EXHIBIT 35

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

NDEP Letter

NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, *Governor*
Bradley Crowell, *Director*
Greg Lovato, *Administrator*

3 May 2021

VIA EMAIL ONLY

Ms. Catherine Clark
Lithium Nevada Corp.
3685 Lakeside Drive
Reno, NV 89509

Re: Water Pollution Control Permit Application – Technical Comments 2
Thacker Pass Project, Humboldt County, Nevada
Water Pollution Control Permit (WPCP) NEV2020104

Dear Ms. Clark:

The Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation (the Division), has completed its technical review of the Water Pollution Control Permit (WPCP) application submitted on 3 April 2020 for the Thacker Pass Project. The project is an open pit lithium mining and chemical process facility located in Humboldt County. Technical comments were sent on 29 October 2020 and a response to the technical comments was received from Lithium Nevada Corp. (LNC) on 26 February 2021.

This letter is to advise you that during the course of our technical review, it has been determined that additional information and documentation is needed. Lithium Nevada Corp. (LNC) is requested to provide the following information and documentation listed below:

1. Additional Drawing Clarification: Please provide focused detail cross sections of the east and west perimeters of the containment of the temporary tailings stockpiles. Drawings A152 and A154 show the overall cross section, but more focused drawings would be helpful. Additionally, is the 12-inch perforated collection header pipe on the eastern side of the cell going to be constructed during the initial stage of construction? The pipe is not included on the overall cross section.

2. Comment 2: The CTFS Conveyor Corridor was modified to include a low-hydraulic conductivity soil layer (LHCSL); however, the Division requires the placement of a geosynthetic liner (i.e., HDPE or similar product) to facilitate clean up in the event of a release.

3. Comment 7: Modeling results predict that the proposed full backfill of the open pits with waste rock and coarse gangue material will result in groundwater exceedances of several Profile I constituents up to 300 years post closure. As discussed during the virtual meeting between LNC and the Division on 6 April 2021, the Division cannot authorize a facility to degrade waters of the State and subsequently mitigate the impacts. Pursuant to NAC445A.424, a facility, regardless of size or type, may not degrade waters of the State.

   Therefore, the Division will implement a Permit limitation to restrict mining below the

water table (regional aquifer) until additional studies can be completed and a mine plan is proposed which does not result in the degradation of waters of the State. Please provide the water elevation of the regional aquifer, as well as data regarding variation and fluctuation in the water table.

The Division understands that there are several options which may be viable in the future once additional studies are completed including, but not limited to, the following:

a. The partial backfill alternative analyzed in the Environmental Impact Statement which results in the formation of a wetland in the South Pit and a hydraulic sink with no outflow to groundwater;

b. Adsorption amendment; and

c. Ongoing attenuation studies.

4. Comment 12: Radiological concerns – Thank you for providing a radiological evaluation by Fox Fire Scientific, Inc. While it appears the uranium concentrations in the ore, waste rock, and tailings are below the 0.05 percent, or 500 mg/kg regulatory threshold for Naturally Occurring Radioactive Material (NORM), the Division has concerns regarding the following:

   a. The HPZ and Tv materials exceed the radium-226 regulatory threshold of 5 pCi/g.

   b. Radium-226 concentrations in the gangue and tailings materials are inferred based on barium concentrations.

   c. The Meteoric Water Mobility Procedure – Profile I-R results for tailings materials (clay tailings, neutralization solids, and sulfate salts) reveal exceedances for uranium (0.724 mg/L exceeding the 0.03 mg/L reference value), gross alpha (670 pCi/L exceeding the 15 pCi/L reference value), gross beta (ranging from 1,700 pCi/L in the neutralization solids to 18,000 pCi/L in the sulfate salts exceeding the 50 pCi/L reference value), and radium 226/228 (8.2 pCi/L exceeding the 5 pCi/L).

   The Division is uncertain of how these concentrations compare to the Nevada Department of Health – Radiation Control Program (NDOH-RCP) regulatory thresholds and strongly recommends LNC contact the NDOH-RCP to receive a determination on whether any materials at the facility fall within their program and whether the tailings material meets the criteria for Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).

5. Comments 16 and 17: An additional study was completed to assess the amount of stormwater runoff from the watershed that will comingle with run off from the WRSFs. The result shows that runoff from WRSFs is diluted to meet Profile I reference values; however, the Division is not does not accept the practice of dilution to achieve regulatory compliance and protect waters of the State. Constructing containment for the WRSFs and runoff is the most conservative and defensible permitting decision to protect waters of the State. This requirement is consistent with all other facilities permitted by the Division.

Please provide engineered drawings of containment for both WRSFs and runoff from these facilities.

6. Comment 18: The ROM ore stockpile was designed to have a LHCSL for containment, but the runoff from the stockpile also requires containment. Currently, ROM stockpile runoff combines with site run off in sediment pond #2.

7. Comment 20: The response indicates a quality assurance inspection and testing program (including lab and field testing of soils and survey verification) will be implemented to ensure the chimney drain is constructed in accordance with the design drawings and technical specifications. The Division has experienced issues with chimney drains at other facilities where fine material clogs or blinds off the drain creating problems to ensure proper drainage and stability. Please provide additional detail on the quality assurance inspection and testing program. How often will testing and survey verification be completed?

8. Comment 34: SAP subsurface – The response indicates the confirmatory geotechnical program has not been completed and will be planned for a date closer to construction. The Permit will have a schedule of compliance item requiring subsurface conditions to be confirmed prior to construction. If the program results in a modification to the design of the SAP, an engineering design change and $500 fee will be required for submittal and approval by the Division.

9. Comment 37: The SLERA provided indicates that no adverse effects will result in the use of waste rock for construction and roads. Foxfire indicates the use of the hot pot zone and tertiary volcanics would require a 15 centimeter cover at closure due to the elevated levels of radium-226 (5.9 pCi/g and 5.6 pCi/g respectively, which exceed the 5 pCi/g threshold). The Division suggests not using these rock types for construction as it may be difficult to differentiate in the field and it is the most conservative to not use altogether.

10. Comment 39: The response indicates the NewFields concrete specifications will not be used for process plant. Please provide technical specification for the processing plants. Otherwise, technical specifications can be provided with the final design required by the schedule of compliance item described earlier in comment 9.

11. Comment 41: The response explains why secondary containment is not proposed for several areas. There are inconsistencies in the following areas:

    a. The classification area/attrition scrubbing area is described as not requiring containment. Although only water and a small dose of flocculant is used in this area, similar to the ROM stockpile and Gangue Stockpile, this area requires secondary containment due to the potential to leach Profile I constituents from the material as exhibited by Meteoric Water Mobility Procedure Analyses.

    d. The Product Packaging and Warehouse area is listed as an area not requiring secondary containment in drawing SF-001; however, the response indicates this area will have secondary containment. Please update the drawing.

e. The Molten Sulfur area is listed as an area not requiring secondary containment in drawing SF-001, but the response indicates this area will have secondary containment consisting of concrete containment with a curbed wall. Please update the drawing.

h. Asphalt pavement is proposed for the Gas Side of the SAP; however, this area requires 110% curbed concrete containment.

12. Comment 43 and 44: The response indicates drawings SF-007 and SF-015 will be corrected. Please provide the corrected drawings for approval by the Division.

13. Comment 46: The response points to Note 4 which indicates only the sump will be lined with acid proof tile. It is not clear why only the sump requires acid proof tile.

14. Comment 48: The responses says all piping will be elevated on a rack, but there is no detail regarding pipe sizing or material. Please provide this detail and note any solution which does not meet Profile I reference values and has added chemicals requires secondary containment.

15. Comment 52: This comment discusses the need for surface water monitoring upgradient and downgradient of facilities. Although SP-002 is an ephemeral stream with flow (<1 gpm) only observed once during 6 quarters, the Division will require quarterly monitoring of this stream when it is flowing due to its proximity to the facility. As SP-002 eventually flows into Crowley Creek, the Division also requires upgradient and downgradient monitoring of Crowley Creek which has water quality standards prescribed by NAC 445A.1236 and NAC 445A.1312.

16. Comment 53: In response to this comment, 8 locations (two on each side of the CTFS perimeter) were selected for piezometer installation. However, upon further review and consideration, groundwater is considered to be near the surface as described under NAC 445A.433 as exhibited by BH-33, BH-34, and BH-35 with depth to groundwater ranging from 60 to 97 feet bgs. In accordance with NAC 445A.434, the Division has the discretion to require a liner system with a higher level of engineered containment. For these reasons, the Division will also require the installation of a leakage collection and recovery system within the interstitial layer of the primary and secondary liner systems under areas with concentrated flow.

17. Revised Drawing C140: The Division was notified of a typographical error on drawings C140 and C145 with the elevation of the 25-year event. Please provide the revised drawings.

The Division is appreciative of the cooperation extended by the LNC environmental staff. If you have any questions regarding this matter or if I can be of further assistance, please contact me at (775) 687-9405 or m.griffin@ndep.nv.gov.

Sincerely,

Michelle Griffin, P.E.
Staff Engineer III – Regulation Branch, Permitting Section
Bureau of Mining Regulation & Reclamation

ec: *Rob Kuczynski, P.E., Supervisor, NDEP-BMRR Regulation Branch*
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