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Lithium Nevada Corp.

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

17	BARTELL RANCH, LLC, et al.,)	
18	Plaintiffs,)	Lead Case:
19	v.)	Case No. 3:21-cv-00080-MMD-CLB
20	ESTER M. MCCULLOUGH, et al.,)	
21	Defendants,)	NOTICE OF ERRATA AND
22)	CORRECTED DECLARATION OF
23	and)	ALEXI ZAWADZKI IN SUPPORT OF
24	LITHIUM NEVADA CORP.,)	LITHIUM NEVADA CORP.'S
25	Defendant-Intervenor..)	OPPOSITION TO MOTION FOR
)	PRELIMINARY INJUNCTION

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Lithium Nevada Corp. (“Lithium Nevada”) submits this Notice of Errata and corrected Declaration of Alexi Zawadzki in support of Lithium Nevada’s Opposition (the “Opposition”) to the Motion for Preliminary Injunction and Joinder to same (ECF 45 & 62), filed respectively on July 29 and August 10, 2021. Under Local Rule of Practice for the U.S. District Court, District of Nevada, (“LR”) LR IC 2-2(h), “[a] notice of errata must explain the changes to [a] corrected document.” An “errata” typically consists of “a list of errors in a printed work discovered after printing and shown with corrections.” *Entsminger v. Aranas*, 2020 WL 4904626 (D. Nev., Aug. 20, 2020 (Unpublished Order), at *2 n.1 (denying a motion to “strike the errata and authenticating declarations” because the court [found] no prejudice to Plaintiff in Defendants having filed the documents one day late) (internal quotation marks omitted)).

On August 12, 2021, Lithium Nevada filed its Opposition (ECF 66), and attached as **Exhibit 7** the Declaration of Alexi Zawadzki in Support of Lithium Nevada’s Opposition (the “Declaration”). After filing its Opposition, Lithium Nevada learned that the Declaration inadvertently contained an error and inadvertently omitted an attachment. Specifically, the Declaration stated that “In all of the years of prior disturbance in the area . . . including . . . drilling of over 374 holes . . . we have never heard of any concerns about Traditional Cultural Properties or been contacted by or heard any objections from the Reno-Sparks Indian Colony.” Declaration of Alexi Zawadzki, (**Exhibit 7**), ¶ 17. The correct number of holes actually drilled is 358 (though the additional 16 drill holes referenced are authorized but have not been completed). The corrected Declaration revises this clerical error.

Additionally, the Declaration, at Paragraph 10, stated that “Lithium Nevada held town hall meetings in Winnemucca in 2018 and 2020 and held community gatherings and project update meetings in Orovada, Nevada, in 2017, 2018 and 2020 to discuss the Thacker Pass Project.” *Id.*, ¶ 10. This statement is accurate; however, an attachment was intended to be attached to reflect that one of the attendees at the 2018

1 event was Elvida Crutcher, the Secretary of The People of Red Mountain, who
2 provided her name and contact information on a sign-in sheet as an attendee of the
3 2018 Thacker Pass Project “2nd Annual Open House and BBQ” in Orovada. The
4 corrected Declaration includes the sign-in sheet reflecting this information as an
5 attachment. The Declaration includes a new **Exhibit C** No other changes have been
6 made.

7 The corrected Declaration of Alexi Zawadzki follows below:

8
9 I, Alexi Zawadzki, declare as follows:

- 10 1. I am over eighteen years old, have personal knowledge of the matters set forth
11 in this Declaration, and am competent to testify as to the matters set forth
12 herein.
- 13 2. I am the CEO of Lithium Nevada Corp. (“Lithium Nevada”). I am a
14 hydrologist by training and, my work for Lithium Nevada focuses on
15 developing the largest known lithium resource in the United States at the
16 Thacker Pass Project.
- 17 3. Lithium Nevada has been working since 2011 on collecting baseline
18 environmental data, collaborating with local stakeholders, and engaging with
19 state and federal agencies to design and permit one of the most advanced and
20 environmentally sound lithium projects in the world at Thacker Pass. The
21 resource at Thacker Pass is a world class lithium deposit that is the largest and
22 highest-grade known sedimentary lithium resource in the United States. The
23 identified reserves at the project would support lithium for more than 1.5
24 million electric vehicles per year for over 40 years.

25 **We Relocated the Project from the Montana Mountains**

- 26 4. Lithium Nevada and heritage companies that previously owned the mineral
27 rights have spent substantial time, effort and resources identifying a sizeable,
28 high-grade lithium deposit in the McDermitt Caldera, which included the

1 upper Montana Mountains. In fact, the deposits in the Montana Mountains are
2 very attractive for mining as they are well characterized through drilling, very
3 high grade and at or near surface. However, that area also contains excellent
4 sage-brush habitat as it is higher, cooler and receives more precipitation. I
5 want to avoid impacting the Montana Mountains. Thus in 2017 I went to our
6 Board of Directors and asked that we slow down, commit additional resources
7 to exploration and project planning, carefully reconsider our draft mine plan,
8 and evaluate alternatives for a viable lithium project that could reduce
9 potential environmental impacts.

- 10 5. As a result, we delayed development to evaluate potential avoidance of
11 environmental impacts including numerous acres that the BLM identified in
12 2015 as Sagebrush Focal Areas (“SFAs”) important to greater sage-grouse
13 habitat conservation. Our theoretical geologic model suggested that the
14 Thacker Pass area located south of the Montana Mountains could contain
15 lithium resources that had yet to be fully discovered. Thacker Pass does not
16 contain the high-value habitat identified in the Montana Mountains as it is
17 lower in in elevation, warmer and receives less precipitation.
- 18 6. Rather than proceed with permitting efforts for a project in the Montana
19 Mountains, we instead invested our limited resources to evaluate the prospect
20 of an alternative lithium mine plan in Thacker Pass that would be robust
21 enough to satisfy significant forecasted growth in demand, and yet completely
22 avoid direct impacts to the Montana Mountains where there were widespread
23 greater sage-grouse SFAs and other environmental concerns. This
24 environmental mitigation effort required several millions of dollars of
25 investment at-risk and two seasons of drilling to conduct greenfield
26 exploration to see if we could identify a resource in a new footprint outside of
27 the Montana Mountains.
- 28

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- 1 7. After nearly two years of exploration and millions of dollars of investment,
2 we were able to identify the world-class resource in Thacker Pass. We
3 redesigned our operating plan to conduct our operations entirely at Thacker
4 Pass and achieved the optimal environmental mitigation: total avoidance of
5 areas where greater sage-grouse reside and avoidance of other ecological and
6 wildlife concerns in the Montana Mountains, including aquatic important
7 species. There are no sage grouse leks within the mine-project boundary.
- 8 8. Through the years of this additional exploration and delay of the project in
9 order to complete the redesign and move the project footprint out of the
10 Montana Mountains, we continued to work with federal and state agencies to
11 collect baseline environmental data. We also continued to engage with local
12 stakeholders to discuss the project, including the Fort McDermitt Paiute and
13 Shoshone Tribe ("Fort McDermitt"), through numerous open houses and
14 individual meetings.

15 **Years of Data Gathering & Community Engagement Before NEPA**

- 16 9. Over the course of approximately nine years, 18,600 acres have been surveyed
17 for baseline environmental studies. Environmental, land, and cultural data has
18 been collected for environmental studies and evaluations
- 19 10. Lithium Nevada held town hall meetings in Winnemucca in 2018 and 2020
20 and held community gatherings and project update meetings in Orovada,
21 Nevada, in 2017, 2018 and 2020 to discuss the Thacker Pass Project. See
22 **Exhibit C** (reflecting Elvida Crutcher, Secretary of The People of Red
23 Mountain, attended the 2018 Thacker Pass Project 2nd Annual Open House &
24 BBQ in Orovada). Orovada is located approximately 17 miles southeast of the
25 Thacker Pass Project.

26 **Engagement with Tribal Communities Has Been A Focus for Us**

- 27 11. Our corporate identity is based on social and environmental ethics that include
28 responsible development and community investment. We have been and

1 remain committed to working with our community partners through
2 thoughtful engagement.

3 12. In June 2017, Lithium Nevada began formally meeting with Fort McDermitt.
4 In October 2018, Lithium Nevada hosted a site meeting in the Thacker Pass
5 area between Fort McDermitt and the BLM. The Fort McDermitt reservation
6 is located approximately fifty miles by road to the northeast of the Thacker
7 Pass Project near the Oregon-Nevada border.

8 13. In 2019, Lithium Nevada entered into a formal engagement agreement with
9 the Fort McDermitt Tribe based on mutual respect and transparency. We
10 conducted a skills mapping exercise to identify the qualifications of tribe
11 members for job matching, developed and executed training programs to fill
12 in the skills gaps, and made other community building investments, including
13 the purchase of a 16-person van to transport tribe members to training, sports
14 and children's events. In 2018, we hosted a trip by Fort McDermitt Tribe
15 members to the Navajo Mine in the Four Corners Area of New Mexico to
16 view an example of a successful collaboration involving a Tribe and contract
17 mine operator, including reclamation works. Many of the Tribe members are
18 very supportive of the Thacker Pass Project, but some others are not.

19 14. We have planned the Thacker Pass Project with the local community, not only
20 to identify and address environmental issues but also to develop workforce
21 training through the "BuildNV Core Construction Program" and the Fort
22 McDermitt Tribe. This includes, but is not limited to, the relocation and
23 construction of a new world-class school in Orovada.

24 15. The EIS estimates that during construction the project will result in \$265.2
25 million in construction-related economic activity in Humboldt County in
26 addition to \$29.1 million in federal, state and local taxes. During operations,
27 the project is estimated to result in \$314 million in economic activity in
28 Humboldt County and \$6.7 billion in federal, state and local taxes over the life

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1 of the project. During construction and then in operations, Thacker Pass will
2 create hundreds of high paying jobs for Nevadans in the growing lithium
3 battery market.

4 16. The Thacker Pass project at issue here follows more than a decade of
5 work in the project area including many acres of surface disturbance under
6 prior BLM authorizations. In 2009, the BLM authorized the Kings Valley
7 Lithium Exploration Project Plan with a project boundary covering 1,200
8 acres. In 2014, the BLM approved the Kings Valley Clay Mine also in the
9 Thacker Pass area covering approximately 796 acres and clay mining from
10 two open pits. Both of these prior BLM authorizations included public notice,
11 comment and tribal consultation.

12 17. In all of the years of prior disturbance in the area and BLM
13 authorizations for that work, years of community engagement and extensive
14 outreach we have done over the course of more than a decade of work at
15 Thacker Pass, including permitting for extensive exploration, drilling of over
16 358 holes, and permitting and construction of a clay mine, we have never
17 heard of any concerns about Traditional Cultural Properties or been contacted
18 by or heard any objections from the Reno-Sparks Indian Colony, The People
19 of Red Mountain, the Burns Paiute Tribe or other Native American tribes or
20 entities. The first we heard of any such concerns was just hours before the
21 first hearing before this Court on July 21, 2021 on the first Motion for
22 Preliminary Injunction.

23
24 **One of the Least Disruptive Most Advanced Lithium Projects in the**
25 **World**

26 18. In addition to the substantial investment we made to achieve avoidance of
27 impacts to widespread SFA areas for greater sage-grouse habitat conservation,
28 Lithium Nevada also has committed to significant environmental mitigation to

1 minimize and mitigate environmental impacts as detailed in the EIS and the
2 required by the BLM's Record of Decision ("ROD"). Lithium Nevada has
3 invested over \$10,000,000 to date in permitting and approval of the Thacker
4 Pass Mine Project, and over \$100,000,000 in total project development costs
5 since 2007.

6 19. Lithium Nevada is striving to be a leader in the industry, moving toward our
7 goal of being a carbon-neutral operation and developing and producing a
8 critical mineral as designated by the United States Department of the Interior
9 to be extracted, processed and manufactured into a final high-value product to
10 be used directly in cathodes for lithium-ion batteries, all within Humboldt
11 County. We have designed the project to generate carbon free energy on-site
12 to be used in the process, and intend on powering the processing plant entirely
13 on carbon-free power.

14 20. Thacker Pass is the most advanced and the largest known lithium deposit in
15 the United States. If it were in full operation today, Thacker Pass production
16 would exceed current lithium demand in the United States. Domestic and
17 global lithium demand is forecasted to triple by 2025 and is forecasted to
18 outstrip supply as electrification of the transportation sector intensifies. The
19 current U.S. demand for lithium is approximately 18,000 tons per year of
20 lithium carbonate equivalent ("tpa LCE"). By 2025, the U.S. is forecasted to
21 require approximately 100,000 tpa LCE, increasing to about 350,000 tpa LCE
22 by 2030. The U.S. currently produces less than 5,000 tpa LCE from just one
23 facility. The U.S. will not fulfill this demand by 2030 through domestic
24 supply without Thacker Pass due to the small number of lithium projects
25 currently under development.

26 21. At a proposed capacity of 66,000 tons per year LCE at full buildout, the
27 Thacker Pass project is positioned to become a cornerstone of the U.S. lithium
28 supply for batteries necessary to achieve renewable energy objectives.

22. There are no other U.S. alternatives to Thacker Pass that provide the scale, grade or timeline to production that is required to keep pace with reshaping the national economy toward electrification of the transportation sector and reduction of carbon, in addition to providing the lithium products required by the military to achieve national defense objectives.
23. In early June 2021, the report on advanced batteries led by the Department of Energy (“DOE”) in response to President Biden’s EO 14017 to develop a strategic process to address vulnerabilities and opportunities in the supply of four key products, including advanced batteries, was submitted to the President. Shortly thereafter, the administration announced a set of immediate actions it will take to grow America’s ability to produce high-capacity batteries and products that use batteries, like EVs and stationary energy storage for renewables. One step in that critical path was the release of the National Blueprint for Lithium Batteries (attached as **Exhibit A**) released by the Federal Consortium on Advanced Batteries (“FCAB”) which is chaired by DOE and includes the Department of Defense (“DOD”), Commerce and State. The report proposes near-term (2025) and long-term (2030) objectives to support goals needed to secure the domestic supply chain. The report discusses potential military applications and challenges the DOD faces with its advanced battery supply chain due to its needs for battery use in weapon systems and higher military specifications.
24. In order to establish a secure battery materials and technology supply chain that supports long-term U.S. economic competitiveness and job creation, enables decarbonization goals, and meets national security requirements, the FCAB will “secure U.S. access to raw materials for lithium batteries by incentivizing growth in safe, equitable, and sustainable domestic mining ventures while leveraging partnerships with allies and partners to establish a diversified supply.”

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1 25. The U.S. policy as emphasized in President Biden’s Executive Order on
2 America’s Supply Chain and Tackling the Climate Crisis is to leverage
3 domestic development of lithium as a critical mineral. President Biden
4 declared the importance of building resilient supply chains to protect the
5 United States from facing shortages of critical products such as high-capacity
6 batteries including electric-vehicle batteries which require lithium.

7 26. On August 5, 2021 President Biden issued an executive order aimed at
8 making half of all new vehicles sold in the U.S. in 2030 electric.

9 27. Delaying the Thacker Pass Project, the largest and most advanced lithium
10 project in the U.S., would threaten President’s Biden’s domestic supply chain
11 and climate policy goals and national security, resulting in an even greater
12 dependence on the political goodwill of foreign governments to provide a
13 critical lithium supply in the face of a forecasted supply deficit as early as
14 2025.

15 **Construction is Expected to Commence in Early 2022**

16 28. Although we have attempted to work with the Plaintiffs and the BLM to
17 avoid preliminary injunction proceedings, we do need to proceed with the
18 required cultural resource mitigation work as part of the critical path to
19 commence construction of the Thacker Pass Project in early 2022. The
20 cultural clearances are prerequisites to installation of necessary water lines
21 and power line infrastructure, both critical-path items. The cultural work
22 cannot be completed if there is snow on the ground and, therefore, delaying
23 that work for several more weeks or months could result in substantial project
24 delays. Completion of the cultural resource mitigation will require several
25 weeks to months of field work followed by several weeks to months for
26 analysis and reporting.

27 29. The cultural resource mitigation work approved in the Historic Properties
28 Treatment Plan (“HPTP”) will result in a total of approximately 0.36 acres of

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1 ground disturbance during implementation of the HPTP. Access and foot
2 traffic likely would not exceed an additional 0.5 acres of disturbance and, of
3 course, would utilize existing access wherever possible to minimize any need
4 for cross-country travel in hopes of reducing that 0.5-acre estimate. The
5 contractor will backfill, recontour and revegetate any disturbance to the extent
6 possible. We plan on using our coated seed technology in this effort.

7 30. Other than the cultural resource mitigation work, the only activity we
8 anticipate occurring in 2021 will be placement of a temporary trailer as a site
9 office and fencing for safety, and some access improvements from Hwy 293
10 to the proposed site office and some gates. There will be no blasting, major
11 site clearing or grubbing but only a presence on site with security which has
12 become necessary for the safety of our employees and contractors.

13 Individuals have been preventing safe access to our existing infrastructure in
14 place under permitted activities that are not even the subject of the Plaintiffs'
15 challenge in this case, including the existing meteorological station which we
16 have not been able to safely access or service due to the ongoing protest.

17 31. Protestors have organized "direct action" training and have threatened to use
18 "direct action" to prevent us from moving forward. Will Falk is one of two
19 key organizers of the protest against the Thacker Pass Project. Attached as
20 **Exhibit B**. Therefore, we seek to install gates, fencing and cameras to ensure
21 access to our existing infrastructure and safety of our employees. The trailer
22 would be within a fenced area of approximately 0.23 acres, situated on a
23 previously disturbed pad, and accessed by existing roads.

24 32. Under previous BLM authorizations, 194 acres of disturbance are authorized
25 at Thacker Pass, and 56.8 acres have been disturbed.

26 **Enjoining Pre-construction Activities Is Not in the Public Interest &**
27 **Would Cause Undue Hardship**
28

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1 33. Exploration to identify a developable resource, permitting the project and then
2 building a mine takes approximately 7-14 years. Building a lithium-ion
3 battery factory takes only 2 years, and thus demand is created much faster
4 than supply. The demand for lithium is rapidly increasing to support climate
5 change, economic and national defense objectives, and avoid supply chain
6 issues that will, in turn, give rise to national security concerns.

7 34. Delaying the Thacker Pass project interferes with the ability of the United
8 States to secure the lithium necessary to meet domestic demand critical to
9 national security and environmental benefits of renewable energy and
10 transportation electrification. Global demand is forecasted to outpace
11 production as early as 2025 and securing lithium even from ally countries is
12 likely to be a significant challenge in coming years as Europe and Asia face
13 similar supply challenges.

14 35. Given the extensive efforts taken to provide the ultimate mitigation of
15 avoidance of the greater sage-grouse SFAs and other environmental concerns
16 in the Montana Mountains, the nearly decade long collection of environmental
17 and other baseline data, the thorough environmental analysis and significant
18 mitigation required under the BLM's ROD, the BLM's completion of tribal
19 consultation and Lithium Nevada's extensive efforts to partner with all
20 community stakeholders, including tribal interests, it is not in the public
21 interest and would cause significant hardship to enjoin the minimal activities
22 Lithium Nevada seeks to conduct at Thacker Pass while awaiting the decision
23 on the merits of this case.

24 36. Enjoining the minimal cultural resource work would create continuing
25 substantial hardship. Delay of the cultural resource work could lead to
26 substantial delays in the project construction timeline.

27 37. That delay also could create uncertainty that could lead to concerns with the
28 financing activities underway and necessary for the construction of the

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1 Thacker Pass mine. After a recent Reuters article reporting a one-month
2 delay in commencing the cultural resource work on June 11, Lithium
3 America's share price decreased by 10%, demonstrating the sensitivity of the
4 detailed planning sequence to the project including our ability to finance it.

5 38. This delay would cost our company in excess of \$5,000,000 in overhead costs
6 on an annual basis. We currently have over 30 employees and many more
7 consultants working on the development of the project and relying on our
8 continued progress. Delay would cost our company over \$900,000,000 in
9 revenue (at current lithium spot pricing) on an annual basis. Associated local,
10 state and federal tax payments would in turn be delayed.

11 39. We are in the process of arranging the financing for construction of the mine
12 and given that this is a world-class resource at the intersection of several
13 major U.S. policy initiatives including climate, supply security and defense,
14 we have a lot of interest from potential partners. An injunction that halts the
15 cultural resource mitigation jeopardizes our construction schedule and casts
16 doubt on our ability to proceed with the project construction and development.
17 This scenario could potentially cause interference with our ability to raise
18 necessary funds for development.

19 40. Halting the Thacker Pass project would result in increased reliance on other
20 countries that will control lithium production, and create vulnerabilities to key
21 growth areas necessary for a reduced-carbon economy and resilient defense
22 supply chain without justification given the extensive environmental planning,
23 studies, review and mitigation that has been considered and provided for the
24 project.

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1 I declare under penalty of perjury under the laws of the United States of America that
2 the foregoing is true and correct.

3 Executed on August 17, 2021 in Vancouver, Canada .

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5 _____
6 Alexi Zawadzki
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