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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BARTELL RANCH, LLC, a Nevada limited
liability company and **EDWARD BARTELL**,

Plaintiff,

vs.

ESTER M. MCCULLOUGH, Winnemucca
District Manager, Bureau of Land Management,
BUREAU OF LAND MANAGEMENT,

Defendant,

and

LITHIUM NEVADA CORP.,
Defendant-Intervenor.

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

**DECLARATION OF DOMINIC M.
CAROLLO IN SUPPORT OF BARTELL
PLAINTIFFS' MOTION TO COMPLETE
AND SUPPLEMENT ADMINISTRATIVE
RECORD**

1 I, Dominic M. Carollo, declare under penalty of perjury, as follows:

2 1. I am the lead attorney for Plaintiffs Bartell Ranch, LLC and Edward Bartell
3 (collectively, “Plaintiffs”) who are filing a Motion to Complete and Supplement the
4 Administrative Record in this proceeding. I provide this declaration in support of Plaintiffs’
5 motion and for the purpose of authenticating documents filed in the Water Rights Protest
6 proceeding (“protest”) before the Nevada State Engineer, *IN THE MATTER OF APPLICATION*
7 *NUMBERS 89681 TO 89684, INCLUSIVE FILED BY LITHIUM NEVADA CORPORATION*
8 *ON APRIL 8, 2020*, where I serve as Plaintiff Bartell Ranch, LLC’s lead attorney.

9
10 2. On or around July 29, 2021 Plaintiffs received Federal Defendant’s proposed
11 Administrative Record. Pursuant to the “Joint Case Management Report & Stipulation” and the
12 “Joint Stipulated Schedule” Plaintiffs’ counsel conferred with Federal Defendant’s counsel, and
13 other parties’ counsel, and requested that Federal Defendants produce and include in the
14 Administrative Record various categories of documents and specific records that Plaintiffs had
15 provided. I also requested that a privilege log be provided. Plaintiffs emailed Defendant lists
16 of the records sought and the basis for their inclusion in the Administrative Record.

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18 3. Attached to this Declaration as **Exhibit 1** is a true and accurate copy of an email
19 string consisting of most of the written conferral that took place concerning Plaintiffs’ disputes
20 with the proposed Administrative Record. **Exhibit 2** is a true and accurate copy of an email
21 attaching a list showing missing emails, written comments, and reports that had been submitted
22 by Plaintiffs to BLM during the environmental review process, which was provided to the
23 parties. **Exhibit 3** is a true and accurate copy of an additional conferral email that was sent, as
24 well as two BLM records pertaining to third-party contracting procedures that Plaintiffs seek to
25 be added to the Administrative Record. **Exhibit 4** is a true and accurate copy of an email string
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1 demonstrating my early efforts to confer with Federal Defendants regarding a privilege log.
2 The parties' counsel, including those for Federal Defendant, LNC, and Environmental Plaintiffs
3 and Tribal Plaintiffs, also conferred by telephone conference on August 25, 2021.

4 4. As a result of these conferrals, Federal Defendant generally agreed to include
5 missing comments and reports that had been submitted by Plaintiffs to BLM. See Exhibit 1.
6 However, to date, Federal Defendants have not produced a supplemental Administrative Record
7 confirming that they have found all records identified in the list included with Exhibit 2. Federal
8 Defendants otherwise generally declined to produce or supplement the Administrative Record
9 with Plaintiffs' requested categories of record, including records relating to BLM's use of third-
10 party contractors. Based on the above, I certify that, despite a sincere effort to resolve or narrow
11 the dispute during the meet-and-confer conference, the parties were unable to resolve or narrow
12 the dispute without court intervention for the issues presented by Plaintiffs' motion.
13

14 5. Plaintiffs' motion is particularly concerned with the paucity of records relating
15 to third-party contractors' work on the Environmental Impact Statement for the Record of
16 Decision at issue in this case. Based on my experience litigating cases brought pursuant to the
17 Administrative Procedures Act and involving Environmental Impact Statements that were
18 supported by the work of third-party contractors, it is my reasonable belief and opinion that the
19 record for this case is conspicuously absent of communications and documentation of the work
20 third-party contractors performed on the EIS for the Thacker Pass mine, that such records likely
21 exist, or should exist, and that such records should be part of the Administrative Record.
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23 6. As foundation for this statement, I provide the following experience. I was lead
24 counsel for Harney County, a political subdivision of the State of Oregon, as an intervenor-
25 defendant in *Oregon Natural Desert Association v. Jewell*, 12-cv-00596-MO, where an
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1 environmental organization challenged the Bureau of Land Management's ("BLM")
2 authorization of a right-of-way for an energy transmission line that was to serve a private wind
3 energy project. This was in the Burns District BLM, just across the state line from the Thacker
4 Pass project. Like this case, the ROD for the transmission line was supported by an EIS, which
5 analyzed, among an array of other issues, potential impacts to sage grouse. Defendants
6 prevailed in the district court but the Ninth Circuit reversed. *Oregon Nat. Desert Ass'n v. Jewell*,
7 No. 3:12-CV-00596-MO, 2013 WL 5101338, at *1 (D. Or. Sept. 11, 2013), *rev'd*, 823 F.3d
8 1258 (9th Cir. 2016), *opinion amended and superseded on denial of reh'g*, 840 F.3d 562 (9th
9 Cir. 2016), *and aff'd in part, rev'd in part and remanded*, 840 F.3d 562 (9th Cir. 2016). The
10 Ninth Circuit reversed because the record on appeal showed that the EIS supporting the ROD
11 incorrectly reported data that was gathered by a third-party contractor for the EIS. *Oregon Nat.*
12 *Desert Ass'n v. Jewell*, 840 F.3d at 569 ("Contrary to what the FEIS stated, four sage grouse
13 were found at the East Ridge site—the surveyed site closer to Echanis—during February,
14 indicating that some sage grouse do spend the winter there.") (emphasis added); *id.* at 570 ("In
15 short, the FEIS's inaccurate data concerning the closer East Ridge site that was surveyed
16 rendered its assumption concerning the winter presence of sage grouse at the Echanis site
17 arbitrary and capricious.") (emphasis added) (citation omitted). The document in the
18 administrative record that the Ninth Circuit relied on was a letter from a third-party contractor
19 wildlife surveyor directed to the project applicant, Columbia Energy Partners. I have attached
20 as **Exhibit 5** a true and correct copy of the letter as it was filed by the U.S. Department of Justice
21 as an excerpt of record before the Ninth Circuit. I have also attached as **Exhibit 6** a true and
22 correct copy the entire document as it was produced in the certified Administrative Record
23 lodged in the district court. What Exhibit 6 shows is that the letter pertaining to the sage grouse
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1 surveys, and relied upon by the Ninth Circuit, was transmitted by the project applicant to the
2 third-party consultant responsible for preparing the EIS, ENTRIX. ENTRIX served in the same
3 role as did ICF International for the Thacker Pass EIS.

4 7. Here, it appears clear from the parties' conferral that the Federal Defendants'
5 position on the Administrative Record for this case is that records of a nature as those attached
6 as Exhibit 5 and Exhibit 6 have not been searched for by BLM, nor included in the
7 Administrative Record. As the Ninth Circuit decision reflects, I submit in good faith this is
8 improper and would preclude meaningful judicial review. Had such records not been produced
9 and made part of the record in *Oregon Nat. Desert Ass'n v. Jewell*, no one would have
10 discovered the inaccurate data reported in the FEIS.

11
12 8. Plaintiffs are particularly concerned with BLM's reliance on the work of third-
13 party contractors in this case, in part, because one of those contractors, Piteau Associates, is
14 currently serving as an expert for intervenor-defendant Lithium Nevada Corporation ("LNC")
15 in a separate water right protest proceeding before the Office of the State Engineer for the State
16 of Nevada, where Plaintiff Bartell Ranch, LLC is a protestant.

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18 9. Attached to this declaration as **Exhibit 7** is a true and accurate copy of the Notice
19 of Hearing whereby the Office of the State Engineer set the procedures and dates for the protest
20 hearing. I am serving as lead counsel for the protestants. Attached as **Exhibit 8** is a true and
21 accurate copy of LNC's witness list filed pursuant to the Notice of Hearing, listing Tyler Cluff
22 of Piteau Associates as an expert witness. In conjunction with this, LNC has submitted expert
23 reports from Mr. Cluff that relies on much of the work he did on the EIS for the Thacker Pass
24 mine.

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1 I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE
2 BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE
3 MADE FOR USE AS EVIDENCE IN COURT AND ARE SUBJECT TO PENALTY FOR
4 PERJURY.

5 Executed on this 22nd day of October, 2021

6
7 /s/ Dominic M. Carollo
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CERTIFICATE OF SERVICE

I hereby certify that on October 22nd, 2021, I filed the foregoing using the United States District Court CM/ECF, which caused all counsel of record to be served electronically.

/s/ Dominic M. Carollo
Dominic M. Carollo (Or. Bar. No. 093057)
Admitted Pro Hac Vice

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