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

BARTELL RANCH, LLC, et al.,)	
)	Lead Case:
Plaintiffs,)	Case No. 3:21-cv-00080-MMD-CLB
v.)	
)	
ESTER M. MCCULLOUGH, et al.,)	DEFENDANT-INTERVENOR
)	LITHIUM NEVADA CORP.'S
Defendants,)	SUR-REPLY IN OPPOSITION TO
)	BURNS PAIUTE TRIBE'S REPLY
and)	IN SUPPORT OF RENO-SPARKS
LITHIUM NEVADA CORP.,)	INDIAN COLONY'S MOTION FOR
)	PRELIMINARY INJUNCTION
Defendant-Intervenor.)	
)	
)	
)	
)	

Pursuant to the Court’s Minute Order, ECF 79, Lithium Nevada Corp. files this sur-reply to respond to the Burns Paiute Tribe’s (“Tribe”) arguments in the last paragraph of page 3 of its Reply in Support of Reno-Sparks Indian Colony’s (“RSIC”) Motion for Preliminary Injunction (“Motion”). The Tribe raised new arguments concerning the Bureau of Land Management’s (“BLM”) invitation to consult with the Tribe and RSIC about remains removed from Elephant Mountain Cave in Humboldt County. The Tribe omitted critical context for that invitation to consult. Further details concerning the Elephant Mountain Cave incident which involved looting of human remains, demonstrate why that single invitation to consult, which the Tribe declined, does not evidence that BLM was on notice that the RSIC or the Tribe had interest in the Thacker Pass Project area – 52 miles away.

ARGUMENT

The Tribe joined Plaintiff-Intervenors’ Motion, arguing that BLM failed to consult with all impacted Tribes, including the Burns Paiute Tribe. (ECF 62 at 3) BLM responded that neither RSIC nor the Tribe previously provided BLM any notice that it had places of cultural or religious significance *in Thacker Pass* until well after approving the Project. (ECF 65 at 9) For the first time in its Reply, the Tribe cites a Notice of Inventory Completion, 78 Fed. Reg. 59,958 (Sept. 2013) (“Notice”), **Ex. 1**, that it claims demonstrates BLM knew the Tribe and RSIC had an “important connection . . . to the area[,]” and that BLM has consulted with the Tribe and RSIC in the past “concerning sensitive cultural resources *in the area.*” *Id.* at 3-4. By “area” the Tribe appears to argue that all of Humboldt County is one “area.”

While the Tribe explains that the Notice concerned human remains and associated funerary objects removed from Elephant Mountain Cave in Humboldt County—“the same county where the Project is located[,]” *id.* at 3, the Tribe omits that Elephant Mountain Cave is over 52 miles southwest from the Thacker Pass Project boundary as the crow flies, and about 80 miles if traveling by road. *See id.*; *see also* **Exhibit 2** Dec. of J. Schonlau. Thus, this Notice does not reflect that BLM knew that the Tribe’s potential interest “in the area” of the Elephant Mountain Cave in an instance of looting human remains extended more than 52

1 miles away to Thacker Pass. Also, the Notice indicates that, although BLM invited the RSIC
2 and the Tribe to consult regarding the Elephant Mountain Cave human remains, *neither*
3 *responded to BLM's request for consultation*, though the Fort McDermitt Tribe did respond and
4 actively participated in consultation. *See* 78 Fed. Reg. at 59,959.

5 Importantly, the Notice also demonstrates the standard procedure and requirements
6 for unanticipated discoveries. These procedures and requirements, including notification and
7 opportunity for consultation upon such a discovery apply at the Thacker Pass Project. In
8 addition to the Class III cultural surveys (which are the most extensive and intensive
9 inventories requiring professional pedestrian surveys),¹ across the entire Thacker Pass Project
10 area (ECF 65-14 at 32) the Historic Properties Treatment Plan for the Thacker Pass Project
11 requires that an archeological monitor be present for ground-disturbing work occurring near
12 any historic property, ECF 65-14 at 74, and, if Project activities encounter unanticipated
13 discoveries including Native American human remains, funerary objects or other cultural
14 resources, work will stop immediately. *Id.* at 76; ROD Stipulation 15 at 13 (ECF 65-1 at 18).

15 Therefore, this information about the Elephant Mountain Cave discovery not only
16 fails to demonstrate the BLM had notice the Tribe or RSIC had an interest in the Thacker
17 Pass area but also demonstrates that procedures are in place to ensure that an unanticipated
18 discovery will halt work immediately and consultation would be completed relative to that
19 discovery. Thus, the Tribe has failed to demonstrate a likelihood of success on the merits
20 because the BLM had no notice of its interest in the Thacker Pass Project area and given the
21 intensive surveys completed and the safeguards in place for any unanticipated discovery, there
22 is no irreparable harm from the cultural resource mitigation at issue.

23
24 ¹ A Class III inventory is an “[i]ntensive survey” that “provides managers and cultural resource
25 specialists with a complete record of cultural properties” occurring within a specified and defined
26 target area. BLM Manual 8110.21(C)(3). Designed to “produce a total inventory of the cultural
27 properties observable”, once a Class III survey has been completed, no further survey work is
28 needed in the target area. *Id.* It is a “continuous, intensive survey of an entire target area, aimed at
locating and recording all archaeological properties that have surface indications, by walking
close-interval parallel transects until the area has been thoroughly examined . . .” ECF 65-22 at
78. The entire Thacker Pass Plan of Operations area has been surveyed through Class III
inventories. ECF 65-14 at 32.

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DATED this 25th day of August 2021.

By: /s/ Laura Granier

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Certificate of Service

I hereby certify that on August 25, 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
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TABLE OF EXHIBITS

1. Notice of Inventory Completion “Notice”
2. Declaration of Jennifer Schonlau

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