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*Attorneys for Defendant-Intervenor
Lithium Nevada Corp.*

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

BARTELL RANCH, LLC, a Nevada)	
limited liability company and EDWARD)	Case No. 3:21-cv-00080-MMD-CLB
BARTELL,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ESTER M. MCCULLOUGH,)	LITHIUM NEVADA CORP.'S
Winnemucca District Manager, Bureau of)	ANSWER TO PLAINTIFF
Land Management; BUREAU OF LAND)	INTERVENORS RENO-SPARKS
MANAGEMENT,)	INDIAN COLONY'S AND ATSA
)	KOODAKUH WYH NUWU'S
Defendants,)	COMPLAINT
and)	
)	
LITHIUM NEVADA CORP.,)	
)	
Defendant-Intervenor.)	
)	

1 Pursuant to Rule 8 of the Federal Rules of Civil Procedure, intervenor-defendant
2 Lithium Nevada Corp. (“Lithium Nevada”) hereby states the following for its Answer
3 to Plaintiff Intervenor’s complaint for vacatur, equitable and injunctive relief (the
4 “Complaint”), identified as ECF No. 46.

5 Any factual allegation admitted in Lithium Nevada’s Answer is admitted only
6 as to the specific fact asserted and not as to any conclusions, characterizations, or
7 inferences drawn therefrom by Plaintiffs. The denial of any factual allegation may not
8 be construed as an admission of the negative of such allegation. Lithium Nevada denies
9 each and every assertion in the Complaint, except as specifically admitted, qualified or
10 otherwise responded to herein. Lithium Nevada follows the format of the Complaint
11 for ease of reference only and denies any assertion contained in any heading or other
12 formatting of Plaintiffs’ Complaint or inference drawn therefrom.

13 INTRODUCTION

14 1. Paragraph 1 consists of a summary of the claims and assertions of
15 Plaintiff Intervenor’s Complaint, which are responded to below and to which no
16 separate response is required. To the extent that a response is deemed necessary,
17 Lithium Nevada denies every allegation not specifically admitted below.

18 2. Answering Paragraph 2, Lithium Nevada denies that the Bureau of Land
19 Management (“BLM”) violated the National Historic Preservation Act (“NHPA”) and
20 further denies that the BLM failed to make a reasonable and good faith effort to
21 identify Indian tribes that should have been consulted with for the Thacker Pass Project
22 at issue in these proceedings. Lithium Nevada further denies that the BLM did not
23 adequately seek public comment on the project or acted in contravention of any
24 applicable laws, regulations or the 2014 BLM-SHPO State Protocol Agreement. The
25 remaining allegations of Paragraph 2 characterize Plaintiffs’ legal conclusions to
26 which no response is required, and to the extent a response is required, Lithium
27 Nevada denies the allegations.

JURISDICTION

5. The allegations of Paragraph 5 characterize Plaintiff Intervenor's legal conclusions to which no response is required, and to the extent a response is required, Lithium Nevada denies the allegations.

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VENUE

PARTIES

12. Lithium Nevada admits the allegation in Paragraph 12 that Deb Haaland is the Secretary of the Interior and, upon information and belief, understands Intervenor Plaintiffs have named her as a defendant in her official capacity.

1 13. The allegations in Paragraph 13 are admitted.

2 14. Answering Paragraph 14, Lithium Nevada has insufficient information to
3 form a belief as to the truth of the allegations of Paragraph 14 and, therefore, denies
4 the allegations.

5 15. Answering Paragraph 15, Lithium Nevada has insufficient information to
6 form a belief as to the truth of the allegations of Paragraph 15 and, therefore, denies
7 the allegations.

8 16. Answering Paragraph 16, upon information and belief, Lithium Nevada
9 denies having any knowledge, information, discovery or evidence that the events
10 described took place in the Thacker Pass project area which lacks caves. With respect
11 to the remaining allegations of Paragraph 16, Lithium Nevada has insufficient
12 information to form a belief as to the truth of the allegations of Paragraph 16 and,
13 therefore, denies the allegations.

14 17. Lithium Nevada has insufficient information to form a belief as to the
15 truth of the allegations of Paragraph 17 and, therefore, denies the same.

16 18. Answering Paragraph 18, Lithium Nevada understands that the BLM
17 conducted extensive consultation and review and analysis of cultural resource surveys
18 and other relevant information in preparation of the FEIS and evaluation of the
19 Thacker Pass Project and project area, which documents speak for themselves and
20 which documents speak for themselves and are the best evidence of their contents.
21 Any allegations inconsistent with those documents or other information in the BLM
22 administrative record are denied.

23 19. Answering Paragraph 19, Lithium Nevada understands that the BLM
24 conducted extensive consultation and review and analysis of cultural resource surveys,
25 inventories, and other relevant information in preparation of the FEIS and evaluation
26 of the Thacker Pass Project and project area, which documents speak for themselves
27 and which documents speak for themselves and are the best evidence of their contents.
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1 Any allegations inconsistent with those documents or other information in the BLM
2 administrative record are denied.

3 20. Lithium Nevada has insufficient information to form a belief as to the
4 truth of the allegations of Paragraph 20 and, therefore, denies the same.

5 21. Lithium Nevada has insufficient information to form a belief as to the
6 truth of the allegations of Paragraph 21 and, therefore, denies the same.

7 22. Paragraph 22 describes choke cherry orchards and appears to allege such
8 orchards are within the Thacker Pass Project area which Lithium Nevada, upon
9 information and belief, denies. Lithium Nevada understands that the BLM conducted
10 extensive consultation and review and analysis of cultural resource surveys,
11 inventories, and other relevant information in preparation of the FEIS and evaluation
12 of the Thacker Pass Project and project area, which documents speak for themselves
13 and which documents speak for themselves and are the best evidence of their contents.
14 Any allegations in Paragraph 22 inconsistent with those documents or other
15 information in the BLM administrative record are denied.

16 23. Lithium Nevada understands that the BLM conducted extensive
17 consultation and review and analysis of cultural resource surveys, inventories, and
18 other relevant information in preparation of the FEIS and evaluation of the Thacker
19 Pass Project and project area, which documents speak for themselves and which
20 documents speak for themselves and are the best evidence of their contents. Any
21 allegations in Paragraph 23 inconsistent with those documents or other information in
22 the BLM administrative record are denied.

23 24. Lithium Nevada has worked in the Thacker Pass Project area for over a
24 decade and denies ever having seen any hunting or sacred ceremonies described in the
25 allegations set forth in Paragraph 24. Lithium Nevada understands that the BLM
26 conducted extensive consultation and review and analysis of cultural resource surveys,
27 inventories, and other relevant information in preparation of the FEIS and evaluation
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1 of the Thacker Pass Project and project area, which documents speak for themselves
2 and which documents speak for themselves and are the best evidence of their contents.
3 Any allegations in Paragraph 24.

4 25. Lithium Nevada has worked in the Thacker Pass Project area for over a
5 decade and denies ever having seen any gathering or toza root or ibi as described in
6 the allegations set forth in Paragraph 25. Lithium Nevada understands that the BLM
7 conducted extensive consultation and review and analysis of cultural resource surveys,
8 inventories, and other relevant information in preparation of the FEIS and evaluation
9 of the Thacker Pass Project and project area, which documents speak for themselves
10 and which documents speak for themselves and are the best evidence of their contents.
11 Any allegations in Paragraph 25 inconsistent with those documents or other
12 information in the BLM administrative record are denied. Lithium Nevada has
13 insufficient information to form a belief as to the truth of the remaining allegations in
14 Paragraph 25 and, therefore, denies those allegations.

15 26. Paragraph 26 purports to characterize provisions of the ROD which speak
16 for themselves and are the best evidence of their contents. Any allegations contrary
17 to the plain language of the ROD are denied.

18 27. Paragraph 27 purports to characterize provisions of the Thacker Pass
19 Lithium Mine Project Final Environmental Impact Statement ("FEIS") which speak
20 for themselves and are the best evidence of their contents. Any allegations contrary
21 to the plain language of the FEIS are denied.

22 28. Paragraph 28 purports to characterize provisions of the FEIS which
23 speak for themselves and are the best evidence of their contents. Any allegations
24 contrary to the plain language of the FEIS are denied.

25 29. Paragraph 29 purports to characterize provisions of the FEIS which speak
26 for themselves and are the best evidence of their contents. Any allegations contrary
27 to the plain language of the FEIS are denied.
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1 30. Paragraph 30 purports to characterize provisions of the FEIS which speak
2 for themselves and are the best evidence of their contents. Any allegations contrary
3 to the plain language of the FEIS are denied.

4 31. Paragraph 31 purports to characterize provisions of the National Historic
5 Preservation Act (“NHPA”) and case law, which speak for themselves and are the best
6 evidence of their contents. Any allegations contrary to the plain meaning of the NHPA
7 or the case law cited are denied.

8 32. Paragraph 32 purports to characterize certain provisions of the NHPA
9 implementing regulations which speak for themselves and are the best evidence of
10 their contents. Any allegations contrary to the plain language of those regulations are
11 denied.

12 33. Paragraph 33 purports to characterize certain provisions of the NHPA
13 implementing regulations which speak for themselves and are the best evidence of
14 their contents. Any allegations contrary to the plain language of those regulations are
15 denied.

16 34. Paragraph 34 purports to characterize certain provisions of the NHPA
17 implementing regulations which speak for themselves and are the best evidence of
18 their contents. Any allegations contrary to the plain language of those regulations are
19 denied.

20 35. Paragraph 35 purports to characterize certain provisions of the NHPA
21 implementing regulations which speak for themselves and are the best evidence of
22 their contents. Any allegations contrary to the plain language of those regulations are
23 denied.

24 36. Paragraph 36 purports to characterize certain provisions of the NHPA
25 implementing regulations which speak for themselves and are the best evidence of
26 their contents. Any allegations contrary to the plain language of those regulations are
27 denied.

1 37. Answering Paragraph 37, Lithium Nevada understands that the BLM
2 conducted extensive consultation and review and analysis of cultural resource surveys,
3 inventories, and other relevant information in preparation of the FEIS and evaluation
4 of the Thacker Pass Project and project area, which documents speak for themselves
5 and which documents speak for themselves and are the best evidence of their contents.
6 Any allegations in Paragraph 37 inconsistent with those documents or other
7 information in the BLM administrative record are denied. With respect to the
8 remaining allegations of Paragraph 37, Lithium Nevada has insufficient information
9 to form a belief as to the truth of such allegations and, therefore, denies the same.

10 38. Paragraph 38 purports to characterize certain provisions of the NHPA
11 implementing regulations which speak for themselves and are the best evidence of
12 their contents. Any allegations contrary to the plain language of those regulations are
13 denied.

14 39. Paragraph 39 purports to characterize certain provisions of the NHPA
15 implementing regulations which speak for themselves and are the best evidence of
16 their contents. Any allegations contrary to the plain language of those regulations are
17 denied.

18 40. Lithium Nevada denies any allegation in Paragraph 40 that the BLM did
19 anything other than conduct a thorough consultation with all tribes identified in
20 reasonable good faith and its continuing efforts are demonstrated through BLM having
21 offered, in its discretion, further consultation opportunities to Plaintiff Intervenor
22 prior to issuance of the ARPA permit required for the cultural resource mitigation at
23 issue. The remaining allegations in Paragraph 40 characterize Plaintiff Intervenor's
24 legal conclusions to which no response is required, and to the extent a response is
25 required, Lithium Nevada denies the allegations.

26 41. Paragraph 41 purports to characterize certain provisions of the NHPA
27 implementing regulations which speak for themselves and are the best evidence of
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1 their contents. Any allegations contrary to the plain language of those regulations are
2 denied.

3 42. Lithium Nevada denies any allegation in Paragraph 42 that the BLM did
4 anything other than conduct a thorough consultation with all tribes identified in
5 reasonable good faith and its continuing efforts are demonstrated through BLM having
6 offered, in its discretion, further consultation opportunities to Plaintiff Intervenor
7 prior to issuance of the ARPA permit required for the cultural resource mitigation at
8 issue. While Paragraph 42 alleges that the Fort McDermitt tribal offices were closed
9 for most of 2020, Lithium Nevada denies that BLM did anything other than a thorough
10 consultation with the Fort McDermitt tribe. The remaining allegations in Paragraph
11 42 characterize Plaintiff Intervenor's legal conclusions to which no response is
12 required, and to the extent a response is required, Lithium Nevada denies the
13 allegations.

14 43. Paragraph 43 purports to characterize the NHPA implementing
15 regulations, the Section 106 consultation process, the National Programmatic
16 Agreement and the 2014 BLM-State Historic Preservation Office State Protocol
17 Agreement (the "Protocol") all of which speak for themselves and are the best
18 evidence of their contents. Any allegations contrary to the plain language of those
19 documents are denied. The remaining allegations of Paragraph 43 characterize
20 Plaintiff Intervenor's legal conclusions to which no response is required, and to the
21 extent a response is required, Lithium Nevada denies the allegations.

22 44. Paragraph 44 purports to characterize provisions of the Protocol which
23 speak for themselves and are the best evidence of their contents. Any allegations
24 contrary to the plain language of the Protocol are denied.

25 45. The first allegation of Paragraph 45 is denied. The remaining allegations
26 of Paragraph 45 purport to characterize the BLM's actions which speak for
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1 themselves. Any allegations inconsistent with the BLM's actions or the record on
2 appeal are denied.

3 46. Paragraph 46 purports to characterize provisions of the Notice of
4 Availability of the FEIS and the ROD which speak for themselves and are the best
5 evidence of their contents. Any allegations contrary to the plain language of those
6 documents are denied.

7 47. Answering Paragraph 47, Lithium Nevada has insufficient information to
8 form a belief as to the truth of the allegations in Paragraph 47 and, therefore, denies
9 the allegations.

10 48. Paragraph 48 purports to characterize certain provisions of the ROD
11 which speak for themselves and are the best evidence of their contents. Any allegations
12 contrary to the plain language of the ROD are denied.

13 49. Paragraph 49 purports to characterize the contents of a letter from
14 Kathleen Rehberg, which speak for themselves and are the best evidence of their
15 contents. Any allegations contrary to the plain language of that letter are denied.

16 50. Paragraph 50 purports to characterize Tenth Circuit case law which
17 speaks for itself and is the best evidence of its contents. Any allegations contrary to
18 the plain language of the Tenth Circuit case cited are denied.

19 51. Paragraph 51 purports to characterize certain provisions of a federal court
20 case opinion, which speak for themselves and are the best evidence of their contents.
21 Any allegations contrary to the plain language of the cited case are denied.

22 52. Paragraph 52 purports to characterize certain provisions of a federal court
23 case opinion, which speak for themselves and are the best evidence of their contents.
24 Any allegations contrary to the plain language of the cited case are denied.

25 53. Paragraph 53 purports to characterize certain provisions of federal court
26 case law, which speak for themselves and are the best evidence of their contents. Any
27 allegations contrary to the plain language of that cited case law are denied.
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1 54. Denied.

2 55. The allegations in Paragraph 55 purport to characterize actions by the
3 BLM and SHPO which actions speak for themselves and are the best evidence of what
4 occurred. Any allegations contrary to those actions and information in the
5 administrative record on appeal are denied. Paragraph 55 further purports to
6 characterize provisions of the FEIS which speak for themselves and are the best
7 evidence of their contents. Any allegations contrary to the plain meaning of the
8 provisions of the FEIS are denied. To the extent Paragraph 55 alleges that the BLM
9 did not allow for legally required consultation or participation in tribes, Lithium
10 Nevada denies that allegation.

11 56. Answering Paragraph 56, Lithium Nevada admits that the ROD issued on
12 January 15, 2021.

13 57. Answering Paragraph 57, Lithium Nevada admits that it has attempted to
14 work collaboratively with Plaintiffs to avoid the need for a preliminary injunction and
15 that through a series of discussions Plaintiffs were made aware that the cultural
16 resource mitigation work that did include a small amount of ground disturbance would
17 need to commence soon.

18 58. Paragraph 58 purports to characterize the contents of a letter RSIC
19 delivered to the BLM, which letter speaks for itself and is the best evidence of its
20 contents. To the extent the allegations in Paragraph 58 are inconsistent with the plan
21 language of that letter, they are denied.

22 59. Paragraph 59 purports to characterize the contents of a letter Atsa
23 koodakuh vyh Nuwu delivered to the BLM, which letter speaks for itself and is the
24 best evidence of its contents. To the extent the allegations in Paragraph 59 are
25 inconsistent with the plan language of that letter, they are denied.

26 60. Paragraph 60 purports to characterize the contents of a letter from the
27 BLM to RSIC, which letter speaks for itself and is the best evidence of its contents.
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1 To the extent the allegations in Paragraph 60 are inconsistent with the plan language
2 of that letter, they are denied. The remaining allegations of Paragraph 60 characterize
3 Plaintiff Intervenor's legal conclusions to which no response is required, and to the
4 extent a response is required, Lithium Nevada denies the allegations, particularly in
5 light of the BLM's offer, in its discretion, to provide for Plaintiff Intervenor's
6 consultation on the ARPA permit which must issue before the ground disturbance
7 required for the cultural resource mitigation.

8 **CLAIMS FOR RELIEF**

9 61. Answering Paragraph 61, Lithium Nevada resubmits its answers to
10 Paragraphs 1-60 of Plaintiff Intervenor's complaint.

11 62. Answering Paragraph 62, Lithium Nevada denies that BLM failed to
12 make a reasonable good faith effort to identify Indian tribes that should have been
13 consulted with for the Thacker Pass project at issue in this proceeding. The remaining
14 allegations in Paragraph 62 characterize Plaintiffs' legal conclusions to which no
15 response is required, and to the extent a response is required, Lithium Nevada denies
16 the allegations.

17 63. Paragraph 63 characterizes Plaintiffs' legal conclusions to which no
18 response is required, and to the extent a response is required, Lithium Nevada denies
19 the allegations.

20 64. Paragraph 64 characterizes Plaintiffs' legal conclusions to which no
21 response is required, and to the extent a response is required, Lithium Nevada denies
22 the allegations.

23 65. Paragraph 65 characterize Plaintiffs' legal conclusions to which no
24 response is required, and to the extent a response is required, Lithium Nevada denies
25 the allegations.

26 **PRAYER FOR RELIEF**

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The remainder of Plaintiff Intervenor's complaint consists of Plaintiff Intervenor's prayer for relief, to which no response is required. Insofar as a response is required, Lithium Nevada denies that Plaintiff Intervenor is entitled to any relief whatsoever.

GENERAL DENIAL

Lithium Nevada hereby denies all allegations, whether express or implied, including any allegations reflected in section heading, in Plaintiff Intervenor's Complaint not specifically admitted herein.

AFFIRMATIVE DEFENSES

- A. Plaintiff Intervenor fails to state a claim upon which relief may be granted.
- B. Plaintiff Intervenor lacks standing to assert some or all of their claims.
- C. Some or all of Plaintiff Intervenor's claims are barred by statute.
- D. Some or all of Plaintiff Intervenor's claims are barred by the ripeness doctrine.
- E. Some or all of Plaintiff Intervenor's claims are barred because they failed to exhaust administrative remedies.
- F. Lithium Nevada incorporates by reference the defenses asserted or to be asserted in forthcoming filings by any other defendant to this action.

DATED this 19th day of August, 2021

By: /s/ Laura K. Granier

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*Attorneys for Defendant-Intervenor
Lithium Nevada Corp.*

Certificate of Service

I hereby certify that on August 19, 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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