

THORPE SHWER, P.C.

William L. Thorpe (No. 005641)

Mitchell W. Fleischmann (No. 021075)

Bree Nevarez (035671)

3200 North Central Avenue, Suite 1560

Phoenix, Arizona 85012-2441

Telephone: (602) 682-6100

Email: docket@thorpeshwer.comEmail: wthorpe@thorpeshwer.comEmail: mfleischmann@thorpeshwer.comEmail: bnevarez@thorpeshwer.com**Attorneys for Intervenor Defendant Arizona Lithium Limited****UNITED STATES DISTRICT COURT****DISTRICT OF ARIZONA**Hualapai Indian Tribe of the Hualapai
Indian Reservation, Arizona,

Plaintiff,

v.

Debra Haaland in her official capacity
as the United States Secretary of the
Interior; United States Bureau of Land
Management; Ray Suazo in his official
capacity as State Director of the United
States Bureau of Land Management;
and Amanda Dodson in her official
capacity as Field Office Manager of the
United States Bureau of Land
Management Kingman Field Office,

Defendants.

Arizona Lithium Limited,

Intervenor Defendant.

NO. 3:24-cv-08154-DJH

**INTERVENOR DEFENDANT
ARIZONA LITHIUM LIMITED'S
SUR-REPLY TO PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER
FOLLOWED BY A PRELIMINARY
INJUNCTION**

Intervenor Defendant Arizona Lithium Limited ("AZL") submits this sur-reply to
Plaintiff's Motion for Temporary Restraining Order Followed by a Preliminary Injunction

(the “Motion”). Plaintiff’s Reply in support of its Motion (“Reply”) improperly asserts multiple disputed statements as conceded facts. AZL files this sur-reply to rebut two of Plaintiff’s misstatements in particular: (1) that the Sandy Valley Exploration Project’s (“Project”) drilling will perforate a potential water source of Ha’Kamwe’, and; (2) that AZL entered into an agreement with Plaintiff to halt drilling at the Project site from August 10-19, 2024.

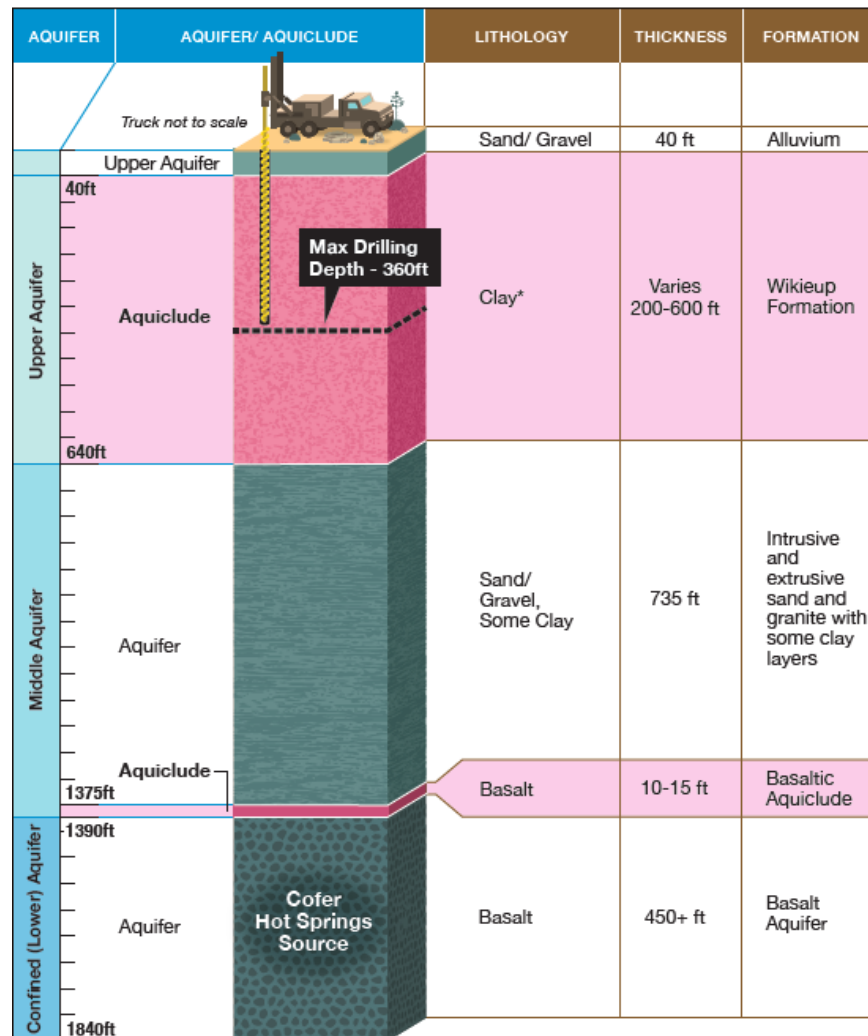
Plaintiff’s Motion and Reply do not fulfill the burden necessary to warrant the extraordinary remedy of a preliminary injunction. Accordingly, AZL requests this Court deny Plaintiff’s Motion.

I. The drilling will not affect the lower aquifer that feeds Ha’Kamwe’.

The first inaccurate statement in Plaintiff’s Reply claims that the Bureau of Land Management (“BLM”) conceded “the Project’s drilling will perforate a potential source of the spring’s flows”, resulting in “significant risk of irreparable harm. . . .” (Dkt. 35 at p. 1.) There is no evidentiary basis that supports Plaintiff’s speculative argument that the water source of Ha’Kamwe’ will be affected by drilling at the Project. Neither BLM’s nor AZL’s briefing concludes that Ha’Kamwe’s water source is in imminent danger of being perforated by the scheduled drilling at the Project site.

Throughout the Reply, Plaintiff muddies the term “aquifer,” creating a blurred vision of the drilling directly impacting the water that sources Ha’Kamwe’. Importantly, there are three geologically distinct aquifers at the project site identified by their vertical relationship to each other—the upper, middle, and lower aquifers. (Dkt. 15-1 at p. 20.) As clearly stated within the Final Environmental Assessment (“EA”): “The aquifer that supplies the Cofer Hot Spring (*Ha’Kamwe’*) is a deeper confined aquifer (Lower Aquifer) that is geologically isolated from the overlying aquifers (Upper and Middle Aquifers) by an aquitard.” (*Id.* at p. 21.) Based on the fact that the Project’s drilling will only reach 360 feet in depth, contact with the middle or lower aquifer will not occur as they are simply too

far beneath the drilling depth. (Dkt. 15-2 at p. 9, demonstrating the depth of the middle aquifer starts at 640 ft. and the lower aquifer starts at 1390 ft.)



(*Id.*)

Further, the lack of any risk of irreparable harm to Ha'kamwe' is demonstrated by the drilling that previously occurred at the Project during its prior two phases. No groundwater was encountered during drilling at the site. (Dkt. 28, Ex. A at ¶ 47.) Additionally, in the unlikely instance any groundwater is encountered, no irreparable harm will occur because the EA requires immediate mitigation measures: "protection of water resources would be provided by promptly plugging and abandoning all core holes especially those that intersect water in accordance with Arizona Administrative Code R12-

1 15-816.” (Dkt. 15-1 at p. 21.) Plaintiff’s claim that there is “no dispute regarding the core
 2 issue: the Project may affect the spring’s hydrology” is simply not true. (Dkt. 35 at p. 9.)
 3 AZL vigorously disputes Plaintiff’s unsubstantiated belief and the contrary position is well
 4 documented through the EA and briefing, and also confirmed by AZL’s actual experience
 5 during the prior drilling activity.

6
 7 In issuing the EA, BLM properly considered the potential harms to Ha’Kamwe’ by
 8 providing appropriate measures to prevent and limit any harm from occurring. Plaintiff’s
 9 inability to demonstrate a likelihood of suffering irreparable harm is fatal to their argument
 10 that a preliminary injunction is warranted here. *See Conservation Cong. v. U.S. Forest*
 11 *Serv.*, 720 F.3d 1048, 1054 (9th Cir. 2013) (identifying the four elements a plaintiff must
 12 show for issuance of a preliminary injunction, ***including likelihood of suffering***
 13 ***irreparable harm***) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 22 (2008)). Accordingly,
 14 Plaintiff’s request for a preliminary injunction should be denied.

15 **II. AZL did not enter into an agreement with Plaintiff to stop drilling.**

16 Second, the Reply misstates correspondence from AZL to Plaintiff concerning
 17 drilling at the Project site. Specifically, the Reply states “AZL...now disavows the
 18 company’s statement to the Tribe that it would not do any drilling from August 10 to 19
 19 while discussions continued.” (Dkt. 35 at p. 17.) No such agreement occurred.

20 On August 9, 2024, AZL sent a letter via email to Duane Clarke, Chairman of
 21 Hualapai Tribe. In that letter, AZL agreed to cease its planned expansion of its area of
 22 ground disturbance and not increase the number of drill pads: “AZL (and its contractors)
 23 will cease additional grading, road preparation, or placement of drill pads from August 10,
 24 2024 through August 19, 2024 to promote our conversations. Please note, however, our
 25 agreement to not expand our exploratory activities for that period of time is based on us
 26 setting a meeting date for next week.” (Dkt. 11-8, at Attachment 14.) AZL did not agree to
 27
 28

1 stop all activities and did not suggest that it would pause drilling that was already
2 scheduled.

3
4 The reality is that the Tribe was aware of the planned drilling activities and, despite
5 such knowledge, allowed the drilling efforts to move forward and did not promptly seek
6 any emergency relief for weeks following its filing of the Complaint. While Plaintiff argues
7 that their “slight delay” in filing the Motion was due in part to “the Tribe’s diligence and
8 efforts to preserve its rights out of court through outreach to BLM and AZL,” Plaintiff’s
9 lack of urgency for relief is demonstrated, in part, by the delay between its filing of the
10 Complaint and the Motion for a Temporary Restraining Order.

11 **CONCLUSION**

12 Plaintiff’s briefing does not meet the burden required to warrant the extraordinary
13 relief provided by a preliminary injunction. Plaintiff has no evidence that the water supply
14 to Ha’Kamwe’ will be affected by the Project’s scheduled drilling, or that the existing
15 precautionary remedial measures in place will fail, resulting in irreparable harm. To the
16 contrary, the extensive analysis and review of the Project site detailed in the EA
17 demonstrates that no irreparable harm will occur. Accordingly, AZL requests this Court
18 deny Plaintiff’s Motion.

19
20 DATED this 4th day of September, 2024.

21 **THORPE SHWER, P.C.**

22
23 By /s/ William L. Thorpe

24 William L. Thorpe

25 Mitchell W. Fleischmann

26 Bree G. Nevarez

27 ***Attorneys for Arizona Lithium Limited***

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2024, the foregoing document was electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, to the following CM/ECF registrants:

Laura Berglan
Heidi McIntosh
Thomas Delehanty
EARTHJUSTICE
633 17th Street, Suite 1600
Denver, Colorado 80202
lberglan@earthjustice.com
hmcintosh@earthjustice.com
tdelehanty@earthjustice.com

Roger Flynn
Jeffrey C. Parsons
WESTERN MINING ACTION PROJECT
440 Main Street, #2
Lyons, Colorado 80540
roger@wmaplaw.org
jeff@wmaplaw.org

Attorneys for Plaintiffs

Todd Kim
Daniel Luecke
Matthew Marinelli
NATURAL RESOURCES SECTION
UNITED STATES DEPARTMENT OF JUSTICE
P.O. Box 611
150 M Street NE
Washington, D.C. 20044-7611
Daniel.luecke@usdoj.gov
Matthew.marinelli@usdoj.gov

*Attorneys for Defendants Debra Haaland;
United States Bureau of Land Management;
Ray Suazo; and Amanda Dodson*

/s/ Brandi Kline
Legal Assistant