

HOLLAND & HART LLP  
5441 KIETZKE LANE, SUITE 200  
RENO, NV 89511-2094

Laura K. Granier, Esq (SBN 7357)  
Erica K. Nannini, Esq (SBN 13922)  
HOLLAND & HART LLP  
5441 Kietzke Lane, 2nd Floor  
Reno, Nevada 89511  
Tel: 775-327-3000  
Fax: 775-786-6179  
[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com)  
[eknannini@hollandhart.com](mailto:eknannini@hollandhart.com)

Hadassah M. Reimer, Esq (Wyo. Bar No. 6-3825)  
*Admitted Pro Hac Vice*  
HOLLAND & HART LLP  
P.O. Box 68  
Jackson, WY 83001  
Tel: 307-734-4517  
Fax: 307-739-9544  
[hmreimer@hollandhart.com](mailto:hmreimer@hollandhart.com)

*Attorneys for Defendant-Intervenor  
Lithium Nevada Corp.*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

|                              |   |                                       |
|------------------------------|---|---------------------------------------|
| BARTELL RANCH, LLC, et al.,  | ) |                                       |
|                              | ) | <b>Lead Case:</b>                     |
| Plaintiffs,                  | ) | <b>Case No. 3:21-cv-00080-MMD-CLB</b> |
| v.                           | ) |                                       |
|                              | ) |                                       |
| ESTER M. MCCULLOUGH, et al., | ) |                                       |
|                              | ) |                                       |
| Defendants,                  | ) | <b>DEFENDANT-INTERVENOR</b>           |
|                              | ) | <b>LITHIUM NEVADA CORP.'S</b>         |
| and                          | ) | <b>UNOPPOSED MOTION THAT</b>          |
| LITHIUM NEVADA CORP.,        | ) | <b>LEAVE TO FILE SUR-REPLIES BE</b>   |
|                              | ) | <b>GRANTED</b>                        |
| Defendant-Intervenor.        | ) |                                       |
|                              | ) |                                       |

Defendant-intervenor Lithium Nevada Corp. moves for leave to file sur-replies to respond to new information presented in the Reply In Support of Preliminary Injunction filed by

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1 Reno-Sparks Indian Colony and Atsa koodakuh wyh Nuwu (“the People”) (ECF 73, “RSIC  
2 Reply”) and in the Reply in Support of Preliminary Injunction (ECF 71, “Burns Reply”) filed  
3 the Burns Paiute Tribe (the “Burns Tribe” and, collectively with RSIC and the People, the  
4 “Plaintiff-Intervenors”). Lithium Nevada met and conferred with counsel for the Plaintiff-  
5 Intervenors and the Federal Defendants regarding a possible motion to strike the new  
6 information. To avoid the necessity of filing a motion to strike, the Plaintiff-Intervenors, Federal  
7 Defendants and Lithium Nevada have agreed that, subject to Court approval, the Federal  
8 Defendants and Lithium Nevada would each file a sur-reply to respond to the new information  
9 presented by the Intervenor-Plaintiffs in their Reply briefs. For the Burns Reply, the interested  
10 parties agreed to a total page limit for both sur-replies to the Burns Reply will not exceed 4 pages  
11 and be filed by no later than August 25, 2021, excluding captions and signatures. For the RSIC  
12 and the People Reply, the interested parties agreed that, subject to Court approval, the Federal  
13 Defendants and Lithium Nevada would limit their filing to no more than 5 pages each and submit  
14 by no later than August 26, 2021. Lithium Nevada also believes such sur-replies would eliminate  
15 the need for an evidentiary hearing instead of oral argument as it had requested with the filing  
16 of its Opposition.

17 This Court has consistently held that new evidence and information cannot be submitted  
18 after an opposition has been filed. *See, e.g., Queensridge Towers LLC v. Allianz Glob. Risks US*  
19 *Ins. Co.*, 2015 U.S. Dist. LEXIS 38689, at \*6 (D. Nev. Mar. 26, 2015) (“Where a reply asserts  
20 new evidence, the court may strike the information, and should not consider it without giving  
21 the opposing party an opportunity to respond.”) (citation omitted). The submission of new  
22 evidence or information in a final reply brief is particularly inappropriate when the evidence was  
23 available when the initial motion was filed. *Pacquiao v. Mayweather*, 2010 WL 3271961, at \*1  
24 (D. Nev. Aug. 13, 2010). The replies filed by the Plaintiff-Intervenors each included new  
25 information that was obviously available at the time their motion and joinder, respectively, were  
26 filed. To minimize the prejudice resulting from the delayed disclosure of the information, the  
27 parties have agreed that Lithium Nevada and the Federal Defendants should be permitted to file  
28 short sur-replies to respond to the new information, subject to Court approval. If sur-replies are

1 not allowed, then Lithium Nevada believes the new information should be stricken because of  
2 the prejudice created by depriving Federal Defendants and Lithium Nevada the opportunity to  
3 respond and based on the availability of the information at the time the motion and joinder were  
4 filed by the Plaintiff-Intervenors.

5 Specifically, Lithium Nevada's proposed sur-reply will address three pieces of new  
6 information presented in the reply briefs: (1) RSIC Reply Brief, Attachment 1 and text from the  
7 reply discussing Attachment 1; (2) RSIC Reply Brief, Attachment 2, paragraph 18 and text from  
8 the reply discussing Attachment 2, paragraph 18, and (3) Burns Reply Brief, final paragraph of  
9 page 3. Each of these items presents new information which was available to the Intervenor-  
10 Plaintiffs when they filed their original motions in support of preliminary injunction but raised  
11 for the first time in their reply briefs.

12 *First*, RSIC Reply Brief, Attachment 1 is a photocopy of federal land survey records,  
13 which RSIC and the People claim is "easily" discoverable in BLM's records. If permitted to file  
14 a sur-reply, Lithium Nevada will provide the Court with appropriate context regarding the  
15 record, including how it can be identified in BLM's records, a historic map that was included  
16 with the land survey notes in BLM's records but omitted by the RSIC and the People from their  
17 Reply, and the relevance and context of the document to Intervenor-Plaintiffs' National Historic  
18 Preservation Act claims.

19 *Second*, RSIC Reply Brief, Attachment 2, paragraph 18 asserts that the declarant does  
20 "not believe that BLM's efforts to identify Indian tribes to consult with were reasonable and in  
21 good faith" because BLM had sent her notices regarding other projects, and lists the projects.  
22 ECF 73-2, ¶ 18. If permitted to file a sur-reply, Lithium Nevada would respond to this new  
23 information including providing the Court with relevant information, including geographic  
24 information, regarding the projects identified in paragraph 18 considering RSIC's previously  
25 disclosed map of areas of interest for purposes of Section 106 consultations and with the Thacker  
26 Pass project area.

27 *Third*, the final paragraph of page 3 of the Burns Reply asserts that BLM has consulted  
28 with the Burns Paiute Tribe "about sensitive cultural resource issues in the area" and provides a

1 single example regarding consultation on Elephant Mountain Cave, which it asserts is in the  
 2 “same county” where the Thacker Pass project is located. ECF 71 at 3. If permitted to file a  
 3 sur-reply, Lithium Nevada would provide responsive information and argument including the  
 4 relevant and important geographic context of the Elephant Mountain cave and the circumstances  
 5 of that discovery in relation to the Thacker Pass project area and project requirements.

6 For the foregoing reasons, Lithium Nevada’s respectfully requests that the Court grant  
 7 Lithium Nevada and the Federal Defendants leave to each file a sur-reply (for a combined total  
 8 of no more than 4 pages) to respond to the new information presented by the Intervenor-Plaintiff  
 9 the Burns Paiute Tribe by no later than August 25, 2021, and leave to each file a sur-reply of no  
 10 more than 5 pages each to respond to the new information presented by RSIC and The People  
 11 on reply by no later than August 26, 2021, as negotiated by the parties (subject to Court approval)  
 12 to eliminate the need to file a motion to strike.

13 DATED this 23rd day of August 2021.

14 By: /s/ Laura K. Granier

15 Laura K. Granier, Esq (SBN 7357)  
 16 Erica K. Nannini, Esq (SBN 13922)  
 17 Holland & Hart LLP  
 18 5441 Kietzke Lane, 2nd Floor  
 19 Reno, Nevada 89511  
 20 Tel: 775-327-3000  
 21 Fax: 775-786-6179  
 22 [lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com)  
 23 [eknannini@hollandhart.com](mailto:eknannini@hollandhart.com)

24 Hadassah M. Reimer, Esq  
 25 (Wyo. Bar No. 6-3825)  
 26 *Admitted Pro Hac Vice*  
 27 Holland & Hart LLP  
 28 P.O. Box 68  
 Jackson, WY 83001  
 Tel: 307-734-4517  
 Fax: 307-739-9544  
[hmreimer@hollandhart.com](mailto:hmreimer@hollandhart.com)

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**Certificate of Service**

I hereby certify that on August 23, 2021, I filed the foregoing using the United States District Court CM/ECF, which caused all counsel of record to be served electronically.

/s/ Laura K. Granier  
Laura K. Granier, Esq (SBN 7357)

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