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 Lithium Nevada Corp.*

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

WESTERN WATERSHEDS PROJECT;  
 GREAT BASIN RESOURCE WATCH;  
 BASIN AND RANGE WATCH; and  
 WILDLANDS DEFENSE,  
  
 Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
 THE INTERIOR; U.S. BUREAU OF LAND  
 MANAGEMENT; and ESTER M.  
 McCULLOUGH, District Manager, BLM's  
 Winnemucca Office,

Defendants,

and

LITHIUM NEVADA CORP.,  
 Defendant-Intervenor.

**Case No. 3:21-cv-00103-MMD-CLB**

**LITHIUM NEVADA CORP.'S ANSWER  
 TO PLAINTIFFS' COMPLAINT**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, intervenor-defendant  
 Lithium Nevada Corp. ("Lithium Nevada") hereby states the following for its Answer  
 to Plaintiffs' complaint for declaratory and injunctive relief (the "Complaint"),  
 identified as ECF No. 1.

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

### INTRODUCTION

1. Paragraph 1 consists of a summary of the claims and assertions of Plaintiffs' Complaint, which are responded to below and to which no separate response is required. To the extent that a response is deemed necessary, Lithium Nevada denies every allegation not specifically admitted below.

2. Lithium Nevada admits that Ester McCullough signed the Record of Decision ("ROD") on January 15, 2021 based on the Bureau of Land Management's ("BLM") thorough review of the proposed project, as supported by independent and qualified consultants and substantial baseline environmental data compiled by qualified experts over the course of several years and in accordance with the National Environmental Policy Act ("NEPA") and all applicable laws. The remaining allegations in Paragraph 2 appear to purport to characterize the ROD and a letter from the Department of the Interior, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language of the ROD or the applicable letter are denied.

3. Lithium Nevada denies that the environmental review, studies which started years before the formal NEPA process initiated in 2019, was "rushed" or was not conducted in full compliance with all federal laws including federal environmental statutes with thorough consideration of potential environmental impacts and inclusion of appropriate environmental mitigation provisions.

1           4.     Lithium Nevada admits that the BLM's Winnemucca District, Humboldt  
2     River Field Office issued the final Environmental Impact Statement ("FEIS")  
3     analyzing the Thacker Pass Lithium Mine Project (the "Mine") in December of 2020  
4     and that Plaintiffs are challenging the ROD which approves the Plan of Operations for  
5     the mine as well as the North/South Exploration Project. Lithium Nevada denies that  
6     these two projects are proposed within the same project boundary area.

7           5.     The allegations in Paragraph 5 consist of a summary of Plaintiffs'  
8     requests for relief, which are responded to below and to which no separate response is  
9     required. To the extent that a response is deemed necessary, Lithium Nevada denies  
10    every allegation not specifically admitted below.

11          6.     Lithium Nevada admits that the Thacker Pass project is the most  
12    advanced and the largest known lithium deposit in the United States that is positioned  
13    to become a cornerstone of the U.S. lithium supply. The remaining allegations of  
14    Paragraph 6 purport to characterize provisions of the FEIS, which speak for  
15    themselves and are the best evidence of their contents. Any allegations contrary to the  
16    plain language of the FEIS are denied.

17          7.     Lithium Nevada admits that the Mine will be developed in two phases  
18    over the 41-year life of the Project with Phase 1 including construction and the first  
19    four years of mine life and phase 2 occurring from years 5 to 41 of the mine life.  
20    Lithium Nevada admits that the ROD approves exploration drilling but denies that the  
21    boundary for the exploration is the same as the boundary for the mine. The remaining  
22    allegations in Paragraph 7 appear to purport to characterize provisions of the ROD and  
23    FEIS, which speak for themselves and are the best evidence of their contents. Any  
24    allegations contrary to the plain language of the ROD or FEIS are denied.

25          8.     The allegations in Paragraph 8 regarding the project area are consistent  
26    with the information in the FEIS and admitted.

27          9.     Lithium Nevada admits that the total disturbance footprint or the  
28    proposed project would be approximately 5,695 acres of public lands administered by

1 the BLM, Winnemucca District. Lithium Nevada admits that the Project would have  
2 significant positive effects across the region and the nation given the proposed  
3 responsible development of the critical mineral, lithium, that will advance national  
4 policies for America's supply chain, national security, and climate objectives. To the  
5 extent the allegations in Paragraph 9 purport to characterize provisions of the FEIS  
6 with respect to project effects or potential impacts, the FEIS speaks for itself and is the  
7 best evidence of its contents. Any allegations contrary to the plain language of the  
8 FEIS are denied.

9 10. The allegations in Paragraph 10 purport to characterize provisions of the  
10 FEIS, which speak for themselves and are the best evidence of their contents. Any  
11 allegations contrary to the plain language of the FEIS are denied.

12 11. Lithium Nevada denies the allegation that the groundwater in the area  
13 would "continue to be lowered by the mine into the indefinite future." The remaining  
14 allegations in Paragraph 11 purport to characterize provisions of the ROD, which  
15 speak for themselves and are the best evidence of their contents. Any allegations  
16 contrary to the plain language of the ROD are denied.

17 12. Lithium Nevada denies the allegations in the first sentence of Paragraph  
18 12. The allegations in the second sentence of Paragraph 12 purport to characterize  
19 certain provisions of the FEIS, which characterizations are incomplete and potentially  
20 misleading. The provisions of the FEIS speak for themselves and are the best  
21 evidence of their contents. Any allegations contrary to the plain language of the FEIS  
22 are denied.

23 13. Lithium Nevada denies that the BLM admitted the Project will violate  
24 water quality requirements for antimony. Paragraph 13 purports to characterize  
25 certain provisions of the FEIS, which characterizations are incomplete and misleading.  
26 The provisions of the FEIS speak for themselves and are the best evidence of their  
27 contents. Any allegations contrary to the plain language of the FEIS are denied.  
28

1           14. Paragraph 14 purports to characterize BLM’s legal responsibilities under  
2 the implementing regulations of the Federal Land Policy and Management Act  
3 (“FLPMA”) and other regulations, which speak for themselves and are the best  
4 evidence of their contents. Any allegations contrary to the plain language of FLPMA  
5 or the applicable regulations regulations are denied.

6           15. Paragraph 15 purports to characterize a toxicological profile issued by  
7 the U.S. Department of Health and Human Services, which speaks for itself and is the  
8 best evidence of its contents. Any allegations contrary to the plain language of the  
9 applicable profile are denied.

10           16. Lithium Nevada denies that the BLM did not analyze or require  
11 mitigation to prevent the proposed project from violating Nevada water quality  
12 standards given the BLM’s extensive analysis and consideration of and requirements  
13 for mitigation of any potential impacts to groundwater quality. The remaining  
14 allegations of Paragraph 16 purports to characterize the record on appeal, where the  
15 record speaks for itself and is the best evidence of its contents. Any allegations  
16 inconsistent with the record on appeal are denied.

17           17. Paragraph 17 purports to characterize a letter from the U.S.  
18 Environmental Protection Agency (“EPA”), which speaks for itself and is the best  
19 evidence of its contents. Any allegations contrary to the plain language of the  
20 applicable letter are denied.

21           18. Lithium Nevada denies that the BLM never provided the information and  
22 analysis requested by EPA. The remaining allegations of Paragraph 18 purport to  
23 characterize a letter from the EPA, which speaks for itself and is the best evidence of  
24 its contents. Any allegations contrary to the plain language of the applicable letter are  
25 denied.

26           19. Paragraph 19 purports to characterize provisions of the proposed mine  
27 plan of operations prepared and submitted in 2019 that is included as an appendix to  
28 the FEIS and does not include any mention of the substantial work, analysis, or

1 required mitigation associated with any water than would be discharged from the mine  
2 pit and, therefore, is incomplete and misleading. The provisions of the mine plan  
3 speak for themselves and are the best evidence of their contents. Any allegations  
4 contrary to the plain language of the FEIS are denied.

5 20. Lithium Nevada denies that the FEIS does not analyze details and  
6 sufficiency of any drainage of water from the mine pit given the BLM's extensive  
7 consideration of both potential impacts and mitigation, including the effectiveness of  
8 mitigation, of any potential impacts to ground water quality. The remaining  
9 allegations of Paragraph 20 purport to characterize provisions of the FEIS, which  
10 speak for themselves and are the best evidence of their contents. All allegations  
11 contrary to the plain language of the FEIS are denied.

12 21. Lithium Nevada denies that the BLM failed to present information and  
13 analysis as to how long drainage from facilities for the proposed project will occur  
14 and/or need to be treated.

15 22. Lithium Nevada denies that the BLM failed to comply with BLM  
16 regulations. The remaining allegations of Paragraph 22 purport to characterize  
17 provisions of the FEIS and BLM regulations, which speak for themselves and are the  
18 best evidence of their contents. Any allegations contrary to the plain language of the  
19 FEIS or applicable regulations are denied.

20 23. Lithium Nevada denies the allegations in the first sentence of Paragraph  
21 23. The remaining allegations in Paragraph 23 purport to characterize provisions of  
22 the FEIS, which speak for themselves and are the best evidence of their contents. Any  
23 allegations contrary to the plain language of the FEIS are denied.

24 24. Lithium Nevada admits that an acre-foot of water is approximately  
25 325,851 gallons. The remaining allegations of Paragraph 24 purport to characterize  
26 provisions of the FEIS, which speak for themselves and are the best evidence of their  
27 contents. Any allegations contrary to the plain language of the FEIS are denied.  
28

1           25. Lithium Nevada denies the allegations in the first sentence of Paragraph  
2           25. The remaining allegations of Paragraph 25 purport to characterize Nevada  
3           Department of Wildlife (“NDOW”) comments regarding the FEIS, which speak for  
4           themselves and are the best evidence of their contents. Any allegations contrary to the  
5           plain language of the applicable comments are denied.

6           26. Paragraph 26 purports to characterize NDOW comments regarding the  
7           FEIS, which speak for themselves and are the best evidence of their contents. Any  
8           allegations contrary to the plain language of the applicable comments are denied.

9           27. Paragraph 27 purports to characterize certain provisions of the FEIS,  
10          which characterizations are incomplete and misleading. The FEIS provisions speak  
11          for themselves and, taken in their entirety as relevant to any particular issue, are the  
12          best evidence of their contents. Any allegations contrary to the plain language of the  
13          FEIS are denied.

14          28. Denied.

15          29. Lithium Nevada denies that the Project poses “serious impacts” to greater  
16          sage-grouse and further denies that the BLM failed to adequately analyze and mitigate  
17          against impacts.

18          30. Lithium Nevada admits that greater sage-grouse is a ground-nesting bird  
19          which does breed on grounds called leks. Lithium Nevada admits that significant  
20          regulatory efforts have been dedicated to the conservation of habitat used by greater  
21          sage-grouse and that Lithium Nevada has collaborated with the BLM and Nevada state  
22          agencies to redesign the project and then to voluntarily offer substantial mitigation for  
23          potential impacts to habitat. The remaining allegations in Paragraph 30 are overly  
24          broad, and characterize the status of the species and its habitat, both of which have  
25          been examined extensively by the United States Fish and Wildlife Service and the  
26          BLM and is best determined and characterized by review of relevant agency and  
27          scientific reports and documents regarding the same. Lithium Nevada therefore denies  
28



1 the allegations to the extent they are inconsistent with the best available scientific  
2 information regarding the status of the species.

3 31. Paragraph 31 purports to characterize provisions of the FEIS, which speak  
4 for themselves and are the best evidence of their contents. Any allegations contrary to  
5 the plain language of the FEIS are denied.

6 32. Paragraph 32 purports to characterize provisions of the FEIS and  
7 unknown sources quoted, which speak for themselves and are the best evidence of  
8 their contents. Any allegations contrary to the plain language of the FEIS or the  
9 unknown sources quoted are denied.

10 33. The allegations in the first, second, third, and fourth sentences of  
11 Paragraph 33 purport to characterize provisions of the FEIS and seem to quote from  
12 unknown sources, which are the best evidence of their contents. Any allegations  
13 contrary to the plain language of the FEIS or the unknown sources quoted are denied.  
14 Regarding the allegations in the fifth sentence of Paragraph 33, Lithium Nevada  
15 denies that the FEIS failed to disclose any and all impacts to greater sage-grouse,  
16 based on the BLM's comprehensive and thorough review and analysis of any and all  
17 impacts to greater sage-grouse based on its experience and expertise, extensive data  
18 collected and prepared over several years by qualified experts in coordination with  
19 state and federal environmental agencies, and consideration and response to public and  
20 agency comments.

21 34. Paragraph 34 purports to characterize provisions of the FEIS, which speak  
22 for themselves and are the best evidence of their contents. Any allegations contrary to  
23 the plain language of the FEIS are denied.

24 35. Lithium Nevada denies that the FEIS failed to disclose reasonably  
25 identifiable potential impacts to greater sage-grouse, given the BLM's comprehensive  
26 and thorough review and analysis of impacts to greater sage-grouse based on its  
27 experience and expertise, its 2015 and 2019 land use plan amendments governing  
28 greater sage-grouse habitat conservation and data collected and prepared in



1 coordination with state and federal environmental agencies, and consideration and  
2 response to public and agency comments.

3 36. Lithium Nevada denies that the FEIS failed to disclose potential impacts  
4 to greater sage-grouse, based on the BLM's comprehensive and thorough review and  
5 analysis of impacts to greater sage-grouse based on its experience and expertise,  
6 extensive data collected and prepared over several years by qualified experts in  
7 coordination with state and federal environmental agencies, and consideration and  
8 response to public and agency comments. The remaining allegations of Paragraph 36  
9 purport to characterize provisions of the FEIS, which speak for themselves and are the  
10 best evidence of their contents. Any allegations contrary to the plain language of the  
11 FEIS are denied.

12 37. Paragraph 37 appears to purport to characterize provisions of the FEIS,  
13 which speak for themselves and are the best evidence of their contents. Any  
14 allegations contrary to the plain language of the FEIS are denied.

15 38. Lithium Nevada denies that the FEIS failed to disclose and analyze  
16 potential impacts to pronghorn antelope as legally required. The remaining allegations  
17 of Paragraph 38 purport to characterize provisions of the FEIS, which speak for  
18 themselves and are the best evidence of their contents. Any allegations contrary to the  
19 plain language of the FEIS are denied.

20 39. Lithium Nevada denies that the project will dewater or destroy riparian  
21 areas or springs. Paragraph 39 appears to purport to characterize provisions of the  
22 FEIS, which speak for themselves and are the best evidence of their contents. Any  
23 allegations contrary to the plain language of the FEIS are denied.

24 40. Lithium Nevada denies that the FEIS failed to adequately analyze  
25 potential impacts to Lahontan Cutthroat Trout ("LCT"), based on the BLM's  
26 comprehensive and thorough review and analysis of impacts to LCT based on its  
27 experience and expertise, extensive data collected and prepared over several years by  
28 qualified experts in coordination with state and federal environmental agencies, and

1 consideration and response to public and agency comments. Lithium Nevada denies  
2 that the BLM's conclusion that the project will not have any effect on LCT in Crowley  
3 Creek, Pole Creek and habitat within the Project area was unsupported. Lithium  
4 Nevada denies that BLM erroneously assumed that there was no LCT stream habitat  
5 that would be affected by the Project and operations. The remaining allegation in  
6 Paragraph 40 purports to characterize the BLM's response to what is characterized as  
7 an NDOW recommendation, where the record with regard to the BLM's response  
8 speaks for itself and is the best evidence of its contents. Any allegations inconsistent  
9 with the record on appeal are denied.

10 41. Lithium Nevada denies that the Project conflicts with BLM's  
11 Winnemucca District Resource Management Plan (the "RMP"). The remaining  
12 allegations in Paragraph 41 appear to purport to characterize provisions of the FEIS,  
13 which speak for themselves and are the best evidence of their contents. Any  
14 allegations contrary to the plain language of the FEIS are denied.

15 42. Lithium Nevada has insufficient information about the source of the  
16 photographs included in the allegations in Paragraph 42, and, therefore, denies that  
17 they are an accurate and complete representation of the Project site. The remaining  
18 allegations in Paragraph 42 purport to characterize provisions of the RMP, which  
19 provisions speak for themselves and are the best evidence of their contents. Any  
20 allegations contrary to the plain language of the RMP are denied.

21 43. Lithium Nevada denies that the Project conflicts with the RMP, which  
22 acknowledges that it will recognize valid existing rights and that public lands remain  
23 open and available for mineral exploration and development subject to FLPMA  
24 Section 204 which covers withdrawal of lands from mineral entry. The remaining  
25 allegations of Paragraph 43 purport to characterize the FEIS and BLM's legal  
26 responsibilities under FLPMA, where both the FEIS and the applicable laws and  
27 regulations speak for themselves and are the best evidence of their contents. Any  
28

1 allegations contrary to the plain language of the FEIS or the applicable laws and  
2 regulations are denied.

### 3 JURISDICTION AND VENUE

4 44. The allegations of Paragraph 44 characterize Plaintiffs' legal conclusions  
5 and requests for relief to which no response is required, and to the extent a response is  
6 required, Lithium Nevada denies the allegations.

7 45. The first sentence of Paragraph 45 characterizes Plaintiffs' legal  
8 conclusions to which no response is required, and to the extent a response is required,  
9 Lithium Nevada denies the allegations. Lithium Nevada admits that the Thacker Pass  
10 Project is located in Humboldt County, Nevada and that the BLM Winnemucca  
11 District Office is located in Nevada. Lithium Nevada has insufficient information to  
12 form a belief as to the truth of the remaining allegations of Paragraph 45 and,  
13 therefore, denies the same.

### 14 PARTIES

15 46. Lithium Nevada has insufficient information to form a belief as to the  
16 truth of the allegations in the first, second, third, fourth, and fifth sentences of  
17 Paragraph 46 and, therefore, denies the same. The allegations in the last sentence of  
18 Paragraph 46 characterize Plaintiffs' legal conclusions to which no response is  
19 required, and to the extent a response is required, Lithium Nevada denies the  
20 allegations.

21 47. Lithium Nevada has insufficient information to form a belief as to the  
22 truth of the allegations in the first, second, third, fourth, and fifth sentences of  
23 Paragraph 47 and, therefore, denies the same. The allegations in the last sentence of  
24 Paragraph 47 characterize Plaintiffs' legal conclusions to which no response is  
25 required, and to the extent a response is required, Lithium Nevada denies the  
26 allegations.

27 48. Lithium Nevada has insufficient information to form a belief as to the  
28 truth of the allegations in the first, second, third, fourth, and fifth sentences of

1 Paragraph 48 and, therefore, denies the same. The allegations in the last sentence of  
2 Paragraph 48 characterize Plaintiffs' legal conclusions to which no response is  
3 required, and to the extent a response is required, Lithium Nevada denies the  
4 allegations.

5 49. Lithium Nevada has insufficient information to form a belief as to the  
6 truth of the allegations in the first, second, third, fourth, fifth, and sixth sentences of  
7 Paragraph 49 and, therefore, denies the same. The allegations in the last sentence of  
8 Paragraph 49 characterize Plaintiffs' legal conclusions to which no response is  
9 required, and to the extent a response is required, Lithium Nevada denies the  
10 allegations.

11 50. Lithium Nevada denies that there is any immediate or irreparable harm  
12 caused by the Project and further denies that in preparing the FEIS and approving the  
13 ROD for the project the BLM did anything other than a comprehensive and thorough  
14 review and analysis in compliance with federal law based on its experience and  
15 expertise, extensive data collected and prepared over several years by qualified experts  
16 in coordination with state and federal environmental agencies, and consideration and  
17 response to public and agency comments. The remaining allegations of Paragraph 50  
18 characterize Plaintiffs' legal conclusions to which no response is required, and to the  
19 extent a response is required, Lithium Nevada denies the allegations.

20 51. Lithium Nevada admits that the BLM is an agency within the Department  
21 of the Interior ("DOI") which released the FEIS and ROD. The remaining allegations  
22 of Paragraph 51 are admitted.

23 52. Lithium Nevada admits that Ester McCullough is the District Manager of  
24 the Winnemucca District of the BLM. Lithium Nevada admits that based on the  
25 caption and the Plaintiffs' allegations they appear to be suing Ms. McCullough in her  
26 official capacity.

1           53. Lithium Nevada denies that the Project conflicts with the RMP and with  
2 the related Sage Grouse RMP Amendment. Lithium Nevada denies that the BLM's  
3 approval of the project violates FLPMA and its implementing regulations.

4           54. Paragraph 54 purports to characterize provisions of FLPMA, which speak  
5 for themselves and are the best evidence of their contents. Any allegations contrary to  
6 the plain language of FLPMA are denied.

7           55. Paragraph 55 purports to characterize provisions of FLPMA, which speak  
8 for themselves and are the best evidence of their contents. Any allegations contrary to  
9 the plain language of FLPMA are denied.

10          56. Paragraph 56 purports to characterize Ninth Circuit caselaw, which  
11 speaks for itself and is the best evidence of its contents. As legal argument, Paragraph  
12 56 requires neither admission nor denial. To the extent the allegations require a  
13 response, and are contrary to the relevant caselaw or taken out of context as relevant to  
14 the issues presented in this case, they are denied.

15          57. Paragraph 57 purports to characterize provisions of FLPMA, which speak  
16 for themselves and are the best evidence of their contents. Any allegations contrary to  
17 the plain language of FLPMA are denied.

18          58. Paragraph 58 purports to characterize provisions of FLPMA's  
19 implementing regulations, which speak for themselves and are the best evidence of  
20 their contents. Any allegations contrary to the plain language of applicable regulations  
21 are denied.

22          59. Paragraph 59 purports to characterize provisions of FLPMA's  
23 implementing regulations, which speak for themselves and are the best evidence of  
24 their contents. Any allegations contrary to the plain language of applicable regulations  
25 are denied.

26          60. The first sentence in Paragraph 60 constitutes a legal conclusion to which  
27 no response is required. To the extent a response is required, Lithium Nevada denies  
28 the allegation. The remaining allegations in Paragraph 60 purport to characterize U.S.

1 District Court for the District of Columbia caselaw, which speaks for itself and is the  
2 best evidence of its contents. Any allegations contrary to the plain language of  
3 relevant caselaw are denied.

4 61. Lithium Nevada denies that BLM's application of the Mining Law in the  
5 ROD and FEIS was erroneous or anything other than lawful and consistent with BLM  
6 policy and regulations and Federal law. The remaining allegations in Paragraph 61  
7 purport to characterize provisions of FLPMA and its implementing regulations, the  
8 FEIS, and the ROD, all of which speak for themselves and are the best evidence of  
9 their contents. Any allegations contrary to the plain language of the applicable law,  
10 the FEIS, or the ROD are denied.

11 62. Paragraph 62 purports to characterize provisions of the RMP and ROD  
12 and the Nevada and Northeastern California Greater Sage-Grouse Approved RMP  
13 Amendment ("ARMPA"), which speak for themselves and are the best evidence of  
14 their contents. Any allegations contrary to the plain language of the applicable  
15 documents are denied. Lithium Nevada admits that significant regulatory efforts have  
16 been dedicated to the conservation of habitat used by greater sage-grouse. The  
17 remaining allegations in Paragraph 62 are overly broad, and characterize the status of  
18 the species and its habitat needs both of which have been examined extensively by the  
19 United States Fish and Wildlife Service and the BLM and is best determined and  
20 characterized by review of relevant agency and scientific reports and documents  
21 regarding the same. Lithium Nevada therefore denies the allegations to the extent they  
22 are inconsistent with the best available agency documents and scientific information  
23 regarding the status of the species.

24 63. Paragraph 63 purports to characterize the BLM's and U.S. Forest  
25 Service's actions and a National Technical Team ("NTT") report, which speak for  
26 themselves and are the best evidence of their contents. Any allegations inconsistent  
27 with the BLM's and U.S. Forest Service's actions or contrary to the plain language of  
28 applicable report are denied.

1           64. Paragraph 64 purports to characterize the NTT report, which speaks for  
2           itself and is the best evidence of its contents. Any allegations contrary to the plain  
3           language of applicable report are denied.

4           65. Paragraph 65 purports to characterize the U.S. Fish and Wildlife Service's  
5           actions and a conservation objectives team ("COT") report, which speak for  
6           themselves and are the best evidence of their contents. Any allegations inconsistent  
7           with the U.S. Fish and Wildlife Service's actions or contrary to the plain language of  
8           applicable report are denied.

9           66. Paragraph 66 purports to characterize the BLM's actions and statements,  
10          along with the Great Basin ROD for the 2015 Greater Sage-Grouse Land Use Plan  
11          Amendments, all of which speak for themselves and are the best evidence of their  
12          contents. Any allegations inconsistent with the BLM's actions and statements or  
13          contrary to the plain language of the Great Basin ROD are denied.

14          67. Paragraph 67 purports to characterize certain provisions of the Great  
15          Basin ROD, which speaks for itself and is the best evidence of its contents. Any  
16          allegations contrary to the plain language of the Great Basin ROD are denied.

17          68. Paragraph 68 purports to characterize the BLM's actions and various  
18          ARMPAs and RODs, all of which speak for themselves and are the best evidence of  
19          their contents. Any allegations inconsistent with the BLM's actions or contrary to the  
20          plain language of the applicable documents are denied.

21          69. Lithium Nevada denies that the FEIS ignored potential impacts to greater  
22          sage-grouse, based on the BLM's comprehensive and thorough review and analysis of  
23          impacts to greater sage-grouse based on its experience and expertise, extensive data  
24          collected and prepared over several years by qualified experts in coordination with  
25          state and federal environmental agencies, and consideration and response to public and  
26          agency comments. The remaining allegations in Paragraph 69 purport to characterize  
27          provisions of the FEIS, which speak for themselves and are the best evidence of their  
28          contents. Any allegations contrary to the plain language of FEIS are denied.



1           70. Paragraph 70 purports to characterize certain provisions of the ARMPA,  
2           which as referenced are incomplete and misleading particularly given that the site of a  
3           project for the development of locatable minerals cannot be relocated as is recognized  
4           under the Mining Law and the ARMPA. The ARMPA speaks for itself and is the best  
5           evidence of its contents. Any allegations contrary to the plain language of applicable  
6           document are denied.

7           71. Paragraph 71 purports to characterize provisions of the FEIS, the  
8           ARMPA, and the RMP, all of which speak for themselves and are the best evidence of  
9           their contents. Any allegations contrary to the plain language of the FEIS or the other  
10          applicable documents are denied.

11          72. Lithium Nevada denies that in preparing the FEIS and approving the  
12          ROD for the project the BLM did anything other than a comprehensive and thorough  
13          review and analysis in compliance with federal law based on its experience and  
14          expertise, extensive data collected and prepared over several years by qualified experts  
15          in coordination with state and federal environmental agencies, and consideration and  
16          response to public and agency comments. The remaining allegations in Paragraph 72  
17          purport to characterize the BLM's actions, the ARMPA, and the RMP, all of which  
18          speak for themselves and are the best evidence of their contents. Any allegations  
19          inconsistent with the BLM's actions or contrary to the plain language of the applicable  
20          documents are denied.

21          73. Paragraph 73 purports to characterize certain provisions of the ARMPA  
22          and the RMP, which as referenced are incomplete and misleading particularly given  
23          that the site of a project for the development of locatable minerals cannot be relocated  
24          as is recognized under the Mining Law and the ARMPA and RMP which speak for  
25          themselves and are the best evidence of their contents. Any allegations contrary to the  
26          plain language of the applicable documents are denied.

27          74. Paragraph 74 purports to characterize certain provisions of the ARMPA  
28          and the RMP, which as referenced are incomplete and misleading particularly given

1 that the site of a project for the development of locatable minerals cannot be relocated  
2 as is recognized under the Mining Law as well as the ARMP and RMP, both of which  
3 speak for themselves and are the best evidence of their contents. Any allegations  
4 contrary to the plain language of the applicable documents are denied.

5 75. Paragraph 75 purports to characterize certain provisions of the ARMPA  
6 and the RMP, which as referenced are incomplete and misleading particularly given  
7 that the site of a project for the development of locatable minerals cannot be relocated  
8 as is recognized under the Mining Law as well as the ARMPA and RMP, both of  
9 which speak for themselves and are the best evidence of their contents. Any  
10 allegations contrary to the plain language of the applicable documents are denied.

11 76. Lithium Nevada denies that the Project is not fully compliant with all  
12 applicable laws and all provisions of the ARMPA and RMP as they apply to locatable  
13 minerals.

14 77. Lithium Nevada denies that the BLM has not complied with the ARMPA.  
15 The remaining allegations of Paragraph 77 purport to characterize the BLM's actions  
16 and legal responsibilities, where the applicable actions and applicable laws speak for  
17 themselves and are the best evidence of their contents. Paragraph 77 further purports  
18 to characterize certain provisions of the ARMPA and the RMP, which as listed are  
19 incomplete and misleading particularly given that the site of a project for the  
20 development of locatable minerals cannot be relocated as is recognized under the  
21 Mining Law as well as the ARMPA and RMP, both of which speak for themselves and  
22 are the best evidence of their contents. Any allegations inconsistent with the BLM's  
23 actions or contrary to the plain language of the applicable law or documents are  
24 denied.

25 78. Lithium Nevada denies that in preparing the FEIS and approving the  
26 ROD for the project the BLM did anything other than a comprehensive and thorough  
27 review and analysis in compliance with federal law based on its experience and  
28 expertise, extensive data collected and prepared over several years by qualified experts

1 in coordination with state and federal environmental agencies, and consideration and  
2 response to public and agency comments. The remaining allegations of Paragraph 78  
3 purport to characterize the FEIS and unnamed studies which Plaintiffs purportedly  
4 provided to the BLM, all of which speak for themselves and are the best evidence of  
5 their contents. Any allegations contrary to the plain language of the FEIS or the  
6 applicable studies are denied.

7 79. Paragraph 79 purports to characterize the BLM's actions and legal  
8 responsibilities, where the applicable actions and applicable laws speak for themselves  
9 and are the best evidence of their contents. Paragraph 79 further purports to  
10 characterize certain provisions of the ARMPA and the RMP, which as listed are  
11 incomplete and misleading particularly given that the site of a project for the  
12 development of locatable minerals cannot be relocated as is recognized under the  
13 Mining Law as well as the ARMPA and RMP, both of which speak for themselves and  
14 are the best evidence of their contents. Any allegations inconsistent with the BLM's  
15 actions or contrary to the plain language of the applicable law or documents are  
16 denied.

17 80. Paragraph 80 purports to characterize the BLM's actions and legal  
18 responsibilities, where the applicable actions and applicable laws speak for themselves  
19 and are the best evidence of their contents. Paragraph 80 further purports to  
20 characterize the FEIS, the ARMPA, and the RMP, which, as listed are incomplete and  
21 misleading particularly given that the site of a project for the development of locatable  
22 minerals cannot be relocated as is recognized under the Mining Law as well as the  
23 ARMPA and RMP, both of which speak for themselves and are the best evidence of  
24 their contents. Any allegations inconsistent with the BLM's actions or contrary to the  
25 plain language of the FEIS, the applicable law, or the applicable documents are  
26 denied.

27 81. Paragraph 81 purports to characterize the BLM's actions and legal  
28 responsibilities, where the applicable actions and applicable laws speak for themselves

1 and are the best evidence of their contents. Paragraph 81 further purports to  
2 characterize provisions of the FEIS, which speak for themselves and are the best  
3 evidence of their contents. Any allegations inconsistent with the BLM's actions or  
4 contrary to the plain language of the FEIS or the applicable law are denied.

5 82. Paragraph 82 purports to characterize the BLM's actions and legal  
6 responsibilities, where the applicable actions and applicable laws speak for themselves  
7 and are the best evidence of their contents. Paragraph 82 further appears to purport to  
8 characterize provisions of the FEIS and ARMPA, which speak for themselves and are  
9 the best evidence of their contents. Any allegations inconsistent with the BLM's  
10 actions or contrary to the plain language of the FEIS, ARMPA, or the applicable law  
11 are denied.

12 83. Lithium Nevada denies that the Project conflicts with the RMP. The  
13 remaining allegations in Paragraph 83 purport to characterize certain provisions of the  
14 FEIS, which as listed are incomplete and misleading. The provisions of the FEIS  
15 speak for themselves and are the best evidence of their contents. Any allegations  
16 contrary to the plain language of the FEIS are denied.

17 84. The first sentence of Paragraph 84 appears to purport to characterize  
18 certain provisions of the FEIS and the ARMPA, which are incomplete and potentially  
19 misleading and, speak for themselves and are the best evidence of their contents. Any  
20 allegations contrary to the plain language of the FEIS or the ARMPA are denied. The  
21 second and third sentences of Paragraph 84 are vague, overly broad, and speculative  
22 and Lithium Nevada therefore denies the allegations.

23 85. Lithium Nevada denies that the BLM made an unsubstantiated asserted  
24 that all sage-grouse RMP requirements were "not applicable" given the extensive  
25 analysis BLM performed to evaluate potential impacts and also the significant work  
26 Lithium Nevada is completing with the BLM and the State of Nevada Sagebrush  
27 Ecosystem Technical Team to complete mitigation for potential impacts to sage-  
28 grouse habitat. The remaining allegations of Paragraph 85 purport to characterize the

1 BLM's actions and legal responsibilities, where the applicable actions and applicable  
2 laws speak for themselves and are the best evidence of their contents. Paragraph 85  
3 further purports to characterize provisions of the FEIS and ARMPA, which speak for  
4 themselves and are the best evidence of their contents. Any allegations inconsistent  
5 with the BLM's actions or contrary to the plain language of the FEIS, ARMPA, or the  
6 applicable law are denied.

7 86. Lithium Nevada admits that it has "valid existing rights" under the 1872  
8 Mining Law and denies that BLM's recognition of such rights is erroneous. The  
9 remaining allegations in Paragraph 86 purport to characterize and quote from the  
10 BLM's position from an unknown source, which source speaks for itself and is the  
11 best evidence of its contents. Any allegations inconsistent with the unknown quoted  
12 source are denied.

13 87. Lithium Nevada denies that in preparing the FEIS and approving the  
14 ROD for the project the BLM did anything other than a comprehensive and thorough  
15 review and analysis in compliance with federal law based on its experience and  
16 expertise, extensive data collected and prepared over several years by qualified experts  
17 in coordination with state and federal environmental agencies, and consideration and  
18 response to public and agency comments. Lithium Nevada further denies that the  
19 BLM has no evidence of the "validity" of LNC's claims or that there is any basis to  
20 challenge LNC's rights under the federal Mining Law as recognized by the BLM. The  
21 remaining allegations in Paragraph 87 purport to characterize the BLM's legal  
22 obligations, the record on appeal, and the NTT Report, where the applicable  
23 documents and law speak for themselves and are the best evidence of their contents.  
24 Any allegations contrary to the plain language of the NTT Report or the applicable law  
25 or inconsistent with the record on appeal are denied.

26 88. Lithium Nevada admits that it has "valid existing rights" under the 1872  
27 Mining Law. Lithium Nevada denies that the site of the Thacker Pass Project could be  
28 relocated given that the mineral to be developed and extracted obviously has a fixed

1 location and, thus, the suggestion that the BLM could or should have changed the site  
2 of the project proposes the impossible as is recognized under the Mining Law and  
3 FLPMA. Lithium Nevada denies that the BLM did not fulfill its duty to prevent  
4 unnecessary or undue degradation under FLPMA and to comply with the ARMPA.  
5 The remaining allegations in Paragraph 88 purport to characterize the BLM's legal  
6 obligations under FLPMA and the ARMPA, which speak for themselves and are the  
7 best evidence of their contents. Any allegations contrary to the plain language of  
8 FLPMA or the ARMPA are denied.

9 89. Paragraph 89 purports to characterize provisions of FLPMA (apparently  
10 through use of preamble to the BLM's adoption of its 3809 rules), which speak for  
11 themselves and are the best evidence of their contents. Any allegations contrary to the  
12 plain language of FLPMA are denied as is the notion that FLMPA mandates certain  
13 mitigation.

14 90. Lithium Nevada denies that in preparing the FEIS and approving the  
15 ROD for the project the BLM did anything other than a comprehensive and thorough  
16 review and analysis in compliance with federal law based on its experience and  
17 expertise, extensive data collected and prepared over several years by qualified experts  
18 in coordination with state and federal environmental agencies, and consideration and  
19 response to public and agency comments. The second sentence of Paragraph 90  
20 characterizes Plaintiffs' legal conclusions to which no response is required, and to the  
21 extent a response is required, Lithium Nevada denies the allegations.

22 91. Lithium Nevada denies that the BLM "erred" in recognizing its rights  
23 under the Mining Law or concluded that the project was "exempt" from the RMP  
24 provisions. The remaining allegations of Paragraph 91 purport to characterize the  
25 ROD and the FEIS, which speak for themselves and are the best evidence of their  
26 contents. Any allegations contrary to the plain language of the ROD or the FEIS are  
27 denied.  
28

1           92. Paragraph 92 purports to characterize provisions of FLPMA, which speak  
2 for themselves and are the best evidence of their contents and which mandate that the  
3 BLM oversee the use of public lands under the directives of multiple use and  
4 consistent with the Mining Law. Any allegations contrary to the plain language of  
5 FLPMA are denied.

6           93. Paragraph 93 purports to characterize certain limited provisions of the  
7 RMP, which speak for themselves and are the best evidence of their contents in the  
8 proper context of the entire RMP. Any allegations contrary to the plain language of  
9 the RMP are denied.

10          94. Paragraph 94 purports to characterize certain limited provisions of the  
11 FEIS associated with the RMP, which speak for themselves and are the best evidence  
12 of their content considered in the proper context of the entirety of the document. Any  
13 allegations contrary to the plain language of the applicable FEIS are denied.

14          95. Paragraph 95 purports to characterize certain limited provisions of the  
15 FEIS, which speak for themselves and are the best evidence of their contents  
16 considered in the proper context of the entirety of the relevant provisions of the  
17 document. Any allegations contrary to the plain language of the FEIS are denied.

18          96. Paragraph 96 purports to characterize certain limited provisions of the  
19 FEIS, which, taken out of context may be misleading, speak for themselves and are the  
20 best evidence of their contents considered in proper context of the entirety of the  
21 relevant provisions of the document. Any allegations contrary to the plain language of  
22 the FEIS are denied.

23          97. Paragraph 97 purports to characterize certain limited provisions of the  
24 FEIS, which, taken out of context may be misleading, speak for themselves and are the  
25 best evidence of their contents considered in proper context of the entirety of the  
26 relevant provisions of the document. Any allegations contrary to the plain language of  
27 the FEIS are denied.



1           98. Lithium Nevada denies that the Project will conflict with the RMP, which  
2 recognizes rights for the development of locatable minerals under the federal Mining  
3 Law. The remaining allegations of Paragraph 98 purport to characterize certain  
4 limited provisions of the FEIS, which, taken out of context may be misleading, speak  
5 for themselves and are the best evidence of their contents considered in proper context  
6 of the entirety of the relevant provisions of the document. Any allegations contrary to  
7 the plain language of the FEIS in proper context of all relevant provisions are denied.

8           99. Lithium Nevada denies that the approval of the Thacker Pass project  
9 violated the BLM's own RMP. The remaining allegations of Paragraph 99 purport to  
10 characterize the BLM's legal obligations under FLPMA, where the applicable law  
11 speaks for itself and is the best evidence of its contents. Any allegations contrary to  
12 the plain language of FLPMA are denied.

13           100. The first sentence of Paragraph 100 purports to characterize provisions of  
14 the FEIS, which speak for themselves and are the best evidence of their contents. Any  
15 allegations contrary to the plain language of FEIS are denied. Lithium Nevada denies  
16 the allegations in the second sentence of Paragraph 100 to the extent they suggest that  
17 the BLM provided anything less than a legal response to the comments.

18           101. Paragraph 101 purports to characterize provisions of NEPA along with  
19 caselaw from the Ninth Circuit and the U.S. District Court for the District of  
20 Columbia, all of which speak for themselves and are the best evidence of their  
21 contents. Any allegations contrary to the plain language of NEPA or the applicable  
22 caselaw are denied. The remaining allegations in Paragraph 101 characterize  
23 Plaintiffs' legal conclusions to which no response is required, and to the extent a  
24 response is required, Lithium Nevada denies the allegations.

25           102. Lithium Nevada denies that the Project violates the RMP or that an  
26 amendment to the RMP was necessary to legally approve the Project. The remaining  
27 allegations of Paragraph 102 purport to characterize the BLM's understanding and  
28 legal responsibilities, where the record on appeal and the applicable laws are the best

1 evidence of their contents. Any allegations inconsistent with the record on appeal or  
2 contrary to the plain language of the applicable law, including all relevant provisions  
3 of the RMP which recognize rights for development of locatable minerals under the  
4 federal Mining Law, are denied.

5 103. Lithium Nevada admits that the BLM issued a Notice of Intent (“NOI”) to  
6 prepare an EIS in January 2020. The remaining allegations in Paragraph 103 purport  
7 to characterize the NOI, which speaks for itself and is the best evidence of its contents.  
8 Any allegations contrary to the plain language of the NOI are denied.

9 104. Paragraph 104 mischaracterizes the quoted language in Paragraph 104  
10 and purports to characterize BLM actions and purported admissions, where the record  
11 on appeal speaks for itself and is the best evidence of its contents. Any allegations  
12 inconsistent with the record on appeal are denied.

13 105. Paragraph 105 purports to characterize provisions of federal regulations,  
14 which speak for themselves and are the best evidence of their contents. Any  
15 allegations contrary to the plain language of the applicable regulations are denied.

16 106. Lithium Nevada admits that the BLM issued the Draft EIS (“DEIS”) in  
17 July 2020. Lithium Nevada denies that the Project violates the RMP. The remaining  
18 allegations of Paragraph 106 purport to characterize the DEIS and the record on  
19 appeal, which speak for themselves and are the best evidence of their contents. Any  
20 allegations contrary to the plain language of the DEIS or inconsistent with the record  
21 on appeal are denied.

22 107. Lithium Nevada denies that the Project violates the RMP. The remaining  
23 allegations of Paragraph 107 purport to characterize the ROD, the FEIS, and the NOI,  
24 all of which speak for themselves and are the best evidence of their contents. Any  
25 allegations contrary to the plain language of the ROD, the FEIS, or the NOI are  
26 denied.

27 108. Lithium Nevada admits that it has “valid existing rights” under the 1872  
28 Mining Law that arise not only from properly located and maintained mining claims,

1 including payment of substantial amounts for mining claim fees, but also substantial  
2 expenditures (millions of dollars) to conduct exploration to define the locatable  
3 mineral resource and develop and propose a mine plan of operations and rights to  
4 ancillary use under the Mining Law. The remaining allegations of Paragraph 108  
5 purport to characterize provisions of the FEIS, which speak for themselves and are the  
6 best evidence of their contents. Any allegations contrary to the plain language of FEIS  
7 are denied.

8 109. Paragraph 109 purports to characterize provisions of the 1872 Mining  
9 Law and Ninth Circuit caselaw, which speak for themselves and are the best evidence  
10 of their contents. Any allegations contrary to the plain language of the same are  
11 denied. Paragraph 109 further makes conclusions of law to which no response is  
12 required. To the extent any response is required, the allegations are denied.

13 110. Paragraph 110 purports to characterize provisions of the 1872 Mining  
14 Law and the ROD, which speak for themselves and are the best evidence of their  
15 contents. Lithium Nevada denies that 30 U.S.C. 22 makes any reference to “mining  
16 claims” and, therefore, the allegations present an incomplete quote of the federal law  
17 out of context. The remaining allegations of Paragraph 110 render conclusions of law  
18 to which no response is required. To the extent any response is required, the  
19 allegations are denied. Any allegations contrary to the plain language of the ROD or  
20 the applicable law are denied.

21 111. Paragraph 111 renders conclusions of law to which no response is  
22 required. To the extent any response is required, the allegations are denied. The  
23 remaining allegations of Paragraph 111 purport to characterize caselaw in the U.S.  
24 District Courts for the District of Columbia and the District of Arizona, which speak  
25 for themselves and are the best evidence of their contents. Any allegations contrary to  
26 the plain language of applicable caselaw are denied.

27 112. Paragraph 112 purports to characterize U.S. Supreme Court caselaw,  
28 which speaks for itself and is the best evidence of its contents. Any allegations

1 contrary to the plain language of the applicable and relevant caselaw are denied. The  
2 remaining allegations of Paragraph 112 renders conclusions of law to which no  
3 response is required. To the extent any response is required, the allegations are  
4 denied.

5 113. Denied.

6 114. Paragraph 114 purports to characterize certain provisions of the Mine  
7 Plan of Operations, which speak for themselves and are the best evidence of the cited  
8 contents. Any allegations contrary to the plain language of the Plan of Operations are  
9 denied.

10 115. Paragraph 115 purports to characterize the record on appeal and BLM's  
11 actions, which speak for themselves and are the best evidence of their contents. Any  
12 allegations inconsistent with the record on appeal or BLM's actions are denied.

13 116. Lithium Nevada denies that any of the proposed uses of lands within the  
14 project boundary are not necessary mining and mining related activities authorized  
15 under and consistent with its rights under the federal Mining Law. The remaining  
16 allegations of Paragraph 116 purport to characterize the record on appeal, which  
17 speaks for itself and is the best evidence of its contents. Any allegations inconsistent  
18 with the record on appeal are denied.

19 117. Lithium Nevada denies that any of its proposed use in the project area are  
20 inconsistent with its rights under the federal Mining Law given that all proposed uses  
21 are necessary to extract the valuable locatable minerals. The remaining allegations of  
22 Paragraph 117 consist of Plaintiffs' conclusions of law which require no response. To  
23 the extent any response is required, they are denied.

24 118. Paragraph 118 purports to characterize provisions of the Surface  
25 Resources and Multiple Use Act of 1955, which speak for themselves and are the best  
26 evidence of their contents. Any allegations contrary to the plain language of the  
27 applicable law are denied. The remaining allegations of Paragraph 118 consist of  
28

1 Plaintiffs' conclusions of law which require no response. To the extent any response  
2 is required, they are denied.

3 119. Paragraph 119 purports to characterize the record on appeal or BLM  
4 actions, which speak for themselves and are the best evidence of their contents. Any  
5 allegations inconsistent with the record on appeal or BLM's actions are denied.

6 120. Lithium Nevada denies that the FEIS does not support that LNC has  
7 satisfied the requirements under the Mining Law to use the proposed area of public  
8 lands for its mining and mining related activities necessary to develop and extract the  
9 valuable locatable minerals. Lithium Nevada further denies that the BLM's decision  
10 violated the RMP provisions. The remaining allegations in Paragraph 120 characterize  
11 Plaintiffs' legal conclusions to which no response is required, and to the extent a  
12 response is required, Lithium Nevada denies the allegations.

13 121. Paragraph 121 purports to characterize BLM's legal obligations under  
14 NEPA and FLPMA and unidentified environmental protection laws and policies,  
15 where the applicable law speaks for itself and is the best evidence of its contents. Any  
16 allegations contrary to the plain language of NEPA or FLPMA are denied.

17 122. Paragraph 122 purports to characterize provisions of NEPA's  
18 implementing regulations, which speak for themselves and are the best evidence of  
19 their contents. Any allegations contrary to the plain language of the applicable  
20 regulations are denied.

21 123. Paragraph 123 purports to characterize provisions of NEPA's  
22 implementing regulations and Ninth Circuit caselaw, which speak for themselves and  
23 are the best evidence of their contents. Any allegations contrary to the plain language  
24 of the applicable regulations or caselaw are denied.

25 124. Paragraph 124 purports to characterize provisions of NEPA, which speak  
26 for themselves and are the best evidence of their contents. Any allegations contrary to  
27 the plain language of NEPA are denied.

1           125. Paragraph 125 purports to characterize provisions of NEPA's  
2 implementing regulations, which speak for themselves and are the best evidence of  
3 their contents. Any allegations contrary to the plain language of the applicable  
4 regulations are denied.

5           126. Paragraph 126 purports to characterize provisions of NEPA's  
6 implementing regulations, which speak for themselves and are the best evidence of  
7 their contents. Any allegations contrary to the plain language of the applicable  
8 regulations are denied.

9           127. Paragraph 127 purports to characterize provisions of FLPMA, which  
10 speak for themselves and are the best evidence of their contents. Any allegations  
11 contrary to the plain language of FLPMA are denied.

12           128. Paragraph 128 purports to characterize provisions of FLPMA and an  
13 Interior Board of Land Appeals ("IBLA") decision, which speak for themselves and  
14 are the best evidence of their contents. Any allegations contrary to the plain language  
15 of FLPMA or the applicable IBLA decision are denied.

16           129. Allegations in Paragraph 129 characterize Plaintiffs' legal conclusions to  
17 which no response is required, and to the extent a response is required, Lithium  
18 Nevada denies the allegations. The remaining allegation in Paragraph 129 purports to  
19 characterize provisions of federal regulations, which speak for themselves and are the  
20 best evidence of their contents. Any allegations contrary to the plain language of the  
21 applicable regulations are denied.

22           130. Paragraph 130 purports to characterize BLM's obligations under FLPMA,  
23 BLM actions, and a BLM manual, where the applicable laws, actions, and documents  
24 speak for themselves and are the best evidence of their contents. Any allegations  
25 inconsistent with BLM actions or contrary to the plain language of the applicable laws  
26 and documents are denied.

1           131. Paragraph 131 purports to characterize a BLM manual, which speaks for  
2           itself and is the best evidence of its contents. Any allegations contrary to the plain  
3           language of the applicable manual are denied.

4           132. Lithium Nevada denies that the BLM failed any of its duties in approving  
5           the Thacker Pass project or that the BLM's analysis in the FEIS was anything other  
6           than fully compliant with all applicable laws. Paragraph 132 purports to characterize  
7           provisions of federal regulations and the FEIS, which speak for themselves and are the  
8           best evidence of their contents. Any allegations contrary to the plain language of the  
9           FEIS or the applicable regulations are denied. The remaining allegations of Paragraph  
10          132 characterize Plaintiffs' legal conclusions to which no response is required, and to  
11          the extent a response is required, Lithium Nevada denies the allegations.

12          133. Paragraph 133 purports to characterize provisions of federal regulations,  
13          which speak for themselves and are the best evidence of their contents. Any  
14          allegations contrary to the plain language of the applicable regulations are denied.

15          134. Paragraph 134 purports to characterize provisions of the RMP, which  
16          speak for themselves and are the best evidence of their contents. Any allegations  
17          contrary to the plain language of the RMP are denied.

18          135. Lithium Nevada denies the allegations of Paragraph 135 given that the  
19          FEIS is clear that the extent of any potentially elevated antimony levels would not  
20          extend the plan boundary and mitigation is provided for in the event antimony  
21          concentrations ever do exceed Nevada primary drinking water standards.

22          136. Paragraph 136 purports to characterize certain limited provisions of the  
23          FEIS, which speak for themselves and are the best evidence of their contents. Any  
24          allegations contrary to the plain language of the FEIS are denied.

25          137. Lithium Nevada denies that the proposed operation is predicted to violate  
26          water quality standards given the required mitigation in the FEIS and ROD. The  
27          remaining allegations of Paragraph 137 purport to characterize provisions of the FEIS,  
28          FLPMA, and federal regulations, all of which speak for themselves and are the best



1 evidence of their contents. Any allegations contrary to the plain language of the FEIS,  
2 FLPMA, or the applicable regulations are denied.

3 138. Paragraph 138 purports to characterize the DEIS, FEIS, and Plaintiff  
4 comments, which speak for themselves and are the best evidence of their contents.  
5 Any allegations contrary to the plain language of the DEIS, FEIS, or the applicable  
6 comments are denied.

7 139. Lithium Nevada denies the allegations of Paragraph 139 that suggest that  
8 proposed mitigation plans were “undefined” and not subject to public NEPA and  
9 FLPMA review simply because a finalized fully detailed mitigation plan was not in  
10 the FEIS given the extensive disclosure and analysis of proposed mitigation. The  
11 remaining allegations of Paragraph 139 purport to characterize provisions of NEPA,  
12 FLPMA, and the FEIS, which speak for themselves and are the best evidence of their  
13 contents. Any allegations contrary to the plain language of NEPA, FLPMA, or the  
14 FEIS are denied.

15 140. Paragraph 140 purports to characterize provisions of the FEIS, which  
16 speak for themselves and are the best evidence of their contents. Any allegations  
17 contrary to the plain language of the FEIS are denied.

18 141. Paragraph 141 purports to characterize Plaintiff comments and BLM’s  
19 response thereto, which speak for themselves and are the best evidence of their  
20 contents. Any allegations contrary to the plain language of the applicable comments or  
21 inconsistent with BLM’s response thereto are denied.

22 142. Paragraph 142 characterizes Plaintiffs’ legal conclusions to which no  
23 response is required, and to the extent a response is required, Lithium Nevada denies  
24 the allegations.

25 143. Paragraph 143 purports to characterize portions of an EPA letter, which  
26 characterizations are incomplete and potentially misleading given, for example,  
27 reference to what might occur “[w]ithout mitigation” when the EIS clearly provides  
28 for significant mitigation. The EPA letter, in its entirety, speaks for itself and is the

1 best evidence of its contents. Any allegations contrary to the plain language of the  
2 complete applicable letter are denied.

3 144. Paragraph 144 purports to characterize portions of an EPA letter, which  
4 characterizations are incomplete and potentially misleading. The EPA letter, in its  
5 entirety, speaks for itself and is the best evidence of its contents. Any allegations  
6 contrary to the plain language of the applicable letter are denied.

7 145. Paragraph 145 purports to characterize portions of an EPA letter, which  
8 characterizations are incomplete and potentially misleading given, for example,  
9 omission of reference to EPA's acknowledgment of additional mitigation information  
10 available. The EPA letter, in its entirety, speaks for itself and is the best evidence of  
11 its contents. Any allegations contrary to the plain language of the applicable letter are  
12 denied.

13 146. Paragraph 146 purports to characterize portions of an EPA letter, which  
14 characterizations are incomplete and potentially misleading given, for example,  
15 omission of reference to EPA's acknowledgment of additional mitigation information  
16 available. The EPA letter, in its entirety, speaks for itself and is the best evidence of  
17 its contents. Any allegations contrary to the plain language of the applicable letter are  
18 denied.

19 147. Paragraph 147 purports to characterize portions of an EPA letter, which  
20 characterizations are incomplete and potentially misleading. The EPA letter, in its  
21 entirety, speaks for itself and is the best evidence of its contents. Any allegations  
22 contrary to the plain language of the applicable letter are denied.

23 148. Paragraph 148 purports to characterize provisions of the FEIS, which,  
24 without proper context and other relevant provisions are incomplete and potentially  
25 misleading. The FEIS provisions speak for themselves and are the best evidence in  
26 the context of the entirety of relevant provisions of the FEIS of their contents. Any  
27 allegations contrary to the plain language of the FEIS are denied.  
28

1           149. Paragraph 149 purports to characterize certain provisions of the FEIS,  
2           which speak for themselves and are the best evidence of their contents considered in  
3           full context of all relevant provisions particularly given, for example, that the citation  
4           is to the original proposed plan of operations submitted in July 2019 which, by itself,  
5           does not describe or include mitigation required under the BLM's ROD or what is  
6           fully described in other portions of the FEIS. Any allegations contrary to the plain  
7           language of the FEIS are denied. The remaining allegations of Paragraph 149  
8           characterize Plaintiffs' legal conclusions to which no response is required, and to the  
9           extent a response is required, Lithium Nevada denies the allegations. Lithium Nevada  
10          further denies that the public did not have full opportunity to evaluate relevant  
11          information on groundwater quality given extensive information and analysis provided  
12          in the NEPA documents which is in addition to the further and ongoing public process  
13          with the State of Nevada, Division of Environmental Protection for the water pollution  
14          control permitting process.

15          150. Paragraph 150 purports to characterize provisions of the FEIS, which  
16          speak for themselves and are the best evidence of their contents. Any allegations  
17          contrary to the plain language of the FEIS are denied.

18          151. Paragraph 151 purports to characterize provisions of the FEIS, which  
19          speak for themselves and are the best evidence of their contents. Any allegations  
20          contrary to the plain language of the FEIS are denied. Lithium Nevada denies that that  
21          the public had "no way" to evaluate the mitigation given the substantial information  
22          and analysis provided in the NEPA process.

23          152. Paragraph 152 purports to characterize provisions of the FEIS, which  
24          speak for themselves and are the best evidence of their contents. Lithium Nevada  
25          denies that Paragraph 152 accurately alleges information in the FEIS as cited at 4-15.  
26          Lithium Nevada further denies that final reclamation plans which must be reviewed  
27          and approved in compliance with Nevada law by the BLM and the Nevada Division of  
28          Environmental Protection, will allow for any "level of toxicity" that presents a "threat

1 to people and wildlife indefinitely.” Any further allegations contrary to the plain  
2 language of the FEIS are denied.

3 153. Paragraph 153 purports to characterize the record on appeal, the ROD,  
4 FLPMA, and federal regulations, all of which speak for themselves and are the best  
5 evidence of their contents. Any allegations inconsistent with the record on appeal or  
6 contrary to the plain language of the ROD, FLPMA, or the applicable regulations are  
7 denied. The remaining allegations of Paragraph 153 characterize Plaintiffs’ legal  
8 conclusions to which no response is required, and to the extent a response is required,  
9 Lithium Nevada denies the allegations.

10 154. Lithium Nevada denies that the FEIS and ROD do not ensure compliance  
11 with applicable air quality standards. The remaining allegations of Paragraph 154  
12 characterize Plaintiffs’ legal conclusions to which no response is required, and to the  
13 extent a response is required, Lithium Nevada denies the allegations.

14 155. Paragraph 155 characterizes Plaintiffs’ legal conclusions to which no  
15 response is required, and to the extent a response is required, Lithium Nevada denies  
16 the allegations. The remaining allegations of Paragraph 155 purport to characterize  
17 federal regulations, which speak for themselves and are the best evidence of their  
18 contents. Any allegations contrary to the plain language of the applicable regulations  
19 are denied.

20 156. Lithium Nevada denies that the BLM’s decision fails to comply with air  
21 quality standards. Paragraph 156 characterizes Plaintiffs’ legal conclusions to which  
22 no response is required, and to the extent a response is required, Lithium Nevada  
23 denies the allegations. The remaining allegations of Paragraph 156 purport to  
24 characterize provisions of the RMP, which speak for themselves and are the best  
25 evidence of their contents. Any allegations contrary to the plain language of the  
26 applicable regulations are denied.

27 157. Paragraph 157 purports to characterize Plaintiffs’ comments, the DEIS,  
28 and the FEIS, which speak for themselves and are the best evidence of their contents.

1 Any allegations contrary to the plain language of the applicable comments, the DEIS,  
2 or the FEIS are denied.

3 158. Lithium Nevada denies that no currently existing technology is capable of  
4 achieving the reductions in emissions as asserted by the BLM. The remaining  
5 allegations of Paragraph 158 purport to characterize Plaintiffs' comments and their  
6 characterization of information available at an online database with citation to what  
7 appears to be outdated information from 2018, which speak for themselves and are the  
8 best evidence of their contents. Any allegations contrary to the plain language of the  
9 applicable comments and online database are denied.

10 159. Paragraph 159 is denied and appears to be based upon internet  
11 information from a 2018 data sheet that does not provide the best available or current  
12 information.

13 160. Lithium Nevada denies that in preparing the FEIS it did not adequately  
14 explain the scrubbing system and basis for determining the effectiveness in the FEIS  
15 and in response to Plaintiffs' comments on the Draft EIS. Lithium Nevada further  
16 denies that in preparing the FEIS and approving the ROD for the project the BLM did  
17 anything other than a comprehensive and thorough review and analysis in compliance  
18 with federal law based on its experience and expertise, extensive data collected and  
19 prepared over several years by qualified experts in coordination with state and federal  
20 environmental agencies, and consideration and response to public and agency  
21 comments. Lithium Nevada further denies that the BLM and the public do not have  
22 assurance that the technology for scrubbing control exists given the BLM's review and  
23 analysis, response to comments and recognition that all emission standards will be  
24 enforced through the Nevada Division of Environmental Protection Air Quality  
25 Operating Permit for the Thacker Pass project. The remaining allegations of  
26 Paragraph 160 purport to characterize provisions of the FEIS, NEPA, and FLPMA,  
27 which speak for themselves and are the best evidence of their contents. Any  
28 allegations contrary to the plain language of the FEIS, NEPA, or FLPMA are denied.

1           161. Lithium Nevada denies that the BLM failed to adequately explain how the  
2 effectiveness of these measures can be determined or that in preparing the FEIS and  
3 approving the ROD for the project the BLM did anything other than a comprehensive  
4 and thorough review and analysis in compliance with federal law based on its  
5 experience and expertise, extensive data collected and prepared over several years by  
6 qualified experts in coordination with state and federal environmental agencies, and  
7 consideration and response to public and agency comments. The remaining  
8 allegations of Paragraph 161 purport to characterize provisions of the FEIS, NEPA,  
9 and FLPMA, which speak for themselves and are the best evidence of their contents.  
10 Any allegations contrary to the plain language of the FEIS, NEPA, or FLPMA are  
11 denied.

12           162. Paragraph 162 purports to characterize the FEIS, along with unnamed  
13 Plaintiff requests and BLM responses, which speak for themselves and are the best  
14 evidence of their contents. Any allegations contrary to the plain language of the FEIS,  
15 Plaintiff requests, or BLM responses are denied.

16           163. Lithium Nevada denies that the BLM “assumes” what emissions will be  
17 given that the BLM conducted a thorough and detailed analysis of air quality issues  
18 including SO<sub>2</sub> emissions during Phase 1 and Phase 2. The remaining allegations of  
19 Paragraph 163 purport to characterize provisions of the FEIS, which speak for  
20 themselves and are the best evidence of their contents. Any allegations contrary to the  
21 plain language of the FEIS are denied.

22           164. Lithium Nevada denies that the BLM “assumes” what the projected  
23 process emissions for critical air pollutants will be. Paragraph 164 purports to  
24 characterize provisions of the FEIS, which speak for themselves and are the best  
25 evidence of their contents. Any allegations contrary to the plain language of the FEIS  
26 are denied.

27           165. Lithium Nevada denies that there is “no evidence” to support the BLM’s  
28 conclusions about projected process emissions for critical air pollutants or that the

1 technology is “undetermined.” Lithium Nevada further denies that the BLM made  
2 “assumptions” or lacked “the required evidentiary support” regarding its projected  
3 emissions. Lithium Nevada further denies that in preparing the FEIS and approving  
4 the ROD for the project the BLM did anything other than a comprehensive and  
5 thorough review and analysis in compliance with federal law based on its experience  
6 and expertise, extensive data collected and prepared over several years by qualified  
7 experts in coordination with state and federal environmental agencies, and  
8 consideration and response to public and agency comments. The remaining  
9 allegations of Paragraph 165 purport to characterize the record on appeal, which  
10 speaks for itself and is the best evidence of its contents. Any allegations inconsistent  
11 with the record on appeal are denied.

12 166. Lithium Nevada denies that the FEIS fails to establish air quality  
13 standards can be met with appropriate data and analysis. The remaining allegations of  
14 Paragraph 166 characterize Plaintiffs’ legal conclusions to which no response is  
15 required, and to the extent a response is required, Lithium Nevada denies the  
16 allegations.

17 167. Lithium Nevada denies that the BLM and the FEIS failed to take a hard  
18 look at impacts from the proposed mine to Threatened, Sensitive, and other special  
19 status birds, wildlife, and plans in the project area. Lithium Nevada further denies that  
20 the BLM did not or does not have adequate baseline information. The remaining  
21 allegations of Paragraph 167 characterize Plaintiffs’ legal conclusions to which no  
22 response is required, and to the extent a response is required, Lithium Nevada denies  
23 the allegations. Any allegations inconsistent with the record on appeal are denied.

24 168. Paragraph 168 purports to characterize Ninth Circuit caselaw, which  
25 speaks for itself and is the best evidence of its contents. Any allegations inconsistent  
26 with the applicable caselaw are denied.

27 169. Lithium Nevada denies that in preparing the FEIS and approving the  
28 ROD for the project the BLM did anything other than a comprehensive and thorough



1 review and analysis in compliance with federal law based on its experience and  
2 expertise, extensive data collected and prepared over several years by qualified experts  
3 in coordination with state and federal environmental agencies, and consideration and  
4 response to public and agency comments. The remaining allegations of Paragraph 169  
5 purport to characterize unnamed scientific information which Plaintiffs purportedly  
6 provided and the BLM's response thereto, which speak for themselves and are the best  
7 evidence of their contents. Any allegations inconsistent with information Plaintiffs  
8 provided or the BLM's response thereto are denied.

9 170. Lithium Nevada denies the allegations in the first sentence of Paragraph  
10 170. Lithium Nevada further denies that the BLM "overlooked" or inadequately  
11 disclosed or considered effects in its sage-grouse analysis or that in preparing the FEIS  
12 and approving the ROD for the project the BLM did anything other than a  
13 comprehensive and thorough review and analysis in compliance with federal law  
14 based on its experience and expertise, extensive data collected and prepared over  
15 several years by qualified experts in coordination with state and federal environmental  
16 agencies, and consideration and response to public and agency comments. The  
17 remaining allegations in Paragraph 170 purport to characterize the FEIS and unnamed  
18 NDOW information, which speak for themselves and are the best evidence of their  
19 contents. Any allegations contrary to the plain language of the FEIS or the applicable  
20 NDOW information are denied.

21 171. Lithium Nevada denies that that in preparing the FEIS and approving the  
22 ROD for the project the BLM did anything other than a comprehensive and thorough  
23 review and analysis in compliance with federal law based on its experience and  
24 expertise, extensive data collected and prepared over several years by qualified experts  
25 in coordination with state and federal environmental agencies, and consideration and  
26 response to public and agency comments. The remaining allegations in Paragraph 171  
27 purport to characterize the FEIS and the record on appeal, including unnamed  
28 resources Plaintiffs purportedly provided and the BLM's response thereto, all of which

1 speak for themselves and are the best evidence of their contents. Any allegations  
2 contrary to the plain language of the FEIS or the record on appeal are denied.

3 172. Paragraph 172 purports to characterize provisions of the FEIS, which  
4 speak for themselves and are the best evidence of their contents. Any allegations  
5 contrary to the plain language of the FEIS or the record on appeal are denied.

6 173. Paragraph 173 purports to characterize provisions of the FEIS, unnamed  
7 NDOW comments, unnamed studies purportedly submitted by Plaintiffs, and BLM  
8 responses thereto, all of which speak for themselves and are the best evidence of their  
9 contents. Lithium Nevada denies that the FEIS did not disclose potential impacts of  
10 noise effects. Lithium Nevada further denies Plaintiffs' characterization in Paragraph  
11 173 about the best available science with respect to lek buffers and locatable mineral  
12 development. Any further allegations contrary to the plain language of the FEIS,  
13 applicable NDOW comments, applicable studies, or BLM responses are denied.

14 174. The first sentence of Paragraph 174 purports to characterize provisions of  
15 the FEIS, which speak for themselves and are the best evidence of their contents. Any  
16 allegations contrary to the plain language of the FEIS are denied. Lithium Nevada  
17 denies the allegations in the second sentence of Paragraph 174.

18 175. Lithium Nevada denies the first and third sentences of Paragraph 175.  
19 The second sentence of Paragraph 175 purports to characterize provisions of the FEIS,  
20 which speak for themselves and are the best evidence of their contents. Any  
21 allegations contrary to the plain language of the FEIS are denied.

22 176. Lithium Nevada denies that that in preparing the FEIS and approving the  
23 ROD for the project the BLM did anything other than a comprehensive and thorough  
24 review and analysis in compliance with federal law based on its experience and  
25 expertise, extensive data collected and prepared over several years by qualified experts  
26 in coordination with state and federal environmental agencies, and consideration and  
27 response to public and agency comments. The remaining allegations of Paragraph 176  
28 purport to characterize provisions of the FEIS, which speak for themselves and are the

1 best evidence of their contents. Any allegations contrary to the plain language of the  
2 FEIS are denied.

3 177. Lithium Nevada denies that that in preparing the FEIS and approving the  
4 ROD for the project the BLM did anything other than a comprehensive and thorough  
5 review and analysis in compliance with federal law based on its experience and  
6 expertise, extensive data collected and prepared over several years by qualified experts  
7 in coordination with state and federal environmental agencies, and consideration and  
8 response to public and agency comments. The remaining allegations of Paragraph 177  
9 purport to characterize provisions of the FEIS, which speak for themselves and are the  
10 best evidence of their contents. Any allegations contrary to the plain language of the  
11 FEIS are denied.

12 178. Lithium Nevada denies that that in preparing the FEIS and approving the  
13 ROD for the project the BLM did anything other than a comprehensive and thorough  
14 review and analysis in compliance with federal law based on its experience and  
15 expertise, extensive data collected and prepared over several years by qualified experts  
16 in coordination with state and federal environmental agencies, and consideration and  
17 response to public and agency comments. The remaining allegations of Paragraph 178  
18 purport to characterize provisions of the FEIS, which speak for themselves and are the  
19 best evidence of their contents. Any allegations contrary to the plain language of the  
20 FEIS are denied.

21 179. Lithium Nevada denies that that in preparing the FEIS and approving the  
22 ROD for the project the BLM did anything other than a comprehensive and thorough  
23 review and analysis in compliance with federal law based on its experience and  
24 expertise, extensive data collected and prepared over several years by qualified experts  
25 in coordination with state and federal environmental agencies, and consideration and  
26 response to public and agency comments. The remaining allegations of Paragraph 179  
27 purport to characterize provisions of the FEIS, unnamed studies which Plaintiffs  
28 purportedly submitted, and the BLM's response thereto, all of which speak for

1 themselves and are the best evidence of their contents. Any allegations contrary to the  
2 plain language of the FEIS or applicable studies and responses are denied.

3 180. Paragraph 180 purports to characterize provisions of the Bald and Golden  
4 Eagle Protection Act (“BGEPA”), the Migratory Bird Treaty Act (“MBTA”), and  
5 federal regulations, all of which speak for themselves and are the best evidence of  
6 their contents. Any allegations contrary to the plain language of the BGEPA, MBTA, or  
7 the applicable regulations are denied.

8 181. Paragraph 181 purports to characterize the FEIS and the Eagle  
9 Conservation Plan for the Project, which speak for themselves and are the best  
10 evidence of their contents. Any allegations contrary to the FEIS or the applicable plan  
11 are denied.

12 182. Lithium Nevada denies that the BLM’s conclusion regarding nest  
13 disturbance and a likely take is “too low.” Paragraph 182 further purports to  
14 characterize provisions of the FEIS and unnamed Plaintiff “explanations” to the BLM,  
15 which speak for themselves and are the best evidence of their contents. Any  
16 allegations contrary to the plain language of the FEIS or the applicable “explanations”  
17 are denied. The remaining allegations in Paragraph 182 characterize Plaintiffs’ legal  
18 conclusions to which no response is required, and to the extent a response is required,  
19 Lithium Nevada denies the allegations.

20 183. Lithium Nevada denies that the BLM did not adequately respond to  
21 substantive comments and questions on the DEIS. The remaining allegations of  
22 Paragraph 183 purport to characterize the FEIS and Plaintiffs’ comments on the DEIS,  
23 which speak for themselves and are the best evidence of their contents. Any  
24 allegations contrary to the plain language of the FEIS or the applicable comments are  
25 denied.

26 184. Paragraph 184 purports to characterize provisions of the FEIS, which  
27 speak for themselves and are the best evidence of their contents. Any allegations  
28 contrary to the plain language of the FEIS are denied.

1           185. Lithium Nevada denies that that in preparing the FEIS and approving the  
2     ROD for the project the BLM did anything other than a comprehensive and thorough  
3     review and analysis in compliance with federal law based on its experience and  
4     expertise, extensive data collected and prepared over several years by qualified experts  
5     in coordination with state and federal environmental agencies, and consideration and  
6     response to public and agency comments. The remaining allegations of Paragraph 185  
7     purport to characterize provisions of the FEIS, which speak for themselves and are the  
8     best evidence of their contents. Any allegations contrary to the plain language of the  
9     FEIS are denied.

10          186. Paragraph 186 purports to characterize provisions of the FEIS, which  
11     speak for themselves and are the best evidence of their contents. Any allegations  
12     contrary to the plain language of the FEIS are denied.

13          187. Paragraph 187 purports to characterize provisions of the FEIS, unnamed  
14     “detailed evidence” which Plaintiffs purportedly submitted, and the BLM’s response  
15     thereto, all of which speak for themselves and are the best evidence of their contents.  
16     Any allegations contrary to the plain language of the FEIS, applicable evidence, and  
17     BLM’s responses thereto are denied.

18          188. Paragraph 188 purports to characterize provisions of the FEIS and the  
19     record on appeal, which speak for themselves and are the best evidence of their  
20     contents. Any allegations contrary to the plain language of the FEIS or inconsistent  
21     with the record on appeal are denied.

22          189. Lithium Nevada denies that that in preparing the FEIS and approving the  
23     ROD for the project the BLM did anything other than a comprehensive and thorough  
24     review and analysis in compliance with federal law based on its experience and  
25     expertise, extensive data collected and prepared over several years by qualified experts  
26     in coordination with state and federal environmental agencies, and consideration and  
27     response to public and agency comments. The remaining allegations of Paragraph 189  
28     purport to characterize provisions of the FEIS and the record on appeal, which speak

1 for themselves and are the best evidence of their contents. Any allegations contrary to  
2 the plain language of the FEIS or the record on appeal are denied.

3 190. Lithium Nevada denies that that in preparing the FEIS and approving the  
4 ROD for the project the BLM did anything other than a comprehensive and thorough  
5 review and analysis in compliance with federal law based on its experience and  
6 expertise, extensive data collected and prepared over several years by qualified experts  
7 in coordination with state and federal environmental agencies, and consideration and  
8 response to public and agency comments. The remaining allegations of Paragraph 190  
9 purport to characterize provisions of the FEIS and the environmental status of various  
10 species attributable to unnamed sources, which speak for themselves and are the best  
11 evidence of their contents. Any allegations contrary to the plain language of the FEIS  
12 or inconsistent with the environmental status of the various species are denied.

13 191. Lithium Nevada denies that that in preparing the FEIS and approving the  
14 ROD for the project the BLM did anything other than a comprehensive and thorough  
15 review and analysis in compliance with federal law based on its experience and  
16 expertise, extensive data collected and prepared over several years by qualified experts  
17 in coordination with state and federal environmental agencies, and consideration and  
18 response to public and agency comments. Lithium Nevada further denies the first  
19 sentence of Paragraph 191. The remaining allegations of Paragraph 191 purport to  
20 characterize provisions of the FEIS, ROD, NDOW comments, and several reports and  
21 surveys, which speak for themselves and are the best evidence of their contents. Any  
22 allegations contrary to the plain language of the FEIS, ROD, NDOW comments, or  
23 applicable reports and surveys are denied.

24 192. Lithium Nevada denies that that in preparing the FEIS and approving the  
25 ROD for the project the BLM did anything other than a comprehensive and thorough  
26 review and analysis in compliance with federal law based on its experience and  
27 expertise, extensive data collected and prepared over several years by qualified experts  
28 in coordination with state and federal environmental agencies, and consideration and

1 response to public and agency comments. Paragraph further 192 purports to  
2 characterize provisions of the FEIS, which speak for themselves and are the best  
3 evidence of their contents. Any allegations contrary to the plain language of the FEIS  
4 are denied. The remaining allegations of Paragraph 192 are vague, ambiguous, overly  
5 broad, and speculative and Lithium Nevada therefore denies the allegations.

6 193. Lithium Nevada admits that LCT were listed under the Endangered  
7 Species Act (“ESA”) as “endangered” in 1970 and then as “threatened” in 1975.  
8 Lithium Nevada denies that there is any disturbance to Pole Creek within the  
9 disturbance boundary for the Mine Plan of Operations. Lithium Nevada further denies  
10 that there is any LCT habitat in Pole Creek in the area of the Mine plan. The  
11 remaining allegations in Paragraph 193 purport to characterize provisions of the FEIS  
12 and the record on appeal, which speak for themselves and are the best evidence of  
13 their contents. Any allegations contrary to the plain language of the FEIS or the  
14 record on appeal are denied.

15 194. Denied.

16 195. Paragraph 195 purports to characterize provisions of the FEIS, BLM  
17 actions, and unidentified NDOW requests, which speak for themselves and are the best  
18 evidence of their contents. Any allegations contrary to the plain language of the FEIS,  
19 BLM’s actions, or the applicable NDOW statements are denied.

20 196. Lithium Nevada denies that its consultants provided flawed data  
21 regarding LCT impacts. Lithium Nevada further denies that the BLM did not consult  
22 with the U.S. Fish and Wildlife Service (“FWS”) particularly given the BLM’s  
23 completion of a Biological Assessment under Section 7 of the Endangered Species Act  
24 and FWS’s concurrence that the Thacker Pass Project is not likely to adversely affect  
25 any ESA-listed species. The remaining allegations of Paragraph 196 purport to  
26 characterize the record on appeal, which speaks for itself and is the best evidence of its  
27 contents. Any allegations inconsistent with the record on appeal are denied.  
28



1           197. Paragraph 197 characterizes Plaintiffs' legal conclusions to which no  
2 response is required, and to the extent a response is required, Lithium Nevada denies  
3 the allegations. The remaining allegations of Paragraph 197 purports to characterize  
4 Ninth Circuit caselaw, which speaks for itself and is the best evidence of its contents.  
5 Any allegations inconsistent with the applicable caselaw are denied.

6           198. Paragraph 198 purports to characterize provisions of the ESA, which  
7 speak for themselves and are the best evidence of their contents. Any allegations  
8 inconsistent with the ESA are denied. The remaining allegations of Paragraph 198  
9 characterize Plaintiffs' intentions, to which no response is required, and to the extent a  
10 response is required, Lithium Nevada denies the allegations.

11           199. Lithium Nevada denies that the FEIS made erroneous determinations  
12 regarding there being no effect from the Mine on LCT or its habitat. Lithium Nevada  
13 further denies that the BLM did anything other than fully and accurately analyze all  
14 relevant baseline conditions. The remaining allegations of Paragraph 199 characterize  
15 Plaintiffs' legal conclusions to which no response is required, and to the extent a  
16 response is required, Lithium Nevada denies the allegations.

17           200. Paragraph 200 purports to characterize provisions of NEPA and its  
18 implementing regulations, which speak for themselves and are the best evidence of  
19 their contents. Any allegations contrary to the plain language of NEPA or the  
20 applicable regulations are denied.

21           201. The first sentence of Paragraph 201 purports to characterize Ninth Circuit  
22 caselaw, which speaks for itself and is the best evidence of its contents. Any  
23 allegations contrary to the plain language of the applicable caselaw are denied.  
24 Lithium Nevada denies the second sentence of Paragraph 201.

25           202. Denied.

26           203. Paragraph 203 purports to characterize provisions of NEPA's  
27 implementing regulations and Ninth Circuit caselaw, which speak for themselves and  
28

1 are the best evidence of their contents. Any allegations contrary to the plain language  
2 of the applicable regulations or caselaw are denied.

3 204. Paragraph 204 purports to characterize provisions of the FEIS, which  
4 speak for themselves and are the best evidence of their contents. Any allegations  
5 contrary to the plain language of the FEIS are denied.

6 205. Paragraph 205 purports to characterize provisions of the FEIS, which  
7 speak for themselves and are the best evidence of their contents. Any allegations  
8 contrary to the plain language of the FEIS are denied.

9 206. Paragraph 206 purports to characterize provisions of the FEIS, which  
10 speak for themselves and are the best evidence of their contents. Any allegations  
11 contrary to the plain language of the FEIS are denied.

12 207. Paragraph 207 purports to characterize provisions of the FEIS, which  
13 speak for themselves and are the best evidence of their contents. Any allegations  
14 contrary to the plain language of the FEIS are denied.

15 208. Paragraph 208's comparison of the FEIS to Ninth Circuit caselaw  
16 characterizes Plaintiffs' legal conclusions to which no response is required, and to the  
17 extent a response is required, Lithium Nevada denies the allegations. The remaining  
18 allegations of Paragraph 208 purport to characterize Ninth Circuit caselaw, which  
19 speaks for itself and is the best evidence of its contents. Any allegations contrary to  
20 the plain language of the applicable caselaw are denied.

21 209. Paragraph 209 purports to characterize Ninth Circuit caselaw, which  
22 speaks for itself and is the best evidence of its contents. Any allegations contrary to  
23 the plain language of the applicable caselaw are denied.

24 210. Paragraph 210 purports to characterize provisions of the FEIS and an  
25 online press release, which speak for themselves and are the best evidence of their  
26 contents. Any allegations contrary to the plain language of the FEIS or the applicable  
27 press release are denied.  
28

211. Paragraph 211 characterizes Plaintiffs' legal conclusions to which no response is required, and to the extent a response is required, Lithium Nevada denies the allegations. The remaining allegations of Paragraph 211 purport to characterize provisions of the FEIS and a U.S. Fish and Wildlife Service report, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language of the FEIS or the applicable report are denied.

212. Paragraph 212 characterizes Plaintiffs' legal conclusions to which no response is required, and to the extent a response is required, Lithium Nevada denies the allegations. The remaining allegations of Paragraph 212 purport to characterize provisions of the FEIS, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language of the FEIS are denied.

213. The first and second sentences of Paragraph 213 purport to characterize provisions of NEPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language of NEPA or the applicable regulations are denied. Lithium Nevada denies that the BLM did not adequately analyze mitigation as required under NEPA. The third sentence of Paragraph 213 characterizes Plaintiffs' legal conclusions to which no response is required, and to the extent a response is required, Lithium Nevada denies the allegations.

214. Paragraph 214 purports to characterize provisions of NEPA and its implementing regulations, along with Ninth Circuit caselaw, all of which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language of NEPA, its implementing regulations, or the applicable caselaw are denied.

215. Lithium Nevada denies that FLPMA requires mitigation of all impacts particularly given FLPMA's multiple-use mandate, the BLM's duty to manage the public lands in a manner as to address the nation's need for minerals, and the need recognized by the BLM for production of lithium relative to national security, supply

1 chains and national policies for renewable energy objectives. The remaining  
2 allegations of Paragraph 215 purport to characterize provisions of the preamble to  
3 BLM's 3809 mining regulations, which speak for themselves and are the best evidence  
4 of their contents. Any allegations contrary to the plain language of the applicable law  
5 are denied.

6 216. Paragraph 216 is denied.

7 217. Paragraph 217 purports to characterize the EPA's comments on the FEIS,  
8 which speak for themselves and are the best evidence of their contents. Any  
9 allegations contrary to the plain language of applicable comments are denied.

10 218. Paragraph 218 purports to characterize portions of the EPA's comments  
11 on the FEIS, which fail to include other relevant provisions and, therefore, are  
12 misleading when considered out of context of their full text. The EPA's comments  
13 speak for themselves and, considered in their entirety, are the best evidence of their  
14 contents. Any allegations contrary to the plain language of applicable comments are  
15 denied.

16 219. Paragraph 219 purports to characterize portions of an EPA letter, which  
17 characterizations are incomplete and potentially misleading. The EPA letter, in its  
18 entirety, speaks for itself and is the best evidence of its contents. Any allegations  
19 contrary to the plain language of applicable comments are denied.

20 220. Paragraph 220 purports to characterize portions of an EPA letter, which  
21 characterizations are incomplete and potentially misleading. The EPA letter, in its  
22 entirety, speaks for itself and is the best evidence of its contents. Any allegations  
23 contrary to the plain language of applicable comments are denied.

24 221. Paragraph 221 is denied.

25 222. Paragraph 222 purports to characterize provisions of NEPA and its  
26 implementing regulations, along with Ninth Circuit caselaw, all of which speak for  
27 themselves and are the best evidence of their contents. Any allegations contrary to the  
28

1 plain language of NEPA, its implementing regulations, or the applicable caselaw are  
2 denied.

3 223. Paragraph 223 purports to characterize portions of an EPA letter, which  
4 characterizations are incomplete and potentially misleading. The EPA letter, in its  
5 entirety, speaks for itself and is the best evidence of its contents. Any allegations  
6 contrary to the plain language of applicable comments are denied.

7 224. Paragraph 224 purports to characterize provisions of the FEIS, which  
8 speak for themselves and are the best evidence of their contents. Any allegations  
9 contrary to the FEIS are denied.

10 225. Paragraph 225 characterizes Plaintiffs' legal conclusions to which no  
11 response is required, and to the extent a response is required, Lithium Nevada denies  
12 the allegations. The remaining allegations of Paragraph 225 purport to characterize  
13 provisions of the ROD, which speak for themselves and are the best evidence of their  
14 contents. Any allegations contrary to the plain language of the ROD are denied.

15 226. Paragraph 226 purports to characterize provisions of federal regulations,  
16 which speak for themselves and are the best evidence of their contents. Any  
17 allegations contrary to the plain language of the applicable regulations are denied.

18 227. Paragraph 227 purports to characterize provisions of federal regulations,  
19 which speak for themselves and are the best evidence of their contents. Any  
20 allegations contrary to the plain language of the applicable regulations are denied.

21 228. Paragraph 228 purports to characterize provisions of a BLM handbook,  
22 which speak for themselves and are the best evidence of their contents. Any  
23 allegations contrary to the plain language of the applicable handbook are denied.

24 229. Paragraph 229 purports to characterize provisions of a BLM handbook,  
25 which speak for themselves and are the best evidence of their contents. Any  
26 allegations contrary to the plain language of the applicable handbook are denied.

27 230. Paragraph 230 purports to characterize provisions of BLM guidelines and  
28 federal regulations, which speak for themselves and are the best evidence of their

1 contents. Any allegations contrary to the plain language of the applicable guidelines  
2 or regulations are denied.

3 231. Paragraph 231 characterizes Plaintiffs' legal conclusions to which no  
4 response is required, and to the extent a response is required, Lithium Nevada denies  
5 the allegations. The remaining allegations of Paragraph 231 purport to characterize  
6 provisions of the ROD, which speak for themselves and are the best evidence of their  
7 contents. Any allegations contrary to the plain language of the ROD are denied.

8 232. Paragraph 232 purports to characterize provisions of the FEIS and the  
9 ROD, which speak for themselves and are the best evidence of their contents. Any  
10 allegations contrary to the plain language of the FEIS or the ROD are denied.

11 233. Paragraph 233 purports to characterize the Mine plan and the record on  
12 appeal, which speak for themselves and are the best evidence of their contents. Any  
13 allegations contrary to the Mine plan or the record on appeal are denied.

14 234. Paragraph 234 purports to characterize the BLM's regular practices and a  
15 BLM decision, which speak for themselves and are the best evidence of their contents.  
16 Any allegations inconsistent with the BLM's regular practices or contrary to the plain  
17 language of the applicable decision are denied.

18 235. Paragraph 235 characterizes Plaintiffs' legal conclusions to which no  
19 response is required, and to the extent a response is required, Lithium Nevada denies  
20 the allegations.

21 236. Paragraph 236 purports to characterize the BLM's actions and ROD  
22 issued in connection with the Mount Hope Project, which speak for themselves and are  
23 the best evidence of their contents. Any allegations inconsistent with the applicable  
24 BLM actions or contrary to the plain language of the ROD are denied.

25 237. Paragraph 237 purports to characterize provisions of the ROD issued in  
26 connection with the Mount Hope Project, which speak for themselves and are the best  
27 evidence of their contents. Any allegations contrary to the plain language of the  
28 applicable ROD are denied.

1           238. Paragraph 238 characterizes Plaintiffs' legal conclusions to which no  
2 response is required, and to the extent a response is required, Lithium Nevada denies  
3 the allegations. The remaining allegations of Paragraph 238 purport to characterize  
4 provisions of the ROD and FEIS, which speak for themselves and are the best  
5 evidence of their contents. Any allegations contrary to the plain language of the ROD  
6 or FEIS are denied.

7           239. Paragraph 239 purports to characterize EPA comments, which speak for  
8 themselves and are the best evidence of their contents. Any allegations contrary to the  
9 plain language of the applicable comments are denied.

10           240. Paragraph 240 purports to characterize EPA comments, which speak for  
11 themselves and are the best evidence of their contents. Any allegations contrary to the  
12 plain language of the applicable comments are denied.

13           241. Paragraph 241 purports to characterize provisions of the ROD and record  
14 on appeal, which speak for themselves and are the best evidence of their contents.  
15 Any allegations contrary to the plain language of the ROD or record on appeal are  
16 denied.

17           242. Paragraph 242 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                                   CLAIMS FOR RELIEF

### 21                                   FIRST CAUSE OF ACTION

22           243. Lithium Nevada resubmits its answers to Paragraphs 1–242 of Plaintiffs'  
23 Complaint.

24           244. Lithium Nevada denies that the ROD, FEIS, and Project approvals did not  
25 comply with the Winnemucca RMP and the applicable RMP for protection of the  
26 Greater Sage Grouse. Lithium Nevada further denies that the BLM did not set forth in  
27 detail extensive mitigation it is committed to providing to offset potential impacts to  
28 Greater Sage-Grouse habitat. The remaining allegations of Paragraph 244 characterize



1 Plaintiffs' legal conclusions to which no response is required, and to the extent a  
2 response is required, Lithium Nevada denies the allegations.

3 245. Paragraph 245 characterizes Plaintiffs' legal conclusions to which no  
4 response is required, and to the extent a response is required, Lithium Nevada denies  
5 the allegations.

6 246. Paragraph 246 characterizes Plaintiffs' legal conclusions to which no  
7 response is required, and to the extent a response is required, Lithium Nevada denies  
8 the allegations.

## 9 **SECOND CAUSE OF ACTION**

10 247. Lithium Nevada resubmits its answers to Paragraphs 1–246 of Plaintiffs'  
11 Complaint.

12 248. Lithium Nevada denies that the ROD, FEIS, and Project approvals violate  
13 the Winnemucca RMP.

14 249. Lithium Nevada denies that any amendment to the RMP was necessary to  
15 move forward with the Project. The remaining allegations of Paragraph 249  
16 characterize Plaintiffs' legal conclusions to which no response is required, and to the  
17 extent a response is required, Lithium Nevada denies the allegations.

18 250. Lithium Nevada denies that it will permanently occupy public lands and  
19 further denies that the BLM was lacking necessary factual information to demonstrate  
20 Lithium Nevada's rights under the Mining Law. The remaining allegations of  
21 Paragraph 250 characterize Plaintiffs' legal conclusions to which no response is  
22 required, and to the extent a response is required, Lithium Nevada denies the  
23 allegations.

24 251. Paragraph 251 characterizes Plaintiffs' legal conclusions to which no  
25 response is required, and to the extent a response is required, Lithium Nevada denies  
26 the allegations.

## 27 **THIRD CAUSE OF ACTION**

1           252. Lithium Nevada resubmits its answers to Paragraphs 1–251 of Plaintiffs’  
2 Complaint.

3           253. Lithium Nevada denies that the BLM “assumed” that it had valid existing  
4 rights. Lithium Nevada further denies that it will permanently occupy public lands  
5 and that the BLM was lacking necessary factual information to demonstrate Lithium  
6 Nevada’s rights under the Mining Law. The remaining allegations of Paragraph 253  
7 characterize Plaintiffs’ legal conclusions to which no response is required, and to the  
8 extent a response is required, Lithium Nevada denies the allegations.

9           254. Paragraph 254 characterizes Plaintiffs’ legal conclusions to which no  
10 response is required, and to the extent a response is required, Lithium Nevada denies  
11 the allegations.

#### 12                                   **FOURTH CAUSE OF ACTION**

13           255. Lithium Nevada resubmits its answers to Paragraphs 1–254 of Plaintiffs’  
14 Complaint.

15           256. Lithium Nevada denies that in the ROD and FEIS, BLM failed to  
16 adequately and accurately analyze mitigation measures and their effectiveness as  
17 required by NEPA and FLPMA.

18           257. Paragraph 257 characterizes Plaintiffs’ legal conclusions to which no  
19 response is required, and to the extent a response is required, Lithium Nevada denies  
20 the allegations.

#### 21                                   **FIFTH CAUSE OF ACTION**

22           258. Lithium Nevada resubmits its answers to Paragraphs 1–257 of Plaintiffs’  
23 Complaint.

24           259. Paragraph 259 is denied.

25           260. Paragraph 260 characterizes Plaintiffs’ legal conclusions to which no  
26 response is required, and to the extent a response is required, Lithium Nevada denies  
27 the allegations.

#### 28                                   **SIXTH CAUSE OF ACTION**

1           261. Lithium Nevada resubmits its answers to Paragraphs 1–260 of Plaintiffs’  
2 Complaint.

3           262. Paragraph 262 is denied.

4           263. Paragraph 263 characterizes Plaintiffs’ legal conclusions to which no  
5 response is required, and to the extent a response is required, Lithium Nevada denies  
6 the allegations.

7                                   **SEVENTH CAUSE OF ACTION**

8           264. Lithium Nevada resubmits its answers to Paragraphs 1–263 of Plaintiffs’  
9 Complaint.

10          265. Lithium Nevada denies that BLM’s determination that the Project will  
11 comply with all applicable air and water quality standards was based on an erroneous  
12 and factually deficient analysis. The remaining allegations of Paragraph 265  
13 characterize Plaintiffs’ legal conclusions to which no response is required, and to the  
14 extent a response is required, Lithium Nevada denies the allegations.

15          266. Paragraph 266 characterizes Plaintiffs’ legal conclusions to which no  
16 response is required, and to the extent a response is required, Lithium Nevada denies  
17 the allegations.

18                                   **EIGHTH CAUSE OF ACTION**

19          267. Lithium Nevada resubmits its answers to Paragraphs 1–266 of Plaintiffs’  
20 Complaint.

21          268. Paragraph 268 characterizes Plaintiffs’ legal conclusions to which no  
22 response is required, and to the extent a response is required, Lithium Nevada denies  
23 the allegations.

24          269. Paragraph 269 characterizes Plaintiffs’ legal conclusions to which no  
25 response is required, and to the extent a response is required, Lithium Nevada denies  
26 the allegations.

1           270. Paragraph 270 characterizes Plaintiffs' legal conclusions to which no  
2 response is required, and to the extent a response is required, Lithium Nevada denies  
3 the allegations.

4                                   **NINTH CAUSE OF ACTION**

5           271. Lithium Nevada resubmits its answers to Paragraphs 1–270 of Plaintiffs'  
6 Complaint.

7           272. Lithium Nevada denies that the project as approved will result in any  
8 unnecessary or undue degradation or that BLM has failed to protect public resources.  
9 The remaining allegations of Paragraph 272 characterize Plaintiffs' legal conclusions  
10 to which no response is required, and to the extent a response is required, Lithium  
11 Nevada denies the allegations.

12           273. Paragraph 273 characterizes Plaintiffs' legal conclusions to which no  
13 response is required, and to the extent a response is required, Lithium Nevada denies  
14 the allegations.

15           274. Paragraph 274 characterizes Plaintiffs' legal conclusions to which no  
16 response is required, and to the extent a response is required, Lithium Nevada denies  
17 the allegations.

18                                   **REQUEST FOR RELIEF**

19           The remainder of Plaintiffs' Complaint consists of Plaintiffs' prayer for relief, to  
20 which no response is required. Insofar as a response is required, Lithium Nevada  
21 denies that Plaintiffs are entitled to any relief whatsoever.

22                                   **GENERAL DENIAL**

23           Lithium Nevada hereby denies all allegations, whether express or implied,  
24 including any allegations reflected in section heading, in Plaintiffs' Complaint not  
25 specifically admitted herein.

26                                   **AFFIRMATIVE DEFENSES**

- 27   A.     Plaintiffs fail to state a claim upon which relief may be granted.  
28   B.     Plaintiffs lack standing to assert some or all of their claims.

- 1 C. Some or all of Plaintiffs' claims are barred by statute.
- 2 D. Some or all of Plaintiffs' claims are barred by the ripeness doctrine.
- 3 E. Some or all of Plaintiffs' claims are barred because they failed to exhaust
- 4 administrative remedies.
- 5 F. Lithium Nevada incorporates by reference the defenses asserted or to be asserted
- 6 in forthcoming filings by any other defendant to this action.
- 7

8 DATED this 18th day of May, 2021

9

10 By: /s/ Laura K. Granier

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**Certificate of Service**

I hereby certify that on May 18, 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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