

## Exhibit 2

### Conferral Email 2 and List of Missing Submissions

## Dominic Carollo

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**From:** Dominic Carollo  
**Sent:** Tuesday, August 24, 2021 3:26 PM  
**To:** Talasi Brooks; Carroll, Arwyn (ENRD)  
**Cc:** wmap@igc.org; Laura K. Granier; falkwilt@gmail.com; julie@cblawoffices.org; tjlodge50@yahoo.com; kent@winnemuccalaw.com; Doktor, Leilani (ENRD); fermina@cblawoffices.org; Rick Eichstaedt; Chris Mixson  
**Subject:** RE: Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)  
**Attachments:** BLM AR Missing Docs.xlsx

Arwyn:

In light of the recent emails from other parties, detailing concerns with the Administrative Record, I thought it best to compile a more comprehensive list of concerns on our end, which also includes new additional issues and requests. Please note that this list is not exhaustive, and will be updated accordingly, but it does constitute a list of our requests and concerns at this point in time. Further, this list should not be construed as a waiver of any prior expressed concern or request.

1. We join the other parties' expressed concerns and requests with respect to the AR, including those from Roger, Talasi, and Mr. Falk.
2. Please search for and produce in the AR all intra-agency communications, inter-agency communications, and communications by or with higher levels at the Department of the Interior regarding the project, ROD, DEIS and FEIS.
3. Agency communications with the third-party consultant
  - a. This may also include internal communications of the consultant
4. For any communications, or other documents, withheld on the basis of a privilege or exemption, please provide a privilege log.
5. The contract under which the third-party consultant(s) provided assistance with the EIS and NEPA process, including but not limited to Piteau and Associates
6. TPEIS 0594 is marked "private and confidential." We dispute this designation and request that the designation be withdrawn.
7. TPEIS 0343 – this is the Stringham report. Please provide and include in the AR all communications regarding this report, including with LNC or third-party consultants, as well as the transmittal email and responses for the report.
8. TPEIS 0403 – this document discusses Bartell Ranch well mitigation. Please provide and include in the AR all communications regarding this report, including with LNC or third-party consultants. Please also provide and include in the AR any post-ROD documentation or communications regarding water right or water resource mitigation.
9. Please check with BLM and ensure that all versions of Piteau 2020c, including drafts or markups, are sought and produced and made part of the AR.
10. Omitted exhibit numbers; adding to what Talasi highlighted, the highest exhibit number is 729, but there are 634 lines on the spreadsheet. 6 of these are the claw-back documents, but this still leaves roughly 89 documents missing. Please produce all those documents or, if applicable, provide a privilege log.

11. TPEIS 0406, 443, 545

- a. please produce and include in the AR all transmittal emails regarding these documents, emails discussing these documents, and the complete document that the referenced Figure(s) was excerpted from

Please also see the attached spreadsheet listing specific communications between my client and the agency that appear to have been omitted. The AR should include all these communications (including all attachments), as well as any communications of BLM or the applicant or third-party consultants regarding these communications.

Thanks.

Dominic Carollo

Carollo Law Group LLC

Sent remotely from Microsoft Surface

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**From:** Talasi Brooks <tbrooks@westernwatersheds.org>

**Sent:** Monday, August 23, 2021 2:14 PM

**To:** Carroll, Arwyn (ENRD) <Arwyn.Carroll@usdoj.gov>

**Cc:** wmap@igc.org; Dominic Carollo <dcarollo@carollolegal.com>; Laura K. Granier <LKGranier@hollandhart.com>; falkwilt@gmail.com; julie@cblawoffices.org; tjlodge50@yahoo.com; kent@winnemuccalaw.com; Doktor, Leilani (ENRD) <Leilani.Doktor@usdoj.gov>; fermina@cblawoffices.org; Rick Eichstaedt <rick@wheatlawoffices.com>; Chris Mixson <c.mixson@kempjones.com>

**Subject:** Re: Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)

Dear Arwyn and Leilani:

In reviewing the AR to prepare for our 8/27 deadline, we have found additional issues. As noted in Roger's previous email, we request that the attachments to our clients' comments on the FEIS submitted to and received by BLM in late December 2020, be included in the Record.

We are also bringing these additional issues to your attention now in hopes of resolving them without motion practice. We reserve the right to raise other issues as we become aware of them.

In general, the numbering of the Record suggests that some documents have been omitted. For example, the numbering jumps from TPEIS-0006 to TPEIS-0009, and the Index includes numerous similar gaps. Please provide a privilege log describing the records omitted and the privilege(s) claimed.

The Record also seems to be missing communications between BLM and NDOW, NDEP, EPA, LNC, and LNC's contractors regarding the Project. For example, the attached October 29, 2020 letter from NDEP to LNC and cc'ed to Ken Loda at BLM, should be part of the Record but was not. This gives us reason to believe that other similar communications must be missing. Did BLM search for such communications in compiling the Record? The Record should include all Project-related communications.

The Record must include the 2015 Great Basin ROD adopting the 2015 Nevada/Northeastern California Greater sage-grouse ARMPA. This document is filed with our PI Motion as Exhibit 8. TPEIS-0298, the 2015 Nevada/Northeastern California Greater sage-grouse ARMPA, is misidentified in the Index and does not include the ROD.

The Record must include all Appendices to the 2015 Nevada/Northeastern California Greater sage-grouse ARMPA. TPEIS-0298 includes the text of the ARMPA but not the Appendices. Examples of these Appendices are included as Exhibits 13 and 14 to our PI Motion. All appendices to the 2015 ARMPA must be included in the Record, especially since they are referenced in Appendix N to the FEIS.

TPEIS-0359 appears to summarize comments the NDOW submitted on BLM's Preliminary Draft EIS (PDEIS). Please provide the original NDOW comment letter and/or copy of the PDEIS upon which NDOW made its comments.

The PDEIS is not part of the Record. Please provide the PDEIS and all comments and markup versions of the PDEIS from any other entity.

The Record should include the Western Lithium Corporation Kings Valley Clay Mine EA attached as Exhibit 6 to BLM's Response Brief to Plaintiff-Intervenors' PI Motion.

The Record should include the 2009 NDOW survey documenting winter sage-grouse use of the Project area, referenced in, for example, TPEIS-0025.

Please provide the information provided by NDOW documenting sage-grouse use of the Project area through 63 tracking locations generated by at least 30 radiomarked birds, cited as NDOW 2018 and 2018b. See FEIS at 4-42; TPEIS-0097.

TPEIS-0034 is an excerpt from a conference brochure. Please provide the entire document.

Finally, we find that there are significant gaps in the Record, especially because it contains very few communications. This indicates there may have been omissions in the Record. As noted, please provide all Project-related communications that have not already been provided, or the detailed reasons why such communications were not included in the Record submitted to the Court and the parties. Lastly, please provide the required certification by the proper agency official as to the completeness of the search and the compilation of the Record.

Thank you,

Talasi

On Thu, Aug 19, 2021 at 1:34 PM Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)> wrote:

Dominic and Roger,

Thanks for your emails concerning the scope of the administrative record. We've forwarded your questions to BLM and will let you know their response.

As you know, Plaintiff-Intervenors' complaints and preliminary injunction motion have injected new issues into the case and have required a significant expenditure of both their and our resources in the short term. BLM is evaluating the scope of the administrative record in connection with those claims, and we anticipate proposing a schedule by early next week, based on when BLM can serve that record.

In the meantime, cognizant of next Friday's existing deadline to meet and confer, and with an interest in keeping this side of the litigation rolling, we'll be happy to discuss the concerns you've raised next week – even were that deadline ultimately extended, we're happy to get the conversation going regarding the concerns already raised. We are also available on the 26<sup>th</sup>, between 11:00am and 3:00pm ET.

Finally, in response to an earlier question, yes—BLM will be serving redacted versions of the clawed-back documents. We can provide them on a thumb drive when the NHPA-related administrative record is served, or earlier via Box.com.

Thanks,

Arwyn

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**From:** [wmap@igc.org](mailto:wmap@igc.org) <[wmap@igc.org](mailto:wmap@igc.org)>  
**Sent:** Thursday, August 19, 2021 3:09 PM  
**To:** 'Dominic Carollo' <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>  
**Cc:** 'Laura K. Granier' <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; [tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org); [falkwilt@gmail.com](mailto:falkwilt@gmail.com); [julie@cblawoffices.org](mailto:julie@cblawoffices.org); [tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com); [kent@winnemuccalaw.com](mailto:kent@winnemuccalaw.com); Doktor, Leilani (ENRD) <[Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov)>; [fermina@cblawoffices.org](mailto:fermina@cblawoffices.org); 'Rick Eichstaedt' <[rick@wheatlawoffices.com](mailto:rick@wheatlawoffices.com)>; 'Chris Mixson' <[c.mixson@kempjones.com](mailto:c.mixson@kempjones.com)>  
**Subject:** RE: Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)

Arwyn/Leilani – The WWP plaintiffs share Dominic’s concerns and issues regarding the admin record. We continue to review the record and will be providing further issues/concerns in the coming days.

Roger

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**From:** Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>  
**Sent:** Wednesday, August 18, 2021 5:49 PM  
**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>  
**Cc:** Laura K. Granier <[LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)>; [tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org); [falkwilt@gmail.com](mailto:falkwilt@gmail.com); Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; [wmap@igc.org](mailto:wmap@igc.org); [julie@cblawoffices.org](mailto:julie@cblawoffices.org); [tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com); [kent@winnemuccalaw.com](mailto:kent@winnemuccalaw.com); [Leilani.Doktor@usdoj.gov](mailto:Leilani.Doktor@usdoj.gov); [fermina@cblawoffices.org](mailto:fermina@cblawoffices.org)  
**Subject:** RE: Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)  
**Importance:** High

Arwyn:

I'd like a response to my email below, please, concerning the AR and a privilege log, preferably by this Friday. I'm looping the rest of the parties in as well.

To add a bit more context, it seems to me the record is very likely missing substantial intra-agency communications as well as communications with the third-party consultant. In addition, depending on the nature of the relationship of the consultant, it seems to me internal communications of the consultant may also be subject to disclosure in the AR. I am requesting to see the contract under which the third-party consultant provided assistance with the EIS. It is also questionable that there are no higher level Interior communications given the contention that this project is a National priority. This is a non-exclusive list of concerns. For instance, there are also missing communications with my client and the agency. In short, compared to other similar cases I have litigated, the record seems rather, if not very, sparse.

Related to this, under the stipulated schedule we reached prior to consolidation and prior to new plaintiffs intervening, we have a deadline of August 27 to confer on the AR and a deadline of Sept. 10 to file a motion to supplement the AR. Meanwhile, Leilani emailed the parties back on July 29 about reaching an adjusted global schedule, which seems to make sense, if not necessary. I believe everyone responded with willingness and approval except LNC (unless I missed it). Unless we are going to agree to vacate the schedule or to a new schedule, we need to confer by August 27. I am available at any time next week on August 25 or August 26 to confer. However, if the issues above are not addressed, and very quickly, I expect we will be filing a motion challenging the adequacy of the AR and likely prior to Sept. 10.

The government's prompt attention to these matters would be appreciated. Thanks.

DOMINIC M. CAROLLO

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Roseburg, OR 97470

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FAX: 541-957-5923

[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)

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**From:** Dominic Carollo  
**Sent:** Monday, July 26, 2021 10:20 AM  
**To:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>; Laura Granier ([LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com)) <[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com)>  
**Cc:** [kent@winnemuccalaw.com](mailto:kent@winnemuccalaw.com)  
**Subject:** RE: Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)

Arwyn:

One question I have about the AR is with respect to the deliberate process privilege.

I don't see very many intra-agency communications, nor or agency communications with outside contractors/consultants, related to development of the DEIS and FEIS. Relatedly, I don't see any claim of the deliberative process privilege for any of the documents listed in the AR index you sent Friday.

Have searches for such documents been performed? Is a separate privilege log forthcoming?

If you need further clarification, please let me know. It may be easier to discuss.

Thanks.

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**From:** Carroll, Arwyn (ENRD) <[Arwyn.Carroll@usdoj.gov](mailto:Arwyn.Carroll@usdoj.gov)>  
**Sent:** Friday, July 23, 2021 5:36 PM  
**To:** Dominic Carollo <[dcarollo@carollolegal.com](mailto:dcarollo@carollolegal.com)>; Laura Granier ([LKGranier@hollandhart.com](mailto:LKGranier@hollandhart.com))  
<[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com)>  
**Cc:** [kent@winnemuccalaw.com](mailto:kent@winnemuccalaw.com)  
**Subject:** Bartell Ranch v. McCullough, 3:21-cv-00080 (D. Nev.)

Dominic and Laura,

Pursuant to Paragraph A of the approved scheduling order in this case, please find attached a copy of the draft administrative record index.

Relatedly, several documents in the administrative record contain confidential information, such as information about the location of cultural resources identified through the NHPA process, golden eagle nesting sites, etc. I discussed briefly with Laura and WWP's counsel at the PI hearing, but BLM would like to produce these with a protective order in place. Dominic, would you be amenable to a protective order in this case? I'll circulate a draft PO based on the standard form in the District of Nevada and a proposed motion early next week.

Finally, BLM anticipates send out the administrative record on USB drives. I know that some folks aren't working from the office these days – can you confirm for me that the address on the docket is the one BLM should send the record to, or if there's another address we should use?

Thanks,

Arwyn Carroll

Natural Resources Section

Environment & Natural Resources Division

U.S. Department of Justice



202-305-0465 (desk)

202-598-3315 (mobile)

[arwyn.carroll@usdoj.gov](mailto:arwyn.carroll@usdoj.gov)

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Talasi Brooks

(208)336-9077

[tbrooks@westernwatersheds.org](mailto:tbrooks@westernwatersheds.org)

pronouns: she/her

## OUTGOING

From	Subject	Received	Size	Categories	To	
edwardab@aol.com	Thacker pass Lithium Scoping		2/26/2020 161 KB		wfoweb@blm.gov	Had Attachments no email or attachments
<a href="mailto:rogervv@aol.com">rogervv@aol.com</a>	Bartell Thacker Pass Letter		5/19/2020 52 KB		wfoweb@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Thacker Pass Lithium Mine WFO		5/19/2020 2 MB		nvsoweb@blm.gov	(forwarded to winemucca field officer per letter from NSO) Had Attachments no email or attachments
edwardab@aol.com	Thacker Pass Lithium _Baseline Data Concerns		7/1/2020 2 MB		wfoweb@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Transducer in Windmill Well		7/26/2020 9 KB		kkinder@blm.gov; krehberg@blm.gov	
edwardab@aol.com	Re: Transducer in Windmill Well		7/28/2020 39 KB		kkinder@blm.gov; krehberg@blm.gov	
edwardab@aol.com	Transducer in Windmill Well		7/28/2020 2 MB		kkinder@blm.gov; krehberg@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Re: Transducer in Windmill Well		7/28/2020 21 KB		kkinder@blm.gov; krehberg@blm.gov	
edwardab@aol.com	Re: Transducer in Windmill Well		7/30/2020 57 KB		kkinder@blm.gov; krehberg@blm.gov	
edwardab@aol.com	Re: [EXTERNAL] Data request Thacker Pass DEIS		8/27/2020 29 KB		BLM_NV_WDO_Thacker_Pass@blm.gov	
edwardab@aol.com	Re: Transducer in Windmill Well		9/2/2020 52 KB		kkinder@blm.gov; krehberg@blm.gov	
edwardab@aol.com	Bartell Comments Attachment I part 4 and 5		9/14/2020 20 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Re: Bartell Comments Attachment I part 3		9/14/2020 10 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Bartell Comments Attachment I part 2		9/14/2020 19 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Bartell Comments Attachment I part 1		9/14/2020 10 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Bartell Comment Attachment H		9/14/2020 20 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Bartell Comment Attachments F and G		9/14/2020 2 MB		blm_nv_wdo_thacker_pass@blm.gov	Had Attachments no email or attachments
edwardab@aol.com	Re: [EXTERNAL] Bartell Comments Attachment I part 4 and 5		9/15/2020 23 KB		BLM_NV_WDO_Thacker_Pass@blm.gov	
edwardab@aol.com	Documents Request Thacker Pass		12/4/2020 6 KB		kloda@blm.gov; andrew.newman@icf.com; wfoweb@blm.gov	
edwardab@aol.com	Thacker Pass FEIS data request		12/6/2020 5 KB		kloda@blm.gov; wfoweb@blm.gov; andrew.newman@icf.com	
edwardab@aol.com	Fwd: Thacker Pass FEIS data request		12/8/2020 6 KB		krehberg@blm.gov	
edwardab@aol.com	Re: [EXTERNAL] Documents Request Thacker Pass		12/9/2020 16 KB		kloda@blm.gov	
Edward Bartell	<b>Hand delivered FEIS COMMENTS CD and cover letter</b>		12/31/2020		Cover Letter missing, Dr. Powell's comments missing Attachments Missing	

## INCOMING

WDO_Webmail, BLM_NV	RE: [EXTERNAL] Bartell Thacker Pass Letter	5/20/2020 14 KB	
Ted Grandy	RE: Transducer in Windmill Well	7/28/2020 41 KB	
Ted Grandy	RE: Transducer in Windmill Well	7/30/2020 62 KB	
Ted Grandy	RE: Transducer in Windmill Well	9/2/2020 74 KB	
Ted Grandy	RE: Transducer in Windmill Well	9/4/2020 1,011 KB	Had Attachments no email or attachments