

Louis M. Bubala III (Nevada Bar No. 8974)
KAEMPFER CROWELL
50 West Liberty Street, Suite 700
Reno, Nevada 89501
Telephone: (775) 852-3900
Facsimile: (775) 327-2011
Email: lbubala@kcnvlaw.com

Rick Eichstaedt (Washington Bar No. 36487 *Admitted Pro Hac Vice*)
WHEAT LAW OFFICES
25 West Main Avenue, Suite 320
Spokane, Washington 99201
Telephone: (509) 251-1424
Email: rick@wheatlawoffice.com

Attorneys for the Burns Paiute Tribe

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BARTELL RANCH LLC, *et al.*,

Plaintiffs,

v.

ESTER M. McCULLOUGH, *et al.*,

Defendants,

WESTERN WATERSHEDS PROJECT, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants.

Lead Case:

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

Consolidated with:

Case No.: 3:21-cv-00103-MMD-CLB

**BURNS PAIUTE TRIBE’S JOINDER IN
SUPPORT IN RENO-SPARKS INDIAN
COLONY, *et al*’s MOTION FOR
RECONSIDERATION AND NOTICE TO
THE COURT REGARDING APRA
PERMIT**

Intervenor-Plaintiff Burns Paiute Tribe (“Tribe”) submit this Joinder in support of the
Motion for Reconsideration of the September 3, 2021 Order Denying Preliminary filed by

1 Plaintiff-Intervenors Reno-Sparks Indian Colony and Atsa koodakuh wyh Nuwu/People of Red
2 Mountain (“RSIC”) (ECF No. 96). The joinder is solely limited to the presentation of new
3 evidence presented in the Motion regarding the Thacker Pass Massacre Site. ECF 96 at 21-25.
4 Based upon the new evidence presented, RSIC has satisfied the requirements for this Court to
5 reconsider its previous Order.

6 The Tribe further provides notice to this Court that the ARPA permit in question was
7 issued by the BLM during the week of September 27, 2021. *See* Exhibit 1. There was no
8 consultation with the Burns Paiute Tribe prior to the issuance of that permit. *See* Exhibit 2.

9 Dated this 11th day of October 2021.

10 WHEAT LAW OFFICE

11 By: /s/Rick Eichstaedt
12 RICK EICHSTAEDT

13 Attorneys for Burns Paiute Tribe
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CERTIFICATE OF SERVICE

I certify that on October 11, 2021, I filed the foregoing using the United States District Court CM/ECF, which caused all counsel of record to be served electronically.

By: /s/Rick Eichstaedt

RICK EICHSTAEDT

EXHIBIT

Exhibit	Description	# of Page
1	September 28 Letter from BLM To Burns Paiute Tribe	2
2.	October 10, 2021 Email from Diane Teeman, Burns Paiute Tribe to Shannon Deep, BLM	3

Exhibit 1



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Winnemucca District Office

Humboldt River Field Office

5100 East Winnemucca Boulevard

Winnemucca, Nevada 89445

Phone: (775) 623-1500 Fax: (775) 623-1740

Email: wfoweb@blm.gov

<https://www.blm.gov/office/winnemucca-district-office>

Official Record Copy

In Reply Refer To:
8142/3809(NVW000.02)

SEP 28 2021

Shelley 9/28
ME Hall 9/28

CERTIFIED MAIL NO. 9171 9690 0935 0210 5560 80
RETURN RECEIPT REQUESTED

9171 9690 0935 0210 5560 80

Chairperson Diane Teeman
Burns Paiute Tribe
100 Pasigo Street
Burns, OR 97720

Dear Chairperson Teeman,

Thank you for your correspondence on the issuance of the Archeological Resources Protection Act (ARPA) permit for the Thacker Pass treatment plan. The BLM will issue the ARPA permit the week of September 27 with the stipulations that excavation work can be done under the observance of tribal monitors. If your tribe is interested in having monitors present during the excavations, please contact the BLM Winnemucca District's Native American Coordinator, Ms. Shannon Deep at 775-623-1504 or sdeep@blm.gov as soon as possible to ensure arrangements are in place prior to the beginning of any excavation work.

After issuance of the ARPA permit, the cultural contractor must submit their Field Work Authorization (FWA) for approval by the BLM. If it is determined that additional mitigations are needed, they can be added to the project via the FWA. Once the BLM approves the FWA, excavations may proceed. As excavations are completed, the contractor has 10-days to submit summary excavation reports. Once the BLM reviews and deems the reports acceptable, they are sent to SHPO for a 10-day review period. If your tribe has a data sharing agreement with the Winnemucca District Office, the summary reports can be shared with your tribal representatives.

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CALIFORNIA*, NEVADA*, OREGON*

* PARTIAL

We are willing to continue to consult on the excavations with you and your tribe and, once excavations begin, we are willing to visit the Thacker Pass area with your tribal representatives. To set up a site visit, establish a data sharing agreement for access to the excavation summary reports, or for more information please contact Ms. Deep.

Sincerely,

Kathleen L. Rehberg

Kathleen Rehberg
Field Manager
Humboldt River Field Office

Cc: Diane Teeman, Culture & Heritage Dept. Director

Exhibit 2

From: **Diane Teeman** <dlteeman.burns.paiute@gmail.com>

Date: Sun, Oct 10, 2021 at 4:18 PM

Subject: Re: Thacker Pass ARPA Permit Letter

To: Deep, Shannon E <sdeep@blm.gov>

Cc: BPTTribalcouncil@burnspaiute.onmicrosoft.com <BPTTribalcouncil@burnspaiute.onmicrosoft.com>

Pisa Tabino Shannon,

The Burns Paiute Tribe's Culture & Heritage Dept. has not yet received the information we requested to adequately evaluate the arpa permit application. I can tell you as the Director of the Culture & Heritage Dept. that any collection and/or excavation is an adverse effect to our cultural resources (heritage) and we will need to discuss mitigation of these losses. Oftentimes when we are able to review the research methodology of ARPA and SHPO permits we are able to work with the researchers and the BLM to reduce adverse effects. By the BLM Winnemucca Field office not allowing us access to review the application, we can only assume our concerns are not a consideration. Additionally, we have not had a response to the request for a field visit to the project APE. Field visits as part of the government to government consultation process between the Burns Paiute Tribe and other agencies typically includes various officials and staff from BLM offices and the BPT and has been customary in our experiences. Is the Winnemucca Field office of the BLM refusing to provide the Burns Paiute Tribe with an opportunity to visit with you about the project on site? Also, we reviewed and sent back the draft data sharing agreement to you in a timely fashion. The last time I inquired you stated your office was still in review. When can we expect a response to move the data sharing agreement towards execution?

Regarding the notification that the ARPA permit was issued without our ability to adequately comment, I will inform you that we do want Burns Paiute Tribal cultural monitors assigned to the project for all ground disturbing activities and we have a standard process for carrying that out. We are certain the excavations will be impacting the final resting places of our Ancestors (making the local a sacred site) and therefore the Native American Graves Protection and Repatriation Act (NAGPRA) will be a factor as will sacred sites legislation. Please let us know who we should contact to begin the process of negotiating the monitoring agreement. Typically we work directly with the project proponent and/or their designees (often an environmental or archaeological consultant company).

Finally, I may have overlooked the document if it was previously sent, is there a programmatic agreement that was executed in relation to this project? If so would you please resend. If not, is there one being developed? Since all of the impacts of this project to our culture & heritage cannot be currently identified, we would ask to be party to a programmatic agreement for the project either by asking it be amended to include the Burns Paiute Tribe as a signatory (if already executed), or including us in the draft document as a signatory if one is yet to be developed. Pisa eh (thank you) for your time.

Sa'a u Punedua (see you later),

Diane
C&H Director, Burns Paiute Tribe

On Wed, Sep 29, 2021 at 1:23 PM Deep, Shannon E <sdeep@blm.gov> wrote:
Dear Chairperson Teeman ,

A letter was mailed to you yesterday on September 28, 2021 regarding consultation on the ARPA Permit for the Thacker Pass project and other consultation opportunities. I have attached the letter to this email for your convenience. If you have any questions regarding this letter, I am available by the phone or email listed below.

Thank you.

Sincerely,

Shannon E Deep, MA, BA
***District Archaeologist, Native American Coordinator
Cultural/Lands/Recreation Team***
*Bureau of Land Management-
Humboldt River Field Office
5100 E Winnemucca Blvd.
Winnemucca, NV 89445
775-623-1504
sdeep@blm.gov*