

March 11, 2022

Via emailSfontaine@ndep.nv.gov and Certified Mail/Return Receipt Requested 7017 0530 0000
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Executive Secretary
State Environmental Commission
901 South Stewart Street, Ste 401
Carson City, NV 89701

Re: Petition for Leave to Intervene

Dear Executive Secretary:

Please accept for filing with the Nevada State Environmental Commission the attached Petition for Leave to Intervene, filed on behalf of Lithium Nevada Corp. in the action initiated by Great Basin Resource Watch Notice of appeal of Water Pollution Control Permit Number NEV2020104.

Should you have any questions, or require additional information, please advise.

Sincerely,



Laura K. Granier
Partner
of Holland & Hart LLP

LKG:ald

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1 **BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION**

2 **IN THE MATTER OF:**

3 Great Basin Resource Watch appeal challenging)
4 Water Pollution Control Permit No. NEV2020104)
5 _____)

6 **LITHIUM NEVADA CORP.’S PETITION FOR LEAVE TO INTERVENE**

7 Lithium Nevada Corp. (“Lithium Nevada”), by and through its attorneys, Holland & Hart
8 LLP, hereby petitions the Nevada State Environmental Commission (“Commission”) for leave to
9 intervene in the above-captioned matter, in which Great Basin Resource Watch (“GBRW”)
10 challenges Lithium Nevada’s Water Pollution Control Permit Number NEV2020104, pursuant to
11 Nevada Administrative Code (“NAC”) 445B.8915.
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13 This petition for leave to intervene (“Petition”) provides the information required under
14 NAC 445B.8915, including a statement of Lithium Nevada’s direct and substantial interest in the
15 proceeding as the permittee under the challenged permit. Lithium Nevada respectfully requests
16 that the Commission grant its petition and issue an order allowing the requested intervention,
17 permitting Lithium Nevada to: (1) fully participate in GBRW’s requested appeal hearing, including
18 the opportunity to present evidence and witnesses pursuant to NAC 445B.8914; (2) participate in
19 any prehearing conferences held pursuant to NAC 445B.8913; and (3) submit written argument to
20 the Commission regarding the merits of GBRW’s appeal.
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22 **I. THE COMMISSION SHOULD GRANT LITHIUM NEVADA’S PETITION**

23 **A. Standard for Intervention**

24 Under NAC 445B.8915(1), a non-party to a Commission proceeding may file with the
25 Commission a written petition for leave to intervene where the non-party “believes that [it] may
26 be directly and substantially affected by the proceeding.” Such a petition must be filed with the
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1 Commission within 10 calendar days after the relevant notice of appeal is filed. NAC
2 445B.8915(2). The petition for leave to intervene must include the following information:

- 3
4 (a) Identify the proceeding in which the petitioner requests leave to intervene;
5 (b) Set forth the name and address of the petitioner and, if the petitioner is
6 represented by an attorney or other authorized person, the name, address and
7 telephone number of the attorney or other authorized person;
8 (c) Contain a clear and concise statement of the direct and substantial interest of
9 the petitioner in the proceeding;
10 (d) Set forth the manner in which the petitioner will be affected by the proceeding;
11 and
12 (e) Include a statement indicating whether or not the petitioner intends to present
13 evidence in the proceeding.

14 NAC 445B.8915(2)(a)-(e).

15 The information required under NAC 445B.8915(2) is provided below. As demonstrated
16 here, the Commission should grant the Petition because it is timely filed; Lithium Nevada has a
17 direct and substantial interest in the proceeding as the owner of the project that is the subject of
18 the challenged permit; and Lithium Nevada will be substantially affected by the Commission's
19 decision in this proceeding and any project delays that could arise if the permit authorization is
20 overturned as a result of this proceeding.

21 **B. Information Regarding the Petitioner and the Thacker Pass Project**

22 1. Lithium Nevada, formerly known as Western Lithium Nevada, was formed in
23 September 2007.

24 2. Lithium Nevada is currently working on developing the Thacker Pass Project (the
25 "Project") – a lithium mine and processing facility to be constructed on federal lands managed by
26 the Bureau of Land Management ("BLM") in Humboldt County, Nevada – pursuant to a Record
27 of Decision ("ROD") which the BLM issued approving the Project in January 2021 following a
28 thorough and years-long environmental review. Lithium Nevada has invested significant

1 resources since 2011 to support the collection of environmental data and collaborate with
2 stakeholders as well as state and federal agencies to design and permit the Project, which represents
3 one of the most advanced and environmentally sound lithium projects in the world. Once
4 constructed, the Project is positioned to become a cornerstone of the U.S. lithium supply for
5 batteries that are deemed critical under U.S. policy, supporting President Biden’s policy objectives
6 to support domestic production of electric vehicle batteries to help tackle the climate crisis, build
7 resilient supply chains, and support national security.
8

9 3. Pursuant to NAC 445B.8915(2)(b), Lithium Nevada’s principal place of business,
10 mailing address, and telephone number are as follows:

11 Lithium Nevada Corp.
12 5310 Kietzke Lane, Suite 200
13 Reno, NV 89511
14 Phone: (775) 827-3318

15 4. Pursuant to NAC 445B.8915(2)(b), the name, mailing address, and telephone
16 number for Lithium Nevada’s counsel with respect to this Petition are as follows:

17 Laura K. Granier
18 Erica K. Nannini
19 Holland & Hart LLP
20 5441 Kietzke Lane, Second Floor
21 Reno, Nevada 89511
22 Phone: (775) 327-3000
23 lkgranier@hollandhart.com
24 eknannini@hollandhart.com

25 **C. Information Regarding the Challenged Permit**

26 On April 2, 2020, Lithium Nevada filed an application with Nevada Department of
27 Conservation and Natural Resources, Division of Environmental Protection, Bureau of Mining
28 Regulation and Reclamation (“NDEP”) for a Water Pollution Control Permit for the Project. On
February 25, 2022, NDEP issued Water Pollution Control Permit Number NEV2020104 (the

1 “Permit” or “Lithium Nevada’s Permit”), pursuant to Nevada Revised Statutes (“NRS”) 445A.300
2 through 445A.730, and the regulations promulgated thereunder, authorizing Lithium Nevada to
3 construct, operate, and close the Project in accordance with the requirements and conditions listed
4 in the Permit. The Permit becomes effective on March 12, 2022, and shall remain effective until
5 March 11, 2027, pursuant to its terms.

6 **D. Lithium Nevada’s Petition is Timely**

7 On March 7, 2022, GBRW filed with the Commission “Form #3,” requesting an appeal
8 hearing with regard to Lithium Nevada’s Permit pursuant to NAC 445B.890 (“Notice of Appeal”),
9 arguing that NDEP’s decision to issue the Permit was arbitrary and capricious or characterized by
10 an abuse of discretion, clearly erroneous, and affected by other error of law.
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12 Lithium Nevada petitions the Commission for leave to intervene in this appeal challenging
13 the Permit, as initiated by GBRW on March 7, 2022. *See* NAC 445B.8915(2)(a). This Petition is
14 filed within ten calendar days of GBRW’s Notice of Appeal – indeed, just four days after the
15 Notice of Appeal was filed – and is therefore timely pursuant to NAC 445B.8915(2).
16

17 **E. Lithium Nevada Has a Direct and Substantial Interest in the Proceeding as**
18 **the Permittee of the Challenged Permit, which Interests Could be Impaired**
19 **by this Proceeding**

20 GBRW’s Notice of Appeal challenges Lithium Nevada’s Permit, which is necessary for
21 Lithium Nevada to construct, operate, and close the Project for which it has already received
22 federal approval to construct – giving rise to Lithium Nevada’s clear, direct, and substantial
23 interest in the outcome of the proceeding currently before the Commission pursuant to NAC
24 445B.8915(2)(c) and jeopardizing both Lithium Nevada’s valid and existing rights and financial
25 interest in the Permit pursuant to NAC 445B.8915(2)(d).

26 First, Lithium Nevada’s interest in the continued validity of its Permit is significantly-
27 protectable, statutorily-recognized, and protected as a matter of Due Process. NDEP issued the
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1 Permit to Lithium Nevada pursuant to NRS 445A.300 through 445A.730, and may only revoke,
2 modify, or suspend the valid and existing Permit “for cause” as provided in NRS 445A.600. Thus,
3 as the Permittee and owner of the challenged Permit, which is necessary for Lithium Nevada’s
4 operations at Thacker Pass, Lithium Nevada has a protectable interest in the Permit and a right to
5 be heard in any proceeding challenging that Permit. *See, e.g., Nw. Forest Res. Council v.*
6 *Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) (to demonstrate a sufficient interest related to the
7 subject of the current action in the context of FRCP Rule 24(a)(2) intervention, the petitioner must
8 establish a significantly protectable interest that has some relationship with the claims at issue);
9 *Buckingham v. Sec’y of U.S. Dep’t of Agric.*, No. 307CV00073BESRAM, 2009 WL 10691087, at
10 *11-12 (D. Nev. Mar. 12, 2009), *aff’d sub nom. Buckingham v. Sec’y of U.S. Dep’t of Agr.*, 603
11 F.3d 1073 (9th Cir. 2010) (concluding that “[b]ecause the regulation restrains the [agency’s]
12 discretion to cancel an existing permit, a permittee appears to have a legitimate claim of entitlement
13 to the continued possession of an existing permit[,]” giving rise to a protected property interest in
14 the duration of the permit for Due Process purposes).

17 Further, Lithium Nevada also has a clear financial interest in this proceeding because it
18 directly threatens Lithium Nevada’s substantial investment in the Project, along with Lithium
19 Nevada’s expected revenue from the Project. *See Ass’n of Pub. Agency Customers v. Bonneville*
20 *Power Admin.*, 733 F.3d 939, 951 (9th Cir. 2013) (the threat to economic injury is a legally
21 protected interest that warrants intervention as a matter of right under FRCP 24(a)(2)). In this
22 case, Lithium Nevada has a significant protectable interest in its unpatented mining claims and the
23 duly authorized Plan of Operations for the Thacker Pass Mine, and the continued validity of the
24 Permit is necessary for Lithium Nevada to construct and operate the Project. Lithium Nevada
25 intends to construct and operate the Project pursuant to its valid existing rights under both the
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1 Permit and the BLM-issued ROD, which represent the culmination of Lithium Nevada's
2 approximately \$100 million investment over the course of a decade of Project research, design,
3 and permitting. Currently, dozens of people are employed on the Project and hundreds of
4 employees will be working there in the future. Because the Permit is necessary for Lithium
5 Nevada's Project, the challenge at issue here poses a threat to Lithium Nevada's substantial interest
6 in the Project that is of tremendous importance to not only Lithium Nevada's economic interest in
7 developing its mining claims pursuant to federal approvals, but also to local, state, and national
8 interests in developing this critical mineral.
9

10 Lithium Nevada's interests would be substantially affected by the Commission's
11 determination in this action. *See* NAC 445B.8915(2)(d). To the extent GBRW's Notice of Appeal
12 requests that the Commission order NDEP to vacate Lithium Nevada's Permit and require NDEP
13 to gather additional analysis about the Project before reissuance, the Commission's decision in this
14 proceeding has the potential to adversely affect Lithium Nevada's interest under both the Permit
15 and the ROD, potentially causing harmful and costly delays for the Project jeopardizing Lithium
16 Nevada's \$100 million investment and impacting dozens of existing employees and hundreds of
17 future employees. *See Sw. Ctr for Biological Diversity v. Berg*, 286 F.3d 810, 822 (9th Cir.
18 2001) (in determining impairment of a potential intervenor's interest under FRCP 24(a)(2),
19 the Ninth Circuit Court of Appeals follows the "guidance of Rule 24 advisory notes that
20 state that '[i]f an absentee would be substantially affected in a practical sense by the
21 determination made in an action, he should, as a general rule, be entitled to intervene.'").
22 Even brief delays to the ability to begin Project construction as a result of GBRW's requested
23 relief in this proceeding would severely prejudice Lithium Nevada.
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1 **F. Granting Lithium Nevada’s Intervention is in the Public Interest**

2 Granting Lithium Nevada’s requested intervention is also in the public interest. In addition
3 to the significant and irreparable harms Lithium Nevada stands to suffer, vacatur of the Permit or
4 even a substantial delay of mining at the Project site could result in significant harms to the public
5 given the importance of domestic lithium development to our nation’s critical supply chain and
6 President Biden’s policy identified to ensure national security and tackle the climate crisis,
7 specifically identifying the need to leverage domestic development of our nation’s lithium
8 reserves. *See* Executive Order 14017 (Feb. 24, 2021), *available at*
9 <https://www.govinfo.gov/app/details/DCPD-202100163> (last visited March 10, 2022); *see also*
10 The White House Statements and Releases, *FACT SHEET: Securing America’s Critical Supply*
11 *Chains*, February 24, 2021, *available at* [https://www.whitehouse.gov/briefing-room/statements-](https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/fact-sheet-securing-americas-critical-supply-chains/)
12 [releases/2021/02/24/fact-sheet-securing-americas-critical-supply-chains/](https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/fact-sheet-securing-americas-critical-supply-chains/) (last visited March 10,
13 2022). Either outcome would also result in significant economic harm to the public at the local,
14 state, and national levels given the substantial economic and employment benefits attributed to the
15 Project, where construction is expected to create more than 800 high-paying jobs, operations will
16 employ approximately 300 Nevadans, and the Project will result in \$265.2 million in construction-
17 related economic activity in Humboldt County. Halting the Thacker Pass Project would create
18 vulnerabilities to key growth areas of the national economy and defense supply chain, without
19 justification given the extensive environmental studies, review, and mitigation that have been
20 considered for the Project.
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24 **G. Granting Lithium Nevada Intervention Will Not Unduly Broaden the Issues**

25 Finally, granting the Petition will not unduly broaden the issues or prejudice any party to
26 the proceeding because Lithium Nevada’s Permit is that which GBRW has challenged. *See* NAC
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1 445B.8915(3). Lithium Nevada does not seek to expand the issues beyond those which GBRW
2 raised in its Notice of Appeal, but instead to merely defend its Permit by responding to GBRW's
3 arguments. Because this Petition is timely filed, Lithium Nevada's participation will not delay the
4 proceedings or require the Commission to alter any existing schedule.
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6 Accordingly, the Commission should grant Lithium Nevada's Petition to ensure that it is
7 permitted to participate fully in proceedings which jeopardize its rights under the Permit, its
8 interest in the continuing validity of the Permit, and its substantial investment in the Project.

9 Finally, pursuant to NAC 445B.8915(2)(e), Lithium Nevada intends to present evidence in
10 the proceeding as needed to defend its direct and substantial interests in the Permit.
11

12 **II. CONCLUSION AND REQUEST FOR RELIEF**

13 Lithium Nevada respectfully requests that the Commission grant this Petition for Leave to
14 Intervene and issue an order allowing intervention, which permits Lithium Nevada full
15 participation in any and all proceedings, briefing, and the presentation of evidence and witnesses
16 related to the Notice of Appeal.
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18 Dated and respectfully submitted this 11th day of March, 2022.
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20 HOLLAND & HART LLP

21 By: *Laura K. Granier*
22 Laura K. Granier (NBN 7357)
23 Erica K. Nannini (NBN 13922)
24 5441 Kietzke Lane, 2nd Floor
25 Reno, Nevada 89511
26 Telephone: (775) 327-3000
27 Facsimile: (775) 786-6179
28 lkgranier@hollandhart.com
eknannini@hollandhart.com

Attorneys for Lithium Nevada Corp.