

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

**FILED**  
SEP 23 2020 *JS*  
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 89681  
FILED BY Lithium Nevada Corporation  
ON April 8, 20 20



PROTEST

Comes now Bartell Ranch LLC  
Printed or typed name of protestant  
whose post office address is PO Box 130, Orovada, Nevada 89425  
Street No. or PO Box, City, State and ZIP Code  
whose occupation is Livestock producer and farming and protests the granting  
of Application Number 89681, filed on April 8, 20 20  
by Lithium Nevada Corporation for the

waters of an underground source situated in Humboldt  
an underground source or name of stream, lake, spring or other source  
County, State of Nevada, for the following reasons and on the following grounds, to wit:  
See attached Bartell Ranch Protest.

THEREFORE the Protestant requests that the application be denied  
Denied, issued subject to prior rights, etc., as the case may be  
and that an order be entered for such relief as the State Engineer deems just and proper.

**Pursuant to NRS 53.045, I hereby certify, under penalty of perjury of the laws of the State of Nevada, that the foregoing is true and correct.**

Signed *O. Kent Maher*  
Agent or protestant  
O. Kent Maher  
Printed or typed name, if agent  
Address PO Box 130  
Street No. or PO Box  
Winnemucca, Nevada 89446  
City, State and ZIP Code  
775-623-5277  
Phone Number  
kent@winnemuccalaw.com  
E-mail

**+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

The Applicant is proposing to change the point of diversion and manner and place of use of Humboldt County, Nevada water rights that are currently used for irrigation on a farm the Applicant owns, and other water rights the Applicant has purchased/will purchase. Water is proposed to be transferred to two wells (one drilled and another that has yet to be drilled). The wells are several miles distant from the existing points of diversion. The water will then be transferred by pipeline several additional miles to the Applicant's mine site.

The Protestant holds several vested, certificated, and permitted water rights in the area that will likely be injured by this application. In addition, dropping water tables will adversely impact vegetation and associated grazing rights held by the Protestant. Also, the Applicant intends to burn hundreds of tons of sulfur, every day, and use water to convert the resulting gas to sulfuric acid. The resulting pollution and odor from the process will devalue the private lands of Protestant and other property owners in the area, adversely affect the economy of the area and be detrimental to wetlands, fish, wildlife, and scenic and cultural values.

Protestant is challenging and objecting to the proposed transfer for the following reasons:

- 1) There is no unappropriated water at the proposed source of supply.
- 2) The application, if granted, will cause conflicts with existing rights.
- 3) The proposed wells will cause negative interference with existing wells.
- 4) The average annual recharge of the groundwater supply in the affected groundwater basin will not be adequate for the needs of all permittees and all vested water rights claimants.
- 5) The application, if granted, will be detrimental to the public interest.
- 6) A portion of the water proposed for transfer has not been used for a period of five or more years and is subject to a declaration of forfeiture or abandonment pursuant to NRS 534.090.
- 7) The Applicant has not provided proof satisfactory pursuant to NRS 533.370(1)(c) of the financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 8) Applicant has failed to identify and commit to mitigation of the impacts caused by groundwater pumping and mine dewatering and ensure that wildlife which customarily use the water from affected springs will have access to it as required by NRS 533.367.

- 9) There are extensive potential hydrological and environmental impacts of the application, if granted, and the State Engineer must conduct an impartial study as provided under for under NRS 533.368 to analyze all the impacts of the proposed transfer, and all related activities of the proposed mine. Applicant has conducted studies; however, Protestant has identified several errors in such studies and the State Engineer should not rely on the Applicant's studies.
- 10) The transferred water will be used to generate electricity via steam turbines which, according to Protestant's understanding, will be primarily sold out of state and it is not in the public interest or the economic welfare of the State of Nevada to allow a beneficial use of water to generate energy to be used out of state per NRS 533.372.
- 11) The State Engineer has not considered additional information to enable a determination whether the public interest will be adequately guarded per NRS 533.375 from the potential impact of cumulative diversions proposing to divert more than 10 cubic feet per second of water for a single project.
- 12) The State Engineer has not considered pursuant to NRS 533.370(3): (i) whether the Applicant has justified the need to import water from another basin; (ii) if a plan of conservation of water is advisable for the basin into which the water is to be imported; (iii) whether the proposed action is environmentally sound as it relates to the basin from which the water will be exported; and, (iv) whether the proposed action is a long-term use which will not unduly limit the future growth and development in the basin from which the water is exported. A portion of the proposed place of use is within another basin (Kings River Basin 30A), and it appears most of the remaining water involved in the proposed transfer will be permanently removed from the Quinn River Basin as it is converted to steam to run steam turbines and vents into the atmosphere, thus resulting in permanently transferring the water out of the basin. Additionally, water will be bound with sulfur and transformed into sulfuric acid (up to 5,800 tons per day per POO Phase 2 projections) and it does not appear the sulfur will ever be unbound from the water atoms, thus the water is permanently removed from the basin.
- 13) The groundwater basin is not open to new appropriation. The Applicant is proposing to transfer water rights several miles away and across the Quinn River. The water table on the West side of the Quinn River is very close to the surface and has not suffered the precipitous declines experienced on the East side of the Quinn River where the water is being transferred from. According to NDWR website, the water table under the Applicant's farm where a portion of the total water rights are to be transferred from has a static level of roughly 290 feet. The static water level is roughly 30 feet at the proposed point of diversion. The two sources of water are separate and distinct (between the

existing and proposed points of diversion). In effect, the application results not in a change in point of diversion, but in a new appropriation.

- 14) The proposed transfer will be detrimental to Protestant's rights. The Applicant's research established a direct hydrologic connection with Protestant's senior water rights. After a short period of test pumping at the proposed place of use; the Applicant measured an impact on Protestant's stock water well. If the Application is granted, Protestant anticipates a reduction in the water table over a large area affecting vegetation, springs, stockwater, and irrigation rights owned by Protestant.
- 15) The Applicant holds Permit Nos. 82384 and 82385 for nominal amounts of water associated with the Applicant's organoclay extraction operation at the same location as the Applicant's proposed place of use of water for the subject application. According to the NDWR website, the Applicant filed extensions for the two permits and has yet to file a proof of completion or proof of beneficial use originally due in 2015. The December 31, 2019 Consolidated Financial Statements of Lithium Americas (Lithium Nevada's parent company) state that Lithium Nevada discontinued their organoclay business and incurred very substantial net operating losses. The inability of Applicant to perfect a water right transfer in a timely manner for a project expected to cost \$100,000 casts doubt that Applicant will be able to perfect a water right for a project estimated to cost \$520,000,000.
- 16) The Applicant's representative advised Protestant in writing that the duty of the water proposed for transfer was to be reduced by 25%. Such a reduction is necessary to adjust for the lack of recharge and subsequent increase in net consumptive use when the manner of use is changed from agriculture to mining and milling; the subject application does not reflect the reduction.