nos. 92, 117.)

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<sup>25</sup>The NEPA legal standard described elsewhere in this order applies to Burns Paiute Tribe’s NEPA claim.

<sup>26</sup>These orders also describe the pertinent factual background and legal standards that apply to the Court’s NHPA analysis.

Building on that point, the Court has twice ruled that Tribal Plaintiffs may not assert the interests of other tribes who were consulted on the Project to support their arguments. (*Id.*) The Court will accordingly not address any arguments Tribal Plaintiffs make in their pending motions based on that twice-rejected proposition, and explicitly incorporates its reasoning from those prior orders on that point by reference here. (*Id.*) As to Burns Paiute Tribe specifically, it makes some arguments based on letters sent by the tribes who were consulted on the Project after the ROD issued, and based on one letter it sent after the ROD issued. (ECF No. 203 at 28-29.) In addition to violating the Court's prior rulings on asserting the interests of non-party tribes, these arguments also ignore the Court's repeated prior rulings regarding the scope of the administrative record that the Court may not—and will not—consider documents that post-date the ROD. (ECF Nos. 155 at 10-11, 275 at 5-7.) The Court accordingly declines to further address Burns Paiute Tribe's argument based on letters that post-date the ROD, some sent by non-party tribes.

As mentioned, the Court first addresses Tribal Plaintiffs' NHPA claim and then Burns Paiute Tribe's NEPA claim.

#### **1. NHPA**

As noted, and as addressed in the Court's pertinent prior orders (ECF Nos. 92, 117), Tribal Plaintiffs' primary NHPA claim is that BLM's decision not to consult them on the Project was not reasonable nor made in good faith in violation of 36 C.F.R. § 800.2(c)(2)(ii)(A) ("It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process."). Federal Defendants counter that BLM's decision not to consult RSIC or Burns Paiute Tribe on the Project was reasonable and made in good faith by offering a chronological narrative of its interactions with both tribes, which led BLM to the understanding that neither tribe would want to be consulted on the Project. (ECF No. 227.) The Court is ultimately persuaded by Federal Defendants' argument that BLM's decision not to consult Tribal Plaintiffs on the Project was reasonable and made in good faith based on the information BLM had at the time it initiated consultation for the

Project. In explaining its decision that BLM's decision not to consult Tribal Plaintiffs was reasonable, the Court follows Federal Defendants' chronology offered in their briefing and at the Hearing, addressing Tribal Plaintiffs' objections and counterarguments as they arise in the context of the narrative described *infra*.

In 2005, BLM began preparing for the ARMPA, a land use plan encompassing the proposed Project area. See Notice of Intent To Prepare a Resource Management Plan (RMP) and Associated Environmental Impact Statement (EIS) and Initiate the Public Scoping Process, 70 FR 15348-01, 2005 WL 677030 (Mar. 25, 2005). As part of this process, BLM prepared a document—now part of the AR—called the Ethnographic Assessment, which was finalized in April 2006. (TPNHPA-0003 (filed under seal).)<sup>27</sup> The Ethnographic Assessment describes the reprehensible history of what it describes as the first Euromericans' forays into what is now Northern Nevada, killing vital game, ruining all the best grassland, and killing Native Americans without provocation. (*Id.* at 13-16.) These initial contacts developed into a series of battles and wars between the United States government and the Native Americans who lived in this region that eventually led to the present-day arrangement of recognized tribes and reservations. (*Id.* at 16-21.) This brutal history likely informs the righteous indignation with which Tribal Plaintiffs approach this case.

However, the Ethnographic Assessment also contains information that contributed more directly to BLM's decision not to consult Tribal Plaintiffs on the Project. Specifically, several tribes identified sacred and massacre sites summarized in the Ethnographic Assessment, but none of the tribes who spoke to BLM's consultant who prepared the Ethnographic Assessment identified the Thacker Pass area as either sacred or a massacre site. (See *generally id.*) RSIC's Cultural Resource Coordinator Michon Eben attended a meeting in Nixon, Nevada and offered comments and concerns on behalf of

<sup>27</sup>Apparently Federal Defendants were unable to bates-stamp this document, so the pages referenced are the pages in the PDF document.

RSIC reflected in the Ethnographic Assessment. (*Id.* at 95-96.) Burns Paiute Tribe apparently did not respond to any letters requesting consultation on the Ethnographic Assessment, but Charisse Snapp, identified in the Ethnographic Assessment as the tribe's Cultural Resource Representative, is recorded as having said on a telephone call on July 28, 2005, that Burns Paiute Tribe, "would defer consultation to the tribes that had reservations closer to the study area."<sup>28</sup> (*Id.* at 100.) "She said that it would not be necessary to keep the tribe on the mailing list for the RMP/EIS." (*Id.*)

In 2015, RSIC sent BLM a letter explaining its official area of cultural interest, where it expected to be consulted on all projects, and otherwise reserved its rights to request consultation on projects falling outside that area. (TPNHPA-0034.) As the Court discussed this letter and its reading of it extensively in one of its prior orders, the Court again explicitly incorporates by reference that discussion here. (ECF No. 92 at 11-13.) As noted in that order as well, RSIC never requested consultation on the Project until after the ROD issued, so the reservation of rights to consult on other projects outside RSIC's official area of cultural interest described in the letter does not affect the Court's analysis. (ECF No. 205 at 14-15, 19-21 (arguing to the contrary).) Moreover, RSIC's argument that there is insufficient evidence in the AR that a specific employee viewed the letter and made decisions based on it is unpersuasive because the letter is part of the AR, and therefore the Court must presume it was before BLM when BLM decided not to consult RSIC. See *Goffney v. Becerra*, 995 F.3d 737, 748 (9th Cir.), *cert. denied*, 142 S. Ct. 589 (2021) ("[A]n agency's statement of what is in the record is subject to a presumption of regularity."); *Pac. Choice Seafood Co. v. Ross*, 976 F.3d 932, 942 (9th Cir. 2020) (stating that the AR includes, "everything that was before the agency pertaining to the merits of its decision.") (citation omitted).

<sup>28</sup>Charisse Snapp submitted a declaration with Tribal Plaintiffs' reply (ECF No. 259) in which disputes that she was authorized to speak on Burns Paiute Tribe's behalf, but the Court cannot consider this declaration as it post-dates the ROD and is not part of the AR. (ECF Nos. 155 at 10-11, 275 at 5-7.) And regardless, she does not dispute that she had the phone conversation with BLM's consultant who prepared the Ethnographic Assessment summarized in the document.

Thus, the records before the BLM show that both Tribal Plaintiffs indicated to BLM that they did not wish to be consulted on projects being considered in a geographic area encompassing the Project—Burns Paiute Tribe in response to invitations to participate in the Ethnographic Assessment, and RSIC in a letter it mailed to BLM. And between 2010 and 2017, BLM consulted with tribes (including, in one instance, RSIC) on four projects implicating the Project area, but BLM did not learn from any of those consultations either that Tribal Plaintiffs had a special interest in the Thacker Pass area, or that the Thacker Pass area was religiously or culturally significant to them. (ECF No. 227 at 31-33 (citing the AR).)

When it came time to initiate the NHPA process for the Project,<sup>29</sup> and as otherwise noted as to the NEPA process, BLM published a notice in the Federal Register. See Notice of Intent To Prepare a Draft Environmental Impact Statement and Resource Management Plan Amendment, for the Lithium Nevada Corp., Thacker Pass Project Proposed Plan of Operations and Reclamation Plan Permit Application, Humboldt County, Nevada, 85 FR 3413-02, 2020 WL 279646 (Jan. 21, 2020) (“This notice announces the beginning of the scoping process to solicit public comments and identify issues to be considered in the EIS, and serves to initiate public consultation, as required under the National Historic Preservation Act (NHPA).”). There is no dispute here that neither of Tribal Plaintiffs requested consultation on the Project until after the ROD issued. And this publication renders unpersuasive RSIC’s argument that BLM provided insufficient public notice of the NHPA process for the Project (ECF No. 205 at 3, 8-10, 16-19), because “[p]ublication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance.” *Shiny Rock Min. Corp. v. United States*, 906 F.2d 1362, 1364 (9th Cir. 1990) (citation omitted).

<sup>29</sup>The NHPA process has several components, see *WildEarth Guardians v. Provencio*, 923 F.3d 655, 676-77 (9th Cir. 2019); *Montana Wilderness Ass’n v. Connell*, 725 F.3d 988, 1005-06 (9th Cir. 2013), but, again, Tribal Plaintiffs only challenge the decision not to consult them before issuing the ROD, and not the other steps of the NHPA process.

BLM also sent consultation letters to the Fort McDermitt Paiute and Shoshone Tribe, the Summit Lake Paiute Tribe, and the Winnemucca Indian Colony on December 12, 2019. (TPNHPA-0010, TPNHPA-0011, TPNHPA-0012.) There is also no dispute that these three tribes did not respond to the consultation letters before the ROD issued.

In addition, BLM consulted with the Nevada State Historic Preservation Office (“Nevada SHPO”), as required by NHPA. (TPNHPA-0001.) Nevada SHPO responded some time later indicating that all of its concerns had been addressed, concurring that BLM had initiated tribal consultation, and declining to identify any additional tribes (such as Tribal Plaintiffs) with whom BLM should have consulted. (TPNHPA-0036.) This fact further supports a finding that BLM’s decision not to consult with RSIC and Burns Paiute Tribe before issuing the ROD was reasonable. See *Ctr. for Biological Diversity v. United States Army Corps of Engineers*, Case No. CV 14-1667 PSG (CWX), 2015 WL 12659937, at \*21 (C.D. Cal. June 30, 2015), *aff’d sub nom. Friends of Santa Clara River v. United States Army Corps of Engineers*, 887 F.3d 906 (9th Cir. 2018) (finding that the Army Corps of Engineers’ decision not to consult the Santa Ynez Band was reasonable in part because the California “SHPO did not advise the Corps to contact the Santa Ynez Band”).

At the Hearing, Federal Defendants also directed the Court’s attention to an email sent by Tanner Whetstone, one of the BLM employees responsible for tribal consultation on the Project, where he retroactively described the factors he considered in recommending to the responsible official which tribes to consult with for the NHPA review process regarding the Project. (TPNHPA-0047.)<sup>30</sup> He describes those factors as

<sup>30</sup>The Court includes the full text of the email in this footnote, below, because it is pertinent to the Court’s analysis.

David Kampwerth or I may need to be in this side-meeting that was proposed in the call today. I say may because I can’t really tell if the folks are concerned about reaching out to Pyramid lake Paiute Tribe about the project or if they just want to analyze the potential impacts to PLPT, if any. If it’s the latter one of us probably needs to be on the call. Not to be rude to the folks on the call, but decisions about how the BLM consults with tribes are made



geographical proximity, historical ties, and whether a particular tribe had previously indicated an interest in the Project area. (*Id.*) He also uses the phrasing reasonable and good faith in several instances, suggesting he was aware of the pertinent regulation's requirements and attempted to comply with them. (*Id.*) The Court infers from this email—part of the AR—that Whetstone decided not to consult Tribal Plaintiffs on the Project because they lacked geographic proximity or historical ties to the Project area and had not otherwise expressed an interest in it. And this inference is consistent with the other evidence before the Court and described *supra*.

RSIC's counsel attempted to cast doubt on the probative value of this email at the Hearing by pointing out that it was sent in May 2020, or long after BLM started the consultation process pertinent to the Project, but the Court's reading of the email suggests that Whetstone was describing why he did not recommend consultation with the Pyramid Lake Paiute Tribe—and also described the factors that led to his recommendation about which tribes to consult—at the time that he made his consultation recommendations. He was not writing in the present tense. Thus, the fact that he sent the email long after consultation began is immaterial. Moreover, these factors—particularly absent any

by authorized officers and tribes, not partners or BLM employees. I work with our managers on a project-specific basis to help them determine which tribes to reach out to in order to meet our reasonable and good faith effort to consider tribal concerns. In this case, based on my input the HRFO Field Manager David Kampwerth determined that the BLM would consult with Fort McDermitt Paiute and Shoshone Tribe, Winnemucca Indian Colony, and Summit lake Paiute Tribe. The Pyramid Lake Paiute Tribe is located 120 miles from the project area and to our knowledge has not concerned itself with the Thacker Pass area before, and historically did not have ties to the Thacker Pass area, therefore it was determined not to reach out to them. If there's a concern that traffic generated from the project may have implications for PLPT or impact resources that are of concern to PLPT, then I have no issue discussing it with our management and conducting any additional outreach/consultation that they see fit, but I'll need to know that soon to make a meaningful effort considering the Draft EIS comes out in a month.

(TPNHPA-0047.)



caselaw to the contrary—are reasonable factors to use in deciding which tribes to consult on a particular project. And this email supports Federal Defendants’ argument that it was reasonable not to consult Tribal Plaintiffs on the Project because they lacked geographical proximity and historical ties to the Project area, and had never affirmatively indicated an interest in the Project area. Indeed, as described *supra*, they effectively did the opposite by opting out of consultation on projects in the geographic area of the Project.

More broadly, all of this evidence supports the Court’s finding that BLM’s decision not to consult with Tribal Plaintiffs before issuing the ROD was reasonable and made in good faith within the meaning of 36 C.F.R. § 800.2(c)(2)(ii)(A). The Court tentatively made that decision in connection with Tribal Plaintiffs’ motions for preliminary injunction, and makes the same decision on the merits now.

The Court also notes that the gist of Tribal Plaintiffs’ contrary argument has no limiting principle. The gist seems to be that BLM must consult every tribe on every project. But Tribal Plaintiffs do not quite argue that BLM must consult every tribe on every project, and must persist in repeated contact even when faced with silence or affirmative indications that a particular tribe does not wish to be consulted on projects in a particular area. Tribal Plaintiffs likely do not quite make that argument because it is not the law. And Tribal Plaintiffs offer no analogous caselaw (much less any binding precedent) to support their argument that BLM should have consulted more tribes, including them, on this Project. It is instead the law that the responsible BLM employee must make a reasonable and good faith effort to identify which tribes to consult with. See 36 C.F.R. § 800.2(c)(2)(ii)(A). BLM made the requisite effort.

This distinction also applies to Tribal Plaintiffs’ more specific arguments that they are both descended from Northern Paiutes forcibly dispersed from land including the Project area, and that the Thacker Pass area contains features like water and rock outcroppings sacred to them—so BLM should have consulted them. As Federal Defendants respond, these arguments are insufficiently linked to Tribal Plaintiffs, such that “BLM would have had reasonable notice that [Tribal Plaintiffs] had a relationship with

places of cultural or religious significance in the Thacker Pass area” (ECF No. 227 at 40)—particularly considering the evidence to the contrary discussed *supra*. Or perhaps the more honest answer is that the Court lacks the authority to equitably right historical wrongs perpetrated against Tribal Plaintiffs in the context of the deferential review it is required to conduct of a single decision BLM employees made constituting Tribal Plaintiffs’ legal claim here, especially where the pertinent statute does not require any particular outcome. See *Connell*, 725 F.3d at 1005 (“Section 106 of NHPA is a ‘stop, look, and listen’ provision that requires each federal agency to consider the effects of its programs.”) (citation omitted).

In sum, BLM made a reasonable decision not to consult RSIC or Burns Paiute Tribe on the Project before issuing the ROD. BLM did not violate NHPA in making that decision. Tribal Plaintiffs’ motions are accordingly denied as to this claim, and Federal Defendants’ and Lithium Nevada’s cross motions are correspondingly granted.

## **2. NEPA**

Setting aside evidence that post-dates the ROD and is thus not properly part of the AR, Burns Paiute Tribe’s NEPA claim is that the FEIS did not discuss current uses of the Project area by tribes or the area’s significance to local tribes.<sup>31</sup> (ECF No. 203 at 30.) However, as Federal Defendants counter (ECF No. 227 at 49, 49 n.133), the FEIS incorporated by reference the Previous Cultural Resources Inventories in Appendix J (TPEIS-0384 at AR-045630), which included the Class III Inventory of 12,963 Acres for Lithium Nevada’s Thacker Pass Project, Humboldt County, Nevada for Lithium Nevada’s Thacker Pass Project, Humboldt County, Nevada (TPEIS-0705 at AR-065807), which, in turn, includes an explanation of how the area near the Project area was used by bands of Northern Paiutes from around the middle of the 19<sup>th</sup> century through present (TPEIS-0269

<sup>31</sup>This argument accordingly also runs afoul of the Court’s ruling that the Burns Paiute Tribe cannot assert the interests of third-party tribes based on the prudential prohibition against allowing one to assert the legal interests of another known as the third party standing doctrine, but the Court summarizes Burns Paiute Tribe’s argument here as the Burns Paiute Tribe makes it in an attempt at clarity.

(filed under seal) at AR-035386-87). Thus, Burns Paiute Tribe's NEPA argument is based on either an oversight or an incorrect premise.

To the extent Burns Paiute Tribe more generally argues that BLM failed to take the requisite hard look by failing to specifically consider the impact of the Project on historic and cultural resources, the Court is unpersuaded. (ECF No. 203 at 30.) To the contrary, the Court agrees with Federal Defendants that they "took the requisite hard look at the potential impacts to cultural resources from the Thacker Pass Project." (ECF No. 227 at 44; see also *id.* at 44-50 (supporting the statement).)

More specifically, BLM reviewed 38 cultural resource inventories conducted over 49 years that investigated the Project area (both mining and exploration), along with the area of indirect effects. (TPEIS-0705 at AR-065805 - AR-065807.) These inventories included a 2018 survey that inventoried 12,963 acres for the Project. (TPEIS-0269.) This was a Class III inventory (*see generally id.*), meaning that it was an:

"[i]ntensive" survey that involve[d] "a professionally conducted, thorough pedestrian survey of an entire target area ... intended to locate and record all historic properties" and that "provides managers and cultural resource specialists with a complete record of cultural properties." BLM Manual 8110.2.21.C.1, C.3. This alternative requires an on-the-ground survey of the entire subject area. The Manual explains that an "[i]ntensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area." BLM Manual 8110.2.21.C. The Class III survey is the most frequently employed method of inventory. See *BLM Manual* 8110.2.21.

*Connell*, 725 F.3d at 1006. This and the prior inventories identified that the Project would negatively impact some 1000 cultural resource sites, including 56 eligible for inclusion on the National Register of Historic Places. (*See generally* TPEIS-0269.)

And BLM considered all of this in the FEIS. (TPEIS-0384 at AR-045630-33.) To somewhat mitigate the harm to cultural properties that BLM stated the Project would cause, BLM chose "an approved Historic Properties Treatment Plan (HPTP), currently in development." (*Id.* at AR-045633.) BLM also noted in this portion of the FEIS that the tribal consultation to which had engaged up to that point in time had not yielded any concerns,

but also stated that it would engage in more tribal consultation before issuing the final HPTP, along with consulting with the Nevada SHPO. (*Id.*)

Under the deferential standard of review, see *Great Basin Res. Watch*, 844 F.3d at 1101, BLM took a hard enough look at the Project's impacts on cultural and historical resources, and the Court's review must accordingly end, see *id.* The NEPA portion of Burns Paiute Tribe's motion is accordingly denied, and Federal Defendants' and Lithium Nevada's competing motions are granted to a corresponding extent.

#### **D. Remand and Vacatur**

"The remaining issue is whether to vacate the [ROD] or remand while leaving the [ROD] in place." *Pollinator*, 806 F.3d at 532. While the parties did not extensively brief this issue, the Court heard extensive argument on it at the Hearing after informing the parties it was interested in hearing such argument in advance of the Hearing. (ECF No. 276.) The Court also stated at the Hearing, primarily in response to Federal Defendants' request, that it would only permit further briefing on this question if it found it necessary. The Court does not so find.

The Court may only order remand without vacatur in limited circumstances, and only when equity so demands. See *Pollinator*, 806 F.3d at 532. The Court must generally weigh the seriousness of the agency's errors against the disruptive consequences of vacating the ROD. See *id.* Examples of where it is appropriate to remand without vacatur include situations where environmental harm will result from vacatur, and situations where the Court reasonably expects the agency could reach the same result on remand but either offer better reasoning or comply with procedural rules to essentially fix the error the Court has identified in its review. See *id.*

The Court finds that this is the rare case where remand without vacatur is appropriate because, as described *supra* in the section of the order addressing *Rosemont* in depth, BLM could fix the error—it could find on remand that Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project. There is at least some evidence in the record of sufficient lithium mineralization in those land

such that BLM could find Lithium Nevada had discovered ‘valuable mineral deposits’ in them.<sup>32</sup> This is accordingly the rare case where BLM could fix its *Rosemont* issue on remand and still reach the same outcome that it reached in the ROD. Said otherwise, this case presents a situation like the situation where remand without vacatur was found appropriate in *Allied-Signal*, 988 F.2d at 151 (“there is at least a serious possibility that the Commission will be able to substantiate its decision on remand”), described as a situation where remand without vacatur would be acceptable in *Pollinator*, 806 F.3d at 532.

Moreover, as also described *supra*, the *Rosemont* argument the Court agrees with only applies to the waste dump and mine tailings land subject to the mining plan of operations, and not the exploration plan of operations at all. The ROD approved both plans. In addition, the Court does not find that Plaintiffs or Plaintiff-Intervenors prevail on any of the several other claims they advanced in this case. Thus, BLM substantially complied with the applicable legal requirements here. This too suggests remand without vacatur is appropriate. See *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 664 (9th Cir. 2022) (“EPA’s failure to comply with FIFRA’s notice and comment requirement also does not warrant vacatur, ‘especially in light of’ EPA’s ‘substantial compliance’ with FIFRA.”) (citation omitted). And *Rosemont* did not issue until well after the ROD issued in any event. Thus, remand with vacatur would be inequitable because it would sweep in many aspects of the ROD as to which the Court identified no issue, and would not acknowledge that would be unfair to expect BLM to follow *Rosemont*—in contravention of its own regulations—before *Rosemont* had issued.<sup>33</sup>

<sup>32</sup>As noted *supra*, Federal Defendants and Lithium Nevada also argue the Project already complies with the ARMPA in any event, but the Court need not—and does not—reach that argument.

<sup>33</sup>Lithium Nevada also argues that “the disruptive impact of vacatur would be severe” because “there is no other U.S. alternative to the Project that provides the scale, grade, or timeline to production required to keep pace with transportation electrification and carbon reduction, in addition to providing lithium products needed for national security.” (ECF No. 242 at 48.) This argument finds at least some support in binding precedent. See *California Communities Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 993-

#### IV. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Environmental Plaintiffs' motion for summary judgment (ECF No. 202) is granted in part, and denied in part, as specified herein.

It is further ordered that the Burns Paiute Tribe's motion for summary judgment (ECF No. 203) is denied as specified herein.

It is further ordered that Rancher Plaintiffs' motion for summary judgment (ECF No. 204) is granted in part, and denied in part, as specified herein.

It is further ordered that RSIC's motion for summary judgment (ECF No. 205) is denied as specified herein.

It is further ordered that Lithium Nevada's counter motion for summary judgment (ECF No. 241) as to Rancher Plaintiffs' claims is granted in part, and denied in part, as specified herein.

It is further ordered that Lithium Nevada's cross motion for summary judgment (ECF No. 242) as to Environmental Plaintiffs' claims is granted in part, and denied in part, as specified herein.

It is further ordered that Federal Defendants' cross motions for summary judgment (ECF Nos. 227, 237, 238) are granted in part, and denied in part, as specified herein.

It is further ordered that Lithium Nevada's cross motions for summary judgment as to Tribal Plaintiffs' claims (ECF No. 230) are granted as specified herein.

It is further ordered that this case is remanded—but without vacatur of the Record of Decision—to BLM to determine whether Lithium Nevada possesses valid rights to the

94 (9th Cir. 2012). However, the Court declines to reach this argument because it does not need to in order to adequately support its decision that remand without vacatur is appropriate here.

waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the ROD described herein.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 6<sup>th</sup> Day of February 2023.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

**No. 23-15259**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

WESTERN WATERSHEDS PROJECT, GREAT BASIN RESOURCE WATCH,  
BASIN AND RANGE WATCH, and WILDLANDS DEFENSE,  
*Plaintiffs-Appellants,*

and

RENO SPARKS INDIAN COLONY,  
*Intervenor-Plaintiff Appellant,*

and

BURNS PAIUTE TRIBE  
*Intervenor-Plaintiff Appellant,*

v.

ESTER MCCULLOUGH; UNITED STATES DEPARTMENT OF THE  
INTERIOR; and BUREAU OF LAND MANAGEMENT;  
*Defendants-Appellees,*

and

LITHIUM NEVADA CORPORATION,  
*Intervenor-Defendant-Appellee.*

---

On Appeal From the United States District  
Court for the District of Nevada  
(District Judge Miranda M. Du)

---

**EXCERPTS OF RECORD VOLUME 2 OF 2**



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Attorneys for Great Basin Resource Watch, Basin and Range Watch, and  
Wildlands Defense

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# EXHIBIT 2



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Nevada State Office  
1340 Financial Boulevard  
Reno, Nevada 89502-7147  
<https://www.blm.gov/nevada>

In Reply Refer To:  
3809 (NV921.c)

**FEB 22 2023**

## DECISION

|                                 |   |                     |              |
|---------------------------------|---|---------------------|--------------|
| Principal:                      | : |                     |              |
| Lithium Nevada Corp             | : |                     |              |
| 5310 Kietzke Lane Ste 200       | : |                     |              |
| Reno, NV 89511                  | : |                     |              |
|                                 | : |                     |              |
| Surety:                         | : |                     |              |
| Endurance Assurance Corporation | : | Surety Bond Number: | EACX4028412  |
| 4 Manhattanville Road           | : | Surety Bond Amount: | \$13,742,964 |
| Purchase, NY 89511              | : | BLM Bond Number:    | NVB002804    |

### Statewide Surety Bond Accepted

On February 22, 2023, the BLM Nevada State Office (NSO) received surety bond number EACX4028412 with Lithium Nevada Corp, as principal, and underwritten by Endurance Assurance Corporation, as surety, in the amount of \$13,742,964. The bond was submitted to provide statewide surface reclamation coverage for operations conducted by the principal on lands in Nevada under 43 CFR 3809. The bond has been examined, found satisfactory, and is accepted effective February 22, 2023.

The bond, assigned BLM bond number NVB002804, will be maintained by the NSO. Termination of the liability under the bond will be permitted only after the NSO is satisfied there is no outstanding liability under the bond or satisfactory replacement bond coverage is furnished.

On February 17, 2022, the BLM Humboldt River Field Office determined the reclamation cost estimate on Phase I of Plan of Operations NVN098586, the Thacker Pass Mine, to be \$13,487,823. Effective the date of this Decision, NVN098586 is satisfactorily bonded under NVB002804 in the amount of \$13,487,823.

Considering the bond amounts accepted and obligated, \$255,141 remains available under NVB002804 for future amendments or additional operations.

If you have any questions, please call David Carvalho at 775-861-6648, or send electronic mail to [dcarvalho@blm.gov](mailto:dcarvalho@blm.gov).



Nathaniel J. Osborn  
Supervisory Land Law Examiner  
Branch of Mineral Resources (Solids)

cc: NVW0100 (KLoda)  
NDEP

**Lithium Nevada Corp.  
Thacker Pass Project  
N98586  
Work Plan #1**

November 21, 2022  
Revision: January 13, 2023  
Revision: January 30, 2023  
Revision: February 7, 2023  
Revision: February 14, 2023

On January 15, 2021, the Bureau of Land Management (BLM) issued a Record of Decision (ROD) authorizing the Lithium Nevada Corp's (LNCs) Thacker Pass Project (N98586). The Plan of Operations authorized approximately 5,545 acres of disturbance over the 41-year mine life. We have previously included 3,144.5 acres of disturbance in the first Phase of bonding, as shown in the Nevada Division of Environmental Protection Bureau of Mining Regulation and Reclamation (NDEP-BMRR) Reclamation Permit (0415). LNC respectfully requests the Thacker Pass Project N98586 Permit work and associated bonding be performed under phases (Phased Bonding). In this work plan (Work Plan #1), LNC proposes an early-works project, for the first year of construction.

Under Work Plan #1, LNC is requesting authorization for initial total disturbance of up to 2,660.9 acres, as shown in Figure 1 (Appendix A). Figure 1 shows the permitted area that will be kept in gray shade. All areas are within the Plan of Operations boundary limits. Table 1 (Appendix A) shows the interfacility disturbance for this work plan. Construction under Work Plan # 1 will consist of the following:

- Clear and grub the site;
- Strip and stockpile growth media;
- Earthworks construction of West Waste Rock Storage Facility (WWRSF), Coarse Gangue Stockpile (CGS), and Clay Tailings Filter Stack (CTFS) and associated roads and ponds;
- Earthworks construction for sediment ponds;
- Earthworks construction for landfill, as part of the CGS;
- Improvements to existing access roads;
- Installing the Quinn Well # 1 pump;
- Install the Quinn Well water supply pipeline and associated infrastructure;
- Constructing small water storage ponds for construction;
- Install a temporary office trailer and associated security fencing;
- Install a temporary security access control point;
- Construct communication improvements including radio and cellular improvements;
- Construct highway and state route deceleration lane improvements; and,
- Install temporary construction power setup to support construction activities. Temporary construction power will consist of temporary generators.



The total planned disturbance under Work Plan #1 is 2,660.9 acres, as shown in Figure 1 (Appendix A). LNC files Work Plan #1 pursuant to the provisions of 43 CFR 3809 and as part of the previously approved Thacker Pass Project Plan of Operations.

1.     Name of Operator:                     Lithium Nevada Corporation  
  
          Name of Corporate Contact:     Jennifer Schonlau, Sr. Environmental Engineer  
  [Jennifer.Schonlau@lithiumamericas.com](mailto:Jennifer.Schonlau@lithiumamericas.com)  
  
          Mailing Address:                     5310 Kietzke Ln Suite 200 Drive Reno, Nevada 89511  
  Office: (775) 827-3318                     Direct: (925) 487-4261  
  
          Tax Identification Number:        \*to be provided under separate cover.  
  
          Owners of Mining Claims:        Lithium Nevada Corporation  
  5310 Kietzke Ln Suite 200  
  Reno, Nevada 89511
  
2.     Filed Names of Claims Included in Work Plan #1:  
  
          Filed names of Claims included in Work Plan # 1 are provided in Attachment 1 (Appendix B). A map of the claims are provided in Figure 2 (Appendix A).
  
3.     Location of Proposed Activities: The Project is located within the Thacker Pass Project Plan of Operations Boundary, specifically in Township 44 North (T44N), Range 34 East (R34E), within portions of Sections 1 and 12; T44N, R35E within portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17; and T44N, R36E, within portions of Sections 7, 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 29. The Project Area is accessed by traveling approximately 39 miles north from Winnemucca on US Route 95 and approximately 21 miles northwest on State Route 293.
  
4.     Project Description:  
  
          LNC is requesting authorization for a phased bonding approach, that includes early works construction and disturbance across the 10-year disturbance boundary.  
  
          Proposed work to be completed under Work Plan # 1 includes:
  - Clear and grub the site;
  - Strip and stockpile growth media;
  - Earthworks construction of West Waste Rock Storage Facility (WWRSF), Coarse Gangue Stockpile (CGS), and Clay Tailings Filter Stack (CTFS) and associated roads and ponds;

- Earthworks construction for sediment ponds;
- Earthworks construction for landfill, as part of the CGS;
- Improvements to existing access roads;
- Installing the Quinn Well # 1 pump;
- Install the Quinn Well water supply pipeline and associated infrastructure;
- Constructing small water storage ponds for construction;
- Install a temporary office trailer and associated security fencing;
- Install a temporary security access control point;
- Construct communication improvements including radio and cellular improvements;
- Construct highway and state route deceleration lane improvements; and,
- Install temporary construction power setup to support construction activities. Temporary construction power will consist of temporary generators.

5. Proposed Approximate Disturbance:

The total planned disturbance for Work Plan # 1 is 2,660.9 acres, which will largely consist of clearing and grubbing the project footprint and then stripping the growth media from the major facility area footprints for future reclamation.

6. Schedule of Activities: LNC anticipates that Project activities under Work Plan # 1 would commence in the first half of 2023. Construction activities for Work Plan # 1 are expected to last approximately 12 months.

7. Measures Taken to Prevent Unnecessary or Undue Degradation: Operations will be conducted consistent with 43 CFR 3809.415 and 3809.420, and as provided in the Thacker Pass Project Plan of Operations, the Record of Decision, and applicable federal, state, and local permits. The commitments include, among other things:

- LNC will not knowingly disturb, alter, injure, or destroy any scientifically important paleontological deposits; or any historical or archaeological site, structure, building, or object. If LNC discovers any previously undiscovered and unmitigated cultural or paleontological resource that might be altered or destroyed by operations, the discovery will be left intact and reported to the authorized BLM officer.
- Any survey monuments, witness corners, or reference monuments will be protected to the extent economically and technically feasible.
- Public safety will be maintained throughout the life of the Project. All equipment will be maintained in a safe and orderly manner.
- All solid wastes will be removed from the Project Area and disposed of in a state, federal, or local designated site within a timely manner.

- Hazardous substances utilized at the Project will include diesel fuel, gasoline, and lubricating grease in a sufficient amount to support the work. A reasonable amount of diesel fuel and gasoline to support earthwork activities may be stored in fuel delivery systems located on the drill rig and support vehicles (e.g., portable tank located in the back of the bed of a truck). In the event that hazardous or regulated materials were spilled, measures will be taken to control the spill and the BLM and the Nevada Division of Environmental Protection (NDEP) will be notified as required. Any hazardous substance spills will be cleaned immediately, and any resulting waste will be transferred off site in accordance with all applicable local, state, and federal regulations. Contractors will maintain spill kits on site for use in case of a spill. LNC also has a Spill Plan and Emergency Response Plan in place for the Thacker Pass Project.
  - LNC will comply with all applicable state and federal fire laws and regulations and all reasonable measures will be taken to prevent and suppress fires in the Project Area.
  - Best Management Practices (BMPs) for sediment control will be utilized during construction, operation, and reclamation to minimize sedimentation from disturbed areas. Sediment control structures could include, but not be limited to, fabric or hay bale filter fences, siltation or filter berms, and down-gradient drainage channels in order to prevent unnecessary or undue degradation to the environment.
  - All drill holes will be plugged in accordance with Nevada Administrative Code (NAC) 534.4369 and 534.4371. If ground water is encountered, the hole will be plugged pursuant to NAC 534.420.
  - All reasonable steps will be taken to minimize the introduction of noxious weeds and to limit the spread of any existing infestations.
8. Environmental Summary: In compliance with BLM Instruction Memorandum No. NV-2011-004, Guidance for Permitting 3809 Plans of Operation, per 43 CFR 3809.401(b), and in consultation with the BLM, LNC has completed baseline studies that support this POO document and subsequent environmental analysis. Baseline studies include climate, geology, soils, water resources, vegetation, wildlife, visual resources, cultural resources, socioeconomics, livestock grazing, and floodplains. The project, including early works construction, has been analyzed in the Thacker Pass Mine Lithium Project Environmental Impact Statement DOI-BLM-NV-W010-2020-0012-EIS. A Record of Decision and Plan of Operations Approval was issued on January 15, 2021. On March 21, 2022, the State of Nevada Sagebrush Ecosystem Program informed LNC that LNC has fulfilled their initial compensatory mitigation obligation for the Thacker Pass Project associated with sage grouse, and LNC is in compliance with the State Mitigation

Regulation (NAC 232.400-232).

9. Reclamation: Reclamation will be completed to the standards described in 43 CFR 3809.420 as well as the Thacker Pass Plan of Operations and will prevent unnecessary or undue degradation to public lands by operations authorized under the mining laws.

Primary objectives for post-mining reclamation of the Project are to:

- Ensure public safety;
- Reduce or eliminate potential environmental impacts;
- Return the site to a condition supporting land uses similar to those in existence prior to mining activities;
- Control infiltration, erosion, sedimentation, and related degradation of existing drainages to minimize offsite impacts; and,
- Employ reclamation practices using proven methods that do not require ongoing maintenance.

With these objectives in mind, reclamation activities are designed to:

- Stabilize the disturbed areas to a safe condition;
- Reduce visual impacts; and,
- Protect both disturbed and undisturbed areas from unnecessary and undue degradation.

Reclamation will include small structure and foundation removal, regrading and reshaping, stormwater control, and revegetation. The reclamation seed mix proposed is shown in the table below.

| Variety               | Species                                       | Pure Live Seed (pounds/acre) |
|-----------------------|---|------------------------------|
| Wyoming Big Sagebrush | <i>Artemisia tridentate spp. Wyomingensis</i> | 1.00                         |
| Fourwing Saltbush     | <i>Atriplex canescens</i>                     | 0.50                         |
| Squirreltail          | <i>Elymus elymoides</i>                       | 2.75                         |
| Sandberg's Bluegrass  | <i>Poa secunda</i>                            | 1.00                         |
| Crested Wheatgrass    | <i>Agropyron cristatum</i>                    | 6.00                         |
| Blue Flax             | <i>Linum lewisii</i>                          | 0.50                         |
| Scarlet globemallow   | <i>Sphaeralcea coccinea</i>                   | 0.25                         |
| Western Yarrow        | <i>Achillia millifolium</i>                   | 0.10                         |
| <b>Total</b>          |   | <b>12.10</b>                 |

Note: <sup>1</sup> Seed mixtures may change from time to time during concurrent and final reclamation. The changes will be based on targeting specific soil/disturbance types and experience gained during concurrent reclamation during the life of the Project, on test plot results, and changes in agency recommendations.

10. Reclamation Cost Estimate: The reclamation cost estimate (Appendix C), as required by 43 CFR 3809.552, for Work Plan #1, is attached. The official Nevada Standardized Reclamation Cost Estimator (SRCE) software that was developed in accordance with the

Nevada Standardized Unit Cost Project, a cooperative effort between the NDEP, BLM, and Nevada Mining Association (NvMA) to facilitate accuracy, completeness, and consistency in the calculation of costs for mine site reclamation, was used to estimate the cost of reclamation. LNC has updated the Reclamation Cost Estimate (RCE) based on the 2022 Cost Data File and the RCE includes the proposed Work Plan #1 activity as well as 2,660.9 acres of disturbance. The Thacker Project, Work Plan #1 RCE totals **\$13,487,823**.

11. Effective Date: LNC understands that Work Plan # 1 would become effective only upon agency acceptance of the approved financial assurance for Work Plan # 1 and related Notice to Proceed has been issued.

Signature

Lithium Nevada Corporation

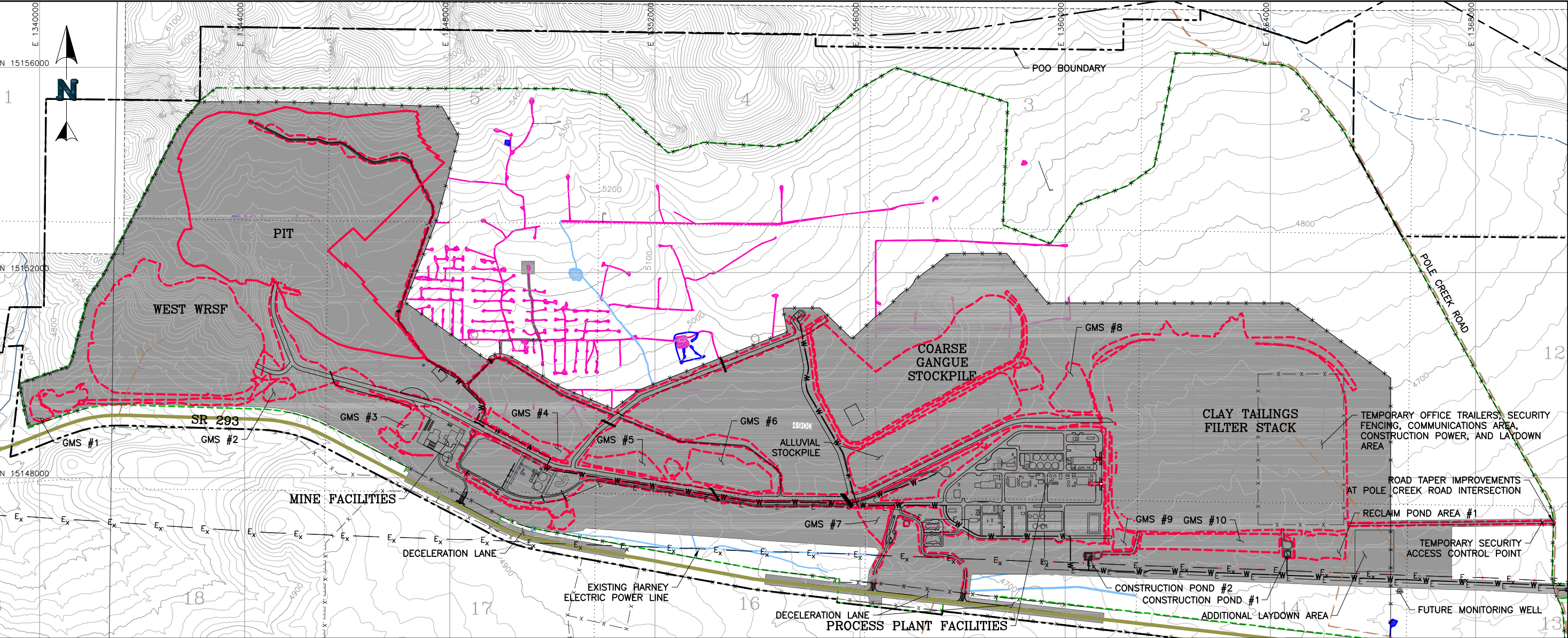
By 

Edward B. Grandy  
Vice President of Legal and Regulatory Affairs  
February 14, 2023

# **Appendix A**

## **Figures and Tables**





**LEGEND:**

EXISTING 20 FOOT GROUND CONTOURS

EXISTING ROADS-MAJOR

EXISTING ROADS/TRAILS

EXISTING DRAINAGES

POO BOUNDARY

ULTIMATE DISTURBANCE AREA BOUNDARY

FENCE

POWERLINE

EXISTING POWER LINE

EXISTING POWER POLES

EXISTING FENCE

CULVERT

10-YEAR DISTURBANCE AREAS

DFS 10-YEAR SURFACE BOUNDARIES

KINGS VALLEY CLAY MINE DISTURBANCE AREA

KINGS VALLEY LITHIUM EXPLORATION DISTURBANCE AREA

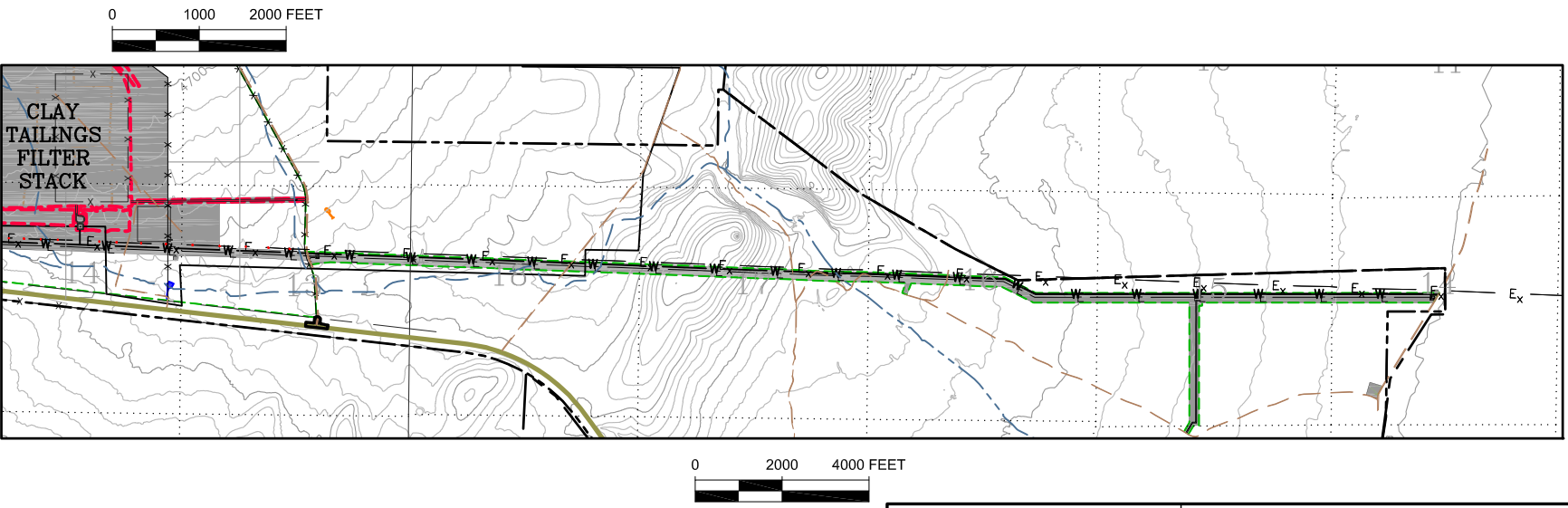
PRE-LNC DISTURBANCE AREA

**NOTES:**

1. THE LATEST PERMITTED EXPLORATION DISTURBANCE AREAS ARE INCLUDED AS PART OF THE FIRST YEAR CONSTRUCTION BOND.

2. GMS = GROWTH MEDIA STOCKPILE.

3. ALL LINEWORK IS PROPOSED UNLESS CALLED OUT AS EXISTING.



|         |   |                                   |            |
|---------|---|-----------------------------------|------------|
|         |   | CLIENT LITHIUM NEVADA CORPORATION |            |
| PROJECT |   | THACKER PASS PROJECT              |            |
| TITLE   | 10-YEAR PERMITTED FOOTPRINT VS DETAILED DESIGN (PERMITTING) | FILENAME 0385.001.127F            |            |
|         |   | FIGURE NO. 05                     | REVISION J |

Table 1 Work Plan # 1 Disturbance Table

| Facility   | Phase 1       | Subsequent Phases | Total         |
|--|---------------|-------------------|---------------|
| <b>Previous Authorizations</b>                                 |               |                   |               |
| Kings Valley Lithium Exploration Project                       | 75.0          | 0.0               | 75            |
| Kings Valley Clay Mine   | 1.8           | 0.0               | 1.8           |
| Quinn River Valley Test Wells NOI                              | 4.4           | 0.0               | 4.39          |
| Far East NOI <sup>2</sup>                                      | 4.9           | 0.0               | 4.94          |
| <b>Proposed Project</b>  |               |                   |               |
| Mine Pit   | 0.0           | 1099.8            | 1,099.82      |
| West WRSF  | 157.3         | 3.4               | 160.70        |
| East WRSF  | 0.0           | 137.2             | 137.20        |
| Mine Facilities, Run-of-Mine Stockpile, Attrition Scrubbing    | 49.2          | 0.0               | 49.24         |
| Coarse Gangue Stockpile  | 149.5         | 185.5             | 335.00        |
| Processing Facility (Lithium and Sulfuric Acid Plant)          | 153.9         | 464.2             | 618.10        |
| Clay Tailings Filter Stack                                     | 349.9         | 816.2             | 1,166.10      |
| Mine Facilities Power Line, Quinn Power Line, and Water Supply | 190.2         | 79.6              | 269.80        |
| Exploration  | 105.4         | 44.6              | 150.00        |
| Roads  | 145.3         | 27.9              | 173.20        |
| Ponds  | 44.3          | 25.7              | 70.00         |
| Growth Media Stockpiles  | 93.6          | 0.0               | 93.60         |
| Inter-Facility Disturbance <sup>4</sup>                        | 1136.2        | 0.0               | 1136.2        |
| <b>Total</b>   | <b>2660.9</b> | <b>2884.1</b>     | <b>5545.0</b> |



UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BARTELL RANCH LLC, et al.,

Plaintiffs,

v.

ESTER M. MCCULLOUGH, et al.,

Defendants,

and

LITHIUM NEVADA CORPORATION,

Intervenor-Defendant

Case No.: 3:21-cv-80-MMD-CLB  
(LEAD CASE)

**STIPULATION FOR EXTENSION OF  
BRIEFING SCHEDULE FOR  
EMERGENCY MOTION FOR  
INJUNCTION PENDING APPEAL [AND  
PROPOSED ORDER]  
(First Request)**

The parties to the above-captioned matter hereby stipulate to extend time for briefing on the Emergency Motions for Injunction Pending Appeal, filed by Environmental Plaintiffs, Bartell Ranch, and the Burns Paiute Tribe. Federal Defendants' and Defendant-Intervenor's Responses to Environmental Plaintiffs' motion are presently due today, February 22, 2023, under the Court's minute order entered February 21, 2023, and Environmental Plaintiffs' Reply is due by 4pm on February 23, 2023.

If the Court approves the parties' proposed schedule herein, Lithium Nevada will commit to delaying its construction schedule and commencement of ground disturbance under the January 15, 2021 Record of Decision at issue in this case until March 6th. The parties understand and agree that this commitment does not cover any work that is ongoing or remains to be completed under any prior authorizations that are not before this Court.

The parties propose that Federal Defendants' and Defendant-Intervenor's Responses to Environmental Plaintiffs' Motion for Emergency Injunction Pending Appeal will be filed by 4pm

PST on February 27, 2023. Federal Defendants and Defendant Intervenors' Responses to Bartell Ranch's and Burns Paiute Tribe's motions will be filed by 12:00 pm PST on February 28, 2023. Environmental Plaintiffs, Bartell Ranch, and the Burns Paiute Tribe will file their replies by 4pm PST on March 2, 2023.

Respectfully submitted February 22, 2023.

/s/ Talasi Brooks

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TODD KIM

Assistant Attorney General  
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**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
CHIEF U.S. DISTRICT JUDGE MIRANDA M. DU

|            |                     |  |
|------------|---------------------|--|
| 02/21/2023 | 286                 | MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Miranda M. Du on 2/21/2023. Based on the urgency implied by Environmental Plaintiffs' representation that Lithium Nevada intends to start construction on February 27, 2023 (ECF No. <a href="#">284</a> at 8, 8 n.1), the Court sets an expedited briefing schedule on Environmental Plaintiffs' emergency motion for an injunction pending appeal ( <i>id.</i> ("Motion")). Any responses to the Motion are due tomorrow, February 22, 2023. Any reply in support of the Motion is due by 4 p.m. Pacific time on Thursday, February 23, 2023. The Court will then endeavor to issue an order on the Motion before February 27, 2023. If Federal Defendants or Lithium Nevada feel they need more time to respond to the Motion, they must reach a stipulation with Environmental Plaintiffs to a normal briefing schedule, <i>see</i> LR 7-2(b), that includes a commitment not to allow construction on the Project to commence until the Court issues an order on the Motion. <b>(no image attached)</b> (Copies have been distributed pursuant to the NEF - TH) (Entered: 02/21/2023) |
| 02/22/2023 | <a href="#">287</a> | FORMS - Designation of Transcripts and Transcript Order forms and instructions for ECF No. <a href="#">285</a> Notice of Appeal. The forms may also be obtained on the Court's website at <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . (Attachments: # <a href="#">1</a> Transcript Order Form) (DRM) (Entered: 02/22/2023)  |
| 02/22/2023 | <a href="#">288</a> | NOTICE OF APPEAL as to <a href="#">280</a> Judgment by Plaintiffs Edward Bartell, Bartell Ranch LLC. Filing fee \$ 505, receipt number ANVDC-7213581. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Carollo, Dominic) (Entered: 02/22/2023)   |
| 02/22/2023 | <a href="#">289</a> | Emergency MOTION Injunction Pending Appeal re <a href="#">280</a> Judgment by Plaintiffs Edward Bartell, Bartell Ranch LLC. Responses due by 3/8/2023. (Attachments: # <a href="#">1</a> Exhibit Declaration of D M Carollo, # <a href="#">2</a> Exhibit Declaration of Edward Bartell)(Carollo, Dominic) (misc) (injunctive) (Entered: 02/22/2023)  |
| 02/22/2023 | <a href="#">290</a> | Emergency MOTION Injunction Pending Appeal re <a href="#">284</a> Motion, by Intervenor Plaintiff Burns Paiute Tribe. Responses due by 3/8/2023. (Attachments: # <a href="#">1</a> Exhibit A to Joinder to Emergency Motion for Injunctive Relief Pending Appeal, # <a href="#">2</a> Fourth Declaration of Diane L. Teeman)(Eichstaedt, Richard) (misc) (injunctive) (Entered: 02/22/2023)  |
| 02/22/2023 | <a href="#">291</a> | First STIPULATION FOR EXTENSION OF TIME (First Request) re 286 Minute Order,,, by Plaintiffs Basin and Range Watch, Great Basin Resource Watch, Western Watersheds Project, Wildlands Defense. (Brooks, Talasi) (extend) (nondispositive) (Entered: 02/22/2023)  |
| 02/22/2023 | 292                 | MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Miranda M. Du on 2/22/2023.<br><br>The Court denies the parties' stipulation (ECF No. <a href="#">291</a> ) because it fails to comply with the Court's minute order providing for a stipulation to the normal briefing schedule (ECF No. 286 ). Moreover, the stipulation provides the parties with additional time but fails to consider the Court's time and schedule. That said, the Court will entertain a revised stipulation that complies with the Court's minute order. As has been it practice throughout the pendency of this case, the Court will endeavor to address the emergency motions on an expedited basis.<br><br><b>(no image attached)</b> (Copies have been distributed pursuant to the NEF - PAV) (Entered: 02/22/2023)  |
| 02/22/2023 | <a href="#">293</a> | RESPONSE to <a href="#">284</a> Motion, by Defendants Bureau of Land Management of the U.S. Department of Interior, Department of Interior, Ester M. McCullough. Replies due by 3/1/2023. (Attachments: # <a href="#">1</a> Exhibit 1 - Reclamation cost estimate, # <a href="#">2</a> Exhibit 2 - BLM bond decision)(Carroll, Arwyn) (Entered: 02/22/2023)  |

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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                              |   |                                  |
|------------------------------|---|----------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB     |
|                              | ) | (LEAD CASE)                      |
| Plaintiffs,                  | ) |                                  |
| v.                           | ) | <b>ENVIRONMENTAL PLAINTIFFS'</b> |
|                              | ) | <b>EMERGENCY MOTION FOR</b>      |
| ESTER M. MCCULLOUGH, et al., | ) | <b>INJUNCTION PENDING APPEAL</b> |
|                              | ) | <b>AND</b>                       |
|                              | ) | <b>MEMORANDUM IN SUPPORT</b>     |
|                              | ) |                                  |
| Defendants,                  | ) |                                  |
| and                          | ) |                                  |
|                              | ) |                                  |
| LITHIUM NEVADA CORPORATION,  | ) |                                  |
|                              | ) |                                  |
| Intervenor-Defendant.        | ) |                                  |

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| WESTERN WATERSHEDS PROJECT, et al., | ) | Case No.: 3:21-cv-103-MMD-CLB |
|                                     | ) | (CONSOLIDATED CASE)           |
| Plaintiffs,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| RENO SPARKS INDIAN COLONY, et al.,  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| BURNS PAIUTE TRIBE                  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) |                               |
|                                     | ) |                               |
| UNITED STATES DEPARTMENT OF THE     | ) |                               |
| INTERIOR, et al.,                   | ) |                               |
|                                     | ) |                               |
| Defendants,                         | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| LITHIUM NEVADA CORPORATION,         | ) |                               |
|                                     | ) |                               |
| <u>Intervenor-Defendant.</u>        | ) |                               |

**EXHIBIT 1**

**DECLARATION OF ROGER FLYNN**

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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                              |   |                              |
|------------------------------|---|------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB |
|                              | ) | <b>(LEAD CASE)</b>           |
| Plaintiffs,                  | ) |                              |
| v.                           | ) | DECLARATION OF               |
|                              | ) | ROGER FLYNN                  |
| ESTER M. MCCULLOUGH, et al., | ) | IN SUPPORT OF                |
|                              | ) | ENVIRONMENTAL PLAINTIFFS'    |
|                              | ) | EMERGENCY MOTION FOR         |
| Defendants,                  | ) | INJUNCTION PENDING APPEAL    |
| and                          | ) |                              |
|                              | ) |                              |
| LITHIUM NEVADA CORPORATION,  | ) |                              |
|                              | ) |                              |
| Intervenor-Defendant.        | ) |                              |



|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| WESTERN WATERSHEDS PROJECT, et al., | ) | Case No.: 3:21-cv-103-MMD-CLB |
|                                     | ) | (CONSOLIDATED CASE)           |
| Plaintiffs,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| RENO SPARKS INDIAN COLONY, et al.,  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| BURNS PAIUTE TRIBE                  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) |                               |
|                                     | ) |                               |
| UNITED STATES DEPARTMENT OF THE     | ) |                               |
| INTERIOR, et al.,                   | ) |                               |
|                                     | ) |                               |
| Defendants,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| LITHIUM NEVADA CORPORATION,         | ) |                               |
|                                     | ) |                               |
| Intervenor-Defendant.               | ) |                               |

I, Roger Flynn, make this declaration based upon my personal knowledge and belief and state:

1. I am lead counsel for Plaintiffs Great Basin Resource Watch (GBRW), Basin and Range Watch (BRW), and Wildlands Defense (WD) in this case.

2. Pursuant to Local Rule 7-4 (a), this Declaration certifies Plaintiffs' efforts to meet and confer with opposing counsel for the Federal Defendants Bureau of Land Management (BLM) and Defendant-Intervenor Lithium Nevada Corp. (LNC).

3. Beginning on Friday, February 10, 2023, I emailed opposing counsel (Arwyn Carroll and Michael Robertson for BLM, and Laura Granier for LNC) informing them of Plaintiffs' intention to appeal this Court's Order (ECF No. 279) and Judgment (ECF No. 280) to the Ninth Circuit, our intention to seek an injunction from the Ninth Circuit, as well as Plaintiffs' intention to file

an Emergency Motion for Injunction Pending Appeal with this Court in order to prevent the imminent commencement of ground disturbance and operations by the Thacker Pass Project. *See* attached copy of the relevant emails.

4. Beginning with emails on February 16, 2023, counsel for Bartell Ranch and counsel for Plaintiff-Intervenors Burns Paiute Tribe and Reno-Sparks Indian Colony informed counsel for LNC and BLM that they would be joining the Environmental Plaintiffs in the emergency motion.

5. In response to my emails, counsel for LNC and BLM stated that, because this Court did not vacate the Project-approving ROD, it was legally effective. Counsel for LNC stated that Project operations could commence as early as the middle of the week of February 20 (i.e., on or about February 22, 2023). After additional emails, counsel for LNC later stated that they anticipated that Project operations could start as early as February 27, 2023. *See* LNC counsel email of February 15, 2023 (included in attached emails).

6. Counsel for BLM stated that, because it had not approved the reclamation bond for the Project, pursuant to the Record of Decision (ROD), operations could not start until the bond was approved.

7. Counsel for LNC stated that the company would submit the necessary paperwork for the bond as early as Tuesday, February 21, 2023. *See* LNC counsel email of February 17, 2023 (attached below). BLM's approval of the bond could occur at any time after BLM receives the paperwork.

8. In an attempt to lessen the emergency nature of the situation, on February 17, 2023, Plaintiffs requested to BLM and LNC that BLM either not approve the bond, or that LNC would not commence ground disturbance, during the pendency of this Court's consideration of Plaintiffs' motion, and if the motion was denied, during the pendency of the Ninth Circuit's consideration of Plaintiffs' injunction motion to the Ninth Circuit.

9. In order to minimize the effect of the requested stay of operations on LNC, Plaintiffs also proposed an expedited briefing schedule to this Court, and the Ninth Circuit if needed.

10. In response, counsel for BLM refused to agree to stay the approval of the bond, or to any stay of ground disturbance. *See* BLM counsel email of February 17, 2023. Counsel for LNC was unable to provide its position on Plaintiffs' February 17 request prior to February 21, the day LNC planned to submit the bond paperwork.

11. Thus, since BLM may approve the bond at any time after LNC submits the paperwork, Plaintiffs have no choice but to seek emergency relief.

12. Regarding the timing of the irreparable injury to Plaintiffs once Project operations begin, on February 16, 2023, Lithium Americas, Inc., the parent company of LNC, released a statement from the President and CEO stating that: “**The beginning of construction at Thacker Pass is imminent following last week’s favorable ruling on the Record of Decision** and the closing of GM’s initial investment,” said Jonathan Evans, President and CEO of Lithium Americas.” Press Release attached to this Declaration (emphasis added).

13. The nature of the immediate and irreparable injury to Plaintiffs and the environment is detailed in Plaintiffs’ emergency motion and exhibits thereto. As shown in those filings, BLM’s approval of the Project authorizes LNC to begin “pre-production waste rock removal and stripping concurrent with process facility construction.” FEIS at B-25 (LNC Mining Plan)(AR TPEIS-0384, AR 045794). “Stripping,” “Pre-stripping” and “waste rock removal” involves bulldozing, blasting, removal of all vegetation, and excavation and dumping of millions of tons of rock at the Project site. *Id.* at ii. “The site preparation and construction activities are expected to include a combination of scraping, dozing, grading, compacting, and material transfers.... The pre-production waste rock removal operations would include drilling, blasting, waste hauling, and material transfers.” FEIS at 4-77, AR 045625. All of this significant and irreparable damage will occur in BLM-designated Priority Habitat for the Sage Grouse. FEIS Figure 4.5-11 (TPEIS-0384), AR 045738.

14. Pursuant to Local Rule 7-4 (a)(2), the following is a list of lead counsel for Plaintiffs and all other parties. Each of these attorneys were included in the various emails noted above.

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*Attorneys for Burns Paiute Tribe*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed this 21<sup>st</sup> day of February, 2022, at Lyons, Colorado.

/s/ Roger Flynn

## Lithium Americas Announces Initial Closing of \$650 Million Investment from General Motors

**February 16, 2023 – Vancouver, Canada:** Lithium Americas Corp. (TSX: LAC) (NYSE: LAC) (“**Lithium Americas**” or the “**Company**”) today announced the closing of the initial tranche, an investment of \$320 million, of its previously announced \$650 million investment by General Motors Co. (NYSE: GM) (“**GM**”). Proceeds from GM’s investment are to be used to accelerate the development of the Company’s Thacker Pass lithium project (“**Thacker Pass**”) located in Humboldt County, Nevada, the largest known lithium resource in the United States that is fully permitted to begin construction.

“The beginning of construction at Thacker Pass is imminent following last week’s favorable ruling on the Record of Decision and the closing of GM’s initial investment,” said Jonathan Evans, President and CEO of Lithium Americas. “GM’s investment is a landmark transaction that will help put millions of drivers into electric vehicles while creating jobs and a strong and secure U.S. supply chain for EV raw materials.”

GM is now Lithium Americas largest shareholder and offtake partner. Lithium Americas continues to pursue a commitment from the U.S. Department of Energy’s Advanced Technology Vehicle Manufacturing Program, which will help scale lithium production at Thacker Pass to support production of nearly one million EVs annually.

As previously disclosed, GM is making a \$650 million equity investment in the Company in two tranches. In connection with today’s initial closing, GM has purchased 15 million common shares of the Company at a price of \$21.34 per share for gross proceeds of \$320 million. The Company expects to close the second and final tranche following the Company’s contemplated separation of its U.S. and Argentine businesses in the second half of 2023 and the satisfaction of certain conditions precedent to closing. For the final \$330 million investment, GM has agreed to subscribe for shares in the U.S. business based on the then market price on the date of subscription, subject to a cap of \$27.74 per share (adjusted for the separation).

The parties have also completed the additional transactions contemplated to occur concurrent with the closing of the initial tranche, including execution of the offtake agreement, investor rights agreement and second tranche subscription agreement, as well as issuance of the second tranche alternative exercise warrants.

All figures presented are in U.S. Dollars.

### FURTHER INFORMATION

For full details on the GM investment, refer to the Company’s news releases dated January 31, 2023. For more details about the separation, please refer to the Company’s news release dated November 3, 2022. Further information is also contained in the Company’s material change report dated February 7, 2023 and the master purchase agreement dated as of January 30, 2023 previously filed on [www.sedar.com](http://www.sedar.com) and [www.sec.gov](http://www.sec.gov).

### ABOUT LITHIUM AMERICAS

Lithium Americas is focused on advancing lithium projects in Argentina and the United States to production. In Argentina, Caucharí-Olaroz is advancing towards first production and Pastos Grandes represents regional growth. In the U.S., the Company’s Thacker Pass project will soon be advancing towards construction. The Company trades on both the Toronto Stock Exchange and on the New York Stock Exchange, under the ticker symbol “LAC”.

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Investor Relations  
Telephone: 778-656-5820  
Email: [ir@lithiumamericas.com](mailto:ir@lithiumamericas.com)  
Website: [www.lithiumamericas.com](http://www.lithiumamericas.com)

## FORWARD-LOOKING INFORMATION

This news release contains certain forward-looking information, including information with respect to the ability of Lithium Americas to meet the anticipated timing and closing conditions for the second tranche of GM's investment, and the ability of Lithium Americas to secure sufficient additional financing to develop Thacker Pass. Statements that are not historical fact are "forward-looking information" as that term is defined in National Instrument 51-102 ("NI 51-102") of the Canadian Securities Administrators (collectively, "forward-looking information"). Forward-looking information is frequently, but not always, identified by words such as "plans", "expects", "anticipates", "believes", "intends", "estimates", "potential", "possible" and similar expressions, or statements that events, conditions or results "will", "may", "could" or "should" occur or be achieved. In stating the forward-looking information herein, Lithium Americas has applied certain material assumptions including, but not limited to, the assumption that general business conditions will not change in a materially adverse manner.

Forward-looking information involves information about the future and is inherently uncertain, and actual results, performance or achievements of Lithium Americas and its subsidiaries may differ materially from any future results, performance or achievements expressed or implied by the forward-looking information due to a variety of risks, uncertainties and other factors. Such risks and other factors include, among others, risks involved uncertainties related to raising sufficient financing in a timely manner and on acceptable terms; risks associated with meeting the anticipated timing and closing conditions for the second tranche of GM's investment, and risks associated with fluctuations in lithium and other commodity prices and currency exchange rates; and other risks and uncertainties disclosed in information released by Lithium Americas and filed with the applicable regulatory agencies.

Lithium Americas' forward-looking information is based on the beliefs, expectations and opinions of management on the date such information is posted, and Lithium Americas does not assume, and expressly disclaims, any intention or obligation to update or revise any forward-looking information whether as a result of new information, future events or otherwise, except as otherwise required by applicable securities legislation. For the reasons set forth above, investors should not place undue reliance on forward-looking information.

**Roger Flynn**

---

**From:** Carroll, Arwyn (ENRD) <Arwyn.Carroll@usdoj.gov>  
**Sent:** Friday, February 17, 2023 1:42 PM  
**To:** Roger Flynn; Laura K. Granier; Dominic Carollo; rick@eichstaedtlaw.net; Robertson, Michael (ENRD)  
**Cc:** 'Will Falk'; 'Terry Lodge'; 'Talasi Brooks'; 'Chris Mixson'  
**Subject:** RE: [EXTERNAL] Thacker Pass

Roger,

As I said in my previous email, BLM can't provide an estimate of how long it will take to issue a decision until it receives LNC's submission. How long the adjudication takes depends on the submission, which I understand BLM has not yet received. And BLM can't commit to *not* processing the submission – neither law nor regulation authorizes that. But we will let plaintiffs know when the decision issues.

Thanks,  
 Arwyn

---

**From:** Roger Flynn <Roger@wmaplaw.org>  
**Sent:** Friday, February 17, 2023 12:11 PM  
**To:** Laura K. Granier <LKGranier@hollandhart.com>; Dominic Carollo <dcarollo@carollolegal.com>; Carroll, Arwyn (ENRD) <Arwyn.Carroll@usdoj.gov>; rick@eichstaedtlaw.net; Robertson, Michael (ENRD) <Michael.Robertson@usdoj.gov>  
**Cc:** 'Will Falk' <falkwilt@gmail.com>; 'Terry Lodge' <tjlodge50@yahoo.com>; 'Talasi Brooks' <tbrooks@westernwatersheds.org>; 'Chris Mixson' <c.mixson@kempjones.com>  
**Subject:** RE: [EXTERNAL] Thacker Pass

Thanks, Laura. Please inform us when LNC has submitted the bond paperwork.

Arwyn – per my last email, we await your estimate of how long it will take BLM to approve the bond. Also will BLM commit to notify us as soon as it approves the bond?

Regarding our emergency motion to the district court, and to the Ninth Circuit – in order to allow briefing to the district court and Ninth Circuit, would BLM agree to hold off approving the bond until the district court rules on our emergency motion, and further (if the district court denies our motion) until the Ninth Circuit rules on our emergency motion for injunction? Similarly, if the bond is approved, would LNC agree not to begin ground disturbance until the district court can rule on our emergency

motion, and further (if the district court denies our motion) until the Ninth Circuit rules on our emergency motion for injunction?

Roger

---

**From:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>

**Sent:** Thursday, February 16, 2023 2:35 PM

**To:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtllaw.net](mailto:rick@eichstaedtllaw.net); Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

Roger/Dominic/Rick -

I understand Lithium Nevada may submit the bond paperwork to BLM early next week.

Of course, Lithium Nevada does not intend to start the work under the ROD before the bond issues.

---

**From:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>

**Sent:** Thursday, February 16, 2023 11:40 AM

**To:** Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtllaw.net](mailto:rick@eichstaedtllaw.net); Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

External Email

Arwyn/Michael and Laura – we need clarification regarding your respective emails. Laura stated that LNC intends to start ground disturbance and Project construction as early as Feb. 27. Yet DOJ's email says that, as of today, BLM has not even received, let alone analyzed and then approved, the required bond/financial assurance. As Arwyn correctly notes, no activities at the site can begin until the bond is approved.

Thus, according to DOJ/BLM, LNC does not have authority to begin ground disturbance.



Laura – under what authority does LNC have to begin disturbance? Does LNC believe that BLM will have received, analyzed, and approved the bond by Feb. 27<sup>th</sup>?

Because of these uncertainties and statements, we believe that an emergency motion for injunction pending appeal is still warranted.

Similar to Dominic's email, we request that LNC provide an estimate as to when it will submit the bond, and DOJ provide an estimate as to how long BLM's review of the bond will take. This will better inform the parties' motion(s) and the timing of emergency relief.

Thanks,

Roger

---

**From:** Dominic Carollo <[dcarlo@carollolegal.com](mailto:dcarlo@carollolegal.com)>

**Sent:** Thursday, February 16, 2023 11:53 AM

**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

All:

I'm chiming in, for the purpose of conferral, to inform all parties that my clients have the same concerns as the environmental plaintiffs and Tribes, and also plan to appeal and seek injunctive relief. It would be helpful if LNC could inform the parties about when LNC expects to submit the reclamation financial guarantee.

Thanks.

DOMINIC M. CAROLLO

CAROLLO LAW GROUP LLC  
 PO Box 2456  
 Roseburg, OR 97470  
 PH: 541-957-5900  
 FAX: 541-957-5923  
[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)

---

**From:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>  
**Sent:** Thursday, February 16, 2023 10:46 AM  
**To:** [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>  
**Cc:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>  
**Subject:** RE: [EXTERNAL] Thacker Pass

Roger and Rick,

As you're aware, the ROD provides that surface disturbing activities approved under it "shall not begin until the BLM Nevada State Office issues a decision accepting the reclamation financial guarantee." ROD at 21. As of close of business yesterday, Lithium Nevada has not yet submitted the reclamation financial guarantee for the Thacker Pass project to BLM. Once that is received, BLM will still need to adjudicate the guarantee and issue a decision before surface disturbance under the ROD may begin. Because the financial guarantee has not yet been submitted, we can't estimate when it will be adjudicated. We're happy to update you when it is submitted.

Because Lithium Nevada is not authorized to conduct surface disturbing activities under this ROD until that decision issues, we believe an emergency motion for injunctive relief in the district court to be premature at this time and that there is likewise no basis under Rule 8 for an emergency motion in the Ninth Circuit. Federal defendants would, in any event, oppose both motions for an injunction pending appeal in this case.

Thanks,  
 Arwyn

---

**From:** [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net) <[rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net)>  
**Sent:** Thursday, February 16, 2023 12:50 PM  
**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>  
**Cc:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Dominic Carollo' <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge'

<[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** [EXTERNAL] Thacker Pass

Arwyn, Michael, and Laura –

The Burns Paiute Tribe intends to appeal the recent decision of Judge Du. We plan on joining in the motion that will be filed by Roger on behalf of his clients.

Because we will be filing joinder to his motions, we will need to indicate the position of your clients, so please provide me with any response provided to Roger.

Thanks.

Rick Eichstaedt

---

**From:** Roger Flynn

**Sent:** Wednesday, February 15, 2023 12:09 PM

**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Cc:** Robertson, Michael (ENRD) < >

**Subject:** RE: Thacker Pass inquiry

Thanks, Arwyn/Michael and Laura. In light of Laura's statement that ground disturbance under the ROD and Plan of Operations approval could start as early as Feb. 22, Environmental Plaintiffs intend on filing an emergency motion for injunction pending appeal with Judge Du this week, along with a notice of appeal and then an emergency motion for injunction to the Ninth Circuit. Both motions would request an injunction against the commencement of ground disturbance. Although based on your emails we assume that both BLM and LNC will oppose both motions (to the District Court and Ninth Circuit), please confirm your positions on these motions.

Also – if ground disturbance will not occur until a later date, please let us know, so we can inform the courts.

Per Arwyn's email -- if BLM has not approved the bond/financial assurance yet, and thus project operations and ground disturbance could not begin, please let us know the status of the bond approval as well, including when that approval is expected.

We look forward to your prompt responses,

Thank you,

Roger, Talasi, and Chris.

---

**From:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>

**Sent:** Monday, February 13, 2023 5:24 PM

**To:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Cc:** Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Subject:** RE: Thacker Pass inquiry

Roger,

Because Judge Du declined to vacate the ROD and there is no injunction in place, it is similarly BLM's position that the decision itself and the authorizations under it remain in effect. That said, at least as of earlier today, BLM has not yet received or adjudicated the bond.

Thanks,  
Arwyn

---

**From:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>

**Sent:** Monday, February 13, 2023 6:39 PM

**To:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Doktor, Leilani (ENRD) <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** [EXTERNAL] RE: Thacker Pass inquiry

Roger,

Judge Du considered vacatur and decided not to vacate the ROD. Therefore, our understanding is that the ROD is legally effective. Having said that, I understand it is estimated that Lithium Nevada will only begin work probably at the earliest the middle of next week.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lgranier@hollandhart.com](mailto:lgranier@hollandhart.com) | T: 775-327-3089 | M: 775-750-9295

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---

**From:** Laura K. Granier

**Sent:** Sunday, February 12, 2023 5:10 PM

**To:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Doktor, Leilani (ENRD)' <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; 'Carroll, Arwyn (ENRD)' <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: Thacker Pass inquiry

Roger,

Sorry for the delayed response. I have been traveling. I will discuss with my client and get back to you.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lgranier@hollandhart.com](mailto:lgranier@hollandhart.com) | T: 775-327-3089 | M: 775-750-9295

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---

**From:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>

**Sent:** Friday, February 10, 2023 12:48 PM

**To:** 'Doktor, Leilani (ENRD)' <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; 'Carroll, Arwyn (ENRD)' <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** Thacker Pass inquiry

**External Email**

Leilani/Arwyn and Laura – environmental plaintiffs (WWP et al) are considering appealing Judge Du’s order and judgment. Due to the court’s decision not to vacate the ROD, we may have to seek immediate relief from the 9th Circuit to enjoin Project operations (and under court rules, may seek a stay pending appeal before Judge Du as a first step). Court rules require that we contact opposing counsel regarding the need for emergency or preliminary relief.

We are inquiring as to your position as to whether Project operations may begin immediately due to the lack of vacatur of the ROD. If so, when does LNC intend on commencing ground disturbance as authorized in the ROD and approval of the plans of operations?

On the other hand, emergency relief may not be needed if operations (including ground disturbance) would not commence in the foreseeable future.

Relatedly, does LNC and BLM believe that operations cannot commence until BLM satisfies the court’s remand ordering: “BLM to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the ROD described herein.” Order at 48-49.

Thank you for your prompt consideration of these issues.

Roger Flynn  
Counsel for Environmental Plaintiffs

**Roger Flynn**

---

**From:** Laura K. Granier <LKGranier@hollandhart.com>  
**Sent:** Wednesday, February 15, 2023 4:51 PM  
**To:** Roger Flynn; Carroll, Arwyn (ENRD); 'Talasi Brooks'; 'Chris Mixson'  
**Cc:** Robertson, Michael (ENRD)  
**Subject:** RE: Thacker Pass inquiry

Roger,

Doing my best to provide transparency, but obviously with some uncertainty, my understanding is the earliest day is now estimated to be 2/27.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com) | T: 775-327-3089 | M: 775-750-9295

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**Sent:** Wednesday, February 15, 2023 11:09 AM  
**To:** Carroll, Arwyn (ENRD) <Arwyn.Carroll@usdoj.gov>; Laura K. Granier <LKGranier@hollandhart.com>; 'Talasi Brooks' <tbrooks@westernwatersheds.org>; 'Chris Mixson' <c.mixson@kempjones.com>  
**Cc:** Robertson, Michael (ENRD) <Michael.Robertson@usdoj.gov>  
**Subject:** RE: Thacker Pass inquiry

External Email

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injunction pending appeal with Judge Du this week, along with a notice of appeal and then an emergency motion for injunction to the Ninth Circuit. Both motions would request an injunction against the commencement of ground disturbance. Although based on your emails we assume that both BLM and LNC will oppose both motions (to the District Court and Ninth Circuit), please confirm your positions on these motions.

Also – if ground disturbance will not occur until a later date, please let us know, so we can inform the courts.

Per Arwyn's email -- if BLM has not approved the bond/financial assurance yet, and thus project operations and ground disturbance could not begin, please let us know the status of the bond approval as well, including when that approval is expected.

We look forward to your prompt responses,

Thank you,

Roger, Talasi, and Chris.

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**Cc:** Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Subject:** RE: Thacker Pass inquiry

Roger,

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<[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** [EXTERNAL] RE: Thacker Pass inquiry

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**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

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**Subject:** RE: Thacker Pass inquiry

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Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lgranier@hollandhart.com](mailto:lgranier@hollandhart.com) | **T:** 775-327-3089 | **M:** 775-750-9295

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**Sent:** Friday, February 10, 2023 12:48 PM

**To:** 'Doktor, Leilani (ENRD)' <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; 'Carroll, Arwyn (ENRD)' <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** Thacker Pass inquiry

External Email

Leilani/Arwyn and Laura – environmental plaintiffs (WWP et al) are considering appealing Judge Du’s order and judgment. Due to the court’s decision not to vacate the ROD, we may have to seek immediate relief from the 9th Circuit to enjoin Project operations (and under court rules, may seek a stay pending appeal before Judge Du as a first step). Court rules require that we contact opposing counsel regarding the need for emergency or preliminary relief.

We are inquiring as to your position as to whether Project operations may begin immediately due to the lack of vacatur of the ROD. If so, when does LNC intend on commencing ground disturbance as authorized in the ROD and approval of the plans of operations?

On the other hand, emergency relief may not be needed if operations (including ground disturbance) would not commence in the foreseeable future.

Relatedly, does LNC and BLM believe that operations cannot commence until BLM satisfies the court’s remand ordering: “BLM to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the ROD described herein.” Order at 48-49.

Thank you for your prompt consideration of these issues.

Roger Flynn  
Counsel for Environmental Plaintiffs

**Roger Flynn**

---

**From:** Laura K. Granier <LKGranier@hollandhart.com>  
**Sent:** Friday, February 17, 2023 1:53 PM  
**To:** Roger Flynn; Dominic Carollo; Carroll, Arwyn (ENRD); rick@eichstaedtllaw.net; Robertson, Michael (ENRD)  
**Cc:** 'Will Falk'; 'Terry Lodge'; 'Talasi Brooks'; 'Chris Mixson'  
**Subject:** RE: [EXTERNAL] Thacker Pass

Thanks, Roger. The latest information re: Lithium Nevada's submission of the bond paperwork remains as I mentioned yesterday and, with Monday being a federal holiday, I believe the earliest would be Tuesday for that.

My client is evaluating your proposal below. We have at least one critical decision maker who is traveling so we are doing our best to identify a time to discuss so that I can get back to you on your proposal below.

---

**From:** Roger Flynn <Roger@wmaplaw.org>  
**Sent:** Friday, February 17, 2023 10:38 AM  
**To:** Laura K. Granier <LKGranier@hollandhart.com>; Dominic Carollo <dcarollo@carollolegal.com>; Carroll, Arwyn (ENRD) <Arwyn.Carroll@usdoj.gov>; rick@eichstaedtllaw.net; Robertson, Michael (ENRD) <Michael.Robertson@usdoj.gov>  
**Cc:** 'Will Falk' <falkwilt@gmail.com>; 'Terry Lodge' <tjlodge50@yahoo.com>; 'Talasi Brooks' <tbrooks@westernwatersheds.org>; 'Chris Mixson' <c.mixson@kempjones.com>  
**Subject:** RE: [EXTERNAL] Thacker Pass

**External Email**

Thanks, Laura. We plan on filing our emergency motion to the district court today or Tuesday (due to the federal holiday). As far as briefing to the district court, we anticipate an expedited schedule. Assuming that operations/ground disturbance would be stayed in the meantime per my previous email, how about a week for BLM/LNC's responses and a week for replies? Regarding the motion to the Ninth Circuit (if Judge Du denies our emergency motion), we could file our motion to the Ninth within a week of the district court's denial. Then we could do the same week for responses and week for replies. Please propose another schedule if that does not work (e.g., if you would like additional time for your responses to either court).

Also, I have not discussed the briefing schedules with Dominic, Will, or Rick, so they may have other suggestions.

Roger

---

**From:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>

**Sent:** Friday, February 17, 2023 11:10 AM

**To:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtllaw.net](mailto:rick@eichstaedtllaw.net); Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

Roger,

I am checking with my client.

Do you have a proposed briefing schedule in mind for the emergency motion practice you reference below to further detail your proposals below? We do not agree emergency motions are necessary or justified but in the interest of meeting and conferring to evaluate your proposal, that would be helpful to understand.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lgranier@hollandhart.com](mailto:lgranier@hollandhart.com) | T: 775-327-3089 | M: 775-750-9295

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---

**From:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>

**Sent:** Friday, February 17, 2023 9:11 AM

**To:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtllaw.net](mailto:rick@eichstaedtllaw.net); Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

External Email

Thanks, Laura. Please inform us when LNC has submitted the bond paperwork.

Arwyn – per my last email, we await your estimate of how long it will take BLM to approve the bond. Also will BLM commit to notify us as soon as it approves the bond?

Regarding our emergency motion to the district court, and to the Ninth Circuit – in order to allow briefing to the district court and Ninth Circuit, would BLM agree to hold off approving the bond until the district court rules on our emergency motion, and further (if the district court denies our motion) until the Ninth Circuit rules on our emergency motion for injunction? Similarly, if the bond is approved, would LNC agree not to begin ground disturbance until the district court can rule on our emergency motion, and further (if the district court denies our motion) until the Ninth Circuit rules on our emergency motion for injunction?

Roger

---

**From:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>

**Sent:** Thursday, February 16, 2023 2:35 PM

**To:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Dominic Carollo <[dcarlolo@carollolegal.com](mailto:dcarlolo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

Roger/Dominic/Rick -

I understand Lithium Nevada may submit the bond paperwork to BLM early next week.

Of course, Lithium Nevada does not intend to start the work under the ROD before the bond issues.

---

**From:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>

**Sent:** Thursday, February 16, 2023 11:40 AM

**To:** Dominic Carollo <[dcarlolo@carollolegal.com](mailto:dcarlolo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

**External Email**

Arwyn/Michael and Laura – we need clarification regarding your respective emails. Laura stated that LNC intends to start ground disturbance and Project construction as early as Feb. 27. Yet DOJ's email says that, as of today, BLM has not even received, let alone analyzed and then approved, the required bond/financial assurance. As Arwyn correctly notes, no activities at the site can begin until the bond is approved.

Thus, according to DOJ/BLM, LNC does not have authority to begin ground disturbance.

Laura – under what authority does LNC have to begin disturbance? Does LNC believe that BLM will have received, analyzed, and approved the bond by Feb. 27<sup>th</sup>?

Because of these uncertainties and statements, we believe that an emergency motion for injunction pending appeal is still warranted.

Similar to Dominic's email, we request that LNC provide an estimate as to when it will submit the bond, and DOJ provide an estimate as to how long BLM's review of the bond will take. This will better inform the parties' motion(s) and the timing of emergency relief.

Thanks,

Roger

---

**From:** Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>

**Sent:** Thursday, February 16, 2023 11:53 AM

**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Tulasi Brooks'

<[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

All:

I'm chiming in, for the purpose of conferral, to inform all parties that my clients have the same concerns as the environmental plaintiffs and Tribes, and also plan to appeal and seek injunctive relief. It would be helpful if LNC could inform the parties about when LNC expects to submit the reclamation financial guarantee.

Thanks.

DOMINIC M. CAROLLO

CAROLLO LAW GROUP LLC

PO Box 2456

Roseburg, OR 97470

PH: 541-957-5900

FAX: 541-957-5923

[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)

---

**From:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>

**Sent:** Thursday, February 16, 2023 10:46 AM

**To:** [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net); 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: [EXTERNAL] Thacker Pass

Roger and Rick,

As you're aware, the ROD provides that surface disturbing activities approved under it "shall not begin until the BLM Nevada State Office issues a decision accepting the reclamation financial guarantee." ROD at 21. As of close of business yesterday, Lithium Nevada has not yet submitted the reclamation financial guarantee for the Thacker Pass project to BLM. Once that is received, BLM will still need to adjudicate the guarantee and issue a decision before surface

disturbance under the ROD may begin. Because the financial guarantee has not yet been submitted, we can't estimate when it will be adjudicated. We're happy to update you when it is submitted.

Because Lithium Nevada is not authorized to conduct surface disturbing activities under this ROD until that decision issues, we believe an emergency motion for injunctive relief in the district court to be premature at this time and that there is likewise no basis under Rule 8 for an emergency motion in the Ninth Circuit. Federal defendants would, in any event, oppose both motions for an injunction pending appeal in this case.

Thanks,  
Arwyn

---

**From:** [rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net) <[rick@eichstaedtlaw.net](mailto:rick@eichstaedtlaw.net)>

**Sent:** Thursday, February 16, 2023 12:50 PM

**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Cc:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Dominic Carollo' <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; 'Will Falk' <[falkwilt@gmail.com](mailto:falkwilt@gmail.com)>; 'Terry Lodge' <[tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** [EXTERNAL] Thacker Pass

Arwyn, Michael, and Laura –

The Burns Paiute Tribe intends to appeal the recent decision of Judge Du. We plan on joining in the motion that will be filed by Roger on behalf of his clients.

Because we will be filing joinder to his motions, we will need to indicate the position of your clients, so please provide me with any response provided to Roger.

Thanks.

Rick Eichstaedt

---

**From:** Roger Flynn

**Sent:** Wednesday, February 15, 2023 12:09 PM

**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Cc:** Robertson, Michael (ENRD) <>

**Subject:** RE: Thacker Pass inquiry



Thanks, Arwyn/Michael and Laura. In light of Laura's statement that ground disturbance under the ROD and Plan of Operations approval could start as early as Feb. 22, Environmental Plaintiffs intend on filing an emergency motion for injunction pending appeal with Judge Du this week, along with a notice of appeal and then an emergency motion for injunction to the Ninth Circuit. Both motions would request an injunction against the commencement of ground disturbance. Although based on your emails we assume that both BLM and LNC will oppose both motions (to the District Court and Ninth Circuit), please confirm your positions on these motions.

Also – if ground disturbance will not occur until a later date, please let us know, so we can inform the courts.

Per Arwyn's email -- if BLM has not approved the bond/financial assurance yet, and thus project operations and ground disturbance could not begin, please let us know the status of the bond approval as well, including when that approval is expected.

We look forward to your prompt responses,

Thank you,

Roger, Talasi, and Chris.

---

**From:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>

**Sent:** Monday, February 13, 2023 5:24 PM

**To:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Talasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Cc:** Robertson, Michael (ENRD) <[Michael.Robertson@usdoj.gov](mailto:Michael.Robertson@usdoj.gov)>

**Subject:** RE: Thacker Pass inquiry

Roger,

Because Judge Du declined to vacate the ROD and there is no injunction in place, it is similarly BLM's position that the decision itself and the authorizations under it remain in effect. That said, at least as of earlier today, BLM has not yet received or adjudicated the bond.

Thanks,  
Arwyn

---

**From:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>

**Sent:** Monday, February 13, 2023 6:39 PM

**To:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; Doktor, Leilani (ENRD) <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** [EXTERNAL] RE: Thacker Pass inquiry

Roger,

Judge Du considered vacatur and decided not to vacate the ROD. Therefore, our understanding is that the ROD is legally effective. Having said that, I understand it is estimated that Lithium Nevada will only begin work probably at the earliest the middle of next week.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lgranier@hollandhart.com](mailto:lgranier@hollandhart.com) | **T:** 775-327-3089 | **M:** 775-750-9295

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---

**From:** Laura K. Granier

**Sent:** Sunday, February 12, 2023 5:10 PM

**To:** 'Roger Flynn' <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>; 'Doktor, Leilani (ENRD)' <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; 'Carroll, Arwyn (ENRD)' <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** RE: Thacker Pass inquiry

Roger,

Sorry for the delayed response. I have been traveling. I will discuss with my client and get back to you.

Best,

**Laura Granier**

Laura Granier P.C.

Partner, Co-Chair Mining Group, Holland & Hart LLP

[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com) | T: 775-327-3089 | M: 775-750-9295

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**From:** Roger Flynn <[Roger@wmaplaw.org](mailto:Roger@wmaplaw.org)>

**Sent:** Friday, February 10, 2023 12:48 PM

**To:** 'Doktor, Leilani (ENRD)' <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; 'Carroll, Arwyn (ENRD)' <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; 'Tulasi Brooks' <[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>

**Subject:** Thacker Pass inquiry

External Email

Leilani/Arwyn and Laura – environmental plaintiffs (WWP et al) are considering appealing Judge Du’s order and judgment. Due to the court’s decision not to vacate the ROD, we may have to seek immediate relief from the 9th Circuit to enjoin Project operations (and under court rules, may seek a stay pending appeal before Judge Du as a first step). Court rules require that we contact opposing counsel regarding the need for emergency or preliminary relief.

We are inquiring as to your position as to whether Project operations may begin immediately due to the lack of vacatur of the ROD. If so, when does LNC intend on commencing ground disturbance as authorized in the ROD and approval of the plans of operations?

On the other hand, emergency relief may not be needed if operations (including ground disturbance) would not commence in the foreseeable future.

Relatedly, does LNC and BLM believe that operations cannot commence until BLM satisfies the court’s remand ordering: “BLM to determine whether Lithium Nevada possesses valid rights to the waste dump and mine tailings land it intends to use for the Project to support BLM's decision to issue the ROD described herein.” Order at 48-49.

Thank you for your prompt consideration of these issues.

Roger Flynn

Counsel for Environmental Plaintiffs

## **EXHIBIT 2**

### **DECLARATION OF TERRY CRAWFORTH**

Christopher Mixson (NV Bar#10685)  
 KEMP JONES, LLP  
 3800 Howard Hughes Parkway, Suite 1700  
 Las Vegas, Nevada 89169  
 702-385-6000  
 c.mixson@kempjones.com

Attorney for Plaintiffs

Roger Flynn, (CO Bar#21078) Pro Hac Vice  
 Jeffrey C. Parsons (CO Bar#30210), Pro Hac Vice  
 WESTERN MINING ACTION PROJECT  
 P.O. Box 349, 440 Main St., #2  
 Lyons, CO 80540  
 (303) 823-5738  
 wmap@igc.org

Attorneys for Great Basin Resource Watch, Basin and Range Watch, and Wildlands Defense

Talasi B. Brooks (ISB#9712), Pro Hac Vice  
 Western Watersheds Project  
 P.O. Box 2863  
 Boise ID 83714  
 (208) 336-9077  
 tbrooks@westernwatersheds.org

Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                                    |   |                                |
|------------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT; et al. | ) | Case No.: 3:21-cv-0103-MMD-CLB |
|                                    | ) |                                |
| Plaintiffs,                        | ) |                                |
| v.                                 | ) | DECLARATION OF TERRY           |
|                                    | ) | CRAWFORTH IN SUPPORT OF        |
| UNITED STATES DEPARTMENT OF THE    | ) | PLAINTIFFS' EMERGENCY          |
| INTERIOR; et al.                   | ) | MOTION FOR INJUNCTION          |
|                                    | ) | PENDING APPEAL (ECF #)         |
| Defendants,                        | ) |                                |
|                                    | ) |                                |
| LITHIUM NEVADA CORP.,              | ) |                                |
|                                    | ) |                                |
| Defendant-Intervenor.              | ) |                                |

I, Terry Crawford, hereby declare as follows:

1. I am a resident of Kings River Valley, Humboldt County, Nevada. The statements below are based upon my 42 years working for the Nevada Department of Wildlife (NDOW), including 6+ years as agency Director, as well as my personal knowledge and experience concerning the Thacker Pass Mine Project and 35+ years working and recreating in the Montana Mountains of Humboldt County.

#### **Education and Experience**

2. I was born in Ely, Nevada and graduated from the University of Nevada, Reno with a Bachelor of Science degree and several graduate study credits in Wildlife Management. I have attended, organized and taught numerous continuing education seminars and training sessions to enhance my knowledge of wildlife management techniques and associated skills including: Peace Officer Standards and Training, administrative processes, collaborative and facilitated management, public outreach and workshops for a number of species such Greater sage-grouse, mule deer, desert tortoise, bighorn sheep, several species of trout, etc.
3. I grew up in the copper mining/milling towns of McGill and Weed Heights, Nevada where I first learned of chemical processing of ore. Both of these mines are now closed, and one is a “ghost town” with little or no reclamation and both are considered Superfund sites with environmental impacts that persist to this day. Despite these factors, I believe in harvesting natural resources and am not opposed to mining if done under modern day protocols and regulations.
4. I worked for the Nevada Department of Wildlife (“NDOW”) for 42 years. My work with NDOW began at the Verdi Fish Hatchery near Reno, which was focused on captive rearing of Lahontan cutthroat trout to reestablish a population at Pyramid Lake. I subsequently worked at the Spring Creek Trout Rearing Station near Baker and as a Game Warden and Biologist in Douglas, Carson, Lyon, Mineral, Storey and Washoe

counties while stationed in Gardnerville. I then moved into positions of supervisory authority, serving as game warden supervisor for Elko, Eureka, Lander, and White Pine Counties while assigned to Elko. My next assignments were in Reno as statewide Law Enforcement Division Chief and Deputy Director before accepting a Governor's appointment to the Directors position. This statewide work gave me significant experience in legislative, regulatory, and public process' as well as an enhanced general knowledge of wildlife management for the myriad of Nevada's species and their required habitats.

5. I served as Director of NDOW for 6+ years, before retiring in 2006. During my career with NDOW I served as an active member and often as chairman, secretary or president of numerous commissions, committees, and councils including: Western Association of Fish and Wildlife Agencies and the International Association of Fish and Wildlife agencies, both of which included North American states and provinces; Colorado Fish and Wildlife Council; Pacific Waterfowl Flyway Council; Nevada State Environmental Commission; Douglas County, Nevada Planning Commission; and the Nevada Wildlife Commission. These appointments included considerable travel throughout North America, testimony before legislative bodies, including the United States Congress, Nevada Legislature, state and local commissions, and Federal, state and local courts. In addition, considerable time was spent working with congressional delegations and local government on wilderness designations, wetlands, grazing, and funding for wildlife and habitat management and protection.
6. During my tenure as Director we reorganized the department to increase efficiency and acquired additional funding sources to provide more training and improved equipment for employees, acquired a wildlife veterinarian on staff, improved public and industry outreach, and created new divisions to better address non-hunted/fished for species and address land and water use issues related to all wildlife. We increased the transplanting



and water development programs for a number of species to expand their range with considerable assistance from volunteer organizations. We also initiated several species-specific task groups to study and recommend actions to preserve and enhance populations of those species and their habitats. Our work was successful as we became more involved in land and water decision processes, industries, non-profit organizations, and the media. Lahontan Cutthroat Trout range was expanded, Governor Guinn's state sage-grouse plan prevented the endangered species listing of the sage-grouse and increased awareness of sagebrush habitats, a network of over one thousand rainwater catchments were installed or improved that improved wildlife distribution and population size for a number of species, and successful protection strategies were developed for desert tortoise. During my tenure as Director, no species was ever listed as endangered or threatened.

7. Nevada experienced a significant increase in mining in the 1980's, especially for gold in the northern counties. Recognizing the potential impacts to wildlife and required habitats, NDOW became very collaboratively involved with mining companies, agricultural entities, local government, state permitting and federal NEPA processes to identify potential threats to wildlife habitat and opportunities to diminish impacts and actually enhance habitats. Some examples and techniques used were: toxic pond impoundment protection for migrating waterfowl; reseeding areas of disturbance and harvesting seed from them for future projects; mitigation funding for offsite habitat improvements; wildlife water and wetlands developments; scientific studies; redesign of facility plans prior to construction including roads and fencing which did not interfere with migration corridors; minimizing ambient light, dust and noise; and special land designations such as population management units, mineral withdrawals, and areas of critical environmental concern (ACEC).
8. I had long been concerned for the status and trend of sage-grouse populations and their sagebrush habitats and what impact an Endangered Species Act listing would have on

Nevada's rural culture and economy. Recognizing that sage-grouse are a keystone species for sagebrush communities, we established a sage-grouse conservation team with representatives from academia, legislators, environmental community, mining, agriculture, hunters, scientists, federal and state land management agencies, wildlife commission, utility companies, and NDOW employees to provide group support. After a year plus of meetings, guest speakers, observers, and tours, a statewide conservation plan was completed and work began. We were successful in using several techniques and processes to implement some of our proposed projects and were asked by other western states to "export" our process to their states through the new formed Western Association Sage Grouse team in order to create a rangewide effort. One project initiated was the Lone Willow Population Management Unit capture, which includes the Montana Mountains, marking and bird health study. This study indicated the sage grouse population estimate for the Montana Mountains area at approximately 10,000 birds. That estimate is now 5000 or less based on LEK (Swedish word for gathering place) count analysis.

#### **Personal Knowledge of the Thacker Pass Project**

9. I have worked and recreated in the Kings River Valley area for 35 years and became a permanent resident almost 4 years ago. I am now the closest active residence (4 miles) to Thacker Pass. Of the 4 mountain ranges that surround me the Montana Mountains are of most interest and therefore where I spend the most time. The Montana's are a very unique environment found nowhere else in Nevada, thanks to their formation by the McDermitt Caldera whose "hot spot" now resides under Yellowstone. The vistas are amazing, as is the variety and seasonal migrations of wildlife. From some points one can see 25 different mountain ranges, it is easy to see over 3 dozen species of wildflowers in the spring, and a short morning drive will reveal at least 2 dozen species of wildlife to the trained eye. I hunt and camp in the area, regularly take friends on tours, especially in

March and April to view sage grouse “lekking” on the Montana-10 lek and wildflowers and would wager that there are few who know the entire range as well as I.

10. I have been involved with the Bureau of Land Management BLM NEPA/EIS process surrounding the Thacker Pass Project, including attending public meetings. During public meetings BLM employees and LNC-contracted biologists, geologists, chemists, etc., and drafters of the EIS presented renditions of the site and their findings which again showed expanded growth and complexity of the project and drastically understated the potential environmental, cultural and infrastructure impacts.
11. Following the BLM release of the EIS and ROD Orovada area citizens were confounded about ways to proceed to address a multitude of concerns about mine impacts on the communities. We had weekly meetings with presentations from every possible source and opinion and created the Thacker Pass Concerned Citizens (TPCC) group, which appointed me as chairman. I am no longer involved with that group.

#### **Wildlife Use of the Project Area**

12. Based upon my knowledge of wildlife in the Thacker Pass area as a citizen, as well as my familiarity with wildlife populations in Nevada generally, the Thacker Pass Lithium Mine will have serious impacts to wildlife.
13. I do not consider myself as an expert for any specific species of wildlife but believe that I have developed considerable knowledge regarding a broad array of wildlife through education, field work and experience, and constant training and study. This, I believe is especially true for species such as sage grouse, mule deer, and cutthroat trout. I have been instrumental in developing and participating in task groups regarding the status and future of species such as sage grouse, mule deer, cutthroat trout, bighorn sheep, pronghorn, desert tortoise and their required habitats.
14. Specific to the Montana Mountains I am very familiar with the habitats seasonally occupied, migration routes, population trends, NDOW species management and BLM

grazing strategies, and required habitat condition.

15. Winter range is the most critical for wildlife and is usually where the highest mortality occurs, especially for young of the year, when forage and thermal cover may be minimal. For example, sage grouse, mule deer, pronghorn antelope, and big horn sheep typically follow this same pattern and return to the same familiar areas annually unless weather and forage conditions dictate minor adjustments. The NDOW numbered management units are developed to coincide with these documented migrations and to allow for measurement and estimation of species population status within each unit.
16. Most resident wildlife occupy higher elevations in the summer and move south to lower elevation areas for the winter and return north in the spring as weather and forage conditions allow. These migrations may be as much as 20 miles each way and may include moving to adjacent mountain ranges, local agricultural lands and even north into Oregon.

### **Sage-Grouse**

17. Specific to sage-grouse, the Lone Willow Population Management Unit (PMU), which for the most part coincides with NDOW unit 031, and is so named because of a large meadow complex in the center of the Montana Mountains was established as a result of an intensive several year study, including trapping, banding and attaching telemetry devices, and health checks of birds at lek sites and either documenting movement and nest success electronically or by comparing the number of banded birds versus unbanded birds in the fall hunting harvest. This analysis indicated that the estimated sage-grouse in the Lone Willow PMU, which includes 4 mountain ranges and 2 valleys, was 20,000 birds, which meant that as much as 20 percent of the world's sage-grouse resided in the Lone Willow PMU.
18. The only population measurement available now is spring lek counts and harvest reports including wing samples from birds harvested in the fall. The population estimate from

these sources has now fallen to approximately 5000 birds and corresponds with similar reductions in other states for a variety of reasons, such as ambient noise and heavy vehicle traffic during lek season near mineral and oil extraction and geothermal sites.

19. The most significant villain in sage-grouse population decline is the rangewide loss of millions of acres of sagebrush ecosystems. Such is the case for the Lone Willow PMU where the Holloway fire caused the loss of over 800,000 acres of sagebrush ecosystem in 3 mountain ranges that to this date show little sign of recovery. NDOW closed the sage grouse hunting season in unit 031, which caused the loss of data collection except lek counts. BLM has tried developing fire breaks which result in more noxious weeds, reseeding at the wrong time of the year which is, of course, unsuccessful, and placing reflectors on fences to prevent bird strikes in areas.
20. I am personally aware that sage-grouse use the Project area for habitat, especially in winter. I have seen sage-grouse in the Project area, particularly in the fall and winter, when I hunt chukar in the area. It is not uncommon for me to see flocks of as many as 30 sage-grouse and I frequently find more sage-grouse than chukar.
21. I also annually take friends to the Montana-10 lek in March and April to see the lekking spectacle and report my observations to the NDOW area biologist. Montana-10 is one of the three largest leks in the Lone Willow PMU and is nearly in eye sight and certainly within ear shot of the Thacker Pass Project. It is considered a trend lek because of a long recorded history and is a significant contributor to the overall sage grouse population of the Lone Willow PMU. I have observed, and NDOW has records, of nesting birds and fall coveys immediately above the project and I annually see large coveys of wintering sage grouse on the Project site, often near the small pit in the middle of the Project area. It must be assumed significant mortality of these birds will occur due to noise pollution, traffic and outright removal of the sagebrush community.

22. I have a basic knowledge of sage-grouse biology. Disturbance to sage-grouse from noise impacts can interfere with lekking, when noise interference may prevent hens from locating dominant males. However, that habitat used for nesting or brood-rearing may be close to a road or other noise source does not mean it will not be used by sage-grouse. Sage-grouse hens typically nest within about 4-miles of the lek where they bred. As long as noise does not interfere with the lek site, the habitat is still likely to be used by sage-grouse.
23. This is especially true because sage-grouse have high site-fidelity and will return to the same habitats they have seasonally used historically, even after those habitats have been degraded. When sage-grouse use degraded habitats it decreases their chances of successful breeding and survival.
24. Sage-grouse can also make large seasonal movements. For instance, I am aware of an example of a sage-grouse hen that bred on a lek in the Montana Mountains, went to Oregon to rear her chicks, and returned the next year to breed on the same lek.
25. During different times of the year, sage-grouse rely on different habitat components. However, sage-grouse rely on sagebrush for every part of their lifecycle. In winter, tall sagebrush that sticks up above the snow is important for the birds, which eat the leaves and use the plants for thermal cover.

### **Harms From The Thacker Pass Project**

26. The mine will begin by stripping away all of the vegetation in the area. This will completely remove the last, large scale, unburned south facing sagebrush ecosystem on the entirety of the Montana Mountains. This is critical winter range for a wide array of wildlife, who after having migrated several miles over several weeks will have to move to less suitable, previously burned, and often north facing snow filled habitats by crossing a state highway. This will surely exacerbate the already dwindling area populations of sage grouse, mule deer and pronghorn antelope.

27. By destroying or degrading habitat at Thacker Pass, the Thacker Pass Project will remove the last good winter range in the whole mountain range, pushing wildlife south to the Double H mountains south of the Project area. But, even the Double H mountains may not be available as habitat because although the mining company originally told us they would not be operating south of the highway, they have drilled there significantly in the past year. This area is adjacent to springs occupied by the imperiled Kings River pyrg.
28. Even if the Double H mountains remain available, they will not be equally good winter range because the slope there is north-facing and full of snow in the winter. Most of the habitat there has burned. Deep snow and burned habitat create substandard conditions for wildlife. Animals need the sagebrush community at Thacker Pass for cover and food in the winter and if they don't have that there will be significant wildlife mortality; lack of cover increases vulnerability to predators, etc.
29. The removal of the habitat at Thacker Pass is an immediate impact from the mine that will not be recoverable in our lifetimes. Sagebrush is notoriously difficult to restore and takes decades to reach a condition where it could serve as habitat, particularly sage-grouse winter habitat. Adverse effects from the mine will destroy the value of habitat at Thacker Pass for generations of sage-grouse, which, given the birds' site-fidelity, will be a virtually permanent effect.
30. Development of the Project area risks to have particularly significant effects to wildlife if it begins right now, in late February or early March. Winter conditions persist at Thacker Pass and deer and antelope are grouped in the area while waiting to move to spring/summer fawning areas. I have seen herds of 50-60 deer, as well as antelope, in the Project area. Those deer and antelope will be pushed out of these high value winter habitats by Project development. They will likely experience increased mortality, especially fawns, from that displacement, including because they are more susceptible to predators during this season. Since population trend estimates look at survival of fawns through the winter, that mortality

will likely manifest as a downward population trend.

31. In addition, spring “greenup”, when protein-rich green vegetation begins to emerge under the snow, provides a critical source of protein for wildlife, which are not as strong coming out of the winter. Greenup begins to happen at Thacker Pass during this time of year. The spring greenup vegetation is more accessible to wildlife on the south-facing slopes of the Project area because there is less snow there than on north-facing slopes (like in the Double H mountains) where snow is presently drifted up to several feet deep. Wildlife rely on access to this early protein source. That is particularly true for sage-grouse; studies have shown that sage-grouse in the Montana mountains have very low winter protein compared to populations elsewhere and birds in the Lone Willow PMU show the most rapid health improvement of any population range wide. Without being able to access these nutrients, deer, antelope, sage-grouse, and other wildlife will experience reduced fitness, making them more vulnerable to predation and other mortality.
32. Sage-grouse breeding season usually begins around February and grouse undoubtedly began moving onto leks, including the Montana-10 lek, in recent weeks. Mating will peak the first week of April but continue until early May, when nesting starts. As noted, there is increasing evidence that loud noise and traffic have caused lek abandonment rangewide, including from recent examples of geothermal development in Nevada and oil and gas development in Wyoming.
33. The closest lek to the Thacker site, the Montana-10 lek, is approximately 1 air mile from the proposed site and traffic on the highway south of the site can be heard. Lek counts on that lek have dropped significantly in recent years, which is a weathervane for the whole area. Radiocollar data show that some females that breed on the lek nest between the lek and the Project area. If the Montana-10 lek is abandoned due to the noise and traffic from the mine Project, it could cause population-level decline for sage-grouse. Impacts to sage-grouse in the Montana mountains would be significant enough to place the species on a



sure path to listing under the Endangered Species Act since abundance of grouse in that area is exceptional.

34. Thus, the Thacker Pass Project—especially if it begins in the coming weeks— will cause irreparable harm to wildlife by destroying the best remaining winter range in the Montana mountains, reducing plant productivity and therefore deer, antelope, bird, rodent and predator health and survival, and reducing the productivity, or potentially causing abandonment, of the Montana-10 lek.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of February at Kings River, Nevada.

s/ Terry Crawford

# **EXHIBIT A**

To

## **ENVIRONMENTAL PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

In

Bartell Ranch LLC, et al. v. McCullough

Case No. 3 :21-cv-80-MMD-CLB

and

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No. 3:21-cv-0103-MMD-CLB

## **DECLARATION OF JOHN HADDER**

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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                              |   |                              |
|------------------------------|---|------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB |
|                              | ) | <b>(LEAD CASE)</b>           |
| Plaintiffs,                  | ) |                              |
| v.                           | ) | DECLARATION OF               |
|                              | ) | JOHN HADDER                  |
| ESTER M. MCCULLOUGH, et al., | ) | IN SUPPORT OF                |
|                              | ) | ENVIRONMENTAL PLAINTIFFS'    |
|                              | ) | MOTION FOR SUMMARY           |
| Defendants,                  | ) | JUDGMENT                     |
| and                          | ) |                              |
|                              | ) |                              |
| LITHIUM NEVADA CORPORATION,  | ) |                              |
|                              | ) |                              |
| Intervenor-Defendant.        | ) |                              |

WESTERN WATERSHEDS PROJECT, et al., ) Case No.: 3:21-cv-103-MMD-CLB  
)  
(CONSOLIDATED CASE)  
Plaintiffs, )  
)  
and )  
)  
RENO SPARKS INDIAN COLONY, et al., )  
)  
Intervenor-Plaintiff, )  
)  
and )  
)  
BURNS PAIUTE TRIBE )  
)  
Intervenor-Plaintiff, )  
)  
v. )  
)  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR, et al., )  
)  
Defendants, )  
and )  
)  
LITHIUM NEVADA CORPORATION, )  
)  
Intervenor-Defendant. )

I, John Hadder, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Reno, Nevada. I am 61 years old and competent to testify.
2. I am a member of Great Basin Resource Watch (GBRW), plaintiff in this case. I am also the Executive Director of GBRW.
3. Plaintiff Great Basin Resource Watch (GBRW) is a nonprofit, 501(c)(3), organization based in Reno, Nevada that is concerned with protecting the Great Basin's land, air, water, wildlife and communities from the adverse impacts of hardrock mining. GBRW is a coalition of ranchers, sportsmen, conservationists, scientists, and Native Americans dedicated to protecting the communities, wildlife, land, air, water and Native American resources of the Great Basin.
4. Members of GBRW have used, enjoyed, and valued the area of the Thacker Pass Mine

1 Project, including the Project site, for many years. This also includes members that live near  
2 Thacker Pass. Members of GBRW hike, view and photograph wild plant and animal life,  
3 appreciate and value the cultural and historical resources at the site, and generally enjoy using  
4 the area of the Project for recreational, cultural, historical, conservation, and aesthetic purposes.  
5 Members of GBRW intend on continuing to use and value the lands at, and affected by, the  
6 Project during 2022 and in future years. These uses will be immediately, irreparably, and  
7 significantly harmed by the Project and related operations.

8 5. GBRW submitted comments to the BLM during the scoping phase and regarding the  
9 Draft EIS and Final FEIS for the Project.

10 6. I personally use and enjoy the lands at and near the Thacker Pass Mine Project. I have  
11 visited the lands at and immediately adjacent to the Project site, the last visit in 2022. During  
12 these visits, I hike, sightsee, watch and appreciate wildlife, enjoy the solitude and views, and  
13 otherwise use and enjoy the public lands in these areas.

14 7. I also use and enjoy the riparian areas and waters of the springs and seeps that will suffer  
15 loss or damage due to the Project's groundwater pumping. I have enjoyed refreshment,  
16 relaxation, and aesthetic enjoyment from these waters and lands

17 8. My recreation, aesthetic, conservation, spiritual and other interests and experiences will  
18 be severely and adversely affected if the Project is allowed to be constructed, developed and  
19 operated. These uses and interests will be irreparably and immediately harmed by the  
20 commencement of construction at the site.

21 9. The initial construction activities, let alone the actual open pit mining and waste disposal,  
22 will permanently degrade the environment and permanently and irreparably injure my uses of  
23 these lands. For example, the initial road building, ground clearance, and construction will  
24 irreparably and immediately destroy the landscape of Thacker Pass upon which I conduct my  
25 above-detailed uses.

26 10. My uses are totally incompatible with the uses of the public lands at the site approved by  
27 the BLM in the Record of Decision (ROD), including the immediate ground clearance, road  
28

1 building, and Project construction.

2 11. I intend on visiting and using the lands and waters at and near the proposed Project to  
3 continue my above noted uses. More specifically, I intend on returning to the Project site this  
4 coming Summer and Fall, as well as in 2023 and in future years.

5 12. The only way my to protect my interests and uses of the Project site and other public  
6 lands and waters affected by the Project, and the similar interests and uses of members of  
7 GBRW, from irreparable injury is to stop Lithium Nevada Corp. (LNC) from conducting any  
8 activities at the Project site and the surrounding area.

9 13. The failure of BLM to prepare an adequate Environmental Impact Statement (EIS) and to  
10 fully involve the public, including myself and GBRW members, in the agency's decision-  
11 making, adversely affects my and GBRW's members' ability to participate in the NEPA,  
12 FLPMA, and other public review processes.

13 14. As detailed in the attached Motion for Preliminary Injunction, BLM failed to adequately  
14 involve the public in the agency's review of the Project's impacts to wildlife, cultural/historical,  
15 environmental, and other issues, impacts, and alternatives – depriving me and other members of  
16 GBRW of our rights to fully participate in the public process under NEPA and federal law.

17 15. The initial ground disturbing activities proposed to start this year, would significantly,  
18 immediately, and irreparably impair my uses of the site and the values in these public lands that I  
19 and other GBRW members value. It is impossible to enjoy the natural plants, wildlife, and  
20 solitude of the site when excavations and digging are occurring at the site.

21 16. In addition to the immediate ground disturbance this year, the approved construction  
22 activities that would occur in the coming year, let alone the actual open pit mining and waste  
23 disposal and gangue piles, will permanently degrade the environment and permanently and  
24 irreparably injure my uses of these lands, and the lands and waters themselves. For example, the  
25 initial road building, ground clearance, and construction will irreparably and immediately  
26 destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my  
27 above-described uses.  
28

17. In addition to the above noted uses and injuries, I am also concerned with the Project's adverse impacts to water quality and quantity. The EIS predicts that the water in the mine pits and/or in ground water will be degraded and would violate water quality standards. This degradation and violation of protective standards, even though the groundwater impacts would not occur until mining started, injures my aesthetic and conservation interests in ensuring that water be protected from mining.

20. Similarly, the significant drawdown of local ground waters caused by the Project's dewatering will cause the loss and degradation of these waters. This loss and degradation injures my aesthetic and conservation interests in ensuring that water be protected from mining.

21. As approved by BLM, the Project is not required to protect against these quality and quantity impacts. Instead, BLM only required a general "wait-and-see" approach to mitigate against these impacts. This essentially allows the impacts to occur first, with potential mitigation to occur only later. Such a failure to protect against these impacts injures my interests in ensuring against degradation and loss of water in the area affected by the Project and drawdown.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed this 1<sup>st</sup> day of April, 2022, at Reno, Nevada.

/s/ John Hadder

John Hadder



## **EXHIBIT B**

To

### ENVIRONMENTAL PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

In

Bartell Ranch LLC, et al. v. McCullough

Case No. 3 :21-cv-80-MMD-CLB

and

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No. 3:21-cv-0103-MMD-CLB

### **DECLARATION OF KELLY FULLER**



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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                              |   |                              |
|------------------------------|---|------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB |
|                              | ) | <b>(LEAD CASE)</b>           |
| Plaintiffs,                  | ) |                              |
| v.                           | ) | DECLARATION OF               |
|                              | ) | KELLY FULLER                 |
| ESTER M. MCCULLOUGH, et al., | ) | IN SUPPORT OF                |
|                              | ) | ENVIRONMENTAL PLAINTIFFS'    |
|                              | ) | MOTION FOR SUMMARY           |
| Defendants,                  | ) | JUDGMENT                     |
| and                          | ) |                              |
|                              | ) |                              |
| LITHIUM NEVADA CORPORATION,  | ) |                              |
|                              | ) |                              |
| Intervenor-Defendant.        | ) |                              |

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| WESTERN WATERSHEDS PROJECT, et al., | ) | Case No.: 3:21-cv-103-MMD-CLB |
|                                     | ) | ( <b>CONSOLIDATED CASE</b> )  |
| Plaintiffs,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| RENO SPARKS INDIAN COLONY, et al.,  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| BURNS PAIUTE TRIBE                  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) |                               |
|                                     | ) |                               |
| UNITED STATES DEPARTMENT OF THE     | ) |                               |
| INTERIOR, et al.,                   | ) |                               |
|                                     | ) |                               |
| Defendants,                         | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| LITHIUM NEVADA CORPORATION,         | ) |                               |
|                                     | ) |                               |
| <u>Intervenor-Defendant.</u>        | ) |                               |

I, Kelly Fuller, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I am currently employed by Western Watersheds Project (WWP) as its Energy and Mining Campaign Director. I am a member of WWP.

**Personal and Professional Background**

3. I grew up hiking and camping in the American west, and I became aware of the many threats to its wildlife and public lands after I started going on camping trips with the conservation group Desert Survivors. Through Desert Survivors, I first began drafting public comments on actions that impacted the California desert, in the early 2000s.

4. I have been working in environmental conservation on a paid basis since 2006. Through that work, I have participated on behalf of environmental groups in NEPA environmental review processes in 28 states. As a result, I have become quite familiar with federal agency implementation of NEPA, including how long these environmental review processes typically take to unfold and what greater and lesser amounts of public participation look like.

5. Since February of 2017, I have served first as the Energy Campaign Coordinator and then as the Energy and Mining Campaign Director for Western Watersheds Project (“WWP”). In my positions here I have tracked proposed actions and I have drafted comment letters and administrative appeals on all types of energy and mining projects across the American west. I most frequently comment for WWP on energy and mining in Idaho, Nevada, and Wyoming, but I have also drafted or helped to draft NEPA comments for WWP on energy and mining in seven other states.

6. Personally and on behalf of WWP, I have strong interests in preventing irresponsible development that will harm key wildlife habitats. I enjoy camping, hiking, wildlife watching, and other professional and recreational activities on public lands in Nevada and throughout the West. In particular, I have a strong interest in conserving greater sage-grouse, golden eagles, and other birds and wildlife and their habitats. I greatly enjoy viewing birds and other wildlife when I visit the public lands and my interests are harmed when they are no longer present because their habitats have been degraded or destroyed by mining and mine-related development. I have strong interests in robust public processes surrounding mining and mine-related developments that will impact these important habitats so that the public can review and evaluate information about wildlife impacts.

### **WWP's Interests in Mining**

7. WWP is a nonprofit environmental organization with approximately 12,000 members and supporters throughout the West, including in Nevada. WWP employs a Nevada/Oregon Director and has staff, members, and supporters who live in Nevada and who work, travel, recreate, and otherwise enjoy public lands in Nevada.
8. WWP's mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP works to influence and improve public lands management throughout the West with a primary focus on the negative impacts of livestock grazing on 250 million acres of western public lands, including harm to ecological, biological, cultural, historic, archeological, scenic resources, wilderness values, roadless areas, Wilderness Study Areas and designated Wilderness.
9. Although WWP primarily focuses its advocacy efforts on public lands grazing, it is also concerned about mining, particularly where it is slated to occur in sagebrush habitat crucial to sage-grouse and other species.
10. WWP has a longstanding interest in preserving the sagebrush steppe ecosystem and wildlife that depend upon it, like greater sage-grouse, pronghorn, burrowing owl, pygmy rabbits, golden eagles, Lahontan cutthroat trout, bighorn sheep, and others.
11. WWP has a longstanding interest in protecting the sage-grouse, an iconic ground-dwelling bird that depends upon the sagebrush ecosystem to survive. For almost two decades, WWP has advocated for protecting the sage-grouse from activities like grazing, oil and gas development, and mining that disturb the species and destroy its habitat.
12. Other environmental organizations frequently draw on WWP's expertise concerning sage-grouse when projects that may impact sage-grouse are proposed. They consult

with WWP when writing public comments concerning sage-grouse issues and I frequently review and contribute sage-grouse analysis to those comments when WWP is a co-signatory.

13. Mining devastates the sagebrush steppe ecosystem, which is notoriously difficult to restore successfully. Mining's effects on sage-grouse are not well-studied, but recent research shows sage-grouse exhibit avoidance behavior and increased mortality risk in mined areas. This makes sense, since mining begins by removing sagebrush and other vegetation that sage-grouse depend upon to support their lifecycle and involves extensive human occupancy and disturbance. In addition, because sagebrush habitats are so difficult to restore, especially from extensive disturbances such as those caused by mining, sage-grouse habitat loss from mining is virtually permanent, displacing sage-grouse from former habitats for generations. Because locatable mineral development is deemed incompatible with sage-grouse, BLM and the Forest Service originally proposed to withdraw certain high value sage-grouse habitats from locatable mineral entry. And expert scientists recommend excluding "priority habitats" for sage-grouse like most of Thacker Pass from mining.

14. Through public comments, WWP can advocate to protect sensitive wildlife populations and their key habitats from proposed resource extraction such as mining, and provide oversight to ensure that the agency complies with the law. WWP can also encourage the agency to mitigate wildlife and habitat impacts to render mining exploration and development less harmful. Thus, WWP has strong interests in the integrity of the NEPA process and in having agencies comply with law regarding public engagement.

15. In my experience, information gained through the public comment process can help BLM make better decisions. For example, additional mitigation measures to protect migratory birds from collision, electrocution, and death by burning were added to the QEP RZA

43-33-722 oil well project in Utah after WWP commented on the project's Environmental Assessment to the BLM.

### **Work with WWP on Mining**

16. In my professional capacity at WWP, I have participated in NEPA on at least eight mining projects in four states, including Nevada.

17. More specifically, I was the primary author of WWP's Scoping and Draft Environmental Impact comment for the Thacker Pass Lithium Mine. I drafted and helped others to draft the wildlife sections of the joint comment letter that was submitted to the BLM by WWP, Basin and Range Watch, and Great Basin Resource Watch during the 30-day availability period for the mine's Final Environmental Impact Statement. I also collected many of the wildlife studies and other conservation documents that were submitted to the BLM with that joint comment letter, writing summaries of them that were included in the letter.

18. Based upon my knowledge and experience, the public process for the FEIS moved very quickly for such a big project. For instance, BLM began public scoping for the Dairy Syncline phosphate mine in eastern Idaho in May 2010 and issued a Record of Decision in April 2020. In Nevada, BLM began public scoping for the Gold Rock Mine in September 2013 and issued a Record of Decision in September 2018; similarly, BLM began public scoping for Phase II expansion of the Hycroft gold mine in December 2014 and issued a Record of Decision in October 2019. In contrast, BLM began public scoping for the Thacker Pass lithium mine on January 20, 2020 and signed a Record of Decision on January 15, 2021 – less than 365 days later. Furthermore, the public comment periods for the Draft Environmental Impact Statement and Final Environmental Impact Statement both took place while the COVID-19 pandemic was in full swing. At that time, the public, including tribes, was preoccupied with very serious matters of personal and community survival. Thus, the public process for the Thacker Pass

lithium mine EIS was both unusually short and conducted during an unusually chaotic and difficult time for much of the public, including tribes.

19. In addition, it is my understanding that not a single tribe commented during the Thacker Pass lithium mine's NEPA process, which is unsurprising given both the unusually short public process and the severe challenges that tribes have experienced during the COVID-19 pandemic. Some members of the Fort McDermitt Paiute and Shoshone Tribe have since expressed public anguish about the lack of public comment. However, strong Indigenous interest and concern about the project have been demonstrated publicly in the last year through cultural events such as prayer runs, round dances, and gatherings at the project site, as well as through tribal members and descendants voicing their concerns in online videos, websites, a webinar, and at community meetings associated with the project's state permits.

20. Perhaps as a result of this rushed process, the Thacker Pass lithium mine's FEIS overlooks numerous issues—including by writing off issues that WWP raised in comments. In particular, the FEIS relies on the assumption that BLM cannot direct the mine development in ways necessary to protect wildlife.

21. I am harmed, and WWP's members and supporters are harmed, by BLM's perfunctory approach to NEPA analysis for this massive project that will destroy ecological values of these public lands virtually forever. In particular, I am harmed by BLM's decision not to assert its authority for managing the public lands by imposing constraints on the mine development to protect wildlife.

22. In my opinion, had this project not been fast-tracked for approval before the end of the Trump Administration, the FEIS might have been higher quality and might have done a better job taking into account public input. There might have been time for the more comprehensive analysis necessary to fully understand the wildlife impacts. If BLM had been

operating with a full understanding of wildlife impacts it might have decided to impose measures on the actions authorized to better protect wildlife and that would have better protected my interests and those of WWP and its members and supporters.

**WWP's Use of Thacker Pass and Harms to WWP's Use**

23. I and other WWP staff enjoy using the Thacker Pass area for hiking, camping, photography, wildlife watching, sightseeing, stargazing, and general relaxation. I visited the area in 2018, 2020, and 2021, and plan to return in April 2022. It is a unique area that provides important wildlife habitat. It contains sagebrush habitat that is highly functional for wildlife, which is increasingly rare.

24. Thacker Pass provides excellent opportunities to watch for sage-grouse and pronghorn. It contains sage-brush nearly as tall as I am that would serve as excellent sage-grouse winter habitat and I understand that sage-grouse use has been documented throughout the area. I am aware that the area also contains two pronghorn movement corridors. Virtually the entire project area occurs within a pronghorn daily movement corridor and a pronghorn migration corridor passes through the center of the project area; the significance and implications of those facts were inadequately analyzed in the EIS.

25. Thacker Pass is also the only easily accessible place I know where visitors have a really good chance of seeing golden eagles, a wildlife species that doesn't like being around humans. In fact, I once had to slow my car almost to a stop in Thacker Pass because a golden eagle was sitting directly on Kings River Road (Nevada State Route 293) eating something. As I slowly approached, the eagle flew off and a puff of either fur or fluffy feathers from the eagle's meal blew into the air. I am very concerned that as soon as the Thacker Pass Mine begins construction, the earthmoving equipment and big trucks that will be going to and from the mine site will not have the same ability to stop quickly and that golden eagles and other birds,



including greater sage-grouse, will be killed. I know that vehicle strike risk to golden eagles is of concern to conservationists and wildlife agencies, and that HawkWatch International has been conducting transmitter studies that document that risk.

26. If the mine is built, it will harm wildlife immediately. It may directly kill animals like desert horned lizards that cannot move fast enough or far enough to get out of the way of the excavation equipment. Pre-stripping for the mine will remove all vegetation from the site, fragmenting or destroying habitat that wildlife rely on for survival, including some wetlands and riparian habitat. Sagebrush habitat, which takes decades or even as long as a century to re-establish if it can be restored at all, will be destroyed for generations of sage-grouse. This destruction of vegetation and human occupancy will block or severely degrade wildlife movement corridors in the area that allow connectivity between habitats to the north and the south of the Project area, producing more far-reaching wildlife impacts that have never been evaluated. Through blasting and other loud construction noises, exploration and mine development will likely cause wildlife to abandon their habitat, leks, or nests, to move farther away from the mine. And, for a species like the sage-grouse, that returns to the same leks year after year, even after they have been degraded, changes to the surrounding habitat will decrease the likelihood that they will survive or successfully reproduce.

27. In the longer term, the mine is expected to reduce water quality and quantity in water sources and groundwater that wildlife live in, need to drink, or that sustain vegetation that wildlife use. According to the FEIS, it is expected to reduce stream baseflow at Crowley, Thacker, and Pole Creeks and could cause water reductions at some springs, all of which would reduce how much water is available to wildlife and could result in springs completely drying up. It will involve construction of structures and overhead powerlines that increase predation on other wildlife by providing new perches. It will also involve construction of reclaim and

emergency stormwater management ponds that are expected to be dry at times, but will be breeding grounds for mosquitos and a vector for West Nile Virus, to which sage grouse and other birds are susceptible, at those times when the ponds have water in them. As a result of all of these factors, constructing and operating the Thacker Pass mine will greatly diminish, if not eliminate, the ability of members of the public, like myself and other WWP staff, to view wildlife there.

28. Thacker Pass is also important to me because is an excellent place for me to camp for the night when I am traveling from my home in rural Oregon to other locations in Nevada. It is a solid day's drive and is paved roads all the way until about the last mile. It has some reasonably good dirt roads with spots suitable for camping. Because it is some miles removed from towns and U.S. Highway 95, it feels safe to camp alone there, which is always a concern for me as a woman. Once construction of the Thacker Pass Mine starts, I will no longer feel safe camping alone there. There is research in the U.S. and Canada that shows increases in crime and violence against women when outside workers come into rural areas to construct resource extraction projects such as mines and oilfields.

29. In addition to providing camping, hiking, photography, relaxation, sightseeing, and wildlife watching opportunities, Thacker Pass is a great place for star gazing. On nights that aren't dominated by moonlight, the skies are very dark, and the sky is full of stars. Especially on a cold, dark night, the stars look so big and near that it seems like you could almost touch them. Mines have a lot of night lighting, and the Thacker Pass Mine's lighting will dim the spectacular night sky. Even if there are efforts to shield the mine's lighting, there will still be light bleed-through and reductions in the beauty of the night sky.

30. I intend to return to Thacker Pass later this year to stargaze and look for sage-grouse, pronghorn, golden eagles, and other wildlife. I would also like to explore the rocky

outcrops in the northwestern part of Thacker Pass and the local springs on Bureau of Land Management lands that are home to the rare Kings River pyrg springsnail. If I were to return and found that construction had started, I would be devastated.

31. I am especially concerned about what will happen to the big sagebrush habitat in the western part of Thacker Pass, which would be obliterated by the mine pit and other mine features. That area has really good habitat for sage-grouse and other wildlife. Because I know how rare high-quality habitats like these are becoming, I would find destruction of those habitats especially upsetting. The photo below shows how big some of the sagebrush in the western part of Thacker Pass is. I am the person in the photo and I am 5'9".



32. My and WWP's interests will be harmed if the mine is allowed to proceed, particularly on the basis of the inadequate FEIS. The mine will immediately impact the area's scenic, ecological, and wildlife values by stripping away, or otherwise disturbing, native

vegetation. Any recreational value of this industrialized landscape will be lost for the foreseeable future. Wildlife will immediately be destroyed or displaced.

33. And, because impacts to wildlife were not fully considered in the FEIS supporting the Project, the extent and severity of these impacts will likely not be fully understood until after they have occurred. For instance, mine development is projected to cause impacts to the Montana-10 sage-grouse lek less than 1 mile from the Project area boundary that could harm sage-grouse at the population level, but the FEIS makes no attempt to analyze or project what those impacts might be. The mine's impact on wildlife values is likely to extend far beyond the Project area and may impact wildlife-related recreational values on a regional scale. To allow the Project move forward based upon this rushed a flawed EIS will cause me, and WWP, harm.

34. My interests would be protected if the Court required BLM to undertake a new NEPA process with full public participation to consider wildlife impacts and thoroughly evaluate this massive project. In particular, if this Court ordered BLM to impose restrictions on the mine development to protect wildlife, and to undertake an analysis that fully examined wildlife impacts, it would protect my interests. Vacating the ROD and FEIS and sending BLM back to the drawing board to do a thorough NEPA analysis that accurately reflects its legal responsibilities for land management would also protect my interests and those of WWP.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1 day of April, 2022, in Depoe Bay, Oregon.



Kelly Fuller

# **EXHIBIT C**

To

## **ENVIRONMENTAL PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

In

Bartell Ranch LLC, et al. v. McCullough

Case No. 3 :21-cv-80-MMD-CLB

and

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No. 3:21-cv-0103-MMD-CLB

## **DECLARATION OF KATIE FITE**

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                              |   |                              |
|------------------------------|---|------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB |
|                              | ) | <b>(LEAD CASE)</b>           |
| Plaintiffs,                  | ) |                              |
| v.                           | ) | DECLARATION OF               |
|                              | ) | KATIE FITE                   |
| ESTER M. MCCULLOUGH, et al., | ) | IN SUPPORT OF                |
|                              | ) | ENVIRONMENTAL PLAINTIFFS’    |
|                              | ) | MOTION FOR SUMMARY           |
| Defendants,                  | ) | JUDGMENT                     |
| and                          | ) |                              |
|                              | ) |                              |
| LITHIUM NEVADA CORPORATION,  | ) |                              |
|                              | ) |                              |
| Intervenor-Defendant.        | ) |                              |

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| WESTERN WATERSHEDS PROJECT, et al., | ) | Case No.: 3:21-cv-103-MMD-CLB |
|                                     | ) | (CONSOLIDATED CASE)           |
| Plaintiffs,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| RENO SPARKS INDIAN COLONY, et al.,  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| BURNS PAIUTE TRIBE                  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) |                               |
|                                     | ) |                               |
| UNITED STATES DEPARTMENT OF THE     | ) |                               |
| INTERIOR, et al.,                   | ) |                               |
|                                     | ) |                               |
| Defendants,                         | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| LITHIUM NEVADA CORPORATION,         | ) |                               |
|                                     | ) |                               |
| Intervenor-Defendant.               | ) |                               |

I, Katie Fite, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Boise, Idaho. I am 67 years old and competent to testify.
2. I am a member of WildLands Defense (WLD) plaintiff in this case. I am also the Public Lands Director of WLD.
3. Plaintiff WildLands Defense (WLD) is a nonprofit, 501(c)(3), organization based in Hailey, Idaho that is concerned with preserving biodiversity and wildlife habitats and populations on public wild lands in the West, especially in Nevada, Idaho and Oregon. WLD advances its mission by means of landscape and wildlife monitoring, by media outreach, and with legal and administrative advocacy. WLD has members in several western states, including members that regularly focus on public land and wildlife

preservation in the high desert ecosystem of the scenic and remote Nevada and Oregon border land region. As an organization and on behalf of its members, WLD has a particular interest in protection of biodiversity and conservation of rare species like pygmy rabbit, golden eagle, greater sage-grouse and Lahontan cutthroat trout, and in sustaining migratory birds. WLD members work and/or recreate throughout this area generally, and in the Project Area particularly.

4. Members derive scientific, recreational, inspirational, spiritual, aesthetic, educational, journalistic, expressive and other benefits from the public lands, wildlife, ecosystems, and the sweeping beautiful wild landscape of the Montana Mountains region, and intend to visit and engage in these pursuits frequently in the immediate future. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.
5. Members of WLD have visited, explored, and enjoyed the area of the Thacker Pass Mine Project, including the Project site, for many years. Members of WLD birdwatch, hike, view and photograph wild plant and animal life, seek solace in the sweeping expansive high desert wild lands and vistas, and relish using the area of the Project for recreational, conservation, and aesthetic purposes. Members of WLD intend on continuing to use and value the lands at, and affected by, the Project during 2022 and in years to come. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.
6. Wildlands Defense submitted comments to the BLM regarding the Draft EIS and Final FEIS for the Project.
7. I personally use and enjoy the lands at and near the Thacker Pass Mine Project. I use the public lands of Thacker Pass and this landscape for hiking, camping, sightseeing, birdwatching, nature study, photography and other wild land pursuits, and for relaxation and respite in a natural wild land setting.



8. I took the following photos on my November 3, 2020 camping visit to the Project site on a hike enjoying scenery and examining wildlife habitat overlooking Thacker Pass. This lovely expanse of sagebrush habitat would be destroyed by the Project's development and facilities.





9. I have visited the Montana Mountains area and Thacker Pass for over 20 years, and have explored the landscape, hiked, camped, photographed wildlife, and examined sage-grouse, migratory bird, pygmy rabbit and other wildlife habitat conditions.
10. I have long worked to protect the irreplaceable sage-grouse and other wildlife habitat values in the Montana Mountains and this region, including adjacent Oregon wild land areas in the Trout Creek and Oregon Canyon mountains, which are also essential to the maintenance and survival of this sage-grouse population. The Montana Mountains have long been known as essential habitat for both pygmy rabbits and sage-grouse. I have a keen professional interest in preservation of these species, including writing a petition seeking ESA listing of the pygmy rabbit.
11. I vividly recall the experience of visiting the Montana Mountains with a conservation intern over 15 years ago. We had camped to the south, drove up through Kings River Valley and turned east over Thacker Pass. As we came up over the pass, the sagebrush



and rugged rocky outcroppings were bathed in glowing morning light. We stopped and hiked above the Pass, enjoying the gorgeous view of the landscape and distant mountain ranges.

12. I have participated in Winnemucca BLM site visit tours in the Montana Mountains that I had requested the agency conduct for better public understanding of projects, and so I could be able to provide informed comments on the agency proposals. One site visit with BLM was to understand proposed fuel break and other vegetation manipulation proposals that would fragment sagebrush habitat at Thacker Pass and surrounding areas. Another visit concerned building new fencing that was claimed to be mitigation for impacts of a major gas pipeline that had cut across portions of the Quinn River watershed to the south, and had impacted sage-grouse and other wildlife habitats across much of northern Nevada.
13. I have repeatedly visited the Thacker Pass area to camp, hike, sightsee, look for and enjoy wildlife like sage-grouse and pygmy rabbit and to observe the conditions of their habitat, and to photograph sweeping sagebrush vistas and the area's native plant communities. In fall 2020, I camped within the sagebrush communities that will be obliterated by the Project. On that trip, I photographed the landscape and scenery and wildlife habitat conditions, including areas of habitat degradation in the Montana Mountains. I also observed water flows in spring and meadow areas of the Montana Mountains.
14. BLM's approval of the Project will cause great and irreparable harm to a very significant block of still-undeveloped wild lands in the northern Great Basin. This area is critical to the survival of sage-grouse in this Nevada-Oregon landscape that is still recovering from massive wildfires. Many decades are required to recover the sagebrush structural cover and complexity required by sensitive sagebrush wildlife.
15. The bulldozing, dynamiting, excavation and other activity associated with development of a mega-mine at Thacker Pass will wipe out and/or woefully fragment and disturb large areas of sagebrush habitat across thousands of acres crucial to sage-grouse and used for

nesting by several BLM sensitive migratory bird species like Brewer's sparrow, sage sparrow, sage thrasher and loggerhead shrike. The Thacker site contains some of the only remaining lower elevation winter habitat for sage-grouse and other wildlife species in the Montana Mountains. In hard winters, such sagebrush is crucial for wildlife survival. In addition, wildfires, and subsequent poor post-fire rehab success and lack of recovery of native grasses, forbs and shrubs, combined with Winnemucca BLM's past sagebrush manipulation treatments, have resulted in significant sagebrush losses and a serious sagebrush void at lower elevations.

16. The Thacker Pass Project will also generate a massive noise and human activity disturbance and annoyance footprint that will extend many miles outward from the mine site itself. There will be loud noises 24 hours a day. There will be sudden and startling booms from dynamiting the ancient caldera. There will be significant visual intrusions, ranging from round the clock equipment movement, including with lights at night, to metallic surfaces causing glaring reflections. There will be large volumes of loud motorized traffic accessing the site. All of this combined will deal a major disturbance blow to the region's wildlife – disrupting wildlife behavior, causing nest abandonment, displacing animals to sub-optimal habitats, and in some instances causing outright mortality. The mine's lighting will pierce the dark night skies of this remote region distant from population centers.
17. There will also be various forms of air pollution including dust and water pollution, and this may contaminate wildlife food and water. It will also draw down and deplete the aquifer in an area where water flows on public lands springs and small streams are already under serious stress from livestock grazing impacts and water developments, and existing levels of depletion combined with climate stress.
18. Thus, this Project will drastically intrude on, and destroy sensitive species habitats and populations, and this site's sweeping visual settings, wild land beauty and serenity. Development of this Project would seriously harm my interests in wildlife conservation

and will result in loss of wildlife, scenery, cultural sites and many other essential values of public lands that I seek to observe, photograph, study and appreciate on my hiking and camping trips to public lands and to the Montana Mountains.

19. I am fearful of the environmental consequences of the large-scale loss and immense disturbance to soils, microbiotic crusts, aquifers, surface expression of perennial water flow, native vegetation communities, wildlife habitats and populations, special status species habitats, cultural resources and other important values. Thus, BLM's approval of the Project harms my own and WLD's interests in protection of native biodiversity, and preservation of wildlife habitats and viable sensitive species populations, in this wild landscape and on Nevada's public lands. The mine's lighting will pierce the dark night skies of this remote region distant from population centers. The project's huge scar and lighting will be visible for long distances.
20. I plan to return to Thacker Pass by summer or fall 2022, and in the coming years, and will be deeply saddened if this beautiful biodiverse scenic area is wantonly destroyed by this Project.
21. I have recently returned to the Thacker Pass project site on multiple visits. During these visits, I observed ecological conditions and wildlife present on the site, including migratory birds species that are BLM sensitive species or species of concern (long-billed curlew, (flock and dispersed pairs), sage thrasher, courtship flight display, and singing sagebrush sparrow and Brewer's sparrow). I observed all these species within the Thacker Pass project area in spring 2021. I have also observed sage-grouse strutting on a very important lek (Montana #10 lek) within a mile of the project site. I have also visited considerable areas of surrounding wildlife habitats in the Montana Mountains and contiguous Trout Creek Mountains in Oregon. I also visited the location there where the BLM, without any public comment or process, has authorized multi-year lithium mining exploration just across the Oregon border (the Jindalee Project) with new destruction of

sagebrush vegetation amid sage-grouse Priority habitat, with additional exploration activity planned this year.

22. Throughout my more recent visits within the Thacker Pass project area, I have also scanned the ground surface for lithic cultural material visible on the ground surface. I can say with assurance that there is a stunning amount of worked lithic material found at Thacker Pass, and that would be disturbed or destroyed if this mine were to be constructed. I am very concerned about scale and scope of any disturbance or excavation of this material that may take place imminently.
23. Riparian areas home to tiny populations of Lahontan cutthroat trout and other rare biota, and the waters of the springs and seeps will suffer loss or damage due to the Project's groundwater pumping. I have enjoyed refreshment, picnicking, relaxation, and aesthetic enjoyment from these waters and lands.
24. My recreation, aesthetic, conservation, spiritual and other interests and experiences will be severely and adversely affected if the Project is allowed to be constructed, developed and operated. These uses and interests will be irreparably and immediately harmed by the commencement of construction at the site, as irreplaceable sagebrush habitats will be wiped out.
25. The initial ground disturbing activities and operations, proposed to commence this year would significantly, immediately, and irreparably impair my uses of the site and the values in these public lands that I so greatly value. For example, any ground disturbance, including any vegetation removal, excavation or digging on public lands at the site, immediately and adversely affects my uses of the site and the environmental resources at the site. It is impossible to enjoy the natural plants, wildlife, scenery and solitude of the site when clearcutting vegetation, excavations and digging are occurring at the site.
26. Further, BLM's failure to comply with the public information and review requirements of NEPA regarding the immediate plans for excavations and ground disturbance further injures my rights and interests.

27. In addition to the immediate ground disturbance this year, the approved construction activities that would occur in the coming year, let alone the actual open pit mining and waste disposal and gangue piles, will permanently degrade the environment and permanently and irreparably injure my uses of these lands, and the lands and waters themselves. For example, the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my above-described uses, and where I **had** been observing sensitive wildlife last spring.
28. My uses are totally incompatible with the uses of the public lands at the site approved by the BLM in the Record of Decision (ROD), including the immediate ground disturbance, ground clearance, road building, and Project construction.
29. I intend on visiting and using the lands, waters and wildlife habitats at and near the proposed Project to continue my above noted uses. More specifically, I intend on returning to the Project site this summer or fall, as well as in the coming year as I have done in the past.
30. The only way my to protect my interests and uses of the Project site and other public lands and waters affected by the Project, and the similar interests and uses of members of WLD, from irreparable injury is to vacate BLM's approvals of the Project and stop Lithium Nevada Corp. (LNC) and BLM from conducting any activities at the Project site and its environs.
31. The failure of BLM to prepare an adequate Environmental Impact Statement (EIS) and to fully involve the public, including myself and WLD's members, in the agency's decision-making, adversely affects my and WLD's members' ability to participate in the NEPA, FLPMA, and other public review processes.
32. As detailed in the attached Motion for Summary Judgment, BLM failed to adequately involve the public in the agency's review of the Project's impacts to wildlife, environmental, and other issues, impacts, and alternatives – depriving me and other


1 members of WLD of our rights to fully participate in the public process under NEPA and  
2 federal law.

3 33. Similarly, the severe drawdown of local ground waters caused by the Project's  
4 dewatering will cause the loss and degradation of these waters. This loss and degradation  
5 injures my aesthetic and conservation interests in ensuring that water be protected from  
6 mining, and that native aquatic and terrestrial species dependent on these scarce waters  
7 can be preserved.

8 34. As approved by BLM, the Project is not required to protect against these water quality  
9 and quantity impacts. Instead, BLM only required a general "wait-and-see" approach to  
10 mitigate against these impacts. This essentially allows the impacts to occur first, with  
11 potential mitigation to occur only later. Such a failure to protect against these impacts  
12 injures my interests in ensuring against degradation and loss of water in the area affected  
13 by the Project and drawdown.  
14

15 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
16 correct to the best of my personal knowledge, information, and belief.  
17

18 Executed this 1<sup>st</sup> day of April, 2022, at Boise, Idaho.  
19

20 

21 /s/ Katie Fite

22 Katie Fite  
23  
24  
25  
26  
27  
28



## **EXHIBIT D**

To

### **ENVIRONMENTAL PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

In

Bartell Ranch LLC, et al. v. McCullough

Case No. 3 :21-cv-80-MMD-CLB

and

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No. 3:21-cv-0103-MMD-CLB

### **DECLARATION OF KEVIN EMMERICH**

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Attorneys for Great Basin Resource Watch, Basin and Range Watch, and Wildlands Defense

Talasi B. Brooks (ISB#9712), *Pro Hac Vice*  
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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                              |   |                              |
|------------------------------|---|------------------------------|
| BARTELL RANCH LLC, et al.,   | ) | Case No.: 3:21-cv-80-MMD-CLB |
|                              | ) | <b>(LEAD CASE)</b>           |
| Plaintiffs,                  | ) |                              |
| v.                           | ) | DECLARATION OF               |
|                              | ) | KEVIN EMMERICH               |
| ESTER M. MCCULLOUGH, et al., | ) | IN SUPPORT OF                |
|                              | ) | ENVIRONMENTAL PLAINTIFFS’    |
|                              | ) | MOTION FOR SUMMARY           |
| Defendants,                  | ) | JUDGMENT                     |
| and                          | ) |                              |
|                              | ) |                              |
| LITHIUM NEVADA CORPORATION,  | ) |                              |
|                              | ) |                              |
| Intervenor-Defendant.        | ) |                              |

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| WESTERN WATERSHEDS PROJECT, et al., | ) | Case No.: 3:21-cv-103-MMD-CLB |
|                                     | ) | (CONSOLIDATED CASE)           |
| Plaintiffs,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| RENO SPARKS INDIAN COLONY, et al.,  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| BURNS PAIUTE TRIBE                  | ) |                               |
|                                     | ) |                               |
| Intervenor-Plaintiff,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) |                               |
|                                     | ) |                               |
| UNITED STATES DEPARTMENT OF THE     | ) |                               |
| INTERIOR, et al.,                   | ) |                               |
|                                     | ) |                               |
| Defendants,                         | ) |                               |
|                                     | ) |                               |
| and                                 | ) |                               |
|                                     | ) |                               |
| LITHIUM NEVADA CORPORATION,         | ) |                               |
|                                     | ) |                               |
| Intervenor-Defendant.               | ) |                               |

I, Kevin Emmerich, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Beatty, Nevada. I am 59 years old and competent to testify.
2. I am a member of Basin and Range Watch (BRW), plaintiff in this case. I am also the Director of BRW. BRW submitted extensive comments to BLM on the Draft and Final Environmental Impact Statements (EISs) for the Thacker Pass Project.
3. Plaintiff BRW is a non-profit organization working to conserve the deserts of Nevada and California and to educate the public about the diversity of life, cultures, and history of the desert, as well as sustainable local renewable energy alternatives. One of BRW's main goals is to identify the problems of large-scale mineral and energy extraction. We work to find solutions

that will preserve our natural ecosystems, public lands, open spaces, and quality of life for local communities. Members of BRW hike, view and photograph wild plant and animal life, and generally enjoy using the area at the Project site for recreational, historical, conservation, and aesthetic purposes. Members of BRW intend on continuing to use and value the lands at, and affected by, the Project during 2022 and in future years. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.

4. I use and enjoy the public lands at and near the Thacker Pass Lithium Project (proposed by Lithium Nevada Corp., LNC), the BLM's review and approval of which is the subject of this case.

5. I have visited the lands at and immediately adjacent to the Project site three times in the last few years. During these visits, I hike, sightsee, watch wildlife, take photos, enjoy the solitude and views, and otherwise use and enjoy the public lands in these areas.

6. During my last visit to Thacker Pass and the Montana Mountains on December 17, 2020, I hiked on the Project site to a high, panoramic view. I took several photographs of the project site and adjacent scenic areas. I identified plants on the site and by Thacker Creek. I viewed and photographed golden eagles, California quail and mule deer.

7. These uses will be immediately and irreparably harmed if the Project is allowed to proceed. The Project will cause significant impacts to the environment, solitude, and unspoiled resources of the public lands that I use and value.

8. More specifically regarding LNC's proposed operations in the coming months and years, the proposed and authorized blasting, land clearing and excavation, drilling, waste dumping, vegetation removal, road work, utility corridor instillation/construction, noise and light pollution, truck traffic, and other activities represent a severe and immediate intrusion into the unspoiled resources of the area that I use and value.

9. All of these impacts will cause irreparable damage to the fragile high desert environment at the site, and irreparable damage to my uses of the area and to the irreplaceable environmental and cultural resources and values at and around the site. If work is allowed to begin as approved

by BLM, this beautiful landscape will be ruined.

10. It will be impossible to enjoy the scenery, plants, wildlife, and solitude of the site when the Project begins.

11. Further, BLM's failure to comply with the public information and review requirements of NEPA regarding the Project and its impacts further injures my rights and interests.

12. The approved construction activities that would occur in the coming year, as well as future operations, will permanently degrade the environment and permanently and irreparably injure my uses of these lands, and the lands and waters themselves. Just the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my above-described uses.

13. BLM has authorized LNC to severely degrade, and indeed eliminate substantial amounts of water from this area – the lifeblood of this high desert region. Even though the dewatering will not occur in the coming few months, it will result in severe and irreparable harm to wildlife, including the greater sage-grouse, amphibians, springsnails and other imperiled species. The loss of water, and predicted pollution of the groundwater caused by the mine pit greatly troubles me and severely harms my emotional and environmental interests in water.

14. All of these activities are totally incompatible with my uses of these public lands and will severely and irreparably damage, if not eliminate, my ability to use these public lands for aesthetic and emotional enjoyment, peace and solitude, hiking, viewing wildlife and scenery, and appreciating the invaluable environmental values of the Project site and the nearby areas that will be adversely impacted by LNC's intended operations – let alone the fact that these activities will turn a beautiful area of northern Nevada into an industrial mine zone for the rest of my life and beyond.

15. As I have done in recent years (including 2020), during this Summer, Fall and into 2023 and beyond, I intend to continue to visit and use the lands at the Project site, and those adjacent public lands and waters that will also be irreparably harmed by the Project, to continue my above noted uses.

16. The only way to protect my interests and uses of the Project site and other public lands and waters affected by the Project, and the similar interests and uses of members of BRW from irreparable injury is for this Court to vacate the BLM's approval of the Project thus enjoining the Project's severe and irreparable impacts.

17. In addition to these immediate, substantive, and irreparable harms to the environment and my uses of the affected lands, the BLM's failure to comply with the public notice, comment, and review requirements of NEPA, has significantly harmed my ability, and the ability of BRW and its members, to fully and adequately participate in the public participation process mandated by these laws. The BLM's approval of the Project, without full compliance with NEPA, irreparably damages my rights to participate in the public process under these laws.

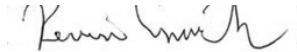
18. In addition to the above noted uses and injuries, I am also concerned with the Project's adverse impacts to water quality and quantity. The EIS predicts that the water in the mine pits and/or in ground water will be degraded and would violate water quality standards. This degradation and violation of protective standards, even though the groundwater impacts would not occur until mining started, injures my aesthetic and conservation interests in ensuring that water be protected from mining.

19. Similarly, the severe drawdown of local ground waters caused by the Project's dewatering will cause the loss and degradation of these waters. This loss and degradation injures my aesthetic and conservation interests in ensuring that water be protected from mining.

20. As approved by BLM, the Project is not required to protect against these quality and quantity impacts and allows the impacts to occur first, with potential mitigation to occur only later. Such a failure to protect against these impacts injures my interests in ensuring against degradation and loss of water in the area affected by the Project and drawdown.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed this 21<sup>st</sup> day of March, 2022, at Beatty, Nevada.

A handwritten signature in black ink, appearing to read "Kevin Emmerich". The signature is written in a cursive, flowing style.

Kevin Emmerich

# EXHIBIT 26

To

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No.: 3:21-cv-0103-MMD-CLB

Declaration of John Hadder (GBRW)



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 tbrooks@westernwatersheds.org

Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No.: 3:21-cv-0103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                                |
| BASIN AND RANGE WATCH; and      | ) |                                |
| WILDLANDS DEFENSE,              | ) | DECLARATION OF                 |
|                                 | ) | JOHN HADDER in SUPPORT         |
| Plaintiffs,                     | ) | OF PLAINTIFFS' MOTION FOR      |
| vs.                             | ) | PRELIMINARY INJUNCTION         |
|                                 | ) |                                |
| UNITED STATES DEPARTMENT OF THE | ) |                                |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                                |
| LAND MANAGEMENT; and ESTER M.   | ) |                                |
| McCULLOUGH, District Manager,   | ) |                                |
| BLM's Winnemucca Office,        | ) |                                |
|                                 | ) |                                |
| Defendants.                     | ) |                                |

I, John Hadder, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Reno, Nevada. I am 60 years old and competent to testify.
2. I am a member of Great Basin Resource Watch (GBRW), plaintiff in this case. I am also the Executive Director of GBRW.
3. Plaintiff Great Basin Resource Watch (GBRW) is a nonprofit, 501(c)(3), organization based in Reno, Nevada that is concerned with protecting the Great Basin's land, air, water, wildlife and communities from the adverse impacts of hardrock mining. GBRW is a coalition of ranchers, sportsmen, conservationists, scientists, and Native Americans dedicated to protecting the communities, wildlife, land, air, water and Native American resources of the Great Basin.
4. Members of GBRW have used, enjoyed, and valued the area of the Thacker Pass Mine Project, including the Project site, for many years. This also includes members that live near Thacker Pass. Members of GBRW hike, view and photograph wild plant and animal life, appreciate and value the cultural and historical resources at the site, and generally enjoy using the area of the Project for recreational, cultural, historical, conservation, and aesthetic purposes. Members of GBRW intend on continuing to use and value the lands at, and affected by, the Project during 2021 and in future years. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.
5. GBRW submitted comments to the BLM during the scoping phase and regarding the Draft EIS and Final FEIS for the Project.
6. I personally use and enjoy the lands at and near the Thacker Pass Mine Project. I have visited the lands at and immediately adjacent to the Project site, including in 2020. During these visits, I hike, sightsee, watch and appreciate wildlife, enjoy the solitude and views, and otherwise use and enjoy the public lands in these areas.
7. I also use and enjoy the riparian areas and waters of the springs and seeps that will suffer loss or damage due to the Project's groundwater pumping. I have enjoyed refreshment, , relaxation, and aesthetic enjoyment from these waters and lands.

8. My recreation, aesthetic, conservation, spiritual and other interests and experiences will be severely and adversely affected if the Project is allowed to be constructed, developed and operated. These uses and interests will be irreparably and immediately harmed by the commencement of construction at the site.
9. The initial construction activities, let alone the actual open pit mining and waste disposal, will permanently degrade the environment and permanently and irreparably injure my uses of these lands. For example, the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass upon which I conduct my above-detailed uses.
10. My uses are totally incompatible with the uses of the public lands at the site approved by the BLM in the Record of Decision (ROD), including the immediate ground clearance, road building, and Project construction.
11. I intend on visiting and using the lands and waters at and near the proposed Project to continue my above noted uses. More specifically, I intend on returning to the Project site this coming Spring and Summer, including during the week of May 24, 2021, as well as later in the coming year
12. The only way my to protect my interests and uses of the Project site and other public lands and waters affected by the Project, and the similar interests and uses of members of GBRW, from irreparable injury is to issue an immediate injunction prohibiting Lithium Nevada Corp. (LNC) from conducting any activities at the Project site and its environs.
13. The failure of BLM to prepare an adequate Environmental Impact Statement (EIS) and to fully involve the public, including myself and GBRW members, in the agency's decision-making, adversely affects my and GBRW's members' ability to participate in the NEPA, FLPMA, and other public review processes.
14. As detailed in the attached Motion for Preliminary Injunction, BLM failed to adequately involve the public in the agency's review of the Project's impacts to wildlife, cultural/historical, environmental, and other issues, impacts, and alternatives – depriving

me and other members of GBRW of our rights to fully participate in the public process under NEPA and federal law.

15. The initial ground disturbing activities proposed to start this June, would significantly, immediately, and irreparably impair my uses of the site and the values in these public lands that I and other GBRW members value. Digging/excavations on public lands at the site purportedly as part of a cultural resources mitigation plan directly impacts my (and other members of GBRW) uses and values in maintaining these cultural/historical sites in their current unmolested state. It is impossible to enjoy the natural plants, wildlife, and solitude of the site when excavations and digging are occurring at the site.
16. BLM's failure to meet the public information and review requirements of NEPA regarding the immediate plans for ground disturbance further injures my rights and interests. LNC and BLM proposes to conduct excavations and other ground disturbance this summer, as discussed in a "Historic Properties Treatment Plan"(HPTP) which has never been submitted for public review. *See* FEIS at 4-85 (admitting that the HPTP was "currently in development" when the FEIS was issued). GBRW and the public were never provided even the draft HPTP before it was approved.
17. In addition to the immediate ground disturbance this summer, the approved construction activities that would occur in the coming year, let alone the actual open pit mining and waste disposal and gangue piles, will permanently degrade the environment and permanently and irreparably injure my uses of these lands, and the lands and waters themselves. For example, the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my above-described uses.
18. Such construction and operation is imminent or will certainly begin during the pendency of this lawsuit. For example, the CEO of LNC, Alexi Zawadzki, published an Op-Ed in a local paper on April 28, 2021, stating that "we are now on the cusp of construction."

<http://www.sierranevadaally.org/2021/04/28/lithium-americas-ceo-explains-the-benefits-of-the-thacker-pass-lithium-project/> (viewed May 19, 2021).

19. In addition to the above noted uses and injuries, I am also concerned with the Project's adverse impacts to water quality and quantity. The EIS predicts that the water in the mine pits and/or in ground water will be degraded and would violate water quality standards. This degradation and violation of protective standards, even though the groundwater impacts would not occur until mining started, injures my aesthetic and conservation interests in ensuring that water be protected from mining.
20. Similarly, the significant drawdown of local ground waters caused by the Project's dewatering will cause the loss and degradation of these waters. This loss and degradation injures my aesthetic and conservation interests in ensuring that water be protected from mining.
21. As approved by BLM, the Project is not required to protect against these quality and quantity impacts. Instead, BLM only required a general "wait-and-see" approach to mitigate against these impacts. This essentially allows the impacts to occur first, with potential mitigation to occur only later. Such a failure to protect against these impacts injures my interests in ensuring against degradation and loss of water in the area affected by the Project and drawdown.
22. GBRW is a small non-profit organization with very limited financial resources. If more than a nominal bond amount was required in order for us to seek a stay of the irreparable harm to Thacker Pass and our uses and enjoyment of the lands and waters that will be destroyed or significantly and adversely affected as noted above, GBRW would be unable to seek preliminary relief and thus would be unable to protect our uses and these values.
23. Accordingly, we would be unable to afford anything more than a nominal bond in support of the preliminary injunction. Posting anything more than a nominal bond would severely restrict, and potentially eliminate, GBRW's ability to pay me even part-time.

This would represent a severe hardship to our ability to continue our public interest work on behalf of Nevadans and would significantly hamstring our ability to challenge illegal government actions and decisions. This would also represent a severe personal hardship to my personal finances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed this 20<sup>th</sup> day of May, 2021, at Reno, Nevada.

A handwritten signature in black ink, reading "John Hadder". The signature is written in a cursive, flowing style with a large initial "J" and a prominent flourish at the end.

John Hadder

# Lithium Nevada Corp's CEO explains the benefits of the Thacker Pass Lithium Project

By  
Alexi Zawadzki

-  
April 28, 2021

<http://www.sierranevadaally.org/2021/04/28/lithium-americas-ceo-explains-the-benefits-of-the-thacker-pass-lithium-project/>

## Opinion

*"America must lead the critical industries that produce and deploy clean technologies."*

*"Prioritize American workers."*

*"Together, we can seize the opportunity to drive prosperity, create jobs and build the clean energy economy of tomorrow."*

These are the bold statements President Biden and his administration announced on Earth Day – April 22, 2021. Lithium Americas wholeheartedly supports these goals and is proud to be an enabler of this policy.

To support the U.S. target to reduce greenhouse gas pollution by 50 to 52 percent by 2030, America will need much more lithium than it currently produces. World demand for lithium is currently about 350,000 tons per year. However, demand for lithium is anticipated to triple over the next four years, driven in part by the global electrification of transportation, as lithium is a key element in electric vehicle batteries.

Currently, only one percent of the global lithium supply is produced in the U.S., with the majority of processing done in China. Building a domestic lithium battery supply chain will create good-paying jobs, reduce America's overall carbon footprint, and support autoworkers in building modern, efficient electric vehicles.

Energy Secretary Jennifer Granholm put it bluntly in a recent news interview (PBS Newshour, April 1, 2021):

**"We are going to manufacture the means to our energy security in this country, to our national security in this country...Even the guts to the batteries that are in the electric vehicles, they've got critical materials in them that we have in this country, but we are allowing other countries to corner the market on those materials."**

The Thacker Pass project in Nevada is uniquely positioned to play a key role in this American-made lithium supply chain solution critical to reducing greenhouse gas emissions. Thacker Pass has the potential to increase U.S. lithium supply over 10-fold to meet most, if not all, expected domestic demand.

Nevada could become a world leader in specialty lithium chemicals production, a champion in the fight to reduce America's carbon footprint and a leader in the critical industries that produce and deploy clean technologies. Thacker Pass stands to put hundreds of jobless Nevadans back to work and strengthen communities.

Clearly, the development of Thacker Pass is in the Nation's interest.

After 10 years of data collection, environmental studies, geologic exploration, technological innovation, community engagement, and an exhaustive permitting process with state and federal authorities, Thacker Pass is projected to commence construction later this year after essential permits are received.

We have listened carefully to the community and are taking additional steps to be good neighbors and a part of Humboldt County for many decades to come.

We will provide as many as 300 family-supporting jobs, creating opportunities for rural Humboldt County youth to stay and thrive in the communities where their parents and grandparents established deep roots.



We are committed to working with local partners to equip residents with the right skills to take advantage of job opportunities.

We will contribute taxes and our local procurement policies will bring additional economic benefits to the surrounding communities.

We are focused on exceeding all the relevant state and federal safety and environmental laws we are obligated to comply with, not just meeting them.

We will build away from sensitive species, as purposefully designed and approved in our final Environmental Impact Statement.

We are avoiding mining in the Montana Mountains to protect its sagebrush habitat and important cultural areas, despite false claims that we are “blowing up mountains”.

The plant has been designed to use waste heat to generate carbon-free power for our operation.

We will repeatedly recirculate the water used in processing our ore to minimize our water needs.

Thacker Pass has committed to using the best available technology to limit air emissions.

The mined pit will be backfilled with sand and rock that does not contain valuable lithium metal and will be revegetated as soon as possible, instead of waiting to the end of the mine life to begin reclamation.

We will always strive to earn people’s trust and support through our actions as a responsible operator and charitable member of the community.

After a decade of talking, meeting, and planning, we are now on the cusp of construction. It is only to be expected that fellow Nevadans would want more information about our path forward. We are planning a range of upcoming engagement opportunities with the communities of Northern Nevada.

As President Biden said recently, *"This is the decade we must make decisions that will avoid the worst consequences of the climate crisis."* Together, we will help position American workers and industry to do just that.

Alexi Zawadzki is the CEO of Lithium Nevada.

## **EXHIBIT 27**

To

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

**Case No.: 3:21-cv-0103-MMD-CLB**

**Declaration of Kelly Fuller (WWP)**

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Attorney for Plaintiffs

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Jeffrey C. Parsons (CO Bar#30210), *Pro Hac Vice*  
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Attorneys for Great Basin Resource Watch, Basin and Range Watch, and Wildlands Defense

Talasi B. Brooks (ISB#9712), *Pro Hac Vice*  
Western Watersheds Project  
P.O. Box 2863  
Boise ID 83714  
(208) 336-9077  
tbrooks@westernwatersheds.org

Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No.: 3:21-cv-0103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                                |
| BASIN AND RANGE WATCH; and      | ) |                                |
| WILDLANDS DEFENSE,              | ) | DECLARATION OF                 |
|                                 | ) | KELLY FULLER IN SUPPORT        |
| Plaintiffs,                     | ) | OF PLAINTIFFS' MOTION FOR      |
| v.                              | ) | PRELIMINARY INJUNCTION         |
|                                 | ) |                                |
| UNITED STATES DEPARTMENT OF THE | ) |                                |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                                |
| LAND MANAGEMENT; and ESTER M.   | ) |                                |
| McCULLOUGH, District Manager,   | ) |                                |
| BLM's Winnemucca Office,        | ) |                                |
|                                 | ) |                                |

Defendants, )  
 )  
 and )  
 )  
 LITHIUM NEVADA CORPORATION, )  
 )  
 Intervenor-Defendant. )

I, Kelly Fuller, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.

2. I am currently employed by Western Watersheds Project (WWP) as its Energy and Mining Campaign Director. I am a member of WWP.

### **Personal and Professional Background**

3. I grew up hiking and camping in the American west, and I became aware of the many threats to its wildlife and public lands after I started going on camping trips with the conservation group Desert Survivors. Through Desert Survivors, I first began drafting public comments on actions that impacted the California desert, in the early 2000s.

4. I have been working in environmental conservation on a paid basis since 2006. Through that work, I have participated on behalf of environmental groups in NEPA environmental review processes in 28 states. As a result, I have become quite familiar with federal agency implementation of NEPA, including how long these environmental review processes typically take to unfold and what greater and lesser amounts of public participation look like.

5. Since February of 2017, I have served first as the Energy Campaign Coordinator and then as the Energy and Mining Campaign Director for Western Watersheds Project (“WWP”). In my positions here I have tracked proposed actions and I have drafted comment

1 letters and administrative appeals on all types of energy and mining projects across the American  
2 west. I most frequently comment for WWP on energy and mining in Idaho, Nevada, and  
3 Wyoming, but I have also drafted or helped to draft NEPA comments for WWP on energy and  
4 mining in seven other states.  
5

6 6. Personally and on behalf of WWP, I have strong interests in preventing  
7 irresponsible development that will harm key wildlife habitats. I enjoy camping, hiking, wildlife  
8 watching, and other professional and recreational activities on public lands in Nevada and  
9 throughout the West. In particular, I have a strong interest in conserving greater sage-grouse,  
10 golden eagles, and other birds and wildlife and their habitats. I greatly enjoy viewing birds and  
11 other wildlife when I visit the public lands and my interests are harmed when they are no longer  
12 present because their habitats have been degraded or destroyed by mining and mine-related  
13 development. I have strong interests in robust public processes surrounding mining and mine-  
14 related developments that will impact these important habitats so that the public can review and  
15 evaluate information about wildlife impacts.  
16  
17

#### 18 **WWP's Interests in Mining**

19 7. WWP is a nonprofit environmental organization with approximately 12,000  
20 members and supporters throughout the West, including in Nevada. WWP employs a  
21 Nevada/Oregon Director and has staff, members, and supporters who live in Nevada and who  
22 work, travel, recreate, and otherwise enjoy public lands in Nevada.  
23

24 8. WWP's mission is to protect and restore western watersheds and wildlife through  
25 education, public policy initiatives, and legal advocacy. WWP works to influence and improve  
26 public lands management throughout the West with a primary focus on the negative impacts of  
27 livestock grazing on 250 million acres of western public lands, including harm to ecological,  
28

1 biological, cultural, historic, archeological, scenic resources, wilderness values, roadless areas,  
2 Wilderness Study Areas and designated Wilderness.

3  
4 9. Although WWP primarily focuses its advocacy efforts on public lands grazing, it  
5 is also concerned about mining, particularly where it is slated to occur in sagebrush habitat  
6 crucial to sage-grouse and other species.

7  
8 10. WWP has a longstanding interest in preserving the sagebrush steppe ecosystem  
9 and wildlife that depend upon it, like greater sage-grouse, pronghorn, burrowing owl, pygmy  
10 rabbits, golden eagles, Lahontan cutthroat trout, bighorn sheep, and others.

11  
12 11. WWP has a longstanding interest in protecting the sage-grouse, an iconic ground-  
13 dwelling bird that depends upon the sagebrush ecosystem to survive. For almost two decades,  
14 WWP has advocated for protecting the sage-grouse from activities like grazing, oil and gas  
15 development, and mining that disturb the species and destroy its habitat.

16  
17 12. Other environmental organizations frequently draw on WWP's expertise  
18 concerning sage-grouse when projects that may impact sage-grouse are proposed. They consult  
19 with WWP when writing public comments concerning sage-grouse issues and I frequently  
20 review and contribute sage-grouse analysis to those comments when WWP is a co-signatory.

21  
22 13. Mining devastates the sagebrush steppe ecosystem, which is notoriously difficult  
23 to restore successfully. Mining's effects on sage-grouse are not well-studied, but recent research  
24 shows sage-grouse exhibit avoidance behavior and increased mortality risk in mined areas. This  
25 makes sense, since mining begins by removing sagebrush and other vegetation that sage-grouse  
26 depend upon to support their lifecycle and involves extensive human occupancy and disturbance.  
27 In addition, because sagebrush habitats are so difficult to restore, especially from extensive  
28 disturbances such as those caused by mining, sage-grouse habitat loss from mining is virtually

1 permanent, displacing sage-grouse from former habitats for generations. Because locatable  
2 mineral development is deemed incompatible with sage-grouse, BLM and the Forest Service  
3 originally proposed to withdraw certain high value sage-grouse habitats from locatable mineral  
4 entry. And expert scientists recommend excluding “priority habitats” for sage-grouse like most  
5 of Thacker Pass from mining.  
6

7 14. Through public comments, WWP can advocate to protect sensitive wildlife  
8 populations and their key habitats from proposed resource extraction such as mining, and provide  
9 oversight to ensure that the agency complies with the law. WWP can also encourage the agency  
10 to mitigate wildlife and habitat impacts to render mining exploration and development less  
11 harmful.  
12

13 15. In my experience, information gained through the public comment process can  
14 help BLM make better decisions. For example, additional mitigation measures to protect  
15 migratory birds from collision, electrocution, and death by burning were added to the QEP RZA  
16 43-33-722 oil well project in Utah after WWP commented on the project’s Environmental  
17 Assessment to the BLM.  
18

### 19 **Work with WWP on Mining**

20 16. In my professional capacity at WWP, I have participated in NEPA on at least  
21 eight mining projects in four states, including Nevada.  
22

23 17. More specifically, I was the primary author of WWP’s Scoping and Draft  
24 Environmental Impact comment for the Thacker Pass Lithium Mine. I drafted and helped others  
25 to draft the wildlife sections of the joint comment letter that was submitted to the BLM by WWP,  
26 Basin and Range Watch, and Great Basin Resource Watch during the 30-day availability period  
27 for the mine’s Final Environmental Impact Statement. I also collected many of the wildlife  
28



1 studies and other conservation documents that were submitted to the BLM with that joint  
2 comment letter, writing summaries of them that were included in the letter.

3  
4 18. Based upon my knowledge and experience, the public process for the FEIS  
5 moved very quickly for such a big project. For instance, BLM began public scoping for the  
6 Dairy Syncline phosphate mine in eastern Idaho in May 2010 and issued a Record of Decision in  
7 April 2020. In Nevada, BLM began public scoping for the Gold Rock Mine in September 2013  
8 and issued a Record of Decision in September 2018; similarly, BLM began public scoping for  
9 Phase II expansion of the Hycroft gold mine in December 2014 and issued a Record of Decision  
10 in October 2019. In contrast, BLM began public scoping for the Thacker Pass lithium mine on  
11 January 20, 2020 and signed a Record of Decision on January 15, 2021 – less than 365 days  
12 later. Furthermore, the public comment periods for the Draft Environmental Impact Statement  
13 and Final Environmental Impact Statement both took place while the COVID-19 pandemic was  
14 in full swing. At that time, the public, including tribes, was preoccupied with very serious  
15 matters of personal and community survival. Thus, the public process for the Thacker Pass  
16 lithium mine EIS was both unusually short and conducted during an unusually chaotic and  
17 difficult time for much of the public, including tribes.

18  
19  
20 19. In addition, it is my understanding that not a single tribe commented during the  
21 Thacker Pass lithium mine's NEPA process, which is unsurprising given both the unusually short  
22 public process and the severe challenges that tribes have experienced during the COVID-19  
23 pandemic. Some members of the Fort McDermitt Paiute and Shoshone Tribe have since  
24 expressed public anguish about the lack of public comment. However, strong Indigenous interest  
25 and concern about the project have been demonstrated publicly in recent months through cultural  
26 events such as prayer runs, round dances, and gatherings at the project site, as well as through  
27  
28

1 tribal members and descendants voicing their concerns in online videos, websites, a webinar, and  
2 at community meetings associated with the project's state permits.

3  
4 20. Perhaps as a result of this rushed process, the Thacker Pass lithium mine's FEIS  
5 overlooks numerous issues—including by writing off issues that WWP raised in comments. In  
6 particular, the FEIS relies on the assumption that BLM cannot direct the mine development in  
7 ways necessary to protect wildlife.

8  
9 21. I am harmed, and WWP's members and supporters are harmed, by BLM's  
10 perfunctory approach to NEPA analysis for this massive project that will destroy ecological  
11 values of these public lands virtually forever. In particular, I am harmed by BLM's decision not  
12 to assert its authority for managing the public lands by imposing constraints on the mine  
13 development to protect wildlife.

14  
15 22. In my opinion, had this project not been fast-tracked for approval before the end  
16 of the Trump Administration, the FEIS might have been higher quality and might have done a  
17 better job taking into account public input. There might have been time for the more  
18 comprehensive analysis necessary to fully understand the wildlife impacts. If BLM had been  
19 operating with a full understanding of wildlife impacts it might have decided to impose measures  
20 on the actions authorized to better protect wildlife and that would have better protected my  
21 interests and those of WWP and its members and supporters.

### 22 **WWP's Use of Thacker Pass and Harms to WWP's Use**

23  
24 23. I and other WWP staff enjoy using the Thacker Pass area for hiking, camping,  
25 photography, wildlife watching, sightseeing, stargazing, and general relaxation. I visited the area  
26 in 2018, 2020, and 2021, and plan to return later this year. It is a unique area that provides  
27  
28

1 important wildlife habitat. It contains sagebrush habitat that is highly functional for wildlife,  
2 which is increasingly rare as climate change-fueled wildfires now devastate the west each year.

3  
4 24. Thacker Pass provides excellent opportunities to watch for sage-grouse and  
5 pronghorn. It contains sage-brush nearly as tall as I am that would serve as excellent sage-  
6 grouse winter habitat and I understand that sage-grouse use has been documented throughout the  
7 area. I am aware that the area also contains two pronghorn movement corridors. Virtually the  
8 entire project area occurs within a pronghorn daily movement corridor and a pronghorn  
9 migration corridor passes through the center of the project area; the significance and implications  
10 of those facts were inadequately analyzed in the EIS.

11  
12 25. Thacker Pass is also the only easily accessible place I know where visitors have a  
13 really good chance of seeing golden eagles, a wildlife species that doesn't like being around  
14 humans. In fact, I once had to slow my car almost to a stop in Thacker Pass because a golden  
15 eagle was sitting directly on Kings River Road (Nevada State Route 293) eating something. As I  
16 slowly approached, the eagle flew off and a puff of either fur or fluffy feathers from the eagle's  
17 meal blew into the air. I am very concerned that as soon as the Thacker Pass Mine begins  
18 construction, the earthmoving equipment and big trucks that will be going to and from the mine  
19 site will not have the same ability to stop quickly and that golden eagles and other birds,  
20 including greater sage-grouse, will be killed. I know that vehicle strike risk to golden eagles is  
21 of concern to conservationists and wildlife agencies, and that HawkWatch International has been  
22 conducting transmitter studies that document that risk.

23  
24  
25 26. If the mine is built, it will harm wildlife immediately. It will directly kill animals  
26 that cannot move fast enough or far enough to get out of the way of the excavation equipment.  
27 Pre-stripping for the mine will remove all vegetation from the site, fragmenting or destroying  
28

1 habitat that wildlife rely on for survival, including some wetlands and riparian habitat. Sagebrush  
2 habitat, which takes decades or even as long as a century to re-establish if it can be restored at  
3 all, will be destroyed for generations of sage-grouse. This destruction of vegetation and human  
4 occupancy will block or severely degrade wildlife movement corridors in the area that allow  
5 connectivity between habitats to the north and the south of the Project area, producing more far-  
6 reaching wildlife impacts that have never been evaluated. Through blasting and other loud  
7 construction noises, exploration and mine development will likely cause wildlife to abandon  
8 their habitat, leks, or nests, to move farther away from the mine. And, for a species like the sage-  
9 grouse, that returns to the same leks year after year, even after they have been degraded, changes  
10 to the surrounding habitat will decrease the likelihood that they will survive or successfully  
11 reproduce.

12  
13  
14 27. Even a lesser level of disturbance, such as disturbance associated with  
15 archaeological surveys, could harm sage-grouse and other wildlife. The human presence and  
16 noise associated with these kinds of projects would certainly disturb and possibly displace  
17 wildlife—especially nesting sage-grouse, which are likely using the Project area during this  
18 season. Disturbance that causes sage-grouse to flush from their nest increases the risk of  
19 predation and decreases their chances of nest success. In addition, golden eagles are well known  
20 for their inability to tolerate much human disturbance, which has been demonstrated to result in  
21 nest loss and reduced foraging for food for themselves and their young. In the wrong location,  
22 just the presence of a human being can be enough to disturb and harm golden eagles, especially  
23 during golden eagle breeding season, which in Nevada generally runs from December through  
24 August. Moreover, any ground disturbance would increase the susceptibility of the habitats at  
25 Thacker Pass to invasions by cheatgrass and other weeds, and, if they destroy sagebrush, cause  
26  
27  
28

1 long-lasting damage. These changes would decrease the value of the habitats for wildlife and  
2 make them more likely to burn—the greatest threat to sagebrush habitats in the Great Basin.

3  
4 28. In the longer term, the mine is expected to contaminate some water sources and  
5 groundwater that wildlife live in, need to drink, or that sustain vegetation that wildlife use.

6 According to the FEIS, it is expected to reduce stream baseflow at Crawley, Thacker, and Pole  
7 Creeks and could cause water reductions at some springs, all of which would reduce how much  
8 water is available to wildlife and could result in springs completely drying up. It will involve  
9 construction of structures and overhead powerlines that increase predation on other wildlife by  
10 providing new perches. It will also involve construction of reclaim and emergency stormwater  
11 management ponds that are expected to be dry at times, but will be breeding grounds for  
12 mosquitos and a vector for West Nile Virus, to which sage grouse and other birds are susceptible,  
13 at those times when the ponds have water in them. As a result of all of these factors, constructing  
14 and operating the Thacker Pass mine will greatly diminish, if not eliminate, the ability of  
15 members of the public, like myself and other WWP staff, to view wildlife there.

16  
17  
18 29. Thacker Pass is also important to me because is an excellent place for me to camp  
19 for the night when I am traveling from my home in rural Oregon to other locations in Nevada. It  
20 is a solid day's drive and is paved roads all the way until about the last mile. It has some  
21 reasonably good dirt roads with spots suitable for camping. Because it is some miles removed  
22 from towns and U.S. Highway 95, it feels safe to camp alone there, which is always a concern  
23 for me as a woman. Once construction of the Thacker Pass Mine starts, I will no longer feel safe  
24 camping alone there. There is research in the U.S. and Canada that shows increases in crime and  
25 violence against women when outside workers come into rural areas to construct resource  
26 extraction projects such as mines and oilfields.  
27  
28

1           30. In addition to providing camping, hiking, photography, relaxation, sightseeing,  
2 and wildlife watching opportunities, Thacker Pass is a great place for star gazing. On nights that  
3 aren't dominated by moonlight, the skies are very dark, and the sky is full of stars. Especially on  
4 a cold, dark night, the stars look so big and near that it seems like you could almost touch them.  
5 Mines have a lot of night lighting, and the Thacker Pass Mine's lighting will dim the spectacular  
6 night sky. Even if there are efforts to shield the mine's lighting, there will still be light bleed-  
7 through and reductions in the beauty of the night sky.  
8

9  
10           31. I intend to return to Thacker Pass later this year to stargaze and look for sage-  
11 grouse, pronghorn, golden eagles, and other wildlife. I would also like to explore the rocky  
12 outcrops in the northwestern part of Thacker Pass and the local springs on Bureau of Land  
13 Management lands that are home to the rare Kings River pyrg springsnail. If I were to return and  
14 found that construction had started, I would be devastated.  
15

16           32. I am especially concerned about what will happen to the big sagebrush habitat in  
17 the western part of Thacker Pass, which would be obliterated by the mine pit and other mine  
18 features. That area has really good habitat for sage-grouse and other wildlife. Because I know  
19 how rare high-quality habitats like these are becoming, I would find destruction of those habitats  
20 especially upsetting. The photo below shows how big some of the sagebrush in the western part  
21 of Thacker Pass is. I am the person in the photo and I am 5'9".  
22  
23  
24  
25  
26  
27  
28



33. My and WWP's interests will be irreparably harmed if the mine is allowed to proceed. The mine will immediately and irreparably impact the area's scenic, ecological, and wildlife values by stripping away, or otherwise disturbing, native vegetation. Any recreational value of this industrialized landscape will be lost for the foreseeable future. Wildlife will immediately be destroyed or displaced. And, because impacts to wildlife were not fully considered in the FEIS supporting the Project, the extent and severity of these impacts will likely not be fully understood until after they have occurred. For instance, mine development is projected to cause impacts to the Montana-10 sage-grouse lek less than 1 mile from the Project area boundary that could harm sage-grouse at the population level, but the FEIS makes no attempt to analyze or project what those impacts might be. The mine's impact on wildlife values is likely to extend far beyond the Project area and may impact wildlife-related recreational values

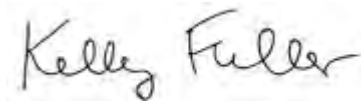


1 on a regional scale. To allow the Project move forward based upon this rushed a flawed EIS will  
2 cause me, and WWP, irreparable harm.

3  
4 34. If the Court were to enjoin the Project until it is able to hear the merits of WWP's  
5 case challenging the mine, it would protect my interests.

6 35. My interests would also be protected if the Court required BLM to undertake a  
7 new NEPA process with full public participation to consider wildlife impacts and thoroughly  
8 evaluate this massive project. In particular, if this Court ordered BLM to impose restrictions on  
9 the mine development to protect wildlife, and to undertake an analysis that fully examined  
10 wildlife impacts, it would protect my interests. However, simply vacating the FEIS and sending  
11 BLM back to the drawing board to do a thorough NEPA analysis that accurately reflects its legal  
12 responsibilities for land management would also protect my interests.  
13

14 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
15 15th day of May, 2021, in Depoe Bay, Oregon.  
16

17  
18   
19

20 Kelly Fuller  
21  
22  
23  
24  
25  
26  
27  
28



## EXHIBIT 28

To

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No.: 3:21-cv-0103-MMD-CLB

Declaration of Kevin Emmerich (BRW)

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Attorney for Western Watersheds Project

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No.: 3:21-cv-0103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                                |
| BASIN AND RANGE WATCH; and      | ) |                                |
| WILDLANDS DEFENSE,              | ) | DECLARATION OF                 |
|                                 | ) | KEVIN EMMERICH in SUPPORT      |
| Plaintiffs,                     | ) | OF PLAINTIFFS' MOTION FOR      |
| vs.                             | ) | PRELIMINARY INJUNCTION         |
|                                 | ) |                                |
| UNITED STATES DEPARTMENT OF THE | ) |                                |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                                |
| LAND MANAGEMENT; and ESTER M.   | ) |                                |
| McCULLOUGH, District Manager,   | ) |                                |
| BLM's Winnemucca Office,        | ) |                                |
|                                 | ) |                                |
| Defendants.                     | ) |                                |

I, Kevin Emmerich, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Beatty, Nevada. I am 58 years old and competent to testify.
2. I am a member of Basin and Range Watch (BRW), plaintiff in this case. I am also the Director of BRW. BRW submitted extensive comments to BLM on the Draft and Final Environmental Impact Statements (EISs) for the Thacker Pass Project.
3. Plaintiff BRW is a non-profit organization working to conserve the deserts of Nevada and California and to educate the public about the diversity of life, cultures, and history of the desert, as well as sustainable local renewable energy alternatives. One of BRW's main goals is to identify the problems of large-scale mineral and energy extraction. We work to find solutions that will preserve our natural ecosystems, public lands, open spaces, and quality of life for local communities. Members of BRW hike, view and photograph wild plant and animal life, and generally enjoy using the area at the Project site for recreational, historical, conservation, and aesthetic purposes. Members of BRW intend on continuing to use and value the lands at, and affected by, the Project during 2021 and in future years. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.
4. I use and enjoy the public lands at and near the Thacker Pass Lithium Project (proposed by Lithium Nevada Corp., LNC), the BLM's review and approval of which is the subject of this case.
5. I have visited the lands at and immediately adjacent to the Project site three times in the last few years. During these visits, I hike, sightsee, watch wildlife, take photos, enjoy the solitude and views, and otherwise use and enjoy the public lands in these areas.
6. During my last visit to Thacker Pass and the Montana Mountains on December 17, 2020, I hiked on the Project site to a high, panoramic view. I took several photographs of the project site and adjacent scenic areas. I identified plants on the site and by Thacker Creek. I viewed and photographed golden eagles, California quail and mule deer.

7. These uses will be immediately and irreparably harmed if the Project is allowed to proceed. The Project will cause significant impacts to the environment, solitude, and unspoiled resources of the public lands that I use and value.
8. More specifically regarding LNC's proposed operations in the coming months and year, the proposed and authorized land clearing and excavation, drilling, land clearing, vegetation removal, road work, utility corridor instillation/construction, noise and light pollution, truck traffic, and other activities represent a severe and immediate intrusion into the unspoiled resources of the area that I use and value.
9. All of these impacts will cause irreparable damage to the fragile high desert environment at the site, and irreparable damage to my uses of the area and to the irreplaceable environmental and cultural resources and values at and around the site. If work is allowed to begin as approved by BLM, this beautiful landscape will be ruined.
10. Because Plaintiffs seek a preliminary injunction to stop all aspects of the Project pending the federal court's ruling on the merits, the damage inflicted by the Project this year is just the beginning of the continuing irreparable harm that will be caused by LNC – damage this Motion seeks to prevent.
11. For example, BLM has authorized LNC to conduct ground disturbing activities and operations beginning June 23, 2021. This would significantly, immediately, and irreparably impair my uses of the site and the associated public resources. Excavation or digging at the site immediately and adversely affects my uses and the environmental resources at the site. It is impossible to enjoy the scenery, plants, wildlife, and solitude of the site when excavations and digging are occurring at the site.
12. Further, BLM's failure to comply with the public information and review requirements of NEPA regarding the immediate plans for excavations and ground disturbance further injures my rights and interests. LNC and BLM proposes to conduct excavations and other ground disturbance this summer, as discussed in a "Historic Properties Treatment Plan"(HPTP) which has never been submitted for public review. See FEIS at 4-85 (admitting that the HPTP was "currently in development" when the FEIS was issued).

None of the public, or members of BRW, were ever shown the HPTP, in even draft form, before it was approved.

13. In addition to the immediate ground disturbance this Summer and Fall, the approved construction activities that would occur in the coming year, as well as future operations, will permanently degrade the environment and permanently and irreparably injure my uses of these lands, and the lands and waters themselves. Just the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my above-described uses.
14. BLM has authorized LNC to severely degrade, and indeed eliminate substantial amounts of water from this area – the lifeblood of this high desert region. Even though the dewatering will not occur in the coming few months, it will result in severe and irreparable harm to wildlife, including the greater sage-grouse, amphibians, springsnails and other imperiled species. The loss of water, and predicted pollution of the groundwater caused by the mine pit greatly troubles me and severely harms my emotional and environmental interests in water.
15. All of these activities, starting immediately and into this Spring and Summer and beyond, are totally incompatible with my uses of these public lands and will severely and irreparably damage, if not eliminate, my ability to use these public lands for aesthetic and emotional enjoyment, peace and solitude, hiking, viewing wildlife and scenery, and appreciating the invaluable environmental values of the Project site and the nearby areas that will be adversely impacted by LNC's intended operations – let alone the fact that these activities will turn a beautiful area of northern Nevada into an industrial mine zone for the rest of my life and beyond.
16. As I have done in recent years (including 2020), during this Spring, Summer, Fall and into 2022 and beyond, I intend to continue to visit and use the lands at the Project site, and those adjacent public lands and waters that will also be irreparably harmed by the Project, to continue my above noted uses.

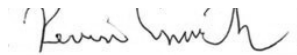
17. The only way to protect my interests and uses of the Project site and other public lands and waters affected by the Project, and the similar interests and uses of members of BRW from irreparable injury is for this Court to issue an immediate injunction to stop this Project.
18. In addition to these immediate, substantive, and irreparable harms to the environment and my uses of the affected lands, the BLM's failure to comply with the public notice, comment, and review requirements of NEPA, has significantly harmed my ability, and the ability of BRW and its members, to fully and adequately participate in the public participation process mandated by these laws. The BLM's approval of the Project, without full compliance with NEPA, irreparably damages my rights to participate in the public process under these laws.
19. In addition to the above noted uses and injuries, I am also concerned with the Project's adverse impacts to water quality and quantity. The EIS predicts that the water in the mine pits and/or in ground water will be degraded and would violate water quality standards. This degradation and violation of protective standards, even though the groundwater impacts would not occur until mining started, injures my aesthetic and conservation interests in ensuring that water be protected from mining.
20. Similarly, the severe drawdown of local ground waters caused by the Project's dewatering will cause the loss and degradation of these waters. This loss and degradation injures my aesthetic and conservation interests in ensuring that water be protected from mining.
21. As approved by BLM, the Project is not required to protect against these quality and quantity impacts and allows the impacts to occur first, with potential mitigation to occur only later. Such a failure to protect against these impacts injures my interests in ensuring against degradation and loss of water in the area affected by the Project and drawdown.
22. I am the Director of the BRW. We are a small non-profit organization, with a small budget. All of our work is completed by volunteers.
23. BRW is a small non-profit organization with very limited financial resources. If more

than a nominal bond amount was required in order for us to seek a stay of the irreparable harm to Thacker Pass and our uses and enjoyment of the lands and waters that will be destroyed or significantly and adversely affected as noted above, BRW would be unable to seek preliminary relief and thus would be unable to protect our uses and these values.

24. Accordingly, we would be unable to afford anything more than a nominal bond in support of the preliminary injunction. Posting anything more than a nominal bond would severely restrict, and potentially eliminate, BRW's ability to reimburse me for expenses. This would represent a severe hardship to our ability to continue our public interest work on behalf of Nevadans and other supporters and would significantly hamstring our ability to challenge illegal government actions and decisions. This would also represent a severe personal hardship to my personal finances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed this 20<sup>th</sup> May, 2021, at Beatty, Nevada.



Kevin Emmerich

## **EXHIBIT 29**

To

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No.: 3:21-cv-0103-MMD-CLB

Declaration of Katie Fite (WD)



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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No.: 3:21-cv-0103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                                |
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| WILDLANDS DEFENSE,              | ) | DECLARATION OF                 |
|                                 | ) | KATIE FITE in SUPPORT          |
| Plaintiffs,                     | ) | OF PLAINTIFFS' MOTION FOR      |
| vs.                             | ) | PRELIMINARY INJUNCTION         |
|                                 | ) |                                |
| UNITED STATES DEPARTMENT OF THE | ) |                                |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                                |
| LAND MANAGEMENT; and ESTER M.   | ) |                                |
| McCULLOUGH, District Manager,   | ) |                                |
| BLM's Winnemucca Office,        | ) |                                |
|                                 | ) |                                |
| Defendants.                     | ) |                                |

I, Katie Fite, make this declaration based upon my personal knowledge and belief and state:

1. I reside in Boise, Idaho. I am 66 years old and competent to testify.
2. I am a member of WildLands Defense (WLD) plaintiff in this case. I am also the Public Lands Director of WLD.
3. Plaintiff WildLands Defense (WLD) is a nonprofit, 501(c)(3), organization based in Hailey, Idaho that is concerned with preserving biodiversity and wildlife habitats and populations on public wild lands in the West, especially in Nevada, Idaho and Oregon. WLD advances its mission by means of landscape and wildlife monitoring, by media outreach, and with legal and administrative advocacy. WLD has members in several western states, including members that regularly focus on public land and wildlife preservation in the high desert ecosystem of the scenic and remote Nevada and Oregon border land region. As an organization and on behalf of its members, WLD has a particular interest in protection of biodiversity and conservation of rare species like pygmy rabbit, golden eagle, greater sage-grouse and Lahontan cutthroat trout, and in sustaining migratory birds. WLD members work and/or recreate throughout this area generally, and in the Project Area particularly.
4. Members derive scientific, recreational, inspirational, spiritual, aesthetic, educational, journalistic, expressive and other benefits from the public lands, wildlife, ecosystems, and the sweeping beautiful wild landscape of the Montana Mountains region, and intend to visit and engage in these pursuits frequently in the immediate future. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.
5. Members of WLD have visited, explored, and enjoyed the area of the Thacker Pass Mine Project, including the Project site, for many years. Members of WLD birdwatch, hike, view and photograph wild plant and animal life, seek solace in the sweeping expansive high desert wild lands and vistas, and relish using the area of the Project for recreational, conservation, and aesthetic purposes. Members of WLD intend on continuing to use and

value the lands at, and affected by, the Project during 2021 and in years to come. These uses will be immediately, irreparably, and significantly harmed by the Project and related operations.

6. Wildlands Defense submitted comments to the BLM regarding the Draft EIS and Final FEIS for the Project.
7. I personally use and enjoy the lands at and near the Thacker Pass Mine Project. I use the public lands of Thacker Pass and this landscape for hiking, camping, sightseeing, birdwatching, nature study, photography and other wild land pursuits, and for relaxation and respite in a natural wild land setting.
8. I took the following photos on my November 3, 2020 camping visit to the Project site on a hike enjoying scenery and examining wildlife habitat overlooking Thacker Pass. This lovely expanse of sagebrush habitat would be destroyed by the Lithium mine development and facilities.







9. I have visited the Montana Mountains area and Thacker Pass for over 20 years, and have explored the landscape, hiked, camped, photographed wildlife, and examined sage-grouse, migratory bird, pygmy rabbit and other wildlife habitat conditions.
10. I have long worked to protect the irreplaceable sage-grouse and other wildlife habitat values in the Montana Mountains and this region, including adjacent Oregon wild land areas in the Trout Creek and Oregon Canyon mountains, which are also essential to the maintenance and survival of this sage-grouse population. The Montana Mountains have long been known as essential habitat for both pygmy rabbits and sage-grouse. I have a keen professional interest in preservation of these species, including writing a petition seeking ESA listing of the pygmy rabbit.
11. I vividly recall the experience of visiting the Montana Mountains with a conservation intern over 15 years ago. We had camped to the south, drove up through Kings River

Valley and turned east over Thacker Pass. As we came up over the pass, the sagebrush and rugged rocky outcroppings were bathed in glowing morning light. We stopped and hiked above the Pass, enjoying the gorgeous view of the landscape and distant mountain ranges.

12. I have participated in Winnemucca BLM site visit tours in the Montana Mountains that I had requested the agency conduct for better public understanding of projects, and so I could be able to provide informed comments on the agency proposals. One site visit with BLM was to understand proposed fuelbreak and other vegetation manipulation proposals that would fragment sagebrush habitat at Thacker Pass and surrounding areas. Another visit concerned building new fencing that was claimed to be mitigation for impacts of a major gas pipeline that had cut across portions of the Quinn River watershed to the south, and had impacted sage-grouse and other wildlife habitats across much of northern Nevada.
13. I have repeatedly visited the Thacker Pass area to camp, hike, sightsee, look for and enjoy wildlife like sage-grouse and pygmy rabbit and to observe the conditions of their habitat, and to photograph sweeping sagebrush vistas and the area's native plant communities. In fall 2020, I camped within the sagebrush communities that will be obliterated by the mine. On that trip, I photographed the landscape and scenery and wildlife habitat conditions, including areas of habitat degradation in the Montana Mountains. I also observed water flows in spring and meadow areas of the Montana Mountains.
14. BLM's approval of the Project will cause great and irreparable harm to a very significant block of still-undeveloped wild lands in the northern Great Basin. This area is critical to the survival of sage-grouse in this Nevada-Oregon landscape that is still recovering from massive wildfires. Many decades are required to recover the sagebrush structural cover and complexity required by sensitive sagebrush wildlife.
15. The bulldozing, dynamiting, excavation and other activity associated with development of a mega-mine at Thacker Pass will wipe out and/or woefully fragment and disturb large

areas of sagebrush habitat across thousands of acres crucial to sage-grouse and used for nesting by several BLM sensitive migratory bird species like Brewer’s sparrow, sage sparrow, sage thrasher and loggerhead shrike. The Thacker site contains some of the only remaining lower elevation winter habitat for sage-grouse and other wildlife species in the Montana Mountains. In hard winters, such sagebrush is crucial for wildlife survival. In addition, wildfires, and subsequent poor post-fire rehab success and lack of recovery of native grasses, forbs and shrubs, combined with Winnemucca BLM ‘s past sagebrush manipulation treatments, have resulted in significant sagebrush losses and a serious sagebrush void at lower elevations.

16. The Thacker Pass Project will also generate a massive noise and human activity disturbance and annoyance footprint that will extend many miles outward from the mine site itself. There will be loud noises 24 hours a day. There will be sudden and startling booms from dynamiting the ancient caldera. There will be significant visual intrusions, ranging from round the clock equipment movement, including with lights at night, to metallic surfaces causing glaring reflections. There will be large volumes of loud motorized traffic accessing the site. All of this combined will deal a major disturbance blow to the region’s wildlife – disrupting wildlife behavior, causing nest abandonment, displacing animals to sub-optimal habitats, and in some instances causing outright mortality. The mine’s lighting will pierce the dark night skies of this remote region distant from population centers.
17. There will also be various forms of air pollution including dust and water pollution, and this may contaminate wildlife food and water. It will also draw down and deplete the aquifer in an area where water flows on public lands springs and small streams are already under serious stress from livestock grazing impacts and water developments, and existing levels of depletion combined with climate stress.
18. Thus, this Project will drastically intrude on, and destroy sensitive species habitats and populations, and this site’s sweeping visual settings, wild land beauty and serenity.

Development of this Project would seriously harm my interests in wildlife conservation and will result in loss of wildlife, scenery, cultural sites and many other essential values of public lands that I seek to observe, photograph, study and appreciate on my hiking and camping trips to public lands and to the Montana Mountains.

19. I am fearful of the environmental consequences of the large-scale loss and immense disturbance to soils, microbiotic crusts, aquifers, surface expression of perennial water flow, native vegetation communities, wildlife habitats and populations, special status species habitats, cultural resources and other important values. Thus, BLM's approval of the Project harms my own and WLD's interests in protection of native biodiversity, and preservation of wildlife habitats and viable sensitive species populations, in this wild landscape and on Nevada's public lands. The mine's lighting will pierce the dark night skies of this remote region distant from population centers. The project's huge scar and lighting will be visible for long distances.
20. I plan to return to Thacker Pass by summer 2021, and will be deeply saddened if this beautiful biodiverse scenic area is wantonly destroyed by a lithium mine.
21. I have recently returned to the Thacker Pass project site on multiple visits. During these visits, I observed ecological conditions and wildlife present on the site, including migratory birds species that are BLM sensitive species or species of concern (long-billed curlew flock and dispersed pairs, sage thrasher courtship flight display, and singing sagebrush sparrow and Brewer's sparrow). I observed all these species within the Thacker Pass project area in spring 2021. I have also observed sage-grouse strutting on a very important lek (Montana #10 lek) within a mile of the project site. I have also visited considerable areas of surrounding wildlife habitats in the Montana Mountains and contiguous Trout Creek Mountains in Oregon. I also visited the location there where the BLM, without any public comment or process, has authorized multi-year lithium mining exploration just across the Oregon border (the Jindalee Project) with new destruction of



sagebrush vegetation amid sage-grouse Priority habitat, with additional exploration activity planned this year.

22. Throughout my more recent visits within the Thacker Pass project area, I have also scanned the ground surface for lithic cultural material visible on the ground surface. I can say with assurance that there is a stunning amount of worked lithic material found at Thacker Pass, and that would be disturbed or destroyed if this mine were to be constructed. I am very concerned about the scale and scope of any disturbance or excavation of this material that may take place imminently.
23. Riparian areas home to tiny populations of Lahontan cutthroat trout and other rare biota, and the waters of the springs and seeps will suffer loss or damage due to the Project's groundwater pumping. I have enjoyed refreshment, picnicking, relaxation, and aesthetic enjoyment from these waters and lands.
24. My recreation, aesthetic, conservation, spiritual and other interests and experiences will be severely and adversely affected if the Project is allowed to be constructed, developed and operated. These uses and interests will be irreparably and immediately harmed by the commencement of construction at the site, as irreplaceable sagebrush habitats will be wiped out.
25. The initial ground disturbing activities and operations, proposed to commence on June 23, 2021 (according to LNC's attorneys' communications to Plaintiffs' counsel), would significantly, immediately, and irreparably impair my uses of the site and the values in these public lands that I so greatly value. For example, any ground disturbance, including any excavation or digging on public lands at the site, including that associated with historical/cultural information gathering or mitigation related to the Project, immediately and adversely affects my uses of the site and the environmental resources at the site. It is impossible to enjoy the natural plants, wildlife, scenery and solitude of the site when excavations and digging are occurring at the site.



26. Further, BLM's failure to comply with the public information and review requirements of NEPA regarding the immediate plans for excavations and ground disturbance further injures my rights and interests. For example, LNC and BLM propose to conduct excavations and other ground disturbance this summer, as discussed in a "Historic Properties Treatment Plan" (HPTP) which has never been submitted for public review. *See* FEIS at 4-85 (admitting that the HPTP was "currently in development" when the FEIS was issued). None of the public, or members of Plaintiffs' groups, were ever shown the HPTP, in even draft form, before it was approved.
27. In addition to the immediate ground disturbance this summer, the approved construction activities that would occur in the coming year, let alone the actual open pit mining and waste disposal and gangue piles, will permanently degrade the environment and permanently and irreparably injure my uses of these lands, and the lands and waters themselves. For example, the initial road building, ground clearance, and construction will irreparably and immediately destroy the landscape of Thacker Pass and the crucial wildlife habitats where I conduct my above-described uses, and where I have been observing sensitive wildlife this spring.
28. My uses are totally incompatible with the uses of the public lands at the site approved by the BLM in the Record of Decision (ROD), including the immediate ground disturbance, ground clearance, road building, and Project construction.
29. I intend on visiting and using the lands, waters and wildlife habitats at and near the proposed Project to continue my above noted uses. More specifically, I intend on returning to the Project site this Spring and Summer, as well as in the coming year as I have done in the past.
30. The only way my to protect my interests and uses of the Project site and other public lands and waters affected by the Project, and the similar interests and uses of members of WLD, from irreparable injury is to issue an immediate injunction prohibiting Lithium

Nevada Corp. (LNC) and BLM from conducting any activities at the Project site and its environs.

31. The failure of BLM to prepare an adequate Environmental Impact Statement (EIS) and to fully involve the public, including myself and WLD's members, in the agency's decision-making, adversely affects my and WLD's members' ability to participate in the NEPA, FLPMA, and other public review processes.
32. As detailed in the attached Motion for Preliminary Injunction, BLM failed to adequately involve the public in the agency's review of the Project's impacts to wildlife, environmental, and other issues, impacts, and alternatives – depriving me and other members of WLD of our rights to fully participate in the public process under NEPA and federal law.
33. Similarly, the severe drawdown of local ground waters caused by the Project's dewatering will cause the loss and degradation of these waters. This loss and degradation injures my aesthetic and conservation interests in ensuring that water will be protected from mining, and that native aquatic and terrestrial species dependent on these scarce waters can be preserved.
34. As approved by BLM, the Project is not required to protect against these water quality and quantity impacts. Instead, BLM only required a general “wait-and-see” approach to mitigate against these impacts. This essentially allows the impacts to occur first, with potential mitigation to occur only later. Such a failure to protect against these impacts injures my interests in ensuring against degradation and loss of water in the area affected by the Project and drawdown.
35. WLD is a small non-profit organization with very limited financial resources. If more than a nominal bond amount was required in order for us to seek a stay of the irreparable harm to Thacker Pass and our uses and enjoyment of the lands and waters that will be destroyed or significantly and adversely affected as noted above, WLD would be unable to seek preliminary relief and thus would be unable to protect our uses and these values.

1  
2 36. Accordingly, we would be unable to afford anything more than a nominal bond in  
3 support of the preliminary injunction. Posting anything more than a nominal bond would  
4 severely restrict, and potentially eliminate, WLD's ability to pay me even part-time. This  
5 would represent a severe hardship to our ability to continue our public interest work on  
6 behalf of Nevada and other regions in the sagebrush biome and would significantly  
7 hamstring our ability to challenge illegal government actions and decisions. This would  
8 also represent a severe personal hardship to my personal finances.

9  
10 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
11 correct to the best of my personal knowledge, information, and belief.

12  
13 Executed this 20<sup>th</sup> day of May, 2021, at Boise, Idaho.

14   
15 /s/ Katie Fite

16 Katie Fite  
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24  
25  
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27  
28

## **EXHIBIT 30**

To

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

**Case No.: 3:21-cv-0103-MMD-CLB**

**Declaration of Dr. Clait E. Braun**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No. 3:21-cv-103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                              |
| BASIN AND RANGE WATCH; and      | ) |                              |
| WILDLANDS DEFENSE,              | ) | DECLARATION OF               |
|                                 | ) | DR. CLAIT E. BRAUN           |
| Plaintiffs,                     | ) |                              |
| v.                              | ) |                              |
|                                 | ) |                              |
| UNITED STATES DEPARTMENT OF THE | ) |                              |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                              |
| LAND MANAGEMENT; and ESTER M.   | ) |                              |
| McCULLOUGH, District Manager,   | ) |                              |
| BLM's Winnemucca Office,        | ) |                              |

Defendants, )  
 )  
 and )  
 )  
 LITHIUM NEVADA CORPORATION, )  
 )  
 Intervenor-Defendant. )

---

I, Clait E. Braun, declare:

1. My name is Clait E. Braun, and I reside in Tucson, Arizona. The statements below are based on my scientific training, personal knowledge, and experience, including my 40+ years of professional experience researching, studying, and managing Greater sage-grouse.

2. I have been retained by Plaintiff Western Watersheds Project to describe the likely effects of the proposed Thacker Pass Lithium Mine (“Mine” or “Project”) on Greater sage-grouse.

### Education and Experience

3. A Biographical Sketch describing my education and professional experience is attached.

4. My education includes a B.S. in Technical Agronomy from Kansas State University (1962), a M.S. in Wildlife Management from the University of Montana (1965), and a Ph.D. in Wildlife Biology from Colorado State University (1969). In addition, I have attended numerous short courses, workshops, and technical sessions to remain current in my professional work, and I am a Certified Wildlife Biologist.

5. I spent much of my professional career with the Colorado Division of Wildlife, where I was a Research Wildlife Scientist, Wildlife Research Leader, and Avian Program Manager for a thirty-year period (1969-99). In addition, I taught as an Instructor at the

1 University of Montana (1963-65) and Colorado State University (1966-69), and have been an  
2 invited lecturer at more than 20 U.S. and Canadian universities. I also worked as a Soil Scientist  
3 in Kansas (1961) and Montana (1964) for the USDA, Soil Conservation Service, and as a  
4 Research Technician with the Montana Department of Fish and Game (1965).

6 6. My field research was primarily on different species of birds, especially grouse  
7 (1965-2020 ). I specifically conducted and directed research on sage-grouse throughout  
8 Colorado from 1973 through 1999. My research on sage-grouse has caused me to review  
9 sagebrush steppe ecosystems (plants and animals) in areas of all western states and adjacent  
10 provinces. This research has led to more than 300 scientific publications, mostly in peer-  
11 reviewed journals. I am lead author or co-author on more than 70 articles on sage-grouse  
12 (including Greater sage-grouse and Gunnison sage-grouse) and more than 50 technical abstracts  
13 on sage-grouse in scientific publications. A list of scientific publications that I authored or co-  
14 authored through 2020 is attached as Exhibit 1.

17 7. I have remained closely involved in research and publications regarding sage-  
18 grouse and their habitats after my retirement from the Colorado Division of Wildlife. I served as  
19 Technical Editor for the recent “Monograph” on Greater sage-grouse. This 646-page  
20 “Monograph” contained 24 chapters arranged in 5 sections (I. Management and Conservation  
21 Status, II. Ecology of Greater Sage-Grouse, III. Ecology of Sagebrush, IV. Population Trends  
22 and Habitat Relationships, and V. Conservation and Management). I also coauthored two  
23 chapters. The “Monograph” was published in book form in 2011. S. T. Knick and J. W.  
24 Connelly, Editors, C. E. Braun, Technical Editor (2011), Greater Sage-Grouse: Ecology and  
25 Conservation of a Landscape Species and Its Habitats, *Studies in Avian Biology* No. 38. It is  
26 regarded as the primary resource on sage-grouse biology and habitat needs.

1           8. I also served as Editor of the Wilson Journal of Ornithology, a leading  
2 international ornithology journal during 2007-2012; and I am a principal in Grouse Inc., a  
3 consulting firm. I have been retained through my consulting firm to provide my review of the  
4 effect of the Thacker Pass Lithium Mine on Greater sage-grouse based on my scientific expertise  
5 and knowledge, as discussed below.

6  
7           9. I am closely familiar with research and scientific literature that addresses the  
8 habitat needs and biological requirements of Greater sage-grouse, and on the factors that cause or  
9 contribute to sage-grouse population losses or declines (including from habitat loss). I have also  
10 spent innumerable hours in the field studying sage-grouse populations and habitats over the last  
11 four decades, which I have used in my own publications addressing the relationships between  
12 sage-grouse and their habitats, as well as the management implications of these relationships. In  
13 addition, I supervised many graduate students conducting field research on sage-grouse during  
14 1973-1999.

#### 15 16 17                   **Familiarity with Nevada Sage-Grouse Populations**

18           10. I am familiar with Nevada sage-grouse populations and habitats, including the  
19 Lone Willow PMU, and the Western Great Basin PAC. I served as a consultant on the Saval  
20 Ranch Research and Evaluation Project near Elko, Nevada during 1981-1986. My role was to  
21 review ongoing projects that affected sage-grouse. I also served as a consultant for Nevada Game  
22 and Fish over a 2-year period during about 1994-95 developing methods for identification of age  
23 and sex based on review of wings from hunter-harvested sage-grouse.

24  
25           11. I am personally knowledgeable about sage-grouse including those in Nevada and  
26 have toured areas in the Montana Mountains prior to any plans for development.  
27  
28



1           12.     The Montana Mountains, just north of the Project area, contain a robust  
2 population of greater sage-grouse, as well as some of the last remaining unburned sage-grouse  
3 habitat in the Lone Willow PMU.

4  
5           13.     A population model published this year reveals that sage-grouse have declined 80  
6 percent rangewide since the 1960s, with particular losses in the past two decades in the Great  
7 Basin—including Nevada—due to the effects of wildfire. Peter S. Coates, Brian G. Prochazka,  
8 Michael S. O'Donnell, Cameron L. Aldridge, David R. Edmunds, Adrian P. Monroe, Mark A.  
9 Ricca, Gregory T. Wann, Steve E. Hanser, Lief A. Wiechman, Michael Chenaille. **Range-wide  
10 greater sage-grouse hierarchical monitoring framework—Implications for defining  
11 population boundaries, trend estimation, and a targeted annual warning system.** *Open-File  
12 Report 2020-1154*, 2021 DOI: [10.3133/ofr20201154](https://doi.org/10.3133/ofr20201154)  
13

14           14.     Given the decline of sage-grouse on a range-wide basis and threats to remaining  
15 sage-grouse populations and habitats, I can say without reservation that protecting remaining  
16 sage-grouse populations and habitats at Thacker Pass and in the Montana Mountains is important  
17 to prevent further decline of the species and possible Endangered Species Act listing.  
18 Specifically, Thacker Pass provides important sage-grouse nesting, brood-rearing, and winter  
19 habitats and at least 30 sage-grouse are known to have recently used the Project area. In  
20 addition, Thacker Pass is adjacent to the Montana Mountains, which are known to be an  
21 important stronghold for sage-grouse in Nevada.  
22

23  
24           15.     I have reviewed relevant portions of the Thacker Pass Lithium Mine Project Final  
25 Environmental Impact Statement, DOI-BLM-NV-W010-2020-0012-EIS, and associated Record  
26 of Decision and Plan of Operations Approval. I have also reviewed the maps concerning sage-  
27 grouse in Appendix A, specifically Figures 4.5-10, 4.5-11, 4.5-12, and Appendix N, which  
28

1 covers sage-grouse. I have also reviewed the maps in Appendix A showing projected impacts to  
2 water resources from the various alternatives. *See* Figures 4.3-3 to 4.3-21.

### 4 **Sage-grouse Habitat Needs**

5 16. The Greater sage-grouse is ground-dwelling bird known for its distinctive mating  
6 dance, performed on breeding grounds called leks. Sage-grouse have high site fidelity and will  
7 return to the same leks to breed year after year, even after habitat has been degraded or  
8 destroyed.

9  
10 17. The Greater sage-grouse is a sagebrush obligate, as the species depends upon  
11 sagebrush for every part of its life cycle. In spring, nesting and brood-rearing sage-grouse use  
12 sagebrush for cover to reduce losses due to predation as well as for foraging (they eat the leaves  
13 of sagebrush). In summer, sage-grouse use sagebrush for cover and for food as they move from  
14 upland nesting and early brood-rearing sites to wetter areas with succulent forbs as well as  
15 sagebrush cover to reduce losses to predation. In fall and winter, sage-grouse depend upon  
16 sagebrush almost entirely as a food source and rely on areas where sagebrush is available above  
17 the snow (Braun et al. 2005). Sage-grouse in winter (December- March) may return to the same  
18 winter concentration areas (depending upon snow depth) year after year—these areas are used by  
19 flocks of sage-grouse for taller sagebrush and protection from wind as well as for snow roosting  
20 at night (Braun et al. 2005).

21  
22 18. Sage-grouse also depend upon other habitat components at different parts of their  
23 life-cycle. In spring, during nesting and brood-rearing, tall grasses and abundant forbs provide  
24 vital hiding cover and nutrition for female sage-grouse and their chicks. Forbs also attract insect  
25 communities that are an important source of protein for young chicks. Sage-grouse depend on  
26 wet meadows and riparian habitats in summer for succulent forage foods (forbs). Sage-grouse  
27  
28

move from late summer brood-use areas along the edges of riparian habitats near meadows and stream areas into upland areas dominated by live sagebrush.

19. Activities that destroy or degrade these habitat components also harm sage-grouse. Fragmentation of sagebrush habitats has been documented as a primary cause of the decline of sage-grouse populations.

20. The U.S. Fish and Wildlife Service, in its March 2010 finding that sage-grouse were warranted but precluded for listing under the Endangered Species Act, defined habitat fragmentation as:

the separation or splitting apart of previously contiguous, functional habitat components of a species. Fragmentation can result from direct habitat losses that leave the remaining habitat in noncontiguous patches, or from alteration of habitat areas that render the altered patches unusable to a species (i.e., functional habitat loss). Functional habitat losses include disturbances that change a habitat's successional state or remove one or more habitat functions; physical barriers that preclude use of otherwise suitable areas; and activities that prevent animals from using suitable habitat patches due to behavioral avoidance.

*See* USFWS, 2010, at 13927. I concur in this definition.

21. The 2011 Studies in Avian Biology Monograph to which I contributed includes analysis of connectivity of Greater sage-grouse across the sagebrush landscape by Dr. Steve Knick of the U.S. Geological Survey and colleagues. Their analysis (Knick and Hanser 2011) of historical population data revealed that historic leks with low connectivity have been lost, indicating that isolation of leks by distance (including habitat fragmentation) will likely result in their future loss (Knick and Hanser 2011). Small decreases in lek connectivity resulted in large increases in probability of lek abandonment (Id.). These findings were largely confirmed recently by Coates et al. (2020), pp. 52, (Table 8) who observed that probability of extirpation was greater for sage-grouse leks and populations around the periphery of sage-grouse range.

1           22.     The U.S. Fish and Wildlife Service concluded, based on the scientific literature,  
2     that: “maintaining habitat connectivity and sage-grouse population numbers are essential for  
3     sage-grouse persistence.” (USFWS, 2010, at 13923). I fully concur with this conclusion, which is  
4     directly relevant to the proposed lithium mine here.  
5

6           23.     Studies also indicate there is typically a time lag, of perhaps 2-10 years, in sage-  
7     grouse response to habitat changes. This time lag occurs because sage-grouse are relatively long-  
8     lived birds that will continue to return to altered breeding areas (i.e., leks, nesting, and early  
9     brood-rearing habitats), due to strong site fidelity, even despite nesting or productivity failures  
10    (lack of recruitment) caused by habitat disturbance or fragmentation (USFWS 2010, p. 13928;  
11    Garton *et al.* 2011).  
12

13           24.     After the Fish and Wildlife Service determined that Greater sage-grouse were  
14    warranted for listing under the Endangered Species Act in 2010, the federal agencies managing  
15    most sage-grouse habitats (the Forest Service and the BLM) undertook a rangewide effort to  
16    amend their land-use plans to adopt conservation measures for sage-grouse. Those measures  
17    were based in part upon measures recommended by a “National Technical Team” convened by  
18    BLM, which issued a report in 2011. The “NTT Report” remains the best resource available on  
19    how to protect sage-grouse from different kinds of development.  
20

21           25.     With respect to mining, the NTT Report recommended excluding such large-scale  
22    disturbances from sage-grouse habitats. NTT Report, pp. 21. Where disturbances could not be  
23    avoided, the National Technical Team recommended minimizing the impacts of the disturbances  
24    by limiting direct surface disturbance to 3 percent of the area or less. *Id.* In particular, the  
25    National Technical Team recommended withdrawing sage-grouse priority habitats from  
26  
27  
28

1 locatable mineral entry, requiring effective mitigation “in perpetuity” for conservation where  
2 development occurred, and making best management practices mandatory. *Id.* at 24-25.

3  
4 26. In general, the plan amendments, adopted in 2015, sought to carry out this  
5 direction by “avoiding, minimizing, and mitigating” impacts of actions to sage-grouse priority  
6 habitats by first, striving to site harmful projects outside of high-value sage-grouse habitats, and  
7 next, strive to minimize or mitigate for unavoidable impacts. This is because BLM recognized  
8 that even a small amount of development in the wrong place could have an outsized impact in  
9 these landscapes. Great Basin Record of Decision (2015), pp. 1-20.

10  
11 27. Each portion of that framework is crucial to the ability of the sage-grouse to  
12 survive and recover. The “avoid” portion sites harmful projects outside of sage-grouse habitats,  
13 while the “minimize” portion ensures that effects to sage-grouse from projects occurring within  
14 sage-grouse habitats are minimized by applying accepted and scientifically-supported design  
15 features. Importantly, unavoidable impacts must be mitigated to a “net conservation gain”  
16 standard. Great Basin ROD (2015), pp. 1-25. Applying that standard ensures that “[i]f impacts  
17 from BLM management actions and authorized third-party actions result in habitat loss and  
18 degradation that remain after avoidance and minimization measures are applied, then  
19 compensatory mitigation projects would be used to provide a net conservation gain to the  
20 species.” *Id.*

### 21 22 23 **Impacts to Greater Sage-grouse from Mining at Thacker Pass**

24 28. Generally, mining for locatable minerals is strongly negative for Greater sage-  
25 grouse because it destroys important sage-grouse habitats virtually permanently as recovery of  
26 useable habitats is exceedingly slow and not uniform. For example, at Thacker Pass, the open pit  
27 mine will occupy sage-grouse nesting, brood-rearing, and winter habitats in the Project area until  
28

1 it is fully reclaimed, decades into the future. As soon as Project construction begins, the mining  
2 company will “strip” away all vegetation, destroying all habitat value for the species. Since  
3 sagebrush, once destroyed, can take decades to re-establish, even post-reclamation these effects  
4 will be long-lasting. The value of the habitat at Thacker Pass will be lost for generations of  
5 sage-grouse.  
6

7 29. Mining disturbance also results in habitat abandonment and increases mortality.  
8 A recent study found declines in sage-grouse use of all seasonal habitats except for brood-rearing  
9 habitat (for which evidence was inconclusive) due to mining disturbance. Pratt and Beck 2019.  
10 It also found increases in sage-grouse mortality linked to mining. *Id.*  
11

12 30. For instance, I understand the mining company and/or BLM is proposing to  
13 conduct historical/cultural surveys that involve excavations and/or soil or vegetation removal,  
14 digging up sagebrush habitat to search for cultural artifacts. Such actions have the immediate  
15 potential to harm sage-grouse and its habitat by impacting sagebrush or forbs used by sage-  
16 grouse. In addition, any kind of ground disturbance can act as a weed vector by removing native  
17 vegetation and destroying biological soil crusts, thus reducing resistance to cheatgrass invasion.  
18

19 31. The Project area also will completely span the eastern half of the Lone Willow  
20 PMU, potentially harming connectivity between sage-grouse populations south and north of the  
21 Project area. As noted above, isolating populations in this way is a precursor to extirpation. The  
22 NTT Report specifically recognized that this could be a significant impact to sage-grouse from  
23 these types of projects. NTT Report, pp. 18.  
24

25 32. Further, the mine will destroy the moderate to high quality winter habitat in the  
26 area. As noted, destruction of winter habitats can exert a powerful influence on sage-grouse  
27  
28

1 populations by increasing movements during periods of environmental stress, causing sage-  
2 grouse to use suboptimal habitats and increasing loss to predation.

3  
4 33. Mining can affect sage-grouse in other ways as well. Human presence can  
5 increase likelihood of vehicle collisions, flush sage-grouse from their nests, and otherwise  
6 increase the risk of mortality. Where standing water is present, the risk of West Nile virus—a  
7 disease to which Greater sage-grouse are susceptible— can be increased. Reduced water  
8 availability can impact the springs and seeps sage-grouse rely upon for summer brood-rearing  
9 habitat. And, noise from mining activity can disturb sage-grouse during the crucial lekking  
10 season and increase the likelihood of lek abandonment.

11  
12 34. Anthropogenic noise is particularly harmful to sage-grouse because it can reduce  
13 juvenile recruitment. Increases in ambient noise above 10 dba are known to increase the  
14 likelihood of lek abandonment and cause decreases in juvenile recruitment (Blickley et al.  
15 2013).

16  
17 35. In the case of the Thacker Pass Mine, the Nevada Department of Wildlife has  
18 expressed concern that increases in ambient noise above the 10 dba threshold could affect the  
19 Montana-10 lek, which is located less than 1 mile from the Project area. I concur with NDOW  
20 that these noise effects would be negative for sage-grouse.

21  
22 36. Impacts from increases in noise greater than 10 dba above ambient noise levels at  
23 the Montana-10 lek could include reduction in use of the lek by males and females.

24 37. They could also decrease the reproductive success of sage-grouse breeding on the  
25 lek. Lek sites are selected for visibility (to reduce predation pressure) and to allow sage-grouse  
26 mating calls to be widely disseminated. Both elements are important for maintaining  
27  
28

1 connectivity among sage-grouse. This connectivity facilitates successful breeding and  
2 reproduction.

3  
4 38. Since sage-grouse typically nest within about 4 miles of the lek where they breed,  
5 sage-grouse that attend the Montana-10 lek likely use the mapped nesting and brood-rearing  
6 habitat in the Project area, including where the open pit would be located. According to the  
7 FEIS, at least 30 radio-collared sage-grouse have generated 63 tracking locations within the  
8 Project area, and the Nevada Department of Wildlife states that the Montana-10 lek is one of the  
9 three most well-attended leks in the PMU.  
10

11 39. The loss of such a large and well-attended lek as this one could have population-  
12 level effects to sage-grouse.

13 40. Population-level impacts to sage-grouse in the Lone Willow PMU would be  
14 particularly significant since 48 percent of the PMU has burned in wildfires. The remaining  
15 populations and unburned habitats have elevated importance to the species' survival in light of  
16 these declines.  
17

18 41. Moreover, my review of the FEIS reveals that BLM has not fairly acknowledged  
19 the full extent of the potentially significant effects to sage-grouse in the Project area. For  
20 instance, the FEIS does not disclose how sage-grouse use seasonal habitats within the Project  
21 area, or how the destruction of those habitats can impact the population of birds in the Montana  
22 Mountains. Nor does the FEIS discuss or acknowledge the population-level effects to sage-  
23 grouse that could be caused by noise impacts to the Montana-10 lek.  
24

25 42. The FEIS also falsely claims that impacts to sage-grouse will be offset through  
26 mitigation. However, the FEIS does not anticipate that Lithium Nevada Company will purchase  
27 any permanent conservation credits to compensate for permanent impacts to brood-rearing  
28



1 habitat from mine-caused dewatering even though the maps in Appendix A reveal that  
2 groundwater depletion is projected to persist into the indefinite future. And, as noted,  
3 destruction of fragile sagebrush habitats is a virtually permanent effect. I do not know of any  
4 effective way to mitigate loss of traditional lek sites.

### 6 Conclusion

7 43. The Thacker Pass Lithium Mine is likely to cause irreparable harm to sage-grouse  
8 in the Project area and even regionally. But the FEIS' analysis pays those impacts short shrift, in  
9 an effort to sweep them under the rug. Nor is BLM applying required design features or other  
10 measures necessary to reduce impacts to Greater sage-grouse. The best available science (NTT  
11 Report) is not being incorporated in the planning process.

13 I declare under penalty of perjury pursuant to the laws of the United States that the  
14 foregoing is true and correct to the best of my knowledge.

15 Executed this \_ 13th \_ day of May 2021, at Tucson, Arizona.

17 /s/ Clait E. Braun

18 Clait E. Braun

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endangered or threatened species. Federal Register 80:59858-59942.

## BIOGRAPHICAL SKETCH

Clait E. Braun, Grouse Inc., 5572 N. Ventana Vista Road, Tucson, AZ 85750

E-mail: [sgwtp66@gmail.com](mailto:sgwtp66@gmail.com)

Phone/Fax 520-529-4614

Born: 4 October 1939, Kansas City, Missouri, USA

### Academic Training

B.S. 1962. Technical Agronomy, Kansas State University, Manhattan

M.S. 1965. Wildlife Management, University of Montana, Missoula

Ph.D. 1969. Wildlife Biology, Colorado State University, Fort Collins

### Experience (50+ years of study of species of grouse, including Sage-Grouse)

Director, Grouse Inc., Tucson, AZ (2000-Present)

Avian Research Program Manager, Colorado Division of Wildlife

Wildlife Research Leader-Avian, Colorado Division of Wildlife

Soil Scientist, Soil Conservation Service, USDA, Kansas and Montana

### Memberships

The Wildlife Society

Editor (*Journal of Wildlife Management*) (1981-83)

Vice President, President, Past President

Charter and Founding Member of Colorado and Montana Chapters

Editor, Sixth Edition, *The 'Techniques Manual'* (2005)

Fellow

The Wilson Ornithological Society

1 Elected Board Member, Vice President, President

2 Life Member

3 Editor (*Wilson Journal of Ornithology*) (2007-2012)

4  
5 Colorado-Wyoming Academy of Science

6 Elected Board Member, Treasurer, President, Life Member

7  
8 American Ornithologist's Union

9 Elected Member, Elected Fellow, Life Member

10  
11 Cooper Ornithological Society: Life Member

12 American Society of Mammalogists: Life Member

13 Great Plains Natural Science Society: Life Member

14 American Association for the Advancement of Science (1969-2021) (Life  
15 Member)

16 American Men and Women of Science

17 Who's Who in the West

18 Personalities of the West and Midwest

19 Dictionary of International Biography

20  
21 **Professional Achievement Awards**

22 Colorado State University

23 Colorado-Wyoming Academy of Science

24 Defenders of Wildlife, Science Award, 2015

25 Gunnison Sage-Grouse Stewardship Award

26 The Wildlife Society (Chapter, Section, National, Group Achievement [1986])

27 U.S. Department of Agriculture (SCS)

28 Western Agencies Sage & Columbian Sharp-tailed Grouse Technical Committee



1 ---Robert L. Patterson Award

2 Western Watersheds ----Sagebrush Sentinel Award

3 Wilson Ornithological Society---Klamm Award

4  
5 Publications

6 Over 300 Technical Articles (especially on grouse) published in Peer-reviewed and Non  
7 Peer-reviewed Journals, Symposia, Proceedings (List Available upon Request)

8  
9 Referee

10 Peer Reviewer for 20+ National/International Journals

11  
12 **Technical Editor or Editor**

13 Multiple Books and Proceedings, and Professional International Journals

14  
15 Most Recent

16 Greater Sage-Grouse: Ecology and Conservation of a Landscape Species  
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20  
21 Consultant

22 County (Gunnison, Colorado), State (Nevada, New Mexico, Oregon, Utah,  
23 Wyoming), Federal (USFWS), and Provincial (Alberta) governments, and Private  
24 Entities (NGO's, Private Ranchers)

25  
26 Professional Interests

27 Birds (especially Grouse and Columbids), Habitat Management, Alpine Ecology,  
28 Sagebrush-steppe, Population Dynamics

**National Advisory Committee, Wildlife Services (USDA, APHIS)**

1999-2005 Vice Chair and Chair

2008-2009 Chair

# EXHIBIT 24

To

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

Case No.: 3:21-cv-0103-MMD-CLB

"Drilling Commences at McDermitt Lithium Project,"  
Jindalee Resources, Nov. 16, 2020

ASX RELEASE  
16 NOVEMBER 2020  
ASX: JRL



## DRILLING COMMENCES AT McDERMITT LITHIUM PROJECT

- 21 drill hole program designed to upgrade and extend current Resource
- First assays expected next month

Jindalee Resources Limited (**Jindalee**, the **Company**) is pleased to announce that drilling at the Company's 100% owned McDermitt Lithium Project (US) has commenced (Figure 1). The drilling program comprises up to 21 holes (Figure 2) designed to extend the current Inferred Mineral Resource<sup>1</sup> and Exploration Target Range<sup>1</sup> and convert existing Inferred Mineral Resources to Indicated status ahead of a possible Scoping Study. First assay results are expected late December.



Figure 1 – Drilling the first hole (MDRC-002) at McDermitt for 2020.

### McDermitt Project – Background

In late 2019 Jindalee announced an Inferred Mineral Resource of **150Mt @ 2,000ppm Li** (0.43% Li<sub>2</sub>O) at 1,750ppm Li cut-off<sup>1</sup> had been estimated at McDermitt (refer Table 1, below):

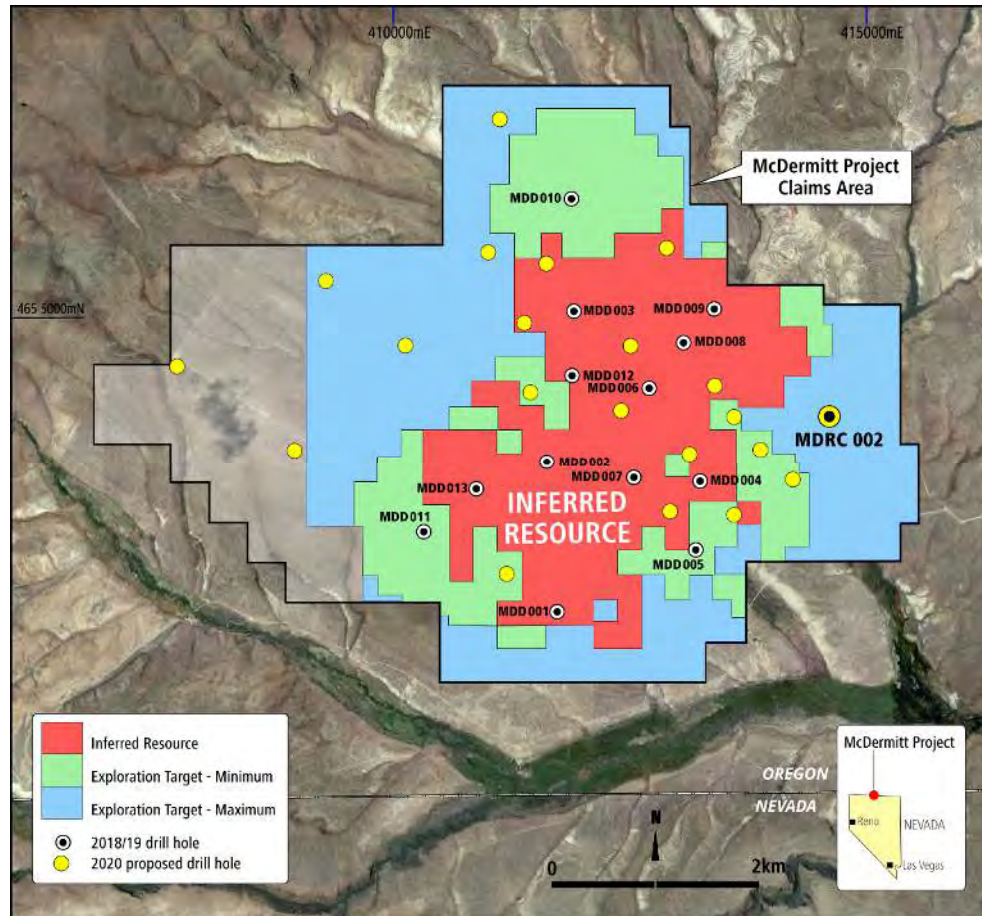
| Cut Off<br>(ppm Li) | Mass<br>(Mt) | Grade<br>(ppm Li) | Contained LCE<br>(Mt) |
|---------------------|--------------|-------------------|-----------------------|
| 1,750               | 150          | 2,000             | 1.6                   |

Table 1 – Summary of the maiden Inferred Mineral Resource



The Mineral Resource was estimated using a cut-off grade of 1,750ppm Li, which is considered appropriate in the context of similar projects and based on an assessment of the likelihood of future economic extraction as required by the JORC (2012) Code.

The Company confirms that it is not aware of any new information or data that materially affects the information included in this market announcement and that all material assumptions and technical parameters underpinning the estimates of mineral resources referenced in this market announcement continue to apply and have not materially changed.



**Figure 2 – Location of McDermitt Resource<sup>1</sup> and Exploration Target Areas<sup>1</sup>, planned holes (yellow) and location of hole MDRC-002.**

The entire Inferred Mineral Resource sits within 100m of surface and is flat lying, both positive factors for future project economics. Furthermore, analysis of the grade tonnage distribution of the McDermitt resource model highlights the potential for additional material available at lower grades. Metallurgical testwork to date has been very encouraging, indicating high lithium recoveries from conventional sulphuric acid leaching at low temperature and atmospheric pressure and the potential to beneficiate the ore to increase lithium head grade and remove acid consuming minerals, thereby improving project economics<sup>2</sup>.



Recent announcements by Tesla Inc., (NASDAQ: TSLA) regarding its commitment to invest in the “localisation” of its cathode supply chain and production in the United States and the acquisition of the rights to a Nevada sediment hosted lithium deposit<sup>3</sup> have underlined the importance of very large sediment hosted lithium deposits. The McDermitt project is strategically located with respect to Tesla’s Gigafactory (Figure 3). Tesla is the first automotive OEM to enter lithium production, a move that may be replicated by other US auto makers keen to gain greater control over the supply chain for minerals critical for the manufacture of electric vehicles.

Jindalee is also highly encouraged by the strong bi-partisan US government support being shown for the development of large, strategic lithium projects like McDermitt.



**Figure 3 – Location of Jindalee’s Lithium Projects and US Battery Factories (existing & proposed)**

Authorised by the Board.

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### About Jindalee

Jindalee Resources Limited (ASX: JRL) is an exploration company with direct and indirect exposure to lithium, gold, base and strategic metals, iron ore, uranium and magnesite through projects generated by the Company's technical team. Jindalee has a track record of rewarding shareholders, including priority entitlements to several successful IPO's and payment of a special dividend.

Jindalee's strategy is to acquire prospective ground, add value through low cost exploration and, where appropriate, either introduce partners to assist in funding further progress, or fund this activity via a dedicated company in which Jindalee retains a significant interest.

At 30 September 2020 Jindalee held cash and marketable securities worth approximately \$3.9M, with a further \$0.62M raised in an entitlement offer which closed 16 October 2020<sup>4</sup>. This funding, combined with the Company's tight capital structure (only 44.7M shares on issue), provides a strong base for advancing projects currently held by Jindalee and leveraging into new opportunities.

### References:

Additional details including JORC 2012 reporting tables, where applicable, can be found in the following releases lodged with ASX and referenced in this announcement:

1. Jindalee Resources ASX announcement 19/11/2019: "Maiden Lithium Resource at McDermitt".
2. Jindalee Resources ASX announcement 17/08/2020: "More Encouraging Metallurgical Results from McDermitt".
3. Jindalee Resources ASX announcement 25/09/2020: "Tesla Battery Day highlights McDermitt Project Potential."
4. Jindalee Resources ASX announcement 29/10/2020: "Quarterly Activities & Cashflow Report".

### Competent Persons Statement

The information in this report that relates to Exploration Results, Mineral Resources or Ore Reserves is based on information compiled by Mr Lindsay Dudfield. Mr Dudfield is consultant to the Company and a Member of the Australasian Institute of Mining and Metallurgy and the Australian Institute of Geoscientists. Mr Dudfield has sufficient experience relevant to the styles of mineralisation and types of deposits under consideration, and to the activity being undertaken, to qualify as a Competent Person as defined in the 2012 Edition of the 'Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves.' Mr Dudfield consents to the inclusion in this report of the matters based on this information in the form and context in which it appears.

The information in this report that relates to the Exploration Target and the Mineral Resource Estimate for the McDermitt deposit is based on information compiled by Mr. Arnold van der Heyden, who is a Member and Chartered Professional (Geology) of the Australasian Institute of Mining and Metallurgy and a Director of H&S Consultants Pty Ltd. Mr. van der Heyden has sufficient experience relevant to the style of mineralisation and type of deposit under consideration and to the activity being undertaken to qualify as a Competent Person as defined in the 2012 Edition of the 'Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves' (JORC Code). Mr. van der Heyden consents to the inclusion in this report of the matters based on the information in the form and context in which it appears.

### Forward-Looking Statements

This document may contain certain forward-looking statements. Forward-looking statements include but are not limited to statements concerning Jindalee Resources Limited's (Jindalee's) current expectations, estimates and projections about the industry in which Jindalee operates, and beliefs and assumptions regarding Jindalee's future performance. When used in this document, the words such as "anticipate", "could", "plan", "estimate", "expects", "seeks", "intends", "may", "potential", "should", and similar expressions are forward-looking statements. Although Jindalee believes that its expectations reflected in these forward-looking statements are reasonable, such statements are subject to known and unknown risks, uncertainties and other factors, some of which are beyond the control of Jindalee and no assurance can be given that actual results will be consistent with these forward-looking statements

## **EXHIBIT 31**

To

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

In

Western Watersheds Project, et al. v. U.S. Dept. of the Interior, et al.

**Case No.: 3:21-cv-0103-MMD-CLB**

**Declaration of Erik Molvar**



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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| WESTERN WATERSHEDS PROJECT;     | ) | Case No.: 3:21-cv-0103-MMD-CLB |
| GREAT BASIN RESOURCE WATCH;     | ) |                                |
| BASIN AND RANGE WATCH; and      | ) |                                |
| WILDLANDS DEFENSE,              | ) | DECLARATION OF                 |
|                                 | ) | ERIK MOLVAR IN SUPPORT         |
| Plaintiffs,                     | ) | OF PLAINTIFFS' MOTION FOR      |
| v.                              | ) | PRELIMINARY INJUNCTION         |
|                                 | ) |                                |
| UNITED STATES DEPARTMENT OF THE | ) |                                |
| INTERIOR; U.S. BUREAU OF LAND   | ) |                                |
| LAND MANAGEMENT; and ESTER M.   | ) |                                |
| McCULLOUGH, District Manager,   | ) |                                |
| BLM's Winnemucca Office,        | ) |                                |
|                                 | ) |                                |

1 Defendants, )  
2 )  
3 and )  
4 LITHIUM NEVADA CORPORATION, )  
5 )  
6 Intervenor-Defendant. )  
7

8 I, Erik Molvar declare as follows:

9 1. I am the Executive Director of Western Watersheds Project.

10 2. Western Watersheds Project is a non-profit conservation organization  
11 founded in 1993 with the mission of protecting and restoring western watersheds and  
12 wildlife through education, public policy initiatives, and legal advocacy. Headquartered  
13 in Hailey, Idaho, Western Watersheds Projects has over 12,000 members and supporters,  
14 field offices in Idaho, Nevada, Wyoming, and Arizona, as well as additional staff  
15 covering Washington, Oregon, California, Montana, Utah, Colorado, and New Mexico.

16 3. Western Watersheds Project has a six-member Board of Directors. Western  
17 Watersheds Project's annual budget is developed with input from the Board of Directors,  
18 and presented to the full Board for approval. The organization's expenditures pursuant to  
19 the annual budget are monitored by the Board on a monthly basis.

20 4. As a non-profit corporation, Western Watersheds Project operates very  
21 differently than a for-profit corporation. Western Watersheds Project does not make  
22 money and then disburse it to owners or shareholders; rather, it spends what it receives,  
23 and what it receives is often allocated to a specific purpose. There is no "profit margin"  
24 that results in excess funds and its tax returns such as IRS Form 990 cannot be reviewed  
25 with that mindset. There are simply no profits in a non-profit corporation.  
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1           5. Over 75 percent of the organization's income comes from individual donors,  
2 foundation grants, or bequests and is restricted to use for a particular program. By law,  
3 Western Watersheds Project cannot divert restricted income to other purposes. The  
4 organization allocates unrestricted monies from members and donors to fund its general  
5 operating expenses. These general operating expenses cover all administrative functions,  
6 including administrative and executive staff salaries and benefits, rent, building  
7 operations such as maintenance and utilities, supplies and equipment purchase,  
8 publications, and other program costs.

9           6. Imposition a bond in this case would create hardship for Western  
10 Watersheds Project and impair its ability to meet its financial commitments and  
11 organizational goals within the constraints of the FY 2021 budget as approved by the  
12 Board. A bond requirement could lead to financial insolvency, perhaps resulting in the  
13 elimination of Western Watersheds Project and thus prevent Western Watersheds Project  
14 from carrying out its mission.

15           7. Imposition of a bond in this case would have a chilling effect on Western  
16 Watersheds Project's ability to bring future suits to advance the public interest under the  
17 Clean Water Act, the National Environmental Policy Act, the Endangered Species Act,  
18 and other environmental statutes. Congress enacted these and other environmental laws  
19 with the explicit understanding that enforcement of such statutes through the courts  
20 would rely in large part on private citizens and groups such as Western Watersheds  
21 Project. If Western Watersheds Project had to post more than a nominal bond each time it  
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1 sought preliminary injunctive relief, it would curtail the organization's ability to protect  
2 the nation's imperiled wildlife and habitats through the courts because it would not be  
3 able to post such bonds. If Western Watersheds Project were required to post more than  
4 nominal bonds in its lawsuits, it could not bear the financial risk of litigating the majority  
5 of cases it files, and would have to forego litigating in the public interest, thereby  
6 resulting in the irretrievable and irremediable loss of imperiled species and habitat.  
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10 Dated this 21st day of May, 2021,  
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16 Erik Molvar

17 Executive Director, Western Watersheds Project  
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78. The allegations in Paragraph 78 purport to characterize the ROD and FEIS for the Project and unidentified correspondence between Plaintiffs and BLM, which speak for themselves and provide the best evidence of their contents. Any allegations contrary to their plain meaning, language, and context are denied.

79. Federal Defendants admit that the 2015 NV/CA ARMPA incorporates a disturbance cap of 3% within the biologically sensitive unit and proposed project analysis areas in Priority Habitat Management Areas unless a biological analysis indicates a net conservation gain to the species, and that BLM did not convene the “technical team,” described in the 2015 NV/CA ARMPA, Appendix E, to conduct the biological analysis regarding a net conservation gain to the greater sage-grouse prior to the issuance of the ROD for this Project. Federal Defendants deny the remaining allegations in Paragraph 79.

80. The allegations in the first and third sentences of Paragraph 80 constitute legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. The allegations in the second and third sentences of Paragraph 80 purport to characterize the FEIS for the Project and the 2015 BLM NV/CA ARMPA, respectively, which speak for themselves and provide the best evidence of their contents. Any allegations contrary to their plain meaning, language, and context are denied.

81. The allegations in Paragraph 81 constitute legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. The allegations in Paragraph 81 further purport to characterize the FEIS for the





U.S. Department of the Interior  
Bureau of Land Management



U.S. Fish & Wildlife Service

# Thacker Pass Lithium Mine Project

## Record of Decision and Plan of Operations Approval DOI-BLM-NV-W010-2020-0012-EIS

January 2021

### Prepared by:

U.S. Bureau of Land Management  
Winnemucca District Office  
Humboldt River Field Office  
5100 East Winnemucca Blvd.  
Winnemucca, NV 89445-2921

### In cooperation with:

U.S. Fish and Wildlife Service  
Pacific Southwest Region  
Division of Migratory Bird Management  
2800 Cottage Way, W-2650  
Sacramento, CA 95825



## MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT**

**RECORD OF DECISION  
AND  
PLANS OF OPERATIONS APPROVALS**

**THACKER PASS MINE AND NORTH / SOUTH EXPLORATION  
PLANS OF OPERATIONS  
FINAL ENVIRONMENTAL IMPACT STATEMENT**

**Plans of Operations Numbers: NVN-098582 and NVN-098586  
DOI-BLM-NV-W010-2020-0012-EIS  
Winnemucca District Office: Humboldt River Field Office  
Winnemucca, Nevada**

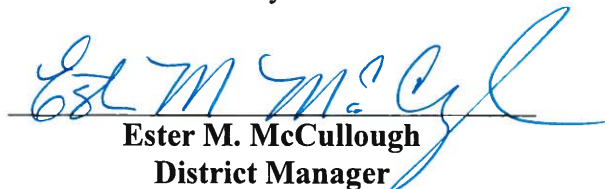
Lead Agency:

*Department of the Interior Bureau of Land Management  
Winnemucca District  
Humboldt River Field Office  
5100 E. Winnemucca Blvd.  
Winnemucca, Nevada 89445-2921*

Cooperating Agencies:

*United States Fish and Wildlife Service  
United States Environmental Protection Agency  
Nevada Department of Wildlife  
Nevada Department of Conservation and Natural Resources  
Humboldt County, Nevada*

January 2021

  
**Ester M. McCullough  
District Manager**

**JAN 15 2021**

**Date Signed**



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## Introduction

This record of decision (ROD) documents the United States Department of the Interior (DOI), Bureau of Land Management's (BLM's) selection of Alternative A from the Thacker Pass Lithium Mine Project Environmental Impact Statement (EIS), DOI-BLM-NV-W010-2020-0012-EIS. In September 2019 The Winnemucca District Office of the BLM received the Plan of Operations for the Thacker North-South Exploration Project (case file NVN-098582) and the Thacker Pass Project Plan of Operations and Reclamation Plan (case file NVN-098586), filed by Lithium Nevada Corporation (LNC). The North-South Exploration Plan of Operations would continue exploration to the north and south of the mine and processing facilities proposed in the Thacker Pass Project Plan of Operations. The Thacker Pass Mine Plan of Operations, herein referred to as the Thacker Pass Mine Plan, would include the proposed mine, necessary processing and ancillary support facilities, and a plan for reclamation (closure) of the mine and mine facilities. These Plans constitute the Thacker Pass Project (Project) analyzed in the FEIS. The Project is entirely on public land administered by the BLM in Humboldt County, Nevada, approximately 17 miles west-northwest of Orovada. Both Plans were revised in December 2020 to include corrections identified by BLM and NDEP, and mitigating measures developed in the course of the development of the EIS. The proposed action in each plan was not substantially changed.

The proposed mining activities located on public lands are subject to review and approval by the BLM pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the BLM's surface management regulations (43 CFR 3809). The BLM's review and approval of a mine Amendment to Plan of Operations under the surface management regulations constitute a federal action that is subject to the National Environmental Policy Act of 1969 (NEPA). The BLM determined that the Project constitutes a major federal action and determined that an Environmental Impact Statement (EIS) was necessary in order to fulfill NEPA requirements. A Notice of Intent to prepare an EIS was published in the *Federal Register* (FR) on January 21, 2020 (85 FR 3413). Public scoping meetings for the EIS were held in Winnemucca and Orovada, Nevada, on February 5 and 6, 2020, respectively. A 45-day comment period was held for the draft EIS from July 31 to September 14, 2020, with public information meetings held virtually on August 19 and 20, 2020. The comments received during the scoping process and comment period were considered in developing the EIS.

This ROD contains the BLM's decision, a summary of alternatives considered, management consideration or rationale for the decision, a summary of public involvement, and other information. This ROD includes Attachment A: Thacker Pass Project and North-South Exploration Conditions of Approval, Applicant's Committed Environmental Design Features described in Appendix D of the EIS, and references mitigating measures described in the Plans of Operations. The approval decision for each plan of operations under surface management regulations (43 CFR 3809) is also included herein.

## Decision

Based on the Thacker Pass Lithium Mine Project Final Environmental Impact Statement (FEIS), DOI-BLM-NV-W010-2020-0012-EIS, and the Management Considerations section in this ROD,

it is my decision to select Alternative A: the Proposed Action, including the Conditions of Approval, Applicant's Committed Environmental Design Features described in Appendix D of the EIS, and references mitigating measures described in the Plans of Operations as the preferred alternative. The Plans are subject to these measures, which are enclosed as Attachment A.

Alternative A is not anticipated to affect any threatened or endangered species or significant scientific, cultural, or historical resources, as these resources are either not present or the effects will be mitigated. BLM will issue a separate decision following this selection, which will carry forward the approval of the Plans under the applicable regulatory sections within subparts 3809 and 3715.

The results of public outreach, including consultation and coordination with state and local governments and other responsible agencies, as summarized in this ROD, were incorporated in forming the decision.

Alternative A conforms to the BLM's Record of Decision and Resource Management Plan for the Winnemucca District Planning Area, approved May 21, 2015, and amended by the ROD and Approved Resource Management Plan Amendments for the Great Basin Region, including the Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon, Utah, both the September 21, 2015, and March 27, 2019, versions. This is in accordance with the RMP Planning Criteria, #11, which states "Management of energy and non-energy mineral resources will be consistent with the acts of Congress relating to the Domestic Minerals Program Extension Act of 1953, the Mining and Minerals Policy Act of 1970, the Federal Land Policy and Management Act of 1976, the National Materials and Minerals Policy, Research and Development Act of 1980, and the Energy Policy Act of 2005, and the 43 CFR 3100, 3200, 3500, 3600, 3700, 3800 regulations." and locatable mineral Objective MR 9, which states, in part, "Manage locatable mineral operations to provide for the mineral needs of the nation while assuring compatibility with and protection of other resources and uses."

## **Mitigation and Monitoring**

The mitigation measures, environmental protection measures, conditions of approval, and monitoring plans specified in Attachment A of this ROD will minimize environmental impacts identified in the FEIS. The monitoring requirements specified in this ROD and Appendix H of Plan of Operations NVN-098586 will assist the BLM and others to identify, avoid, or mitigate, if necessary, and address unforeseen environmental impacts that may occur. The environmental protection measures (EPMs) that LNC has committed to, both in Attachment A of this ROD and in the text of its Plans of Operations, Appendix H of Plan of Operations NVN-098586, and the conditions of approval (including monitoring) in this ROD will provide environmental protection during and after implementation of the action. The ROD also provides the BLM periodic opportunities to reevaluate the analysis of potential impacts during and after implementation.

## Alternatives, Including the Proposed Action

In response to LNC's submittal of their Plans of Operations, the BLM prepared the Thacker Pass Lithium Mine Project EIS, DOI-BLM-NV-W010-2020-0012-EIS. The EIS analyzed the Proposed Action (Alternative A) and three alternatives: Alternative B – Partial Pit Backfill; Alternative C – No Pit Backfill; and Alternative D – No Action.

### Proposed Action (Alternative A)

Under the Proposed Action (Alternative A), LNC would construct and operate an open pit lithium mine and processing facility in the Thacker Pass basin. Facilities associated with the Proposed Action include development of an open pit mine; waste rock storage facilities (WRSF); a coarse gangue stockpile; a clay tailings filter stack; growth media stockpiles; haul and secondary roads; and additional mine facilities to support mining and lithium production operations. The Project would be developed in two phases (Phase 1 and Phase 2) during the proposed 41-year mine life. Phase 1 would include construction of the mine facilities and mining and processing for the first 4 years of mine life. Phase 2 would occur from years 5 to 41 of the mine life, after which the Project would enter the reclamation and closure period (for a minimum of 5 years). In addition, through the life of the project LNC would complete exploration activities as part of the Proposed Action.

The Project area includes 17,933 acres of land, of which 10,468 acres and 7,465 acres are associated with the Mine Plan and Exploration Plan, respectively. The total disturbance footprint would be approximately 5,695 acres. Surface and subsurface mineral estates associated with the Project are located on public lands administered by the BLM, Winnemucca District. No state or private lands are included in the Project area. Surface disturbances under the Proposed Action would be concurrently reclaimed by the applicant during the life of mine in areas where mining activity has been completed. The open pit would be actively backfilled during the life of mine and those areas would be concurrently reclaimed prior to the final closure and reclamation period. At the end of mine life, the open pit would be completely backfilled and reclaimed.

### Alternative B – Partial Pit Backfill

Under Alternative B, the South Pit area would be partially backfilled and the North and West Pits would be backfilled to similar elevations as proposed under Alternative A (EIS Figure 2.5, Appendix A). Under this alternative, no permanent pit lakes are anticipated to develop, however; a small intermittently wet area would likely occur in the South Pit area. Backfilling of the West Pit would be anticipated to begin in year seven of the life-of-mine and would continue into the North Pit and a portion of the South Pit as mining progresses. The partial backfill scenario would generate smaller WRSF than under the No Pit Backfill option (Alternative C). Through the life of the project LNC would complete exploration activities as part this alternative.

### Alternative C – No Pit Backfill

Under this alternative, the West, North, and East Pits would not be backfilled at the end of the life-of-mine and the open pit would remain as a post-mining feature. Upon the cessation of pit dewatering at mine closure, three small permanent pit lakes would develop. Water quality in the pit lakes would be anticipated to be degraded and could adversely affect wildlife and livestock. Groundwater quality could also be adversely affected under this alternative. In addition, this

alternative would result in larger long-term disturbance footprints for the WRSF and gangue stockpile as waste rock and coarse gangue material would not be backfilled into the pit. The increased footprints of these facilities would also result in increased visual effects. Through the life of the project LNC would complete exploration activities as part this alternative.

### **No Action Alternative**

Under Alternative D, the No Action Alternative, the BLM would not approve the proposed Plans for mining and exploration. There would be no construction or operation of the Thacker Pass Mine on BLM-administered lands. LNC would not implement further exploration proposed in the North-South Exploration Plan. LNC could implement the remaining authorized surface disturbance acreages under previous authorizations, and reclamation of those and existing disturbance would be completed according to the approved reclamation plan for each action.

### **Alternatives Considered but Eliminated from Detailed Analysis**

Following is a list of alternatives the BLM considered in the EIS but eliminated from detailed analysis.

- Alternative open pit location
- Alternate clay tailings filter stack (CTFS) location
- Alternate WRSF location
- Alternate power supply
  - Natural gas via pipeline
  - Relying on power supply from the existing grid

### **Preferred Alternative**

The Proposed Action (Alternative A) is the preferred alternative as it conforms to the Purpose and Need of the FEIS and based on the relatively compact disturbance footprint and the commitment to mitigation of reasonably foreseeable impacts to the environment. Alternative A includes all the environmental protection measures and all mitigation measures identified in Attachment A. The environmentally preferable alternative would be the No Action Alternative if solely based on disturbance that would be caused by the operations proposed and disregarding the Purpose and Need.

### **Management Considerations**

The rationale for the decision to select the Proposed Action (Alternative A) is presented in this section. The following resources were identified as having direct, indirect, and potential cumulative impacts during analysis in the EIS: air resources, cultural resources, grazing resources, migratory birds, wastes and materials, water quality and quantity, geology and minerals, land use, recreation resources, social values and economics, soils, special status species, vegetation, visual resources, and wildlife.

The Proposed Action (Alternative A) was selected as the preferred alternative through careful consideration of the impacts associated with the different alternatives. Although the Proposed Action and Alternative B are similar, the backfilling of the mine pit would result in different impacts on air quality, water quality, wildlife, and special status species. Alternative C would



require additional and longer waste rock haulage truck trips, resulting in additional air emissions and potential for fuels release, which would not result under Alternative A. Groundwater quality would likely be affected less under the Proposed Action, as the pit would be backfilled above the level where a seasonal wet area and pit lakes are likely to form, as predicted in Alternatives B and C. Not having post-mining groundwater released to the surface would reduce the risk of toxicity for species ingesting water from the wet area or a pit lake. As a result of not backfilling the mine pits, Alternative C would also result in a much larger disturbance footprint for the project. Alternative A would also reduce impacts on wildlife, migratory birds, special status species, air quality, and visual resources compared with Alternatives B or C. As such, the Proposed Action resulting in lesser direct and indirect impacts to wildlife, migratory birds, and special status species, is the deciding factor.

The Thacker Pass Project provides for the establishment of mining and ore processing in an area where mining has been identified as an appropriate land use as stated in the Winnemucca District Resource Management Plan. This decision will allow LNC to develop infrastructure to produce mineral commodities deemed critical to national security and economic well-being.

## **Consultation and Coordination**

### **Native American Consultation**

The BLM has been in contact with tribal governments regarding this Project from its early stages (October 2018) and throughout the ensuing National Environmental Policy Act (NEPA) process.

In December 2019, the BLM sent certified letters to the McDermitt Paiute and Shoshone Tribe, the Pyramid Lake and Summit Lake Paiute Tribes, and Winnemucca Indian Colony tribes, initiating formal consultation. These tribes are also on the Project EIS mailing list to receive updates, and the BLM notified the tribes of the availability of the draft EIS in July 2020. The tribes also received notification and copies of the final EIS by certified mail in December 2020. No comments or concerns have been raised during formal government to government consultation for the Project by the tribes.

### **Cooperating Agencies**

BLM invited the following agencies to participate in the NEPA process as cooperating agencies for the Project: the United States Environmental Protection Agency (USEPA), the United States Fish and Wildlife Service (USFWS), the Nevada Department of Wildlife (NDOW), the Nevada Department of Conservation and Natural Resources (NDCNR), the Nevada Department of Transportation (NDOT), and Humboldt County. The USEPA, USFWS, NDOW, NDCNR (represented by the Sagebrush Ecosystem Technical Team), and Humboldt County accepted the invitation. These entities participated as cooperating agencies during the process and through regular meetings in internal document review actively coordinated with the BLM on this EIS.

### **Intergovernmental Partners**

The BLM's coordination responsibilities include maximizing consistencies with the plans and policies of other government entities.

In accordance with the requirements of Section 106 of the National Historic Preservation Act, the BLM coordinated and consulted with the State Historic Preservation Office (SHPO). The BLM received a letter dated Wednesday, October 7, 2020, providing the SHPO's concurrence on the cultural resource report and finding of adverse effect. A Memorandum of Agreement and treatment plan are being prepared, and the BLM will continue to consult with the SHPO on the Project and treatment plan in accordance with programmatic protocols.

The BLM and LNC consulted with the NDCNR Sagebrush Ecosystem Technical Team (SETT), which provides guidance to other agencies and project proponents on the Nevada Conservation Credit System (CCS), in conjunction with implementation of the Greater Sage-Grouse Land Use Plan amendments. The CCS ensures that Greater Sage-Grouse habitat impacts are offset by long-term enhancement and protection of other existing sagebrush habitats within Nevada. LNC used the CCS Habitat Quantification Tool to quantify habitat function for Greater Sage-Grouse habitat in the Project area. LNC will continue to coordinate with the SETT to develop or obtain the appropriate number of CCS credits to offset potential impacts to sagebrush habitat within the Project area.

Coordination was also conducted between the BLM and the Nevada Division of Environmental Protection (NDEP) Bureau of Mining Regulation and Reclamation (BMRR) as specified within Memorandum of Understanding (MOU) 3000-NV920-0901, MOU for Mining and Mineral Related Activities within the State of Nevada.

NEPA regulations require that EISs be filed with the USEPA (40 CFR 1506.9). The draft and final EIS were submitted to the USEPA, as required by the Council on Environmental Quality regulations. Coordination was conducted with the USEPA as outlined in the 2008 MOU between the BLM and USEPA regarding mining EISs in Nevada.

## **Public Involvement**

### **Public Scoping**

On January 21, 2020, the BLM published a Notice of Intent (NOI) to prepare this EIS in the *Federal Register* (85 FR 3413). The NOI invited public participation and scoping comments for a 30-day scoping period ending on February 20, 2020. The comment period was extended by seven days, to February 27, 2020, due to the initial NOI having an incorrect internet link for Project information.

The BLM initiated the following additional steps as part of the scoping process:

- Sent letters to federal, state, and local agencies; affected tribal governments; and other interested parties, informing them about and inviting participation and comments on the Proposed Action
- Issued news releases to local news sources
- Updated the ePlanning website to inform the public of the Project and to invite comments
- Held public scoping meetings on February 5, 2020, at the Winnemucca Convention Center in Winnemucca, Nevada, and on February 6, 2020, at the Orovada Community Center in Orovada, Nevada

## Draft EIS

To solicit public comments and feedback on the draft EIS, the BLM published a notice of availability for the draft EIS in the *Federal Register* on July 31, 2020 (85 FR 46094), which initiated a 45-day public comment period that ended on September 14, 2020. Letters were sent to potentially interested parties, and the BLM also issued a news release that stated the draft EIS was available for review during a 45-day comment period. The BLM held two public meetings in a virtual format during the comment period on August 19 and 20, 2020. Comments received were considered in the final EIS.

Individuals, public agencies, and nonprofit organizations submitted 63 letters with comments on the draft EIS. The comments and responses to them are contained in Appendix R of the final EIS. Based on comments received, the BLM prepared the final EIS, adding information to clarify and improve the EIS analysis; however, there were no substantial changes in the analysis or the impacts in the EIS. Moreover, there were no significant new circumstances or information relevant to environmental concerns or having a bearing on the impacts disclosed in the EIS.

## Final EIS

The notice of availability for the Thacker Pass Lithium Mine Project Final EIS was published by the BLM and EPA in the *Federal Register* on December 4, 2020 (85 FR 78324 and 78349). The 30-day availability period ended on January 4, 2021.

During the 30-day availability period a total of two cooperating agencies, three other state agencies, four non-governmental organizations (NGO), and three members of the public submitted comments on the FEIS. Cooperating agencies submitting comments on the Final EIS included the U.S. Environmental Protection Agency (USEPA) and Nevada Department of Wildlife (NDOW). Other state agencies submitting comments included the Nevada Division of Water Resources (NDWR), the Nevada Department of Transportation (NDOT), and the Nevada Department of Environmental Protection (NDEP) Bureau of Safe Drinking Water (BSDW). Comments from the USEPA focused on requesting specific information to be included in the Record of Decision (ROD) regarding monitoring and mitigation of potential effects to surface waters and ground water, specifics of the NDEP Water Pollution Control Permit (WPCP) for which an application is under review by NDEP, and information on long-term financial assurances required by the BLM. NDOW comments focused on requesting specific information to be included in the ROD regarding the proponent's commitments to water and wildlife monitoring efforts, a voluntary commitment from the proponent to conduct noise monitoring and mitigation at the Montana 10 and Pole Creek greater sage-grouse leks, and identification of water monitoring thresholds that would trigger adaptive management of water resources. Comments from the NDWR, NDOT, and NDEP BSDW were standard comments regarding the various state permits that the proponent must obtain as a condition of the BLM approval and prior to initiation of disturbance causing activity at the mine site. NDOT asked for clarification on how many vehicles and buses would be accessing the mine site daily and at what hours of the day.

Comments on the Final EIS were submitted by NGOs including the Great Basin Resource Watch (GBRW), Western Watersheds Project (WWP), Wildlands Defense, and Basin and Range Watch (BRW). These comments focused on requests for additional analysis regarding water resources both ground and surface waters, statements that the BLM was not following proper regulatory



protocols in permitting the project under the General Mining Law of 1872 and the 43 Code of Federal Regulations (CFR) Subpart 3809 Surface Management regulations, statements that the analysis of potential effects to golden eagles were incorrect, and statements that the underlying hydrological data used in modeling and impact analyses were incomplete or inaccurate.

Members of the public submitting comments included Mr. Edward Bartell of Orovada and Erik Powell, PhD. Mr. Bartell's and Dr. Powell's comments focused on the hydrological modeling data and analysis and are in general disagreement with the conclusions of the effects analysis provided in the Final EIS.

The BLM interdisciplinary team specialists reviewed these comments in full and determined that the FEIS analysis was completed using standard protocols for analysis, included the best data and science available at the time, and that the BLM has applied all reasonable and feasible mitigation within its regulatory authority regarding water resources, effects on eagles, and other resource topics. The BLM's decision to select the preferred alternative is based on the analysis presented in the FEIS.

**Attachment A: Thacker Pass Project Conditions of Approval and Applicant's Committed Environmental Protection Measures**

**THACKER PASS PROJECT****CONDITIONS OF APPROVAL AND APPLICANT COMMITTED****ENVIRONMENTAL PROTECTION MEASURES****CONDITIONS OF APPROVAL**

1. In accordance with BLM Instruction Memorandum 2019-018, the mitigation required by the State of Nevada has been included in the analysis for Greater-sage Grouse (see Chapter 3 of the EIS). LNC will continue to consult with the BLM and the Nevada Department of Conservation and Natural Resources (DCNR) Sagebrush Ecosystem Technical Team (SETT) on a mitigation plan based on the Habitat Quantification Tool analysis. The mitigation plan will be developed by the SETT consistent with the Nevada Conservation Credit System or other applicable state requirements.
2. Based on the results of the cultural resource surveys and in consultation with the State Historic Preservation Office (SHPO) a historic properties treatment plan for the Thacker Pass project has been developed. It aligns with cultural resource eligibility determinations presented in the SHPO's letter to the BLM on November 5, 2020. The plan includes specific descriptions of how impacts on historic properties will be mitigated. Treatment measures include avoidance, data recovery at selected sites, public outreach and interpretation, and other methods meeting the approval of the programmatic agreement parties.
3. LNC will monitor groundwater sources according to NDEP standards and will maintain water quality and quantity for wildlife, livestock, and human consumption to State of Nevada standards.
4. LNC will regularly monitor groundwater levels in designated wells as part of the mine's water pollution control permit. Permit issuers routinely require groundwater model updates, which use monitoring data. The BLM recommends the continued monitoring in conjunction with the mine's water pollution control permit, and may require additional monitoring of seeps, springs, and non-mining wells outside the groundwater model boundary, if necessary. If monitoring finds that the project results in drawdown to seeps and springs within the Thacker Pass Project boundary, the BLM will require LNC to develop alternative water sources for wildlife and livestock use.
5. As data are collected from the field, LNC will update the groundwater model with firsthand information on a schedule not to exceed five (5) years from the previous modelling. If such updated models continue to support the assumption that the backfilled pits would exhibit flow-through at low rates with some quality degradation, LNC will adopt mitigation strategies early to minimize or eliminate the risk of groundwater impairment through strategies determined with BLM and the NDEP concurrence.
6. LNC will monitor the proposed activity to identify or prevent impacts according to the operating plans and permits in Appendix O of the EIS.

7. An as-built map for each calendar year will be submitted to the BLM Winnemucca District, Humboldt River Field Office (HRFO) by April 15 of the following year, showing topography; township; range and sections; locations of all mine operations and activities, including new areas of disturbance; and areas that have been reclaimed with the month and year the area was regraded or reseeded.
8. The financial guarantee, or portions thereof, shall be released upon the BLM HRFO and NDEP Bureau of Mining Regulation and Reclamation (BMRR) concurrence that adequate reclamation has been successfully completed. Bond release criteria shall be those set forth in regulations at 43 CFR 3809 and the Nevada Guidelines for Successful Revegetation for the Nevada Division of Environmental Protection, the Bureau of Land Management and the U.S.D.A. Forest Service (Instruction Memorandum #NV99-013). Bond release will be conducted according to the Surface Management Regulations at 43 CFR 3809.590 through 3809.594.
9. The Migratory Bird Treaty Act prohibits the destruction of nests (nests with eggs or young) of migratory birds. In order to avoid potential impacts on breeding migratory birds, a nest survey shall be conducted in coordination with BLM within potential breeding habitat prior to any surface disturbance during the avian breeding season (March 1–August 31). If nests are located, or if other evidence of nesting (i.e., mated pairs, territorial defense, carrying nest material, or transporting food) is observed, a protective buffer (the size depends on the habitat requirements of the species) shall be delineated and the buffer area avoided to prevent destruction or disturbance to nests until they are no longer active. The site characteristics used to determine the size of the buffer are: a) topographic screening; b) distance from disturbance to the nest; c) the size and quality of foraging habitat surrounding the nest; d) sensitivity of the species to nest disturbances; and e) the protection status of the species.
10. No less than biannually, starting in 2023 and continuing until the final release of revegetation requirements, the operator shall complete a noxious weed survey within the entire Thacker Pass Project boundary. The operator shall address monitoring and mitigation of weed occurrences according to the Noxious and Invasive Weed Management Plan (**Plan NVN-098586, Appendix D**). A report of the findings and treatment method(s) shall be sent to the BLM within 60 days after treatment(s). A pesticide use proposal will need to be submitted to and approved by the BLM prior to application of any chemical noxious weed treatment.
11. The operator shall ensure that all mobile mine and exploration equipment is power-washed before entering areas within the Project area dominated by native vegetation (including reclaimed areas) to prevent the spread of noxious weeds. If accomplished at the Project site, washing of this equipment is authorized only at an approved wash-point or facility established in conjunction with the operator's Plan.
12. No hazardous or toxic waste, waste oil, or lubricants shall be disposed of on public lands. Trash and other debris shall be contained on the work site and then hauled to an appropriate and approved landfill either on- or off-site. Burial or burning of trash and other debris is not authorized without specific permits from the BLM and other appropriate agencies. Waste storage and disposal shall be accomplished in a manner that does not attract terrestrial or avian scavengers.

13. All hazardous material spills regardless of size will be cleaned up and reported, if required per applicable regulations. Motorized equipment will be inspected daily by the operator for leaks or fluid loss and will be maintained to prevent leaks or fluid loss. If fluids are lost due to leaks during operations, the operator will shut down the leaking machine and will collect any contaminated soil (if present) in a 55-gallon barrel or other appropriate container for transport offsite to a permitted facility for proper treatment and disposal. Used oil, antifreeze, batteries, tires, and other recyclable materials resulting from equipment maintenance will be collected in closed containers or on pallets, as appropriate, and will be removed from the site on a regular, frequent basis for recycling. Under no circumstances will large quantities of these or other used materials be allowed to accumulate at the site, nor will any of these materials be disposed on or in the land at the site.
14. All reporting requirements specified by the NDEP or NDOW shall also be reported to the BLM HRFO within the same time frames.
15. Pursuant to 43 CFR 10.4(g) the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the operator must stop activities in the immediate vicinity of the discovery and protect it from the operator's activities for 30 days or until notified to proceed by the authorized officer.
16. The following precautionary measures shall be taken to prevent wildland fires. In the event the operator's actions should start a fire, LNC could be held liable for all suppression costs under 43 CFR 9212.4. These are in addition to any requirements imposed by the Mine Safety and Health Administration or other governing agencies for work-area fire protection.
  - a. All vehicles regularly travelling or working in wildlands outside the mine site shall carry at a minimum a shovel and five gallons of water (preferably in a backpack pump), in addition to a conventional fire extinguisher.
  - b. Adequate firefighting equipment (a shovel, a Pulaski, standard fire extinguisher(s), and an ample water supply) shall be kept readily available at each active work site in a wildland setting.
  - c. All cutting and welding torch use, electric-arc welding, and grinding operations shall be conducted in an area free, or mostly free, from vegetation. In a wildland setting an ample water supply and shovel will be on hand to extinguish any fires created from sparks. At least one person in addition to the cutter/welder/grinder shall be at the work site to promptly detect fires created by sparks.
  - d. Any fire restrictions or closures issued by the BLM WD will be publicized in the local media, and notice will be posted at various sites throughout the district. The BLM will not individually contact operators. The operator's plan serves as an authorization that may exempt its operations from certain restrictions in those orders. The operator's personnel will be responsible for being aware of and complying with the requirements of those orders.

In addition, to enhance coordination of monitoring and mitigation measures, BLM will establish a technical advisory group, comprised of BLM staff, representatives of federal, state, or local agencies with direct interest in water quality and quantity, and LNC. The primary purposes of the group would be to suggest monitoring methods and locations or refinements to those already established, periodically evaluate the monitoring data, suggest mitigation methods and triggers for implementing mitigation action. Specific action decisions will be made by the BLM or other responsible agencies (in particular NDEP) in accordance with their authorities and under the terms of their authorizations or permits.

### APPLICANT COMMITTED ENVIRONMENTAL PROTECTION MEASURES

These environmental protection measures, in addition to the above conditions, are part of LNC's Thacker Pass Project (LNC 2019) and listed in Appendix D of the EIS. Other monitoring and mitigation measures are found in Appendices B and H of Plan of Operations NVN-098586.

| Feature Number | Resource Affected | Design Feature  |
|----------------|-------------------|---|
| AQ-01          | Air Quality       | LNC would develop a Fugitive Dust Control Plan for the approved project to ensure consistency with NDEP Bureau of Air Pollution Control (BAPC) operating permits.   |
| AQ-02          | Air Quality       | LNC would control fugitive emissions at the crusher and conveyor drop points using water sprays or baghouses, as necessary.   |
| AQ-03          | Air Quality       | LNC would install, operate, and maintain pollution control devices installed by equipment manufacturers where required.   |
| AQ-04          | Air Quality       | LNC would apply surface treatments (chemical stabilization), additional watering and traffic control regulations (such as reduction in speed and traffic volume restrictions on unpaved roads), as necessary. |
| AQ-05          | Air Quality       | LNC would stabilize the surface of areas adjoining roads which are fugitive dust sources by vegetating or mulching, as necessary.   |
| AQ-06          | Air Quality       | LNC would restrict travel of project-related vehicles overland and on unmaintained travel ways, as necessary.   |
| AQ-07          | Air Quality       | LNC would minimize the area of disturbed land during ongoing surface mining activities as much as possible and practical.   |
| AQ-08          | Air Quality       | LNC would compact unpaved roads to stabilize the road surface and promptly remove ore, rock, soil, and other debris from roads, as necessary.   |
| AQ-09          | Air Quality       | LNC would minimize the loss of material to wind and spills by watering and/or treating loaded haul trucks, as necessary.  |
| AQ-10          | Air Quality       | LNC would ensure prompt revegetation of disturbed lands, as necessary.  |
| AQ-11          | Air Quality       | LNC would restrict activities causing fugitive dust during periods of air stagnation whenever possible.   |
| WA-01          | Water Resources   | See the Stormwater Pollution Prevention Plan ( <b>Plan NVN-098586, Appendix C</b> ).  |



| Feature Number | Resource Affected       | Design Feature  |
|----------------|-------------------------|---|
| NW-01          | Noxious Weed Management | See the Noxious and Invasive Weed Management Plan ( <b>Plan NVN-098586, Appendix D</b> ).   |
| LS-01          | Livestock               | LNC would install cattle guards at the entrance to the plant and mine area if necessary.  |
| MB-01          | Migratory Birds         | If possible, LNC would time land clearing and surface disturbance to prevent destruction of active bird nests or young birds during the avian breeding season (March 1 to August 31, annually in accordance with BLM policies), in compliance with the Migratory Bird Treaty Act. If surface disturbing activities are unavoidable during the avian breeding and nesting season, LNC would have a qualified biologist survey area proposed for disturbance to determine the presence of active nests immediately prior to the disturbance. Should active nests be located, or other evidence of nesting be observed (i.e., mating pairs, territorial defense, carrying nesting material, transporting of food, etc.), LNC will avoid the area to prevent destruction or disturbance of nests until the birds are no longer present. |
| MB-02          | Migratory Birds         | LNC would install raptor anti-perch devices on the proposed 25-kV power poles that are located within the portions of Project area that support sage grouse habitat. Anti-perch devices would also be installed on tall structures (where appropriate) within the mine facilities and plant site (e.g., communication tower, weather station, some areas of the lithium processing plant, and sulfuric acid plant). Anti-perch devices (usually triangle shaped, cone-shaped, or are spike-type structures) are designed to be mounted on utility poles or tall structures to prevent or dissuade raptors from landing or nesting on the structure.   |
| MB-03          | Migratory Birds         | LNC would implement a Bird & Bat Conservation Strategy (BBCS) for the Project. The Project BBCS is a Project-specific document that delineates a program designed to reduce the potential risks of raptor, avian, and bat mortality that may result from the interaction of these species with Project facilities. On-site operations will implement measures as outlined in the BBCS.  |
| MB-04          | Eagles                  | LNC would implement an Eagle Conservation Plan (ECP) for the Project. The Project ECP is a Project-specific document that delineates a program designed to reduce the potential risks of eagle mortality that may result from the interaction of these species with Project facilities. On-site operations will implement measures as outlined in the ECP. LNC is coordinating with the USFWS to apply and obtain an Eagle Take Permit (ETP) to account for effects to Golden Eagles from disturbance related to Project construction and operation.  |
| WR-01          | Wildlife Resources      | LNC would dispose of any animal road kills occurring within the Project site and along the Quinn River Well access road in self-closing trash bins or another secure method.  |
| WR-02          | Wildlife Resources      | All trash associated with the Project during construction and operation would be contained in secure receptacles to prevent the introduction of subsidized food resources for ravens and other wildlife. LNC would use closed bins during construction for organic waste. To reduce the   |

| Feature Number | Resource Affected  | Design Feature  |
|----------------|--------------------|---|
|                |                    | possibility of ravens or other wildlife from ripping into the bags and exposing the trash, plastic bags containing trash would not be left out for pickup. All trash and food items generated by construction and operation activities would be promptly contained and regularly removed from the Project site to reduce the attractiveness of the area to common ravens and other wildlife.  |
| WR-03          | Wildlife Resources | LNC would install the proposed transmission infrastructure such that they are incompatible with the establishment of raven nests. As suggested in Avian Power Line Interaction Committee guidelines, LNC will attach polyvinyl chloride pipe or corrugated drainpipe to the proposed 25-kV distribution line structures to discourage nesting (APLIC 2006). However, ravens are resourceful and, in some cases, have nested around such perch and nest discouraging features. Therefore, LNC would also regularly monitor the usefulness of the deterrence measures and implement different measures if the current effort is unsuccessful. |
| WR-04          | Wildlife Resources | During exploration activities, LNC would install wildlife escape ramps in all open trenches and drilling sumps or areas where wildlife could become trapped. LNC would coordinate with BLM to minimize any potential mortality associated with drilling sumps.  |
| VR-01          | Visual Resources   | LNC would develop and implement BMPs for the Project to reduce light pollution and impacts to visual resources including implementation of "Dark Sky" practices such as screening light sources, directing light towards intended targets, minimizing new disturbance areas, and utilizing colors found in the natural environment for structures and building. The height and angle of illumination from which floodlights are fixed would be reduced as much as possible while still maintaining the required levels of brightness and safety per operations protocol and MSHA/OSHA regulations.  |
| VR-02          | Visual Resources   | Concurrent reclamation of mine areas for which mining has been completed would be implemented to mitigate effects to visual resources. During mining operations, this would allow for vegetation to establish where mining has been completed, while mining activities are in progress elsewhere within the Project area. Concurrent reclamation would result in reduced effects to visual resources and visual contrast.   |
| VR-03          | Visual Resources   | Site-wide post-production reclamation contours and topography would be designed to blend with form, line, color, and texture of the existing landscape. Post-production reclamation would include recontouring, cover placement, placement of growth media, and seeding activities.   |
| VR-04          | Visual Resources   | Mitigation measures, such as painting buildings and structures to blend with the existing landscape, and when feasible, concurrently sloping and reclaiming stockpiles would minimize permanent visual contrasts within the Project area.   |



| Feature Number | Resource Affected  | Design Feature   |
|----------------|--------------------|--|
| WF-01          | Wildland Fire      | LNC and its contractors would comply with all applicable agency and state fire laws and regulations and will implement reasonable measures to prevent and suppress fires within the Project area.  |
| WF-02          | Wildland Fire      | LNC would not allow open fires within the Project area during the life of the Project.   |
| WF-03          | Wildland Fire      | LNC would coordinate with the BLM to keep vegetation mowed to serve as a fire break at appropriate locations along the fence line at the base of the Montana Mountains. LNC will immediately contact the appropriate firefighting entity in the event of a fire and report all wildland fires to the BLM Central Nevada Interagency Dispatch Center.   |
| WF-04          | Wildland Fire      | Vehicles and equipment operated on public and private lands and roads would meet appropriate wildfire preparedness requirements. All vehicles would carry fire extinguishers. Vehicle catalytic converters would be inspected regularly and cleaned of brush and grass debris. Power equipment would be equipped with fire extinguishers, buckets, and shovels.  |
| WF-05          | Wildland Fire      | Smoking would only be permitted in designated areas that are free of flammable materials and only if allowed by state law or federal regulations.  |
| CR-01          | Cultural Resources | Should avoidance to a known site not be feasible due to land disturbance requirements associated with Project development or if adverse effects cannot be prevented, LNC would implement mitigation measures such as data recovery, documentation and reporting at the affected cultural sites. If an unevaluated site cannot be avoided, LNC would gather additional information to evaluate the site. If the site does not meet eligibility criteria, no further cultural survey work will be performed. If the site meets eligibility criteria, LNC would develop a data recovery plan or appropriate mitigation. |
| CR-02          | Cultural Resources | LNC would inform Project employees and contractors that knowingly disturbing cultural resources (historic or archaeological) or collecting artifacts is illegal. Project employees and contractors would be informed on how to proceed with chance finds.  |
| WM-01          | Waste Management   | LNC would develop and implement a Solid and Hazardous Waste Management Plan that will identify wastes generated at the Project site and their appropriate means of disposal. Employee training would outline appropriate disposal practices, which includes the allowable wastes that can be placed in a landfill, management of used filters, oily rags, fluorescent light bulbs, aerosol cans, and other regulated substances.   |
| WM-02          | Waste Management   | All solid wastes generated by the mine and process operations would be collected in dumpsters near the point of generation. The roll-off container would be picked up within 90 days (or sooner) of initial waste accumulation and shipped off-site for disposal or disposed of onsite in a Class III Landfill.  |

| Feature Number | Resource Affected      | Design Feature   |
|----------------|------------------------|--|
| WM-03          | Waste Management       | Hazardous wastes would be properly stored and placed in roll-off containers near their points of generation for no more than 90 days. Hazardous wastes would be picked up and disposed of at a facility licensed to treat, store, and dispose of the wastes. LNC would place appropriate labels on the roll-off containers at the time of delivery.  |
| WM-04          | Waste Management       | LNC would place signs in the waste storage area at the accumulation facility to indicate the locations where the containers (e.g. drums, five-gallon pails, and/or boxes) appropriate for confining various materials are to be placed, including an area for hazardous wastes. Full and labeled drums would be placed in the designated areas on pallets with enough aisle space. Empty drums would be stored in a designated area within the fenced accumulation facility.   |
| WM-05          | Waste Management       | LNC would isolate parts-washer contents from the oil/water separator and the general septic systems. These parts washers would be self-contained and will be located in the maintenance shop. The solvent collected in nearby drums would be returned to a certified recycling/disposal firm.  |
| WM-05          | Waste Management       | LNC would have a trained response team at the site 24 hours per day to manage potential spills of regulated materials at the site. LNC would implement steps described in the Spill Contingency Plan ( <b>Appendix E</b> of the proposed <b>Plan NVN-098586</b> ).   |
| SM-01          | Survey Monuments       | To the extent practicable, LNC would protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees against unnecessary or undue destruction, obliteration, or damage. During operations, if any monuments, corners, or accessories are destroyed, LNC would immediately report the matter to the authorized officer. Prior to obliteration, destruction, or damage during surface disturbing activities, LNC would contact BLM to develop a plan for any necessary restoration or reestablishment activity of the affected monument in accordance with the Manual of Surveying Instructions (DOI 2009). LNC would bear the cost for the restoration or re-establishment activities including the fees for a Nevada Professional Land Surveyor.   |
| RC/LV-01       | Recreation & Livestock | The applicant acknowledges the past and current public use of the Thacker Pass corral and staging area located on Pole Creek Road approximately 2.5 miles north of State Highway 293 as shown on <b>Figure 4.8-1</b> . This area is commonly used by livestock grazing permittees for gathering cattle and by the public as a staging area for recreational activities farther up Pole Creek Road in the Montana Mountains. Under all alternatives analyzed in this EIS, with the exception of Alternative D (No Action Alternative), to ensure continued public access to the staging area, the applicant would not intentionally stage or store mine vehicles or exploration equipment within the designated Livestock and Recreation Staging Area, nor would the applicant close public access to the area via fencing or signage. This area would remain under the administration of the BLM for multiple use including ongoing livestock operations and |

| Feature Number | Resource Affected | Design Feature  |
|----------------|-------------------|---|
|                |                   | recreational activity. The applicant would assume no financial or management responsibility or liability for the staging area beyond any commitments included in the North and South Exploration Area Plan of Operations. |

## **PLAN OF OPERATIONS APPROVAL DECISION UNDER SURFACE MANAGEMENT REGULATIONS (43 CFR 3809) AND DETERMINATION OF CONCURRENCE UNDER THE REGULATIONS GOVERNING USE AND OCCUPANCY UNDER THE MINING LAWS (43 CFR 3715)**

The Winnemucca District, Humboldt River Field Office has reviewed the Plan of Operations and Reclamation Plan for the Lithium Nevada Corporation's North-South Exploration project, case file NVN-098582. The Plan was submitted in September 2019 and was last revised in December 2020. An environmental impact statement, DOI-BLM-NV-W010-2020-0012-EIS, was prepared for the Thacker Pass Project (which includes Plans of Operations NVN-098582 and NVN-098586) and is detailed in the record of decision (ROD).

It is my decision to approve the Plan of Operations NVN-098582, including compliance with the environmental protection measures specified in the Plan and certain of those that are included with the ROD as Attachment A. The specific measures from Attachment A that are applicable to NVN-098582 are: Conditions of Approval #1, #2, #6 through #16, and Applicant Committed Environmental Measures AQ-01, AQ-04, AQ-06, AQ-10, AQ-11, NW-01, MB-01, MB-03, MB-04, WR-01, WR-02, WR-04, WF-01, WF-02, WF-03, WF-4, WF-05, CR-01, CR-02, WM-01, WM-03, WM-05, SM-01, and RC/LV-01. Lithium Nevada Corporation may only perform those operations that have been described in their Plan, and must operate in accordance with BLM's regulations at 43 CFR subpart 3809. The operations proposed, conducted in compliance with BLM regulations and other applicable federal and state laws, would not cause unnecessary or undue degradation.

It is also my determination that the uses and surface occupancy proposed in Plan NVN-098582 meets the conditions specified in BLM's regulations at 43 CFR subpart 3715. The United States Department of the Interior, Bureau of Land Management (BLM) concurs with the occupancy of the subject lands. LNC must remain in compliance with those regulations.

Lithium Nevada Corporation (LNC) may only perform those actions that have been described in their Plan. No work is authorized under the Plan until LNC has complied with all federal, state, and local regulations, including obtaining all necessary permits from the Nevada Department of Environmental Protection and other federal, state, and local agencies.

Surface disturbing activities approved in this decision shall not begin until the BLM Nevada State Office issues a decision accepting the reclamation financial guarantee. In addition to approval of the reclamation financial guarantee from the BLM, LNC must also seek concurrence from the Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation. The types of financial instruments that are acceptable to the BLM are found at 43 CFR 3809.555. Please contact the BLM Nevada State Office at (775) 861-6400 for further information on the financial guarantee process.

### **Authority**

This Decision is in conformance with the National Environmental Policy Act of 1969, 42 USC 4321 *et seq.*; the Federal Land Management and Policy Act of 1976 (FLPMA), 43 USC 1701-1789; the BLM's Surface Management Regulations at 43 CFR Subpart 3809; the BLM's use and

occupancy regulations at 43 CFR Subpart 3715; and the Winnemucca District Resource Management Plan.

### **Appeal of the Decision**

If you are adversely affected by this decision, you may request that the BLM Nevada State Director review this decision. If you request State Director review, the request must be received in the BLM Nevada State Office at: **BLM Nevada State Office, State Director, 1340 Financial Blvd., Reno, Nevada 89502**, no later than 30 calendar days after you receive or have been notified of this decision.

The request for State Director review must be filed in accordance with the provisions in 43 CFR 3809.804 and 3809.805. This decision will remain in effect while the State Director review is pending, unless you request and obtain a stay (suspension) from the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted using the standards and procedures for obtaining a stay (43 CFR 4.21) from the Interior Board of Land Appeals (IBLA).

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the IBLA. You may contact the BLM Nevada State Office to determine when the BLM received the request for State Director review. You have 30 days from the end of the 21-day period in which to file your notice of appeal with this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, which the BLM will forward to the IBLA.

Under 43 CFR 3809.801(a)(1), if you wish to bypass a State Director review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 4. Your notice of appeal must be filed in this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1, which contains information on taking appeals to the IBLA. This decision will remain in effect while the IBLA's decision is pending, unless you request and obtain a stay under 43 CFR 4.21. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted under the criteria in 43 CFR 4.21.

### **Request for Stay**

If you wish to file a petition (request) pursuant to regulations in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that the IBLA is reviewing your appeal, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.



Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied
2. The likelihood of the appellant's success on the merits
3. The likelihood of immediate and irreparable harm if the stay is not granted
4. Whether the public interest favors granting the stay

This decision is issued pursuant to 43 CFR 3809.803. It is effective immediately. In the case of an appeal before the Office of Hearings and Appeals, this decision will remain in effect unless the Office of Hearings and Appeals grants a stay under section 4.21(b) of this title.

  
\_\_\_\_\_  
**Ester M. McCullough**  
**District Manager**  
**JAN 15 2021**  
\_\_\_\_\_  
**Date Signed**

Enclosure: Appeal Form 1842-1

## **PLAN OF OPERATIONS APPROVAL DECISION UNDER SURFACE MANAGEMENT REGULATIONS (43 CFR 3809) AND DETERMINATION OF CONCURRENCE UNDER THE REGULATIONS GOVERNING USE AND OCCUPANCY UNDER THE MINING LAWS (43 CFR 3715)**

The Winnemucca District, Humboldt River Field Office has reviewed the Plan of Operations and Reclamation Plan for the Lithium Nevada Corporation's Thacker Pass Mine project, case file NVN-098586. The Plan was submitted in September 2019 and was last revised in December 2020. An environmental impact statement, DOI-BLM-NV-W010-2020-0012-EIS, was prepared for the Thacker Pass Project (which includes Plans of Operations NVN-098582 and NVN-098586) and is detailed in the above record of decision (ROD).

It is my decision to approve the Plan of Operations NVN-098586, including compliance with the environmental protection measures specified in the Plan and those that are included with the ROD as Attachment A. Lithium Nevada Corporation may only perform those operations that have been described in their Plan, and must operate in accordance with the BLM's regulations at 43 CFR 3809. The operations proposed, conducted in compliance with BLM regulations and other applicable federal and state laws, would not cause unnecessary or undue degradation.

It is also my determination that the uses and surface occupancy proposed in Plan NVN-098586 meets the conditions specified in the BLM regulations at 43 CFR subpart 3715. The United States Department of the Interior, Bureau of Land Management (BLM) concurs with the occupancy of the subject lands. LNC must remain in compliance with those regulations.

Lithium Nevada Corporation (LNC) may only perform those actions that have been described in their Plan. No work is authorized under the Plan until LNC has complied with all federal, state, and local regulations, including obtaining all necessary permits from the Nevada Department of Environmental Protection and other federal, state, and local agencies.

Surface disturbing activities approved in this decision shall not begin until the BLM Nevada State Office issues a decision accepting the reclamation financial guarantee. In addition to approval of the reclamation financial guarantee from the BLM, LNC must also seek concurrence from the Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation. The types of financial instruments that are acceptable to the BLM are found at 43 CFR 3809.555. Please contact the BLM Nevada State Office at (775) 861-6400 for further information on the financial guarantee process.

### **Authority**

This Decision is in conformance with the National Environmental Policy Act of 1969, 42 USC 4321 *et seq.*; the Federal Land Management and Policy Act of 1976 (FLPMA), 43 USC 1701-1789; the BLM's Surface Management Regulations at 43 CFR Subpart 3809; the BLM's use and occupancy regulations at 43 CFR Subpart 3715; and the Winnemucca District Resource Management Plan.

## Appeal of the Decision

If you are adversely affected by this decision, you may request that the BLM Nevada State Director review this decision. If you request State Director review, the request must be received in the BLM Nevada State Office at: **BLM Nevada State Office, State Director, 1340 Financial Blvd., Reno, Nevada 89502**, no later than 30 calendar days after you receive or have been notified of this decision.

The request for State Director review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director review is pending, unless you request and obtain a stay (suspension) from the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted using the standards and procedures for obtaining a stay (43 CFR 4.21) from the Interior Board of Land Appeals (IBLA).

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the IBLA. You may contact the BLM Nevada State Office to determine when the BLM received the request for State Director review. You have 30 days from the end of the 21-day period in which to file your notice of appeal with this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, which the BLM will forward to the IBLA.

Under 43 CFR 3809.801(a)(1), if you wish to bypass a State Director review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 4. Your notice of appeal must be filed in this office at 5100 E. Winnemucca Blvd., Winnemucca, Nevada, 89445, within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1, which contains information on taking appeals to the IBLA. This decision will remain in effect while the IBLA's decision is pending, unless you request and obtain a stay under 43 CFR 4.21. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted under the criteria in 43 CFR 4.21.

## Request for Stay

If you wish to file a petition (request) pursuant to regulations in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that the IBLA is reviewing your appeal, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision, to the IBLA, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

## Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to parties if the stay is granted or denied



2. The likelihood of the appellant's success on the merits
3. The likelihood of immediate and irreparable harm if the stay is not granted
4. Whether the public interest favors granting the stay

This decision is issued pursuant to 43 CFR 3809.803. It is effective immediately. In the case of an appeal before the Office of Hearings and Appeals, this decision will remain in effect unless the Office of Hearings and Appeals grants a stay under section 4.21(b) of this title.

  
Ester M. McCullough  
District Manager

JAN 15 2021  
Date Signed

Enclosure: Appeal Form 1842-1

AR-052420



Steve Sisolak  
Governor

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January 4, 2021

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ATTN: Thacker Pass Project EIS Comments  
DOI-BLM-NV-W010-2020-0012-EIS  
NVN-098582, NVN-098586  
3809/1792 (NVW010.04)

Ms. McCullough:

Thank you for providing the Nevada Department of Wildlife (the "Department") with the opportunity to review the Lithium Nevada Corporation's *Thacker Pass Lithium Mine Project Final Environmental Impact Statement* (Final EIS). As a cooperating agency, we have worked extensively with the Bureau of Land Management (BLM) since 2018 and provided detailed and comprehensive feedback throughout the planning process.

We continue to find that the Preferred Alternative will likely result in adverse impacts to wildlife, ground and surface waters, and riparian vegetation within and outside the project area. These impacts include effects to an array of species and will likely have permanent ramifications on the area's wildlife and habitat resources.

Although we recognize that progress has occurred on addressing wildlife related concerns associated with this Project, there are still several outstanding issues that are of particular concern. A general summary of our remaining primary concerns is included in this letter and our specific concern relating to specific sections of the FEIS are included in Attachment 1.

### **Impacts to groundwater, surface water, and associated habitats**

Groundwater dependent habitats in the Montana Mountains north of the Project area boundary are critical to greater sage-grouse, Lahontan cutthroat trout, mule deer, pronghorn, and many other wildlife species. Given the arid nature of this region, water sources, riparian vegetation, and wet-meadow habitats are essential to wildlife and the loss or degradation of these areas will have significant negative impacts on wildlife populations.

Completing a final review and providing comments on the FEIS was complicated in that Section 4.3.2 Recommended Mitigation and Monitoring, the Final EIS references Piteau 2020a, which does not appear to match the Applicant Committed Monitoring and Mitigation Plan for Water Resources Technical Memorandum (Piteau, October 23, 2020). Applicant Committed Monitoring and Mitigation actions differ between these documents, so it was difficult to understand what items would be implemented. We recommend appropriate revisions such that it is made clear to the public and resource agencies which version of Monitoring and Mitigation Plan will be used.

AR-052422

- The FEIS lacks thresholds to trigger for adaptive management and mitigation actions. Without appropriate and objective triggers, how will future managers know when to initiate adaptive management processes or mitigation? The timescale for the project and the potential impacts to ground and surface waters is exceptionally long. We also recognize the complexity of determining thresholds and triggers and that under the current NEPA schedule, finalizing these before the ROD is impossible. Thus, at a minimum, we recommend the ROD recognize the need to resolve these outstanding issues and provide language such that they are completed by the TAG as soon as practicable. While this is far from ideal, moving forward with a project of this scale without any effort to describe triggers is likely to create significant issues in the future and provides future managers will little to no direction.

### **Impacts to the Montana-10 and Pole Creek 01 Leks from project related noise**

As previously noted by the Department, increased noise at sage-grouse leks has been shown to have negative effects on lek attendance, with likely implications to sage-grouse populations. Current research indicates that as noise levels reach 10 dBA L<sub>50</sub> above natural background levels (Pre-Project L<sub>90</sub>), sage-grouse lek attendance declines and lek abandonment often occurs. Thus, the anticipated project related noise increases at Montana-10 and Pole Creek 01 could have significant negative effects on these leks and the Lone Willow PMU. Based on average lek attendance, the Montana-10 lek is one of the three largest leks in the Lone Willow PMU and the loss of this lek would likely be of high consequence to greater sage-grouse populations.

The noise level increases predicted by the 2020 calculations and noise modeling data provided by Saxelby in 2019 indicate that project-related noise levels put the Montana-10 and Pole Creek 01 leks at considerable risk for reductions in lek attendance and lek abandonment. While we understand that LNC is participating in the State of Nevada Conservation Credit System (CCS), the CCS does not account for the loss of sage grouse leks. The importance of these leks to the Lone Willow PMU and the importance of the Lone Willow PMU to Nevada's sage grouse population is considerable.

We strongly recommend the noise monitoring plan and mitigation mentioned in the FEIS be given additional direction and commitment in the ROD to ensure it is properly completed. Specifically, we recommend the ROD include a commitment to complete noise monitoring, in compliance with all NDOW Protocols, on the Montana-10 and Pole Creek 01 leks during project construction and when mining activities are active. Additionally, lek attendance counts, per NDOW protocols, should occur each year the noise monitoring is completed. Monitoring should occur each year until a clear understanding of project-related noise increases and changes in lek attendance at these two leks sites is understood. We also recommend an annual review of noise monitoring information and lek attendance data be completed. Finally, a firmer commitment to implement noise reduction measures, restricting high noise activities to times less critical to wildlife, or other mitigation measures should be included in the ROD if noise levels (L<sub>50</sub>) are found to exceed 10dBA over pre-project, L<sub>90</sub> noise levels.

Significant time, resources, and initiatives have focused solely on conservation of greater sage-grouse by federal agencies including BLM, U.S. Forest Service, U.S. Fish and Wildlife Service (FWS), and the Natural Resources Conservation Service, as well as by Local Area Work Groups, Conservation Districts, State wildlife agencies, wildlife conservation groups, ranching and livestock organizations, and private landowners. The 2015 decision by FWS not to list this species was in large part made as a result of these efforts and the implementation of the avoid, minimize, and mitigate hierarchy. The lack of disclosure on how BLM and LNC will be implementing monitoring, mitigation, and adaptive management leaves out the tremendous importance and efforts toward collectively conserving greater sage-grouse and is contrary to the on-going efforts of the BLM to manage for this species. The Department cannot stress enough how important it is to provide this information to the public and implement appropriate measures to protect sage grouse.

AR-053646

## 5. BLM Needs to Establish a Long-Term Funding Mechanism to Cover Perpetual Management

As noted above the need to treat toxic drainage from the backfilled pit will be required well past the proposed closure

## Air Quality Aspects

### 1. Incorrect Air Quality Baseline

The DEIS does not use relevant baseline data for the air quality analysis. Baseline data for CO and NO<sub>2</sub> was based on data from Yosemite National Park-Turtleback Dome, and for SO<sub>2</sub> from White Mountain Research Center-Owens Valley Lab. According to Appendix K of the DEIS, “may be considered representative of a rural area in Nevada for conservative SO<sub>2</sub> background concentrations. Both stations (Yosemite and White Mountain in California) are in relatively rural settings in terms of nearby population centers and traffic activity” (DEIS App K, p20). Again, the DEIS does not justify this assertion with technically defensible data and analysis. In fact both Yosemite National Park-Turtleback Dome and White Mountain Research Center-Owens Valley Lab are significantly different than the region that contains Thacker Pass. Thacker Pass bridges two agriculturally intensive valley’s, which is not the case for the locations used in the DEIS.

In the case of H<sub>2</sub>S, PM<sub>2.5</sub>, and PM<sub>10</sub> the DEIS simply states that Nevada-based, NDEP baseline values are use, but with no justification for this assignment. In particular there is no justification for a zero H<sub>2</sub>S background level especially in an agricultural area and were riparian zones exist. The existence of Nevada baseline values does not absolve BLM from conducting its own baseline analysis.

An incorrectly determined baseline leads to an incorrect analysis and the inability to analyze the effectiveness of air quality mitigation plan.

### 2. Sulfur Dioxide Emissions Analysis is Inadequate

The DEIS cites very low sulfur dioxide (SO<sub>2</sub>) emissions from the facility as shown in Table 4.10. For Phase I SO<sub>2</sub> the table shows 75.8 tons per year (TPY) for the production of 337,895 tons of sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) per year. This is a very low emission rate that currently does not exist in the United States<sup>5</sup> for sulfuric acid production. Furthermore, Phase II of the mine plan will involve doubling the acid production; however, SO<sub>2</sub> emissions are still only 76.1 TPY. Phase II would be a truly impressive emission capture rate. The DEIS does not justify these emission numbers. Appendix K of the DEIS provides only the following statement;

“In order to minimize the emissions from the sulfuric acid plant, LNC has committed to installing a state-of-the-art scrubbing control, which is above customary industry standard. As a result, the sulfur dioxide and acid mist emissions from the sulfuric acid plant will be well below the emission standards (4 pounds SO<sub>2</sub> per ton of acid produced and 0.15 pounds H<sub>2</sub>SO<sub>4</sub> per ton of acid produced) in the Code of Federal Regulations, Title 40, Part 60 (40 CFR 60), Subpart H, Standards of Performance for Sulfuric Acid Plants. While the exact scrubbing system has not yet been determined, LNC has committed to installing a control that, at the minimum, meets the emission levels used in this analysis.” (DEIS, App. K, pp 6-7)

Indeed, the scrubbing technology would have to be state-of-the-art or beyond. But, the DEIS does not discuss any specifics, it only mentions a yet to be determined technology. Thus, there

<sup>5</sup>See for example, “Sulphuric Acid on the Web™”, <http://www.sulphuric-acid.com/sulphuric-acid-on-the-web/home.htm>, an online sulfuric acid database, last updated June 29, 2020.

manner that restricts oxidation, such as when it is backfilled to a pit. This concept - that the cumulative amount of sulfide mineral oxidation in waste rock depends on the duration over which the rock is stored in an aerated facility - is a fundamental component of mine-waste management, and is widely described in studies of mine-waste management. (See for example the recent presentation by Pearce et al., 2020.<sup>2</sup> This PDF file is attached to our comments so that it may be included in the public record.)

This cumulative solute release from waste rock by oxidation before backfilling is an important model source parameter, an initial condition, that is required to simulate solute release and transport from the backfill. However, the FEIS not contain a mandatory plan to prevent these pollutant releases. In addition, because the total load of soluble pollutants in the backfill has been ignored, the FEIS has failed to properly analyze treatment needs and the associated costs.. These failures violate BLM's duties under FLPMA and NEPA.

#### The FEIS does not clarify the extent of long-term water treatment

Both the waste rock dump and the tailing facility are potential sources of long-term pollution. The FEIS failed to present information and analysis as to how long it is anticipated that drainage from both of these facilities will need to be captured and treated. This is especially important for the tailings facility which based on the mobility test results contained in appendix P the leachate from the clay tailings will be highly contaminated including very low pH and significant uranium and alpha and beta activity. Drainage from the tailings facility must be treated. The question is for how long? This question is not addressed in the FEIS, but must be analyzed to ensure that water and environmental resources are protected and unnecessary and undue degradation does not occur.

Under FLPMA, BLM cannot approve an operation that is predicted to need such long-term/perpetual treatment. At a minimum, all costs for the construction, operation, and maintenance of this should be included in the reclamation/closure financial guarantee/bond in the ROD, as required by FLPMA and the part 3809 regulations.

#### **Inadequate Air Quality Analysis**

The FEIS still does not address the inconsistency and incomplete analysis of emissions from the facility. In particular is the confusing discussion of the emission from the acid plant.

- GBRW Comment P588 and P589: Sulfur Dioxide Emissions Analysis is Inadequate. The DEIS cites very low sulfur dioxide (SO<sub>2</sub>) emissions from the facility as shown in Table 4.10. For Phase I SO<sub>2</sub> the table shows 75.8 tons per year (TPY) for the production of 337,895 tons of sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) per year. This is a very low emission rate that currently does not exist in the United States for sulfuric acid production. Furthermore, Phase II of the mine

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<sup>2</sup>Pearce, Steven, "Practically achieving zero oxygen concentrations in waste storage facilities: Martabe mine as a case study," BC MEND ML/ARD Annual Workshop, 2020. <http://bc-mlard.ca/files/presentations/2020-18-PEARCE-ETAL-practically-achieving-zero-oxygen.pdf>. Attached to these comments for BLM consideration prior to issuance of the ROD.

plan will involve doubling the acid production; however, SO<sub>2</sub> emissions are still only 76.1 TPY. Phase II would be a truly impressive emission capture rate. The DEIS does not justify these emission numbers. Appendix K of the DEIS provides only the following statement;

“In order to minimize the emissions from the sulfuric acid plant, LNC has committed to installing a state-of-the-art scrubbing control, which is above customary industry standard. As a result, the sulfur dioxide and acid mist emissions from the sulfuric acid plant will be well below the emission standards (4 pounds SO<sub>2</sub> per ton of acid produced and 0.15 pounds H<sub>2</sub>SO<sub>4</sub> per ton of acid produced) in the Code of Federal Regulations, Title 40, Part 60 (40 CFR 60), Subpart H, Standards of Performance for Sulfuric Acid Plants. While the exact scrubbing system has not yet been determined, LNC has committed to installing a control that, at the minimum, meets the emission levels used in this analysis.” (DEIS, App. K, pp 6-7)

Indeed, the scrubbing technology would have to be state-of-the-art or beyond. But, the DEIS does not discuss any specifics, it only mentions a yet to be determined technology. Thus, there is no way for there to be an analysis of the effectiveness on this technology as a mitigation for sulfur dioxide emissions in violation of NEPA. There must be evidence of the effectiveness of the scrubbing technology.

- BLM Response to P588 and 589: The NEPA Air Quality Impact Analysis was completed based on guidance and specifications from a sulfuric acid plant manufacturer, which included manufacturer guaranteed emission levels for Phase 2. (These guaranteed emission levels were conservatively used for Phase 1 as well) [DEIS Appendix K, Sections 2.3.5 & 2.3.7]. Since completing the NEPA Air Quality Impact Analysis, LNC has concluded that the sulfuric acid plant tail gas scrubber will utilize a sodium sulfate scrubbing solution containing sodium hydroxide. The scrubber pH and sulfate concentration will be maintained to optimize the scrubber control efficiency. The emission limits for the sulfuric acid plant, starting with Phase 1, will be enforced through the Nevada Division of Environmental Protection Air Quality Operating Permit for the Thacker Pass Project. Furthermore, as discussed in the Thacker Pass Project NEPA Air Quality Impact Analysis Report, the sulfuric acid plant emissions must be maintained below the Federal standards in 40 CFR Part 60, Subpart H [DEIS Appendix K, Section 2.3.5].

There has been no change in the analysis and the response to comments hardly explains the process and the technology for scrubbing the SO<sub>2</sub> emissions; it merely provides a few chemicals to be used. How can the effectiveness be determined from such little information? Under NEPA and FLPMA, BLM must fully analyze, detail, and confirm the effectiveness of such purported mitigation measures.



GBRW requested “specifics” to be able to analyze whether the acid plant emissions is likely to meet the goals listed in the FEIS. Yet the FEIS adds no specific data or analysis on the scrubbing technology, such as its application in another operational acid plant or reasonably scalable laboratory test data.

GBRW also notes that the emissions for the acid plant for all constituents (PM, PM<sub>10</sub>, PM<sub>2.5</sub>, CO, NO<sub>x</sub>, SO<sub>2</sub>, VOC, H<sub>2</sub>S) are identical for both phase 1 and phase 2 (appendix K, FEIS). The FEIS failed to show why this is the case and clearly show that how the production of acid can double in phase 2 without changing the emissions.

In a discussion between GBRW and LNC on August 28, 2020 company representatives stated that “SO<sub>2</sub> emissions from phase 1 of acid plant are to be ~15 ppm and for phase 2 ~7.5 ppm.” These stack emission concentrations will achieve the 75.8 TYP and 76.1 TPY for phases 1 and 2 respectively facility wide as stated in the FEIS. Again, the FEIS does not provide the public sufficient data and analysis that these very low emissions is achievable.

The company’s unsupported claims contradict current science and are not supported by the record. We note that according to the national “Acid Plant Database,” Rio Tinto’s Kennecott Copper smelter in Utah is “the cleanest in the world” and “captures 99.9% of the sulfur dioxide emissions produced.” The same document from the “Acid Plant Database” listed the emissions concentration at <100 ppm in SO<sub>2</sub>.<sup>3</sup>

Therefore, LNC is proposing an acid plant that will be on the order of 5 to 10 times cleaner in SO<sub>2</sub> than the current state-of-the-art industry standard and the “cleanest in the world,” yet no details are provided for public review.

Under NEPA and FLPMA, the FEIS failed to establish that this standard can be met with clear data and analysis and that emission requirements and goals as presented in the FEIS will be met for all constituents.

### **BLM Must Address Impacts to Endangered, Threatened, Sensitive, and Other Special Status Birds, Wildlife, and Plants**

In general, the EIS fails to take a hard look at impacts from the proposed mine to Endangered, Threatened, Sensitive and other special status birds, wildlife, and plants in the Project area, including State of Nevada Species of Conservation Concern and At-Risk species. BLM must supplement the EIS in order to adequately consider impacts to these species from the proposed mine and carry out its mandate to conserve and protect these species under FLPMA. In particular, it is clear that BLM does not have adequate baseline information to understand special status and imperiled species presence in and use of the Project area and thus, to project how they will be affected by the mine development. In some cases, the biological information about the

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<sup>3</sup>DKL Engineering, Inc., “Sulphuric Acid on the Web™”, <http://www.sulphuric-acid.com/sulphuric-acid-on-the-web/home.htm>, an online sulfuric acid database, last updated June 29, 2020. Kennecott Data Sheet from January 27, 2018 (viewed December 27, 2020). Attached to these comments for BLM consideration prior to issuance of the ROD.

**EPA'S DETAILED COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE THACKER PASS PROJECT, HUMBOLDT COUNTY, NEVADA, JANUARY 4, 2020**

**Unmanaged Groundwater Quality Degradation**

As explained in the Final EIS, adverse effects to groundwater quality are expected from all action alternatives. Without mitigation, a plume of groundwater exceeding the Nevada Division of Environmental Protection Profile I Reference Values for antimony is expected to flow uncontrolled from the backfilled pit. According to fate and transport modeling included in the EIS (Appendix P Part 1 p. 125-133), the preferred alternative (Alternative A) would result in a plume extending approximately one-mile (p. 4-26) downgradient of the pit 300-years post-closure at levels still above Profile I (Appendix P Part 1 p. 132-133).

While the Final EIS includes three conceptual options<sup>2</sup> that have the potential to mitigate antimony groundwater contamination (Appendix P Part 1 p. 154-159), the plans are not developed with an adequate level of detail to assess whether or how groundwater quality downgradient from the pit would be effectively mitigated. In our comments on the Draft EIS, the EPA recommended more detailed information about how effective these potential mitigation options could be, and an evaluation of additional disturbance and impacts from implementing the proposed mitigation options (40 CFR 1508.25(a)(1)(iii)). In response, the BLM stated that options for blending/discharge and active treatment “have not been evaluated, and therefore may not be feasible for consideration as mitigation for the Final EIS” (Appendix R p. R-180). Therefore, conclusions in the Final EIS that groundwater quality management plans would “effectively mitigate impacts to groundwater quality downgradient from the pit” (p. 4-25) are not adequately supported.

Without detailed information about mitigation and its efficacy, it is unclear how a Record of Decision could state that all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. We encourage the BLM to consider what information is needed for the ROD to demonstrate that groundwater contamination impacts can be successfully mitigated and whether subsequent NEPA processes may be needed to analyze and disclose possible changes to the project.

***Recommendations for the ROD:***

- Clearly discuss which mitigation option is selected to prevent or limit antimony groundwater contamination.
- Disclose how mitigation would be enforced by NDEP.
- Describe how mitigation success would be measured.

***New Information***

On December 16, 2020, the EPA received a revised version of the Plan of Operation's Appendix H, “Thacker Pass Project Monitoring Plan,” during the first Water Resources Technical Advisory Group meeting. This revised monitoring plan includes a new potential future mitigation option for groundwater quality impacts that was not discussed in the Draft or Final EIS. This option involves preferentially placing oxide gangue in saturated portions of backfill to reduce the solute load of antimony as compared with the action alternatives in the current EIS. This is not currently a condition of approval or commitment in the Draft ROD, even though the option “may reduce or attenuate antimony mass prior to discharge from the backfill” (Appendix P Part 1 p. 154), which could substantially decrease the modeled 300-year impacts.

<sup>2</sup> The partial backfill closure (Option 3) is likely no longer considered due to the BLM's selection of the preferred alternative.



***Recommendations for the ROD:***

- Include a condition of approval or commitment that requires Lithium Nevada Corporation, the project proponent, to complete the evaluation of potential mitigation options listed in the Plan of Operations Appendix H Attachment A (p. 16) to reduce or attenuate antimony mass prior to discharge from the backfill.
- Consult further with NDEP to determine if the closure or mitigation strategy should be modified.

***State Mine Plan Permitting***

We recognize that LNC is currently in the process of obtaining state permits. Although the Final EIS states that LNC submitted a groundwater quality monitoring plan as required by the permit application (p. 4-26), NDEP's Water Pollution Control Permit may involve other monitoring and mitigation requirements for antimony as well as arsenic, total dissolved solids, sulfate, and magnesium. It is unclear in the Final EIS how enforcement would be implemented and how the public would have access to the monitoring reports.

***Recommendations for the ROD:***

- Ensure that BLM's permit decision is consistent with what can be permitted by the State at this time (40 CFR 1506.2).
- Include all mitigation and monitoring updates from the WPCP, as applicable.
- Expand the mitigation and monitoring discussion to include the WPCP requirements for arsenic, TDS, sulfate, and magnesium, if applicable.
- Summarize the enforcement program for all groundwater constituents. Ensure that each enforcement mechanism is discussed separately.
- Commit to providing monitoring data to the public through a BLM project website or other easily accessible source (40 CFR 1505.3(d)).

**Biological Resources**

The Final EIS did not include a mitigation, monitoring, and adaptive management plan for wildlife mitigation measures SSS-1 to SSS-9 (p. 4-62 to 4-65). Although the updated Plan of Operations included a monitoring plan in Appendix H, this did not include information on these measures. The EPA is concerned that several of these measures require additional monitoring and adaptive management to ensure mitigation success, such as creating the artificial burrowing system for western burrowing owls (SSS-7; p. 4-64, 65) and roosting bat habitat (SSS-9; p. 4-65).

***Recommendations for the ROD:***

- Disclose how each measure would be adopted or enforced by BLM, the U.S. Fish and Wildlife Service, or the Nevada Department of Wildlife.
- Describe how mitigation success would be measured.

**Funding for Long-Term Post-Closure Water Management**

The EPA has expressed concerns through the NEPA process regarding the adequacy of funding for long-term post-closure management. Given that management of antimony would be required in perpetuity, it is important to demonstrate that sufficient financial resources would be available to ensure successful implementation of post-closure WPCP monitoring and mitigation commitments. It is important to evaluate the likelihood that required mitigation will be implemented, and we believe that financial assurance is a critical tool for this evaluation.

reclamation, site closure activities, and post-closure monitoring will occur for a minimum of five years.

The Project will provide employment to approximately 300 workers during the operational phase. The proposed activities and facilities associated with the Project include:

- Development of an open pit mine to recover approximately 230.0 million cubic yards (M CY) of ore. Pit dewatering is not expected to be required as part of the Project until 2055;
- Concurrent backfill of the open pit using approximately 144.3 M CY of waste rock and 75.2 M CY of coarse gangue material;
- Construction of two Waste Rock Storage Facilities (WRSFs) to accommodate permanent storage of approximately 45.9 M CY of excavated mine waste rock material;
- Construction and operation of mine facilities to support mining operations;
- Construction of a 494 thousand cubic yard Run-of-Mine (ROM) stockpile;
- Construction and operation of an attrition scrubbing process to separate the lithium-rich fine clay from the coarse low-grade material (coarse gangue);
- Construction of a coarse gangue stockpile designed with a storage capacity of approximately 48.4 M CY;
- Construction and operation of lithium processing facilities designed to produce lithium carbonate, lithium hydroxide monohydrate, lithium sulfide, lithium metal, and solid-state lithium batteries;
- Construction of a sulfuric acid plant that will generate sulfuric acid for use in a leaching process and will also generate steam for energy that will provide power to support the Project. Excess heat, in the form a steam, will be diverted to a turbo generator to produce electricity for the lithium process. The sulfuric acid plant will generate electrical power using double contact double absorption technology with an integrated steam turbo generator set;
- Construction and operation of a Clay Tailings Filter Stack (CTFS) to permanently store clay tailings, neutralization solids, and various salts generated during lithium processing. LNC will place approximately 353.6 M CY of material on the CTFS;
- Construction and maintenance of haul and secondary roads;
- Construction and maintenance of stormwater management infrastructures including diversions and sediment ponds;
- Construction of three growth media stockpiles with material salvaged within the footprint of proposed disturbances;

## 3.2 Environmental Stewardship and Sustainability

LNC has a strong regard for environmental stewardship and long-term sustainability. LNC is committed to developing a premier lithium operation through an innovative approach to implementing sustainable mining practices involving the environment; resource efficiencies; engagement with partners, communities and customers; safety; and the economy. LNC's initial commitment includes significantly reducing the Project's carbon emissions, reducing water needs by recycling water, and protecting ecologically sensitive areas in the Montana Mountains. Implementing responsible mining practices while also demonstrating leadership in environmental sustainability is central to LNC's business strategy and the development of this Plan.

Emission reductions and water recycling will take place at the process facilities. Steam created in the sulfuric acid plant will be condensed into liquid by all the steam users and recycled within the acid plant and the process facilities. Steam will also be used to create electricity, reducing the need for carbon-based power generation; process water from the lithium process facilities will be recycled and used to slurry solids; and sustainability considerations guided the development of the plant site location and energy infrastructure, as addressed in the accompanying Options Analysis (LNC 2019a).

To avoid potential impacts to ecologically sensitive areas in the Montana Mountains, in 2017 LNC intensified exploration for additional lithium resources specifically at the Thacker Pass area. The objective of the 2017 exploration program was to identify a resource of scale while excluding the known lithium resources in more ecologically sensitive areas. The 2017 and 2018 exploration results revealed additional high-grade and near surface lithium mineralization northwest of the original pit area at Thacker Pass, allowing LNC to develop the current Plan that avoids potential direct impacts to resources within the Montana Mountains.

## 3.3 Thacker Pass Project

LNC is proposing to incorporate all existing authorizations for exploration (Table 2-3) and mining in this Plan, including all relevant aspects of activities under those authorizations in the reclamation estimate for this Project. The current mine life schedule results in 41 years of commercial mining production with two years of pre-production waste rock removal and stripping concurrent with process facility construction and at least five years of reclamation activities after cessation of mining operations.

with the background water quality (Piteau 2020a); and (2) fate and transport modeling to more precisely quantify the post-closure concentrations of antimony in the groundwater system (Piteau 2020a).

The mass mixing analysis consisted of mixing the backfill discharge with representative background groundwater quality from existing monitoring wells. The analysis was conservative in that it omits additional processes such as dispersion, diffusion and attenuation which could potentially retard or dilute pore water chemistry (Piteau 2020a). The results of the mixing analysis indicated that sulfate concentration would always remain below the Nevada Secondary Enforceable Drinking Water Standard (of 500 mg/L in the mixed groundwater zone downgradient of the pit). Antimony concentrations are predicted to be above the Nevada Primary Drinking Water Standard (0.006 mg/L) downgradient from the West and South sub-pit areas. The arsenic concentrations in the mixing zone downgradient of each of the three sub-pit areas are predicted to have concentrations that would exceed the Nevada Primary Drinking Water Standard (0.01 mg/L). However, the baseline background groundwater chemistry for the area has average arsenic concentrations ranging from 0.016 to 0.026 mg/L that naturally exceed the 0.01 mg/L Primary Drinking Water Standard. Piteau (2020a) concluded that the arsenic concentrations from the pore water within the pit backfill would not degrade groundwater because the concentrations within the pore water would be within the range of concentrations that naturally occur within the downgradient groundwater system.

The results of the mass mixing analysis prompted subsequent fate and transport modeling to more precisely quantify the post-closure concentrations of antimony in the groundwater system and to support the development of an appropriate monitoring and mitigation plan (Piteau 2020a). The fate and transport analysis is a more rigorous evaluation of solute transport because the analysis incorporates additional physical processes such as dispersion, diffusion, and advection. The results of the fate and transport modeling predict that the pit backfill outflow with concentrations of antimony that exceed the 0.006 regulatory threshold would migrate up to approximately one mile east-southeast of the pit over the simulated 300-year post-closure period; and, the magnitude of antimony concentrations decreases over time. The outflow with elevated antimony concentrations is not predicted to migrate west of the backfilled pit. In addition, the extent of the elevated antimony concentrations would not extend outside the Plan boundary. LNC has proposed groundwater quality monitoring downgradient of the backfilled pit coupled with mitigation options (Piteau 2020a) in the event that antimony concentrations exceed the Nevada Primary Drinking Water Standard at downgradient compliance points as summarized in Section 4.3.3.

Implementation of the monitoring and mitigation plan is expected to effectively mitigate potential effects to groundwater quality resulting from groundwater outflow from the backfilled pit.

### **WRSF and CGS Facilities**

The WRSFs and CGS facilities would directly overlie native clay soils. During reclamation, the slopes would be covered with 12-inches of growth media and revegetated. The vegetated cover is designed to capture water and reduce infiltration through the facilities (Piteau 2020a).

### **Clay Tailings Filter Stack**

Potential effects to water resources resulting from the construction, operation and closure of the CTFS would be the same as described under the Proposed Action. Based on the site conditions, planned design, and operation and closure plan, effects to groundwater or surface water quality from construction, operation and closure of the proposed CTFS are not anticipated.

#### **4.3.1.4 Alternative D (No Action Alternative)**

Under the No Action Alternative, the proposed Project would not be developed. Reclamation of existing disturbance would be completed according to previous authorizations.

### **4.3.2 Recommended Mitigation and Monitoring**

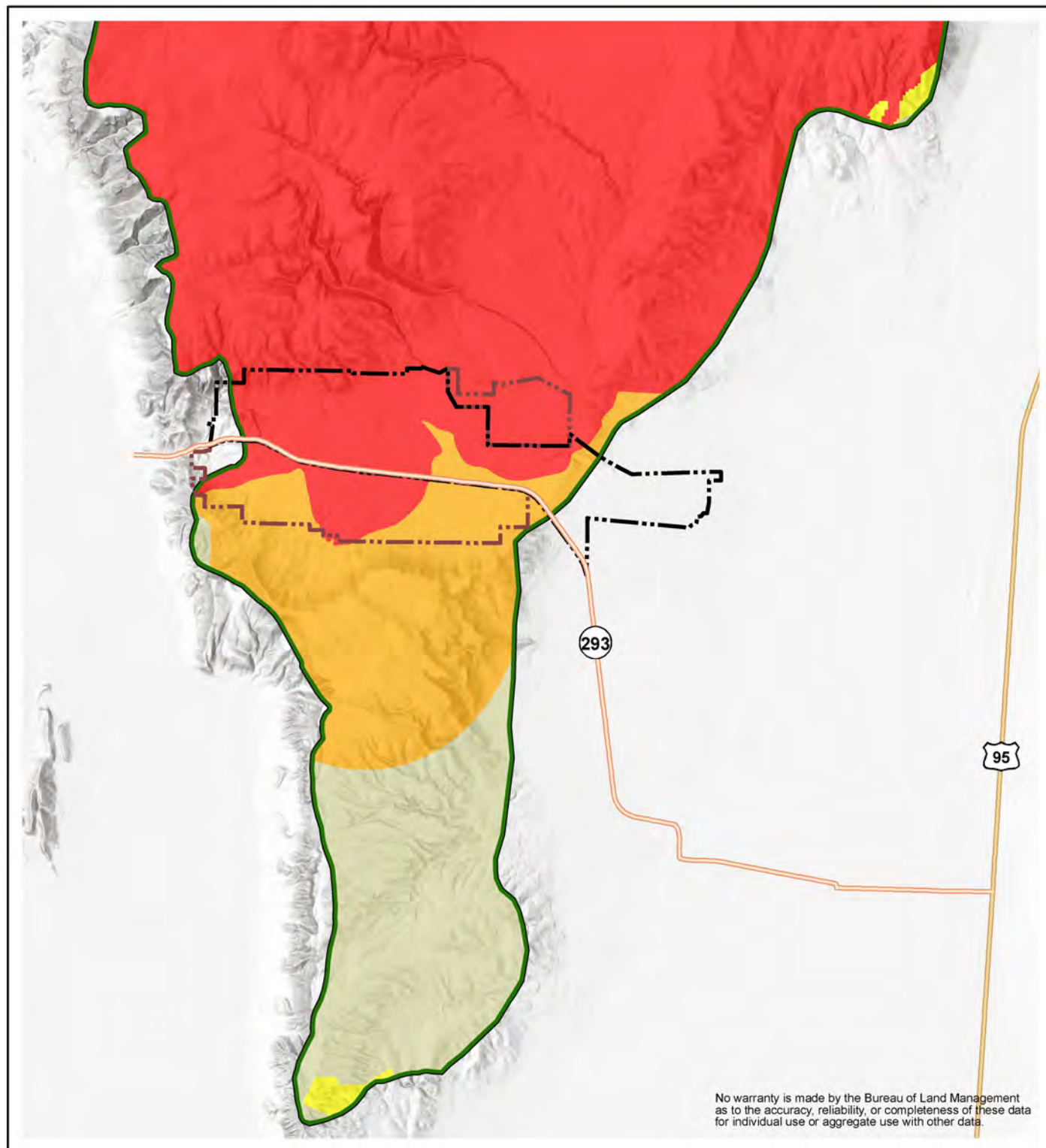
LNC has prepared a proposed monitoring and mitigation plan to address potential effects to surface and groundwater resources from the Proposed Action. The monitoring plan is included in the Thacker Pass Project, Water Quantity and Quality Impacts Report-Addendum I (Piteau 2020a) that is included in **Appendix P** to this EIS. Key elements of the monitoring and mitigation plan are briefly summarized below (see **Appendix P** for additional detail):

- Monitor groundwater levels between the Thacker Pass open pit and water resources in the Montana Mountains (springs and Pole Creek) during and after mining operations. Groundwater monitoring would serve as a warning system to trigger potential supplemental water mitigation to affected surface water features.
- Provide for flow augmentation if necessary to offset unanticipated effects to perennial surface water features located in the southern portion of the Montana Mountains (north of the pit).
- Monitor groundwater quality down-gradient of the Proposed Action backfilled pit and mine facilities.
- Provides mitigation options in the event that antimony concentrations exceed the Nevada Drinking Water Standards at downgradient compliance points. Options include measures to capture and treat the contaminated groundwater including groundwater extraction (i.e., pumping) at the downgradient compliance point; extraction of pore water from the backfill (i.e., source control); and treatment options to manage contaminated water from extraction wells. Other possible measures to mitigate the potential for groundwater contamination include modifying the open pit closure design to include a wetland in the South sub-pit to function as a hydraulic sink; and, adding an amendment to the backfill to mitigate antimony mobilization.

The following additional BLM recommended monitoring and mitigation measures would apply to the Proposed Action (Alternative A), and Alternative B and C.

**Issue WR1:** Mine induced drawdown of groundwater levels could affect baseflow in perennial springs or streams located in the area affected by drawdown. Perennial surface water resources located either: (1) within the predicted maximum extent of the 10-foot drawdown contour; or





- |  |   |
|--|---|
| PoO Boundary                                   | <b>Greater Sage-grouse Habitat Management</b> |
| Proposed Exploration PoO Boundary              | PHMA  |
| Greater Sage-grouse Population Management Unit | GHMA  |
|  | OHMA  |
|  | Non-Habitat                                   |

Source: BLM 2015.



0 2.5 5 Miles

Bureau of Land Management, Winnemucca District  
5100 E Winnemucca Blvd, Winnemucca NV

Date: 9/28/2020

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**Figure 4.5-11**  
**2015 GRSG Amendment Habitat Mapping**

Risk of vehicle collision to raptors can also increase when carcasses are left on the road. To reduce this risk, carcasses the size of a rabbit or larger (unless the carcass is a Bald or Golden Eagle) would be removed and disposed of, when feasible and safe to do so by LNC's trained environmental personnel. LNC's personnel would obtain all required permits from the appropriate agencies prior to collection or removal of wildlife carcasses, as necessary.

As described under migratory birds, risks from electrocution or collision with project facilities, such as transmission lines could increase. Collision risk would be minimized through LNC's adherence to APLIC guidelines (APLIC 2006). LNC would reduce raptor attraction to the Project area by limiting the availability of created water sources, and by installing exclusionary devices around reclaim and stormwater management ponds. Mining facilities that pose hazards to raptors would be inspected on a daily or quarterly basis (Cedar Creek 2020a). To minimize risks posed by Project facilities, recommended mitigation measure SSS-4 would require LNC to develop a monitoring plan that would help identify problem areas or facilities on-site that pose threats to raptors, migratory birds, and other wildlife, and may require additional mitigation or adaptive management.

Some raptor species could potentially utilize the open pit and may find the uneven pit walls suitable for nesting or perching. Since mining activities are continuous (24 hours a day, seven days a week), and considering the pit would be concurrently backfilled starting in year seven, long-term nesting attempts within the pit by raptors or other species are minimized and unlikely to occur.

Indirect effects to raptors would be similar to those described for migratory birds. As previously discussed, LNC has developed a BBCS that it would implement for the Project, with the intent of reducing project related impacts to raptors.

### **Big Game**

Construction activities associated with the Proposed Action would disturb approximately 852 acres of year-round mule deer habitat primarily consisting of shrub dominated vegetation communities over the life of the mine (**Figure 4.5-6, Appendix A**). This would account for approximately 0.04 percent of the total mapped year-round range in the Game Management Unit (GMU). Construction activities are not likely to prohibit or exclude movement of the local mule deer population.

Potential direct effects to pronghorn under the Proposed Action include the loss of 427 acres of summer range and 4,960 acres of winter range over the life of the mine or longer, depending on the success of reclamation (**Figure 4.5-7, Appendix A**). Two pronghorn movement corridors lie within the Project area. These corridors facilitate access between limited use and winter range habitat to the south of the Project area and winter range, summer range, and year-round habitat to the north of the Project area. Mapped pronghorn antelope winter range distribution within the Project area constitutes approximately 1.26 percent of the total winter range mapped distribution within Hunt Unit 31. The construction of Project facilities and the associated loss of habitat is likely to prohibit or impeded pronghorn movement between seasonal habitats.

SETT. The BLM does not administer the development of credits or debits under the CCS and is not responsible for enforcement of program requirements. Mitigation pursued by the applicant through the CCS program is used to offset impacts to GRSG (including noise) and sagebrush habitat only, and is not intended to offset effects to other resources, such as impacts to riparian and water resources. The final number of credits purchased would be determined based on proximity to the Project. The applicant used the CCS Habitat Quantification Tool (HQT) to quantify habitat function for GRSG in the proposed Project area (SWCA 2019b). The HQT quantifies habitat function for a range of purposes including determination of potential temporary and permanent effects of a proposed project. The SETT has completed a formal quality assurance review of the results of the HQT (SWCA 2019b). The CCS provides a regulatory mechanism for GRSG habitat protection that ensures habitat effects from anthropogenic disturbances (debits) are fully compensated by long-term enhancement and protection of habitat that result in a net benefit for the species (credits). The CCS works within a mitigation hierarchy where anthropogenic disturbance effects are first avoided, minimized, and then mitigated using the CCS (State of Nevada 2018).

The current Project would yield a total number of 1,375 term debits, and 0 permanent debits, to fully offset the anticipated temporary effects during the life of the Project. If the entire credit obligation is not satisfied before Project construction, a mitigation plan would be developed in coordination with the SETT. If a mitigation plan is developed, it must be approved by the Sagebrush Ecosystem Council, and at least 1/3 of the total required compensatory mitigation must be offset prior to receiving a Notice to Proceed in accordance with the State Mitigation Regulation (NAC 232.400-232.480). The SETT has conducted a review of the HQT analysis for the Exploration Plan and determined that 0 credits would be required.

Under Management Decision SSS 2A of the 2015 GRSG Amendment the BLM is required to conduct analysis of the area of disturbance at the local or project scale, in addition to analysis of disturbance densities across the biologically significant unit (BSU) according to the methodology presented in 2015 GRSG Amendment Appendix E. The disturbance cap analysis results are provided in NEPA analyses, but any exceedances of the cap (at both the BSU and project levels scales) do not preclude a locatable mineral resources project with existing valid rights from BLM approval. Refer to **Appendix H** of this EIS for GRSG RDFs, disturbance calculations and an analysis of Project consistency with the 2015 and 2019 GRSG ARMPAs.

### ***SSS – Migratory Birds and Raptors***

Potential direct effects from the Proposed Action to special status migratory birds and raptors would be similar to those described under migratory birds and raptors above. Direct mortality through nest destruction is not anticipated because mitigation measures SSS-1 and SSS-3 would require a qualified biologist to conduct breeding bird and raptor pre-construction surveys prior to surface-disturbing activities occurring between March 1 and August 31.

Indirect effects would include a decrease in quality of foraging or breeding habitat due to changes in vegetation community composition and/or an increase in invasive species during Project development, increased habitat fragmentation, and avoidance and displacement of habitat associated with mine-related noise and human presence.



Crowley Creek. Surface disturbance would directly affect Crowley Creek by construction of a single access road crossing and culvert. The directly affected stream reach along Crowley Creek is ephemeral and does not support fish. Exploration activities would avoid stream reaches by using existing roads that cross Pole Creek. Project-wide BMPs would be implemented to limit erosion and reduce sediment in precipitation runoff from Project facilities and disturbed areas during construction, operation, and initial stages of reclamation. To further reduce potential effects on aquatic habitat and species, mitigation measure SSS-12 would require LNC to conduct construction or maintenance activities at Crowley Creek during no flow, or low flow periods, and to use fish-friendly culverts.

The creation of reclaim and emergency stormwater management ponds could increase the amount of wildlife to the Project site by providing an additional source of water, resulting in increased drowning, exposure to contaminated water, and risks associated with increased interaction with mining activities. Risks to wildlife would be reduced by limiting the availability and access of created water sources during construction and operation. When possible, LNC would ensure truck wash areas are kept free of standing water during construction. Water used for dust suppression during construction would be applied at a rate that discourages puddling (Cedar Creek 2020a). All emergency and reclaim ponds would be fenced to restrict wildlife, and these ponds would be kept dry under normal conditions.

Risks to surface and groundwater resources are summarized in detail in Section 4.3. Potential risks to wildlife from dewatering associated with mining operations include changes in surface water and ground water flow to seeps, springs, creeks, and surrounding wildlife habitat in the Project area. This could create a localized loss of wildlife drinking water sources and reductions in aquatic food sources, and an increase inter- and intra-species competition for local water resources. The changes in local water sources could also lead to a redistribution of wildlife due to changes in water availability. Water is a critical resource for many species in the Project area, and any impact to water quantity or quality could be a significant impact.

Loss or degradation of wet meadows, springs, seeps, and associated habitat could result in long-term impacts to GRSG within and outside the Project Area. This is based on the potential for mining and dewatering to impact ground and surface waters north of the Project Area. Although the applicant has committed to offsetting habitat effects of the Project through purchasing habitat credits through the CCS program, these credits do not account for potential effects resulting from groundwater drawdown and loss of seeps or spring habitat.

According to Piteau (2019b; 2020b), simulated flow losses to Thacker Creek and Crowley Creek due to the Project would be small, falling within the measurement error of the stream gages, and less than seasonal variation. Most of the simulated flow losses were estimated to occur near the headwaters of Thacker Creek close to the Project. The modeled simulations predict that drawdown would have a negligible effect on baseflow (i.e., approximately 1 percent or less reduction) in both creeks. Therefore, mine related drawdown is not expected to result in a measurable effect to flows in Thacker or Crowley Creeks.

impacts and to identify possible emissions control strategies or mitigation measures. Detailed calculations and modeling data are provided in **Appendix K**.

#### 4.9.1.1 Alternative A (Proposed Action – Preferred Alternative)

##### Project Emissions

The project schedule consists of two years of facility construction and pre-production waste rock removal, followed by 41 years of commercial mining production. The commercial mining operation would be developed in two phases (Phases 1 and 2). Concurrent with the commercial mining, LNC would conduct continuing exploration activities. This section discusses the potential emissions from each of these components of the Project. **Appendix K** provides further detail on how the emissions inventory was estimated.

**Construction:** The site preparation and construction activities are expected to include a combination of scraping, dozing, grading, compacting, and material transfers, using standard construction equipment. The pre-production waste rock removal operations would include drilling, blasting, waste hauling, and material transfers. These activities would create fugitive dust emissions, tailpipe emissions from mobile equipment, and combustion products from blasting.

**Table 4.8** presents the estimated annual emissions from construction and pre-production waste rock removal.

**Table 4.8. Construction Emissions (tons/year)**

| Activity                         | CO           | NO <sub>x</sub> | PM <sub>10</sub> | PM <sub>2.5</sub> | SO <sub>2</sub> | VOC         | HAP         | CO <sub>2e</sub>        |
|----------------------------------|--------------|-----------------|------------------|-------------------|-----------------|-------------|-------------|-------------------------|
| Facility Construction – Fugitive | -            | -               | 34.5             | 7.5               | -               | -           | 0.10        | 34,109<br>(all sources) |
| Mobile Equipment – Tailpipe      | 137.4        | 269.9           | 8.6              | 8.6               | 0.31            | 29.9        | 0.42        |                         |
| Waste Rock Removal               | 30.0         | 0.8             | 12.8             | 1.0               | 0.002           | -           | 0.04        |                         |
| <b>Total</b>                     | <b>167.4</b> | <b>270.7</b>    | <b>55.9</b>      | <b>17.2</b>       | <b>0.31</b>     | <b>29.9</b> | <b>0.57</b> | <b>34,109</b>           |

Source: LNC 2019h

Note: Sum of individual values may not equal total due to independent rounding.

**Exploration:** Concurrent with the commercial mining, LNC would conduct continuing exploration operations. Exploration operations would result in fugitive dust emissions from drill pad and access road construction and from exploration drilling, and tailpipe emissions from the drill rigs and support equipment. **Table 4.9** presents the estimated annual emissions from exploration activities.

**Table 4.9. Exploration Emissions (tons/year)**

| Activity                          | CO          | NO <sub>x</sub> | PM <sub>10</sub> | PM <sub>2.5</sub> | SO <sub>2</sub> | VOC        | HAP         | CO <sub>2e</sub> |
|-----------------------------------|-------------|-----------------|------------------|-------------------|-----------------|------------|-------------|------------------|
| Exploration Operations – Fugitive | -           | -               | 1.5              | 0.2               | -               | -          | 0.0047      | -                |
| Mobile Equipment – Tailpipe       | 15.2        | 9.3             | 0.3              | 0.3               | 0.03            | 2.4        | 0.061       | 3,018            |
| <b>Total</b>                      | <b>15.2</b> | <b>9.3</b>      | <b>1.8</b>       | <b>0.5</b>        | <b>0.03</b>     | <b>2.4</b> | <b>0.07</b> | <b>3,018</b>     |

would take place during mining operations to minimize the overall visual contrast of the existing landscape. Overall, the construction and operation of the Proposed Alternative would not meet the current VRM Class II objectives, and would not conform with the existing ROD/RMP (see Section 1.5.3). The existing character of the landscape would not be retained, and the level of change to the characteristic landscape would be noticeable and likely attract the attention of the casual observer. Overall, the construction and operation of Alternative A would not meet the current VRM Class II objectives, and would not conform with the existing ROD/RMP (see Section 1.5.3).

### **Mine Exploration**

Under the Proposed Action, exploration activities would occur as needed throughout the operational phase of the mine in the north and south Exploration Plan areas as described in Section 2.2.8, *Exploration*. Exploratory drilling or activity could occur at any location within the exploration areas at any time during the day or night. Exploration within the Plan area would involve the use of heavy equipment and increased vehicular and human presence along roads and land clearing areas. Exploration activities would occur mainly during daylight hours but could extend to 24 hours a day. Temporary impacts on visual resources would include the presence of heavy equipment, clearing of vegetation, additional lighting, and waste rock storage facilities. Long-term impacts could include new access roads. All disturbed land that is not required for operations would be reclaimed after exploration. Vegetation communities would be restored, which would reduce long-term impacts to the line, color, and texture of the natural landscape. Exploration roads would also likely be used for mine construction and operation, and would be reclaimed once they are no longer needed (either post-construction or post-operation).

### **Mine Construction**

Construction of the Thacker Pass Project is expected to begin in 2021 and last for approximately two years. Construction would remove vegetation, add roads, waste rock storage facilities, clay tailings, pits, and associated buildings and infrastructure. The largest visual impacts would result from the mass-grading and reshaping of soils and landforms that would alter topography. Visual changes to the landscape would include removal of vegetation and exposure of soil, causing a contrast in color, line, form, and texture to the existing landscape. All disturbed land that is not required for operations would be reclaimed after construction. Areas that would be reclaimed include the powerline and pipeline construction corridor – an area ranging approximately eight miles. Vegetation communities would be restored, which would reduce long-term impacts to the line, color, and texture of the natural landscape. Smaller construction roads, and construction laydown areas would also be reclaimed after construction. **Appendix M** provides visual simulations for the existing landscape, ten years into mine operation, and post-reclamation, illustrating likely impacts to visual resources from selected KOPs.

### **Mining Operations**

Mining operations are expected to last 41 years, through 2063. Contrasts to the existing landscape during operations would be long-term due to the life of the mine. Mitigation measures would be implemented throughout mine operations to minimize visual changes to the landscape. Mitigation

## 4.11 SOCIAL AND ECONOMIC CONDITIONS

### 4.11.1 Issues – Project Infrastructure, Public Safety, Access, and Transportation

#### 4.11.1.1 Alternative A (Proposed Action – Preferred Alternative)

##### Construction Effects

In order to build the new facilities construction is expected to occur over four years and would construct an open pit mine, lithium processing plant, and sulfuric acid manufacturing plant that would have the capacity to produce up to 33,000 tons of lithium carbonate. Phase 2 would increase production capacity of lithium products to approximately 66,000 tons (University of Nevada, Reno Center for Economic Development 2018-19).

Annually, the investment during construction would be over \$128.3 million and is expected to employ approximately 1,000 personnel at its peak, roughly six to eight months at an average wage rate of \$51,200 per job. In addition, construction impacts are expected to result in \$265.4 million in economic activity in Humboldt County. The construction would also support \$8.2 million in state and local taxes (LNC 2019a; LNC 2020e; University of Nevada, Reno Center for Economic Development 2018-19). **Table 4.13** details the total economic effect of the construction phase on Humboldt County.

**Table 4.13. Estimated Mine and Plant Annual Construction Effects on Humboldt County**

|                      | Direct        | Indirect      | Induced      | Total         | Multiplier |
|----------------------|---------------|---------------|--------------|---------------|------------|
| Economic Activity    | \$218,394,336 | \$115,119,708 | \$31,917,271 | \$265,431,316 | 1.22       |
| Personal Income      | \$56,553,554  | \$4,291,382   | \$7,763,556  | \$68,608,492  | 1.21       |
| Employment           | 1,000         | 97            | 243          | 1,340         | 1.34       |
| Average Wage per Job | \$56,553      | \$44,241      | \$31,948     | \$51,200      | -          |
| State & Local Taxes  | \$4,016,272   | \$1,126,478   | \$3,071,061  | \$8,213,811   | -          |
| Federal Taxes        | \$17,437,041  | \$1,088,259   | \$2,457,810  | \$20,983,110  | -          |

Source: University of Nevada, Reno Center for Economic Development 2018-19

##### Annual Operation Effects

Beginning year three, LNC would begin Lithium Carbonate production at a maximum capacity rate of 33,000 tons per year. The same capacity rate would continue through year six when Phase 2 construction is scheduled to be completed. Beginning year seven, Lithium Carbonate would have the increased production capacity of 66,000 tons per year. Impacts of this phase would be longer-term, continuing over the life of the mine.

Over Phase 1 of operations, LNC would spend \$153 million and employ as many as 183 jobs to produce 33,000 tons of Lithium Carbonate. This direct spending would support over \$18 million in total personal income and support 298 total jobs at an overall average wage of \$62,675. This activity is expected to support approximately \$5 million in state and local taxes (University of

## CHAPTER 5. CUMULATIVE EFFECTS

### 5.1 INTRODUCTION

This section summarizes cumulative effects from past, present, and reasonably foreseeable future actions (RFFAs) for the Proposed Action and forms the basis for the discussion of cumulative effects. Cumulative effects under NEPA are defined by the CEQ as:

“the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time”

(40 Code of Federal Regulations 1508.7).

**Table 5.1** presents information regarding resource CESAs.

**Table 5.1. Cumulative Effects Study Areas by Resource**

| Resource                                 | CESA Description   | CESA Name           | Size of CESA (acres) |
|--|--|---------------------|----------------------|
| Geology and Minerals                     | Project area   | Geology CESA        | 17,933               |
| Water Resources                          | Effect Model Domain  | Groundwater CESA    | 288,501              |
|  | Quinn River and Kings River Valley hydrographic basins       | Surface Water CESA  | 596,480              |
| Vegetation and Wetlands                  | Quinn River and Kings River Valley hydrographic basins       | Vegetation CESA     | 596,480              |
| General Wildlife                         | NDOW Hunt Unit 031   | Recreation CESA     | 86,104               |
| Special Status Species – GRSG            | Lone Willow PMU  | GRSG CESA           | 480,106              |
| Special Status Species – Eagles          | Project area and a 10-mile buffer                            | Eagle CESA          | 218,391              |
| Special Status Species – LCT             | Quinn River and Kings River Valley hydrographic basins       | LCT CESA            | 596,480              |
| Soils                                    | Project area   | Soils CESA          | 17,933               |
| Non-native and Invasive Plants           | Humboldt County  | Noxious Weed CESA   | 6,181,120            |
| Rangeland Management                     | Grazing allotments overlapping the Project area              | Range CESA          | 164,159              |
| Air Quality and Greenhouse Gas Emissions | The airshed or a 100-kilometer radius of the Proposed Action | Air CESA            | 2,436,602            |
| Cultural Resources                       | Double H/Whitehorse Obsidian Procurement District            | Cultural CESA       | 68,000               |
| Social and Economic Conditions           | Humboldt County  | Socioeconomics CESA | 6,181,120            |
| Environmental Justice                    | Humboldt County  | EJ CESA             | 6,181,120            |
| Lands and Realty                         | Project area and major transportation routes                 | Realty CESA         | 17,933               |
| Noise                                    | Project area plus a 10-mile buffer                           | Noise CESA          | 19,305               |
| Visual Resources                         | Project area plus a 30-mile buffer                           | Visual CESA         | 1,808,640            |

**Cumulative Effects****Chapter 5**

| Resource                           | CESA Description                             | CESA Name       | Size of CESA (acres) |
|------------------------------------|--|-----------------|----------------------|
| Wastes, Hazardous and Solid        | Project area and major transportation routes | Wastes CESA     | 17,933               |
| Recreation                         | NDOW Hunt Unit 031                           | Recreation CESA | 86,104               |
| Native American Religious Concerns | Humboldt County                              | Tribal CESA     | 6,181,120            |

CESA = Cumulative Effects Study Area; NDOW = Nevada Department of Wildlife

Relevant projects and actions are defined for the EIS as those past, present, and RFFAs that could interact with the Proposed Action or alternatives in a manner that would result in cumulative effects, resulting primarily from mining, commercial activities, and public uses.

**Past and Present Actions**

Past and present development projects and other actions within Humboldt County include historic and ongoing activities including mining, grazing, agriculture, recreation, and other commercial activities. Past and present actions that are unplanned but have occurred include occurrence of natural and human-caused wildfires. Past and present projects and actions are identified for those specific actions for which effects upon the natural environment would contribute incrementally to effects from the Proposed Action or action alternatives and are considered in the cumulative effects analysis are described in **Table 5.2**.

**Table 5.2. Surface Disturbance Associated with Past and Present Actions and RFFAs within the Resource CESAs**

| Action   | Past and Present Disturbance (acres) | Projected RFFA Disturbance (acres) | Total Disturbance (acres) |
|--|--------------------------------------|------------------------------------|---------------------------|
| <b><i>Mines and Quarries</i></b>               |                                      |                                    |                           |
| National Mine Exploration Project <sup>1</sup> | -                                    | 200                                | 200                       |
| Moonlight Uranium Mine                         | 14.6                                 | -                                  | 14.6                      |
| Kings Valley Clay Mine                         | 50.5                                 | -                                  | 50.5                      |
| Sand and Gravel Operations                     | 24                                   | -                                  | 24                        |
| <b><i>Utilities and Infrastructure</i></b>     |                                      |                                    |                           |
| Roads  | 12,485                               | -                                  | 12,485                    |
| Railroads                                      | 1,479                                | -                                  | 1,479                     |
| Communication Sites                            | 249                                  | -                                  | 249                       |
| Transmission Lines                             | 4,209                                | -                                  | 4,209                     |
| <b><i>Other</i></b>                            |                                      |                                    |                           |
| Wildfires                                      | 22,459                               | -                                  | 22,459                    |
| <b>Total</b>                                   | <b>40,970</b>                        | <b>200</b>                         | <b>41,170</b>             |

Sources: BLM 2019; Tiger 2017

<sup>1</sup> The National Exploration Project is a mineral development project occurring on private, USFS, and BLM lands in northern Humboldt County.



47. Drawing SF-030 Typical Curb and Sump Pit details: The details show placements of waterstops. Please confirm waterstops will be placed at all curb locations in the process buildings.

48. Please provide details on pipes entering and leaving containment.

***Attachment L - Process Fluid Management Plan***

49. Containment and management of WRSF and CGS runoff should be described in this plan.

***Attachment M – Monitoring Plan***

50. Section 3.2.2 Monitoring Wells: Based on the most recent predictive groundwater modeling results, elevated antimony concentrations will occur outside the proposed final pit shell but are expected to remain within the approved Thacker Pass project boundary. The Division does not allow degradation of waters of the State and will therefore enforce Profile I or the demonstrated background water quality immediately outside the pit boundary. Furthermore, the Division will require the placement of at least one monitoring well immediately downgradient of the pit. Be advised that any pore water present in the backfilled pit is not technically a compliance point; therefore, the Division will strongly encourage source mitigation of pore water present in the pit.

51. Section 4.1.1 Natural Groundwater Exceedance Parameter: The section proposes a background arsenic standard of 0.065 mg/L which was determined by using data from the well with the highest arsenic concentrations on site and calculating the median plus two standard deviations.

Data from all wells should be used when calculating the background arsenic concentrations for the facility. Additionally, the median plus two median absolute deviations should be used to calculate background because the data is not normally distributed. Please ensure to eliminate data that were impacted by pump tests as described in this section.

Please provide the completion depth, lithology, and screening level with arsenic concentrations of each well. Are there any correlations between the well completion and arsenic concentrations?

Because fluoride is elevated in only two wells (WSH-11 and -13), background fluoride cannot be established at the facility; however, the Division notes the elevated fluoride concentrations at these two wells.

52. Figure 3 is difficult to see surface water monitoring locations. Please ensure there is an upgradient and downgradient monitoring location for potentially effected surface waters.

A monitoring location should be chosen upgradient of potential impacts from the West WRSF at Thacker Creek and the East WRSF, CGS, and CTFS at Crowley Creek.

53. Please install shallow piezometers surrounding the CTFS to serve as leak detection for the facility. Provide a map showing the proposed piezometer locations.

***Attachment N – Stormwater Pollution Prevention Plan***

54. The SWPPP requires revision considering the required containment for WRSF and CGS

**SSS – Amphibians**

Three BLM special status amphibian species have the potential to occur in the Project area (Columbia spotted frog (*Rana luteiventris*), northern leopard frog (*Lithonates pipiens*), and western toad (*Anaxyrus boreas*). Columbia spotted frog is also listed as a federal candidate species under the ESA. Pacific tree frog (*Pseudacris regilla*) was incidentally observed in one spring (SP-048).

**SSS – Reptiles**

The desert horned lizard is a BLM special status species, and was observed in the Project area during field surveys (SWCA 2019a). Other reptiles listed by BLM or NDOW as special status species have the potential to occur in the Project area (**Table H.1, Appendix H**).

**SSS – GRSG**

The Project area lies within the GRSG Lone Willow Population Management Unit (PMU). Portions of the Project area are identified as Priority Habitat Management Area (PHMA), General Habitat Management Area (GHMA), and non-habitat for GRSG (**Figure 4.18-8, Appendix A**). PHMA is defined as BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations.

There are six known active lek sites within 3.1 miles of the Project area (Cedar Creek 2019c). There are no active leks within one mile of the Project area; however, sage-grouse activity has been documented within the Project area by NDOW, who reported 63 tracking locations generated by at least 30 radio-marked birds (Cedar Creek 2019d). During baseline surveys, one sage-grouse was observed in the Project area (SWCA 2019b).

GRSG habitat field sampling efforts conducted for the Project included surveying 113 transects in 15 sample units across approximately 49,165 acres. Sage-grouse habitat suitability varied throughout the analysis area and sagebrush ecosystems have been highly modified by wildfire and the subsequent infestation of invasive annual grasses, primarily cheatgrass. The northern portion of the analysis area has not been impacted by wildfire or other disturbances, and sagebrush assemblages are intact and non-fragmented. This area provides year-round suitable GRSG habitat, which is evidenced by the extant sagebrush, adjacent mesic habitats (i.e., wet meadows), and sign of GRSG use (SWCA 2019b).

Habitat located in the Project and Operations area has been considerably modified by recent and historical wildfires and contiguous infestations of invasive annual grasses, primarily cheatgrass. The landscape is generally devoid of large, extensive and healthy sagebrush assemblages, with patchy occurrences of sagebrush.

**SSS – Bats**

Bat species detected in and near the Project area during acoustic monitoring events included canyon bat (*Parastrellus hesperus*), Mexican free-tailed bat (*Tadarida brasiliensis*), Townsend's big eared bat (*Corynorhinus townsendii*), hoary bat (*Lasiurus cinereus*), western small-footed myotis (*Myotis ciliolabrum*), and long-eared myotis (*Myotis evotis*) (SWCA 2019a). There are no



# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### GENERAL WILDLIFE & HABITATS

The study area contains habitat for a variety of wildlife typical of the Great Basin Region. Habitat is predominantly sagebrush, intermixed with salt desert scrub and invasive grasslands and forblands. Over 2,600 acres of land within the study area boundary were burned in a large fire in 2012. Key wildlife habitats in the study area also include cliff and canyon habitat, perennial, intermittent, and ephemeral streams, seasonal and perennial seeps and springs, and approximately 28.08 acres of aquatic resources, consisting of emergent marsh, seep/spring riparian wetlands, riverine wetlands, ponds/reservoirs, and temporary or seasonally flooded wetlands.

General wildlife species observed in the study area included cottontails (*Sylvilagus sp.*), jackrabbits (*Lepus sp.*), coyote (*Canis latrans*), ungulates (such as mule deer, *Odocoileus hemionus*), and a variety of snakes, lizards, and birds.

### GENERAL WILDLIFE SPECIES

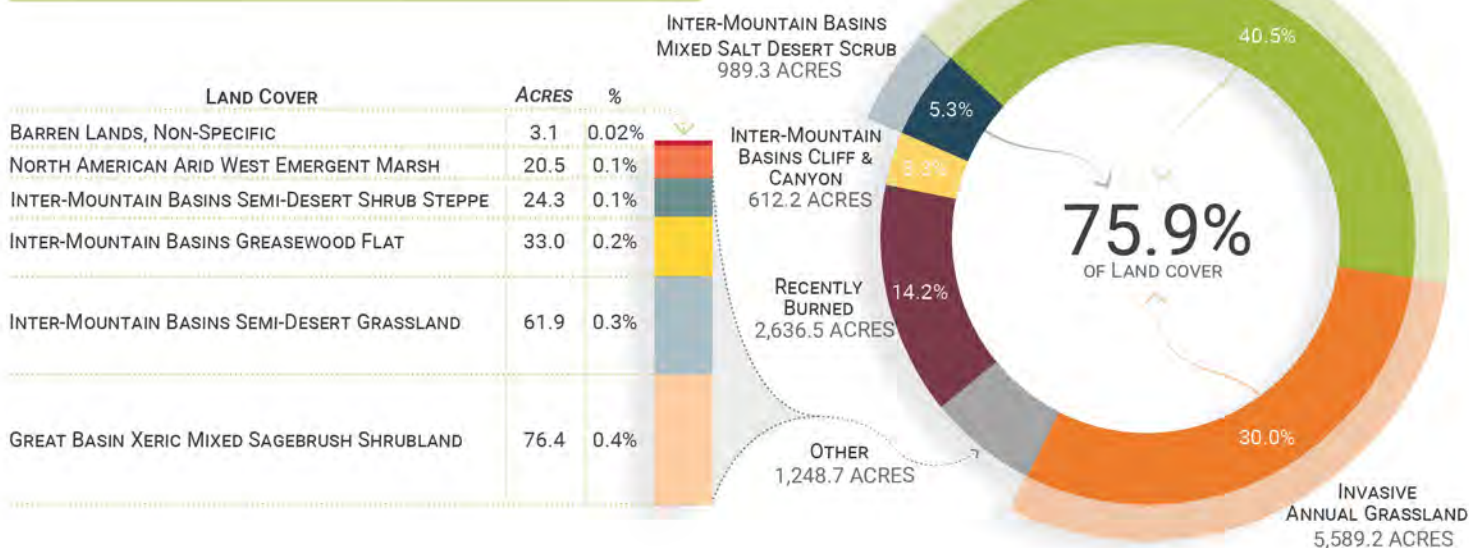


**Black Tailed Jackrabbit**  
(*Lepus californicus*)



**Coyote**  
(*Canis latrans*)

### SWReGAP\* LAND COVER IN PROJECT AREA



\* THE SOUTHWEST REGIONAL GAP ANALYSIS PROJECT (SWReGAP) IS AN UPDATE OF THE GAP ANALYSIS PROGRAM'S MAPPING AND ASSESSMENT OF BIODIVERSITY FOR THE FIVE-STATE REGION ENCOMPASSING ARIZONA, COLORADO, NEVADA, NEW MEXICO, AND UTAH.

PHOTO SOURCES:  
JACKRABBIT - JIM HARPER  
DESERT HORNED LIZARD - NEVADA DEPARTMENT OF WILDLIFE



# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### GAME SPECIES

Game species include big game, furbearers (an animal whose fur is valued commercially) and other game mammals, and game birds.

#### BIG GAME

Occupied pronghorn antelope (*Antilocapra Americana*), mule deer (*Odocoileus hemionus*), and California bighorn sheep (*Ovis canadensis californiana*) distributions occur in portions of the study area and 4-mile buffer area. Mountain goats (*Oreamnos americanus*) have also been reported by NDOW in the study area, though there are no known distributions of mountain goat in the study area. Year-round populations of mule deer and bighorn sheep are mapped in the study area and buffer. Limited use, winter, and summer pronghorn antelope distributions, and a pronghorn movement corridor, occur through portions of the study area and buffer. There are no big game water developments in the study area or vicinity.

In December 2015, indications of disease in the California bighorn sheep population in the Montana Mountains were revealed during routine capture and radiomarking efforts

by NDOW (Nevada Department of Wildlife). The decision was made to depopulate the herd of bighorn sheep in the Montana Mountains due to an outbreak of pneumonia that caused die-off in the herd. Subsequently, there are no known bighorn sheep presently in the Montana Mountains, but bighorn sheep populations continue to occur in the Double H Mountains.

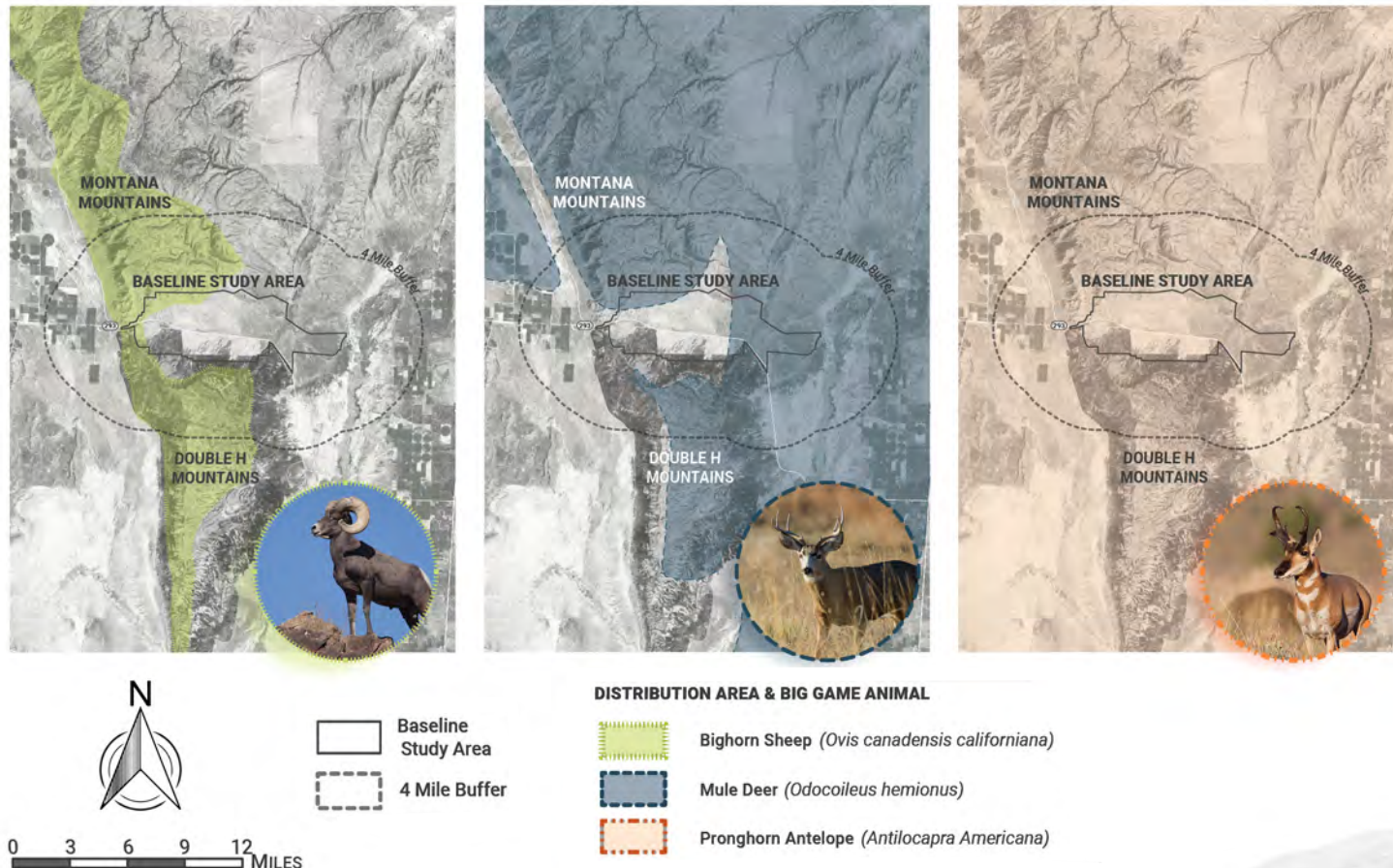
#### FURBEARERS & OTHER GAME MAMMALS

Game mammals that could occur in the area include fox species, bobcat, badger, coyote, rabbits. Species surveys and NDOW records indicate the presence of cottontail rabbits in the study area. There are 16 small game water developments in the vicinity of the study area.

#### GAME BIRDS

Game birds observed in the study area in 2018 included California quail (*Callipepla californica*), chukar (*Alectoris chukar*), Greater sage-grouse (*Centrocercus urophasianus*), mourning dove (*Zenaida macroura*), and American crow (*Corvus brachyrhynchos*). Greater sage-grouse is a special status species and as described in the next section.

FIGURE 1 BIG GAME DISTRIBUTION





# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### REPTILES

Snakes and lizards are common in the region, in almost every habitat type. Reptile species observed in the study area and vicinity, as reported by NDOW, or incidentally observed in 2018, include Great Basin rattlesnake (*Crotalus oreganus lutosus*), western terrestrial gartersnake (*Thamnophis elegans*), western rattlesnake (*Crotalus oreganus*), Great Basin gopher snake (*Pituophis catenifer deserticola*), sagebrush lizard (*Sceloporus graciosus*), and desert horned lizard\* (*Phrynosoma platyrhinos*). \* BLM special status species.

### AMPHIBIANS

The study area contains seeps, springs, wetlands, and streams, which provide potential habitat for amphibians. Frogs and toads can potentially use the associated riparian areas for forage, cover and breeding. During spring surveys for snails, an adult Pacific tree frog (*Pseudacris regilla*) was found in the cobble substrate at one spring. No other amphibian species were found during the survey.

### SPRING SNAILS

Many Great Basin populations of springsnails have become isolated with the drying conditions that followed the close of the Pleistocene. Some of these isolated populations have differentiated to form endemic species. Springs in the study area and surrounding survey area were surveyed for suitable habitat for springsnails. Springsnails were surveyed at 13 undeveloped springs in the survey area. During surveys for springsnails, the Kings River pyrg (*Pyrgulopsis imperialis*) was found at all springs collected. Other species detected at the springs included the turban pebble snail (*Fluminicola turbiniformis*) and Physa snails. None of these snails are identified as BLM special status species, though both species are NDOW species of conservation priority.

### SPECIAL STATUS SPECIES

Special status species are those that state or federal agencies afford an additional level of protection by law, regulation, or policy. Included in this category are federally listed species that are protected under the Endangered Species Act (ESA), and those designated as sensitive and special status by the BLM (IM-NV-2018-003). In addition, there is a Nevada protected animal list (Nevada Administrative Code 501.100-503.104) that the BLM has incorporated, in part, into its sensitive species list.

### WILDLIFE IN PROXIMITY TO THACKER PASS



**Desert Horned Lizard**  
(*Phrynosoma platyrhinosz*)



**Pacific Tree Frog**  
(*Pseudacris regilla*)



**Great Basin Rattlesnake**  
(*Crotalus oreganus lutosus*)



**Sagebrush Lizard**  
(*Sceloporus graciosus*)



**Physa Snail Species**  
(*Physa fontinalis*)



**Desert Cottontail**  
(*Sylvilagus audubonii*)

### LAHONTAN CUTTHROAT TROUT

Lahontan cutthroat trout (*Oncorhynchus clarkia henshawi*; "LCT") is an inland subspecies of cutthroat trout (family Salmonidae) listed as threatened under the ESA. LCT is known to exist in the Crowley Creek-Quinn River watershed. Within the Quinn River Valley subwatershed, LCT occur in the upper reaches of Pole Creek, Riser Creek, Washburn Creek, and the upper reaches of Crowley Creek, where there is perennial flow. In addition, Rock Creek is listed as a recovery stream as it once supported LCT and may be suitable in the future to support LCT. However, it is not currently occupied by LCT and exhibits intermittent flow. No LCT occur in Thacker Creek or lower reaches of Pole Creek (NDOW, personal communication, January 8, 2018). The waters of the U.S. report for the Project indicates that the Crowley and Pole creek reaches in the study area are intermittent and ephemeral. Lahontan cutthroat trout would likely not find suitable habitat in the ephemeral or intermittent tributaries associated with the Project as LCT generally occur in streams with stable banks, perennial flow, rocky to gravelly substrate with riffle pool complexes, and riparian vegetation cover (USFWS 2012).

PHOTO SOURCES:  
PHYSA SNAIL SPECIES - RENÉ WEBER  
DESERT COTTONTAIL - NEVADA DEPARTMENT OF WILDLIFE  
SAGEBRUSH LIZARD - 2019 REPTILE FACT

GREAT BASIN RATTLESNAKE - EVAN JENKINS  
DESERT HORNED LIZARD - DANITA DELMONT / GETTY IMAGES  
PACIFIC TREE FROG - GARY NAFIS

# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### BATS

The study area and surrounding landscape provide foraging habitat and possibly resting/roosting habitat for bats. There are numerous outcrops, fissures, and other rock features which could potentially provide seasonal roosting, hibernation, or maternity colony habitat close to the study area.

Thirteen species of bats were detected in 2018 on acoustic monitoring equipment deployed in and around the study area. The monitors were established near likely foraging sites for bats, which included agricultural and open water habitats. Bat species detected during monitoring events included Fringed myotis (*Myotis thysanodes*), Long-eared myotis (*Myotis evotis*), Silver-haired bat (*Lasionycteris noctivagans*), Big brown bat (*Eptesicus fuscus*), Little brown myotis (*Myotis lucifugus*), Long-legged myotis (*Myotis volans*), Western small-footed myotis (*Myotis ciliolabrum*), Yuma myotis (*Myotis yumanensis*), California myotis (*Myotis californicus*), Hoary bat (*Aeorestes cinereus*), Mexican free-tailed bat (*Tadarida brasiliensis*), Canyon bat (*Parastrellus hesperus*), and Townsend's big eared bat (*Corynorhinus townsendii*). All of the species detected are BLM special status species.

### PYGMY RABBITS

The pygmy rabbit (*Brachylagus idahoensis*) is a BLM special status species and found in sagebrush steppe areas within the Great Basin and Intermountain regions. Pygmy rabbit habitat includes areas of tall, dense big sagebrush stands of varying heights, with deep, loose soils capable of supporting burrow systems. There is potentially suitable habitat for pygmy rabbits in the study area, and the species was reported by NDOW to be in the study area vicinity. Inactive burrows and secondary signs, such as pellets, were observed in these suitable habitat areas. However, no pygmy rabbit sightings, active burrows or burrow complexes were found in the study area during summer and winter pygmy rabbit surveys.

### MIGRATORY BIRDS

Point-count and incidental observations in the study area in 2018 identified 52 species of migratory birds (not including the game birds or raptors). The most frequently detected birds were generalist species with large ranges that are resident grassland and shrubland species, including Horned lark (*Eremophila alpestris*), western meadowlark (*Sturnella neglecta*), brewer's sparrow (*Spizella breweri*), mourning dove (*Zenaida macroura*), sage sparrow (*Artemisospiza nevadensis*), lark sparrow (*Chondestes grammacus*), black-throated sparrow (*Amphispiza bilineata*), cliff swallow (*Petrochelidon pyrrhonota*), common raven (*Corvus corax*), and long-billed curlew (*Numenius americanus*). The migratory birds observed that are identified as BLM special status species include brewer's sparrow, loggerhead shrike (*Lanius ludovicianus*), and sage thrasher (*Oreoscoptes montanus*).

### WILDLIFE IN PROXIMITY TO THACKER PASS



Horned lark  
(*Eremophila alpestris*)



loggerhead Shrike  
(*Lanius ludovicianus*)



Brewer's Sparrow  
(*Spizella breweri*)



Sage Thrasher  
(*Oreoscoptes montanus*)



Hoary bat  
(*Aeorestes cinereus*)



Canyon Bat  
(*Parastrellus hesperus*)



Mexican Free-tailed Bat  
(*Tadarida brasiliensis*)



Long-eared Myotis  
(*Myotis evotis*)

#### PHOTO SOURCES:

HORNED LARK - KATHY ZIMMERMAN  
LOGGERHEAD SHRIKE - LANIUS LUDOVICIANUS  
BREWER'S SPARROW - DAVID HOLLIE  
SAGE THRASHER - RON DUDLEY

LONG-EARED MYOTIS - BATS AND CATS MINUS THE CATS  
MEXICAN FREE-TAILED BAT - KARINE AIGNER  
CANYON BAT - LV MOOSE  
HOARY BAT - JOSE G. MARTINEZ-FONSECA



# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### RAPTORS

Occupied raptor nests occur within 10 miles of the study boundary. Aerial raptor surveys were conducted within the study area and within a 10-mile buffer of the study area in 2018. Active and inactive nests of ferruginous hawks (*Buteo regalis*), red-tailed hawks (*Buteo jamaicensis*), and other large and small raptors were observed during these surveys in pinyon-juniper woodlands, grassland and sagebrush habitats, and on rock outcrops and canyon walls.

In 2018, there were 23 active nests in the survey area, and 127 total nests. Nine active nests were occupied by golden eagles\* (*Aquila chrysaetos*) (a total of 13 golden eagle nests were occupied), 10 by red-tailed hawks, two by ferruginous hawks\*, and two by common ravens (*Corvus corvax*). Other raptor species observed in the study area and surrounding 10-mile buffer area, as reported by NDOW, or during migratory bird surveys, included Swainson's hawk\* (*Buteo swainsoni*), northern harrier (*Circus hudsonius*), Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), prairie falcon\* (*Falco mexicanus*), northern goshawk\* (*Accipiter gentilis*), northern saw-whet owl (*Aegolius acadicus*), osprey (*Pandion haliaetus*), rough-legged hawk (*Buteo lagopus*), merlin (*Falco columbarius*), turkey vulture (*Cathartes aura*), American kestrel (*Falco sparverius*), long-eared owl (*Asio otus*), short-eared owl\* (*Asio flammeus*), flammulated owl\* (*Psiloscops flammeolus*), western screech owl (*Megascops kennicottii*), and great horned owl (*Bubo virginianus*). \* BLM special status species.

### GOLDEN EAGLES

Thirteen nests were occupied by golden eagles\* (*Aquila chrysaetos*) in 2018. Young or eggs were observed in nine of the nests, and the remaining four showed evidence of use or incubating postures. An estimated six golden eagle fledglings emerged from these nests. There are an estimated 18 golden eagle territories in the survey area. No golden eagle nests are located within the study area. Five occupied territories occurred within two miles of the study area boundary.

TABLE 1

| Raptor Nests     |                       |  |
|------------------|-----------------------|--|
| NEST TYPE        | TOTAL NUMBER OF NESTS | ACTIVE IN 2018   |
| GOLDEN EAGLE     | 59                    | 11<br>(9 GOLDEN EAGLES,<br>1 RED-TAILED HAWK,<br>1 COMMON RAVEN) |
| FERRUGINOUS HAWK | 7                     | 2  |
| LARGE RAPTOR     | 41                    | 10<br>(9 RED-TAILED HAWK,<br>1 COMMON RAVEN)                     |
| SMALL RAPTOR     | 17                    | 0  |
| COMMON RAVEN     | 3                     | 0  |
| TOTALS           | 127                   | 23   |

### WILDLIFE IN PROXIMITY TO THACKER PASS



#### BLM SPECIAL STATUS SPECIES



Ferruginous Hawks  
(*Buteo regalis*)



Swainson's hawk  
(*Buteo swainsoni*)



Northern Goshawk  
(*Accipiter gentilis*)



Northern Harrier  
(*Circus hudsonius*)



Short-eared Owl  
(*Asio flammeus*)



Flammulated Owl  
(*Psiloscops flammeolus*)



Golden Eagle  
(*Aquila chrysaetos*)



Prairie Falcon  
(*Falco mexicanus*)

#### PHOTO SOURCES:

PRairie Falcon - ALAN MURPHY  
NORTHERN Harrier - G. LASLEY/VIREO  
GOLDEN EAGLE - GUNNAR PETTERSSON  
NORTHERN GOSHAWK - PETS PLANET, HASSAN AYYAN

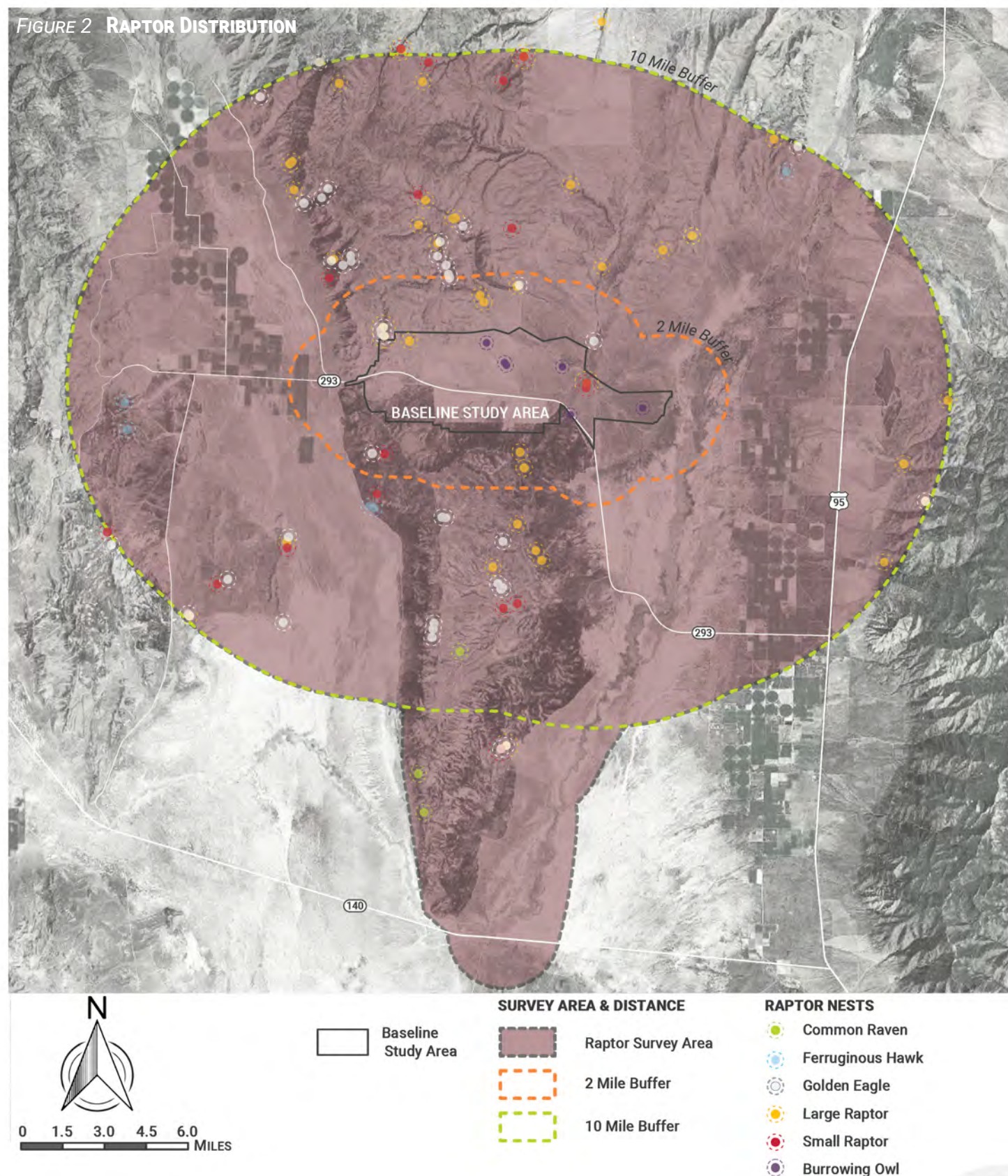
SWAINSON'S HAWK - GLENN BARTLEY/VIREO  
FERRUGINOUS HAWKS - 2018 ABOUT ANIMALS  
FLAMMULATED OWL - SARAH CHICKERING  
SHORT-EARED OWL - ODNR DIVISION OF WILDLIFE



# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA





# WILDLIFE BASELINE SUMMARY



## THACKER PASS - LITHIUM NEVADA

### BURROWING OWLS

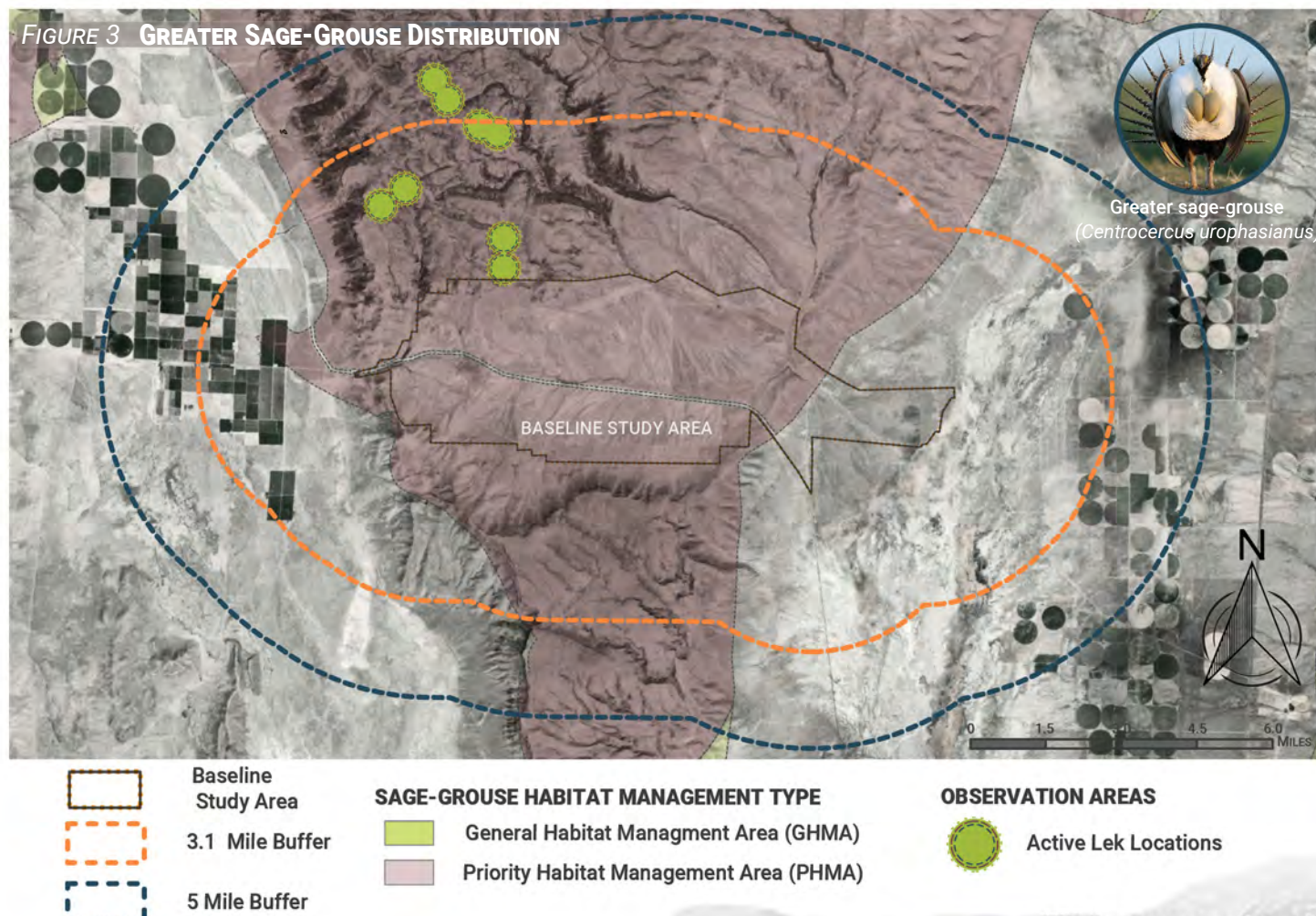
Burrowing owls (*Athene Cunicularia*) are a BLM special status species. In northern Nevada, the majority of the breeding population is seasonal, but observations of this species have been recorded in Nevada during all months of the year. Suitable habitat for breeding burrowing owls includes patches of sparse, low-growing sagebrush or grassland vegetation generally with canopy coverage of less than 30 percent (California Burrowing Owl Consortium [CBOC] 1993, BLM 2015).

Ground-based burrowing owl surveys were completed in 2018 throughout the study area. Thirty-four burrowing owls or their nests were detected at eight locations in the study area. The observations consisted primarily of individual adults (28). One juvenile was observed. Several of the adults were observed in the same area.

### GREATER SAGE-GROUSE

The Greater sage-grouse (*Centrocercus urophasianus*) is a BLM special status species. On September 22, 2015, the USFWS determined that the Greater sage-grouse does not warrant protection under the ESA. The finding prompted federal agencies, states, and counties to initiate a multitude of planning processes and new conservation measures to conserve Greater sage-grouse with the hope of averting the need to list the species. Subsequently, the Nevada and Northeastern California Greater sage-grouse Proposed Land Use Plan Amendment and FEIS (LUPA/FEIS) prepared by the BLM and USFS was signed in 2015, and amended in 2019. In the LUPA, Greater sage-grouse habitat on BLM-administered and National Forest System lands in the decision area consists of lands allocated as priority, general, or other habitat management areas (PHMA, GHMA, or OHMA respectively).

Greater sage-grouse habitat in the vicinity of the Project has primarily been classified as PHMA. GHMA also exist in the vicinity of the study area. There are 6 known active lek sites (a lek is a site at which group of male birds gathers seasonally to engage in competitive display) within 3.1 miles of the baseline study area boundary. Male grouse in lek mating systems tend to exhibit high fidelity to breeding leks. The habitat surrounding lek sites is important for greater sage-grouse because the birds disperse to areas surrounding the leks for nesting.





## **N.2 DISTURBANCE CALCULATIONS**

Under Management Decision SSS 2A of the 2015 GRSG Amendment (**Table N.2** above), the BLM is required to conduct analysis of the area of disturbance at the local or project scale, in addition to analysis of disturbance densities across the BSU according to the methodology presented in 2015 GRSG Amendment Appendix E. The disturbance cap analysis results are provided in NEPA analyses, but any exceedances of the cap (at both the BSU and project levels scales) do not preclude a locatable mineral resources project from BLM approval.

### **N.2.1 Project Scale Calculation of the Preferred Alternative**

Project scale disturbance calculations were conducted by the BLM for the Proposed Action according to the methods presented in Appendix E of the 2015 GRSG Amendment. PHMA habitat is the only habitat category considered in the calculation. The study area for the density calculation is comprised of a four-mile buffer of the disturbance footprint for the proposed project and an additional four-mile buffer of all occupied GRSG leks located within the initial disturbance footprint buffer. PHMA within the project scale study area for the calculation totaled 75,293. Existing disturbance within this area include 172 acres of roads, 2,335 acres of mining disturbance, 109 acres of utility powerlines, and 726 acres of other disturbance for a total of 3,343 acres. This acreage represents 4.4 percent of the total study area. Surface disturbance under the Proposed Action includes 5,695 acres bring the potential total surface disturbance within the project scale study area to 9,038 acres (12 percent of PHMA within the study area).

### **N.2.2 Biological Significant Unit (BSU) Scale Calculation of the Preferred Alternative**

The BSU disturbance is calculated once a year at the BLM National Operations Center. The affected BSU for this project is the Lone Willow BSU. In 2019, approximately 0.23 percent of PHMA within the BSU was disturbed by cumulative actions.

## **N.3 SEASONAL HABITATS**

Seasonal GRSG habitat within the Project area has been identified by NDOW in coordination with the BLM and is presented in **Figures N.1, N.2, and N.3**. The proponent has proposed a suite of Design Features into their Proposed Action, which incorporate Design Features and Management Decisions from the 2015 and 2019 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendments.

## **N.4 REQUIRED LEK BUFFERS**

Under the 2015 and 2019 GRSG Amendments, the BLM is directed to apply the lower end of lek buffer distances identified in the USGS Report on “Conservation Buffer Distance Estimates for

Table N.2. Management Decision(s) SSS 1 through SSS 4

| MD #             | MD Text  | Applicable<br>(Yes/No) | GRSG Amendment Consistency (Yes/No) |               |               | Notes   |
|------------------|--|------------------------|-------------------------------------|---------------|---------------|---|
|                  |  |                        | Proposed Action                     | Alternative B | Alternative C |   |
| SSS 1            | <b>2015 GRSG ARMPA:</b><br>In PHMAs and GHMAs, work with the proponent/applicant, whether in accordance with a valid existing right or not, and use the following screening criteria to avoid effects of the proposed human activity on GRSG habitat:<br>A. First priority—locate project/activity outside PHMAs and GHMAs<br>B. Second priority—if the project/activity cannot be placed outside PHMAs and GHMAs, locate the surface-disturbing activities in non-habitat areas first, then in the least suitable habitat for GRSG.<br>C. Third priority—collocate the project/activity next to or in the footprint of existing infrastructure  | Yes                    | Yes                                 | Yes           | Yes           | Ore bodies are in place and not flexible in terms of location. LNC has consolidated its proposed facilities at the mine site and limited surface disturbance to the greatest extent practicable. LNC has worked with the BLM to avoid effects of human activity on GRSG and habitat. Evidence of the effort to avoid and minimize impacts to high-value sage-grouse habitat is demonstrated in that LNC intensified exploration for additional lithium resources specifically at the Thacker Pass area in 2017 to avoid potential impacts to ecologically sensitive areas in the Montana Mountains. The 2017 and 2018 exploration results revealed additional high-grade and near surface lithium mineralization northwest of the original pit area, at Thacker Pass, allowing LNC to develop the current Plan that avoids potential direct impacts to resources within the Montana Mountains. LNC has further reduced potential impacts by incorporating some previously authorized facilities in addition to implementing concurrent reclamation in areas where no further activity is approved or planned. |
|                  | <b>2019 GRSG ARMPA:</b><br>In PHMAs and GHMAs, work with the proponent/applicant, whether in accordance with a valid existing right or not, and use the following screening criteria to avoid effects of the proposed human activity on GRSG habitat:<br>A. First priority—locate project/activity outside PHMAs and GHMAs<br>B. Second priority—if the project/activity cannot be placed outside PHMAs and GHMAs, locate the surface-disturbing activities in non-habitat areas first, then in the least suitable habitat for GRSG. <i>In non-habitat, ensure the project/activity will not create a barrier to movement or connectivity between GRSG seasonal habitats and populations.</i><br>C. Third priority—collocate the project/activity next to or in the footprint of existing infrastructure   | Yes                    | Yes                                 | Yes           | Yes           | See notes above.  |
| SSS 2<br>(PHMA)  | <b>2015 GRSG ARMPA:</b><br>In PHMAs, the following conditions will be met in order to avoid, minimize, and mitigate any effects on GRSG and its habitat from the project/activity:<br><br><b>2019 GRSG ARMPA:</b><br><i>In PHMAs, the following conditions will be met in order to avoid, minimize, impacts to GRSG and its habitat. The BLM will consider compensatory mitigation actions only when offered voluntarily by a project proponent; when required by law other than FLPMA or as a component of compliance with a States' mitigation plan, program, or authority, such as required by the State of Nevada Executive Order 2018-32 (and any future regulations adopted by the State of Nevada regarding compensatory mitigation, consistent with federal law):</i>  |                        |                                     |               |               |   |
| SSS 2A<br>(PHMA) | <b>2015 GRSG ARMPA:</b><br>Manage discrete anthropogenic disturbances, whether temporary or permanent, so they cover less than 3 percent of 1) biologically significant units (BSUs; total PHMA area associated with a GRSG population area (see <b>Appendix A, Figure 2.2</b> ) and 2) in a proposed project analysis area. See Appendix E, Disturbance Cap Guidance, for additional information on implementing the disturbance cap, including what is and is not considered disturbance and how to calculate the proposed project analysis area, as follows:<br>1. If the 3 percent human disturbance cap is exceeded on all lands (regardless of ownership) in PHMAs in any given BSU, then no further discrete human disturbances (subject to applicable laws and regulations, such as the 1872 Mining Law, as amended, and valid existing rights) will be permitted, by BLM within GRSG PHMA in any given BSU until the disturbance has been reduced to less than the cap (see Nevada exception under MD SSS 2 a. 3. Appendix E).<br>2. If the 3 percent disturbance cap is exceeded on all lands (regardless of land ownership) within a proposed project analysis area in a PHMA, then no further anthropogenic disturbance will be permitted by BLM until disturbance in the proposed project analysis area has been reduced to maintain the area under the cap (subject to applicable laws and regulations, such as the 1872 Mining Law, as amended, valid existing rights; see Nevada exception under MD SSS 2 a. 3. Appendix E). | Yes <sup>1</sup>       | Yes                                 | Yes           | Yes           | 2015 GRSG Amendment Appendix E directs that the disturbance cap analysis should be conducted and results provided in NEPA analyses, but any exceedances of the cap (at both the BSU and project levels scales) do not preclude a locatable mineral resources project from BLM approval.<br><br>The BSU disturbance is calculated once a year at the BLM National Operations Center. The affected BSU for this project is the Lone Willow BSU. In 2019, approximately 0.35% of PHMA within the BSU was disturbed by cumulative actions. Results of the BSU scale disturbance calculations for the Proposed Action yields a 1.12 percent disturbance of PHMA within the BSU.<br><br>BLM Nevada State Office has conducted project scale calculations for the Proposed Action. Results of the project scale disturbance calculations for the Proposed Action yields a 12 percent disturbance of PHMA within the Project scale study area for this calculation. See Section N.2 of this appendix.   |

Appendix N – GRSG Amendment Consistency Tables

| MD #             | MD Text   | Applicable<br>(Yes/No) | GRSG Amendment Consistency (Yes/No) |               |               | Notes   |
|------------------|---|------------------------|-------------------------------------|---------------|---------------|---|
|                  |   |                        | Proposed Action                     | Alternative B | Alternative C |   |
|                  | <b>2019 GRSG ARMPA:</b><br>Same as above.   |                        |                                     |               |               | Same as above.  |
| SSS 2B<br>(PHMA) | <b>2015 GRSG ARMPA:</b><br>In PHMA, in undertaking BLM management actions, and consistent with valid existing rights and applicable law, in authorizing third-party actions that result in habitat loss and degradation, the BLM will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. The project/activity with associated mitigation (such as the use of the State of Nevada Conservation Credit System) will result in an overall net conservation gain to GRSG (see <b>Appendix F</b> ).<br><br>Authorized/permitted activities are implemented by adhering to the RDFs described in Appendix C, consistent with applicable law. At the site-specific scale, if an RDF is not implemented, at least one of the following must be demonstrated in the NEPA analysis associated with the project/activity:<br><ol style="list-style-type: none"><li>1. A specific RDF is documented to not be applicable to the site-specific conditions of the project/activity (e.g., due to the site limitations or engineering considerations). Economic considerations, such as increased costs, do not necessarily require that an RDF be varied or rendered inapplicable.</li><li>2. An alternative RDF is determined to provide equal or better protection for GRSG or its habitat.</li><li>3. A specific RDF will provide no additional protection to GRSG or its habitat.</li></ol> | Yes                    | Yes                                 | Yes           | Yes           | Compensatory mitigation for residual impacts to PHMA unable to be avoided and minimized would be offset by LNC through the voluntary purchase of conservation credits through the Nevada Conservation Credit System or through habitat enhancement conducted on off-site parcels located near the Project site. The BLM coordinated with the Nevada SETT and LNC to calculate the compensatory mitigation to offset residual impacts using the State of Nevada’s CCS. The final number of credits purchased would be determined based on proximity to the project. See Section N.6, <i>Compensatory Mitigation</i> , below for further detail.<br><br>The proponent has proposed a robust suite of applicant-committed environmental protection measures (see <b>Appendix D</b> of this EIS) into their Proposed Action, which incorporate Design Features and Management Decisions from the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan.<br><br>Under the Proposed Action, the Project would be consistent with a majority of RDFs presented in <b>Table N.3</b> and <b>Table N.4</b> below due to the application of the Applicant Committed Environmental Protection Measures presented in <b>Appendix D</b> . |
|                  | <b>2019 GRSG ARMPA:</b><br>Same as above.   | Yes                    | Yes                                 | Yes           | Yes           | The analysis and resulting mitigation for Greater Sage-Grouse outlined in Sections N.6, <i>Compensatory Mitigation</i> of this Final EIS are consistent with the 2019 GRSG Amendment.<br><br>Under the Proposed Action, the Project would be consistent with a majority of RDFs presented in <b>Table N.3</b> and <b>Table N.4</b> below due to the application of the Applicant Committed Environmental Protection Measures presented in <b>Appendix D</b> .   |
| SSS 2C<br>(PHMA) | <b>2015 GRSG ARMPA:</b><br>In management actions, and consistent with valid and existing rights and applicable law in authorizing third-party actions, the BLM will apply the lek buffer-distances identified in the USGS report, Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review Open File-Report 2014-1239 (Manier et al. 2014), in accordance with Appendix B.   | No                     | -                                   | -             | -             | The proponent has proposed a suite of Applicant Committed Environmental Protection Measures into their Proposed Action, which incorporate Design Features and Management Decisions from the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan. As a result, the analysis and resulting mitigation for Greater Sage-Grouse outlined in Sections N.6, <i>Compensatory Mitigation</i> of this Final EIS are consistent with the 2015 GRSG Amendment.<br><br>Proposed locatable minerals resource projects are not subject to lek buffer distances identified in Appendix B of the GRSG Amendment.  |
|                  | <b>2019 GRSG ARMPA:</b><br><i>In undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third-party actions, the BLM will utilize the lower end of the interpreted range of lek buffer-distances and guidance identified in Mainer et al. (2014) to establish the evaluation area around leks that will be used to analyze impacts during project-specific NEPA, including scientifically justifiable departures based on local data, topography, and other factors, in accordance with Appendix B.</i>  | No                     | -                                   | -             | -             | See note above.<br><br>The analysis and resulting mitigation for Greater Sage-Grouse outlined in Sections N.6, <i>Compensatory Mitigation</i> of this Final EIS are consistent with the 2019 GRSG Amendment.  |
| SSS 2D<br>(PHMA) | <b>2015 GRSG ARMPA:</b><br>Seasonal restrictions will be applied during the period specified below to manage discretionary surface-disturbing activities and uses on public lands to prevent disturbances to GRSG during seasonal life-cycle periods:<br><ol style="list-style-type: none"><li>1. In breeding habitat within 4 miles of active and pending GRSG leks from March 1 through June 30</li><li>2. Lek—March 1 to May 15</li><li>3. Lek hourly restrictions—6 p.m. to 9 a.m.</li><li>4. Nesting—April 1 to June 30</li></ol>  | No                     | -                                   | -             | -             | The proponent has proposed a suite of Applicant Committed Environmental Protection Measures into their Proposed Action and other action alternatives, to incorporate Design Features and Management Decisions from the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan. Proposed locatable minerals resource projects are not subject to the application of seasonal restrictions identified in the GRSG Amendment.   |

Appendix N – GRSG Amendment Consistency Tables

| MD #             | MD Text  | Applicable<br>(Yes/No) | GRSG Amendment Consistency (Yes/No) |               |               | Notes   |
|------------------|--|------------------------|-------------------------------------|---------------|---------------|---|
|                  |  |                        | Proposed Action                     | Alternative B | Alternative C |   |
| SSS 3C<br>(GHMA) | <b>2015 GRSG ARMPA:</b><br>In undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third-party actions, the BLM will apply the lek buffer-distances identified in the USGS report, Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review Open File Report 2014-1239 (Manier et.al 2014)), in accordance with Appendix B.  | No                     | -                                   | -             | -             | The proponent has proposed a suite of applicant-committed environmental protection measures into their Proposed Action, to incorporate Design Features and Management Decisions from the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment.   |
|                  | <b>2019 GRSG ARMPA:</b><br><i>In undertaking BLM management actions, and consistent with valid and existing rights and applicable law in authorizing third-party actions, the BLM will utilize the lower end of the interpreted range of lek buffer-distances and guidance identified in Mainer et al. (2014) to establish the evaluation area around leks that will be used to analyze impacts during project-specific NEPA, including scientifically justifiable departures based on local data, topography, and other factors, in accordance with Appendix B.</i>   | No                     | -                                   | -             | -             | See note above.<br>The analysis and resulting mitigation for Greater Sage-Grouse outlined in Sections N.6, <i>Compensatory Mitigation</i> of this Final EIS are consistent with the 2019 GRSG Amendment.  |
| SSS 3D<br>(GHMA) | <b>2015 GRSG ARMPA:</b><br>Seasonal restrictions will be applied during the period specified below to manage discretionary surface-disturbing activities and uses on public lands to prevent disturbing GRSG during seasonal life cycle periods, as follows:<br><ol style="list-style-type: none"><li>In breeding habitat within 4 miles of active and pending GRSG leks from March 1 through June 30<ol style="list-style-type: none"><li>Lek—March 1 to May 15</li><li>Lek hourly restrictions—6 p.m. to 9 a.m.</li><li>Nesting—April 1 to June 30</li></ol></li><li>Brood-rearing habitat from May 15 to September 15<ol style="list-style-type: none"><li>Early—May 15 to June 15</li><li>Late—June 15 to September 15</li><li>Winter habitat from November 1 to February 28</li></ol></li></ol><br>The seasonal dates may be modified due to documented local variations (e.g., higher/lower elevations) or annual climatic fluctuations (e.g., early/late spring, long/heavy winter), in coordination with NDOW, in order to better protect GRSG and its habitat.  | No                     | -                                   | -             | -             | The proponent has proposed a suite of applicant-committed environmental protection measures into their Proposed Action, which incorporate Design Features and Management Decisions from the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment. Proposed locatable minerals resource projects are not subject to the application of seasonal restrictions identified in the 2015 GRSG Amendment. |
|                  | <b>2019 GRSG ARMPA:</b><br>Seasonal restrictions will be applied during the period specified below to manage discretionary surface-disturbing activities and uses on public lands to prevent disturbing GRSG during seasonal life cycle periods, as follows:<br><ol style="list-style-type: none"><li>In breeding habitat within 4 miles of active and pending GRSG leks from March 1 through June 30<ol style="list-style-type: none"><li>Lek—March 1 to May 15</li><li>Lek hourly restrictions—6 p.m. to 9 a.m.</li><li>Nesting—April 1 to June 30</li></ol></li><li>Brood-rearing habitat from May 15 to September 15<ol style="list-style-type: none"><li>Early—May 15 to June 15</li><li>Late—June 15 to September 15</li><li>Winter habitat from November 1 to February 28</li></ol></li></ol><br><i>The seasonal dates could be modified or waived (in coordination with NDOW and/or CDFW) based on site-specific information that indicates:</i><br><i>a. A project proposal’s NEPA document and/or project record, and correspondence from NDOW and/or CDFW demonstrates that any modification (shortening/extending seasonal timeframes or waiving the seasonal timing</i> | No                     | -                                   | -             | -             | See note above.<br>Proposed locatable minerals resource projects are not subject to the application of seasonal restrictions identified in the 2015 GRSG Amendment.   |



process will be controlled by a caustic scrubber, and particulate emissions from lithium sulfide packaging will be controlled by a baghouse.

Lithium metal will be produced by passing an electrical current through a salt bath of potassium chloride and lithium chloride. Lithium chloride will decompose in the electrical current to form lithium metal. Chlorine gas created from the process will be removed to produce a sodium hypochlorite solution (i.e., bleach) using caustic soda and water. One hundred percent of the chlorine created from the lithium metal production will be used to create sodium hypochlorite, resulting in zero chlorine emissions from the metal production. Chlorine emissions from the sodium hypochlorite storage tank transfers will be controlled by a scrubber. The lithium metal will be purified by adding aluminum powder to remove any nitrogen-containing compounds as aluminum nitride. Particulate emissions from the potassium chloride, lithium chloride, and aluminum powder material handling will be controlled by baghouses.

All-solid-state lithium batteries will be produced by first coating a metal substrate with a slurry of the lithium sulfide from the process plant. Then, the coated cathode and separator battery components will be combined with a lithium metal anode, also produced at the process plant, in a lamination step to create a single layer of a battery cell. The layer will be split and stacked into the desired battery format. Volatile organic emissions from battery production solvents will be controlled by a scrubber. Particulate emissions from the battery production complex will be controlled by a baghouse.

### **2.3.5 Sulfuric Acid Plant**

The sulfuric acid required for leaching the lithium bearing ore will be produced on site in a sulfuric acid plant. In the plant, molten sulfur will be burned with air to produce sulfur dioxide, which is catalytically converted to sulfur trioxide and then absorbed in water to produce sulfuric acid. The process is strongly exothermic and produces a large amount of excess heat that will be converted to steam and electricity. The sulfuric acid plant is expected to produce enough electricity to support all the Project facilities, with leftover capacity sold to the power grid. With the sulfuric acid plant, the Project is expected to be a net exporter of carbon-free electricity.

Sulfur dioxide, sulfuric acid mist, and particulate (primarily consisting of sulfuric acid mist as condensable particulate matter) emissions from the sulfuric acid plant will be controlled by a tail gas scrubber. In order to minimize the emissions from the sulfuric acid plant, LNC has committed to installing a state-of-the-art scrubbing control, which is above customary industry standard. As a result, the sulfur dioxide and acid mist emissions from the sulfuric acid plant will be well below the emission standards (4 pounds  $\text{SO}_2$  per ton of acid produced and 0.15 pounds  $\text{H}_2\text{SO}_4$  per ton of acid produced) in the Code of Federal Regulations, Title 40, Part 60 (40 CFR 60), Subpart H, Standards of Performance for Sulfuric Acid Plants. While the exact

scrubbing system has not yet been determined, LNC has committed to installing a control that, at the minimum, meets the emission levels used in this analysis. The sulfuric acid plant will also emit nitrogen dioxides from the combustion of sulfur in air, but it is not expected to emit any HAPs.

Sulfur for the sulfuric acid plant will be delivered to the site and stored in sulfur storage tanks. Sulfur dioxide and hydrogen sulfide emissions from these tanks will be controlled by caustic scrubbing.

During the initial startup of the sulfuric acid plant and after any maintenance downs, startup burners (one in Phase 1, two in Phase 2) will be required to heat the system prior to feeding molten sulfur. In addition, during initial startup and any time the sulfuric acid plant is down, package boilers (one in Phase 1, two in Phase 2) will be required to maintain heat in the sulfur unloading and storage area. It is estimated that both the startup burners and package boilers will each operate no more than 288 hours per year. The startup burners and package boilers will emit diesel combustion products, including HAPs.

### 2.3.6 Ancillary Equipment

The Project will also include various ancillary equipment, such as fire pumps, emergency generators, cooling towers, silos, laboratory equipment, and fuel storage tanks. These sources have the potential to emit small amounts of combustion products, including HAPs from fuel combustion, particulates from material handling, and volatile organics from fuel storage.

### 2.3.7 Criteria Pollutant Emissions

The estimated facility-wide potential annual emissions in tons per year for the two phases of commercial production are presented in Tables 3 and 4. Detailed emission calculations are included in Appendix A.

**Table 3. Thacker Pass Phase 1 – Facility-Wide Potential Emissions (ton/yr)**

| Source Category | PM <sub>10</sub> | PM <sub>2.5</sub> | CO    | NO <sub>x</sub> | SO <sub>2</sub> | VOC  |
|-----------------|------------------|-------------------|-------|-----------------|-----------------|------|
| Process         | 71.0             | 65.1              | 1.0   | 78.4            | 75.8            | 17.9 |
| Fugitive        | 66.6             | 19.3              | 189.1 | 392.7           | 0.5             | 43.5 |
| Facility Total  | 137.6            | 84.5              | 190.1 | 471.1           | 76.2            | 61.4 |

**Table 4. Thacker Pass Phase 2 – Facility-Wide Potential Emissions (ton/yr)**

| Source Category | PM <sub>10</sub> | PM <sub>2.5</sub> | CO    | NO <sub>x</sub> | SO <sub>2</sub> | VOC   |
|-----------------|------------------|-------------------|-------|-----------------|-----------------|-------|
| Process         | 96.3             | 84.5              | 1.8   | 81.2            | 76.1            | 35.2  |
| Fugitive        | 114.6            | 31.4              | 285.9 | 587.7           | 0.7             | 67.6  |
| Facility Total  | 210.9            | 115.9             | 287.7 | 668.9           | 76.8            | 102.8 |

AR-093830

**Re: Thacker Pass air quality discussion**

Loda, Kenton M &lt;kloda@blm.gov&gt;

Fri 2019-12-06 12:16

To: Michel, Robin B &lt;rmichel@blm.gov&gt;

Cc: Hovey, Melissa J &lt;mhovey@blm.gov&gt;; Owen, Dana Marie D &lt;dowen@blm.gov&gt;

For our regulations, the process plant is pretty much a black box. We need to know what goes on there (basic processes, feed stock and reagents going in, product(s) and wastes going out, what processes are proposed that may release deleterious material to the environment along the way) but we do not evaluate the details (engineering) of their processing. Also, to my knowledge the BLM does not employ anyone with that kind of background, which would likely be a chemical or metallurgical engineer.

Ken Loda

Lead Geologist

Humboldt River Field Office

775-623-1539

"The chief factor in any man's success or failure must be his own character." -- Theodore Roosevelt

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On Thu, Dec 5, 2019 at 7:29 AM Michel, Robin <[rmichel@blm.gov](mailto:rmichel@blm.gov)> wrote:

Melissa,

I was wondering if during the air quality meeting the processing plant was discussed. In looking at the issue statements and draft EIS outline, it occurs to me that we haven't really discussed that part of the project in depth. I'm new to BLM but I would guess that analyzing a processing plant is not something we've had to do much. It's not your typical mine set up.

Ken - Do we have an engineer assigned to the IDT who could look at the plans for the processing plant? Dana and I discussed this on Tuesday and it would be best if we could have 30% designs for the plant for our analysis.

Robin

--

Robin Michel  
Planning and Environmental Coordinator  
Bureau of Land Management  
Winnemucca District Office  
5100 E Winnemucca Blvd  
Winnemucca, NV 89445



|   |                   |       |  |   |     |      |
|---|-------------------|-------|--|---|-----|------|
| 4 | 4-31              | 27-31 | Ground disturbance-wildlife impacts      | The discussions in this EIS document include concerning constituent concentrations in pit lakes. Please note that fencing will not prevent access by birds and bats, who may be attracted to these water sources. In particular, these lakes may be an attractant to species not currently common in the project area such as shorebirds, bald eagles, or osprey. While fish eating birds would not stay for an extended period, a new water body may attract them and there currently is no protection to prevent volant species to the pit lakes.   | JVG | NDOW |
| 4 | 4-31              | 34    | 4.5.1.1.1 Alternative A, Migratory Birds | <b>Comment not resolved from version 1:</b> Please consider adding more quantifiable information to this section. If distance estimates were conducted in the baseline surveys, these could be extrapolated to arrive an a better estimate of impacts   | JVG | NDOW |
| 4 | 4-32              | 11-13 | 4.5.1.1.1 Alternative A, Migratory Birds | <b>Comment not resolved from version 1:</b> We recommend at least a 300 ft buffer around located nests to be avoided in coordination with BLM.  | JVG | NDOW |
| 4 | 4-32              | 4-8   | Ground disturbance-wildlife impacts      | Survey results indicated high avian diversity and previous NDOW bat surveys show a large number of species using these mesic habitats. Further, both open water resources and wetland type habitat exist in the area and provide additional benefit for a suite of species. In an arid environment, these resources are critical to a variety of wildlife, especially sensitive bat and bird species. It is important to state here that the wetland areas will be directly and indirectly affected (as earlier comments in the EIS state) and that, in an arid system, the importance of these areas is not offset because the relative spatial size is small. Based on the unique bird species found during baseline surveys and a high species richness within the bat community, we disagree the loss will be minor.  | JVG | NDOW |
| 4 | 4-32              | 10    | Ground disturbance-wildlife impacts      | Please refer to Winnemucca BLM seasonal use windows and adjust to an earlier, appropriate date.   | JVG | NDOW |
| 4 | 4-33              | 10-16 | 4.5.1.1.1 Alternative A, Migratory Birds | <b>Comment not resolved from version 1:</b> The analysis (and project) should not rely on species to re-distribute to other habitats outside the project area and then conclude there will be no impacts on that species. Nearby habitats may be at or near carrying capacity for certain species and individuals currently using the project area may not be able to re-distribute to these areas. A conclusion that individuals will re-distribute and result in no impacts is questionable. Additionally, many species do not avoid or adapt/acclimate to human disturbance and conclusions relying on acclimation may be incorrect for certain species.   | JVG | NDOW |
| 4 | 4-33              | 27    | 4.5.1.1.1 Alternative A, Raptors         | Figure 4.5-3 apparently contradicts this statement as it shows a waypoint for "Large raptor-occupied" within the project boundary. Please clarify/double check this.  | MM  | NDOW |
| 4 | 4-33              | 29    | Raptors                                  | Please refer to Winnemucca BLM seasonal use windows and adjust to an earlier, appropriate date. Great horned owls can start breeding in mid-January and golden eagles begin courtship in February.  | JVG | NDOW |
| 4 | 4-33              | 35-36 | Raptors                                  | We recommend revising or removing this sentence. The document does not provide meaningful quantification of this and the citation does not provide adequate information. "Low" is a relative term and in this context does not provide any clarity. Please remove.  | JVG | NDOW |
| 4 | 4-33              | 38    | Raptors                                  | Please remove and dispose/bury any carcasses. Placement off of the road may still serve as an attractant and is not advised from a wildlife or human-health standpoint.   | JVG | NDOW |
| 4 | 4-34              | 23-27 | Raptors                                  | This section discusses risks to avian species from reclamation ponds and emergency management ponds, but is lacking appropriate measures to prevent avian access to these areas. A fence will not exclude birds or bats. There are multiple exclusion techniques that work for volant species (bird balls, HDPE covers) that we would recommend.  | JVG | NDOW |
| 4 | 4-34              | 34-37 | Raptors                                  | Compared to the loss of natural habitat conditions, we question if rock-pile placement is adequate to foster recovery of prey species and request additional clarification or background on this.   | JVG | NDOW |
| 4 | 4-35/Figure 4.5-5 | 11    | 4.5.1.1.1 Alternative A, Big Game        | <b>Comment not resolved from version 1:</b> Figure's legend specifies this is "pronghorn distribution" and figure title indicates mule deer distribution. The map reflects mule deer distribution and the legend and figure title should be fixed.  | MM  | NDOW |
| 4 | 4-35/Figure 4.5-6 | 16-21 | 4.5.1.1.1 Alternative A, Big Game        | The EIS's figure displays the project entirely bisecting a pronghorn migration corridor, but the text asserts the project will not prohibit or exclude pronghorn movement. This likely needs some additional explanation. As previously noted, we consider the loss of 4,960 acres of pronghorn habitat to be a significant loss.   | MM  | NDOW |
| 4 | 4-35/Figure 4.5-6 | 16-21 | 4.5.1.1.1 Alternative A, Big Game        | <b>Comment not resolved or addressed from version 1:</b> Loss of 4,960 acres of pronghorn winter range is significant. It would be good to indicate the <u>percent of winter range within the Project Area</u> and disturbed in relation to winter range available in Hunt Unit 031. This only represents direct loss of habitat, not indirect loss from human disturbance, noise, activity, etc.   | MM  | NDOW |
| 4 | 4-35              | 32-34 | 4.5.1.1.1 Alternative A, Big Game        | We appreciate the inclusion of citations demonstrating big game displacement from industrial development; however we still question why this likely effect is then discounted by including a reference to likely habituation. Please note that none of the human disturbances analyzed in Stankovich (2008) were industrial development. The responses were based on humans on foot, pets, airplanes/helicopters, cars, and bicycles, not large scale industrial development. Stankovich also classified the habituation response as "weak yet robust." We continue to be concerned with the EIS selecting small pieces of information from cited literature that align with a no-effects conclusion while largely ignoring research that indicates effects to certain species are likely to occur. We were unable to located the Ward (1976) citation in Appendix E so are unable to review that source for consistency with the information presented in the EIS. | MM  | NDOW |
| 4 | 4-36              | 8-10  | 4.5.1.1.1 Alternative A, Big Game        | Please note that barb-wire fencing will not work as exclusionary fencing for wildlife and prevent entry to the Project Area. If not properly constructed using a combination of wildlife-friendly spacing and smooth wire, barb-wire fence may result in wildlife entanglement and mortality.   | KP  | NDOW |
| 4 | 4-36              | 15    | 4.5.1.1.1 Alternative A, Non Game        | A more detailed description of the species included and discussed under the non-game heading would help the reader understand which species are involved.   | JVG | NDOW |
| 4 | 4-36              | 26-28 | 4.5.1.1.1 Alternative A, Non Game        | We agree with lines 20-26 describing likely effects to non-game species; however, it is unclear how the analysis concludes that effects "are expected to be low." There is no data to support this given the text above.  | MM  | NDOW |
| 4 | 4-37              | 1-28  | 4.5.1.1.1 Alternative A, Pygmy Rabbit    | Lines 11 describes effects as moderate and line 24 describes effects at locally substantial. Can you please elaborate?  | MM  | NDOW |
| 4 | 4-37              | 2-3   | 4.5.1.1.1 Alternative A, Pygmy Rabbit    | We question the suitability of citing SWCA 2019 given the presence of other literature on home range estimates and core areas. Pygmy rabbits also use several core areas within the home range and will move relatively large distances between areas (Katzner and Parker 1997). We question the use of certain citations and loosely based claims as they tend to indicate an impetus to minimize discussion of impacts.   | JVG | NDOW |
| 4 | 4-37              | 11-13 | 4.5.1.1.1 Alternative A, Pygmy Rabbit    | Figure 4.5-7 shows a relatively high amount of pygmy rabbit habitat, which is inconsistent with the text stating "limited availability."  | MM  | NDOW |

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|             |          |  |   |
|-------------|----------|--|---|
|             |          |  | grouse, we proposed the BLM consider a more conservative approach. The one offered in this report by Cedar Creek is entirely unsubstantiated and should be revised.   |
| Section 5.2 | page 5-2 |  | <p>There are an abundance of studies demonstrating negative effects of industrial development on ungulates. The first two paragraphs of page 5-2 selectively uses information from a limited number of studies. This section generally ignores the broader body of research available that suggests anthropogenic development more commonly has negative effects on wildlife. For example:</p> <ul style="list-style-type: none"> <li>• Disturbances from vehicle traffic, noise and human activity displaces mule deer (Sawyer et al. 2006),</li> <li>• Disturbance and displacement diverts time and energy from foraging, resting, and activities that improve physiological condition (Gill et al. 1996, Frid and Dill 2002),</li> <li>• Roads and traffic limit mule deer use of important habitats and create barriers that hinder migration (Sawyer et al. 2009),</li> <li>• Direct and indirect impacts associated with energy development and mineral development have potential to affect ungulate population dynamics, especially when concentrated on winter ranges (Sawyer et al. 2002),</li> <li>• Mule deer exhibit alert-flight responses from sources of noise and activity (Freddy et al. 1986),</li> <li>• Increased human presence and activity, equipment operation, vehicle traffic and noise are primary factors leading to avoidance of a developed area by wildlife (Barber et al. 2010),</li> <li>• Mule deer were shown to prefer habitats 1.2 to 1.8 miles away from well pads in Wyoming (Sawyer et al. 2006, Sawyer et al. 2009), and</li> <li>• There is an inverse relationship between habitat use by deer and elk and distance to roads (Rost and Bailey 1979)</li> </ul> |
| Section 5.2 | page 5-3 |  | We recommend significantly revising the second paragraph that states demonstrated benefits of human activity on wildlife. There is far more literature demonstrating the negative effects of industrial development on wildlife. Most importantly, this   |

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|               |     |                               |  |
|---------------|-----|-------------------------------|--|
|               |     |                               | It is unclear why Hunt Unit 031 is used as the area to reference proportion of habitat loss. Hunt Units are specific to a few game species for the primary purpose of managing hunting and are not related to all species/populations. The magnitude of impacts from habitat loss may be negligible for certain generalist species, but less so for specialist species.  |
| Section 3.3.2 | 3-6 | General Comment               | Collision and powerline data do not generally capture data for sage-grouse, arguably the species at highest risk or mortality due to these activities/infrastructure. There should be additional discussion regarding sage-grouse specifically, and inclusion of information from the CCS manual and HQT regarding these two mortality risks.  |
| Section 3.3.3 | 3-8 | 2 <sup>nd</sup> paragraph     | There is no summary of noise impacts to sage-grouse, a species highly sensitive to noise. Recommend including references disclosing impacts of noise on sage-grouse.   |
| Section 3.3.3 | 3-8 | 3 <sup>rd</sup> paragraph     | Please see comments on the Noise Impact Analysis report regarding the use of “increases in median noise levels would be less than 1.5 dBA.” As stated in our comments on the Noise Report, use of this metric is misleading and inconsistent with ARMPA language as well as the report prepared by Saxelby. Continued use of this metric is inappropriate and inconsistent with current science.   |
| Section 3.3.3 | 3-8 | “Based on this assessment...” | We disagree that the effects to Greater Sage-grouse from noise and human activity are short-term, localized, and minor. This conclusion is based on the misuse of data and does not incorporate current science.   |
| Section 3.3.4 | 3-9 | 2 <sup>nd</sup> paragraph     | <p>There overall impacts to wildlife from wetland habitat loss are very unlikely to be negligible and should include indirect impacts such as the change in behavior of different species as a result of loss of resource. Despite the small number of acres lost, the impacts are likely to be high because water and riparian habitats are very limited in Nevada and provide crucial sources of water and riparian vegetation to much broader areas of habitat. The loss of water sources in Nevada is a significant concern.</p> <p>This section also does not adequately capture the potential impacts noted in the Hydrologic Report. The Hydrologic Model and Report indicates potential impacts to</p> |

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|               |      |                      |   |
|---------------|------|----------------------|---|
|               |      |                      | <p>a significant number of springs/seeps well outside the direct project area. The impact of these losses should be a major area of discussion in the impact report due to significant wildlife impacts. We understand this Impacts Report was developed prior to the release of the Hydrologic Report and recommend the BLM revise this report based on those hydrological findings. The presentation by Piteau indicated many springs could be potentially impacted beyond the 10' drawdown isopleth. As with our comments on the PDEIS and Hydrologic Report, additional analysis and disclosure of potential impacts beyond the 10' isopleth is essential. Even minor losses of surface water or wet-meadow habitat north of the project in the Montana Mountains could have significant, permanent and population-level effects to Greater Sage-grouse.</p> <p>The general indication in this section that impacts to aquatic and riparian habitats would be localized and negligible does not appear to be consistent with the findings on the Hydrologic Report and the presentation provided by Piteau.</p> |
| Section 3.4   | 3-10 | Mule deer            | Please see above comment on mule deer distribution within the project area.   |
| Section 3.4   | 3-10 | Mule deer, Pronghorn | We disagree with the conclusion that big game would habituate to the project. Please see previous comments relative to impacts on wildlife from industrial development.   |
| Section 3.5   | 3-11 | LCT                  | <p>Please double check the effects of mining/dewatering on Crowley and Pole Creek based on the finding of the Piteau report.</p> <p>Please see comment from our PDEIS: The document states that no effects to LCT is expected, yet the document also states that impacts to Crowley Creek flow could occur. We find these to be conflicting statements and would offer that any reduction in flow to Crowley Creek could negatively impact LCT, especially during drought years. Given the relatively low discharge of Crowley Creek and generally restricted range of LCT in this system (outside spring flows and fish movement), any additional reductions in water quantity could lead to extirpation of this population. The same would be true for Pole Creek.</p>  |
| Section 3.6.1 | 3-11 | General Comment      | Please also reference the applicable BLM Resource Management Plans (RMPs) (sage-grouse and district office) stipulations and management decisions as those often  |



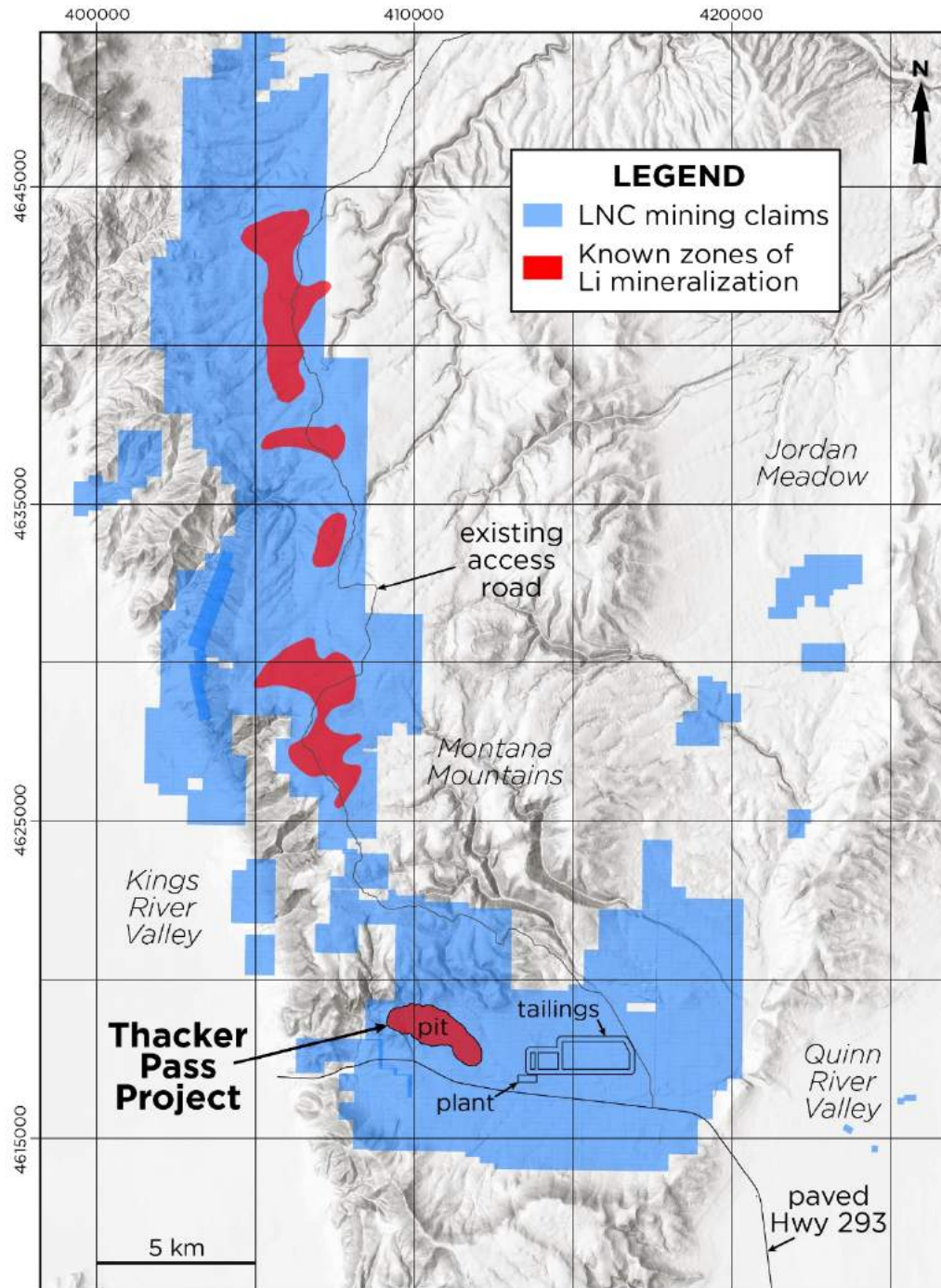
AR-033908



**Lithium Americas Corp.**  
 Technical Report on the Pre-Feasibility Study for the  
 Thacker Pass Project, Humboldt County, Nevada, USA

**LithiumAmericas**

**Figure 4-1 Location Map of the McDermitt Caldera, Thacker Pass Project, and Other Known Mineralized Zones**



Source: Lithium Nevada Corp. (2018)

- GHMA—BLM-administered lands where some special management will apply to sustain GRSG populations; these are areas of occupied seasonal or year-round habitat outside of PHMA.
- OHMA—BLM-administered lands identified as unmapped habitat in the Draft Land Use Plan Amendment (LUPA)/EIS that are within the planning area and contain seasonal or connectivity habitat areas. With the generation of updated modeling data (Spatially Explicit Modeling of Greater Sage-Grouse Habitat in Nevada and Northeastern California; Coates et al. 2014,) the areas containing characteristics of unmapped habitat were identified and are now referred to as OHMAs.

The ARMPA also identifies specific sagebrush focal areas (SFA), a subset of PHMA (see **Figure I-3**). SFA were derived from GRSG stronghold areas described by the USFWS in a memorandum to the BLM titled Greater Sage-Grouse: Additional Recommendations to Refine Land Use Allocations in Highly Important Landscapes (USFWS 2014). The memorandum and associated maps provided by the USFWS identify areas that represent recognized strongholds for GRSG that have been noted and referenced as having the highest densities of GRSG and other criteria important for the persistence of the species.

PHMA (including SFA), GHMA, and OHMA on BLM-administered lands in the decision area fall within 16 counties in northern Nevada and portions of five counties in northeastern California (see **Table I-3**). The habitat management areas also span across five BLM Nevada district offices, three BLM California field offices, and the portions of the Idaho BLM Jarbidge and Bruneau Field Offices that fall within the Nevada state line (see **Table I-4**).

The Battle Mountain, Carson City, Elko, Ely, and Winnemucca BLM District Offices in Nevada and the Alturas, Eagle Lake, and Surprise BLM Field Offices in California administer the 11 pertinent RMPs being amended by this ARMPA. The following BLM RMPs are hereby amended to incorporate appropriate GRSG conservation measures:

#### **California RMPs**

- Alturas RMP (BLM 2008a)
- Eagle Lake RMP (BLM 2008b)
- Surprise RMP (BLM 2008c)

#### **Nevada RMPs**

- Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area RMP (BLM 2004a)
- Carson City Consolidated RMP (BLM 2001a)
- Elko RMP (BLM 1987a)
- Ely RMP (BLM 2008d)
- Winnemucca RMP (BLM 2015)
- Shoshone-Eureka RMP (BLM 1986a)
- Tonopah RMP (BLM 1997a)
- Wells RMP (BLM 1985a)

- Managed as NSO, without waiver, exception, or modification, for fluid mineral leasing
- Prioritized for vegetation management and conservation actions in these areas, including, but not limited to land health assessments, wild horse and burro management actions, review of livestock grazing permits/leases, and habitat restoration (see specific management sections).

**MD SSS 6:** Cooperate with federal and state agencies, universities, and other organizations to establish and maintain a GRSG telemetry database.

**MD SSS 7:** Work with project proponents to limit project-related noise, seasonally or annually (see MDs SSS 2 and SSS 3), in GRSG habitat where it would be expected to reduce functionality of habitats that support associated GRSG populations. Support the establishment of ambient baseline noise levels for leks in PHMAs and GHMAs.

As additional noise-related research and information emerge, specific new limitations appropriate to the type of projects being considered will be evaluated and appropriate measures will be implemented where necessary to minimize the potential for noise impacts on GRSG populations.

**MD SSS 8:** As determined by BLM in coordination with NDOW or CDFW, for any surface-disturbing activities involving mineral activities (to the extent possible under existing law) and rights-of-way actions proposed in PHMAs and GHMAs, the proponent will use the services of a qualified biologist approved by the BLM to conduct surveys for GRSG breeding activity during the GRSG breeding season before project activities begin. The surveys must encompass all suitable GRSG habitats within a minimum of 4 miles of the proposed activities. Surveys will be conducted following protocols established by state fish and wildlife agencies during planning operations and during project activities. GRSG seasonal habitat delineations will also be required within a minimum of 4 miles of project activities.

**MD SSS 9a:** In Nevada only, the BLM will consult with the Sagebrush Ecosystem Technical Team (SETT) for application of the “avoid, minimize, and compensate” mitigation strategy and the Conservation Credit System developed by the Nevada Natural Heritage Program and the SETT (2014a, 2014b) or other applicable mitigation system such as outlined in **Appendix I**. This will be to ensure that a net conservation gain of GRSG habitat is achieved in mitigating human disturbances in PHMAs and GHMAs (see **Appendix F**) on all agency-authorized activities. The specifics of the coordination will be identified in an MOU between the agencies.

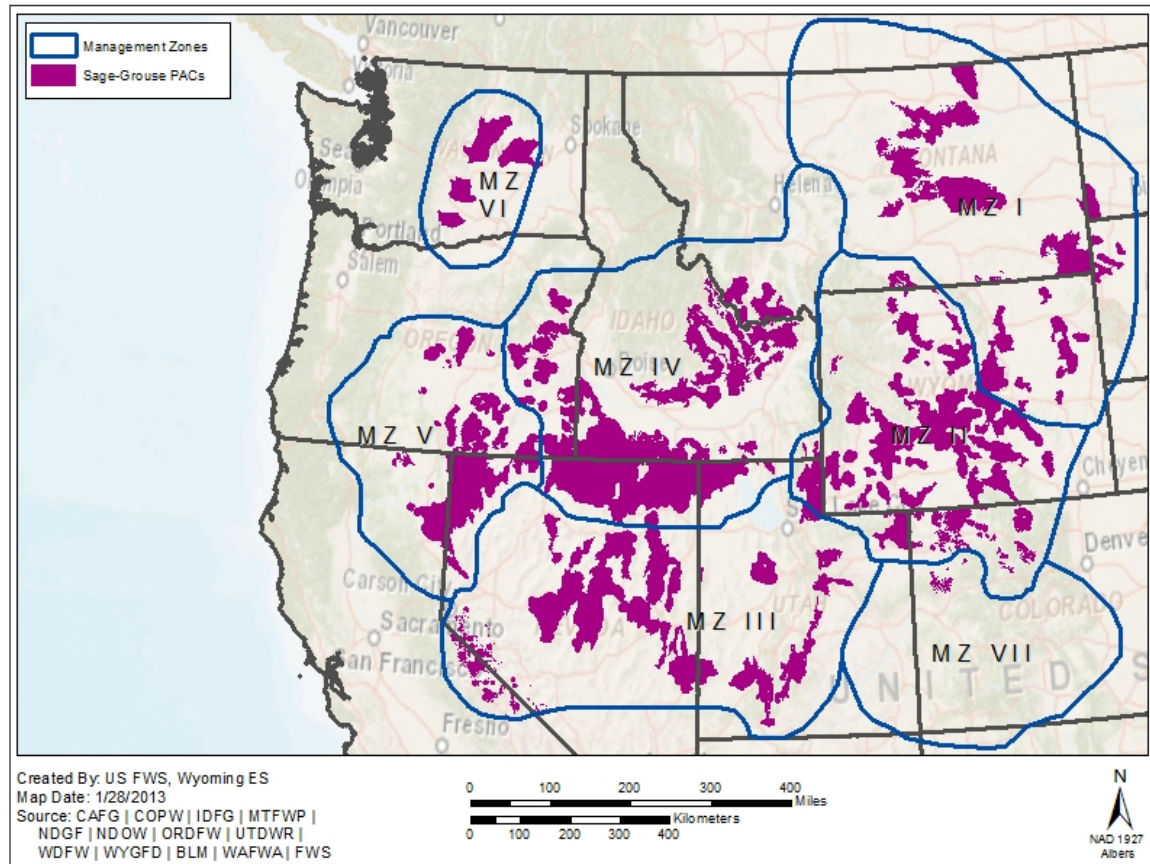
**MD SSS 9b:** In California only, the BLM will follow the BLM mitigation strategy outlined in **Appendix F**.

**MD SSS 10:** When necessary or as new data becomes available, site-specific NEPA analysis on use authorizations in PHMA and GHMA will include project level adaptive management responses to address changed conditions in GRSG habitat and population trends (see **Appendix J**, Adaptive Management Plan).

**MD SSS 11:** Design and construct fences consistent with BLM H-1741-I, Fencing Standards Manual (BLM 1990), and apply the Sage-Grouse Fence Collision Risk Tool to Reduce Bird Strikes (NRCS 2012). Bring existing fencing into compliance as opportunities arise.



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**Figure 2.** Sage-grouse management zones (Stiver *et al.* 2006) and Priority Areas for Conservation (PACs).

To capture the variability in threats and population resilience across the range of the sage-grouse we assessed the presence of threats to each population (Table 2) based on known occurrence of threats, existing management strategies, and professional experience. Not all threats or conservation needs are known with certainty. Areas of uncertainty include the effects of climate change and renewable energy development, the lack of robust information on population connectivity, the relationship between specific habitat characteristics and demographic parameters, and the lack of understanding of the processes necessary to restore sagebrush communities (Knick *et al.* 2003). These uncertainties do not undermine the foundation of PACs as crucial building blocks of a successful conservation strategy, but mean that some flexibility in our strategy will be necessary to retain options for the long-term conservation of the sage-grouse as new information becomes available.