

Exhibit 8:

Second Michon R. Eben Declaration

Julie Cavanaugh-Bill (State Bar No. 11533)
 Cavanaugh-Bill Law Offices
 Henderson Bank Building
 401 Railroad Street, Suite 307
 Elko, NV 89801
 (775) 753-4357
 julie@cblawoffices.org

William Falk (Utah Bar No. 16678)
 2980 Russet Sky Trail
 Castle Rock, CO
 (319) 830-6086
 falkwilt@gmail.com

Terry J. Lodge (Ohio Bar No. 29271)
 316 N. Michigan St., Suite 520
 Toledo, OH 43604-5627
 (419) 205-7084
 tjlodge50@yahoo.com

Attorneys for Reno-Sparks Indian Colony and Atsa koodakuh wyh Nuwu

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

BARTELL RANCH LLC, et al.,)	Case No.: 3:21-cv-80-MMD-CLB
)	(LEAD CASE)
Plaintiffs,)	
)	
v.)	DECLARATION OF MICHON
)	EBEN IN SUPPORT OF
ESTER M. MCCULLOUGH, et al.,)	REPLY IN SUPPORT OF
)	MOTION FOR PRELIMINARY
Defendants,)	INJUNCTION
and)	
)	
LITHIUM NEVADA CORPORATION,)	
)	
Intervenor-Defendant.)	

WESTERN WATERSHEDS PROJECT, et al.,)	Case No.: 3:21-cv-103-MMD-CLB
)	(CONSOLIDATED CASE)
Plaintiffs,)	
)	
RENO SPARKS INDIAN COLONY, et al.,)	

Intervenor-Plaintiffs,

and

BURNS PAIUTE TRIBE,

Intervenor-Plaintiff.

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, et al.,

Defendants,

and

LITHIUM NEVADA CORPORATION,

Intervenor-Defendant.

I, Michon R. Eben, Reno-Sparks Indian Colony (“RSIC”) Cultural Resource Manager and Tribal Historic Preservation Officer, under penalty of perjury, hereby declare the following:

1. I previously provided a Declaration where I described my experience. But, a short restatement seems necessary. I have been employed as the RSIC’s Cultural Resource Program Manager and Tribal Historic Preservation Officer for over 16 years. Before that, I served on the Tri-Basin Cultural Committee, an advisory position with the RSIC Tribal Council. I have extensive experience participating with federal agencies in the National Historic Preservation Act’s section 106 consultation process on behalf of the RSIC.

2. Peehee mu’huh’s sacredness is not limited to the caves and hills where my

1 ancestors survived forced-removal and genocide. Peehee mu'huh's sacredness is not
2 limited to the campsites my ancestors established from time immemorial in the pass.
3 Peehee mu'huh's sacredness is not limited to the Double-H/Thacker Pass Obsidian
4 Procurement District where my ancestors prayed, gathered obsidian, made tools, and
5 healed the sick for thousands of years. No, because our ancestors lived, hunted,
6 gathered, prayed, hid from soldiers, died, and were massacred throughout Peehee
7 mu'huh, the whole pass is important and sacred to us.

8 3. The massacre that gives Peehee mu'huh its name was a shockingly bloody
9 event. Our ancestors had their bellies cut open and their intestines and other organs
10 strung across the sagebrush. This means their blood was spilled across the land, was
11 soaked up by plant roots, and forms part of the soil. It also means their flesh was eaten
12 by insects, birds, and animals. For me and my people, this means our ancestors are still
13 present across Peehee mu'huh. We believe that this means you must treat Peehee
14 mu'huh with gentleness and reverence.

15 4. In my culture, when an individual dies, there are several significant aspects to the
16 transition from the physical world to the spiritual world. There are certain rites and
17 ceremonies that we perform at the time and place of an individual's death. These
18 transitions, our loved one's death, and the community's prayers make the the land
19 where these transitions occur sacred. Peehee mu'huh is one of these places.

20 5. When the dead are laid to their eternal resting place our traditions teach us that
21 that is where the dead is to remain. Our dead are to remain undisturbed. We consider
22 places like Peehee mu'huh, where our ancestors were buried in traditional ways,
23 cemeteries. We still carry these traditions on and we are still very spiritually connected

1 to these age-old customs. Our dead ancestors have a direct connection to our
2 communities, to nature, to the earth, and to us, the living.

3 6. I have reviewed the Historic Properties Treatment Plan ("HPTP") for the Thacker
4 Pass Project. This HPTP describes a plan that, if implemented, would cause me, my
5 Tribe, and other Native Americans raised to honor our traditions extreme emotional and
6 spiritual distress. There are many activities that the HPTP describes that would cause
7 us extreme distress. And, this is a primary reason why we seek meaningful consultation.
8 Meaningful consultation about the effects of such a massive open-pit mine is not
9 something that can take place in one meeting or through one exchange of written
10 comments. Meaningful consultation requires many in-person meetings, visits to the
11 project site, giving Tribes a reasonable opportunity to review the around 7,000 page
12 cultural resource inventory report prepared to support the HPTP, and discussions with
13 traditional elders and tribal leaders.

14 7. The HPTP is a complex document, written in language and with terms-of-art that
15 the general public does not understand. The HPTP uses a lot of abstract, innocuous-
16 sounding terms like "cultural resources treatment measures," "data recovery," "surface
17 collection," and "hand excavation." These abstractions serve to hide harm and
18 desecration the HPTP actually describes. One example of an activity that would cause
19 us extreme distress is the process of "Site Verification, Mapping, and Surface
20 Collection" described at pg. 20-21 of the HPTP:

21 "Work at each site will begin with surface inspection and documentation of the surface
22 assemblage with close-interval pedestrian survey and mapping of all tools (while also
23 noting any high-artifact-density areas of the site suitable for the placement of excavation
24 units). Site boundaries and artifact locations will be confirmed, recording the location of
25 any newly observed tools or features....
26

1
2 Following mapping, all documented tools will be bagged, with the tool's provenience (site
3 number and unit coordinates), artifact number, collection date, and collection personnel
4 documented on the bag and placed within a larger site surface collection bag or box. All
5 tools, with the exception of larger ground stone artifacts (those in excess of 12 inches in
6 length, width, or height), will be collected. Although uncollected, larger pieces of ground
7 stone will be fully documented (i.e., dimensions, ground surface attributes, condition) and
8 in-field starch grain samples may be taken."
9

10 8. Pg. 23 of the HPTP describes what happens to tools and artifacts after they are
11 removed from the land:

12 "Analysis of the collection will commence once cataloguing is completed; this process
13 involves the packaging and delivery of appropriate items (e.g., fine-grained volcanic
14 [FGV] items, obsidian artifacts, radiocarbon samples) to specialists. At the project's close,
15 the final laboratory tasks will involve: (1) generation of a final version of the catalogue; (2)
16 organization, inventory, and final packaging of materials into acid-free archive boxes,
17 including all materials retrieved from specialists as well as appropriate field and other
18 project paperwork; and (3) delivery and curation at approved facility – likely, the Nevada
19 State Museum."
20

21 9. First, the tools and artifacts described in the HPTP were created by our
22 ancestors. We lived on and governed human relations on this land for thousands of
23 years. We have been taught not to move those tools and artifacts. We are sometimes
24 told that this is superstitious. But, even if one cannot respect our traditions, it's important
25 to keep in mind that there are many educational benefits to leaving tools and artifacts
26 where they are found. When a tool or artifact is removed from the natural, living context
27 in which it was made, it becomes harder to understand the people who created the tool
28 or artifact. Seeing an obsidian arrowhead on the sterile shelf of an archaeology firm's
29 backroom warehouse is a much different experience than seeing that same arrowhead
30 tucked amongst sagebrush roots down the hill from where that obsidian was harvested
31 by the person who made the arrowhead.

1 10. If my ancestors had not been systematically murdered and violently forced onto
2 reservations, my people would still control those tools and artifacts and we would not let
3 people take them. It's only because of colonial violence and the erasure of Native
4 peoples that we are not allowed under American law to tell the BLM they cannot disturb
5 our sacred sites, our artifacts, and our burial grounds. We are reminded of this history
6 every time we watch archaeologists remove our tools and artifacts, wrap them in plastic
7 bags, load them onto trucks, drive them off to their warehouses, scratch at them,
8 carbon-date them, and then give them – not back to us – but to a museum, where
9 American law provides no mechanism for returning the artifacts.

10 11. Many members of my Tribe and many of our relatives in other Tribes regularly
11 visit Peehee mu'huh to engage in ceremony; to hunt; to gather food and medicine; to
12 gather obsidian and to make tools from that obsidian; to pay our respects to our
13 massacred ancestors, and to learn our history – especially about our ancestors'
14 resistance to being forced off our traditional homelands. The activities described in the
15 HPTP would impede our ability to continue to engage in the activities just described.

16 12. On July 28, 2021, RSIC requested consultation through the process allowed for in
17 Archaeological Resources Protection Act (ARPA). In that letter, I wrote:
18
19 “The RSIC continues to express our concerns and frustration with BLM Winnemucca's
20 deliberate avoidance and lack of meaningful consultation on this proposed Project that
21 will forever adversely affect Paiute and Shoshone's people's traditions and culture. The
22 RSIC considers Thacker Pass a Traditional Cultural Property (TCP). Although Thacker
23 pass is not federally designated a TCP, it has all the elements associated with a TCP.”
24

25 13. A Traditional Cultural Property is one that is eligible for inclusion in the National
26 Register of Historic Places because of its association with cultural practices or beliefs of
27 a living community that are rooted in that community's history, and are important in

1 maintaining the continuing cultural identity of the community. Traditional Cultural
2 Properties are afforded more protection than other properties.

3 14. I also explained that RSIC's request for, and participation in, consultation about
4 the ARPA is not to be read as RSIC condonation of BLM Winnemucca's attempts to
5 comply with its obligations under Section 106 of NHPA.

6 15. On August 3, 2021, I sent another letter to BLM Winnemucca requesting an in-
7 person meeting with Ms. Ester McCullough, Ms. Kathleen Rehberg, the BLM
8 Winnemucca archaeology team and official representatives of Atsa Koodakuh wyl
9 Nuwu/People of Red Mountain to discuss our interests, including ways to avoid or
10 mitigate potential harm or destruction such as excluding sites from the proposed
11 Thacker Pass permit area, pursuant to ARPA implementing regulations at 43 CFR §
12 7.7(a)(3).

13 16. I also reminded BLM Winnemucca that "if the issuance of a permit under this part
14 may result in harm to, or destruction of, any tribal religious or cultural site on public
15 lands...at least 30 days before issuing such a permit the Federal land manager shall
16 notify any Indian tribe which may consider the site as having religious or cultural
17 importance." 43 CFR § 7.7(a)(3). I listed, once again, all the tribes that consider the
18 Thacker Pass project area as having religious or cultural importance.

19 17. BLM will not provide a copy of any draft ARPA permits, and has referred us to
20 the HPTP. BLM has only stated that they will take our written comments and has
21 attempted to place an arbitrary deadline on those comments for August 22. But, ARPA
22 is not an adequate substitute for NHPA. And, RSIC clearly needs more than 10 days
23 to adequately address the HPTP.

1 18. One reason I do not believe BLM's efforts to identify Indian tribes to consult with
2 were reasonable and in good faith is because over the last two years, the BLM
3 Winnemucca District Office has sent me many notices about other projects and agency
4 actions within the Winnemucca District, but they did not send me notice for the Thacker
5 Pass Project. The BLM Winnemucca District Office has sent me the following notices:
6 *July 6, 2020*: Public Scoping Notice for Environmental Assessment of the Baltazor
7 Geothermal Development Project.
8 *August 31, 2020*: Environmental Assessment analyzing environmental impacts of
9 protecting and restoring swift-moving waters, slow moving waters, and associated
10 riparian habitats.
11 *October 1, 2020*: Pre-scoping Notice for Utilization Plan and Plan of Development
12 proposed by Ormat Technologies Inc. for Gerlach, NV area.
13 *February 2, 2021*: Notice of staff changes within BLM, Winnemucca Office.
14 *April 20, 2021*: Preliminary Environmental Assessment Notice for wild horse and burro
15 management within the Calico Complex.
16 *May 21, 2021*: Environmental Assessment Notice for the North Valley Geothermal
17 Development Project at the San Emidio Geothermal Field.
18 *July 21, 2021*: Notice of completed Environmental Assessment for the Pueblo Fire
19 House and Public Recreation project.
20 *August 2, 2021*: Notice of completed Environmental Assessment for the Calico Complex
21 wild horse and burro gather plan.
22 Executed on this 18th day of August, 2021.
23 /s/ Michon R. Eben
24 Reno-Sparks Indian Colony

Cultural Resources Manager & Tribal Historic Preservation Officer

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