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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BARTELL RANCH, LLC , a Nevada)	Case No.
limited liability company and EDWARD)	
BARTELL ,)	COMPLAINT
)	
Plaintiffs,)	
)	
v.)	
)	
ESTER M. MCCULLOUGH ,)	
Winnemucca District Manager, Bureau of)	
Land Management, BUREAU OF LAND)	
MANAGEMENT ,)	
)	
Defendants.)	

Doc 1-22 COMPLAINT

INTRODUCTION

1. Plaintiffs Bartell Ranch, LLC and Edward Bartell (collectively, “Bartell Ranch”) challenge the decision by Defendant Ester M. McCullough, District Manager for the Winnemucca District of the Bureau of Land Management (“BLM”), Department of Interior, to approve the Thacker Pass Lithium Mine Project (the “Mine”), a proposal for a massive open pit lithium mine with a disturbance area covering more than 5,000 acres and a total project area covering more than 17,000 acres of federal public land administered by BLM. Bartell Ranch is the holder of a federal grazing permit, private ranch lands, and water rights that are imminently threatened with irreparable harm by the construction and operation of the Mine. The Mine likewise threatens irreparable harm to fish, wildlife, wetlands, and streamflows, including habitat for the Lahontan Cutthroat Trout (“LCT”), which is listed as threatened under the Endangered Species Act (“ESA”).

2. On January 15, 2021, Defendant McCullough signed a Record of Decision (“ROD”) approving the Mine. The ROD selected Alternative A, the Proposed Action, from a December, 2020 Final Environmental Impact Statement (“FEIS”), which was prepared by consultants for the project proponent, Lithium Nevada Corporation (“LNC”), and which presents a one-sided, deeply-flawed, and incomplete analysis and characterization of the proposed project and its likely adverse environmental impacts, and in particular to water resources affecting wetlands, streamflows, LCT and LCT habitat, as well as the water rights and private rangelands held and owned by Bartell Ranch. The project consultants relied upon grossly inaccurate, incomplete, and inadequate data for constructing baselines and models purporting to estimate impacts to water resources caused by the groundwater pumping that would be associated with the Mine. The project consultants did so in a manner that masks, or will mask, the likely

environmental impacts and, in addition, makes the proposed mitigation concepts and strategies meaningless, inadequate and ineffective.

3. As described in the FEIS and approved in the ROD, the Mine will be located entirely on public land administered by BLM in Humboldt County, Nevada. The sprawling 17,933-acre project area is to be located approximately 17 miles north-northwest of Orovada, Nevada, in a highly sensitive ecological area that is famously dry, with a commensurately limited and delicate network of water resources. The Mine will require pumping substantial quantities of groundwater for its operations, at 2,600 acre-feet annually during Phase 1, and 5,200 acre-feet annually during Phase 2. The groundwater reserves within the “Orovada Subarea,” where this pumping will take place, is already overallocated by approximately 30,271 acre-feet a year. Additionally, the approximately 400’ deep open pit will draw down water tables, and the North and South Exploration operations will drop water tables by allowing water to flow from upper aquifers to lower aquifers, as has happened with prior LNC exploration. In addition, the Mine intends to use a mining and processing method that will involve the use of millions of tons of toxic sulfuric acid and the deposit of contaminated tailings containing sulfates, arsenic, antimony, and uranium.

4. The Mine and the associated pumping will pose significant adverse harm to several sensitive and protected species—including LCT and Greater Sage Grouse—through direct, indirect, and cumulative impacts. It is well-established within the academy of hydrological science, as well as within Ninth Circuit case law, that excessive groundwater pumping in an already-overallocated basin is inextricably linked to reductions in streamflows within the hydrological nexus. In addition, in signing the ROD, BLM has wholesale ignored the inconsistency of the Mine with BLM’s Sage Grouse plans and associated regulations.

5. Immediately north of the proposed Mine site are several perennial streams known to be inhabited by LCT, and the presence of which is well-understood and comprehensively

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documented throughout decades of catalogued research and reports completed by the Nevada Department of Wildlife (“NDOW”) in conjunction with the U.S. Fish and Wildlife Service (“FWS”). Two of the streams immediately to the north of the proposed Mine location where LCT are known to inhabit are Pole Creek and Crowley Creek. Indeed, in NDOW’s 2012 LCT Study for the Western Region, one of the specific objectives of the study was identifying genetically-pure LCT in Crowley Creek via electroshocking, and then transporting them in aerated tanks to various reaches of Pole Creek where they were then released to supplement the Pole Creek population. This effort was described as one “to salvage and protect the last pure LCT within the Crowley Creek drainage,” which was undertaken through “extensive genetic sampling and mapping, salvaging pure LCT and reintroducing them into the Pole Creek tributary of Crowley Creek[.]” and confirms the existence and importance of the Pole Creek LCT population to the continued existence and recovery of the species.

6. In approving the FEIS and ROD for this project, BLM acknowledges that the Mine’s proposed pumping volume has “the potential for mine related groundwater aquifer drawdown,” and that “[w]ater produced and used by the mine from the proposed production wells could also affect surface water stream flows in nearby perennial and intermittent streams or springs.” In the FWS 1995 Recovery Plan for the Lahontan Cutthroat Trout, “[r]eduction and alteration of stream discharge” is listed as the very first of the “[m]ajor impacts to LCT habitat and abundance[.]”

7. Instead of adhering to the statutory duties imposed upon the agency with respect to the protection of sensitive species such as the LCT, BLM relied entirely upon flawed and error-laden findings made by a third-party contractor that compiled data for the EIS at the direction of, and in return for payment from, the project applicant LNC. The FEIS made the arbitrary and capricious finding that the proposed Mine and its associated pumping would not pose any threat

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to ESA-listed LCT, noting in the FEIS that “[a]ccording to Piteau Associates, simulated flow losses to [Lahontan Cutthroat Trout] occupied reaches of Crowley and Pole Creek due to water use requirements from the proposed Project would not be expected.” In completely ignoring impacts to LCT, LCT habitat, and other sensitive wildlife species and habitats, BLM acted in a manner that is arbitrary, capricious, an abuse of discretion, and contrary to law under the National Environmental Policy Act (“NEPA”) 42 U.S.C. §§ 4321–61, Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–1787, and Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, requiring vacatur of the ROD by this Court.

8. For example, but without limitation, BLM approved the ROD based on the FEIS’s inadequate, incomplete, and, in several cases, misrepresented analysis and collection of the baseline streamflow data and, thereby, failed to consider the likely impacts of the Mine on the LCT population in Pole Creek. In the FEIS, BLM relied upon reports that make the conclusory and objectively inaccurate determination that “Pole Creek is an ephemeral stream.” The existence of a residential LCT population necessarily precludes the characterization of this stream as anything other than a perennial stream. As a result of the objectively inaccurate characterization of the *perennial* flows on Pole Creek, the FEIS’s data on pre-mining calibration flux targets and all other modeling based upon this incorrect data and characterization as an “ephemeral creek” are fundamentally flawed.

9. By approving the ROD based on the FEIS’s inadequate, incomplete, and in some cases objectively flawed collection of baseline data, the ROD was approved based on the FEIS’s inadequate and incomplete analysis of likely impacts of the Mine on LCT and LCT habitat. Even though the FEIS acknowledged that the Mine-associated pumping will have an impact on the groundwater levels and surface flows (and even that the test-pumping conducted during the

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