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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

**TRIBAL PLAINTIFFS' FOR STAY
PENDING APPEAL**

IMMEDIATE ATTENTION REQUESTED

Intervenor-Plaintiffs Burns Paiute Tribe and Reno-Sparks Indian Colony, ("Tribal Plaintiffs") hereby submit this Motion for Stay Pending Appeal. On September 3, 2021, this

1 Court issued an order which denied Tribal Plaintiffs’ Motion for Preliminary Injunction (“PI
2 Motion”) (ECF No. 92). On November 8, 2021, this Court denied a motion to reconsider that
3 order (ECF No. 117). The ARPA permit was issued for the Thacker Pass Lithium Mine (the
4 “Project”) on September 29, 2021, and the ARPA permit’s Field Work Authorization was issued
5 on December 16, 2021, which will allow ground disturbing activities to occur at any time.

6 Ground disturbing activities including mechanical trenching operations, hand-dug pits,
7 and the removal of artifacts created by the Tribal Plaintiffs’ ancestors will cause irreparable harm
8 to Tribal Plaintiffs. Therefore, Tribal Plaintiffs must seek appellate review of this Court’s denial
9 of Tribal Plaintiffs’ PI Motion and Motion for Reconsideration. Tribal Plaintiffs hereby move
10 this Court for a Stay Pending Appeal to preserve the status quo while the Ninth Circuit has an
11 opportunity to review Tribal Plaintiffs’ request for relief.

12 Counsel for Tribal Plaintiffs have contacted opposing counsel. Counsel for Lithium
13 Nevada Corporation and federal defendants oppose this request. Bartell plaintiffs take no
14 position on the motion. Counsel for WWP *et al.* indicates no opposition to the motion.

15 The standard for issuing an injunction pending appeal is analogous to the standard of
16 review applied in deciding whether to grant preliminary injunctive relief. *Lopen v. Heckler*, 713
17 F.2d 1432, 1435 (9th Cir. 1983). Thus, to avoid redundancy and as grounds for this Motion,
18 Tribal Plaintiffs hereby incorporate and reallege the arguments submitted in the previous briefing
19 to this Court on Tribal Plaintiffs’ PI Motion and Motion for Reconsideration.

20 Although this Court denied Tribal Plaintiffs’ Motion for Preliminary Injunction and
21 Motion for Reconsideration, it should grant this Motion for Stay Pending Appeal based on the
22 important legal and factual issues involved in this case that will be reviewed by the Ninth
23 Circuit. It is beyond dispute that any ground disturbing activities at the Project will cause harm to

1 the Tribal Plaintiffs. Plaintiffs intend on filing for emergency relief before the Ninth Circuit and
2 will request a ruling on an expedited basis. Thus, any Stay Pending Appeal issued by this Court
3 would be of very limited duration. A Stay would not result in any economic harm to any party to
4 this case and there are critical legal issues that need to be resolved by the Court of Appeals that
5 necessitated a temporary injunction pending that review.

6 Tribal Plaintiffs respectfully request this Court to issue an Order staying any ground
7 disturbing activities at the Project pending the Ninth Circuit's resolution of Tribal Plaintiffs'
8 appeal. Due to the threat of immediate ground disturbing activities, Tribal Plaintiffs request this
9 Court's immediate attention to this Motion.

10 Dated this 3rd day of January 2022.

11 WHEAT LAW OFFICE

12 By: /s/Rick Eichstaedt
13 RICK EICHSTAEDT

14 Attorneys for Burns Paiute Tribe

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CERTIFICATE OF SERVICE

I certify that on January 3, 2022, 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