



“The Land of Our People, Forever”

United States Human Rights Violations against the Numu/Nuwu and Newe in the Rush for Lithium

HUMAN
RIGHTS
WATCH

ACLU



“The Land of Our People, Forever”
United States Human Rights Violations against the
Numu/Nuwu and Newe in the Rush for Lithium

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We extend our sincerest gratitude to the Indigenous communities who worked alongside us, sharing their wisdom, culture, and deep religious connection to the land. We honor their contributions and stand in respect for their traditions and resilience.



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Summary

Honestly, it's all ancestral land. We thought like Natives do. We thought the settlers would never disturb their own graves, and so you think that [ours] would never be disturbed. As Natives, we think that this would never happen; people won't ever go and mine our burial site. But they do. They treat us like we're an animal, beneath them. They don't show us the respect we show them.

—Tribal member, Fort McDermitt Paiute Shoshone Reservation, March 25, 2024

On September 12, 1865, the First Nevada Cavalry Battalion of the United States' Union Army entered a swath of land in northwestern Nevada that contained a village of the Numu/Nuwu (Northern Paiute) and Newe (Western Shoshone) Indigenous peoples. The Numu/Nuwu and Newe used the land as a site for hunting and gathering. Cavalry approached in the early morning hours when the men, women, and children still slept. The cavalry began shooting, unprovoked. Those who could escape ran, but the Union soldiers kept firing for hours, shooting at every man, woman, and child in sight—killing dozens and injuring others who fled to try to escape the carnage. By the end, the land, called Peehee Mu'huh, was strewn with bodies that were callously left to rot. One newspaper account of the massacre reported: “these wild Indians can walk off with an astonishing amount of lead.” Settlers later named a portion of the land Thacker Pass, a name that is now shared by a new open-pit lithium mine under construction.

The 1865 massacre at Peehee Mu'huh is indicative of the gross human rights abuses historically perpetrated against Indigenous peoples, often by US military forces and in pursuit of natural resources, which reverberate in Indigenous communities today. With the discovery of gold and silver in California and, later, Nevada, the Numu/Nuwu and Newe increasingly faced violent land dispossession by resource-hungry settlers and the US military, emboldened by racism and the false notion that European settlers had an inherent right to the land. Between 1864 and 1868, there were reports of 111 massacres of Numu/Nuwu and Newe Indigenous peoples, who occupied the Great Basin region of the US which includes present-day Nevada. By 1890, the US had recorded a 95 percent drop in the population of Indigenous peoples when compared to 1491.



Numu/Nuwu and Newe prayer horse riders pictured in front of the mountain range approaching Peehee Mu'huh on the annual memorial and prayer horse ride in honor of the 1865 massacre and other atrocities that occurred across the state. Fort McDermitt, Nevada, March 24, 2024. © 2024 Alison Leal Parker/Human Rights Watch.

Since the 1600s, the US had interned Indigenous peoples on reservations, by systematically and forcibly removing Indigenous peoples from their land. Starting around 1850, the US operationalized reservations against the Numu/Nuwu and Newe, defining them as several separate Tribes and forcing them onto ever smaller parcels of land. The US also forcibly removed Indigenous children from their communities and cultures and placed them in residential schools, where many children were physically, sexually, and emotionally abused. The residential schools were shuttered in the 1960s but have left a legacy of trauma. Across the US, Indigenous peoples ultimately lost 99 percent of their lands to colonial settlers or federal and state governments. Reservations in Nevada now make up only 2.2 percent of the state's land.

Despite US attempts to erase and destroy Indigenous communities and their connection to the land, Indigenous communities in Nevada and across the US remain spiritually and physically connected to their ancestral lands.

The Thacker Pass lithium mine is both tied to violent US settler colonialism and a new era of resource exploitation. The project sprawls over nearly 18,000-acres on Numu/Nuwu and Newe ancestral lands the US government stole from them.

Lithium is a key metal for making rechargeable lithium-ion batteries used in electric cars and other technologies. The US government, keen to increase its production of lithium and other so-called “critical minerals,” has sought to incentivize US-based lithium mining and processing through grants, lending and tax credits. Lithium Nevada Corporation—the American subsidiary of the Canadian-owned Lithium Americas Corporation (this report refers to both entities as Lithium Americas, or “LAC”)—is the permit-holder for the Thacker Pass mine. It will process lithium into lithium carbonate, the compound used to make rechargeable batteries, at an on-site facility. The US Department of Energy and General Motors have agreed to finance the mine, with GM joining the mining operation as a joint venture partner with Lithium Nevada and holding exclusive rights to the mine’s initial lithium production. Lithium Americas told Human Rights Watch the Thacker Pass project “has the potential to significantly advance America’s electrification efforts, reduce carbon emissions, and strengthen domestic supply chains for critical minerals—providing clean energy for future generations.” General Motors told Human Rights Watch, “[b]y working with LAC [Lithium Americas], we aim to ensure that our lithium sourcing is sustainable and meets ethical standards.” The project is the most prominent new development in Nevada’s current lithium boom. In Nevada alone, there were more than 23,490 exploration claims presumed to be for lithium as of September 2024.

Historically, there has often been strong environmental and Indigenous resistance to mining operations. Indigenous peoples, both in the US and globally, have warned lithium mining and other transition mineral mining pose a threat to their land and rights. A December 2022 study found that globally more than 54 percent of current or future transition minerals projects are located on or near Indigenous land. While the extent of traditional and ancestral lands differs greatly depending on context and is rarely equivalent to reservation boundaries in the US, one study has indicated 79 percent of all known lithium reserves in the US are located within 35 miles of Tribal reservations.



Image: November 8, 2019 © 2024 Planet Labs PBC



Image: August 18, 2024 © 2024 Planet Labs PBC

Before and after satellite imagery showing the evolution of Thacker Pass area. Satellite imagery from August 2024 shows the ongoing development of the Thacker Pass lithium deposit, in Humboldt County, Nevada. Top image: November 8, 2019. ©2024 Planet Labs PBC. Bottom image: August 18, 2024. © 2024 Planet Labs PBC. Graphics © 2024 Human Rights Watch.

Companies like Lithium Nevada can easily stake mining claims and explore for minerals, due to a US law from 1872 that gives US citizens, including companies, nearly unencumbered ability to explore for minerals on federal public land, the majority of which was confiscated from Indigenous peoples. US citizens can claim mineral rights on any federally owned land except land that is withdrawn from the 1872 Mining Law, such as national parks. The 1872 law functions as an anachronistic and rights-abusive legal codification of the colonial extraction practices of the 1800s. It is responsible in part for setting the lithium mine at Thacker Pass in motion.

The US government permitted the Thacker Pass mine without any meaningful consultation with Indigenous peoples and without their free, prior, and informed consent, a violation of international human rights law. US courts have rebuffed Tribes' efforts to challenge the adequacy of the consultation process, ruling the Tribe's lawsuits were either procedurally barred, or pleaded without sufficient proof to rule on the adequacy of the consultation under US law, which itself falls short of international standards. Businesses have human rights responsibilities under the United Nations Guiding Principles on Business and Human Rights, an international standard endorsed by the UN Human Rights Council in 2011. Lithium Americas has continued to move forward with the mine despite opposition from at least five Tribal governments and in the face of resistance from other Tribal organizations and members. The company stated to Human Rights Watch and the ACLU that litigation has resolved this opposition; it has received its permit from BLM, which has the legal obligation to engage in government-to-government formal consultation with Tribes; it has signed a community benefits agreement with one Tribe, the Fort McDermitt Paiute and Shoshone Tribe (FMPST); and it "has had, and continues to have, engagement with the surrounding communities."

Between September 2023 and January 2025, Human Rights Watch and the ACLU interviewed 41 people about the Thacker Pass mine and its impacts, including impacted Indigenous community members and leaders, lawyers, academics, and scientists. The research focused on discussions with Numu/Nuwu and Newe people and included interviews with members of six federally recognized Tribes, including FMPST, Reno-Sparks Indian Colony (RSIC); Burns Paiute Tribe (BPT); Summit Lake Paiute Tribe (SLPT); Duck Valley Shoshone-Paiute Tribe (DVSPT); and Pyramid Lake Paiute Tribe (PLPT), all six of which have members who are Numu/Nuwu and Newe.

All six Tribes, despite being forced onto reservations between 30 miles and 200 miles from the mine site, claim traditional and ancestral land rights to the land where the mine is located. Other Numu/Nuwu and Newe people who are not members of the Tribes listed above may also have ancestral land rights. The mine interferes with and prevents Indigenous community members from accessing their ancestral lands, and from practicing their cultural traditions and religion in violation of international human rights law. Tribal members wish to continue to hunt, fish, gather food and medicines, and engage in religious practices on the land, as they have for centuries. The land is particularly significant as it is the site to which people fled and died during the 1865 massacre. Tribal members pay tribute to their ancestors, annually commemorate the massacre, and engage in other religious practices on the land.

“We still ... go up to place and give offerings, but we can’t do that without them being on us,” said a tribal leader. “We go up there to pray, after that massacre, people go up there, as families, as groups.... [I]t seems like you gotta ask to go up there now.”

The permitting for the Thacker Pass mine was overseen by the Department of Interior’s Bureau of Land Management (BLM). BLM’s federal permitting process ran from January 21, 2020, to January 15, 2021, far less than the 3.1-year agency average for approving a new mining operation. The administration of then-US President Donald Trump in December 2017 and September 2020 issued executive orders calling for streamlined permitting operations to increase the domestic supply of critical minerals. On taking office again in January 2025, Trump instructed the Interior Department to “identify all agency actions that impose undue burdens on the domestic mining and processing of ... minerals and undertake steps to revise or rescind such actions.” Advisors to the new Trump administration in December 2024 reportedly called for fast-tracking mining permits, including by waiving environmental reviews.

As of this writing, earthworks for the Thacker Pass mine, excavations for the processing plant, and building construction are all 40-50 percent completed, with operations expected to commence in 2026. Construction work and fencing has already prevented Indigenous people from accessing parts of Peehee Mu’huh. “You go up [to Peehee Mu’huh] and there’s a boundary,” a woman who practices traditional Indigenous religion, told Human Rights Watch and the ACLU. “You can’t go past it ... Otherwise you’re gonna get trespass [charges].”

US federal law contains only limited requirements for consultation with Indigenous peoples impacted by mining operations on federal land. For example, a US federal law requires BLM to consult with Tribes whose “historic properties” are impacted by a potential mine. The law requires Tribes have a “reasonable opportunity” to identify concerns about historic properties, advise on the identification and evaluation of historic properties, and participate in the resolution of any adverse impacts, though the law does not mandate the resolution of adverse impacts.

BLM, when approving the mine, stated it, “has been in contact with tribal governments regarding this project from its early stages ... and throughout the ensuing ... process.” The extent of BLM’s direct contact with Tribes during the permitting process, however, was three rounds of mailings sent to three Tribal governments (FMPST, WIC, and SLPT), to which BLM received no reply. Much of this correspondence was sent during the Covid-19 pandemic, which closed Tribal offices and devastated Indigenous communities. Apart from the mailings, there was no follow-up from BLM, no in-person meetings between Tribes and BLM, and no discussions on the substance of the mining project proposal and its impacts on Indigenous peoples’ rights.

Four Tribes and one association of Indigenous peoples asserted their rights to and associated with the land occupied by the mine and their opposition to the mine through federal litigation: Reno-Sparks Indian Colony (RSIC); Burns Paiute Tribe (BPT); Summit Lake Paiute Tribe (SLPT); Winnemucca Indian Colony (WIC); and the association People of Red Mountain (PRM). US federal courts dismissed all the Tribes’ claims. The Duck Valley Shoshone-Paiute Tribe (DVSPT) announced its opposition in a letter to the UN special rapporteur on the rights of Indigenous peoples.

The Fort McDermitt Paiute and Shoshone Tribe (FMPST) Tribal Council ultimately issued a letter of support for the mine but earlier criticized the lack of Tribal consultation during the permitting process. The FMPST Tribal Council signed a community benefits agreement (CBA) in October 2022 with Lithium Americas after the mine had already been fully permitted by the US federal government in January 2021. Several Numu/Nuwu and Newe people associated with FMPST, however, sent individual letters opposing the mine to the Department of the Interior in April 2021, created a petition on Change.org opposing the mine in May 2021, and signed a group letter opposing the mine in June 2021. People of Red Mountain, which includes members of the FMPST, also participated in litigation challenging

BLM’s permitting of the mine. Since the signing of the CBA, individual leaders, members, and residents of FMPST, including current and former Tribal Council members, and members of People of Red Mountain, have continued to express opposition to the mine.

Consultation requirements under federal law fall far short of the free, prior, and informed consent required under international human rights law. The lack of adequate consultation for the Thacker Pass project was repeatedly remarked upon by Numu/Nuwu and Newe Indigenous peoples interviewed for this report: “They keep saying, ‘Consultation, consultation.’ I guess that’s what they think they were doing,” a Fort McDermitt religious and traditional practices leader told Human Rights Watch and the ACLU. “But they didn’t actually do that. They didn’t get the community together and say, ‘Hey, how do you guys feel about this? What do you think? What do you want?’”



Numu/Nuwu and Newe community members gathering outside of Lithium Americas’ Winnemucca office during the annual memorial and prayer horse ride commemorating the 1865 massacre and other atrocities that occurred across Nevada, March 2024. © 2024 River Akemann.

Several Tribal members described the impact of the Covid-19 pandemic on Tribal communities' ability to respond to BLM's letters. "I was working for the Tribe and I know there was no consultation," said an Indigenous community leader. "Our building closed down and we really didn't open up until maybe September [2020], and then we had to close it again because of Covid, and we were on and off. But BLM, nobody ever came. BLM did not consult with us."

Residents fear the mine also threatens their rights to health, a healthy environment, and water.

The use of acids and other chemicals during lithium processing creates a significant risk that, unless adequately controlled, toxic waste will pollute nearby waterways and ecosystems. Waste produced from extracting lithium from the soft clay ore found at Thacker Pass will be stored in a mound, known as a tailings stack, 350 feet high. Great Basin Resource Watch, an environmental watchdog, has warned this could result in "a catastrophic failure releasing the toxic tailings to the environment." Lithium Americas has promised it will monitor the tailings facility and that it has adequate plans in place to avoid leaching. BLM approved Lithium Americas' plan for tailings management.

Great Basin Resource Watch has also noted plans for the mine foresee contamination of groundwater as waste rock is used to fill up previously excavated mine sites, a problem identified by the US Environmental Protection Agency (EPA) during the permitting process for the mine. BLM, however, has said these impacts will be limited to the Thacker Pass project area. EPA has told BLM it remains concerned that its recommendations have not been adopted. Nevertheless, federal courts have upheld BLM's decisions, finding BLM had conducted a "reasonably complete discussion of possible mitigation measures" for groundwater pollution and groundwater quality.

People of Red Mountain, environmental groups and local ranchers have also argued the mine's water consumption will increase water scarcity in an already arid area. "The mine is just going to dry everything," a Fort McDermitt leader told Human Rights Watch and the ACLU. "Maybe our whole mountain is gonna ... go dry." When asked about water consumption, Lithium Americas said its project does not have a net increase in water use.



A view of the Cordero and McDermitt mine locations, former mercury mines located four miles from the Fort McDermitt Reservation. Construction materials containing pollutants may have been transported from the Cordero mine to the town of McDermitt and the Fort McDermitt Reservation in the 1950s or 1960s. McDermitt, Nevada, March 23, 2024. © 2024 Alison Leal Parker/Human Rights Watch

According to the environmental impact statement prepared by BLM, the mine will pump 2,600 acre-feet/year during years 1-4 of the mine and 5,200 acre-feet/year during years 5 to 41. A 2017 state of Nevada water inventory (the most recent statewide data on water use) reported that Humboldt County pumped 260,455 acre-feet/year for agricultural irrigation in calendar year 2017. Therefore, Lithium Americas' water use represents 1 percent in Phase I and 2 percent in Phase II of Humboldt County's 2017 irrigation water use. BLM, citing modeling and analysis submitted by Lithium Nevada, has said impacts on groundwater levels would be limited.

The environmental impact statement also estimated the mine will produce thousands of tons of sulfuric acid each year, which is required to leach lithium from the clay ore. The mine will also produce 34,109 tons per year of greenhouse gas emissions during

construction, 79,998 tons per year of greenhouse gas emissions in Phase I, and 132,588 tons per year of greenhouse gas emissions in Phase II, the equivalent of 31,556 gas-powered cars driven for a year.

Community members have expressed concern that the mine will bring to the area an influx of largely non-Indigenous male workers and risks increasing the already disproportionate rates of sexual and other violence Indigenous women, girls, and two spirit people experience. These concerns are backed by documented instances of other extractive industry operations on or near Indigenous land that have been associated with increased violence against women, girls and two spirit people.

In 2024, Human Rights Watch wrote to BLM and Lithium Americas about the Thacker Pass mine. BLM has not responded. Lithium Americas provided two comprehensive letters to Human Rights Watch (all such letters are in the Appendix to this report), referencing the “intensive consultation process and environmental analyses conducted as part of permitting for the project.” LAC stated: “BLM permitted the Project after years of government-to-government consultation with Tribes in the area, and federal courts have repeatedly upheld BLM’s consultation as consistent with federal law.” The company described its own “extensive consultation” efforts with FMPST, but stated that FPIC principles do not govern the company’s relationship with tribes because “FPIC applies to government-to-government consultation and LAC is not a government entity.” Lithium Americas also disputed, citing to litigation, the Tribes’ repeated contention that the mine interferes with the resting place of massacred ancestors.

Lithium Americas also stated BLM has produced a detailed environmental impact statement (EIS) for the Project addressing issues including air and water quality, tailings and reclamation, and water quantity. The company stated:

Courts have repeatedly upheld BLM’s environmental analysis and the project has also been considered at length and permitted by multiple state agencies, including the Nevada Department of Environmental Protection (NDEP), which issued air quality, reclamation, and water pollution control permits for the Project; no challenge to those permits has succeeded. The water pollution control permit included an extensive review of design and management for the filtered tailings facility.

Regarding concerns over gender-based violence, Lithium Americas said it has no tolerance for violence of any kind and will take swift responsive action should any of its employees or contractors commit an act of violence.

The letters do not directly address how the mine affects the ancestral and traditional land, religious, or cultural rights of the Numu/Nuwu and Newe, and instead repeatedly state that the mine complies with federal law. The letters dispute the applicability of free, prior, and informed consent because, “the Thacker Pass Project is not in a federally recognized Native American territory.” The letters also explain that Lithium Americas believes

consultation with the relevant Tribes is the government's responsibility, and that the Bureau of Land Management complied with its domestic legal obligations to consult with Tribes, as determined by the United States courts. Lithium Americas also indicated it has consulted, and continues to consult, with the Fort McDermitt Paiute and Shoshone Tribe.

The US government's actions at Thacker Pass represent a poisonous combination of unaddressed colonial harms and failure to respect Indigenous peoples' international human rights. Over centuries, the US government forcibly removed Tribes from their ancestral land, annihilated their populations, and isolated them in reservations. Then, when it came to exploiting their ancestral lands for a valuable new resource underneath, the government either failed to contact Tribes altogether or simply mailed letters and held no direct consultations.

President Trump, on taking office for his second term, said it was the policy of the US to become the world's leading mineral producer and processor. In the absence of stronger protections for Indigenous rights, however, including the right to free, prior, and informed consent, accelerating and expanding US mineral production threatens the rights of Indigenous peoples to their land, culture, and religion.

The US federal government should conduct a thorough review of Thacker Pass mine permits to ensure their alignment with international human rights law and conduct consultations with Indigenous peoples in accordance with international standards on the right to free, prior, and informed consent. Until it has completed this review and consultation with all impacted Indigenous peoples, federal authorities should use their authority to prevent further harm. Additionally, the federal government should ensure all current and future mine permitting, in Nevada and elsewhere, complies with international human rights standards on the right to free, prior, and informed consent of Indigenous peoples and respects their human rights to ancestral land, religion, culture, health, a healthy environment, and water. Furthermore, the government should build on the recommendations of a 2023 interagency working group by reforming the 1872 Mining Law to bring it into compliance with international human rights law, especially the rights of Indigenous peoples.

The Numu/Nuwu and Newe, like many other Indigenous peoples across the US, have long seen their lands and culture stolen and harmed in pursuit of natural resources. While the

threat of climate change means the US urgently needs to rapidly phase-out fossil fuels, mining for lithium and other minerals should not ignore the rights of Indigenous peoples neglected by the US government and companies seeking to profit from their land. The Thacker Pass mine stands as a warning of the risks Indigenous peoples face from mining, as well as a fleeting chance to respect their centuries-long connections to Peehee Mu’huh.

Recommendations

To the US Congress

- Amend the 1872 Mining Law in its entirety to protect Indigenous peoples' rights and comply with US treaty and customary law obligations.
- Mandate federal agencies to adequately protect Indigenous peoples' human rights, including their right to free, prior, and informed consent.
- Implement key recommendations of the Interagency Working Group on Mining Laws, Regulations, and Permitting, including:
 - Withdrawing sensitive lands from availability for mineral development unless a mineral claimant agrees to adopt specified measures to avoid, minimize, and mitigate adverse impacts; increasing engagement with stakeholders and potentially affected communities; and expanding consultation and engagement with Tribes.
 - Increasing monitoring of mining projects, including monitoring compliance with international human rights law on the rights of Indigenous peoples. Monitoring and public reporting should include the cumulative impacts and risks of mining to the environment and the human rights of impacted communities, including gender-based impacts.
- Pass legislation recognizing Indigenous peoples' traditional and ancestral land rights, cultural and religious rights, and the right to free, prior, and informed consent, and ensure the legislation creates access to effective remedies for violations. This legislation should, at a minimum, encode the rights in the United Nations Declaration on the Rights of Indigenous Peoples.
- Establish and assign adequate resources to an independent Indigenous-led commission to monitor and evaluate government performance related to Indigenous peoples' international human rights. The commission should consider remedies, including restitution in land, for Indigenous communities who were forcibly displaced from their land by the US and remain unable to access or own their traditional and ancestral land.
- Enact legislation recognizing the right to a safe and healthy environment and ratify the International Covenant on Economic, Social and Cultural Rights.

To the US Department of Interior

- Create a working group on the Thacker Pass mine, including Indigenous representation from all Indigenous peoples with relevant traditional and ancestral land rights, to review the permitting process for the mine and create guidance for future projects ensuring all future projects comply with free, prior, and informed consent.
- While working on long-term land return, ensure federal land management is done in partnership with Indigenous peoples living on or near federal land, respects their international human rights, and affirms Indigenous peoples' rights to land and culture.

To the US Bureau of Land Management

- Ensure mining projects are not permitted without the free, prior, and informed consent of Indigenous peoples who would be impacted by them, regardless of whether it is on reservations, consistent with international standards.
- Rescind the permits for the Thacker Pass mine, while engaging an independent expert body, including impacted Indigenous peoples, to assess if the permitting process can be revised to comply with international human rights law and the rights of Indigenous peoples. Ensure the permits are not reissued without the free, prior, and informed consent of all Indigenous communities with traditional and ancestral land rights.
- While taking steps to rescind the permits, increase Indigenous-led monitoring of the ongoing mining construction and operations at Thacker Pass.
- Implement key recommendations of the Interagency Working Group on Mining Laws, Regulations, and Permitting through internal BLM regulations.

To Lithium Americas and Lithium Nevada

- Cease operations at the Thacker Pass mine. Begin steps of remediation in collaboration with Indigenous communities impacted by the ongoing construction.
- Work with the US government to ensure the land is restituted to Indigenous communities with traditional and ancestral land rights, and in the interim allow Indigenous peoples unfettered access to the land.

- If a new permit is sought on Thacker Pass ensure international human rights law, including free, prior, and informed consent and rights to traditional and ancestral land, is respected.
- Form an external committee of experts, including experts in international human rights law, and members of Indigenous-led organizations, to evaluate Lithium Americas' current policies and practices on human rights.
- Rescind all lawsuits against protesters. Compensate all protesters for time and legal fees.
- Conduct an independent, third-party audit under the Initiative for Responsible Mineral Assurance's Standard for Responsible Mining, including in relation to Indigenous peoples' rights to free, prior, and informed consent.

To the US Department of Energy

- Pause funding for the mine until Lithium Americas and the Bureau of Land Management respect the international human rights of Indigenous peoples, including free, prior, and informed consent; and rights to traditional and ancestral land, to religion, and to culture.
- Make investments in extractive projects conditional upon free, prior, and informed consent from affected Indigenous peoples and government recognition of affected Indigenous peoples' traditional territories and their ownership of and unencumbered access to traditional and ancestral land.

To General Motors

- Ensure construction of the Thacker Pass mine is paused until BLM, GM, and Lithium Americas respect the international human rights of impacted Indigenous peoples, including free, prior, and informed consent and rights to traditional and ancestral land.
- State publicly what steps GM is taking to ensure future construction and operation of the Thacker Pass mine respects the rights of Indigenous peoples, including their right to give their free, prior, and informed consent to projects affecting their ancestral lands and resources.

To Other Companies Exploring the McDermitt Caldera

- Cease exploring the McDermitt Caldera for critical minerals until the US recognizes Indigenous peoples' ownership and management of the caldera.
- Obtain free, prior, and informed consent from all Indigenous peoples with traditional/ancestral land rights to the caldera before exploring the caldera.

Methodology

This report is the product of a joint initiative—the Aryeh Neier Fellowship—between Human Rights Watch and the American Civil Liberties Union (ACLU) to strengthen respect for human rights in the United States.

This report is based on research conducted by Human Rights Watch and ACLU researchers in Nevada, United States, between September 2023 and June 2024. Human Rights Watch and the ACLU interviewed 41 people for this report, including impacted Numu/Nuwu and Newe Indigenous community members and leaders, lawyers, academics, and scientists. Interviews were conducted in person, by phone, or online. Most interviews were conducted individually and in private. Group interviews were conducted with 7 interviewees. All interviewees gave their full informed consent to the interviews and were not paid to participate.

Between May 2024 and December 2024, Human Rights Watch submitted a series of letters requesting information and responses to Lithium Americas, General Motors, Barrick Gold, the Department of Interior, and the Bureau of Land Management. All letters and responses are reproduced in their entirety in the appendix to this report. At the time of writing, we had received two responses from Lithium Americas, one in June 2024 and the second in December 2024, and have reflected those responses in relevant sections of the report. We wrote twice to General Motors, in July 2024 and December 2024, and received a response in January 2025. We wrote to Barrick Gold in December 2024 and received a response that same month. We wrote to the Bureau of Land Management and the Department of the Interior in May 2024 and did not receive a response. We emailed BLM in October 2024 to learn whether a response was forthcoming. Ultimately, however, we did not receive a response from BLM to the May 2024 letter. We also did not receive a response from the Department of Interior.

Human Rights Watch and the ACLU reviewed documents, court records and rulings, reports, policies, and files from multiple sources, including official documentation from Lithium Americas, Lithium Nevada, the Bureau of Land Management, and the Department of Energy. All documents are publicly available or on file with Human Rights Watch.

Academic fields like archaeology, anthropology, and history, have often treated Indigenous peoples as subjects in a problematic way. While Human Rights Watch and the ACLU have tried to seek out and incorporate sources written and researched by Indigenous peoples, the accounts in this report draw from a variety of sources, including historical anthropological accounts or historical accounts which are problematic or raise concerns because they are told solely from the perpetrators' perspective or use discriminatory or derogatory language.

This report focused on six Numu/Nuwu and Newe communities, each of which has ancestral, traditional, and cultural links to Peehee Mu'huh (Thacker Pass) and to the caldera. Other Numu/Nuwu and Newe peoples may have ancestral land rights as well.

Numu/Nuwu and Newe are among the original people of the land now called Nevada.¹ Prior to the decimation and internment policies of settler colonialism, the communities lived across the Great Basin region.² Numu/Nuwu and Newe use, occupy, and exist in relationship with the land that is now Nevada, as well as extensive areas outside the current Nevada borders. The US forcibly interned Numu/Nuwu and Newe communities onto reservations, in Nevada and surrounding states, in the 1800s³ as part of an attempt to remove Indigenous peoples from their lands.⁴ These reservations exist today and are the territories of sovereign

¹ Ned Blackhawk, "Julian Steward and the Politics of Representation: A Critique of Anthropologist Julian Steward's Ethnographic Portrayals of the American Indians of the Great Basin," *American Indian Culture and Research Journal*, vol. 21 (1997), accessed May 31, 2024, doi:10.17953, p. 64, 65, 68; Wilson Wewa, *Legends of the Northern Paiute: as told by Wilson Wewa* (Corvallis: Oregon State University Press, 2017), p. 3; Joe Sanchez, "The Western Shoshone: Following Earth Mother's Instructions," *Race, Poverty, and the Environment*, vol. 3 (1992), <https://www.jstor.org/stable/41554080> (accessed May 31, 2024), p. 10-11; Ned Blackhawk, *Rediscovery of America: Native Peoples and the Unmaking of U.S. History* (New Haven: Yale University Press, 2023), Maps, pre-contact (or pre-removal) Native Nations.

² Blackhawk, "Julian Steward and the Politics of Representation," p. 64, 65, 68; Wewa, *Legends of the Northern Paiute*, p. 3; Sanchez, "The Western Shoshone".

³ Nevada Indian Commission, "Tribal Directory," <https://nevadaindiancommission.org/tribal-directory/> (accessed June 2, 2024) (noting that the Summit Lake Paiute Tribe's reservation was formerly a military fort and was established in 1871, that the Duck Valley Shoshone-Paiute Tribe's reservation was established in 1877, and Pyramid Lake Paiute Tribe's reservation was established in 1859); Fort McDermitt Paiute-Shoshone Tribe, "History and Culture," <https://fmpst.org/history-culture/> (accessed June 2, 2024) (noting that in 1889 the Fort McDermitt Indian Agency replaced the Fort McDermitt Military Fort and Northern Paiute and Shoshone were settled at the Fort McDermitt Indian Agency, before the US officially established the reservation in 1936).

⁴ Justin Farrell et al., "Effects of Land Dispossession and Forced Migration on Indigenous Peoples in North America," *Science*, vol. 374 (2021), accessed January 8, 2025, doi:10.1126/science.abe4943; Kristen A. Carpenter and Angela R. Riley, "Privatizing the Reservation?" *Stanford Law Review*, vol. 71 (2019), accessed January 8, 2025, <https://ssrn.com/abstract=3166333>, p. 791; Dr. Karina Walters, "History Through a Native Lens, Reservation Era Begins," *Native Philanthropy*, https://nativephilanthropy.candid.org/timeline/sort/event-year_asc_num/era/reservation-era-begins/ (accessed June 2, 2024).

Tribal governments with which the US engages in government-to-government relations.⁵ The Numu/Nuwu and Newe maintain their connections to each other, despite their division into separate Tribes and reservations.⁶ They used and occupied land far larger than the size of the reservations to which they were ultimately relegated by the US government.⁷

Fort McDermitt Paiute and Shoshone Tribe is a federally recognized Tribe headquartered in the town of McDermitt, Nevada.⁸ The Tribe refers to itself as members of the Numu (Paiute) and Shoshone (Newe) peoples.⁹ The Tribe has 1,100 tribal members, with 500 living on the Tribe’s reservation lands.¹⁰ The Tribe states that, “Our ancestral homelands are in the Northern Great Basin region of Nevada, extending into both Southeast Oregon and Southwest Idaho.”¹¹ The Tribe’s reservation now consists of a 54-square-mile area spanning the Nevada–Oregon border, in Humboldt County, Nevada and Malheur County, Oregon.¹² The reservation is approximately 30 miles from the Thacker Pass mine site. Human Rights Watch and the ACLU interviewed Numu/Nuwu and Newe people who are members of or associated with this Tribe for this report, reviewed letters and statements made by such people during litigation,¹³ and reviewed public statements made by the Tribal government.¹⁴

⁵ Federal recognition by the US government, which is required for government-to-government consultation, is complicated and can itself pose a barrier to Indigenous communities gaining sovereignty rights under US law. For example, Nations that have and are currently fighting for recognition and sovereignty under US law include the Chinook Indian Nation, the Muwekma Ohlone, and the Tongva, among others. Government Accountability Office, Report to the Honorable Dan Boren, House of Representatives: Federal Funding for Non-Federally Recognized Tribes, April 2012, <https://www.gao.gov/assets/gao-12-348.pdf> (accessed June 2, 2024). Government-to-government relations include Tribal consultation under certain laws. The consultation process is a formal one, between the federal government and Tribal governments on a project proposed to a federal agency. Many domestic laws encode formal government-to-government consultation in the US. In the case of Thacker Pass, the National Historic Preservation Act (NHPA) mandated consultation; for NHPA, it is not necessary that an agency reflect consultation or input in its final decision.

⁶ Numu/Nuwu and Newe people also had different bands pre-colonization that continue to exist today.

⁷ Blackhawk, “Julian Steward and the Politics of Representation,” p. 64, 65, 68; Wewa, *Legends of the Northern Paiute*, p. 3; Sanchez, “The Western Shoshone”; Blackhawk, *Rediscovery of America*, Maps, pre-contact (or pre-removal) Native Nations.

⁸ Fort McDermitt Paiute Shoshone Tribe, “About Us,” <https://fmpst.org/> (accessed October 22, 2024).

⁹ Ibid.

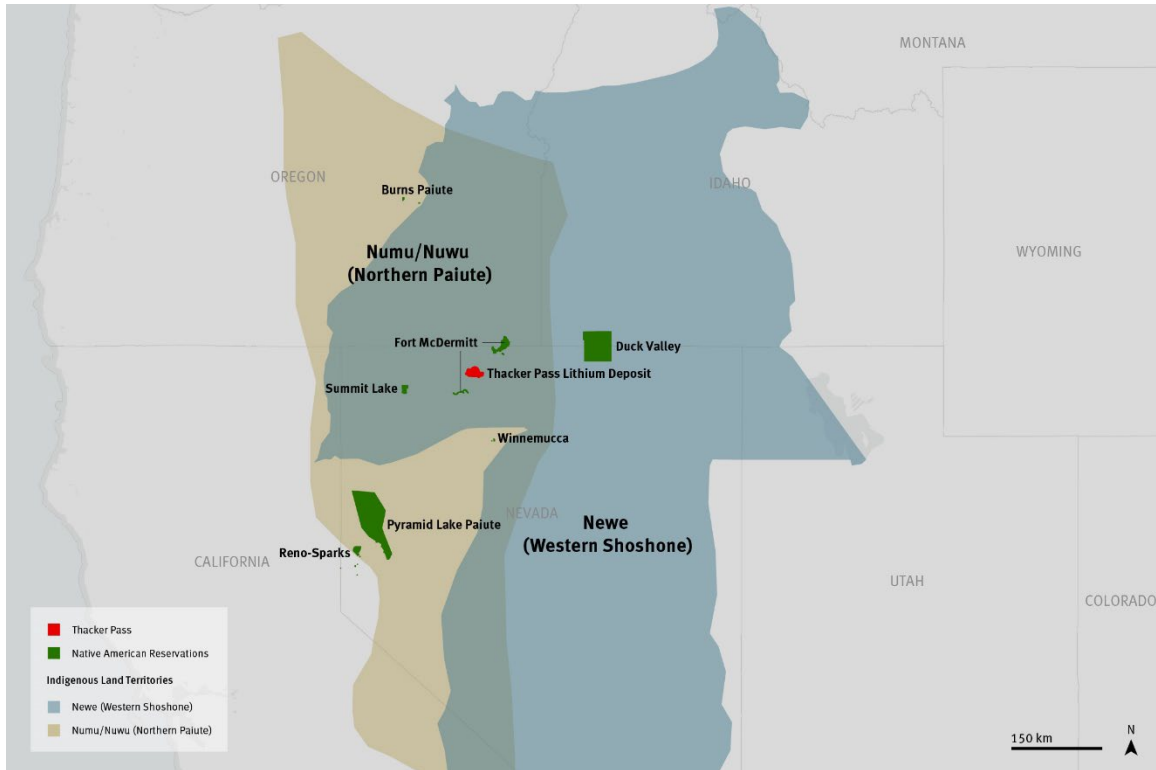
¹⁰ Nevada Department of Native Affairs, “Tribal Directory,” <https://dnaa.nv.gov/tribal-nations/tribal-directory/> (accessed October 22, 2024).

¹¹ Fort McDermitt Paiute Shoshone Tribe, “About Us.”

¹² US Census Bureau, American Community Survey 2022: Fort McDermitt Indian Reservation, Census Reporter, <https://censusreporter.org/profiles/25000US1210-fort-mcdermitt-indian-reservation/> (accessed October 22, 2024).

¹³ *Reno-Sparks Indian Colony v. Haaland*, United States District Court for the District of Nevada, Case No. 3:23-cv-00070-MMD-CLB, Plaintiffs’ Appendix of Exhibits in Support of Complaint, February 16, 2023.

¹⁴ For example, “Energy Department Conditionally Approves \$2.26 Billion Loan for Huge Lithium Mine in Nevada,” *Associated Press*, March 19, 2024, <https://knpr.org/news-88-9-knpr/2024-03-19/energy-department-conditionally-approves-2-26-billion-loan-for-huge-lithium-mine-in-nevada> (quoting Tribal Council member Larina Bell) (accessed October 22, 2024).



Map showing the Indigenous Ancestral Land Territories and Native American reservations around Thacker Pass area. Graphics ©2025 Human Rights Watch.¹⁵

Reno-Sparks Indian Colony is a federally recognized Tribe headquartered in Reno and Sparks, Nevada.¹⁶ The Tribe has 1,157 members who are descendants from the Numu (Northern Paiute), Newe (Western Shoshone), and Washoe Nations.¹⁷ The Tribe describes its history living across the Great Basin region, following “seasonal, migratory patterns for

¹⁵ **For mapping of Indigenous Ancestral Land:** Ruby Valley Treaty of 1863; Royce’s Schedule of Indian Land Cessions, “Cession 444,” October 1, 1863, Indigenous Digital Archive’s Treaties Explorer, DigiTreaties.org, Native Land Digital, <https://native-land.ca/> (accessed August 21, 2024). Native Land Digital states the following disclaimer on its website: “This map does not represent or intend to represent official or legal boundaries of any Indigenous nations. To learn about definitive boundaries, contact the nations in question. Also, this map is not perfect - it is a work in progress with tons of contributions from the community. Please send us fixes if you find errors. You are free to use this data layer for your own maps and applications, but we encourage you to add a similar disclaimer on your own resource.” **For mapping of Native American Reservations:** “Federal American Indian Reservations,” US Census Bureau data, <https://www.arcgis.com/home/item.html?id=41a17452810f4b6f819924f8638c520f> (accessed August 21, 2024). **For mapping of Thacker Pass Lithium Deposit boundaries:** Reno-Sparks Indian Colony and Summit Lake Paiute Tribe, “Traditional Cultural Property Eligibility Statements for the Thacker Pass Cultural District and September 12, 1865 Thacker Pass Massacre Site,” February 3, 2024 (on file with Human Rights Watch).

¹⁶ Reno Sparks Indian Colony, “About Us,” <https://www.rsic.org/27/About-Us> (accessed October 22, 2024); See also *Reno-Sparks Indian Colony and Atsa Koodakuh Wyh Nuwu (“People of Red Mountain”) v. Haaland*, Declaration of Michon R. Eben, Case 3:21-cv-00080-MMD-CLB, Document 45-1, filed July 29, 2021, <https://www.courtlistener.com/docket/59247337/45/1/bartell-ranch-llc-v-mccullough/>, p. 3.

¹⁷ *Ibid.*

hunting and gathering food and other materials needed for life in the Great Basin.”¹⁸ The Tribe’s reservation now consists of 28 acres located in central West Reno and another 15,354 acres in Hungry Valley, 19 miles north of the Colony.¹⁹ The reservation is approximately 200 miles from the Thacker Pass site. Human Rights Watch and the ACLU interviewed members of this Tribe for this report, reviewed litigation filed by the Tribe,²⁰ and reviewed public statements made by the Tribe.²¹

Burns Paiute Tribe is a federally recognized Tribe headquartered in Burns, Oregon.²² The Tribe’s website states it has 402 enrolled members, with 142 living on the Tribe’s reservation.²³ The Tribe describes its “traditional homelands” as “5250 square miles of land in central-southeastern Oregon, Northern Nevada, northwestern California and western Idaho.”²⁴ The Tribe now has 18.9 square miles of reservation land and off-reservation trust land.²⁵ The Tribe’s reservation land is approximately 175 miles from the Thacker Pass site. Human Rights Watch and the ACLU interviewed members of this Tribe for this report, reviewed litigation filed by this Tribe,²⁶ and reviewed letters sent to BLM.²⁷

Summit Lake Paiute Tribe is a federally recognized Tribe located in the northwestern corner of Nevada. The Tribe’s reservation is 20-square miles and is 50 miles south of the Oregon border and 70 miles east of the California border.²⁸ The Tribe has 120 members.²⁹ The Tribe states: “Prior to contact with Europeans and Euro-Americans, [the Tribe]

¹⁸ Reno Sparks Indian Colony, “History,” <https://www.rsic.org/225/History> (accessed October 22, 2024).

¹⁹ Reno Sparks Indian Colony, “Departments,” <https://www.rsic.org/101/Departments> (accessed October 22, 2024).

²⁰ *Reno Sparks Indian Colony v. Haaland*, United States District Court for the District of Nevada, Case No. 3:23-cv-00070-MMD-CLB, 663 F.Supp.3d 1188 (US District Court, Nevada), March 23, 2023, 201291, November 9, 2023.

²¹ Reno Sparks Indian Colony, “Civic Alerts,” <https://www.rsic.org/civicalerts.aspx> (accessed October 22, 2024).

²² Burns Paiute Tribe, “About the Tribe,” <https://burnspaiute-nsn.gov/about-the-tribe/> (accessed October 22, 2024).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ US Census Bureau, American Community Survey 5-year estimates: Burns Paiute Indian Colony, <https://censusreporter.org/profiles/25000US0400-burns-paiute-indian-colony-and-off-reservation-trust-land/> (accessed October 22, 2024).

²⁶ *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, December 27, 2021, Case No. 3:21-cv-00080-MMD-CLB, 2021 U.S. Dist. LEXIS 245622.

²⁷ *Reno Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, February 16, 2023, Exhibit 19.

²⁸ Nevada Department of Native Affairs, “Tribal Directory.”

²⁹ *Ibid.*

controlled at least 2,800 square miles of land.”³⁰ The reservation is approximately 60 miles from the Thacker Pass mine. Human Rights Watch and the ACLU interviewed members of this Tribe for this report, reviewed litigation filed by this Tribe,³¹ and reviewed public statements made by members of this Tribe.³²

Duck Valley Shoshone-Paiute Tribe is a federally recognized Tribe headquartered in Owyhee, Nevada.³³ The Tribe has 2,132 members.³⁴ The Tribe states it, “once freely occupied the land of their forefather’s and foremother’s in the tri-state area of what are now Idaho, Nevada, and Oregon.”³⁵ The Tribe’s reservation, which spans the Nevada-Idaho border, is 453 square miles.³⁶ The reservation is approximately 120 miles from the Thacker Pass site. Human Rights Watch and the ACLU interviewed members of this Tribe for this report and reviewed a submission by this Tribe to the special rapporteur on the rights of Indigenous peoples.³⁷

Winnemucca Indian Colony is a federally recognized Tribe located in Winnemucca, Nevada, which is 65 miles from the Thacker Pass site.³⁸ The Colony consists of approximately 28 members and has a reservation of 0.5 square miles.³⁹ For this report, Human Rights Watch and the ACLU reviewed the Tribe’s motion to intervene in litigation⁴⁰ as well as correspondence from this Tribe to BLM.⁴¹

³⁰ Summit Lake Paiute Tribe, “About Us,”

https://web.archive.org/web/20120301140827/http://www.summitlaketribe.org/About_Us.html (accessed October 22, 2024).

³¹ *Reno-Sparks Indian Colony v. Haaland*, 663 F.Supp.3d 1188 (US District Court, Nevada), March 23, 2023, 201291.

³² Noel Lyn Smith, Pacey Smith-Garcia, “Tribes Face an Uphill Battle to Defend their Sacred Land Against Lithium Mining,” *Lithium Liabilities*, Howard Center for Investigative Reporting, <https://cronkitenews.azpbs.org/howardcenter/lithium/stories/indigenous.html> (quoting statement by Chairwoman Randi Lone Eagle).

³³ Nevada Department of Native Affairs, “Tribal Directory.”

³⁴ *Ibid.*

³⁵ Shoshone Paiute Tribes of the Duck Valley Indian Reservation, “Our History,” <https://www.shopaitribes.org/spculture/> (accessed October 22, 2024).

³⁶ Nevada Department of Native Affairs, “Tribal Directory.”

³⁷ Duck Valley Shoshone Paiute Tribes to the UN Special Rapporteur on the Rights of Indigenous Peoples, “Green Financing,” May 2023, <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/cfis/greenfinancing/subm-green-financing-just-ngos-indi-peop-hoshone-paiute-tribes.pdf> (accessed October 22, 2024).

³⁸ *Bartell Ranch LLC v. McCullough*, Winnemucca Indian Colony, Proposed Complaint, Case 3:21-cv-00080-MMD-CLB Document 179-1, p. 5 (on file with Human Rights Watch and the ACLU).

³⁹ *Ibid.*

⁴⁰ *Bartell Ranch LLC v. McCullough*.

⁴¹ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 13.

Pyramid Lake Paiute Tribe is a federally recognized Tribe headquartered 35 miles northeast of Reno, Nevada.⁴² The Tribe has 2,253 members, with 1,332 living on the Tribe’s reservation.⁴³ The reservation is 742 square miles and is approximately 200 miles from the Thacker Pass site.⁴⁴ Human Rights Watch and the ACLU interviewed members of this Tribe for this report and reviewed a letter this Tribe sent to BLM.⁴⁵

Terminology notes:

- “Indian” is used with quotation marks for consistency with quotes, historical language, and legal language.
- “Indigenous” is primarily used to refer to the Numu/Nuwu and Newe. It should be noted the term “Indigenous” can connote an unwarranted degree of homogenization across all pre-colonial Indigenous nations in the US. Such cultures and nations were and are highly diverse.
- Peehee Mu’huh, or Thacker Pass, is the land between the Double H Mountains and the Montana Mountains connecting the Quinn River Valley and the Kings River Valley in northwestern Nevada. It is the traditional and ancestral land of the Numu/Nuwu and Newe.
- A final environmental impact statement (EIS) is a document prepared by federal agencies when major federal action is taking place. Ideally, EIS’s offer cumulative, objective, and scientific plans for a project, as well as a project’s cumulative impact on the environment and wildlife, taking into consideration impacts on people and communities, and mitigation measures that should be taken to address such potential harms.
- The US Cavalry was a branch of the US Army. During the mid to late 1800s the US Cavalry was often deployed in the western US.
- Lithium Nevada Corporation is the solely owned subsidiary of Lithium Americas, a Canadian corporation. At times throughout the report, the names are used interchangeably.

⁴² Nevada Department of Native Affairs, “Tribal Directory.”

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 18.

Because this is a report on human rights abuses, it focuses on these harms, rather than Indigenous resiliency, resistance, and joy, but the latter have also significantly characterized North American Indigeneity both now and historically.

Background

When asked by an anthropologist what the ‘Indians’ called America before the white men came, an ‘Indian’ simply said “Ours.”

—Excerpt from *Custer Died for Your Sins: An Indian Manifesto*, by Vine Deloria Jr.

“My grandma, she always used to say, ‘It’s the same blue coat to this day who is doing the destruction to our lands.’ They say they own this, they own that. They say this land is theirs. But according to who? To this day, I still feel I own this land, regardless if the fence line is right here and they say this is your boundary.... I still believe that I am entitled to stay and try to preserve and protect [this land].”

—Human Rights Watch/ACLU interview with religious and traditional practices leader, Fort McDermitt Tribe.

The 1865 Massacre at Peehee Mu’huh

Numu/Nuwu and Newe are among the original peoples of the land now called Nevada,⁴⁶ with both communities living across the Great Basin region spanning nearly all of Nevada, much of Utah, and portions of California, Idaho, Oregon, and Wyoming.⁴⁷ Peehee Mu’huh (“Rotten Moon”) is their name for land that includes a former Numu/Nuwu and Newe village in northwestern Nevada, long used as a site for hunting and gathering. The term refers to a swath of land that includes the former village, a rock formation called Sentinel Rock and river valleys including the sides of two mountain ranges that slope down to the valley.⁴⁸ Peehee Mu’huh is located in the McDermitt Caldera, a massive volcanic crater, 26

⁴⁶ Blackhawk, “Julian Steward and the Politics of Representation,” p. 64, 65, 68; Wewa, *Legends of the Northern Paiute*, p. 3; Sanchez, “The Western Shoshone”; Blackhawk, *Rediscovery of America*, Maps, pre-contact (or pre-removal) Native Nations.

⁴⁷ US National Park Service, “The Great Basin,” <https://www.nps.gov/grba/planyourvisit/the-great-basin.htm> (accessed October 22, 2024); Blackhawk, “Julian Steward and the Politics of Representation,” p. 64, 65, 68; Wewa, *Legends of the Northern Paiute*, p. 3; Sanchez, “The Western Shoshone.”

⁴⁸ The Tribes that contested BLM’s administrative decision making on the Thacker Pass mine project site explained that the swath of land to which they attached significance included: “all of the land from [and including] Sentinel Rock in the east, to the Kings River Valley in the west, to the tops of the Montana Mountains in the north, and the tops of the Double H mountains in the south.” *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 4, (Tribes’ National Register of Historic Places – eligibility Submission); US Deputy Surveyor Abed Alley Palmer’s United States General Land Office 1868 Field Notes Journal (Rectangular Survey Field Notes, approved on January 15, 1869 in Volume R

miles long and 22 miles wide, formed tens of millions of years ago.⁴⁹ In 1848, the US purchased what is now Nevada from Mexico. The Numu/Nuwu and Newe and the other original inhabitants of the land had no say in the transaction.⁵⁰

On September 12, 1865, in the early hours of the morning while the Numu/Nuwu and Newe slept, the United States First Nevada Cavalry Battalion moved west across the Quinn River Valley, after seeing smoke from the village's campfires.⁵¹ Upon reaching the Numu/Nuwu and Newe village, the cavalry shot and killed dozens of men, women, and children.⁵² A perpetrator of the massacre, Jim Sackett, told an interviewer:

Daylight was just breaking when we came in sight of the Indian camp. All were asleep. We unslung our carbines, loosened our six-shooters, and started into that camp of savages at a gallop, shooting through their wickiups as we came. In a second, sleepy-eyed sq**ws and bucks and little children were darting about, dazed with the sudden onslaught, but they

0046, Intro Page 295, Survey Pages 296-317, Cert. Pages 317-320); Bill Haywood, *The Autobiography of Big Bill Haywood*, (New York: International Publishers, 1929); September 14, 1865 letter sent by federal cavalryman Corporal Clark Stilges to Captain J.C. Doughty of the 1st Nevada Cavalry stationed near McDermitt describing the aftermath of the massacre (available through the U.S. National Archives and Records Administration); "The Recent 'Indian' Fight in Queen's River Valley," *Humboldt Register*, September 23, 1865; "'Indian' Fight in Queen River Valley," *Owyhee Avalanche*, September 30, 1865 (The Kings River is a tributary of the Quinn River, which used to be referred to as the Queen River. See Nevada State Board on Geographic Names, Minutes, May 16, 2017, https://nbgm.unr.edu/geonames/Meeting_Minutes/5-16-2017_minutes.pdf (accessed October 22, 2024)).

⁴⁹ US Geological Survey, "The McDermitt Caldera," <https://www.usgs.gov/observatories/yvo/news/mcdermitt-caldera-early-caldera-yellowstone-hotspot-track> (accessed October 22, 2024); James Rytuba, "Geology and Ore Deposits of the McDermitt Caldera," US Geological Survey, 1976, <https://pubs.usgs.gov/of/1976/0535/report.pdf> (accessed October 22, 2024), p. 1.

⁵⁰ Treaty of Peace, Friendship, Limits, and Settlement between the United States the United Mexican States concluded at Guadalupe Hidalgo, February 2, 1848, ratified March 16, 1848, <https://www.archives.gov/milestone-documents/treaty-of-guadalupe-hidalgo> (accessed June 4, 2024); Richard C. Hanes, "Cultural Persistence in Nevada: Current Native American Issues," *Journal of California and Great Basin Anthropology*, vol. 4 (1982), p. 204 (noting the incomplete ethnographic boundaries of the Northern Paiute and the Western Shoshone, recognizing that these communities were the original inhabitants of the land). In reality, the Western Shoshone and Northern Paiute territorial boundaries were fluid and both communities occupied Peehee Mu'huh; *United States v. Northern Paiute Nation*, 393 F.2d 786 (Fed. Cir. 1968), 793 (recognizing that Northern Paiute people were "aboriginal," meaning "the people who have been in a region from the earliest time," and disavowing the narrative that Northern Paiutes' title was extinguished by white settlers encroaching on their land. ("Aboriginal," *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/aboriginal> (accessed May 22, 2024)).); Blackhawk, "Julian Steward and the Politics of Representation," p. 64, 65, 68; Wewa, *Legends of the Northern Paiute*, p. 3; Sanchez, "The Western Shoshone."

⁵¹ Human Rights Watch/ACLU interviews with Inelda Sam, Fort McDermitt Indian Reservation, March 25, 2024; Dorece Sam, McDermitt, Nevada, March 25, 2024; and 62-year-old concerned Tribal resident, Cordero Mine, McDermitt, Nevada, March 24, 2024; Haywood, *The Autobiography of Big Bill Haywood*, p. 26-29.

⁵² *Ibid.*; September 14, 1865 letter sent by federal cavalryman Corporal Clark Stilges to Captain J.C. Doughty of the 1st Nevada Cavalry; "The Recent 'Indian' Fight in Queen's River Valley," *Humboldt Register*; "Indian Fight in Queen River Valley," *Owyhee Avalanche*.

were shot down before they came to their waking sense.... In one wickiup, we found two little papooses still alive. One soldier said, "Make a clean-up. Nits make lice."⁵³

On September 23, 1865, *the Humboldt Register*, a local newspaper, reported the massacre:

The camp was surprised; and not stopping to learn the strength of the attacking party, the red skins broke and ran; but fought well as they retreated.... Thirty-five Indians bit the dust, right there; and it is a reasonable presumption that several were mortally wounded.... It is proverbial, too, that these wild Indians can walk off with an astonishing amount of lead....

The fight lasted several hours, and extended over a wide space of country.⁵⁴

The Owyhee Avalanche, another Nevada newspaper, also praised and recorded the massacre:

A charge was ordered and each officer and man went for scalps, and fought the scattering devils over several miles of ground for three hours, in which time all were killed that could be found. A search among the sage resulted in the discovery of thirty-one permanently friendly Indians. More must have



Numu/Nuwu and Newe Indigenous people camping overnight at the accessible section of Peehee Mu'huh at the 2024 commemoration of the 1865 massacre, Fort McDermitt, Nevada, September 12, 2024. © 2024 Chanda Callao

⁵³ Haywood, *The Autobiography of Big Bill Haywood*, p. 27.

⁵⁴ "The Recent 'Indian' Fight in Queen's River Valley," *Humboldt Register*.

been killed and died from their wounds, as a strict search was not made, and the extent of the battlefield so great. Several tons of friend berries, grass seeds, and other food, were completely destroyed.⁵⁵

The massacre was sprawling, because the Indigenous peoples awoke to find the cavalry attacking and ran from the attack.⁵⁶ The cavalry continued their assault, shooting people fleeing the gunfire from behind.⁵⁷ Their remains were scattered across the pass between the mountain ranges, covering many miles.⁵⁸

The 1865 Massacre is a monumental historical event with lasting trauma to the Numu/Nuwu and Newe. The massacred people were not given a proper burial, because surrounding Numu/Nuwu and Newe villages could not return to the site of the massacre under threat of more cavalry violence. Thus, for the Numu/Nuwu and Newe, their ancestors' bones and spirits rest at Peehee Mu'huh, scattered across the area.⁵⁹ For community members, the massacre at Peehee Mu'huh forced the land to become a burial ground, and it remains a place for mourning and communing with ancestors.

This massacre, and the subsequent forced removal of the Numu/Nuwu and Newe, are the basis upon which the US gained ownership and control of the land. There is no treaty between the US and Numu/Nuwu and Newe to include Peehee Mu'huh, or the McDermitt Caldera, the broader area around Peehee Mu'huh. Thus, these lands remain unceded.⁶⁰

⁵⁵ “‘Indian’ Fight in Queen River Valley,” *Owyhee Avalanche*.

⁵⁶ Human Rights Watch/ACLU interviews with Inelda Sam, Dorece Sam, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interview with Dean Barlese, February 15, 2024; Haywood, *The Autobiography of Big Bill Haywood*, p. 26-29; September 14, 1865 letter sent by federal cavalryman Corporal Clark Stilges to Captain J.C. Doughty of the 1st Nevada Cavalry; “The Recent ‘Indian’ Fight in Queen’s River Valley,” *Humboldt Register*; “‘Indian’ Fight in Queen River Valley,” *Owyhee Avalanche*.

⁵⁷ “The Recent ‘Indian’ Fight in Queen’s River Valley,” *Humboldt Register*.

⁵⁸ US Deputy Surveyor Abed Alley Palmer’s United States General Land Office 1868 Field Notes Journal; “The Recent ‘Indian’ Fight in Queen’s River Valley,” *Humboldt Register*; “‘Indian’ Fight in Queen River Valley,” *Owyhee Avalanche*.

⁵⁹ Human Rights Watch/ACLU interviews with Inelda Sam, Dorece Sam, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interviews with Dean Barlese and Daranda Hinkey, April 3, 2024.

⁶⁰ Reno Sparks Indian Colony, “Why is Thacker Pass So Important,” <https://www.rsic.org/218/Why-is-Thacker-Pass-Peehee-MuHuh-So-Impo> (accessed October 22, 2024).



Josh Dini and Gary McKinney pictured at Thacker Pass in northwestern Nevada at the 2024 prayer run. © 2024 River Akemann.

Significance of Peehee Mu’huh to Indigenous Communities

The village and the surrounding area that is Peehee Mu’huh has enormous significance to the Numu/Nuwu and Newe. Indigenous peoples and members of the Tribes discussed in this report describe Peehee Mu’huh as land used and occupied by their ancestors and as vital to their history, culture, and religion.⁶¹

“Our ancestors used this pass as a travel route, obsidian collection area, and campsite for thousands of years,” Reno-Sparks Indian Colony explained in a website statement on the importance of Thacker Pass.⁶² “Paiute and Shoshone people have hunted deer and other wildlife, fished for Lahontan cutthroat trout, gathered food and medicinal plants, and

⁶¹ See footnotes accompanying list of Tribes in Methodology chapter above. See also, *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 4, Tribes’ National Register of Historic Places Eligibility Submission, p. 52, (stating that “Thacker Pass is a traditional cultural property with singular historic and cultural importance.”).

⁶² Reno Sparks Indian Colony, “Why is Thacker Pass So Important,” <https://www.rsic.org/218/Why-is-Thacker-Pass-Peehee-MuHuh-So-Impo> (accessed October 22, 2024).

practiced our spiritual ways here since time immemorial, and we continue to do so to the present day.”⁶³

Peehee Mu’huh’s location as the site of the 1865 Massacre, and the site of its victims’ final resting place, gives it particular significance to the Numu/Nuwu and Newe.⁶⁴ Tribes believe Numu/Nuwu and Newe ancestors’ bones and spirits rest at Peehee Mu’huh⁶⁵ and it remains a place for mourning and communing with ancestors. “That’s where our ancestors were; they were massacred there,”⁶⁶ a Numu/Nuwu and Newe woman Elder told Human Rights Watch and the ACLU, saying she had visited the land repeatedly throughout her lifetime. “Our people, our relatives, and one of our direct ancestors. His name is Ox Sam. But there were other people, the grandparents of the people from here, their ancestors [were massacred] too.”⁶⁷

⁶³ Ibid.

⁶⁴ Hanes, “Cultural Persistence in Nevada,” p. 204 (noting the incomplete ethnographic boundaries of the Northern Paiute and the Western Shoshone, recognizing that these communities were the original inhabitants of the land). In reality, the Western Shoshone and Northern Paiute territorial boundaries were fluid and both communities occupied Peehee Mu’huh. *United States v. Northern Paiute Nation*, (specifically only recognizing the validity of this case in its statement that the Northern Paiute people were “aboriginal,” meaning “the people who have been in a region from the earliest time,” and disavowing the narrative that the Northern Paiutes’ title to the land was extinguished by white settlers encroaching on their land (“Aboriginal,” Merriam-Webster Dictionary.); Eleanor Tom, “We Shall Remain: A Native History of Utah, Paiute Creation Story,” video story, *Public Broadcasting Service*, September 31, 2009, <https://www.pbs.org/video/kued-local-productions-we-shall-remain-paiute/> (accessed May, 22, 2024); Elder Ralph Burns, “Telling Place: The Stone Mother, Pyramid Lake,” video story, *The Archaeology Channel*, 2012, <https://www.archaeologychannel.org/index.php/video-guide-summary/2424-telling-place-stone-mother> (accessed May 22, 2024); “Tribal Water Stories,” ed. Carole Rains, *California Department of Water Resources Technical Publications* (2018), <https://water.ca.gov/-/media/DWR-Website/Web-Pages/About/Tribal/Files/Tribal-Stories-2.pdf> (accessed May 22, 2024), p. 5, 6, 12, 13, 14 (noting that the applicable stories for this region are those of the Bishop Paiutes).

⁶⁵ Human Rights Watch/ACLU interviews with Inelda Sam, Dorece Sam, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interviews with Dean Barlese and Daranda Hinkey.

⁶⁶ Human Rights Watch/ACLU interview with Inelda Sam.

⁶⁷ Ibid.

Tribal members underscored that the distance between the Peehee Mu’huh area and their current reservations does not lessen the cultural, religious and traditional importance of the site.⁶⁸ Tribal members told Human Rights Watch and the ACLU that their connections to Peehee Mu’huh reflect their ancestors’ control over, occupation of, and links to lands in the Great Basin. “This is the land of our people ... my people for ... forever, millennia,” said Numu/Nuwu and Newe community organizer.⁶⁹ “And so to be able to represent [them], that’s pretty powerful in my mind.”⁷⁰

Numu/Nuwu and Newe belief systems attach meaning to the entire swath of land at Peehee Mu’huh because it is:



Construction equipment at the Thacker Pass lithium mine. © 2024 River Akemann.

[A] spiritually powerful place blessed by the presence of our ancestors and other spirits; has been a place where our people have gathered obsidian to make arrowheads ... provides habitat for wildlife we hunt including groundhog and mule deer; and is home to sacred golden eagles, who we believe are directly connected to the Creator and our ancestral past.... We also possess powerful historical connections to Thacker Pass. Some of our ancestors were massacred in Thacker Pass.⁷¹

⁶⁸ Reno-Sparks Indian Colony and Atsa Koodakuh Wyh Nuwu (“People of Red Mountain”), Declaration of Michon R. Eben, *Bartell Ranch v. McCullough*, Case 3:21-cv-00080-MMD-CLB Document 45-1, Filed July 29, 2021, p. 6, <https://www.courtlistener.com/docket/59247337/45/1/bartell-ranch-llc-v-mccullough/> (accessed October 22, 2024).

⁶⁹ Human Rights Watch/ACLU telephone interview with Daranda Hinkey.

⁷⁰ *Ibid.*

⁷¹ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 5, Letter from Reno Sparks Indian Colony to Ms. Ester McCullough, District Manager and Mr. Ken Loda, Project Manager, Bureau of Land Management, Winnemucca District Office, June 3, 2021.

Another characterization of the significance of the land was provided to BLM and the courts by the Summit Lake Paiute Tribe (SLPT):

SLPT tribal members – like our ancestors from time immemorial before us – travel through; hunt; gather traditional foods and medicines; make tools; educate and learn about Paiute history; camp, pray, and perform ceremony in Thacker Pass. And, SLPT tribal members expect to continue to do this in the future. SLPT tribal members have cultural, historical, spiritual, and economic interests in Thacker Pass.⁷²

A third was provided by several Numu/Nuwu and Newe people associated with and members of the Fort McDermitt Tribe:

Thacker Pass is essential to the survival of our traditions. Our traditions are tied to the land. When our land is destroyed, our traditions are destroyed. Thacker Pass is home to many of our traditional foods. Some of our last choke cherry orchards are found in Thacker Pass.... Thacker Pass is one of the last places where we can find our traditional medicines. We gather ibi, a chalky rock that we use for ulcers and both internal and external bleeding.... Last summer and fall, when the pandemic was at its worst on the reservation, we went to Thacker Pass for toza root, which is known as one of the world’s best anti-viral medicines. We also gathered good, old-growth sage brush to make our strong Indian tea, which we use for respiratory illnesses. Thacker Pass is also historically significant to our people. The massacre described above is part of this significance. Additionally, when American soldiers were rounding our people up to force them on to reservations, many of our people hid in Thacker Pass.... The Fort McDermitt Tribe descends from essentially two families who, hiding in Thacker Pass, managed to avoid being sent to reservations farther away from our ancestral lands. It could be said, then, that the Fort McDermitt Tribe might not be here if it wasn’t for the shelter provided by Thacker Pass.⁷³

⁷² *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 2, Declaration of Randi Lone Eagle.

⁷³ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs’ Appendix of Exhibits in Support of Complaint, Exhibit 13, Fort McDermitt and Winnemucca Indian Colony responses to BLM April 14, 2021 letter.

Colonialism, Extraction, and their Legacies

While the full scope of settler colonialism⁷⁴ in the US and its impacts on Indigenous peoples are beyond the scope of this report; this section provides background, however inadequate, on the harms the US government, and US settlers, perpetrated against Indigenous communities.⁷⁵ Disputes over the Thacker Pass mine should be viewed through the lens of centuries of gross human rights abuses committed against Indigenous peoples.

While recognizing that the term “settler colonialism” is used in different ways depending on context, for purposes of this report, we use the term “settler colonialism” to refer to a structure of colonialism that seeks to “occupy permanently the territories they colonize.”⁷⁶

The US federal government implemented policies that attempted to destroy and erase Indigenous peoples and expropriate land and resources prior to settler colonialism.⁷⁷ In 1823, the Supreme Court adopted the discovery doctrine, a legal sanction of settler

⁷⁴ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research*, vol. 8 (2006), p. 388, doi: 10.1080/14623520601056240 (noting that “[s]ettler colonialism destroys to replace,” and recognizing that “elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence”); Natsu Taylor Saito, *Settler Colonialism, Race, and the Law: Why Structural Racism Persists* (New York: New York University Press, 2020), p. 45 (defining settler colonialism not as an event but as a structure and noting that “settler colonists plan not only to profit from but also occupy permanently the territories they colonize”); Mahmood Mamdani, “Settler Colonialism: Then and Now,” *Journal of Critical Inquiry*, vol. 41 (2015) pp. 600-608, doi: 10.1086/680088 (accessed June 25, 2024); Lisa Lowe, *The Intimacy of Four Continents* (Durham: Duke University Press, 2015), p. 16; Frederick E. Hoxie, “Retrieving the Red Continent: Settler Colonialism and the History of American Indians in the US,” *Ethnic and Racial Studies*, vol. 31 (2008), p. 1160, doi: 10.1080/01419870701791294; Lorenzo Veracini, “Introducing Settler Colonial Studies,” *Institute for Social Research*, vol. 1 (2011), doi: 10.1080/2201473X.2011.10648799; Blackhawk, *Rediscovery of America*.

⁷⁵ See Blackhawk, *Rediscovery of America*, Part II, Ch. 12; Taiaiake Alfred and Jeff Corntassel, “Being Indigenous: Resurgences Against Contemporary Colonialism,” *Government and Opposition*, Cambridge University Press, vol. 40 (2014), pp. 597-614; Farrell et al., “Effects of Land Dispossession,” p. 1-2, (noting that land dispossession continues today, as do the effects of land dispossession). Other present-day harms with deep roots in history can be seen in Indigenous health outcomes, access to resources, mental health, wealth disparities, higher pollution rates, mortality rate disparity, and many other areas of US society.

⁷⁶ Ibid.

⁷⁷ Wolfe, “Settler Colonialism and the Elimination of the Native,” (noting that “[s]ettler colonialism destroys to replace,” and recognizing that “elimination is an organizing princip[le] of settler-colonial society rather than a one-off (and superseded) occurrence”); Taylor Saito, *Settler Colonialism, Race, and the Law*, p. 45 (defining settler colonialism not as an event but as a structure and noting that “settler colonists plan not only to profit from but also occupy permanently the territories they colonize.”); Mamdani, “Settler Colonialism”; Lowe, *The Intimacy of Four Continents*, p. 16; Hoxie, “Retrieving the Red,” p. 1160; Veracini, “Introducing Settler Colonial Studies”; Farrell et al., “Effects of Land Dispossession,” p. 1-2; Blackhawk, *Rediscovery of America*; US Department of the Interior, Federal Indian Boarding School Initiative Investigative report (2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf (accessed June 5, 2024), p. 21.

colonialism that spurred centuries of federal “Indian” policy.⁷⁸ The discovery doctrine promoted “a unilateral right of European colonial powers to claim superior sovereignty and rights over Indigenous peoples’ lands and resources based on their supposed lack of civilization and religion.”⁷⁹

Federal policies shaped settler colonization efforts throughout the decades, rooted in the discovery doctrine. From around 1828 until 1849, the federal government operationalized removal policies against Indigenous peoples.⁸⁰ The US military forcibly removed Indigenous peoples from their land,⁸¹ utilizing sexual assault and rape,⁸² starvation,⁸³ hypothermia,⁸⁴ massacres,⁸⁵ and other violent means to decimate Indigenous

⁷⁸ *Johnson & Graham’s Lessee v. McIntosh*, 21 U.S. 543 (1823). This case remains law and has never been overturned or partially overturned; Roxanne Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, (Boston: Beacon Press 2014), Ch. 11; Walter R. Echo-Hawk, *In the Courts of the Conqueror: the 10 Worst Indian Law Cases Ever Decided*, (Golden: Fulcrum Publishing, 2012), p. 55.

⁷⁹ UN Office of the High Commissioner for Human Rights, “UN Expert Hails Vatican Rejection of the ‘Doctrine of Discovery’, Urges States to Follow Suit,” April 6, 2023, <https://www.ohchr.org/en/press-releases/2023/04/un-expert-hails-vatican-rejection-doctrine-discovery-urges-states-follow> (accessed June 5, 2024).

⁸⁰ US Congress, Indian Removal Act of 1830, Sec. I. Ch. 148, 1830; “Andrew Jackson’s Message to Congress ‘On Indian Removal’” (1830), <https://www.archives.gov/milestone-documents/jacksons-message-to-congress-on-indian-removal#transcript> (accessed June 5, 2024) (noting removal will place a “civilized population in large tracts of country now occupied by a few s*v*ge hunters.”); Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 110-112.

⁸¹ Jeffrey Ostler, *Surviving Genocide: Native Nations and the United States from the American Revolution to Bleeding Kansas*, (New Haven: Yale University Press, 2019), Part Three, Removal, p. 247; Blackhawk, *Rediscovery of America*, p. 293; Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 109.

⁸² Colin G. Calloway, “The Continuing Revolution in Indian Country,” in Frederick E. Hoxie et al., eds., *Native Americans and the Early Republic* (Charlottesville: University Press of Virginia, 1999), p. 15. “Indian Country” is a term used by Indigenous communities in the US to describe ancestral homelands and any space where Indigenous community is found. Indian country, with a lowercase c, is used in US legal code to describe federally recognized reservation land, and other land that the US holds in trust for Tribes; See also Ostler, *Surviving Genocide*, Part Three, Removal, p. 34, 72, 262, 266, 271, 272, 286 (examples of the commonplace tool of sexual assault and rape, but undoubtedly a limited view of the atrocity, as sexual assault and rape were common to the era, and even more so against Indigenous people); Blackhawk, *Rediscovery of America*, p. 293.

⁸³ Ostler, *Surviving Genocide*, p. 252; Smithsonian American Art Museum, “Manifest Destiny and Indian Removal,” <https://americanexperience.si.edu/wp-content/uploads/2015/02/Manifest-Destiny-and-Indian-Removal.pdf> (accessed June 5, 2024) (noting “starvation” in the context of several “forced migrations” on the last page before the glossary).

⁸⁴ Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 113; Ostler, *Surviving Genocide*, p. 252.

⁸⁵ Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 111; Ostler, *Surviving Genocide*, p. 306. See also the massacres and genocide in California, Erin Blakemore, “California Slaughtered 16,000 Native Americans. The State Finally Apologized for the Genocide,” *History*, <https://www.history.com/news/native-american-genocide-california-apology> (accessed June 25, 2024).

communities⁸⁶ and allow settlers to occupy Indigenous land.⁸⁷ The US killed tens of thousands of Indigenous peoples during the removal era.⁸⁸

Starting around 1850, the US operationalized the reservation system, which continues today.⁸⁹ The US systematically interned Indigenous peoples on reservations—smaller areas of land, often land undesirable to settlers.⁹⁰ Indigenous peoples who were interned on reservations were denied their traditional ways of life and forced to be dependent on the US for food, water, and health care, of which the US often deprived them, resulting in illness and death.⁹¹ During this era, the US continued to slaughter entire Indigenous communities.⁹²

⁸⁶ US Congress, Indian Removal Act of 1830; “Andrew Jackson’s Message to Congress ‘On Indian Removal’” (1830) (noting removal will place a “civilized population in large tracts of country now occupied by a few s*v*ge hunters.”); Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*; Matthew Wills, “How Commonly Was Smallpox Used as a Biological Weapon?” *Jstor Daily*, <https://daily.jstor.org/how-commonly-was-smallpox-used-as-a-biological-weapon/> (accessed January 2, 2025) (discussing the intentional delivery of blankets infected with smallpox to Indigenous communities in the 17th and 18th century with the intent to harm); See also, footnote 164 of this report for additional sources discussing the spread of disease, which decimated Indigenous communities.

⁸⁷ US Congress, Indian Removal Act of 1830; “Andrew Jackson’s Message to Congress ‘On Indian Removal’” (1830) (noting removal will place a “civilized population in large tracts of country now occupied by a few s*v*ge hunters.”).

⁸⁸ Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 113; David Michael Smith, “Counting the Dead: Estimating the Loss of the Indigenous Holocaust, 1492 -Present,” *Southeastern Oklahoma State University Twelfth Native American Symposium 2017* (2017), p. 7.

⁸⁹ US Congress, Indian Appropriations Act of 1851 (allocating funds for reservations); Blackhawk, *Rediscovery of America*, p. 461; Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 10 (noting also that these time periods have porous edges, and reservations were established before 1851, particularly in the Great Lakes Region). Additionally, though the history and reality of reservations is fraught, it is through reservations and treaty rights that many Tribes enforce their rights and maintain homes for community members. Reservations are and will remain complicated.

⁹⁰ US Department of the Interior, Federal Indian Boarding School Initiative Investigative report (2022), p. 21.

⁹¹ Adam Creppelle, “Federal Policies Trap Tribes in Poverty,” *American Bar Association*, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/wealth-disparities-in-civil-rights/federal-policies-trap-tribes-in-poverty/?login (accessed June 5, 2024); Sara Usha Maillacheruvu, “The Historical Determinants of Food Insecurity in Native Community,” *Center on Budget and Policy Priorities*, (2022), <https://www.cbpp.org/sites/default/files/10-4-22fa.pdf> (accessed June 5, 2024), p. 12; Rebecca Webster, “Food Reservations at the Reservation?” in Beth Ann Fielder, eds., *Translating National Policy to Improve Environmental Conditions Impacting Public Health Through Community Planning* (Duluth: Springer International Publishing) (2018) (noting that both food and healthcare are historical determinants of current poor health in Indigenous communities); United States Census Bureau, “Twelfth Census of the United States No. 35,” <https://www2.census.gov/library/publications/decennial/1900/bulletins/demographic/35-population-nv.pdf> (accessed June 5, 2024); Jedidiah Morse, *A Report to the Secretary of War of the United States, on Indian Affairs, Comprising a Narrative of a Tour, Performed in the Summer of 1820* (New Haven: S. Converse) (1822), p. 368-369. https://www.loc.gov/resource/gdcmassbookdig.reporttosecretaroomors_0/?sp=1&st=slideshow (accessed June 25, 2024) (estimating that in 1820, there were 60,000 “Snake” Indigenous people. “Snake” refers to a conflation of the Northern Paiute, Bannock, and Shoshone people).

⁹² Walters, “History Through a Native Lens,” (listing massacres that occurred throughout this era); Blackhawk, *Rediscovery of America*, p. 408.

From 1887 until 1933, the US used boarding schools and land allotment policies to forcibly assimilate Indigenous communities.⁹³ Hundreds of thousands of children were systematically kidnapped and removed from their homes and communities, and forced into assimilation schools.⁹⁴ In these schools they endured forced labor;⁹⁵ were subjected to sexual, physical, and psychological abuse;⁹⁶ starvation;⁹⁷ and death.⁹⁸ The stated intent of these policies was to “kill the ‘Indian,’ save the man.”⁹⁹ Similar abuse and forced assimilation continued through the 20th century with the “Indian” Adoption Project of 1958–67, which incentivized the adoption of Indigenous children by non-Indigenous families.¹⁰⁰ The US child welfare system still disproportionately investigates and removes Indigenous children from their families.¹⁰¹

⁹³ Blackhawk, *Rediscovery of America*, p. 14, 25, 461, 488 (noting 40 percent of Indigenous children were removed from their homes by 1928 and noting General Land Allotment Act of 1887, and that the US remained intent on eradicating Native Americans); The National Native American Boarding School Healing Coalition, “US Indian Boarding School History,” <https://boardingschoolhealing.org/education/us-indian-boarding-school-history/> (accessed June 5, 2024).

⁹⁴ Zach Levitt, et al, “War Against the Children,” *New York Times*, August 23, 2023, <https://www.nytimes.com/interactive/2023/08/30/us/native-american-boarding-schools.html> (accessed June 5, 2024); The National Native American Boarding School Healing Coalition, “US Indian Boarding School History,” (noting the number of Indigenous children at boarding schools was at 60,889 in 1925, around 35 years before the last boarding school closed).

⁹⁵ US Department of the Interior, Federal Indian Boarding School Initiative Investigative report (2022), p. 8, 24, 37-38, 59-64 (noting a contemporary report that said this practice would have violated labor laws in many states); The National Native American Boarding School Healing Coalition, “Voices from Pezihutazizi Oyate: Boarding School Histories,” video, https://boardingschoolhealing.org/resource_database/voices-from-pezihutazizi-oyate-boarding-school-histories/ (accessed June 5, 2024).

⁹⁶ Blackhawk, *Rediscovery of America*, p. 489-90; The National Native American Boarding School Healing Coalition, “Voices from Pezihutazizi Oyate”; Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 150-153, 211; US Department of the Interior, Federal Indian Boarding School Initiative Investigative report (2022), p. 56, 89 (discussing the epigenetic impact of sexual abuse on Indigenous men and future generations).

⁹⁷ US Department of the Interior, Federal Indian Boarding School Initiative Investigative report (2022), p. 38, 56, 63.

⁹⁸ *Ibid.*, p. 93 (noting that “The Department expects that continued investigation will reveal the approximate number of Indian children who died at Federal Indian boarding schools to be in the thousands or tens of thousands.”).

⁹⁹ “The Advantages of Mingling Indian with Whites, By Captain R. H. Pratt,” *Proceedings of the National Conference of Charities and Correction, at the Nineteenth Annual Session held in Denver*, Col. June 23-29, 1892, Edited by Isabel C. Barrows, Official Reporter of the Conference (Boston: Press of Geo. H. Ellis) (1892), p. 46. Captain Pratt’s speech, and his position on Indigenous people, was deeply racist and derogatory.

¹⁰⁰ See Claire Palmiste, “From the Indian Adoption Project to the Indian Child Welfare Act: The Resistance of Native American Communities,” *Indigenous Policy Journal*, vol. 22 (2011), HAL Id: hal-01768178; Beatrice Alvarez, “Native American History: Documentaries On American Indian Boarding Schools and Forced Assimilation: Generations Stolen,” video, <https://www.pbs.org/articles/native-american-history-documentaries-about-residential-schools-and-forced-adoptions> (accessed June 25, 2024) (noting that “estimates from government agencies suggest that between 25 and 35 percent of all Native children were stolen from their homes and communities in the 1960s. Of these children, an estimated 85 percent were often adopted into non-Native families to further the government’s goal of assimilation”); National Child Indian Welfare Association, “About ICWA,” <https://www.nicwa.org/about-icwa/> (accessed June 5, 2024) (noting 25-35 percent of children were stolen from Indigenous families for adoption to white families).

¹⁰¹ Human Rights Watch, “*If I Wasn’t Poor, I Wouldn’t be Unfit*”: *The Family Separation Crisis in the US Child Welfare System* (New York: Human Rights Watch, 2022), <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

In 1890, the US recorded a 95 percent decrease in the population of Indigenous peoples from 1491.¹⁰² The amount of land held and governed by Indigenous peoples also dropped from 138 million acres in 1887 to 48 million in 1934.¹⁰³ This drop is largely attributed to the allotment program, which divided Indigenous land and allowed for parts of it to be auctioned off.¹⁰⁴ The allotment policies allowed the US to efficiently gain control of lands and resources, making massacres less common as a tactic to seize territory.¹⁰⁵

In 1945, the former director of Japanese internment camps during World War II, Dillon Meyer, was appointed the commissioner of “Indian” affairs.¹⁰⁶ Meyer strongly advocated for defunding reservations and selling reservation land to non-Indigenous peoples.¹⁰⁷ The US began terminating the limited legal protections Indigenous peoples maintained and selling reservation land.¹⁰⁸ The US used the Indian Relocation Act of 1956 to remove Indigenous peoples, opening reservation land for settlement. The Indian Relocation Act lured Indigenous peoples to cities with false promises of prosperity, which a Bureau of Indian Affairs Commissioner later called “an underfunded, ill-conceived program ... essentially a one-way ticket from rural to urban poverty.”¹⁰⁹ By 1988, the US had terminated hundreds of Tribes, rescinding their legal protections and opening access to Tribal land.¹¹⁰ Indigenous activists and activism pressured the US into ending the termination policy in 1988.¹¹¹

¹⁰² David E. Stannard, *American Holocaust: The Conquest of the New World*, (New York: Oxford University Press, 1992), p. 151.

¹⁰³ US Department of the Interior, “Native American Ownership and Governance of Natural Resources,” <https://revenue.data.doi.gov/how-revenue-works/native-american-ownership-governance/#:~:text=The%20policy%20of%20allotment%20reduced,extended%20the%20trust%20period%20indefinitely> (last accessed January 9, 2025).

¹⁰⁴ Blackhawk, *Rediscovery of America*, p. 461. (noting that the 1887 General Allotment Act “divided reservation lands into individual parcels of 160 acres for heads of household and opened the remainder to sale and development.”).

¹⁰⁵ Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 154 (noting that, though less frequent, massacres still occurred, like at Wounded Knee in 1890, and the spread of diseases that originated with Europeans also ravaged communities).

¹⁰⁶ Blackhawk, *Rediscovery of America*, p. 570.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*; Vine Deloria Jr., *Custer Died for your Sins: An Indian Manifesto* (New York: Macmillan, 1969); Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States*, p. 173-90.

¹⁰⁹ Max Nesterak, “Uprooted: the 1950s Plan to Erase Indian Country,” *APM Reports*, <https://www.apmreports.org/episode/2019/11/01/uprooted-the-1950s-plan-to-erase-indian-country> (accessed August 27, 2024).

¹¹⁰ Blackhawk, *Rediscovery of America*, p. 570.

¹¹¹ *Ibid.*

The legacies of colonial harm reverberate today in Indigenous communities through, among other problems, lack of collective land ownership,¹¹² high rates of post-traumatic stress disorder and other mental health conditions,¹¹³ disproportionate family separation,¹¹⁴ health outcome disparities,¹¹⁵ intergenerational poverty,¹¹⁶ inadequate infrastructure,¹¹⁷ low education rates,¹¹⁸ and systemic inadequacy of the availability of and access to rights-essential housing,¹¹⁹ internet,¹²⁰ electricity,¹²¹ sanitation,¹²² safe and acceptable water,¹²³ and adequate and nutritious food.¹²⁴

Settler colonialism and extractive industries have always dominated the relationship between the US and Indigenous peoples in the western US.¹²⁵ Mining, historically and

¹¹² Ibid., p. 563, 461, 570 (noting that the US holds reservation land in trust, rather than Tribes having legal ownership of the land, and that much of the land was sold to settlers during the allotment period).

¹¹³ Deborah Bassett et. al., “Posttraumatic Stress Disorder and Symptoms among American Indians and Alaska Natives: A Review of the Literature,” *Social Psychiatry Epidemiol*, vol. 49 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3875613/> (accessed June 25, 2024), p. 417.

¹¹⁴ Human Rights Watch, “*If I Wasn’t Poor, I Wouldn’t be Unfit.*”

¹¹⁵ US Department of Health and Human Services, Indian Health Services, “Disparities,” October 2019, <https://www.ihs.gov/newsroom/factsheets/disparities/> (accessed June 21, 2024).

¹¹⁶ Joint Economic Committee Democrats, “Native Communities Continue to Face Barriers to Opportunity that Stifle Economic Mobility,” https://www.jec.senate.gov/public/_cache/files/f655e241-4db2-4ef9-bc50-f3987acaco8f/nativeamericanscontinuetofacepervasiveeconomicdisparities-final.pdf (accessed June 25, 2024).

¹¹⁷ US Department of the Interior Indian Affairs, “Importance of Tribal Infrastructure,” <https://www.bia.gov/service/infrastructure/importance-tribal-infrastructure> (accessed June 25, 2024).

¹¹⁸ Alan Woods, “The Federal Government Gives Native Students an Inadequate Education, and Gets Away With It,” *ProPublica*, August 6, 2020, <https://www.propublica.org/article/the-federal-government-gives-native-students-an-inadequate-education-and-gets-away-with-it> (accessed June 25, 2024).

¹¹⁹ Nicole Stern, “Poor Housing Harms Health in American Indian and Alaska Native Communities,” *Harvard Health Publishing*, April 6, 2022, <https://www.health.harvard.edu/blog/poor-housing-harms-health-in-american-indian-and-alaska-native-communities-202204062721> (accessed June 25, 2024).

¹²⁰ Arizona State University, American Indian Policy Institute, “Tribal Broadband Resources,” <https://aipi.asu.edu/tribal-broadband-old> (accessed June 25, 2024).

¹²¹ US Department of the Interior, “Tribal Energy Development,” <https://www.doi.gov/ocl/tribal-energy-development#:~:text=The%20need%20across%20Indian%20Country,higher%20than%20the%20national%20average> (accessed June 25, 2024).

¹²² Tribal Clean Water, “Universal Access to Clean Water for Tribal Communities,” <https://tribalcleanwater.org> (accessed June 25, 2024).

¹²³ Ibid.

¹²⁴ Valarie Blue Bird Jernigan et al., “Food Insecurity among American Indians and Alaska Natives: A National Profile Using the Current Population Survey—Food Security Supplement,” *Journal of Hunger and Environmental Nutrition*, vol. 12 (2017), <https://pubmed.ncbi.nlm.nih.gov/28491205/> (accessed June 25, 2024); Toni Stanger-McLaughlin et al., “Reimagining Hunger Responses in Times of Crisis,” *Native American Agriculture Fund, Indigenous Food and Agriculture Initiative, University of Arkansas, and Food Research & Action Center* (2021) <https://nativeamericanagriculturefund.org/wp-content/uploads/2018/04/Reimagining-Hunger-Responses-in-Times-of-Crisis.pdf> (accessed June 25, 2024).

¹²⁵ Blackhawk, *Rediscovery of America*, p. 432-33, 570; Cody Nelson, “The Dizzying Scope of Abandoned Mine Hazards on Public Lands,” *High Country News*, January 28, 2022, <https://12ft.io/proxy> (accessed June 5, 2024); Johnnye Lewis et. al,

currently, frequently impacts Indigenous peoples' land, health, and human rights.¹²⁶ While this report focuses on the Thacker Pass mine in Nevada, extractive industries harming Indigenous peoples are a characteristic of settler colonialism across the US.¹²⁷ In 2017, more than 600,000 Indigenous peoples lived within approximately six miles of an abandoned mine.¹²⁸ There is also a long history of oppression and land grabs by the fossil fuel industry on Indigenous peoples' land in the United States, as well as a long tradition of resistance in Indigenous communities.¹²⁹

The hunt for natural resources, including minerals, was a key driver in settler colonialism and abuses suffered by Indigenous peoples across the US.¹³⁰ In 1872, the US Congress passed a law that further fueled colonial settlement and the theft of Indigenous lands.¹³¹ The law, by declaring mineral deposits “free and open” to exploitation and purchase, establishes US citizens' rights to mine public land and does not require them to pay royalties to the federal government.¹³² Federal law at the time excluded Indigenous peoples from US citizenship.¹³³ The 1872 law incentivized mineral exploration and

“Mining and Environmental Health Disparities in Native American Communities,” *Current Environmental Health Reports*, vol. 4 (2017), doi: 10.1007/s40572-017-0140-5 (accessed June 5, 2024); Kyle Whyte, “Settler Colonialism, Ecology, and Environmental Injustice,” *Indigenous Resurgence, Environment and Society*, vol. 9 (2018), <https://www.jstor.org/stable/26879582> (accessed June 5, 2025); Edited by Eliga Gould et al., “Extractive Industries and the Transformation of American Environments,” in *The Cambridge History of America and the World* (Cambridge: Cambridge University Press, 2022), p. 96 (providing an overview of extractive industry throughout the decades).

¹²⁶ Nelson, “The Dizzying Scope”; Lewis et. al, “Mining and Environmental Health Disparities.”

¹²⁷ Blackhawk, *Rediscovery of America*, p. 432-33; Nelson, “The Dizzying Scope”; Lewis et. al, “Mining and Environmental Health Disparities.” See also the circumstances around Apache Stronghold, lithium mining in the Black Hills, and lithium exploration on Hualapai sacred springs.

¹²⁸ Nelson, “The Dizzying Scope”; Lewis et. al, “Mining and Environmental Health Disparities.”

¹²⁹ For example, New Mexico: “Energy Development Impacts”; Dakotas and Montana: Native American Rights Fund, “Keystone XL Pipeline”; Texas: Morgan O’Hanlon, “In Texas, Indigenous Land Protectors”; Dakotas: Native Knowledge, “Treaties Still Matter.”

¹³⁰ Blackhawk, *Rediscovery of America*, p. 432-33, 570; Nelson, “The Dizzying Scope”; Lewis et. al, “Mining and Environmental Health Disparities”; Whyte, “Settler Colonialism”; Edited by Gould et al, “Extractive Industries,” p. 96 (for an overview of extractive industry throughout the decades).

¹³¹ US Congress, Act of May 10, 1872 (Mining Law of 1872), as amended through P.L. 103-66, Enacted August 10, 1993, <https://earthworks.org/assets/uploads/2018/05/1872-Mining-Law-text.pdf> (accessed June 5, 2024).

¹³² Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” September 2023, <https://www.doi.gov/media/document/mriwg-report-final-508-pdf> (accessed June 5, 2024), p. 19, 40. The 1872 Mining Law also allows for non-citizens, including non-citizen corporations, who have declared their intention to become citizens, rights under the law. However, standard practice in the industry is to form US subsidiaries; See also, United States Department of the Interior, Office of the Solicitor, November 14, 2005, <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37012.pdf> (accessed January 2, 2025); International Comparative Legal Guides, “Mining laws and Regulations USA 2025,” <https://iclg.com/practice-areas/mining-laws-and-regulations/usa> (accessed January 2, 2025).

¹³³ Indigenous people were not citizens until 1924. See also, US Congress, Act of May 10, 1872; Native American Rights Fund, “The Indian Citizenship Act at 100 years Old,” June 4, 2024 (accessed June 5, 2024).

development, and created a structure for dispossession of Indigenous peoples: the US government first seized Indigenous land without treaties, and then settlers staked and developed mining claims on this newly acquired “public land.”¹³⁴

The 1872 law has played a central role in driving the growth of mining across the US. A US government interagency working group on mining reform stated in a 2023 report that, since the 1872 law’s passage, around 3.2 million acres of land—an area approximately the size of Connecticut—have been transferred from the federal government to mining companies.¹³⁵ The report stated that this constitutes “an estimated excess of \$300 billion in mineral wealth.”¹³⁶

The expansion of mining had devastating impacts on Indigenous communities. The 2023 interagency working group found that:

A large number of Tribal displacements, forced relocations, and other tragedies were driven by mining: from the Georgia gold rush in the 1820s and 1830s that led to the forced removal of the Cherokee and other Tribes from their lands, to the death of an estimated 100,000 American Indians in the first two years of the California gold rush, to the forced negotiations in 1863 that led the Nez Perce Tribe to relinquish 90 percent of its land in what the Tribe refers to as the ‘Steal Treaty,’ to the seizure of the Black Hills in 1877 after the discovery of gold in the region, among numerous other examples.¹³⁷

¹³⁴ Michael Lopez, “Tribal Rights: The 1872 Mining Law Past and Future,” January 1, 2020, https://www.americanbar.org/groups/environment_energy_resources/resources/natural-resources-environment/2014-2022/tribal-rights-1872-mining-laws-past-future/ (accessed January 2, 2025).

¹³⁵ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 19; See also, U.S. Gov’t Accountability Office, B-229205, “Federal Land Management: The Mining Law of 1872 Needs Revision,” 1989, <https://www.gao.gov/assets/rced-89-72.pdf> (accessed January 8, 2025), p. 2. The 3.2 million acres were transferred to private ownership as patents. Since 1994, Congress has not allowed for patented mining claims; much of mining on public lands is permitted under unpatented mining claims subject to statutes and the land remains federally owned.

¹³⁶ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 19; See also Earthworks, “1872 Mining Law Factsheet,” 2019, <https://earthworks.org/resources/the-1872-mining-law> (accessed January 8, 2025).

¹³⁷ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 21.

The Numu/Nuwu and Newe and Colonialism

The Numu/Nuwu and Newe post-colonial history is marked by dispossession, marginalization, and impoverishment largely stemming from predatory resource extraction overseen or facilitated by the US government.

In 1848, settlers began crossing Nevada to seek gold in California,¹³⁸ increasing violence between the Numu/Nuwu and Newe and settlers. In response to Numu/Nuwu and Newe caravan raids, the US military or settlers would attack any Indigenous person in the vicinity.¹³⁹

Throughout the decades, as settlers encroached on their land, the Numu/Nuwu and Newe faced violent land dispossession, the taking of resources,¹⁴⁰ numerous massacres by settlers and the US Cavalry,¹⁴¹ toxic pollution from mining operations,¹⁴² and many other abuses.¹⁴³ The violence perpetrated by the US and settlers against the Numu/Nuwu and Newe, as well as other Indigenous peoples, was often perpetrated with the explicit goal of making land available for mining and excused by the narrative of retribution for raids on settlers' caravans.¹⁴⁴ The value of gold and silver to the US economy and settlers exacerbated settler colonialism in Numu/Nuwu and Newe territory.¹⁴⁵ The following is an incomplete, but illustrative, list of notable massacres, land seizures, kidnappings and

¹³⁸ Sally Zanjani, *Devils Will Reign: How Nevada Began* (Reno: University of Nevada Press, 2007), p. 1.

¹³⁹ Blackhawk, *Rediscovery of America*, p. 434, 440-441, 451. See also, Gregory Michno, *The Deadliest Indian War in the West: The Snake Conflict 1864-1868* (Caldwell: Caxton Press, 2007); Zanjani, *Devils Will Reign*, p. 9; Michael J. Makley, *Imposing Order without Law: American Expansion to the Eastern Sierra, 1850-1865* (Reno: University of Nevada Press, 2022), p. 14 (noting that settlers were often fearful of Indigenous people, which triggered settler violence).

¹⁴⁰ See Blackhawk, *Rediscovery of America*, p. 347, 400, 432, 434, 440-441, 451; Inter-Tribal Council of Nevada, *Numa: The Northern Paiute History* (Reno: Inter-Tribal Council of Nevada, 1976) (noting the Comstock Lode brought hordes of mineral prospectors to Numu territory, dispossessing the Numu of their land); Inter-Tribal Council of Nevada, *Newe: A Western Shoshone History* (Reno: Inter-Tribal Council of Nevada, 1976), p. 20; Ned Blackhawk, *Violence over the Land: Indians and Empires in the Early American West* (Cambridge: Harvard University Press, 2006), p. 10.

¹⁴¹ See Blackhawk, *Rediscovery of America*, p. 347, 400, 432, 434, 440-441, 451.

¹⁴² Lewis et. al, "Mining and Environmental Health Disparities," p. 132; US Environmental Protection Agency, Toxics Release Inventory (TRI), 2013-2022 Data, https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet_forstate?pstate=NV&pyear=2020&pParent=TRI&pDataSet=TRIQ1 (accessed June 4, 2024) (showing Nevada ranked first in the US for toxic releases into the environment, and that Nevada's gold mining sector is the top toxin releasing industry).

¹⁴³ See discussion of reservations and boarding schools later in this section.

¹⁴⁴ Blackhawk, *Rediscovery of America*, p. 432-33; Farrell et al., "Effects of Land Dispossession"; Inter-Tribal Council of Nevada, *Numa* (noting the Comstock Lode brought hordes of mineral prospectors to Numu territory, dispossessing the Numu of their land).

¹⁴⁵ Blackhawk, *Rediscovery of America*, p. 434.

internments described by historians, Tribes, and journalists across Nevada and the Great Basin against the Numu/Nuwu and Newe:

- In 1860, a settler mob gathered to attack a nearby Numu/Nuwu community, perceived to be associated with the recent deaths of a few settlers.¹⁴⁶ The settlers marched on the entire Numu/Nuwu community at Pyramid Lake but were rebuffed.¹⁴⁷ The US then stationed soldiers in the area.¹⁴⁸ A second battle occurred, with the Numu/Nuwu once again prevailing.¹⁴⁹ After these battles, there was a brief armistice.¹⁵⁰
- In 1862, as part of what is known as the Owens Valley War, the US Cavalry¹⁵¹ slaughtered over 330 people on Numu/Nuwu and Newe territory, took 850 Numu/Nuwu prisoner, and marched them to a military fort in southern California.¹⁵²
- In 1863, the US Cavalry attacked a village of hundreds of Newe people.¹⁵³ They fired without provocation, with the intent to massacre the entire village.¹⁵⁴ An Army scout said of the first volley of shots: “it frightened the ‘Indians’ so that they came running out ... like jack rabbits and were shot down like sheep.”¹⁵⁵ A perpetrator of the massacre noted that he counted 493 massacred Indigenous peoples; historians recognize it as the “largest military massacre of Native Americans.”¹⁵⁶
- Also in 1863, the US government stole—taking without a treaty, agreement, or compensation—82,159,280 acres of Great Basin land from the Indigenous

¹⁴⁶ Makley, *Imposing Order without Law*, p. 12, 27 (discussing how the white settlers were likely the initial instigators of the violence).

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Blackhawk, *Rediscovery of America*, p. 438.

¹⁵² Ibid.

¹⁵³ Ibid., p. 405; Dana Hedgpeth, “This Was the Worst Slaughter of Native Americans in History. Few Remember It,” *Washington Post*, September 26, 2021, <https://www.washingtonpost.com/history/2021/09/26/bear-river-massacre-native-americans-shoshone/> (accessed June 4, 2024); “Report of Col. P. Edward Connor,” *Utah Historical Quarterly*, vol. 80 (1863), p. 186-187.

¹⁵⁴ Ibid.

¹⁵⁵ Hedgpeth, “This Was the Worst Slaughter of Native Americans in History.”

¹⁵⁶ Blackhawk, *Rediscovery of America*, p. 405; Hedgpeth, “This Was the Worst Slaughter of Native Americans in History.”

peoples.¹⁵⁷ The Snake War (1864 through 1868)¹⁵⁸ involved US military forces with the Numu/Nuwu and Newe trying to protect their land and people. Various sources reported that US forces and settlers attacked villages and indigenous settlements, often at night, and in the winter,¹⁵⁹ intentionally targeting women and children and other non-combatants.¹⁶⁰ From 1864 to 1868, the US government and settlers conducted 111 reported massacres against Indigenous peoples,¹⁶¹ including the massacre at Peehee Mu’huh.

- In 1874, the United States seized another 43,991,600 acres of Indigenous land in the Great Basin, including Nevada, by executive order, without a treaty, agreement, or payment.¹⁶² This included traditional and ancestral Numu/Nuwu and Newe land.
- In the late 1800s and early 1900s, the US forcibly confining Indigenous peoples on reservations throughout the US.¹⁶³ In the case of the Numu/Nuwu and Newe, this mostly occurred on territories located in what is now Nevada and other parts of the Great Basin region. During this period, the US deprived Indigenous peoples, including the Numu/Nuwu and Newe, of water, food, and health care in these regions, leading to disease and death.¹⁶⁴

¹⁵⁷ Robert Lee and Tristan Ahtone “Land-Grab Universities Expropriated Indigenous land is the Foundation of the Land-Grant University System,” *High Country News*, March 30, 2020, <https://www.hcn.org/issues/52-4/indigenous-affairs-education-land-grab-universities/> (accessed June 4, 2024).

¹⁵⁸ See Inter-Tribal Council of Nevada, *Numa*; Michno, *The Deadliest Indian War in the West*; Col. Matthew Moten, *Between War and Peace: How America Ends its Wars* (New York: Free Press, 2011), p. 131 (stating that “Snake” was a derogatory homogenization of Paiute, Bannock, and Shoshone people).

¹⁵⁹ Inter-Tribal Council of Nevada, *Numa*; Michno, *The Deadliest Indian War in the West*, loc. 843, 876, 997, 1006, 3208, 3228, 3609 (though this book contains useful historical context, Human Rights Watch notes that in other ways this book contains racist content); Moten, *Between War and Peace*, p. 131.

¹⁶⁰ Inter-Tribal Council of Nevada, *Numa*; Michno, *The Deadliest Indian War in the West*, loc.1877, 2023, 2046, 2173, 2613, 3291, 4825, 4896, 7503 (noting that US military units kept Indigenous prisoners as slaves; while citing this book for historical context on the war, Human Rights Watch notes that in other ways this book contains racist content).

¹⁶¹ Reno-Sparks Indian Colony Tribal Historic Preservation Office, “Historical List of Massacres with Dates,” on file with Human Rights Watch/ACLU.

¹⁶² Lee and Ahtone “Land-Grab Universities.”

¹⁶³ State of Nevada Indian Commission, “Tribal Directory,” (see dropdown for a brief history of each Tribe, including dates of their reservation establishment and internment).

¹⁶⁴ Usha Maillacheruvu, “The Historical Determinants of Food Insecurity in Native Community,” p. 12; Webster, “Food Reservations at the Reservation?” (noting that both food and healthcare are historical determinants of current poor health in Indigenous communities); United States Census Bureau, “Twelfth Census of the United States No. 35”; Morse, *A Report to the Secretary of War of the United States, on Indian Affairs*, p. 368-369; Rosalyn Eves, “Protecting Native Americans in the Face of an Expanding United States,” *Smithsonian Magazine*, 2016, <https://www.smithsonianmag.com/history/sarah-winnemucca-devoted-life-protecting-lives-native-americans-face-expanding-united-states-180959930/> (accessed July 8, 2024); Martha C. Knack, *Boundaries Between the Southern Paiutes, 1775-1995* (Lincoln: University of Nebraska Press, 2001) (accessed July 8, 2024), p. 3.

- As part of boarding school initiatives, from 1890 to 1980, the US kidnapped an estimated 30,000 Indigenous children in Nevada and forcibly interned them at the only non-reservation boarding school in the state, one created and operated by the US federal government.¹⁶⁵ There are around 200 unmarked graves of children killed while at the boarding school, according to Stacey Montooth, director of Nevada’s Indian Commission.¹⁶⁶

The legacies of the 1872 Mining Law, massacres, the reservation system, and internment of Indigenous children in boarding schools, continue to impact Indigenous communities in Nevada today. Despite centuries of settler colonial violence and abuse, however, Indigenous people in Nevada and across the US remain culturally distinct, resilient, and sovereign.¹⁶⁷

The Thacker Pass Mine and the Global Hunt for Lithium

The Thacker Pass mine, approximately 25 miles from the Nevada-Oregon border,¹⁶⁸ lies on the traditional lands of the Numu/Nuwu and Newe peoples. The Thacker Pass mine is owned and operated by a Canadian corporation, Lithium Americas, through its wholly-owned US subsidiary, Lithium Nevada Corporation.¹⁶⁹ The project site covers nearly 18,000 acres of land and, when complete, will include an open-pit mine operating on one of the largest lithium deposits in the world.¹⁷⁰ As of October 2024, earthworks for the mine, excavations for the processing plant, and building construction were all 40-50 percent completed, with operations expected to commence in 2026.¹⁷¹

¹⁶⁵ Many of these children were Numu/Nuwu and Newe, but many were from other Indigenous communities as well. Herry L. Rupert, “Steward Indian School Living Legacy,” *State of Nevada Indian Commission*, p. 3, <http://stewartindianschool.com/wp-content/uploads/2015/08/SIS-Living-Legacy-Project-Description-.pdf> (accessed June 5, 2024).

¹⁶⁶ Bert Johnson, “Steward Indian School in Carson City to be Included in Federal Probe,” *Nevada Public Radio*, July 14, 2021, <https://knpr.org/show/knprs-state-of-nevada/2021-07-14/stewart-indian-school-in-carson-city-to-be-included-in-federal-probe> (accessed June 5, 2024).

¹⁶⁷ National Congress of American Indians, “Tribal Nations and the United States” (updated February 2020), https://archive.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf, p. 18 (accessed June 5, 2024).

¹⁶⁸ Nevada Division of Environmental Protection, “The Thacker Pass Lithium Project,” <https://ndep.nv.gov/land/thacker-pass-project> (accessed October 22, 2024).

¹⁶⁹ United States Securities and Exchange Commission, Form 20-F, Lithium Americas Corp. https://s203.q4cdn.com/835901927/files/doc_financials/2023/ar/LAC-20F-March-17.pdf (accessed July 31, 2024).

¹⁷⁰ Nevada Division of Environmental Protection, “The Thacker Pass Lithium Project.”

¹⁷¹ Lithium Americas, “Unlocking Thacker Pass,” October 2024, <https://lithiumamericas.com/news/news-details/2024/Unlocking-Thacker-Pass-General-Motors-to-Contribute-Combined-625-Million-in-Cash-and-Letters-of-Credit-to->



The Cordero Mine, a former mercury mine located four miles from the Fort McDermitt Reservation, McDermitt, Nevada, March 23, 2024. © 2024 Alison Leal Parker/Human Rights Watch

Because the lithium at Thacker Pass is found in soft, clay-based deposits rather than the harder rocks found at most existing lithium mining sites, the mine will use an unusual process to extract lithium from the mined ore.¹⁷² The process at Thacker Pass requires the company to first separate sand and gravel from the clay particles containing lithium and then thicken the clay.¹⁷³ The remainder of the process includes the use of acids to leach lithium.¹⁷⁴ The mine plan includes two waste rock storage facilities, a lithium processing

New-Joint-Venture-with-Lithium-Americas/default.aspx (accessed October 22, 2024) (noting that “Detailed engineering continues to progress in advance of issuing full notice to proceed, currently at approximately 40 percent design complete. Site preparation for major earthworks has been completed and the process plant area is currently being excavated (approximately 50 percent complete) to prepare for concrete placement, forecasted to begin by mid-2025.”).

¹⁷² Molly Boigon, “How Lithium Americas Mines and Processes Lithium Clay,” *AutoNews*, March 17, 2024, <https://www.autonews.com/manufacturing/how-lithium-americas-mines-and-processes-lithium-clay> (on file with Human Rights Watch).

¹⁷³ Lithium Americas, “Thacker Pass Mining and Processing,” <https://lithiumamericas.com/thacker-pass/mining-and-processing/default.aspx> (accessed October 22, 2024); Boigon, “How Lithium Americas Mines and Processes Lithium Clay.”

¹⁷⁴ *Ibid.*

facility, “a sulfuric acid plant for use in a leaching process,” and other processing and waste facilities.¹⁷⁵

Global demand for lithium is expected to increase due to the metal’s use in the lithium-ion batteries used in many electric cars and other technologies.¹⁷⁶ In 2024, the International Energy Agency estimated that, to limit global warming to 1.5 degrees centigrade, lithium production would need to increase by more than four times between 2023 and 2040.¹⁷⁷ The need for mined lithium could be reduced by changes in battery chemistries, increased emphasis on recycling, and efforts to reduce energy consumption,¹⁷⁸ and recently global supply has exceeded demand,¹⁷⁹ contributing to several lithium price crashes.¹⁸⁰ Demand for lithium is still, however, likely to increase significantly in future years.¹⁸¹

Three countries—Australia, Chile, and China—were responsible for more than 90 percent of mined lithium production in 2023,¹⁸² with China dominating certain aspects of production.

¹⁷⁵ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, DOI-BLM-NV-W010-2020-0012-EIS, December 2020, https://eplanning.blm.gov/public_projects/1503166/200352542/20030633/250036832/Thacker%20Pass_FEIS_Chapters1-6_508.pdf (accessed May 29, 2024), p. 1-3.

¹⁷⁶ International Energy Agency, Global Critical Minerals Outlook 2024, p. 124.

¹⁷⁷ *Ibid.*, p. 133.

¹⁷⁸ *Ibid.*, p. 135 (on impact of battery chemistries); Michael Schirber, “Sodium as a Green Substitute for Lithium in Batteries,” *Physics Magazine*, vol. 17 (73) (2024), <https://physics.aps.org/articles/v17/73> (accessed January 2, 2025).

¹⁷⁹ International Energy Agency, Global Critical Minerals Outlook 2024, p. 79.

¹⁸⁰ Andy Home, “After another boom and bust, where next for lithium?” *Reuters*, July 12, 2024, <https://www.reuters.com/markets/commodities/after-another-boom-bust-where-next-lithium-andy-home-2024-07-11/> (accessed January 2, 2025).

¹⁸¹ International Energy Agency, Global Critical Minerals Outlook 2024, p. 79.

¹⁸² Australia, the world’s biggest producer, mined an estimated 86,000 tons of lithium in 2023. Chile mined an estimated 44,000 tons and China 33,000 tons. Total global production was 180,000 tons. US Geological Survey, Mineral Commodity Summaries, January 2024: Lithium, <https://pubs.usgs.gov/periodicals/mcs2024/mcs2024-lithium.pdf> (accessed January 2, 2025).

¹⁸³ The US has expressed concern ¹⁸⁴ over China’s dominance and has sought to incentivize US-based lithium production through grants, lending and tax credits. ¹⁸⁵

The Biden administration in September 2024 stated the US “must expand and accelerate responsible domestic production of critical minerals in a manner that upholds strong environmental, labor, safety, Tribal consultation, and community engagement standards.”¹⁸⁶ Upon taking office in January 2025, President Trump signed an executive order stating it is the policy of the US “to establish our position as the leading producer and processor of non-fuel minerals ... and reduce the global influence of malign and adversarial states.”¹⁸⁷ He also instructed the Interior Department to “identify all agency actions that impose undue burdens on the domestic mining and processing of ... minerals and undertake steps to revise or rescind such actions.” ¹⁸⁸

Nevada contains land believed to be particularly rich in lithium deposits. According to the Nevada Division of Minerals, as of September 27, 2024, the Division is tracking an estimated “23,490 claims presumably for lithium or lithium brine in 18 different

¹⁸³ China dominates the refining of mined lithium into the lithium carbonates and hydroxides needed for battery manufacturing, refining close to two-thirds of the world’s lithium. “How much control do Chinese companies have over global lithium production?” *Benchmark Source*, May 13, 2024, <https://source.benchmarkminerals.com/article/how-much-control-do-chinese-companies-have-over-global-lithium-production> (accessed January 2, 2025); China also dominates global manufacturing of cathode and anodes and electric batteries themselves. China represents nearly 90 percent of global installed cathode active material manufacturing capacity and over 97 percent of anode active material manufacturing capacity today. China accounts for 80 percent of global electric battery manufacturing. See, International Energy Agency, *Global Critical Minerals Outlook 2024*, p. 33, 80.

¹⁸⁴ The Biden administration stated in a 2021 report that, “The United States must secure reliable and sustainable supplies of critical minerals and metals to ensure resilience across U.S. manufacturing and defense needs, and do so in a manner consistent with America’s labor, environmental, equity and other values.” The White House, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017*, June 2021, https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf?_sm_aui=iVV6t3Rk6H12sM5r01TfKK3Qv3fc4 (accessed January 2, 2025), p. 9; The White House, *Fact Sheet: Biden-Harris Administration Takes Further Action to Strengthen and Secure Critical Mineral Supply Chain*, September 20, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/20/fact-sheet-biden-harris-administration-takes-further-action-to-strengthen-and-secure-critical-mineral-supply-chains/#:~:text=The%20Department%20of%20Energy%20Loan%20Programs%20Office%20clarified%20that%20domestic,support%20for%20critical%20minerals%20projects> (accessed January 2, 2025); Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre, https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063 (accessed January 2, 2025).

¹⁸⁵ The White House, *Fact Sheet: Biden-Harris Administration Takes Further Action*.

¹⁸⁶ *Ibid.*

¹⁸⁷ Executive Order, *Unleashing American Energy*, January 20, 2025. <https://whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/> (accessed January 21, 2025).

¹⁸⁸ *Ibid.*

hydrographic basins.”¹⁸⁹ According to the Division, “Nevada is home to the only operating lithium mine in the United States which is located in Clayton Valley, Esmeralda County.”¹⁹⁰ Another lithium mine in Nevada has also been permitted by BLM.¹⁹¹

Lithium Nevada’s Thacker Pass project in Nevada relies heavily on US government funding. On March 14, 2024, the US Department of Energy announced a conditional commitment for a \$2.26 billion loan to help finance the construction of the company’s planned lithium carbonate processing plant at Thacker Pass.¹⁹² The Department of Energy stated the project reduces reliance on competitors like China by strengthening domestic supplies.¹⁹³ The final issuance of the loan was conditional on the Department of Energy’s review of the project under the National Environmental Policy Act (NEPA), but the Department of Energy has explained it relies on BLM’s NEPA assessment and, to some degree, its NHPA assessment (discussed below) when reviewing a project.¹⁹⁴ At time of writing, the loan has closed.¹⁹⁵

General Motors (GM), a major US car company, is also a central partner to the Thacker Pass project. GM initially agreed to invest in Lithium Americas in exchange for lithium from

¹⁸⁹ Nevada Division of Minerals Open Data Site, <https://data-ndom.opendata.arcgis.com/pages/lithium-claims> (accessed January 2, 2025).

¹⁹⁰ Ibid.

¹⁹¹ US Bureau of Land Management, BLM issues final analysis for proposed Rhyolite Ridge lithium in Nevada, <https://www.blm.gov/press-release/blm-issues-final-analysis-proposed-rhyolite-ridge-lithium-mine-nevada> (accessed January 2, 2025).

¹⁹² Lithium Americas, “Lithium Americas Receives Conditional Commitment for \$2.26 Billion ATVM Loan from the U.S. DOE for Construction of Thacker Pass,” <https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Receives-Conditional-Commitment-for-2.26-Billion-ATVM-Loan-from-the-U.S.-DOE-for-Construction-of-Thacker-Pass/default.aspx> (accessed January 2, 2025).

¹⁹³ Lithium Americas, “Lithium Americas Provides a Thacker Pass Plan Update,” March 14, 2024, <https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Provides-a-Thacker-Pass-Construction-Plan-Update/default.aspx> (accessed June 5, 2024) (“supports efforts to...expand and secure reliable, sustainable domestic supply chains for critical materials, which are key to reaching our ambitious clean energy and climate goals and reducing our reliance on economic competitors like China.”).

¹⁹⁴ Department of Energy, Loans Program Office, LPO Announces Conditional Commitment to Lithium Americas Corp., March 14, 2024, <https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-lithium-americas-corp-help-finance-construction> (accessed November 4, 2024); Email from Angela Ryan, Loans Program Office, US Department of Energy to Human Rights Watch, April 11, 2024 (stating “in cases where BLM has already prepared a final EIS and issued a record of decision and in which LPO has already adopted that BLM EIS, LPO adheres to Adoption requirements presented at 40 CFR 1506.3”).

¹⁹⁵ Bridget di Cosmo, “Trump Moves to Claw Back Clean Energy Spending,” *Energy Intelligence*, January 21, 2025, <https://www.energyintel.com/00000194-8ad9-d625-ab9e-9ad97ae50000> (accessed January 22, 2025).

Thacker Pass.¹⁹⁶ In October 2024, however, the two companies announced a joint venture in which General Motors would pay \$625 million in cash and letters of credit to take a 38 percent ownership interest in the Thacker Pass mine itself.¹⁹⁷ The joint venture will fund, develop, construct and operate the Thacker Pass mine.¹⁹⁸

The Need for a Just Transition

Indigenous peoples, human rights groups, and environmental groups, while underscoring the urgency of a transition away from fossil fuels, have expressed concern the increase in mining needed for renewable energy, both for lithium and other materials, will result in harms to Indigenous peoples, local communities, and the environment if not done in a way that upholds relevant human rights standards.¹⁹⁹ Globally, more than 54 of current or future transition minerals projects are located on or near Indigenous lands.²⁰⁰

Tribal advocates in the US have emphasized the risks to Indigenous peoples' rights from increased transition-related mining.²⁰¹ While the extent of traditional and ancestral lands differ greatly depending on context and are rarely equivalent to reservation boundaries in the US, one study has indicated that 79 percent of all known lithium reserves in the US are located within 35 miles of Tribal reservations.²⁰²

¹⁹⁶ General Motors News, "GM and Lithium Americas to Develop U.S.- Sourced Lithium Production through \$650 Million Equity Investment and Supply Agreement," January 31, 2023, <https://news.gm.com/newsroom.detail.html/Pages/news/us/en/2023/jan/0131-lithium.html> (accessed July 31, 2024). Lithium Americas, "Thacker Pass," <https://lithiumamericas.com/thacker-pass/overview/default.aspx> (accessed January 2, 2025).

¹⁹⁷ Lithium Americas, "Unlocking Thacker Pass."

¹⁹⁸ Ibid.

¹⁹⁹ Earthworks, "Declaration on Mining and the Energy Transition," <https://earthworks.org/declaration-on-mining-and-the-energy-transition/> (accessed January 2, 2025); Transition minerals open statement for COP27, November 1, 2022, <https://pwwp.org/transition-minerals-open-statement-for-cop27/> (accessed January 2, 2025).

²⁰⁰ John R. Owen et al., "Energy transition minerals and their intersection with land-connected peoples," *Nature Sustainability*, vol. 6 (2023), <https://www.nature.com/articles/s41893-022-00994-6#:~:text=The%20vast%20majority%20of%20graphite,suggest%20similarly%20complex%20landscape%20interactions.>

²⁰¹ Columbia Energy Exchange Podcast, "Indigenous Rights in the Energy Transition with Kate Finn," *Center on Global Energy Policy at Columbia*, April 30, 2024, <https://www.energypolicy.columbia.edu/indigenous-rights-in-the-energy-transition/> (accessed July 10, 2024); Maxine Joselow, "'On Stolen Land:' Tribes Fight Clean-Energy Projects Backed by Biden," *Washington Post*, March 4, 2024, <https://www.washingtonpost.com/climate-environment/2024/03/04/tribes-clean-energy-biden-sunzia/> (accessed July 10, 2024); Business & Human Rights Resource Centre, "Just Transition Litigation Tracking Tool," https://www.business-humanrights.org/en/from-us/just-transition-litigation-tracking-tool/?utm_source=direct_email&utm_medium=direct_email&utm_campaign=2407JTLitigationtracker&utm_content=email (accessed July 10, 2024).

²⁰² Biden-Harris Administration's Interagency Working Group on Mining Laws, Regulations, and Permitting, "Recommendations to Improve Mining on Public Lands," p. 8.

In a July 2024 submission to the UN Secretary General’s Panel on Critical Energy Transition Minerals, which was launched in April 2024, more than 300 Indigenous peoples, environmental, labor, and human rights groups called for governments and companies to protect and respect Indigenous peoples’ right to self-determination and to free, prior, and informed consent prior to and during minerals licensing, extraction and processing.²⁰³ The groups also called for efforts to reduce the need for new mining by reducing energy and material use and increasing responsible use, especially in developed countries.²⁰⁴

In September 2024, the UN Panel ultimately issued seven “Principles to Guide Critical Energy Transition Minerals Towards Equity and Justice,” underscoring in its first principle that, “human rights must be at the core of all mineral value chains.”²⁰⁵ The panel called on “all actors to uphold the rights of Indigenous peoples,” including by “obtaining their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.”²⁰⁶

Indigenous activists and civil society groups in the US have expressed concern that the country’s outdated federal mining laws, coupled with inadequate requirements for consultation and consent from Indigenous peoples, risk perpetuating harms against Indigenous communities.²⁰⁷

²⁰³ “Civil Society Recommendations for the UNSG’s Panel on Critical Energy Transition Minerals,” *Publish What You Pay*, July 10, 2024 <https://pwwp.org/civil-society-recommendations-for-the-unsgs-panel-on-critical-energy-transition-minerals/> (accessed January 2, 2025).

²⁰⁴ *Ibid.*

²⁰⁵ UN Secretary-General’s Panel on Critical Energy Transition Minerals, *Resourcing the Energy Transition: Principles to Guide Critical Energy Transition Minerals Towards Equity and Justice*, principle 1, https://www.un.org/sites/un2.un.org/files/report_sg_panel_on_critical_energy_transition_minerals_11_sept_2024.pdf (accessed January 2, 2025).

²⁰⁶ *Ibid.*

²⁰⁷ Earthjustice, “It’s Time to Update our Mining Laws for a Clean Energy Future,” May 11, 2022, <https://earthjustice.org/article/critical-minerals-mining-reform> (accessed January 2, 2025); The Environmental Forum, “How can the U.S. safely mine minerals critical to a carbon-free economy?” May/June 2023, <https://www.eli.org/sites/default/files/files-pdf/TheDebate-May-June-2023.pdf> (accessed January 2, 2025).

Permitting Process for the Thacker Pass Mine

The US government approved permits for the Thacker Pass mine in less than a year, far faster than the three-year average it typically takes to permit a new mining operation. Tribes and Indigenous activists argued the abbreviated timeline reflected both a desire to accelerate domestic critical mineral production in the US and a failure to adequately consult with Tribes whose ancestral land, religious, and cultural rights would be impacted by the project.

Permitting Process under US Law

US laws regulating mining distinguish between mining claims—obtaining the legal rights to explore and extract minerals from a specific parcel of land²⁰⁸—and mine permitting, obtaining the official authorization required to begin mining.²⁰⁹

Mining claims can be filed on federal land not withdrawn from the purview of the 1872 Mining Law, such as a national park.²¹⁰ A claim gives the holder the right to explore and extract minerals, although legal land title remains with the US government.²¹¹ As discussed above, under the 1872 mining law, mining claimants pay no royalties to the federal government on most minerals extracted from federal land.²¹²

BLM is responsible for administering mining claims on all federal lands.²¹³ The Federal Land Policy and Management Act of 1976 allows the Department of Interior to deny a mining claim only if it would result in unnecessary or undue degradation of the land.

²⁰⁸ US Bureau of Land Management, Mining Claims, <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims> (accessed January 2, 2025).

²⁰⁹ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 47-57.

²¹⁰ US Bureau of Land Management, Locating a Mining Claim, <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/locating-a-claim> (accessed June 5, 2024).

²¹¹ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 37.

²¹² *Ibid.*, p. 40.

²¹³ *Ibid.*, p. 37.

Subsequent regulations have set an extremely high bar for what constitutes “unnecessary or undue” degradation of the land.²¹⁴

Once a citizen stakes a claim and it is recorded under BLM procedures, the citizen can initiate the permitting process to remove minerals from the land. The federal permitting process, although rooted in the 1872 mining law, is also governed by more recent environmental laws and regulations, including the 1970 National Environmental Policy Act (NEPA), which requires the preparation of an environmental impact statement (EIS).²¹⁵ The specific permits and consultations required for a mining project are dependent on multiple factors, including the location of the mine, type of operation, likely wastes, water, and air emissions generated, and how the wastes are managed or disposed of.²¹⁶ State governments also play a role, alongside federal agencies, in approving and regulating mining operations, including for issues relating to waste management and groundwater use and impacts.²¹⁷

Concurrently with the environmental analysis required by NEPA, BLM conducts an analysis of whether the mine’s plan complies with all other applicable federal laws, including the National Historic Preservation Act (NHPA), the Endangered Species Act, Federal Land Policy and Management Act, and the Native American Graves Protection and Repatriation Act.²¹⁸

Between 2013 and 2023, the median time for BLM to issue a record of decision (ROD), which includes approving a mining EIS, was 3 years, and the average was 3.1 years.²¹⁹ The

²¹⁴ *Ibid.*, p. 43; The standard codified in the Federal Land Policy and Management Act is an extremely high bar and thus not often used. The 2001 Bush administration regulations on Surface Management Provisions for Hardrock Mining, M-37007, October 23, 2001, for implementation noted that this law and standard should only be triggered when other federal laws are being violated. Christine Knight, “Comment, A Regulatory Minefield: Can the Department of Interior Say “No” to A Hardrock Mine?” 73 U. Colo. L. Rev. 619, 621 (2002).

²¹⁵ *Ibid.*, p. 47.

²¹⁶ *Ibid.*, p. 49.

²¹⁷ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 50.

²¹⁸ Advocates contested whether BLM’s permitting processed complied with each of these laws in relation to the Thacker Pass mine in lawsuits and interviews. These laws are a limited selection—BLM must ensure the Plan of Operations is in compliance with all federal laws, not just this limited selection. Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 48-49.

²¹⁹ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 53.

entire process of obtaining a permit for a mine, from first contacting the BLM to breaking ground, on average took 4.6 years.²²⁰

The Trump administration in December 2017 issued an executive order stating it is federal government policy to “reduce the Nation’s vulnerability to disruptions in the supply of critical minerals” by “streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals.”²²¹ The Trump administration issued another executive order in September 2020—soon after BLM published a draft EIS for the Thacker Pass project— instructing federal agencies to “use all available authorities to accelerate the issuance of permits and the completion of projects in connection with expanding and protecting the domestic supply chain for minerals.”²²² In January 2025, President Trump, taking office for a second time, issued executive orders requiring government agencies to eliminate delays in permitting processes for energy projects, including critical minerals.²²³

BLM’s federal permitting process for the Thacker Pass mine took less than a year, far less than the 3.1 year agency average.²²⁴ BLM initiated the permitting process on January 21,

²²⁰ Ibid.

²²¹ Executive Order 13817, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals, December 20, 2017, <https://www.govinfo.gov/content/pkg/DCPD-201700922/pdf/DCPD-201700922.pdf> (accessed January 2, 2025). In 2019, the Trump administration released “A Federal Strategy to Ensure a Reliable Supply of Critical Minerals,” which included recommendations to reduce federal permitting timelines. This included a recommendation to, “Update agency NEPA processes to streamline NEPA analysis with an emphasis on providing timely processing of mining Plans of Operations.” US Department of Commerce, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals, June 4, 2019, https://www.commerce.gov/sites/default/files/2020-01/Critical_Minerals_Strategy_Final.pdf (accessed January 2, 2025) p. 41.

²²² Executive Order on Addressing the Threat to the Domestic Supply Chain from Reliance on Critical Minerals from Foreign Adversaries, September 30, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-domestic-supply-chain-reliance-critical-minerals-foreign-adversaries/> (accessed January 2, 2025).

²²³ An executive order on “Unleashing American Energy” instructed the Department of Interior, as well as other agencies, to “undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule.” Executive Order, Unleashing American Energy, January 20, 2025, <https://whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/> (accessed January 21, 2025); Another executive order requested government agencies to “use any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands.” Executive Order, Declaring a National Energy Emergency, January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/> (accessed January 21, 2025). The order defines domestic energy resources as including critical minerals.

²²⁴ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 53. This average was calculated from 2013-2023. Individual presidential administrations could have different averages than this 10-year average. The averages of specific administration are beyond the scope of this report.

2020 by publishing a notice of intent to prepare a draft EIS.²²⁵ On July 29, 2020, three months after the Covid-19 pandemic had led to closed Tribal offices and high rates of Covid-19 in Tribal communities, BLM published the draft EIS, and held a public comment period which ended on September 11, 2020.²²⁶ BLM published the final EIS on December 3, 2020, followed by a public availability period ending on January 5, 2021, and the issuance of the ROD (the final permit) on January 15, 2021.²²⁷ Nevada finalized its permits for the mine on February 25, 2022.²²⁸ The Nevada Division of Environmental Protection issued permits related to other aspects of the mine, including water pollution control, mine reclamation, and air pollution control.²²⁹ While BLM is engaged in some further reviews of whether Peehee Mu’huh is a traditional cultural district under the NHPA,²³⁰ the agency maintains these reviews have no impact on the ROD or the permits, an interpretation supported by the federal district court.²³¹

Public Comment and Consultation Requirements during Mine Permitting

During the permitting process for a mine, US law requires BLM to solicit public comments²³² (which are weighed but do not dictate the agency’s decision) and requires some, albeit very limited, consultation with impacted Tribes.²³³

²²⁵ US Bureau of Land Management, Notice of Intent to Prepare a Draft Environmental Impact Statement and Resource Management Plan Amendment, for the Lithium Nevada Corp., Thacker Pass Project Proposed Plan of Operations and Reclamation Plan Permit Application, Humboldt County, Nevada, January 21, 2020, <https://www.federalregister.gov/documents/2020/01/21/2020-00851/notice-of-intent-to-prepare-a-draft-environmental-impact-statement-and-resource-management-plan> (accessed June 6, 2020).

²²⁶ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement.

²²⁷ Ibid.

²²⁸ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Record of Decision and Plan of Operations Approval, DOI-BLM-NV-Wo10-2020-0012-EIS, January 15, 2021, https://eplanning.blm.gov/public_projects/1503166/200352542/20033308/250039507/Thacker_Pass_Project_ROD_signed_2021-01-15.pdf (accessed May 29, 2024); Nevada Division of Environmental Protection, Thacker Pass Lithium Mine, <https://ndep.nv.gov/land/thacker-pass-project> (accessed June 6, 2024).

²²⁹ Nevada Division of Environmental Protection, Thacker Pass Lithium Mine, <https://ndep.nv.gov/land/thacker-pass-project> (accessed January 2, 2025).

²³⁰ “BLM Letter to Reno Sparks Indian Colony,” *Sierra Nevada Ally*, February 23, 2023, https://sierranevadaally.org/wp-content/uploads/2023/10/2023_0223-Thacker-Pass-Historic-District-eligibility-letter-to-RSIC-1.pdf.

²³¹ *Reno Sparks Indian Colony v. Haaland*, US District Court for the District of Nevada, 663 F. Supp. 3d 1188, 1201, March 23, 2023 (stating “the Court does not find any authorization in 36 C.F.R. sec. 800.13, much less obligation, for Federal Defendants to block construction under the ROD issued in 2021, or the prior authorizations that predate the ROD.”).

²³² 40 C.F.R. § 1503.1-4.

²³³ Ibid.; National Historic Preservation Act of 1966, section 106; Court challenges regarding the mine at Thacker Pass dismissed opposition from Tribes on procedural grounds but failed to rule in the Tribes’ favor when the only consultation provided were nine letters mailed in three tranches to three Tribes. *Reno Sparks Indian Colony v. Haaland*, 663 F.Supp.3d 1188 (US District Court, Nevada), March 23, 2023.

BLM’s permitting process starts with the applicant’s submission of a proposed plan of operations, which includes a description of how the mine will extract minerals and how it will interact with communities and the environment.²³⁴

Once BLM has received a mine plan of operations, the process includes several legally required opportunities for public comment. This includes the issuance of a notice of intent to prepare an environmental impact statement, a public scoping period, a draft environmental impact statement (DEIS), a period for public review of and comment on the DEIS, a final environmental impact statement (EIS), public availability of the EIS, and then publication of the record of decision.²³⁵ BLM staff are given discretion to implement the methods for conveying information they believe are most appropriate.²³⁶

All these public notification and comment requirements, however, only happen after a mining company has submitted a plan of operations. Nongovernmental organizations have underscored this frequently means mining companies develop and submit detailed plans for exploiting minerals without adequately consulting affected communities or Tribes. The US government interagency working group on mining reform found in a 2023 report that this “perception can undermine trust, engender confrontation, and complicate environmental analyses.”²³⁷

On Tribal trust and reservation land, which Peehee Mu’huh is not, Tribes retain legal rights to determine whether, and if so, how, to develop minerals.²³⁸ For mining occurring beyond Indigenous peoples’ reservation and trust land boundaries, like at Peehee Mu’huh, US law provides only limited requirements for federal agencies, including BLM, to consult impacted

²³⁴ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 48; For discussion of plans of operations, see 43 C.F.R. § 3809.11, 3809.401.

²³⁵ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 61; Council on Environmental Quality Executive Office of the President of the US, “A Citizen’s Guide to the NEPA,” https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Deco7.pdf (accessed June 5, 2024), p. 8.

²³⁶ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 61.

²³⁷ *Ibid.*, p. 63.

²³⁸ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 68-69; United States Executive Office, “Memorandum on Uniform Standards for Tribal Consultation,” <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/> (accessed June 5, 2024).

Tribes.²³⁹ A great deal of discretion is afforded to the agency in determining which Tribes to consult. There is no effort required, or made to reconcile, the often-imperfect overlap between affected Indigenous peoples and Tribal identities and structures. The agency also has a great deal of discretion to determine what “consultation” entails.

For example, the National Historic Preservation Act (NHPA) requires agencies, including BLM, to consult with Tribes whose historic properties are affected by the agency’s actions, including mine permitting processes.²⁴⁰ Tribes should have a “reasonable opportunity” to identify concerns about historic properties, advise on the identification and evaluation of historic properties, and participate in the resolution of any adverse impacts.”²⁴¹

The consultation required under NHPA, however, focuses only on impacts to “historic properties,” rather than other human rights and environmental concerns Tribes might have regarding planned mining operations.²⁴² The NHPA requires only consultation and does not guarantee Tribal comments will actually guide agency decision making.²⁴³

For example, as a part of its consideration of the \$2.6 billion loan to the Thacker Pass project, the Department of Energy considered whether there was an “adverse effect” under the National Historic Preservation Act before approving the loan. On October 4, 2024, DOE requested the Advisory Council on Historic Preservation (ACHP) provide an advisory opinion on DOE’s conclusion that the loan would not trigger an adverse effect.²⁴⁴ On October 22, ACHP issued a letter criticizing DOE’s lack of tribal consultation and advising

²³⁹ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 70.

²⁴⁰ National Historic Preservation Act. The act notes specifically that “federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes.” 36 C.F.R. § 800.2(c)(2)(ii)(D). The act requires the agency to make “a reasonable and good faith effort” to identify Tribes that should be consulted and states that “consultation should commence early in the planning process.” 36 C.F.R. § 800.3(f)(2); 36 C.F.R. § 800.2(c)(2)(ii)(A). Where an agency action, such as a planned mine, might have an adverse impact on historic properties, the agency is required to consult with relevant parties, including affected Tribes, to “to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” 36 C.F.R. § 800.2(a). The Act sets out a process for these consultations, including communication to affected parties on the agency’s final decision. 36 C.F.R. § 800.6 and § 800.7.

²⁴¹ 36 C.F.R. § 800.2(c)(2)(B)(ii)(A).

²⁴² Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 71, 73.

²⁴³ *Ibid.*

²⁴⁴ Letter from US Department of Energy to Reid Nelson, Executive Director, Advisory Council on Historic Preservation, October 4, 2024 (letter on file with Human Rights Watch).

DOE to work with BLM and the Tribes to either revise the existing Historic Properties Treatment Plan and the Historic Properties Treatment Plan’s Memorandum of Agreement, or begin a whole new NHPA consultation process to create a new HPTP and Memorandum of Agreement that reflected the Tribes’ concerns.²⁴⁵ Instead, on October 28, DOE issued a letter declaring it would not follow ACHP’s advice, it would rely to a significant extent on BLM’s processes as the “lead agency,” and that it was concluding the Tribal consultation process, and officially approved the loan to Lithium Nevada.²⁴⁶

Beyond the specific requirements of laws like the NHPA, Tribes, like all other stakeholders, have the right to participate in the public comments solicited pursuant to NEPA.²⁴⁷ However, despite their unique and longstanding connection to their land, and its importance to their livelihoods, ancestry, and culture, US law offers Indigenous peoples few protections beyond what it offers ordinary citizens. US presidential administrations, including the Biden administration, have provided guidance to executive agencies on both the importance of consultation with Tribes and how to ensure early and effective consultation, but this guidance does not have the force of law.²⁴⁸

The 2023 US federal interagency working group identified lack of early Tribal consultation as a major challenge for mining in the United States and stated it, “strongly supports establishing stronger requirements for Tribal consultation on mineral exploration and development proposals.”²⁴⁹ The working group underscored that, “For Tribal engagement efforts to be meaningful, those efforts must occur much earlier, ideally before mining

²⁴⁵ Letter from Advisory Council on Historic Preservation to Department of Energy, October 22, 2024 (stating, in part: “the ACHP hereby issues the advisory opinion that DOE has not correctly applied the criteria of adverse effect to the proposed undertaking. This opinion is based in part on the appearance that DOE has not consulted with or adequately addressed the concerns of the objecting parties, nor does it appear that the DOE has conducted any consultation with interested Tribes to reach this finding, despite years of vocal expressions of concern from several Tribes regarding the undertaking and its potential to adversely affect historic properties of religious and cultural importance to them”) (letter on file with Human Rights Watch).

²⁴⁶ Letter from Department of Energy to Advisory Council on Historic Preservation, October 28, 2024 (letter on file with Human Rights Watch).

²⁴⁷ *Ibid.*

²⁴⁸ See, for example, Executive Order 13175 of November 6, 2000, Consultation and Coordination With Indian Tribal Governments, <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments> (accessed June 5, 2024); United States Executive Office, “Memorandum on Uniform Standards for Tribal Consultation,” <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/> (accessed June 5, 2024); Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 71.

²⁴⁹ Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 8.

interests expend significant resources on exploration, and then continue through the entire exploration and mine development process.”²⁵⁰

The working group also noted agencies like BLM “are often left with a near-polar decision to either approve or deny a plan, often under intense political pressure,”²⁵¹ and recommended “Congress to direct the BLM ... to conduct meaningful, robust, and early consultation with Tribes that may have an interest in mineral exploration or development proposals, including where the proposed action is within a Tribe’s ancestral homeland even if it is not proximate to the Tribe’s current reservation.”²⁵² The working group also recommended Congress “withdraw sensitive lands from availability for the mineral development” without mitigation measures and noted: “Tribes should have more control over sacred land.”²⁵³ Sensitive land entails land that is “cultural, iconic, and ecologically” sensitive.²⁵⁴ Congress has issued no such direction.

Litigation over Tribal Consultation

The final EIS for the Thacker Pass mine acknowledged that BLM is required “to establish regular and meaningful consultation and collaboration with Native American Tribal governments on.... permit approvals for proposed projects that could substantially or uniquely affect tribal communities.”²⁵⁵ BLM, in its record of decision approving the Thacker Pass mine, stated that “BLM has been in contact with tribal governments regarding this project from its early stages (October 2019) and throughout the ensuing National Environmental Policy Act (NEPA) process.”²⁵⁶ The final EIS stated that BLM sent letters to Tribal representatives from three Tribes, the Fort McDermitt Paiute and Shoshone Tribe (FMPST), Winnemucca Indian Colony (WIC), and the Summit Lake Paiute Tribe (SLPT).²⁵⁷

²⁵⁰ *Ibid.*, 74-75.

²⁵¹ *Ibid.*

²⁵² *Ibid.*, p. 8, 119.

²⁵³ *Ibid.*, p. 7, 158.

²⁵⁴ *Ibid.*, p. 158.

²⁵⁵ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 6-23.

²⁵⁶ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Record of Decision and Plan of Operations Approval, DOI-BLM-NV-W010-2020-0012-EIS, January 15, 2021, https://eplanning.blm.gov/public_projects/1503166/200352542/20033308/250039507/Thacker_Pass_Project_ROD_signed_2021-01-15.pdf (accessed May 29, 2024), p. 5.

²⁵⁷ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 6-24.

However, the entirety of BLM’s direct contact with Tribes during the EIS process was nine mailings in total—three rounds of mailings sent to three Tribal government offices, to which BLM received no reply. BLM stated in the EIS record of decision that in December 2019 it sent certified letters to FMPST, WIC, and SLPT initiating formal consultations.²⁵⁸ It also stated the Tribes “were on the Project EIS mailing list to receive updates, and the BLM notified the tribes of the availability of the draft EIS by certified mail in July 2020.”²⁵⁹ The January 2021 record of decision concludes that, “The tribes also received notification and copies of the final EIS by certified mail in December 2020. No comments or concerns have been raised during formal government to government consultation for the Project by the tribes.”²⁶⁰

Numu/Nuwu and Newe communities told Human Rights Watch and the ACLU that BLM did not actively inform them of the planned mine and did not seek to overcome the obstacles created by the Covid-19 pandemic. As a result, the communities were not adequately consulted, nor did they ever consent to the mine:

- “Even when they knew the offices were closed because of the pandemic. It is ... not even, not even good at all. It seems like they didn’t even give us a chance or anything. Everything was ... all ... done, done and over with.”²⁶¹
- “Those letters were given at a time when Covid was really high and our tribal government offices were closed. And so, that final environmental impact statement, no one was in a tribal office during that whole time.”²⁶²
- “So when Covid hit, nobody knew about this consultation. A lot of people in the community didn’t know, and even consultation is not consent.”²⁶³
- “They were sneaky, [the letters] came through when Covid hit—they passed it too when Covid hit.”²⁶⁴
- “To this day, there’s probably a handful [of Tribal community members] that still don’t know about [the mine].”²⁶⁵

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Record of Decision and Plan of Operations Approval, p. 5.

²⁶¹ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

²⁶² Human Rights Watch/ACLU telephone interview with Daranda Hinkey.

²⁶³ Human Rights Watch/ACLU interview with Dorece Sam.

²⁶⁴ Human Rights Watch/ACLU telephone interview with Dean Barlese.

²⁶⁵ Human Rights Watch/ACLU interview with Dorece Sam.

Several Tribes ultimately sued BLM over this lack of consultation during the permitting process.

People of Red Mountain (PRM), Reno-Sparks Indian Colony (RSIC), Burns Paiute Tribe (BPT)

In 2021, members of the Fort McDermitt Paiute, Shoshone, and Bannock Tribes, and allies, formed an Indigenous organization known as “People of Red Mountain,” which seeks to protect their ancestral lands from the impacts of mining.²⁶⁶ In May 2021, PRM issued a “Statement of Opposition to Lithium Nevada Corp’s Proposed Thacker Pass Open Pit Lithium Mine.”²⁶⁷ The statement said the “mine will harm the Fort McDermitt Paiute-Shoshone Tribe, our traditional land, significant cultural sites, water, air, and wildlife” and said, “fighting climate change, however, cannot be used as yet another excuse to destroy native land.”²⁶⁸ PRM has stated publicly that they disagree with the FMPST leadership’s decision to sign a benefits agreement with Lithium Americas (discussed below).²⁶⁹

In July 2021, PRM joined with Reno-Sparks Indian Colony, which had not been contacted by BLM during the EIS process, to challenge BLM’s permitting of the Thacker Pass site in federal court.²⁷⁰ RSIC and PRM argued that BLM should have identified them as Tribes to be consulted as part of the NHPA process.²⁷¹ RSIC said they had only learned about the Thacker Pass mine in April 2021, several months after BLM had approved the permit for the mine.²⁷² They also criticized BLM’s efforts to consult with Tribes during the project, underscoring that, “consultation conducted in good faith and in a manner sensitive to the concerns and needs of Indian tribes would have accounted for the fact that the worst pandemic in at least 100 years was raging around the world, especially when those tribes

²⁶⁶ People of Red Mountain, “About Us,” <https://peopleofredmountain.com/about-us/> (accessed October 23, 2024).

²⁶⁷ People of Red Mountain, “People of Red Mountain Statement of Opposition to Lithium Nevada Corp’s Proposed Thacker Pass Open Pit Lithium Mine,” Op-ed, *Sierra Nevada Ally*, May 20, 2021, <https://sierranevadaally.org/2021/05/20/people-of-red-mountain-statement-of-opposition-to-lithium-nevada-corps-proposed-thacker-pass-open-pit-lithium-mine/> (accessed October 23, 2024).

²⁶⁸ *Ibid.*

²⁶⁹ “One Native Groups Fight to Protect Sacred Land from Destructive Lithium Mining,” *First Nations Development Institute*, <https://www.firstnations.org/stories/one-native-groups-fight-to-protect-sacred-land-from-destructive-lithium-mining/> (accessed October 23, 2024).

²⁷⁰ Reno-Sparks Indian Colony and Atsa Koodakuh Wyh Nuwu (“People of Red Mountain”), Complaint for Vacatur, Equitable, and Injunctive Relief, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (filed July 29, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.46.o.pdf> (accessed January 8, 2025).

²⁷¹ *Ibid.*, p. 3.

²⁷² *Ibid.*, p. 4.

were disproportionately affected by the Covid-19 pandemic. Many tribal offices, including RSIC's and Fort McDermitt's, were closed for much of 2020.”²⁷³

Another Tribe, the Burns Paiute Tribe (BPT), in August 2021, successfully filed a motion to join the case.²⁷⁴ BPT also argued that, because they have members with significant cultural and religious connections to Peehee Mu'huh, and those who hunt and gather there, BLM should have consulted with them during the NHPA process.²⁷⁵ Lithium Americas/Nevada intervened in the case as a defendant.

Both the US District Court and US Court of Appeals for the Ninth Circuit decided the case in favor of BLM and Lithium Americas. The District Court ruled in September 2021 that, as People of Red Mountain is not a federally incorporated Tribe, they were not entitled to consultation under the NHPA and could not challenge BLM's lack of consultation during the permitting process.²⁷⁶ The court said non-federally recognized Tribes must affirmatively request consultation to trigger consultation requirements under the NHPA.²⁷⁷ People of Red Mountain wrote to BLM to request consultation only after BLM had issued its record of decision for the mine.²⁷⁸

The Court also denied RSIC and BPT's claims, ruling in February 2023 that BLM's decision not to consult the Tribes was reasonable and made in good faith.²⁷⁹ The court referenced BLM's prior dealings with both Tribes that, according to BLM, had suggested neither Tribe attached significant religious or cultural significance to the Thacker Pass area.²⁸⁰ The Ninth Circuit Court of Appeals affirmed this decision as it pertained to the Burns Paiute Tribe, on

²⁷³ *Ibid.*, p. 13.

²⁷⁴ Motion to Intervene by Intervenor Plaintiff Burns Paiute Tribe, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (filed August 21, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.53.0.pdf>. (accessed January 8, 2025).

²⁷⁵ Reno-Sparks Indian Colony and Atsa Koodakuh Wyh Nuwu (“People of Red Mountain”), Complaint for Vacatur, Equitable, and Injunctive Relief, *Bartell Ranch LLC v. McCullough*, p. 5, p. 19-20; [Proposed] Complaint-in-Intervention for Declaratory and Injunctive Relief, Burns Paiute Tribe, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (filed August 2, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.53.1.pdf> (accessed January 8, 2025), p. 2, 11-12.

²⁷⁶ Motion on Preliminary Injunction, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (filed September 3, 2021), <https://courtlistener.com/docket/59247337/92/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025), p. 5-6.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ Order, *Bartell Ranch LLC v. McCullough*, 3:21-cv-00080-MMD-CLB (D. Nev. Feb. 6, 2023), p. 43.

²⁸⁰ *Ibid.*, p. 38-40.

July 17, 2023, concluding, “[t]here was no evidence before the BLM that suggested that the Burns Paiute Tribe attached religious or cultural significance to sites in the Project Area.”²⁸¹ As noted previously, in response to a submission to BLM by RSIC, BLM is engaged in some further reviews of whether Peehee Mu’huh is a traditional cultural district.²⁸² BLM and the federal courts maintain that these ongoing reviews do not affect the record of decision or the permits for the mine.²⁸³ As of October 31, 2024, there was no publicly available information indicating BLM had submitted information to the Keeper of the National Register of Historic Places so that an official determination could be made about Thacker Pass’s eligibility for the National Register.²⁸⁴

The ACHP has also criticized the Department of Energy’s decision of “no adverse effect” required by section 106 of the NHPA to issue its loan and advises the DOE to work with BLM to revise the Historic Properties Treatment Plan.²⁸⁵

Winnemucca Indian Colony (WIC)

WIC, another of the Tribes contacted by BLM during the EIS process, filed a motion in February 2022 to join the case against the mine involving PRM, local ranchers, environmental groups, and two Tribes, the Reno-Sparks Indian Colony and Burns Paiute Tribe.²⁸⁶ WIC’s arguments included that the BLM had failed to adequately consult with the Tribe about the mine’s impact on historic properties, as required by the NHPA.²⁸⁷

²⁸¹ *Bartell Ranch LLC et al. v. McCullough*, Court of Appeals for the Ninth Circuit, D.C. Nos. 3:21-cv-00080-MMD-CLB, 3:21-cv-00103-MMD-CLB, (unpublished decision), July 17, 2023, <https://www.courtlistener.com/docket/59247337/307/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025).

²⁸² “BLM Letter to Reno Sparks Indian Colony.”

²⁸³ *Reno-Sparks Indian Colony v. Haaland*, 663 F. Supp. 3d 1188 (D. Nev. 2023) (stating “the Court does not find any authorization in 36 C.F.R. sec. 800.13, much less obligation, for Federal Defendants to block construction under the ROD issued in 2021, or the prior authorizations that predate the ROD.”).

²⁸⁴ National Park Service, National Register of Historic Places, National Register Database and Research, National Places Gallery, <https://npgallery.nps.gov/nrhp> (providing a searchable register of historic places since 2013)(accessed January 12, 2025).

²⁸⁵ Advisory Council on Historic Preservation, “Letter to the US department of Energy, Dispute Regarding a Finding of No Adverse Effect for Lithium Carbonate Processing Thacker Pass Lithium Mine, Humboldt County, NV, ACHP Project Number 021650,” October 22, 2024, p. 2, on file with Human Rights Watch.

²⁸⁶ Winnemucca Indian Colony, Proposed Complaint, *Bartell Ranch LLC v. McCullough*, Case 3:21-cv-00080-MMD-CLB (filed February 11, 2022), <https://www.courtlistener.com/docket/59247337/179/1/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025).

²⁸⁷ *Ibid.*, p. 38-40.

WIC's filing noted the importance of Peehee Mu'huh to the religious and cultural practices of the Tribe and stated: "To build the Thacker Pass Lithium Mine on lands held sacred to Colony members would be like raping the earth and their culture."²⁸⁸ WIC alleged that BLM had not contacted the Tribe's government prior to issuing its record of decision and that, in any case, mere contact with a Tribal government is not sufficient to meet the consultation requirements of the NHPA.²⁸⁹ The complaint also cited BLM's own policies stating: "[S]ending a letter to a Tribe and receiving no response does not constitute a sufficient effort to initiate tribal consultation."²⁹⁰

WIC's chairman Judy Rojo stated in a written statement in support of the motion that the BLM had not consulted the Tribe about the project.²⁹¹ Rojo said that, if her Tribe had in fact been given "reasonable opportunity to participate in the resolution of adverse effects to historic properties in Thacker Pass/Pehee Mu'huh," the Colony would have helped:

[T]he BLM understand that gouging seven, 40-meter long, several-meter-deep trenches and hand-digging as many as 525 holes into land hallowed by the massacre of our ancestors and where we observe religious ceremonies severely disrespects our culture and traditions, causes us extremely emotional and spiritual distress, and is a desecration of the worst kind.²⁹²

The District Court in March 2022 denied WIC's motion to join the case, primarily relying on its conclusion that the Tribe had waited too long to intervene.²⁹³ The court said the interests of other parties, "most notably Lithium Nevada," would be prejudiced if the court permitted WIC to intervene.²⁹⁴

²⁸⁸ *Ibid.*, p. 6.

²⁸⁹ *Ibid.*, p. 6.

²⁹⁰ *Ibid.* p. 13.

²⁹¹ Declaration of Judy Rojo to 179 Motion to Intervene by Intervenor Plaintiff Winnemucca Indian Colony, *Bartell Ranch LLC v. McCullough*, Case 3:21-cv-00080-MMD-CLB (filed February 11, 2022), <https://www.courtlistener.com/docket/59247337/180/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025).

²⁹² *Ibid.*, p. 7.

²⁹³ Order on Motion to Intervene, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (March 11, 2022), <https://www.courtlistener.com/docket/59247337/197/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025), p. 14. ("As all three factors compel the conclusion WIC's Motion is untimely because this case is in a relatively advanced stage of the proceedings, other parties (but most notably Lithium Nevada) would be prejudiced if the Court permitted WIC to intervene now, and WIC waited about 10 months to file its Motion without offering a persuasive rationale for its delay.").

²⁹⁴ *Ibid.*, p. 14.

Summit Lake Paiute Tribe (SLPT)

The Summit Lake Paiute Tribe (SLPT) filed a complaint in federal court in February 2023, alleging inadequate consultation during the permitting process.²⁹⁵ The Tribe’s complaint described Thacker Pass as a “singularly powerful spiritual place blessed by the presence of their ancestors.”²⁹⁶ It also underscored the connection between Thacker Pass and the 1865 massacre, stating that Tribes “regularly gather in Thacker Pass to commemorate and pray for their ancestors killed” in the 1865 massacre and another pre-colonial massacre.²⁹⁷ The complaint alleged BLM “did not discuss the [mine] with the tribe before” approving the mine.²⁹⁸ The complaint also highlighted that “BLM did not meet with any Tribes to discuss the project during the Thacker Pass NEPA process.”²⁹⁹ Lithium Americas/Nevada intervened in the case as a defendant.

BLM’s motion to dismiss, filed in February 2023, stated it had sent letters to the Tribe on multiple occasions during the EIS process to solicit the Tribe’s inputs, but did not receive any response.³⁰⁰ BLM also noted that SLPT did not attend public scoping meetings on February 5, 2020 in Winnemucca, Nevada and on February 6, 2020, in Orovada, Nevada.³⁰¹ SLPT responded in a written filing on June 5, 2023 that the Tribe may not have received any of the letters BLM sent before issuing its record of decision permitting the mine.³⁰²

The district court, in deciding the case on November 9, 2023, acknowledged that SLPT’s complaint likely focused on BLM’s failure to hold in-person meetings with the Tribe, but said that whether or not SLPT received BLM’s letters was relevant to the adequacy of BLM’s

²⁹⁵ Complaint, *Reno-Sparks Indian Colony v. Haaland*, No. 3:23-cv-00070-MMD-CLB (filed February 16, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.nvd.160838/gov.uscourts.nvd.160838.1.o.pdf> (accessed January 8, 2025), p. 2-3. The complaint also alleged that BLM was not adequately consulting with tribes about impacts on historic properties discovered after the initial review under the NHPA.

²⁹⁶ *Ibid.*, p. 7.

²⁹⁷ *Ibid.*, p. 8.

²⁹⁸ *Ibid.*, p. 16.

²⁹⁹ *Ibid.*

³⁰⁰ Federal Defendants’ Motion to Dismiss the Complaint, *Reno-Sparks Indian Colony v. Haaland*, No. 3:23-cv-00070-MMD-CLB (filed May 22, 2023), <https://www.courtlistener.com/docket/66825182/36/reno-sparks-indian-colony-v-haaland/> (accessed January 8, 2025), p. 12-15.

³⁰¹ *Ibid.*

³⁰² *Reno-Sparks Indian Colony v. Haaland*, 3:23-cv-00070-MMD-CLB (D. Nev. Nov. 9, 2023). See also Order, United States District Court, District of Nevada, *Reno-Sparks Indian Colony v. Haaland*, November 9, 2023, <https://storage.courtlistener.com/recap/gov.uscourts.nvd.160838/gov.uscourts.nvd.160838.46.o.pdf>, p. 7.

consultation process.³⁰³ The district court gave SLPT 30 days to amend their complaint to provide further details of the Tribe’s failure to receive BLM’s letters.³⁰⁴ SLPT did not subsequently amend their complaint and the district court dismissed the case on December 12, 2023.³⁰⁵

Fort McDermitt Paiute and Shoshone Tribe (FMPST)

The Fort McDermitt Paiute and Shoshone (FMPST) Tribal Council has not contested BLM’s permitting of the mine in court but has criticized the Historic Properties Treatment Plan (HPTP) portion of the permitting process to BLM. In a May 4, 2021 letter to BLM, former FMPST Chairperson Maxine Redstar expressed concern that the HPTP developed by BLM for the mine “was developed and approved absent any Tribal input and government-to-government consultation.”³⁰⁶ Chairperson Redstar said the “HPTP is in no way reflective of the Tribal Values we have on our cultural, historical, and religious resources at the Thacker Pass Area, which are now being slated to be erased and destroyed—with BLM’s approval—by Lithium Nevada’s Project.”³⁰⁷

The Chairperson’s letter contrasted sharply with BLM’s assertions of Tribal consultation during the HPTP process. For example, the final EIS stated:

Tribal consultations for the Project are ongoing and continue through the HPTP process.... To date, government-to-government consultation between the BLM and representatives from the Fort McDermitt Paiute and Shoshone Tribe, Summit Lake Paiute Tribe, and Winnemucca Indian Colony have not raised any concerns about specific traditional areas, sacred sites, or ceremonial areas or activities in the Project area.³⁰⁸

³⁰³ Order, *Reno-Sparks Indian Colony v. Haaland*, p. 8.

³⁰⁴ *Ibid.*, p. 8, 11.

³⁰⁵ *Ibid.*

³⁰⁶ Letter from Maxine Redstar, Chairman, Fort McDermitt Paiute and Shoshone to Kathleen Rehberg Humboldt River Field Office, Bureau of Land Management, May 4, 2021, copy on file with Human Rights Watch; Also Document 65-16 (filed August 12, 2021), *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB.

³⁰⁷ *Ibid.*

³⁰⁸ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-85.

In December 2024, Human Rights Watch asked Lithium Americas to comment on the FMPST leaders' opposition to the HPTP portion of the US government's permitting process for the mine. Lithium Americas responded that, "Lithium Americas is not aware of any evidence that the Fort McDermitt Tribal Council opposed the HPTP" and noted "vocal support" for the Project offered by the Chairmen of the Fort McDermitt Tribe from 2022–24.³⁰⁹ Lithium Americas also said the "HPTP for the Project complies with the National Historic Preservation Act (NHPA) by addressing the Project's impact on cultural resources protected by the NHPA."³¹⁰

Several Numu/Nuwu and Newe people associated with FMPST expressed direct opposition to the mine. For example, 11 Tribal members sent individual letters to the Department of the Interior in April 2021 opposing the mine,³¹¹ created a petition on Change.org opposing the mine in May 2021,³¹² and signed a group letter opposing the mine in June 2021.³¹³ People of Red Mountain participated in litigation challenging BLM's permitting of the mine and has opposed the mine since they first learned of it.³¹⁴

After federal courts dismissed Tribal challenges to mine permitting, FMPST Tribal leadership signed a Community Benefits Agreement (CBA) with Lithium Americas in October 2022. The CBA is not public, but FMPST members interviewed for this report were aware of it. In its letter to Human Rights Watch, Lithium Americas claimed the CBA was reached after "20 meetings" with "Tribal leadership." The company states that the CBA terms include:

³⁰⁹ Letter to Human Rights Watch from Tim Crowley, Vice-President for Government and External Affairs, Lithium Americas, December 19, 2024 (on file with Human Rights Watch).

³¹⁰ Ibid.

³¹¹ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs' Appendix of Exhibits in Support of Complaint, Letters from 11 members of the Fort McDermitt Paiute Shoshone Tribe to Secretary Haaland, Department of the Interior, dated between April 16 and April 21, 2024.

³¹² *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs' Appendix of Exhibits in Support of Complaint, Declaration of Daranda Hinkey (stating "In early May 2021 we created a petition on Change.org demanding that the Department of the Interior rescind the Thacker Pass Lithium Mine Project Final Environmental Impact Statement, Record of Decision, and Plan of Operations. That petition has gathered over 1950 signatures.").

³¹³ *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs' Appendix of Exhibits in Support of Complaint, Letter from 13 members of the Fort McDermitt Paiute Shoshone Tribe to Secretary Haaland, Department of the Interior, June 1, 2021.

³¹⁴ *Reno-Sparks Indian Colony and Atsa Koodakuh Wyh Nuwu* ("People of Red Mountain"), Complaint for Vacatur, Equitable, and Injunctive Relief, *Bartell Ranch LLC v. McCullough*; People of Red Mountain, "People of Red Mountain Statement of Opposition."

[I]nfrastructure improvements at Fort McDermitt, additional job training and employment opportunities for tribal members, and support for cultural education and preservation. Lithium Americas has also agreed to build a \$5 million community center for the Tribe that includes a preschool, daycare, cultural facility, and playground, and build a greenhouse to provide traditional food crops, medicinal plants, and revenue from seeds for reclamation projects.³¹⁵

The US Department of Energy also briefly mentioned the terms of the CBA when it announced its loan to Lithium Nevada, stating that the CBA “provides for infrastructure improvements at Fort McDermitt, additional job training and employment opportunities for Tribal members, and support for cultural education and preservation.”³¹⁶

A letter was issued by the FMPST Chairperson at the time of the conclusion of the CBA, stating that while the CBA “cannot meet everyone’s expectations and desires, the Tribal Council has approved it to best serve the interests of the Tribe.”³¹⁷ The testimony provided in this report indicates that other members of FMPST, including People of Red Mountain, have continued to oppose the mine.

Litigation over the 1865 Massacre

The inadequacy of BLM’s consultation with Indigenous peoples during the permitting process for the Thacker Pass mine is underscored by the fact that both the original record of decision (ROD) issued by BLM and the final environmental impact statement (EIS) make no mention of the 1865 massacre so central to Indigenous history and narratives over Thacker Pass.³¹⁸

³¹⁵ Letter to Human Rights Watch from Tim Crowley, Vice-President, Government and External Affairs, Lithium Americas, June 24, 2024, p. 2 (on file with Human Rights Watch).

³¹⁶ Department of Energy, Loan Programs Office, “LPO Announces Conditional Commitment to Lithium Americas,” March 14, 2024, <https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-lithium-americas-corp-help-finance-construction> (accessed October 23, 2024).

³¹⁷ Undated letter from Chairwoman Maxine Redstar to Lithium Nevada Corp., https://s203.q4cdn.com/835901927/files/doc_downloads/esg/Thacker-Pass-Support-Letter.pdf (accessed January 9, 2025).

³¹⁸ See, for example, US Department of the Interior, Bureau of Land Management, Thacker Pass Lithium Mine Project, Record of Decision and Plan of Operations Approval, January 15, 2021, https://eplanning.blm.gov/public_projects/1503166/200352542/20033308/250039507/Thacker_Pass_Project_ROD_signe

In their court filings challenging BLM’s permitting of the mine, Tribes argued the evidence of a massacre occurring within the project area meant BLM should have consulted them during the permitting process and that construction of the mine risks disturbing the massacre site and so causes the Tribes irreparable harm.³¹⁹

BLM, however, stated it first became aware of Tribes’ concerns regarding the massacre in June 2021, after the final record of decision (ROD) approving the mine was issued in January 2021.³²⁰ Tribes disputed this, arguing that despite BLM’s lack of consultation with Tribes during the permitting process, it still should have known about the massacre in the area.³²¹

The district court rejected these arguments, finding that an 1868 field survey referring to a massacre does not “show a massacre happened within the project area.”³²² The court also referenced a map, prepared by an environmental engineer who works for Lithium Nevada, showing that the likely location of remains described in the 1868 field notes falls outside the Thacker Pass mine project area.³²³ These findings were critical to the district court’s decision that the Tribes would not suffer irreparable harm and so should not win a preliminary injunction to stop the project.³²⁴

d_2021-01-15.pdf (accessed October 23, 2024); See also US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 1-3.

³¹⁹ *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, Reply to Response to 45 Motion for Preliminary Injunction by Intervenor Plaintiff Reno-Sparks Indian Colony, (Attachments: # 1 Exhibit 1868 Land Report Field Notes, # 2 Exhibit Eben Declaration, # 3 Exhibit RSIC July 28 Letter to BLM, # 4 Exhibit RSIC Aug 3 Letter to BLM, # 5 Exhibit BLM Aug 12 Letter to RSIC, # 6 Exhibit RSIC Aug 18 Letter to BLM) (Falk, William), Filed August 19, 2021, <https://www.courtlistener.com/docket/59247337/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025).

³²⁰ *Ibid.*, p. 6; See Federal Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Reno Sparks Indian Colony v. Haaland*, United States District Court for the District of Nevada, Case No. 3:23-cv-70-MMD-CLB, March 15, 2023 (stating “In June 2021, RSIC and BPT raised their historic and cultural interest in the Thacker Pass area for the first time, citing a massacre that evidence suggests occurred around 1865 near the Project site—but outside the Project’s direct APE—i.e., the area of physical disturbance.”) (emphasis added). BLM opened a new post-ROD administrative process once it claimed its awareness of the massacre (Tribes have disputed that the agency was unaware given longstanding historical records), but the agency added, “Importantly, nothing in 36 C.F.R. § 800.13(b) or 36 C.F.R. § 63 [the regulations that set out procedures to follow if new discoveries are made post-ROD] permits BLM to suspend existing authorizations—such as the Thacker Pass ROD—or to preclude construction under those authorizations while these processes play out.”)

³²¹ *Bartell Ranch LLC v. McCullough*, 2021 U.S. Dist. LEXIS 245622, 245985. RSIC pointed out that “some 1868 field survey notes found in BLM’s records describing a potential massacre as evidence that BLM was on notice of a massacre within the Project area.”

³²² Order on Motion for Preliminary Injunction, *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, <https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.96.o.pdf>, p. 21. See also p. 13-14.

³²³ *Ibid.*, p. 14.

³²⁴ *Reno-Sparks Indian Colony v. Haaland*, 663 F.Supp.3d 1188 (US District Court, Nevada), March 23, 2023, 201291.

RSIC and PRM subsequently presented additional historical evidence indicating injured people fled in the direction of, and likely ultimately died, within the boundaries of the project site.³²⁵ The district court found, however, that while “this additional evidence further highlights the shameful history of the treatment of Native Americans by federal and state governments, it does not persuade the Court that it should reconsider the irreparable harm findings of the Prior Order.”³²⁶

The district court ruled Tribes should have presented this evidence sooner—explaining that it was more than 100 years old, thus available—stated that the new evidence “does not definitely establish that a massacre occurred within the Project area,” and then concluded that this new evidence was too “speculative” to show irreparable injury, the legal threshold required for the court to take action in the Tribes’ favor.³²⁷

Lithium Americas referenced these court decisions in its letters to Human Rights Watch, repeatedly citing court decisions indicating no human remains or funerary items were found in the project site,³²⁸ and stated: “The evidence concluded, and a judge agreed, that the site of the massacre is situated several miles from the Project.”³²⁹ The legal threshold required, however, for considering the additional evidence of the massacre submitted by the Tribes in the litigation meant the district court did not reach a factual finding on whether the massacre did or did not occur in the project site.

In interviews with Human Rights Watch and the ACLU, Numu/Nuwu and Newe peoples consistently recounted oral histories describing how their ancestors scattered and fled during the attack; those who were not instantly killed ultimately succumbed to their wounds some distance away, including within the project site.³³⁰ The massacre is central to Tribes’ religious, spiritual, and historical attachment to the Thacker Pass area and a key reason, under international human rights standards, to consult Tribes over the mine’s impacts.

³²⁵ *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, Motion for Reconsideration, Filed October 1, 2021, <https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.96.o.pdf>, p. 3-4.

³²⁶ *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, 570 F. Supp. 3d 945, 952, November 8, 2021.

³²⁷ *Ibid.*

³²⁸ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

³²⁹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, June 24, 2024, p. 3.

³³⁰ Human Rights Watch/ACLU interviews with 62-year-old concerned Tribal resident; and David Hinkey, Fort McDermitt Indian Reservation, Nevada, March 25, 2024.



Indigenous women carrying Tribal flags and a flag of the American Indian Movement at the 2024 prayer horse ride for Peehee Mu’huh. © 2024 David Calvert

BLM’s lack of consultation with Tribes during the permitting for the Thacker Pass mine denied Numu/Nuwu and Newe the opportunity to convey the historical significance of the 1865 massacre before BLM awarded a permit for the mine.

Once Tribes were fully aware of the planned mine, the 1865 massacre formed a central piece of evidence in all of the Tribes’ communications with BLM.³³¹

BLM has accepted as historical fact that a massacre occurred in 1865 near the Thacker Pass mine project site.³³² The ACHP recommended BLM follow the post-review discovery

³³¹ BLM stated that it first became aware of Tribes’ concerns regarding the massacre in June 2021, after the final Record of Decision (ROD) was issued in January 2021. See footnote 320 of this report for additional analysis.

³³² See, e.g., *Bartell Ranch LLC v. McCullough*, 2021 U.S. Dist. LEXIS 245622, December 27, 2021 (recognizing that “other documents now in the [administrative record] also state that the 1865 massacre occurred”); *Reno-Sparks Indian Colony v. Haaland*, 663 F.Supp.3d 1188 (US District Court, Nevada), March 23, 2023, (at footnote 8) (stating “The Court understands that Federal Defendants tentatively agree with Plaintiffs’ contention. ‘BLM has preliminarily agreed that this proposed TCD is eligible for the National Register of Historic Places due to its association with the Peehee Mu’huh Massacre and the 1865 Quinn River Massacre and has requested additional consultation to define its borders and evaluate its eligibility under other criteria.’”) (internal citations omitted).

process at 36 CFR § 800.13(b), including engaging in renewed consultation with impacted Tribes.³³³ BLM maintains, however, that its failure to conduct these consultations should not impact its permitting decision.³³⁴

³³³ Advisory Council on Historic Preservation, Letter to the US Department of Energy, Dispute Regarding a Finding of No Adverse Effect for Lithium Carbonate Processing Thacker Pass Lithium Mine, Humboldt County, NV, ACHP Project Number 021650, p. 2, October 22, 2024 (on file with Human Rights Watch).

³³⁴ BLM has stated: “Nothing in 36 C.F.R. § 800.13(b) or 36 C.F.R. § 63 [the regulations that set out procedures to follow if new discoveries are made post-ROD] permits BLM to suspend existing authorizations—such as the Thacker Pass ROD—or to preclude construction under those authorizations while these processes play out.”) *Reno Sparks Indian Colony v. Haaland*, United States District Court for the District of Nevada, Case No. 3:23-cv-70-MMD-CLB, p. 6, March 15, 2023.

Human Rights Impacts of the Thacker Pass Mine

We are literally descendants. Our family tree is buried out there. Those artifacts ... they come from our people.... We want the generations after us to know how to carry the drum, carry those different artifacts. And get familiar with those other artifacts ... out there.... Be mindful of those artifacts and things that are ... just being left out there. Because the whole culture, the whole history, it's all under attack.

—Gary McKinney, April 3, 2024³³⁵

Governments have obligations to abide by international human rights treaties their states have ratified and customary international law binding on all states. States that are signatories but not parties to treaties are not legally bound to implement the specific provisions of those treaties, but are obligated to refrain from acts that would defeat the treaty's object and purpose.³³⁶

Companies have human rights responsibilities that have been spelled out in the United Nations Guiding Principles on Business and Human Rights, an international standard endorsed by the UN Human Rights Council in 2011, which has since become widely recognized. Under the Guiding Principles, companies are expected to take proactive steps to ensure they do not cause or contribute to human rights abuses within their global operations, and to respond to human rights abuses when they occur.³³⁷

The Guiding Principles provide that companies should put in place human rights due diligence—that is, a process to identify, prevent, mitigate, and account for companies'

³³⁵ Human Rights Watch/ACLU telephone interview with Gary McKinney, April 3, 2024.

³³⁶ Vienna Convention on the Law of Treaties, adopted May 22, 1969, G.A. Res. 2166 (XXI), 2287 (XXII), 1155 U.N.T.S. 331, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed July 11, 2024), art. 18; Although the United States has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as “the authoritative guide to current treaty law and practice.” Assistant Legal Advisor for Treaty Affairs at the US Department of State and US Secretary of State, “Report to the President,” Department of State Bulletin, vol. 65, October 18, 1971, p. 685; Theodor Meron, “The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination,” *American Journal of International Law*, vol. 79 (1985), doi: 10.2307/2201704, p. 283.

³³⁷ United Nations Human Rights Council, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” 2011, http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf (accessed January 12, 2025).

impacts on human rights. Businesses should monitor their human rights impact on an ongoing basis and have processes in place to remediate adverse human rights impacts they cause or to which they contribute.³³⁸ Although non-binding, the Guiding Principles provide important and widely accepted guidance on businesses' human rights responsibilities.

BLM's decision to move forward with the Thacker Pass mine violates Indigenous peoples' rights under international human rights law and standards to ancestral and traditional land; their freedom of religion; their right to practice their culture; and their right to free, prior, and informed consent. Human Rights Watch and the ACLU also contend that Lithium Nevada has failed to meet its responsibility under the UN Guiding Principles on Business and Human Rights to respect these rights.³³⁹

Both BLM and Lithium Nevada have operated on the basis of an artificially narrow conception of the Numu/Nuwu and Newe people with which they are concerned. In BLM's case, the three sets of mailings sent to the Fort McDermitt Paiute and Shoshone Tribe (FMPST), Winnemucca Indian Colony (WIC), and the Summit Lake Paiute Tribe (SLPT) defined which Indigenous peoples were prioritized through reliance on the federally imposed structures of Tribes and reservations. In Lithium Americas' case, the company stated in its June 2024 letter that it "has deep respect" for the "history and cultural heritage" of the Fort McDermitt Tribe and that its human rights commitments are "primarily focused" on the Fort McDermitt Tribe.³⁴⁰ In its December 2024 letter to Human Rights Watch, Lithium Americas stated it has:

[E]xtensively coordinated with the Fort McDermitt Tribe. LAC's coordination includes a Community Benefits Agreement with the Fort McDermitt Tribe; employment of 11 Fort McDermitt Tribe members as cultural monitors/ technicians during the cultural field surveys that form the backbone of the NHPA analysis for the Project; multiple job trainings for employment at LAC's projects and in the mining industry; and a partnership with Sawtooth Mining

³³⁸ UN Human Rights Council, "Guiding Principles," art. 13-24.

³³⁹ United Nations Office of the High Commissioner, "Frequently Asked Questions about the Guiding Principles on Business and Human Rights," https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf (accessed January 12, 2025).

³⁴⁰ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, June 24, 2024, p. 3.

to provide temporary and full-time employment opportunities to members of the Fort McDermitt, Duck Valley and Navajo Tribes.³⁴¹

This narrow understanding of affected tribes by both BLM and Lithium is in direct tension with Numu/Nuwu and Newe understanding of their peoples' connection to Peehee Mu'huh and whose rights are impacted by the Thacker Pass mine, as stated by Michon Eben, the tribal historic preservation officer for the Reno-Sparks Indian Colony, in a letter to BLM in 2021:

The following Tribes attach religious and cultural significance to Thacker Pass. These Tribes include the Fort McDermitt Paiute and Shoshone Tribe, Summit Lake Paiute Tribe, Burns Paiute Tribe of Oregon, Duck Valley Shoshone-Paiute Tribe, Lovelock Paiute Tribe, Battle Mountain Band Colony of the Te-Moak Tribe of Western Shoshone, Winnemucca Indian Colony, Cedarville Rancheria, Ft. Bidwell Indian Community, Fallon Paiute Shoshone Tribe, Pyramid Lake Paiute Tribe, and the Reno-Sparks Indian Colony.... The BLM Winnemucca District Office must understand that Thacker Pass is a shared use area by a number of Tribes. Just because regional Tribes have been isolated and forced on to reservations relatively far away from Thacker Pass does not mean these regional Tribes do not possess cultural connections to the Pass.³⁴²

There may be other Tribes that attach religious or cultural significance to the McDermitt Caldera.

Right to Access and Return to Traditional and Ancestral Land

Peehee Mu'huh is the traditional and ancestral land of the Numu/Nuwu, and Newe.³⁴³

³⁴¹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

³⁴² *Reno-Sparks Indian Colony v. Haaland*, Plaintiffs' Appendix of Exhibits in Support of Complaint, Exhibit 5, (Letter from Reno Sparks Indian Colony to Ms. Ester McCullough, District Manager and Mr. Ken Loda, Project Manager, Bureau of Land Management, Winnemucca District Office, June 3, 2021).

³⁴³ Hanes, "Cultural Persistence in Nevada," p. 204 (noting the incomplete ethnographic boundaries of the Northern Paiute and the Western Shoshone, recognizing that these communities were the original inhabitants of the land). In reality, the Western Shoshone and Northern Paiute territorial boundaries were fluid and both communities occupied Peehee Mu'huh. *United States v. Northern Paiute Nation*, p. 793 (HRW and ACLU citing this case due to its recognition that the Northern Paiute



Sentinel Rock, which sits above Peehee Mu’huh and holds cultural importance to many Numu/Nuwu and Newe Indigenous people, in Nevada. © 2024 Bucky Harjo

Numu/Nuwu and Newe people interviewed for this report repeatedly explained to Human Rights Watch and the ACLU that Peehee Mu’huh is their traditional and ancestral land. One Numu/Nuwu, Newe person stated this simply and powerfully: “My connection to the land at Peehee Mu’huh goes back before recorded history.”³⁴⁴

Elder Inelda Sam spoke about her longstanding connection to Peehee Mu’huh:

I hate to ... go back and see how it looks now because we used to stay there overnight and ... it used to feel so good out there. I don’t even feel like coming back. You know, before it felt so good because your relatives are

people were “aboriginal,” meaning “the people who have been in a region from the earliest time,” and disavowing the case’s narrative that the Northern Paiutes’ title to the land was extinguished by white settlers encroaching on their land); “Aboriginal,” Merriam-Webster Dictionary.

³⁴⁴ Human Rights Watch/ACLU telephone interview with Bhie Cie Zahn-Nahtz, February 1, 2024.

there and that's how it feels. You feel you're welcome there. That was the feeling.³⁴⁵

Others defined their ancestral connection to the land in light of the 1865 massacre:

“We ... believe our ancestors are likely ... in that area,” said Michon Eben. “They ... just laid there, dead. Nobody was able to go back and collect them, because the cavalry was posted out there and [ordered] to shoot on sight.”³⁴⁶

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007.³⁴⁷ The US was 1 of 4 countries in the General Assembly that opposed the adoption of the Declaration, with 143 countries voting in favor.³⁴⁸ However, US President Barack Obama in December 2010 announced that the US had reversed its position and supported the Declaration.³⁴⁹ At that time, the US State Department said the Declaration, “while not legally binding or a statement of current international law—has both moral and political force” and “expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.”³⁵⁰

The overwhelming adoption of UNDRIP is evidence of its key provisions being customary international law, which would make them binding on all countries, including the US.³⁵¹

³⁴⁵ Human Rights Watch/ACLU interview with Inelda Sam.

³⁴⁶ Human Rights Watch/ACLU interview with Michon Eben, Reno-Sparks Indian Colony, Nevada, March 27, 2024.

³⁴⁷ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/61/L.67 and Add.1 (2007), article 32, www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed October 23, 2024).

³⁴⁸ United States Advisory Council on Historic Preservation, “United Nations Declaration on the Rights of Indigenous Peoples,” <https://www.achp.gov/united-nations-declaration-rights-indigenous-peoples-background#:~:text=General%20Assembly%20adopted%20the%20Declaration,nations%20that%20opposed%20the%20Declaration> (accessed October 23, 2024).

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*

³⁵¹ International Law Association, “Rights of Indigenous People,” Res. No. 5/2012, https://www.ila-hq.org/en_GB/documents/conference-resolution-english-sofia-2012-4 (accessed May 23, 2024), para 2-10; S.J. Anaya and S. Wiessner, “The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment,” *Jurist Forum, School of Law, University of Pittsburgh*, October 3, 2007, <https://jurist.law.pitt.edu/forum/2007/10/undeclaration-on-rights-of-Indigenous-philp> (accessed July 11, 2024), p. 4.; S.J. Anaya and R.A. Williams, “The Protection of Indigenous Peoples Rights over Lands

Under UNDRIP, Indigenous peoples have the right to “maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used land”³⁵² and the right to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”³⁵³

Right to Access Traditional and Ancestral Land

The United States is bound by the International Covenant on Civil and Political Rights (ICCPR), which it ratified in 1992. The United Nations Human Rights Committee, which provides authoritative interpretations of the ICCPR, has recognized the “strong cultural and spiritual link between Indigenous peoples and their traditional lands.”³⁵⁴ Indigenous peoples also have a right to access their ancestral and traditional land as a part of their right to culture under the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁵⁵ The United States has signed, but not ratified, the ICESCR. As a signatory, the US is obligated to refrain from acts that would defeat the treaty’s object and purpose.³⁵⁶

BLM permitting of the Thacker Pass mine under federal regulations allows Lithium Nevada to restrict access to the mine site for safety purposes.³⁵⁷ Lithium Nevada has priority to

and Natural Resources under the Inter-American Human Rights System,” *Harvard Human Rights Journal*, vol. 14 (2001), <https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2020/06/14HHRJ-Anaya.pdf> (accessed July 11, 2024), p. 57; William A. Schabas, *The Customary International Law of Human Rights* (London: Oxford University Press, 2021).

³⁵² UNDRIP, art. 25.

³⁵³ UNDRIP, art. 26.

³⁵⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States September 8, 1992; Note by the Secretary-General on UNGA, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Report of the Third Committee A/76/462/Add.2., December 1, 2021, A/77/514, October 10, 2022.

³⁵⁵ The US signed the covenant in 1977. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, 993 U. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; In its General Comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights, which provides authoritative interpretations of the ICESCR treaty, stresses that “indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected.” UN Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21, December 21, 2009, <https://documents.un.org/doc/undoc/gen/go9/469/22/pdf/go946922.pdf> (accessed July 11, 2024), para. 36.

³⁵⁶ Vienna Convention on the Law of Treaties, art. 18. Although the US is not a party to the Vienna Convention, the treaty is widely viewed as being reflective of customary international law.

³⁵⁷ See, e.g., 43 CFR § 3802, “Exploration and Mining, Wilderness Review Program,” <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3800/subpart-3802> (accessed July 11, 2024) (stating in one relevant part (§ 3802.4-5) “During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise

engage in mining on the land and can restrict public access to the extent necessary to engage in these mining activities.³⁵⁸ Access to the site, including for Indigenous peoples, is restricted by fencing around the mine site; by various structures, pits, roads, and related construction and mining equipment placed throughout the site; and by private security patrols on the only road.

The fence that surrounds the Thacker Pass mine denies everyone all access to the area. Lithium Americas, in a subsection of their spring 2024 project newsletter titled “Boundary Fence Now Encompasses the Perimeter of Thacker Pass,” stated: “Thacker Pass is now completely fenced with four-strand barbed wire fence and ‘No Trespassing’ signage installed every 500 feet. All access gates are locked, or directly supervised by on-site security. Public access to the site is prohibited.”³⁵⁹

This fencing makes traditional and ancestral land completely inaccessible to the Numu/Nuwu and Newe, in violation of their rights. Many Numu/Nuwu and Newe people interviewed for this report noted this. A woman who engages in Numu/Nuwu and Newe traditional religious practices told Human Rights Watch and the ACLU:

You go up [to Peehee Mu’huh] and there’s a boundary. You can’t go past it.... Otherwise you’re gonna get trespass [charges].... We’re not supposed to be that way to each other. We’re supposed to help each other, take care of each other, share. And that’s not the way it is. It doesn’t feel right.³⁶⁰

identified to protect the public in accordance with applicable Federal and State laws and regulations.”); 43 CFR § 3715.0-1, “Use and Occupancy Under the Mining Laws,” <https://www.ecfr.gov/current/title-43/section-3710.3715.0-1> (accessed July 11, 2024).

³⁵⁸ See Amy Alonzo, “Free Speech or Interference? In Rare Move, Lithium Americas Sues Thacker Pass Protesters,” *Nevada Independent*, July 13, 2023, <https://thenevadaindependent.com/article/free-speech-or-interference-in-rare-move-lithium-americas-sues-thacker-pass-protesters> (accessed January 3, 2025) (quoting Mike Visher, director of the Nevada Division of Minerals: “Mining claims in and of themselves do not preclude access. Restriction to the area is based on construction and industrial activities for safety purposes. Typically, you’re going to restrict access so nobody gets hurt during your activities.”); 30 U.S.C. 612(b); *U.S. v. Curtis-Nevada Mines*, 611 F.2d 1277 (9th Cir. 1980).

³⁵⁹ “Lithium Americas Newsletter,” Spring 2024, https://s203.q4cdn.com/835901927/files/doc_downloads/thacker-pass/2024/05/LAC-Spring-2024-External-Newsletter-final-updated-5-14-2024.pdf.

³⁶⁰ Human Rights Watch/ACLU telephone interview with Rose Curtis, April 9, 2024.



The fence encircling Thacker Pass and restricting Indigenous peoples' access to the land, in Nevada, March 26, 2024. © 2024 David Calvert

Lithium Americas told Human Rights Watch that: “The area is closed to the public. All access to the site requires permission by LAC, and all visitors must receive safety training and site orientation.”³⁶¹ The company said it:

[O]perates a fully permitted active construction site with heavy equipment that requires the utmost focus and adherence to safety policies. LAC does not oppose and has never opposed peaceful gatherings on public land adjacent to the construction site, and such gatherings have occurred.³⁶²

Lithium Americas stated that with respect to Fort McDermitt tribal members, they “have an open invitation to visit the site. These visits have to be scheduled for the safety of FMT members and workers at the site.”³⁶³

³⁶¹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

³⁶² Ibid.

³⁶³ Ibid.

Indigenous community members said other portions of the traditional and ancestral land of Peehee Mu'huh are made inaccessible due to the presence of private security on the road that must be traveled to access the region by car. A Fort McDermitt Tribal member and leader told Human Rights Watch and the ACLU:

We can't even go up there without being chased off.... They gotta know what we're doing up there [and we don't want to tell them because these are our spiritual traditions]. Otherwise, they call the cops [on us]. And you know, people don't want to go up there now. It's horrible.³⁶⁴

Some Indigenous community members also told Human Rights Watch and the ACLU they feel intimidated from travelling on the road because they were previously stopped on the road by people they believed to be private security officers.³⁶⁵ When asked about these interactions, Lithium Americas stated: "Pole Creek Road is a public road that bisects the Thacker Pass Project. It remains open to all users."³⁶⁶ The company also shared a video taken on the road showing a demonstrator blocking Lithium Americas access to the road as an act of protest. It said, "Lithium Americas uses a contract security company that does not have vehicles equipped to pull other vehicles over" and "LAC's security contractor is not authorized to pull vehicles over."³⁶⁷

An Indigenous elder told Human Rights Watch and the ACLU that even though she knows she has a right to drive on the road, she was upset when people she believed to be private security stopped her on one previous occasion and is frightened that they will stop her in the future.³⁶⁸ She said that many other Tribal Elders do not know their rights regarding the road, so when private security stops them and tells them they cannot drive on the road, the Elders obey and no longer access their traditional and ancestral land.³⁶⁹ Lithium Americas denies their private security has ever stopped a vehicle on roads outside of the mine

³⁶⁴ Human Rights Watch/ACLU telephone interview with Fort McDermitt Tribal Member and Leader, April 1, 2024.

³⁶⁵ Human Rights Watch/ACLU interviews with Chanda Callao, Fort McDermitt Indian Reservation, Nevada, March 25, 2024; and Inelda Sam.

³⁶⁶ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

³⁶⁷ Ibid.

³⁶⁸ Human Rights Watch/ACLU interview with Indigenous elder, Fort McDermitt Indian Reservation, March 25, 2024.

³⁶⁹ Ibid.

site.³⁷⁰ When asked if Lithium Americas’ private security had ever engaged with any law enforcement agency to restrict access to the land, Lithium Americas stated: “No[.]”³⁷¹

Four Numu/Nuwu and Newe individuals expressed concern that accessing the land could result in lawsuits. Lithium Nevada has sued four Indigenous individuals for six charges related to protests at the Thacker Pass site and is seeking compensatory and punitive damages.³⁷² The protesters characterized their activities as a “nonviolent prayer” protest.³⁷³ In their complaint, Lithium Americas alleged that the protesters’ activities included “blocking public road access to the Project site, climbing onto equipment, vandalizing and stealing equipment, erecting structures in unauthorized areas, and flying drones dangerously close to Project personnel.”³⁷⁴ This lawsuit remains pending.

Right to Return to Traditional and Ancestral Land

Nuwu/Numu and Newe people recounted to Human Rights Watch and the ACLU oral histories describing their longstanding connection to the land at Peehee Mu’huh, and how settler colonialism attempted to rupture that historical connection. One Nuwu/Numu practitioner of traditional religion said his elders taught him: “[T]hey do not have ... title to this earth. They do not have the title to the land. But yet [the government] still says, well, this is ours.... Once they put you inside that boundary, the [reservation] boundary, then you can’t go back out, you can’t be running around free. It is like you are a prisoner.”³⁷⁵ Another Nuwu/Numu and Newe Tribal member said: “They slowly pushed our people this way and then after the massacre they pushed us here to Fort McDermitt. They push us onto smaller and smaller reservations so the homesteaders could get a prime place.”³⁷⁶

³⁷⁰ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

³⁷¹ Ibid.

³⁷² Plaintiff’s (Lithium Americas) Complaint in *Lithium Nevada Corporation v. Protect Thacker Pass, Max Wilbert, Will Falk, Paul Cienfuegos, Bethany Sam, Dorece Sam, Dean Barlese, BC Zahn-Nahtzu*, District Court of the State of Nevada in and for the County of Humboldt, May 24, 2023 (Complaint accessible in Alonzo, “Free Speech or Interference?”

³⁷³ Alonzo, “Free Speech or Interference?”

³⁷⁴ Plaintiff’s (Lithium Americas) Complaint in *Lithium Nevada Corporation v. Protect Thacker Pass, Max Wilbert, Will Falk, Paul Cienfuegos, Bethany Sam, Dorece Sam, Dean Barlese, BC Zahn-Nahtzu* (Complaint accessible in, Alonzo, “Free Speech or Interference?”

³⁷⁵ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

³⁷⁶ Human Rights Watch/ACLU interview with David Hinkey.

Under international human rights law, all people have the right to return to their traditional and ancestral land where they have maintained a genuine and effective link.³⁷⁷ Article 12 of the ICCPR provides for the right to freedom of movement, which has been interpreted to include the right to return.³⁷⁸ The right to return is held by people displaced inside the boundaries of a nation-state and their descendants, so long as they have maintained the appropriate links with the relevant territory. The right persists even when sovereignty over the territory is contested or has changed hands.³⁷⁹

The right to return is closely related to Indigenous peoples' right to re-dress for land, provided for in the UN Declaration on the Rights of Indigenous Peoples. Under article 18 of the Declaration:

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.³⁸⁰

Similarly, the Committee on the Elimination of Racial Discrimination (CERD), which monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which the US became a party in 1994,³⁸¹ recommends any states that have dispossessed Indigenous peoples from their traditional and ancestral lands, offer restitution in land.³⁸² CERD has stated:

³⁷⁷ See generally, Human Rights Watch, "Human Rights Watch Policy on the Right to Return," Human Rights Watch campaign, <https://www.hrw.org/legacy/campaigns/israel/return/index.htm> (accessed May 31, 2024). Citing International Court of Justice, *Nottebohm Case, (Liechtenstein v. Guatemala) Second Phase, Judgment*, I.C.J. reports 1955, Rep 4.

³⁷⁸ ICCPR, art. 12.

³⁷⁹ See generally, Human Rights Watch, "Human Rights Watch Policy on the Right to Return."

³⁸⁰ UNDRIP, art. 28. See also arts. 25, 26, 32.

³⁸¹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, adopted by the United States on November 20, 1994.

³⁸² Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 23, para. 5(d) Rights of indigenous peoples (Fifty-first session, 1997), U.N. Doc. A/52/18, annex V at 122 (1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.6 at 212 (2003) <http://hrlibrary.umn.edu/gencomm/genrexxiii.htm> (accessed May 3, 2024).

[W]here [Indigenous peoples] have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.³⁸³

Both the ICCPR and ICERD guarantee the right to an effective remedy.³⁸⁴ This right can take the form of restitution in land and property, and is a form of effective remedy for gross human rights violations, including those that the US government committed against Indigenous peoples.³⁸⁵

The Inter-American Commission on Human Rights has also stated that Indigenous peoples have the right to “the recognition of [Indigenous peoples’] property and ownership rights with respect to lands, territories and resources they have historically occupied.”³⁸⁶ Where property and user rights of Indigenous peoples arise from rights existing prior to the creation of a state, the Commission interprets international standards as requiring state recognition of the permanent and inalienable title of Indigenous peoples to the land: finding that such title may only be changed by “mutual consent between the state and

³⁸³ *Ibid.*

³⁸⁴ ICCPR, art. 2; ICERD, art. 6; UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation on States Parties to the Covenant (Eightieth session, 2004), U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

³⁸⁵ UN Human Rights Committee, General Comment No. 31, para 15 et seq; “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” General Assembly Resolution 60/147 of 16 December 2005, U.N. Doc. A/RES/60/147, <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx> (accessed May 27, 2020), para. 19.

³⁸⁶ Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-o/79), O.A.S. Off. Rec. OEA/Ser.P/IX.o.2/80, Vol. 1 at 88; Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/11.50 doc.13 rev. 1 at 10 (1980), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 93 (1992), Section 5: Social, Economic, Property Rights, <https://www.cidh.org/Indigenas/Indigenas.en.01/article.XVIII.htm> (accessed May 3, 2024). para. 2; Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Articles 64 of the American Convention on Human Rights, Advisory Opinion OC- 10/89, July 14, 1989, Inter-Am. Ct. H.R., No. 10 (1989). The Inter-American Commission on Human Rights (IACHR) is an organ of the Organization of American States (OAS) that monitors the human rights situation in OAS member states, which includes the United States. It also receives and investigates alleged human rights violations in individual cases. The United States has not ratified the primary human rights treaty in the Americas, the American Convention on Human Rights, but the IACHR reviews US conduct under the American Declaration on the Rights and Duties of Man, which the Inter-American Court of Human Rights has found to be incorporated into the OAS Charter.

respective Indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property.”³⁸⁷

Right to Freedom of Religion

The profound and all-encompassing character of the Numu/Nuwu and Newe religious and spiritual belief systems and their interrelationship in turn with all aspects of nature at Peehee Mu’huh were emphasized repeatedly by people interviewed for this report. For example, a Numu/Nuwu and Newe individual told Human Rights Watch and the ACLU:

We are very spiritual and powerful ... people. Let me tell you about our spirituality ... My ancestors, when they woke up in the morning—they greeted the sun. When they went to the water, they prayed. When they went to eat, they prayed. When they were making [cradleboards], they were praying. They were praying because they knew. When they went to go kill something, they prayed. When they were picking, they prayed. When they were digging, they prayed. Prayer was happening all day long.³⁸⁸

Numu/Nuwu and Newe communities hold Peehee Mu’huh sacred, as the resting place of their ancestors, a place for religious ceremony, and as an ecosystem providing plants and animals necessary for their religious practice.

When police took ceremonial objects and shut down a protest in 2023 by Numu/Nuwu and Newe people, which included a prayer site near construction for the mine, one Elder wrote in response:

When our ceremonial belongings are brought together around the sacred fire, this is our Church. Our Native American Church is a sacred ceremony. I am demanding the immediate access to our prayer site at Peehee Mu’huh and the return of our confiscated ceremonial objects.³⁸⁹

³⁸⁷ Ibid., para. 3.

³⁸⁸ Human Rights Watch/ACLU interview with Michon Eben.

³⁸⁹ “Thacker Pass Camp Raided After Protestors Block Open Pit Lithium Mine,” *Whole Community News*, June 9, 2023, Statement of FMPST Elder Josephine Dick, <https://wholecommunity.news/2023/06/09/thacker-pass-camp-raided-after-protesters-block-open-pit-lithium-mine/> (accessed January 2, 2025).



Numu/Nuwu and Newe Indigenous peoples perform ceremony at Sentinel Rock, Peehee Mu’huh. The people are purposefully facing away from the mine site, which is not always the correct direction for ceremony. Their staffs include sacred eagle feathers, the nests for which are threatened by the mine. Fort McDermitt, Nevada, March 24, 2024. © 2024 Alison Leal Parker/Human Rights Watch

Though it did little to alter their decision making, the religious importance of the land to the Tribes was accepted in general by BLM and the courts in the litigation summarized below:

[B]asically, the Tribes consider the entire Thacker Pass area sacred, so any digging anywhere in that area causes harm. Defendants [BLM] do not dispute that the Tribes consider the entire Thacker Pass area sacred.³⁹⁰

³⁹⁰ *Bartell Ranch LLC v. McCullough*, United States District Court for the District of Nevada, 558 F. Supp. 3d 974, September 3, 2021.

The ICCPR and the ICERD recognize the right to freedom of religion, and in particular enshrine Indigenous peoples' right to practice their religion.³⁹¹ Article 27 of the ICCPR states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group ... to profess and practice their religion.³⁹²

The right to religion includes people's freedom to practice religion "either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching."³⁹³

The Human Rights Committee, the authoritative treaty body monitoring compliance with the ICCPR, while reviewing the US record under the treaty, recommended the US "[a]dopt measures to guarantee the access of Indigenous Peoples to their lands and sacred sites and to effectively protect their lands and sites from the adverse impact of extractive industries, military infrastructure and toxic and nuclear waste[.]"³⁹⁴ Other authoritative human rights bodies have expressed similar concerns and made similar recommendations.³⁹⁵

Tribal members said construction of the Thacker Pass mine, the fence surrounding the mine, and the private security patrolling the road are all preventing them from

³⁹¹ ICERD; ICCPR, art. 25. The US ratified the ICCPR on June 8, 1992. Article VI, para. 2 of the US Constitution makes all treaties the "supreme law of the land." When ratifying the ICCPR the United States expressed its view that it was bound to the extent that US laws implemented the treaty's provisions.

³⁹² ICCPR, art. 27.

³⁹³ ICCPR, art. 18.

³⁹⁴ ICCPR, Concluding observations on the fifth periodic report of the United States of America, CCPR/C/USA/5, December 7, 2023.

³⁹⁵ The Human Rights Council defined religious protection to "ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction[.]" UN Human Rights Council, Elimination of all forms of intolerance of discrimination based on religion or belief, adopted by a recorded vote 34th meeting, December 14, 2007, A/HRC/RES/6/37, at 9e, https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_37.pdf (accessed January 2, 2025); The special rapporteur on religious freedom emphasized deep concern with the "widespread reports of States failing to protect or deliberately undermining indigenous peoples' occupation, access or use of indigenous lands without free, prior and informed consent, with significant implications for their enjoyment of spirituality." Note by the Secretary-General on UNGA, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Report of the Third Committee, A/76/462/Add.2., December 1, 2021, A/77/514, October 10, 2022.

conducting prayer ceremonies and religious commemorations on their ancestral lands, including sites related to the 1865 massacre.

“We still ... go up to place and give offerings, but we can’t do that without them being on us,” said a Numu/Nuwu and Newe community member.³⁹⁶

We go up there to pray, after that massacre, people go up there, as families, as groups ... it seems like you gotta ask to go up there now. People go out there to honor their ancestors. That’s why we go up to pray because that’s how we are raised. That’s what our culture is.³⁹⁷

Dorece Sam, a Numu/Nuwu and Newe woman, told Human Rights Watch and the ACLU about a religious experience she had while practicing ceremony with her ancestors at Sentinel Rock³⁹⁸ within Peehee Mu’huh:

I did four days sitting up at Sentinel Rock ... [when] I was getting ready to sleep ... I heard singing. I knew it was coming from way down below where the river is flowing.³⁹⁹ And I listened. I heard the singing, and I knew it was like Indigenous songs.... And then pretty soon I heard ... little kids ... laughing, playing.... The spirits are out there. They’re alive and I’ve seen it. I’ve heard them when I was [at Peehee Mu’huh].⁴⁰⁰

Dorece Sam said she would no longer be able to practice ceremony in the same way at Sentinel Rock due to the mine’s construction. She said that the mine’s construction is desecration of the land, animal, and spirit community with which Dorece Sam communes in ceremony. The earthmovers, large pits, constructed buildings, and new roads are both visual and spiritual impediments to ceremony. “We look in that direction and it’s just, from sagebrush to now just ... dirt ... they’re just ... digging it up,” she said.⁴⁰¹

³⁹⁶ Human Rights Watch/ACLU telephone interview with a Tribal Member and Leader, April 1, 2024.

³⁹⁷ Ibid.

³⁹⁸ Sentinel Rock sits above the pass between the two mountain ranges enclosing Peehee Mu’huh (Thacker Pass), and the pass is visible from it.

³⁹⁹ Pole creek sits directly below Sentinel Rock within Peehee Mu’huh and runs into the Quinn River watershed.

⁴⁰⁰ Human Rights Watch/ACLU interview with Dorece Sam.

⁴⁰¹ Ibid.



Construction for the mine at Thacker Pass in Nevada, March 2024. © 2024 David Calvert

Lithium Americas told Human Rights Watch it believes both BLM and Lithium Americas “have sought to enable ... access [to religious and cultural sites], consistent with federal law permitting mining on public lands and with the necessary health, safety, and operational limitations that accompany mining.”⁴⁰² As discussed above, the company also stated that Fort McDermitt Tribal members have an open invitation to visit the site. The company’s response did not discuss visits from members of other Tribes, although they were asked to comment in general on all Indigenous peoples’ rights and access to the land.

Peehee Mu’huh is also the ecosystem for many sacred plants and animals that have been impacted by the Thacker Pass mine.⁴⁰³ A Fort McDermitt religious and traditional practices leader told Human Rights Watch and the ACLU, “our people, we harvest this in the late fall,” while showing researchers a plant, which his father taught him to “use for spirits. If

⁴⁰² Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁰³ Human Rights Watch/ACLU interviews with Michon Eben, Dorece Sam, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interviews with Daranda Hinkey and Fort McDermitt Tribal Member and Leader, April 1, 2024.

you're ... bothered by a spirit and you burn this plant, and it would keep them away.”⁴⁰⁴ He noted that the mine would harm these plants that are necessary for his community.⁴⁰⁵

Michon Eben told Human Rights Watch and the ACLU about the sacred Eagle, and their nests at Peehee Mu’huh:

[The Eagle feathers are] on the staff because ... they’re that direct connection right into the next World.... I believe my ancestors are guiding [what I’m doing] ... Those feathers, for me, make that connection to them.... Above Thacker Pass, Eagles live up there. If the mine is disturbing the Eagle nest, then [the mine operators] can dismantle the [nest] and do whatever with the eggs. And if an eagle dies in between, they just report it. They are allowed to kill Eagles.⁴⁰⁶

Regarding the 1865 massacre, the right to religion is also intertwined with the right to ancestral land, family, and culture. The UN Human Rights Committee has interpreted the right to family to encompass Indigenous Peoples’ rights to their ancestral burial grounds that pre-dated colonization, in accordance with that community’s “cultural traditions,” even when the group could not show direct lineage of kinship to the deceased.⁴⁰⁷ The Committee found that building a hotel complex on these burial grounds constituted a violation of the right to family and privacy.⁴⁰⁸ An Elder and spiritual leader told Human Rights Watch and the ACLU he was taught by his father to be careful when visiting the sacred land at Peehee Mu’huh because ancestors were massacred there, and some were wounded, and their remains could be scattered across the land.⁴⁰⁹ “Of course there are bones out there,” he said.⁴¹⁰ Another Numu/Nuwu and Newe woman explained the land

⁴⁰⁴ Human Rights Watch/ACLU telephone interview with Fort McDermitt Tribal Member and Leader, April 1, 2024; Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁴⁰⁵ Ibid.

⁴⁰⁶ Human Rights Watch/ACLU interview with Michon Eben.

⁴⁰⁷ *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1 (1997), para. 10(3); Office of the High Commissioner on Human Rights, Indigenous Peoples’ and the United Nations Human Rights System, Fact Sheet No. 9, rev. 2, <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf> (accessed May 3, 2024), p. 19.

⁴⁰⁸ *Francis Hopu and Tepoaitu Bessert v. France*, para. 10(3).

⁴⁰⁹ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁴¹⁰ Ibid.

was significant because “[o]ur ancestors were massacred [at Peehee Mu’huh].”⁴¹¹ Another Numu/Nuwu woman said:

My children are descendants of Ox Sam, one of the few people that escaped the cavalry. I have three grandchildren that are ... descendants and it’s important that we continue to carry on because their blood, our family’s blood is on this ground.⁴¹²

A Numu/Nuwu two spirit⁴¹³ Elder and spiritual leader said:

Our people were never given the opportunity to return there and take care of them, re-bury them. Even [though] our own people were not allowed to rebury ... we remember our ancestors are still out there. They are still out there.⁴¹⁴

Lithium Americas told Human Rights Watch:

One of these closely scrutinized claims was the allegation that Thacker Pass is located on the site of a massacre of Native Americans by American soldiers that took place in 1865. The evidence concluded, and a judge agreed, that the site of the massacre is situated several miles from the Project. The plaintiffs were denied an injunction request based on this issue.⁴¹⁵

Lithium Americas further stated that it is “committed to upholding fundamental human rights as defined in the UN’s Universal Declaration of Human Rights,” without addressing the specific rights to culture, religion, and to traditional and

⁴¹¹ Human Rights Watch/ACLU interview with Dorece Sam.

⁴¹² Human Rights Watch/ACLU interview with Lorraine Watson, Peehee Mu’huh, Nevada, March 26, 2024.

⁴¹³ The two spirit Society of Denver defines two spirit as “another gender role believed to be common among most, if not all, first peoples of Turtle Island (North America), one that had a proper and accepted place within native societies. This acceptance was rooted in the spiritual teachings that say all life is sacred.” Two spirit is an Indigenous term that is not monolithic and different Indigenous communities define two spirit in different ways. Every two spirit person has a unique identity.

⁴¹⁴ Human Rights Watch/ACLU telephone interview with Dean Barlese.

⁴¹⁵ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

ancestral land under human rights law and standards. Instead, the company referenced US law and stated:

[G]overnment actions with respect to publicly owned land, such as BLM’s approval of the Project, do not impinge on Tribes’ or tribal members freedom of religion under [US law, namely] the Free Exercise Clause or under the Religious Freedom Restoration Act.⁴¹⁶

By allowing the mine at Thacker Pass to go forward, the US is also impermissibly restricting freedom of religion, in violation of its obligations under articles 2(1) and 26 of the ICCPR. Many community members said their right to freedom of religion was unfairly restricted. Chanda Callao, a community organizer with People of Red Mountain, rhetorically asked: “Why can [non-Indigenous peoples] go to that church and practice their religion without ever being questioned but Native people can’t go to sacred land and practice theirs, sacred land is their church.... [We have] rights, religion here. We all do.”⁴¹⁷

Right to Culture

Because the mine site is closed to Indigenous community members and they have expressed concerns about accessing the rest of Peehee Mu’huh based on the presence of private security patrols,⁴¹⁸ many Indigenous community members feel inhibited in their ability to practice their culture at a location central to their identity and collective memory.⁴¹⁹

The right to practice and maintain culture is contained in the non-discrimination clauses of the ICCPR and the ICERD.⁴²⁰ The UN Human Rights Committee has stated that the right to culture encompasses the rights of Indigenous peoples to practice their customary

⁴¹⁶ Ibid.

⁴¹⁷ Human Rights Watch/ACLU interview with Chanda Callao.

⁴¹⁸ See section above on access to traditional and ancestral land.

⁴¹⁹ Human Rights Watch/ACLU telephone interviews with Fort McDermitt Tribal Member and Leader, April 1, 2024; Daranda Hinkey; and Rose Curtis; Human Rights Watch/ACLU interviews with 62-year-old concerned Tribal resident, Michon Eben, Dorece Sam, and Inelda Sam.

⁴²⁰ ICERD; ICCPR; Article VI, para. 2 of the US Constitution makes all treaties the “supreme law of the land.” When ratifying the ICCPR the United States expressed its view that it was bound to the extent that US laws implemented the treaty’s provisions. US Constitution, art 6, para 2.

activities; and to their traditional lands, territories, and resources.⁴²¹ It also includes their right to participate in political decisions that impact their cultural rights.⁴²² The Committee has also interpreted article 1 of the ICCPR, the right to self-determination, to apply to the right to culture, obligating states to provide Indigenous peoples “greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”⁴²³

The Inter-American Commission on Human Rights has also stated:

The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.⁴²⁴

The US is obligated to protect Indigenous peoples’ right to culture. This obligation includes safeguarding Indigenous peoples’ right to access their ancestral land for cultural reasons, such as hunting, gathering medicines and food, and fishing.

Inelda Sam, a Numu/Nuwu and Newe Elder, spoke with Human Rights Watch and the ACLU about the different cultural medicines and foods she gathered at Peehee Mu’huh, and

⁴²¹ Office of the High Commissioner on Human Rights, Indigenous Peoples’ and the United Nations Human Rights System, Fact Sheet No. 9, rev. 2, p. 19, <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf> (accessed May 3, 2024); Human Rights Committee, General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add. 5, April 8, 1994), para. 3.2, 7, 9; *Poma Poma v. Peru*, Human Rights Committee, Communication No. 1457/2006, CCPR/C/95/D/1457/2006, March 27, 2009, para. 7.2; Human Rights Committee, Concluding observations on the fourth periodic report of Paraguay, CCPR/C/PRY/CO/4, August 20, 2011, paras. 44-45.

⁴²² *Ibid.*

⁴²³ Human Rights Committee, Concluding Observations of the Human rights Committee for the United State of America, CCPR/C/USA/CO/3/Rev.1, December 18, 2006, <https://documents.un.org/doc/undoc/gen/go6/459/61/pdf/go645961.pdf> (accessed May 3, 2024), para. 37.

⁴²⁴ Inter-American Commission on Human Rights, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, Norms and Jurisprudence of the Inter-American Human Rights System, <https://cidh.org/countryrep/Indigenous-Lands09/Chap.V-VI.htm> (accessed May 3, 2024), Ch. 5, para. 56, n. 138; Also noting that the mandate of the Inter-American Court of Human Rights is more limited than that of the Inter-American Commission because the court may only decide cases brought against OAS member states that have specifically accepted the court’s jurisdiction. The United States has not accepted the court’s jurisdiction.

about the impact the mine is already having on the medicines and traditional plant and animal life:

We got ... some cedar, and there's an Eagle nest there too. And we got some choke cherries growing there and fish; they're all sacred. Our sacred medicines, our food.... We saw it happening already this summer.... Traditional hunting grounds that are always going to [have] deer. There is not deer there anymore, and we're only one ... year into construction ... and the sage, and ... our sacred firewood that we use in our ceremonies [is no longer there].⁴²⁵

Another Numu/Nuwu and Newe traditional cultural practitioner spoke about her fear the mine would disrupt her ability to live off the land in the way she always has:

There's families out there that live off [traditional food at Peehee Mu'huh]. I am one of them who lives off Native food in the winter. What am I eating? Or what's going to happen to the land? Is it just gonna be nothing? Nothing growing there anymore? We love the sage, the sagebrush, we're very thankful to have a lot of it and that's part of our medicine. It's really ... it's really scary to see the unknown. We don't ... know how it's gonna affect [the sage]?⁴²⁶

She explained that, unlike in her years as a firefighter when the plants always grew back better after a fire, she fears the mine pollution will leach into the land and destroy it all.⁴²⁷

Lithium Americas told Human Rights Watch: “Thacker Pass will disturb the surface of less than 7,000 acres, which is 0.114 percent of the total area in the county. There are currently more than 100,000 acres of cultivated land in the county. Thacker Pass's land impacts are comparatively very low.”⁴²⁸

⁴²⁵ Human Rights Watch/ACLU interview with Inelda Sam.

⁴²⁶ Human Rights Watch/ACLU telephone interview with Rose Curtis.

⁴²⁷ Ibid.

⁴²⁸ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.



A Numu/Nuwu and Newe woman holding culturally significant plant relatives that can be found at Peehee Mu’huh, in Nevada, March 17, 2024. © 2024 David Calvert

A Numu/Nuwu and Newe man explained his culture values medicinal plants the mine would harm and restrict access to: “[P]art of why we don’t want that Thacker Pass mine – it’s because of the medicine that we have out there, the medicine that we live with that helped us, and the vegetation ... that’s out there that we can live off of.”⁴²⁹ Another community member said the mine’s operators view her traditional medicines as a nuisance.⁴³⁰ An Elder expressed that “our medicines are out there, and they’re killing our medicines.”⁴³¹

When asked about these allegations, Lithium Americas responded:

We do not agree with these characterizations. LAC has committed to building a greenhouse at the FMT community for growing traditional,

⁴²⁹ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁴³⁰ Human Rights Watch/ACLU interview with Dorece Sam.

⁴³¹ Human Rights Watch/ACLU interview with Lorraine Watson.

medicinal foods. This commitment is part of the Community Benefits Agreement with the Tribe. Construction of the greenhouse will commence after LAC makes its Final Investment Decision.⁴³²

An Indigenous woman who lives close to the mine and expressed a spiritual connection with future generations told Human Rights Watch and the ACLU she believed the environmental harms would not only impact the health and lives of the people, but also of the ecosystem and animals the Tribe needs to survive. In her view, the decisionmakers regarding the mine were only considering the present.

Tribal members also expressed fears pollution from the mine would make them a dying Tribe, which could eliminate their culture. A Fort McDermitt religious and traditional practices leader likewise said the mine will threaten the future life and health of his Tribe's children, and thus the future of the Tribe:

You know, when you hear Biden, Trump talking about kids. They don't think about [our] kids. Why do they not think about [us]? What about us? What about us Natives? What about our grandkids? What about our children? What's going to become of them? What are their futures? I don't want to see them sick. Children are precious.⁴³³

Tribal members also expressed concern the mine's construction could disturb the resting place of victims from the 1865 massacre and cultural objects.⁴³⁴ "There are remains out there," Michon Eben told Human Rights Watch and the ACLU. "If there are human remains, funerary objects, sacred objects, or objects of cultural patrimony on federal lands, [Bureau of Land Management] must take appropriate steps to identify the lineal descendant."⁴³⁵

⁴³² Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴³³ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁴³⁴ Human Rights Watch/ACLU interviews with David Hinkey and Inelda Sam.

⁴³⁵ Human Rights Watch/ACLU interview with Michon Eben. Eben said they conveyed these points in an official letter from colony leadership to the BLM.

Right to Free, Prior, and Informed Consent

The requirement under US federal law to consult prior to approving mining permits is a necessary but insufficient means to achieve all that is embraced by the international human right of Indigenous peoples to give or withhold free, prior, and informed consent (FPIC) to projects, including mining projects, affecting their lands and rights. The courts considering the Tribe's challenges to the mine interpreted US law to require almost meaningless consultation, which falls far below what is required to satisfy the right to FPIC under international law. The US, and in particular BLM, has thus violated the Numu/Nuwu and Newe peoples' right to FPIC.

UNDRIP states countries shall seek the free and informed consent of Indigenous peoples "prior to the approval of any project affecting their lands or territories and other resources."⁴³⁶ The right to FPIC gives Indigenous peoples the right to give or withhold consent to any activities that affect their lands, resources, and territories. The right to FPIC flows from Indigenous peoples' right to self-determination, which is secured under the ICCPR.⁴³⁷ The UN Human Rights Committee has recommended the US:

Ensure meaningful and good faith consultations with Indigenous peoples, ensuring their active and effective participation, in order to obtain their free, prior and informed consent before adopting and implementing any measures that may substantially affect their rights, way of life and culture, including in relation to infrastructure or development projects[.]⁴³⁸

FPIC is also affirmed by CERD's 1997 General Recommendation No. 23 on Indigenous peoples, as well as multiple CERD recommendations to the US, as a state party to ICERD.⁴³⁹

⁴³⁶ UNDRIP, art. 32.

⁴³⁷ ICCPR, art. 1; Human Rights Committee, Concluding observations on the fifth periodic report of the United States of Americas, para. 66; Human Rights Council, Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous People, A/HRC/39/62, August 10, 2018; UN Office of the High Commissioner, Free, prior and informed consent of Indigenous Peoples, <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> (accessed May 3, 2024).

⁴³⁸ ICCPR, Concluding observations on the fifth periodic report of the United States of America, p. 17.

⁴³⁹ Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, para. 5(d); CERD, Concluding observations on the combined tenth and twelfth reports of the United States of America, U.N. Doc. CERD/C/USA/CO/10-12, September 21, 2022, paras. 49©, 50©; CERD, Concluding observations on the combined seventh and ninth periodic reports of the United States of Americas, U.N. Doc. CERD/C/USA/CO/7-9, September 25, 2014, para. 24(a).



A Numu/Nuwu and Newe individual with a ceremonial staff and a pin reading “Life over Lithium,” in Nevada, March 17, 2024. © 2024 David Calvert

The four elements of FPIC have been summarized by the UN Expert Mechanism on the Rights of Indigenous Peoples as:

“Free” refers to consent “given voluntarily and without coercion, intimidation or manipulation,”⁴⁴⁰ and through a process that Indigenous peoples determine and direct.⁴⁴¹

⁴⁴⁰ Human Rights Council, Free, prior and informed consent, p. 6; See also Final report of the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/18/42, August 17, 2011, <https://documents.un.org/doc/undoc/gen/g11/154/84/pdf/g1115484.pdf> (accessed June 18, 2024), para. 25; “Free, Prior, Informed, Consent,” Food and Agriculture Organization of the United Nations, <https://www.fao.org/indigenous-peoples/pillars-of-work/free--prior-and-informed-consent/en> (accessed June 18, 2024); See Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, U.N. Doc. E/C.19/2005/3, February 17, 2005, <https://documents.un.org/doc/undoc/gen/n05/243/26/pdf/n0524326.pdf>, para. 46; See also “Securing Indigenous Peoples’ Right to Self-Determination, A Guide on Free, Prior, and Informed Consent,” Cultural Survival, First Peoples Worldwide, SIRGE Coalition, https://static1.squarespace.com/static/62cd7860272be4335685de88/t/650b105c830dca28a4ee35ff/1695223916300/FPIC+guide+sm_compressed.pdf (accessed January 2, 2025).

⁴⁴¹ The UN Expert Mechanism on the Rights of Indigenous Peoples has stated that Indigenous Peoples should be free to direct and determine the process through which consent it obtained, including the number of meetings, timing and location

“Prior” refers to consent sought during project design, well before permits are issued and project activities begin, and with sufficient time for Indigenous peoples to fully understand all relevant information.⁴⁴²

“Informed” consent requires that Indigenous communities have the right to be fully informed about a planned project.⁴⁴³

Indigenous peoples’ **“consent”** requires the right to freely say “yes,” “no,” or “yes with conditions” to projects.⁴⁴⁴ Indigenous peoples can also withdraw their consent to a project at any time.⁴⁴⁵

of meetings, language(s) spoken at all meetings, and the decision-making process that ends in giving or withholding consent, as well as any other details that can impact the community’s full and free participation in engagement around its FPIC. Human Rights Council, Free, prior and informed consent, p. 6. See also “Securing Indigenous Peoples’ Right to Self-Determination,” p. 12.

⁴⁴² “Consultation and participation should be undertaken at the conceptualization and design phases and not launched at a late stage in a project’s development, when crucial details have already been decided.” Human Rights Council, Free, prior and informed consent, p. 6. This means that Indigenous Peoples should be involved before the government issues exploration permits or licenses so they can withhold consent even to exploration if they choose. Government officials must also ensure Indigenous Peoples’ have enough time to fully understand all relevant information about the proposed projects *before* making a decision to support it. FPIC requires providing “the time necessary for indigenous peoples to absorb, understand and analyze information and to undertake their own decision-making processes.” Human Rights Council, Free, prior and informed consent, p. 7. See also Final report of the study on indigenous peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, para. 25; ICCPR, art. 1; Human Rights Committee, Concluding observations on the fifth periodic report of the United States of Americas, para. 66; Human Rights Council, Free, prior and informed consent; UN Office of the High Commissioner, Free, prior and informed consent of Indigenous Peoples, <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>. See also “Securing Indigenous Peoples’ Right to Self-Determination,” p. 12.

⁴⁴³ The government should provide Indigenous communities with information about the nature, size, purpose, and scope of the proposed project, the locality or areas that will be affected, the kind of compensation or benefit-sharing schemes involved, and a preliminary assessment of the likely economic, social, cultural and environmental impacts. Human Rights Council, Free, prior and informed consent, p. 7; See Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, U.N. Doc. E/C.19/2005/3, February 17, 2005, <https://documents.un.org/doc/undoc/gen/n05/243/26/pdf/n0524326.pdf>, para. 46. See “Securing Indigenous Peoples’ Right to Self-Determination,” p. 12. The information should be provided in a language and format understandable to Indigenous people, including translation in language they understand. Human Rights Council, Free, prior and informed consent, p. 7. Consultation should also be undertaken using culturally appropriate procedures, which respect the traditions and forms of the organization of Indigenous people concerned. Governments should also ensure Indigenous People have adequate resources and capacity and can meet technical challenges during the consultation process.

⁴⁴⁴ The UN Expert Mechanism on the Rights of Indigenous Peoples has underscored that, “Indigenous peoples must have the opportunity, moreover, to consent to each relevant aspect of a proposal or project. A generalized or limited statement of consent that, for example, does not expressly acknowledge different phases of development or the entire scope or impact of the project will not be considered to meet the standard for consent.” Human Rights Council, Free, prior and informed consent, p. 9; See “Securing Indigenous Peoples’ Right to Self-Determination,” p. 13.

⁴⁴⁵ See, e.g. Human Rights Watch, *“It’s Like Killing Culture”: Human Rights Impacts of Relocating Tanzania’s Maasai* (New York: Human Rights Watch, 2024), <https://www.hrw.org/report/2024/07/31/its-killing-culture/human-rights-impacts-relocating-tanzanias-maasai>.

BLM's Failure to Obtain Tribes' FPIC

BLM failed to meet its obligations under international human rights law to obtain the free, prior, and informed consent of Indigenous peoples before approving permits for the Thacker Pass mine. BLM did not make a meaningful effort to obtain consent from any of the Tribes impacted by the mine, instead relying only on three sets of mailings sent to Tribal offices for three of the relevant Tribes, to which not a single reply was received by BLM.

Tribal members from across the different Tribes described BLM's failure to adequately consult with, provide information to, and gain consent from, Indigenous communities.⁴⁴⁶ They said they were not made aware of the mine in a timely manner and many people only found out about the mine from the news, after it was permitted.⁴⁴⁷

"BLM ... didn't really do any consultation," said Dean Barlese, an Elder knowledge holder and spiritual leader.⁴⁴⁸ He said:

Consultation is not a letter. You gotta sit there at the table, straight across the table. But that never happened, they said "oh we sent letters." Letters are not consultation ... and if you don't answer your letter it's "oh we consulted with them, they didn't reply back to us," so they use that against us and say, "oh they're giving us their approval."⁴⁴⁹

Shaina Gibson, a Numu/Nuwu and Newe woman, said the government, "bypassed the whole consent from our people."⁴⁵⁰ She said:

The government they ... treat us like we don't know what we're doing. And so, I started looking at it more and thinking, "How can we change that? and fix it?" And I honestly think it just takes going back to the consent.... If they

⁴⁴⁶ Human Rights Watch/ACLU interviews with Dorece Sam, David Hinkey, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interviews with Daranda Hinkey; Rose Curtis; Fort McDermitt Tribal Member and Leader, April 1, 2024.

⁴⁴⁷ Human Rights Watch/ACLU interviews with Dorece Sam, David Hinkey, and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interviews with Daranda Hinkey; Rose Curtis; and Fort McDermitt Tribal Member and Leader, April 1, 2024.

⁴⁴⁸ Human Rights Watch/ACLU telephone interview with Dean Barlese.

⁴⁴⁹ Ibid.

⁴⁵⁰ Human Rights Watch/ACLU interview with Shaina Gibson, McDermitt, Nevada, March 26, 2024.

just did the consent the right way ... And reminding [Indigenous communities] that they do have a voice, they do count, and that the people in [United States] government offices or public service cannot ignore them.⁴⁵¹

Rose Curtis, a Numu/Nuwu and Newe woman who resides in Fort McDermitt, said: “There was no consultation on the Tribes’ side. I just think it was very sneaky on their part.”⁴⁵² She said that Tribes were denied the opportunity to describe the impact of the mine on their families’ future way of life:

We have a voice, but right now, it’s like we don’t. We have to look at what’s good for everybody ... but these big companies are only looking at the tip of their nose and what’s in their pocket today ... They’re not worried about the unborn. They’re not worried about our generations, our younger generations. How they’re going to look, how they’re gonna act, how they’re gonna be as people.⁴⁵³

While the legal obligation to obtain FPIC is held by the US government, Lithium Americas holds non-binding responsibilities under the UN Guiding Principles. Human Rights Watch asked Lithium Americas to comment on these types of concerns about future generations. The company stated it is “building a plant that will dramatically reduce carbon emissions for the betterment of future generations.”⁴⁵⁴

A Fort McDermitt Tribal member and leader said:

I’m tired of people not telling us about things [referring to the Thacker Pass mine] and then they go and do it and we don’t find out about it until later.... We were like the last to know. It’s horrible. [We found out] maybe it was two, three years ago.⁴⁵⁵

⁴⁵¹ Ibid.

⁴⁵² Human Rights Watch/ACLU telephone interview with Rose Curtis.

⁴⁵³ Ibid.

⁴⁵⁴ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁵⁵ Human Rights Watch/ACLU interview with Fort McDermitt Tribal Member and Leader, Fort McDermitt Indian Reservation, March 26, 2024.

Several Tribal members underscored that much of the period when BLM sent letters to the Tribal government, from the letters initiating formal consultation in December 2019 to the issuance of a record of decision in January 2021, was during the Covid-19 pandemic.⁴⁵⁶ Tribes were devastated by Covid-19 and were among the hardest hit demographic groups.⁴⁵⁷

“As far as I know, they’ve never consulted with the Tribe because that was during Covid,” said a Tribal member and leader.⁴⁵⁸ She told Human Rights Watch and the ACLU:

And at that time, I was working for the Tribe ... and I know there was no consultation. Our building closed down ... and we really didn’t open up until maybe September [2020], and then we had to close it again because of Covid, and we were on and off. But BLM, nobody ever came. BLM did not consult with us.... [I]t wasn’t until later ... that the company itself came to the Tribe, and there wasn’t a meeting. It was not a consultation. They came and met with the Tribal chairman at that time and a few others. I told [the company] this is not a consultation.⁴⁵⁹

Daranda Hinkey, a Numu/Nuwu and Newe individual, told Human Rights Watch and the ACLU: “Those letters were given at a time when Covid was really high and our tribal government offices were closed. And so, that final environmental impact statement, no one was in a tribal office during that whole time.”⁴⁶⁰

Dorece Sam, a Numu/ Nuwu Newe individual, stated: “When Covid hit, nobody knew about this consultation. A lot of people in the community didn’t know, and even consultation is not consent.”⁴⁶¹

⁴⁵⁶ Centers for Disease Control and Prevention, COVID Data Tracker, Department of Health and Human Services, https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_select_00 (accessed May 29, 2024);

⁴⁵⁷ Ibid.; Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Monthly Death Rates per 100,000 Populations by Age Group, Race and Ethnicity, and Sex, Department of Health and Human Services <https://covid.cdc.gov/covid-data-tracker/#demographicsovertime> (accessed May 29, 2024) (evidencing that deaths from COVID rates in American Indian and Alaskan Native communities were high within the given time frame); Native Waters on Arid Lands, “COVID-19 in Indian Country,” March 14, 2022 <https://storymaps.arcgis.com/stories/336825e7c44a494ab24c72f67e02814a> (accessed May 29, 2024).

⁴⁵⁸ Human Rights Watch/ACLU telephone interview with Fort McDermitt Tribal Member and Leader, April 1, 2024.

⁴⁵⁹ Ibid.

⁴⁶⁰ Human Rights Watch/ACLU telephone interview with Daranda Hinkey.

⁴⁶¹ Human Rights Watch/ACLU interview with Dorece Sam.

Another religious and traditional practices leader and Tribal resident told Human Rights Watch and the ACLU:

Even when they knew the offices were closed because of the pandemic. It is ... not even, not even good at all. It seems like they didn't even give us a chance or anything. Everything was ... all ... done, done and over with. By the time when people pointed out what really was going on, it was too late.⁴⁶²

Tribal members said that, instead of relying only on written letters to contact communities, BLM should have met with Tribal members and engaged in an actual exchange of views.

Five of the six Tribal governments discussed in this report, Reno-Sparks Indian Colony, Burns Paiute Tribe, Summit Lake Paiute Tribe, Duck Valley Shoshone-Paiute Tribe, and Winnemucca Indian Colony, have consistently been and remain opposed to the mine. As described above, FMPST opposed the lack of consultation included in the Historic Properties Treatment Plan for the mine prior to BLM's decision to approve the permit. Once BLM approved the mine, FMPST signed the CBA with Lithium Americas in 2022.

Lithium Americas' and General Motors' Responsibilities and Failures to Obtain FPIC

The United States government holds the legal obligation to obtain FPIC under international law, and Lithium Nevada, owned by Lithium Americas, has a responsibility under the United Nations Guiding Principles on Business and Human Rights to avoid causing or contributing to human rights abuses,⁴⁶³ which includes infringements of the right to FPIC.⁴⁶⁴

⁴⁶² Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁴⁶³ UN Human Rights Council, "Guiding Principles"; The Gender Dimensions of the Guiding Principles on Business and Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf> (accessed February 6, 2024); The OECD Guidelines for Multinational Enterprises, 2023, <https://mneguidelines.oecd.org/> (accessed February 6, 2024), p. 15. See also "The Business Responsibility to Respect the Rights of Indigenous Peoples," Respecting Indigenous Rights, <https://respectingindigenousrights.org/part-a-fundamentals/the-business-responsibility-to-respect-the-rights-of-indigenous-peoples/> (accessed February 6, 2024).

⁴⁶⁴ Special Rapporteur on the Rights of Indigenous Peoples, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples," July 1, 2013, A/HRC/24/41, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf (accessed January 2, 2025).

Lithium Americas stated to Human Rights Watch that the company is “committed to upholding fundamental human rights as defined in the UN’s Universal Declaration of Human Rights.”⁴⁶⁵ It said the company’s Human Rights Policy commits it to respect “all internationally recognized human rights standards,”⁴⁶⁶ but it does not reference FPIC specifically. Lithium Americas has, however, committed to undertake an audit of the Thacker Pass mine under the standard developed by the Initiative for Responsible Mining Assurance (IRMA; Human Rights Watch is an IRMA board member).⁴⁶⁷ IRMA is a voluntary standard and mining companies can commission third-party audits of their compliance with IRMA’s standard.⁴⁶⁸

The current IRMA standard, which is in the process of being revised,⁴⁶⁹ states: “[N]ew mines shall not be certified by IRMA unless they have obtained the free, prior and informed consent (FPIC) of potentially affected indigenous peoples.”⁴⁷⁰ The standard requires companies identify Indigenous peoples impacted by their projects and determine and implement the appropriate process to solicit the FPIC of each community.⁴⁷¹ The standard states that:

[I]f indigenous peoples’ representatives clearly communicate, at any point during engagement with the operating company, that they do not wish to

⁴⁶⁵ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁶⁶ Lithium Americas, “Human Rights Policy,” May 2024, https://s203.q4cdn.com/835901927/files/doc_downloads/governance_docs/2024/LAC-Human-Rights-Policy.pdf (accessed January 2, 2025).

⁴⁶⁷ Lithium Americas, “Environment,” <https://lithiumamericas.com/esg-s/environment/default.aspx> (accessed January 2, 2025).

⁴⁶⁸ Initiative for Responsible Mining Assurance, “Introduction to IRMA,” <https://responsiblemining.net/about/about-us/> (accessed January 10, 2025).

⁴⁶⁹ IRMA’s proposed revised standard, which has not yet been adopted, requires a company’s activities “only proceed with the FPIC of all affected communities of Indigenous Peoples.” IRMA, “DRAFT: Standard for Responsible Mining and Mineral Processing 2.0,” October 2023, <https://responsiblemining.net/wp-content/uploads/2023/10/IRMA-Standard-for-Responsible-Mining-and-Mineral-Processing-2.0-DRAFT-20231026.pdf> (accessed January 2, 2025), p. 131, Chapter 2.2.4.3; The revised standard would also make clear that the FPIC requirements apply even to activities typically in the exploration phase of mining (e.g. site visits, road construction, sampling etc.), meaning these activities should not begin without the FPIC of all affected communities of Indigenous Peoples. IRMA, “Application of the IRMA Draft Standard for Responsible Mining and Mineral Processing 2.0 to all phases of Mineral Development Projects and Operations,” November 2023, <https://responsiblemining.net/wp-content/uploads/2023/11/IRMA-Draft-Standard-2.0-Proposed-Normative-Requirements-Consultation-Draft.pdf> (accessed January 2, 2025), p. 9 (Definition of exploration phase); p. 7, 13, 24 (application of standards on Indigenous Peoples and Free, Prior and Informed Consent (FPIC)).

⁴⁷⁰ IRMA, “Standard for Responsible Mining IRMA-STD-001,” June 2018, https://responsiblemining.net/wp-content/uploads/2018/07/IRMA_STANDARD_v.1.0_FINAL_2018-1.pdf (accessed January 2, 2025), p. 51-52, Chapter 2.2.3-2.2.7.

⁴⁷¹ Ibid.

proceed with FPIC-related discussions, the company shall recognize that it does not have consent, and shall cease to pursue any proposed activities affecting the rights or interests of the indigenous peoples.”⁴⁷²

The requirement to obtain FPIC from Indigenous people is a critical requirement in IRMA’s standard system, under both the existing and revised versions.⁴⁷³

Lithium Americas, in correspondence with Human Rights Watch, stated that in the US, Tribes’ right to consent applies only to federally recognized Native American territory:

The United States has led the world in recognizing the inherent sovereignty of its original inhabitants. In the U.S. today, federally recognized Indian tribes have full decision-making powers over their recognized territories. The Thacker Pass Project is not in a federally recognized Native American territory. If it were, mining could not happen without the express consent and approval of that Tribe.⁴⁷⁴

Indigenous peoples’ right to FPIC under international law, however, is not limited to federally recognized territories, and instead applies whenever Indigenous peoples have traditional, ancestral, or cultural links to land.⁴⁷⁵

IRMA’s standard on FPIC recommends companies “conduct due diligence to determine if the host government conducted an adequate consultation process aimed at obtaining indigenous peoples’ informed consent prior to granting access to mineral resources.”⁴⁷⁶ The standard then states: “The key findings of due diligence assessments shall be made

⁴⁷² Ibid., p. 51, Chapter 2.2.2.4.

⁴⁷³ Mining companies wishing to obtain full membership in IRMA must obtain an IRMA-50 rating in their audit, which means that they must “substantially” meet IRMA’s critical requirements as well as meet at least 50 percent of the requirements in each of the four principles covered in the standard. IRMA, “What are “Critical Requirements” in the IRMA Standard?” February 2022, <https://responsiblemining.net/wp-content/uploads/2022/02/What-are-Critical-Requirements-in-the-IRMA-Standard-Updated2022.pdf> (accessed January 2, 2025); IRMA, “Assessment,” <https://responsiblemining.net/what-we-do/assessment/> (accessed January 2, 2025).

⁴⁷⁴ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁷⁵ UNDRIP.

⁴⁷⁶ IRMA, “Standard for Responsible Mining IRMA-STD-001,” p. 51, Chapter 2.2.2.1.

publicly available and shall include the company’s justification for proceeding with a project if the State failed to fulfill its consultation and/or consent duties.”⁴⁷⁷

When asked what due diligence Lithium Americas conducted to determine if BLM adequately consulted with aim of obtaining free, prior, and informed consent, Lithium Americas stated: “[B]efore permitting the Project BLM engaged in years-long consultation that fully complied with federal law and, accordingly, the U.S. government’s interpretation of FPIC.”⁴⁷⁸ Lithium Americas also stated: “This issue was thorough [sic] vetted in U.S. Federal and District Courts. Below are key passages from the ruling in the United States District Court (dated February 6, 2023 and sent to you previously), which found in favor of the Bureau of Land Management’s Record of Decision for Thacker Pass[.]”⁴⁷⁹

The UN Special Rapporteur on the Rights of Indigenous peoples has, however, said that companies should not assume that compliance with national law equals compliance with international standards on Indigenous rights.⁴⁸⁰ US federal courts’ analysis of BLM’s consultation process for Thacker Pass did not assess whether BLM met Tribes’ FPIC rights under international human rights law and UNDRIP. Federal courts only assessed BLM’s compliance with consultation requirements under US law, which fall far short of FPIC requirements under international human rights law.

Human Rights Watch also asked Lithium Americas what steps the company itself took to fulfill its responsibility to obtain the free, prior, and informed consent of Indigenous peoples impacted by the Thacker Pass project. Lithium Americas stated: “FPIC applies to government-to-government consultation. Though LAC has extensively coordinated with Tribes in the Thacker Pass area, FPIC principles do not govern that coordination given that LAC is not a government entity.”⁴⁸¹

Lithium Americas did describe to Human Rights Watch the “extensive consultation” it has undertaken with the Fort McDermitt Paiute and Shoshone Tribe (FMPST), the closest tribe

⁴⁷⁷ Ibid.

⁴⁷⁸ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁷⁹ Ibid.

⁴⁸⁰ Special Rapporteur on the Rights of Indigenous Peoples, “Report of the Special Rapporteur on the rights of indigenous peoples.”

⁴⁸¹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

to the mine.⁴⁸² The company said it had “undertaken active engagement to form a close relationship with the Fort McDermitt Tribe and is proud of our mutual Community Benefits Agreement that will provide support for that community for years to come.”⁴⁸³ Lithium Americas said there had been “vocal support for the Project offered by the Chairmen of the Fort McDermitt Tribe from 2022–24.”⁴⁸⁴ When asked about the opposition of FMPST members to the Thacker Pass mine, Lithium Americas told Human Rights Watch that the Tribal Council has not expressed opposition to the mine.⁴⁸⁵

When asked what engagement or consultation it had with other Tribes, Lithium Americas stated “[f]ormal consultation is a government-to-government engagement. LAC has had, and continues to have engagement with the surrounding communities.”⁴⁸⁶ In response to a different question, Lithium Americas stated: “To begin, the plaintiffs represented tribes located no closer than 200 miles from Thacker Pass, and as far away as 260 miles.”⁴⁸⁷

When asked how it assessed if other Tribes, beyond FMPST, might have ancestral, cultural, or religious ties to the land, Lithium Americas referred to a 15-year cultural inventory, “completed across nearly 13,000 acres at Thacker Pass from 2007 to 2022,” that it said had ensured “historic artifacts were properly catalogued.”⁴⁸⁸ The company also referenced cultural survey work conducted at Thacker Pass in 2022. Lithium Americas said 11 Fort McDermitt Tribal members participated in the survey, and that Summit Lake Paiute Tribe and the Winnemucca Indian Colony—the other closest tribes to the project area—were also consulted.⁴⁸⁹ Beyond these references to cultural survey work, Lithium Americas did not discuss what steps the company had taken to assess potential Tribal connections to Thacker Pass beyond FMPST, nor whether it had conducted any additional outreach or consultation to Tribes.

⁴⁸² Ibid.

⁴⁸³ Ibid.; Letter to Human Rights Watch from Tim Crowley, Lithium Americas, June 25, 2024.

⁴⁸⁴ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, June 25, 2024.

⁴⁸⁹ Ibid.

General Motors also has a responsibility under the United Nations Guiding Principles to avoid causing or contributing to human rights abuses.⁴⁹⁰

General Motors is a member of IRMA, although IRMA does not as yet have standards applicable to companies purchasing, rather than mining, raw materials.⁴⁹¹ GM notes in its human rights policy that it is “committed to respecting all internationally recognized human rights,” including the rights of Indigenous peoples, and that GM expects “our suppliers to be similarly committed to protecting the rights of vulnerable groups.”⁴⁹² GM’s Supplier Code of Conduct mandates that suppliers respect Indigenous peoples’ right to free, prior, and informed consent.⁴⁹³ Moreover, as a joint venture partner with Lithium Americas, GM should conduct due diligence in accordance with the UN Guiding Principles prior to investing. Additionally, GM should use their leverage as investors to prevent, mitigate, and address abuses during the life of the investment.⁴⁹⁴

Human Rights Watch wrote to General Motors in July and in December 2024 to request information on the due diligence General Motors conducted prior to investing in the Thacker Pass project. Human Rights Watch also asked General Motors what steps it has taken to ensure Lithium Americas acts in conjunction with human rights law, including respect for Indigenous rights. In a January 2025 response, GM said it:

is aware of the issues that have been raised by community members, stakeholders, and other interested parties with respect to Thacker Pass. We incorporated these concerns in our due diligence and investment decision, on Lithium Americas Corp. (“LAC”). LAC has been actively engaging with the local tribes in the area, including the Fort McDermitt Paiute and Shoshone

⁴⁹⁰ UN Human Rights Council, “Guiding Principles.”

⁴⁹¹ Ian Osborne, “General Motors (GM) joins initiative to certify sustainability and human rights in electric vehicle (EV) supply chain,” *Electric Drives*, December 8, 2021, <https://electricdrives.tv/general-motors-gm-joins-initiative-to-certify-sustainability-and-human-rights-in-electric-vehicle-ev-supply-chain/> (accessed January 13, 2025).

⁴⁹² General Motors, “Human Rights Policy,” Effective as of December 1, 2022, <https://investor.gm.com/static-files/a666a0b2e-eddb-4e79-8122-a370a8fca9aa> (accessed January 13, 2025).

⁴⁹³ General Motors, “Supplier Code of Conduct,” <https://gmsupplypower.qa.covisint.com/assets/gmosp/Footer%20Files/Supplier%20Code%20of%20Conduct.pdf> (accessed January 13, 2025).

⁴⁹⁴ UN Working Group on Business and Human Rights, “Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights,” June 2021, A/HRC/47/39/Add.2, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation-reader-friendly.pdf> (accessed December 16, 2024), p. 6.

Tribe (“FMPST”), to build respectful and collaborative relationships. LAC has undertaken efforts to engage and work with the Fort McDermitt Tribe and surrounding potentially impacted communities to understand any potential concerns and impacts related to the project. This includes the Community Benefits Agreement referenced in HRW’s letter, as well as additional activities like conducting cultural resource surveys, engaging in dialogue, and implementing measures to protect cultural heritage and the environment.⁴⁹⁵

GM did not provide more details on the due diligence it conducted prior to investing in the Thacker Pass project, nor in the course of its investment, including whether it has met with any impacted Indigenous peoples. GM also addressed the structure of joint venture operation that will oversee the Thacker Pass project, stating:

LAC will continue to be primarily responsible for managing the JV and its activities; GM will be a minority owner of the JV and will not have management control. However, a Board of Directors, which includes representatives from GM, has been established at the JV level to oversee the operation of the JV, approve the project’s budgets and business plans, and implement policies regarding, among others, human rights and stakeholder engagement. This framework is designed to maintain oversight and accountability. Additionally, a governance structure, which also includes GM representatives, has been developed under the Board of Directors to oversee human rights within the JV’s operations and activities. This structure is intended to support the JV’s commitment to the rights and interests of workers and local communities throughout its supply chain and operations, consistent with our agreements, GM’s policies, and relevant international principles.⁴⁹⁶

⁴⁹⁵ Letter to Human Rights Watch from Fred Gersdorff, Senior Manager—Socially Responsible and Sustainable Supply Chain, Global Purchasing and Supply Chain—Strategy Innovation and Customer Care, General Motors, delivered via email, January 3, 2025.

⁴⁹⁶ *Ibid.*

Human Rights Risks and the Thacker Pass Mine

They do not think about how much ... contamination ... they're gonna bring over the future. They only look at the here and now ... They don't think about how much they're going to contaminate the land. By digging and doing whatever to process, whatever they need to use chemicals to get at the minerals ... Whatever they are blasting. Whatever they are using. Whatever the smoke, the incinerators where they ... go in and melt ... to get whatever they're trying to get out of our land. It is just not a good thing all the way around. Not a good thing all the way around.

—A Numu/Nuwu and Newe Elder

Although not yet operational, community members fear the Thacker Pass mine presents risks to their rights to health, a healthy environment, and water. Planning documents and official government studies outline foreseeable risks to air and water quality and to the availability of safe and acceptable water for personal and domestic uses.

Risks to the Rights to Health, a Healthy Environment, and to Water

Health is a fundamental human right indispensable to the exercise of other human rights, and every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.⁴⁹⁷

The Universal Declaration of Human Rights, which is widely accepted as reflecting customary international law, states that all people have “the right to a standard of living adequate for the health and well-being of himself and of his family.”⁴⁹⁸

Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the rights to “an adequate standard of living” and “the enjoyment of the

⁴⁹⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4, August 11, 2000, <https://www.refworld.org/pdfid/4538838do.pdf> (accessed September 1, 2021), para. 1.

⁴⁹⁸ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25(1).

highest attainable standard of physical and mental health.”⁴⁹⁹ The United States has signed, but not ratified, the ICESCR. As a signatory, the US is obligated to refrain from acts that would defeat the treaty’s object and purpose.⁵⁰⁰

The Committee on Economic, Social and Cultural Rights (CESCR), which interprets the ICESCR, has affirmed that states have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.”⁵⁰¹ This duty extends to preventing and protecting against deprivations of individuals’ human rights by businesses and non-state actors, including effective regulation of their activities.⁵⁰²

Although not yet widely recognized in international human rights law, there is also a growing international recognition that the full realization of civil, political, economic, social, and cultural rights may require an implied human right to a healthy environment. In 2022, the UN General Assembly adopted a resolution declaring access to a clean, healthy, and sustainable environment a universal human right.⁵⁰³ The resolution, which followed recognition of the right by the Human Rights Council in October 2021, affirms “the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights.”⁵⁰⁴ The US voted in favor of the resolution.⁵⁰⁵

More recently, in its General Recommendation No. 37 on racism and health, CERD affirmed that ICERD enshrines the rights of “[r]acial and ethnic groups ... to a clean and healthy environment.”⁵⁰⁶ The US has not recognized the right to a healthy environment in the US

⁴⁹⁹ ICESCR, arts. 11(1), 12(c)(d).

⁵⁰⁰ The Vienna Convention is widely viewed as being reflective of customary international law. Vienna Convention on the Law of Treaties, art. 18.

⁵⁰¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, The Nature of States Parties Obligations, U.N. Doc. E/1991/23, December 14, 1990, para. 10.

⁵⁰² UN Committee on Economic, Social and Cultural Rights, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2000/13, October 2, 2000, para. 18.

⁵⁰³ UN General Assembly Resolution, The human right to a clean, healthy and sustainable environment, U.N. Doc. A/RES/76/300. (July 28, 2022), <https://documents.un.org/doc/undoc/gen/n22/442/77/pdf/n2244277.pdf> (accessed January 8, 2025).

⁵⁰⁴ *Ibid.*

⁵⁰⁵ United Nations, Press Release, “With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right,” July 28, 2022, <https://press.un.org/en/2022/ga12437.doc.htm> (accessed January 8, 2025).

⁵⁰⁶ CERD, General Recommendation No. 37, Racial Discrimination in the Enjoyment of the Right to Health, U.N. Doc. CERD/C/GC/37, August 23, 2024, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-37-2024-racial> (accessed January 8, 2025).

constitution or federal law. However, the constitutions of six US states now recognize this right.⁵⁰⁷

In addition to these rights to health and to a healthy environment, the mine poses risks to the right to water.

Everyone has the right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. The normative content of the right to water as interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) has also been affirmed in resolutions by both the UN General Assembly and Human Rights Council.⁵⁰⁸

Separately, CERD has affirmed the obligations of states to ensure “access to safe and potable water and adequate sanitation,” including the “adequate quantity, quality and maintenance level of safe drinking water and sanitation,” as an essential determinant of the human right to the highest attainable standard of health.⁵⁰⁹

If allowed to proceed as planned, the Thacker Pass mine’s operations present risks to the quality and availability of water resources in this already arid region. A Numu/Nuwu and Newe person interviewed for this report explained:

Water is the main thing. Water is our life.... [My grandpa] ... told me ... he said this water is precious. He said ... our people, our ancestors ... they pray to the water. They pray to it in the morning. They pray to it during the daytime and then in the evening.... They pray when they prepare food, when they put water there the water is our nourishment.... Well, I’ve heard this new lithium mine will use ... [hundreds of thousands of gallons] of water a day? That’s why I

⁵⁰⁷ The six states are: Pennsylvania, Montana, Massachusetts, Illinois, Hawaii, and New York. John Dernbach, “The Environmental Rights Provisions of US State Constitutions,” *Widener Law Commonwealth*, Research Paper No. 23-05, June 8, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4390853 (accessed November 5, 2024).

⁵⁰⁸ UN Economic and Social Council, The Right to Water, General Comment No. 15, January 20, 2003, <https://www.refworld.org/legal/general/cescr/2003/en/39347> (accessed November 5, 2024); UN Human Rights Council, The Human Right to Safe Drinking Water and Sanitation, U.N. Doc. A/HRC/21/L.1, September 20, 2012, <https://documents.un.org/doc/resolution/ltd/g12/168/66/pdf/g1216866.pdf> (accessed November 5, 2024); UN General Assembly, The Human Right to Safe Drinking Water and Sanitation, U.N. Doc. A/RES/70/169, February 22, 2016, <https://documents.un.org/doc/undoc/gen/n15/442/72/pdf/n1544272.pdf> (accessed November 5, 2024). UN General Assembly, The Human Right to Safe Drinking Water and Sanitation, U.N. Doc. A/RES/70/169, February 22, 2016, <https://documents.un.org/doc/undoc/gen/n15/442/72/pdf/n1544272.pdf> (accessed November 5, 2024).

⁵⁰⁹ CERD, General recommendation No. 37, para. 6, 20.

don't want the mine. I want our water and air to be clean. It's not for myself. It's not going to be for tomorrow. Not going to be for next year, or even the early years to come. It's going to be for the next generation.⁵¹⁰

Risks to Water Quality

To examine potential impacts on the availability, acceptability, and quality of water resources for this report, Human Rights Watch and the ACLU relied on interviews with community members, analyses performed by environmental groups, and the final environmental impact statement (EIS) used by BLM during its assessment of the mine project. However, it is important to note that much of the underlying environmental studies referenced in the EIS were funded by Lithium Americas as part of their plan of operations submitted to BLM.⁵¹¹

Indigenous people and environmental groups have expressed concern the mine will pollute local water sources.⁵¹² The use of acids and other chemicals during lithium processing creates a significant risk that, unless adequately controlled, toxic waste will pollute nearby waterways and ecosystems.⁵¹³ The wet and crushed rock particles, and possibly other mining products, including chemicals, that remain after mineral extraction, known in the mining industry as “tailings,” need to be safely stored to ensure toxic pollutants do not leach into water.⁵¹⁴

The mine will store waste in several sites.⁵¹⁵ Waste produced from extracting lithium from the soft clay ore obtained from the mine will be stored in a mound, known as a tailings stack, 350 feet high.⁵¹⁶ The EIS stated that, “approximately 353.6 million [cubic yards] of

⁵¹⁰ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁵¹¹ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, Coverpage.

⁵¹² “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status,” *Great Basin Resource Watch*, <https://gbrw.org/proposed-thacker-pass-lithium-mine/> (accessed October 24, 2024).

⁵¹³ Sierra Club, “Guidance on Lithium Mining and Extraction,” November 13, 2021, https://andthewest.stanford.edu/wp-content/uploads/2021/11/Lithium-Mining-Guidelines_approved_13Nov20214.pdf (accessed December 30, 2024), p. 16.

⁵¹⁴ *Ibid.*

⁵¹⁵ Lithium Nevada Corp., “Final Environmental Impact Statement Thacker Pass Lithium Mine Project – Appendix A. Figures,” https://eplanning.blm.gov/public_projects/1503166/200352542/20030647/250036846/Thacker%20Pass_FEIS_Apx%20A_Figures_508.pdf (accessed December 30, 2024), Figure 2.2, “Proposed Action Mine Facilities.”

⁵¹⁶ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 2-10.

clay tailings will be placed on the facility over the proposed 41-year mine life.”⁵¹⁷ Four years into the mine’s operations, the stack will have a capacity to store 317 million tons of material.⁵¹⁸ Testing conducted by Lithium Nevada indicated that leakage from the tailings stack has the potential to include toxic materials, including mercury and arsenic, and radioactive elements.⁵¹⁹ The company has therefore said that the tailings facility will be “constructed as a zero discharge facility, and stored on lined containment and covered with waste rock/growth media at closure; therefore, no degradation to groundwater will occur.”⁵²⁰

Environmental groups have claimed Lithium Nevada’s commitment to eliminating leakage from the tailings stack is unrealistic.⁵²¹ For example, the environmental organization Great Basin Resource Watch (GBRW) has pointed to inconsistencies in studies commissioned by Lithium Americas, on which the EIS relied when it estimated the amount of water likely to seep from the tailings facility into the drainage ponds.⁵²² GBRW also commissioned their own hydrologist and tailings expert, Dr. Steven Emerman, to examine Lithium Nevada’s studies and calculate possible seepage rates.⁵²³ Because the mine is the first mine globally to extract lithium from soft clay, Emerman said that the filtration technology used to dry tailings to the appropriate water content “is a new technology and there are no

⁵¹⁷ Ibid., p. 2-9.

⁵¹⁸ Ibid., p. 2-10.

⁵¹⁹ Lithium Nevada Corp., “Thacker Pass Project: Proposed Plan of Operations and Reclamation Plan Permit Application - Appendix B. Mining Plan of Operations,” p. 41, July 2019, revised October 2019.

⁵²⁰ Ibid.; Zero discharge facilities are, in theory, designed so that no liquid waste is released from the facility, reducing the risk of contamination of nearby water sources. Waterman Engineers Australia, “The Benefits of Implementing a Zero Liquid Discharge System in Industrial Settings,” post to Blogs on Water Treatment Plant & Machinery (blog), <https://watermanaustralia.com/benefits-of-implementing-a-zero-liquid-discharge-system-in-industrial-settings/> (accessed October 25, 2024); Lithium Americas’ plan for the mine stated that the tailings stack will be lined with an HDPE [High Density Poly Ethylene, a form of plastic] geomembrane. A drain at the bottom of the stack, above the liner, will take water from the stack to storage ponds, where it will, according to Lithium Americas, either evaporate or be used again in the lithium processing plant. Lithium Nevada Corp., “Thacker Pass Project,” p. 53-54; BTL Liners, “Lining Recommendations for Tailing Storage,” <https://www.btl liners.com/lining-recommendations-for-tailing-storage> (accessed October 25, 2024).

⁵²¹ “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status”; Complaint for Vacatur, Equitable, Declaratory and Injunctive Relief, *Western Watersheds Project, Great Basin Resource Basin and Range Watch, Wetlands Defense v US Department of the Interior*, No. Case 3:21-cv-00103 (filed February 26, 2021), https://www.westernwatersheds.org/wp-content/uploads/2021/02/Thacker-Pass-Complaint-2.26.21_filed.pdf (accessed January 8, 2025), para. 148-153.

⁵²² “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status.”

⁵²³ Steven H. Emerman, “Prediction of Seepage from Clay Tailings Filter Stack (CTFS) at the Lithium Nevada Thacker Pass Mine, Northern Nevada,” *Great Basin Resource Watch*, April 7, 2022, https://gbrw.org/wp-content/uploads/2022/06/Exhibit-4-Thacker_Pass_Report_Emerman_Revised2.pdf (accessed May 29, 2024), p. 2. Dr. Emerman underscored that the seepage rates in the principal study commissioned by Lithium Americas were predicated on the tailings in the stack meeting a water content of 46 percent (calculated as weight of water divided by the weight of dry solids).

operating mines with filtered clay tailings anywhere in the world.”⁵²⁴ Emerman conducted his own analysis of predicted seepage rates, including at different water contents, and concluded that at higher water contents the seepage would be significantly greater than predicted by Lithium Nevada, though these higher water contents would still fall within the permitted range.⁵²⁵

Dr. Emerman warned that a failure of the mine’s tailings management system:

[C]ould include overtopping of the reclaim pond or the entry of seepage water from the CTFS [Clay Tailings Filter Stack] into groundwater or surface water. Of course, failure could include the slumping or total collapse of the [CTFS]. There has been no consideration of the potential loss of human lives, the potential impacts on aquatic or wildlife habitat, the potential impacts on livestock, the potential economic losses, or any other kinds of impacts.⁵²⁶

GBRW has warned that “[u]ltimately, the consequences of inadequate design and planning could be significantly more seepage than can be handled resulting in overflow of highly toxic fluid, and even a collapse of tailings facility, which could include catastrophic failure releasing the toxic tailings to the environment.”⁵²⁷

These concerns led GBRW in March 2022 to file an appeal to the Nevada State Environmental Commission challenging the Nevada Division of Environmental Protection’s decision to grant a Water Pollution Control Permit to the mine.⁵²⁸ The Commission did not consider Dr. Emerman’s report in its decision because it had not been submitted to the

⁵²⁴ *Ibid.*, p. 1.

⁵²⁵ *Ibid.*, p. 1, 67. Emerman concluded, “Although this should be a zero-discharge facility, seepage rates from the [tailings stack] would be tens to thousands of gallons per minute and would continue for decades after closure with no provisions for management of the seepage.”

⁵²⁶ *Ibid.*, p. 67.

⁵²⁷ “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status.”

⁵²⁸ Nevada Division of Environmental Protection, “Thacker Pass Lithium Mine: Current Status,” <https://ndep.nv.gov/land/thacker-pass-project> (accessed October 25, 2024); Great Basin Resource Water, “Opening Brief from Attorney for Appellant Great Basin Resource Watch, Before the State of Nevada, State Environmental Commission, In the Matter of: Appeal of Groundwater Pollution Control Permit No. NEV2020104,” submitted April 22, 2022, <https://gbrw.org/wp-content/uploads/2022/06/Opening-Brief-FINAL-SIGNED.pdf> (accessed January 7, 2025).

Division before it granted the permit.⁵²⁹ Lithium Nevada, in its submissions to the Commission, cited what it said were errors in Dr. Emerman’s report, which it said was “not reliable and should not be considered by the Commission.”⁵³⁰ When asked to describe the errors in Dr. Emerman’s report, Lithium Americas told Human Rights Watch: “This issue was adjudicated by the Nevada State Environmental Commission, which sided unanimously with LAC.”⁵³¹ The company also said it is required to monitor water contents in the tailings stack, it is not permitted to exceed the water content levels specified in the permit, and that a range of methods could be used to reduce the water content.⁵³² Lithium Americas also told Human Rights Watch: “The State of Nevada engaged in a rigorous water permitting process that included extensive consideration of the filtered tailings. The facility will include a lined membrane, a compacted lines and leak detection and capture systems.”⁵³³

In 2022, the Nevada State Environmental Commission denied the GBRW appeal, finding:

The technical reports and information submitted by LNC as part of the application process and submitted to the Commission as part of the administrative record offer reasonable support for the Division’s factual determination that the design of the Clay Tailings Filter Stack, the Seepage Collection System, and the Reclaim Pond will protect the waters of the State from degradation.⁵³⁴

As noted above, leakage from the tailings stack has the potential to include toxic materials, including mercury and arsenic, and radioactive elements. These are well-studied toxins, harmful to humans and associated with adverse birth outcomes in

⁵²⁹ Nevada State Environmental Commission, “Order on Appeal in the Matter of: Appeal of Groundwater Pollution Control Permit No. NEV2020104,” https://sec.nv.gov/uploads/Appeal-Lithium-Nevada-0622/Thacker_Pass_-_Order_on_Appeal.pdf, p. 1-2 (accessed January 7, 2025).

⁵³⁰ Attorneys for Lithium Nevada Corp., “In the Matter of: Appeal of Water Pollution Control Permit No. NEV2020104, Intervenor Lithium Nevada Corp.’s Response Brief to Great Basin Resource Watch’s Opening Brief,” May 20, 2022, https://sec.nv.gov/uploads/Appeal-Lithium-Nevada-0622/2022.05.20_-_Intervenor_Lithium_Responding_Brief_.pdf, p. 17 (accessed January 7, 2025).

⁵³¹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁵³² Attorneys for Lithium Nevada Corp., “In the Matter of.”

⁵³³ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁵³⁴ Nevada State Environmental Commission, “Order on Appeal in the Matter of,” p. 4.

studies.⁵³⁵ Mercury attacks the central nervous system and can lead to life-long disability, and, in extreme cases, death.⁵³⁶ It can reach the body through inhalation, ingestion, and skin contact.⁵³⁷ Adverse maternal and newborn health outcomes associated with mercury and arsenic include miscarriage, stillbirth, preterm birth, and low birth weight. Birth anomalies and maternal exposures are also associated with neurological damage that may only become apparent later in life.⁵³⁸

In addition to risks from the tailings stack, BLM’s EIS acknowledges that the mine will need to backfill the excavated mine with waste rock, which would cause antimony and arsenic in the groundwater to exceed the applicable Nevada water quality standard.⁵³⁹ The modeling cited by BLM predicted antimony concentrations above permitted levels would not extend outside the boundary of the Thacker Pass project area.⁵⁴⁰ Antimony is linked to gastrointestinal health issues, as well as abdominal cramps and cardiac toxicity, and can, in extreme cases, be lethal.⁵⁴¹ The EIS states Lithium Nevada will implement mitigation measures and monitoring standards for surface water and groundwater that BLM said is “expected to effectively mitigate potential effects to groundwater quality.”⁵⁴² However, US Environmental Protection Agency (EPA) officials indicated in a letter to BLM on January 4, 2021, that the mitigation plans were insufficient to address groundwater impacts:

Without mitigation, a plume of groundwater exceeding the Nevada Division of Environmental Protection Profile I Reference Values for antimony is expected to flow uncontrolled from the backfilled pit.

⁵³⁵ The World Health Organization, “Mercury and Health,” <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health#:~:text=Generally%2C%20two%20groups%20are%20more,growing%20brain%20and%20nervous%20system> (accessed July 16, 2024); The World Health Organization, “Arsenic,” <https://www.who.int/news-room/fact-sheets/detail/arsenic> (accessed July 16, 2024).

⁵³⁶ Human Rights Watch, *Mercury: A Health and Human Rights Issue: Towards a Global Treaty on Mercury*, (New York: Human Rights Watch, 2012) https://www.hrw.org/sites/default/files/related_material/Mercury%20A%20Global%20Health%20Treaty%20ENGLISH%20LWRES.pdf.

⁵³⁷ *Ibid.*

⁵³⁸ The World Health Organization, “Mercury and Health”; The World Health Organization, “Arsenic.”

⁵³⁹ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-13.

⁵⁴⁰ *Ibid.*, p. 4-14.

⁵⁴¹ World Health Organization, “Antimony in Drinking-water,” WHO/SDE/WSH/03.04/74, 2003, <https://cdn.who.int/media/docs/default-source/wash-documents/wash-chemicals/antimony.pdf> (accessed July 31, 2024), p. 8.

⁵⁴² US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-13-4-14.

According to fate and transport modeling included in the EIS, the preferred alternative (Alternative A) would result in a plume extending approximately one-mile downgradient of the pit 300-years post-closure at levels still above Profile I.⁵⁴³

The EPA letter noted that during the comment period on the draft EIS—from July 31, 2020 to September 14, 2020—EPA made comments in which it raised concerns about water quality and inadequate mitigation of groundwater impacts,⁵⁴⁴ but stated that BLM had not addressed them in the final EIS:

Following our review of the Final EIS, we note that no additional analysis or information was added addressing our Draft EIS comments. As such, we have remaining concerns about the project’s proposed mitigation and monitoring plans, and the assurance that they will be implemented.⁵⁴⁵

Lithium Americas told Human Rights Watch that “the water at the mine site has naturally elevated constituents including arsenic and antimony. Nevertheless, controls are planned to prevent groundwater degradation,” and that “BLM has created an Adaptive Management approach so that data will continue to inform monitoring and mitigation planning through the life of the project.”⁵⁴⁶

⁵⁴³ US Environmental Protection Agency, EPA Comments on the Final Environmental Impact Statement for the Thacker Pass Lithium Mine Project, Humboldt County, Nevada (EIS Number 20200247), January 4, 2021, <https://cdxapps.epa.gov/cdx-enepa-ll/public/action/eis/details?eisId=315942> (accessed January 7, 2025).

⁵⁴⁴ “Final Environmental Impact Statement for the Thacker Pass Lithium Mine Project, Humboldt County, Nevada (EIS Number 20200247),” Appendix R Comment Responses, Comments on Draft EIS from Jean Prijatel, Environmental Protection Agency, p. R-179-181, https://eplanning.blm.gov/public_projects/1503166/200352542/20030652/250036851/Thacker%20Pass_FEIS_Apx%20R_CommentResponses_508.pdf (accessed January 12, 2025) (summarizing EPA’s concerns that “We have remaining concerns about the project’s potential impacts to water quality, the sufficiency of proposed monitoring and mitigation plans, potential impacts to air quality, and long-term post-closure financial assurance.”).

⁵⁴⁵ *Ibid.*

⁵⁴⁶ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

Mine Waste and the Cordero Mine

For members of the nearby Fort McDermitt Tribal community, concern over the risk of pollution from the Thacker Pass mine is in part fueled by the Tribe’s experience of two mercury mines about ten miles away,⁵⁴⁷ the Cordero and McDermitt mines, which began operations in 1935 and closed in 1970 and 1990 respectively.⁵⁴⁸ The Cordero Mine was operated by a subsidiary of Sun Oil Company, now Sunoco, Inc., and its subsidiaries, before closing in 1970.⁵⁴⁹ The McDermitt Mine is owned by the McDermitt Mine joint venture, of which 51 percent is owned by Barrick Gold U.S. Inc. (“Barrick”). According to Barrick, the Cordero Mine operators placed calcine tailings—which are gravel-like—in a “calcine pile” that is on the Cordero mine site, as well as on BLM lands and “adjacent property that later became the McDermitt mine.”⁵⁵⁰ Barrick said the calcine pile was already in place when the McDermitt Mine began.



The former Cordero mercury mine, McDermitt, Nevada, March 23, 2024. © 2024 Alison Leal Parker/Human Rights Watch

⁵⁴⁷ US Environmental Protection Agency, McDermitt and Cordero Mercury Mine Sites, https://response.epa.gov/site/site_profile.aspx?site_id=7029 (accessed May 29, 2024).

⁵⁴⁸ Ibid. See also Memorandum, “Responses to Human Rights Watch” transmitted electronically by Allison Brown, Director, Reclamation and Closure, Barrick, December 30, 2024.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

As early as 1987, the US Environmental Protection Agency (EPA) began visiting the two mine sites to assess conditions.⁵⁵¹ During one of these visits, EPA officials learned “historical information” that waste from the calcine pile had been used to build: roadways near the Fort McDermitt reservation; the McDermitt Combined School (K-12); and roadways near the town of McDermitt.⁵⁵² Barrick said unknown parties may have used the calcine material as road base or construction material in the 1950s or 1960s and that, despite the pile being secured by a barbed wire fence, trespassers may have removed material from the calcine pile without authorization, including by cutting the perimeter fence to access the pile.⁵⁵³

From 2010 to 2011, EPA analyzed sample locations throughout the roadways, school, the Cordero and McDermitt mines, creek sediment, and surface water—together called “the site” by EPA—for soil and water contaminated with mercury and arsenic.⁵⁵⁴ In 2011, the agency found elevated levels of mercury and arsenic exceeding EPA’s recommended levels for both substances in a water sample location,⁵⁵⁵ and in most of the 91 soil sample locations, including the 2 mine sites and the creek sediment locations.⁵⁵⁶ Subsequently, the agency studied the degree to which these contaminants were “available for uptake from potentially exposed persons.”⁵⁵⁷ Based on all of these studies, in October 2012, the agency concluded:

Conditions presently exist at the Site that, if not addressed by implementing the response action documented in this memorandum, may lead to continued exposure to mercury and arsenic present in soil.

⁵⁵¹ Ecology and Environment Incorporated, “Cordero and McDermitt Mercury Mine Sites, Humboldt County, Nevada, Interim Removal Assessment Report,” September 12, 2011, <https://semspub.epa.gov/work/09/1135534.pdf> (accessed May 29, 2024).

⁵⁵² *Ibid.*

⁵⁵³ Memorandum, “Responses to Human Rights Watch,” transmitted electronically by Allison Brown, Barrick, December 30, 2024.

⁵⁵⁴ US Environmental Protection Agency, McDermitt and Cordero Mercury Mine Sites.

⁵⁵⁵ Ecology and Environment Incorporated, “Cordero and McDermitt Mercury Mine Sites, Humboldt County, Nevada, Interim Removal Assessment Report,” Figure 6, and Table C5.

⁵⁵⁶ *Ibid.*, Tables C3 and C4.

⁵⁵⁷ *Ibid.* Ecology and Environment Incorporated, “Cordero Mercury Mine Removal Assessment McDermitt and Fort McDermitt, Nevada, Bioaccessibility, Sequential Extraction, and Spectroscopic Speciation Sampling and Analysis Data Quality Objectives (DQO) Process Document,” April 5, 2011, <https://semspub.epa.gov/work/09/1135535.pdf> (accessed December 8, 2024).

As discussed in this memorandum, these hazardous substances, if unaddressed, may pose an imminent and substantial endangerment to the public health or welfare or the environment.⁵⁵⁸

This conclusion led EPA to begin to clean the site, with the exception of the Cordero and McDermitt mine locations.⁵⁵⁹

In 2013, EPA concluded its clean-up of the school as well as the roadbeds near the reservation and town.⁵⁶⁰ In 2017, Barrick, based solely on its ownership of land where the Calcine Pile was partially located—i.e. Barrick land and BLM land—temporarily removed a portion of the fence and placed a soil cover over the calcine pile to discourage trespassers.⁵⁶¹ Barrick Gold also agreed to pay EPA \$230,000 in past response costs.⁵⁶² In September 2019, EPA stated that Barrick had completed this work.⁵⁶³ “Barrick continues to monitor the Calcine Pile to ensure it remains secure.”⁵⁶⁴

Several Fort McDermitt religious and traditional practices leaders said that their experience with the Cordero waste pile caused them to worry about potential pollution from the lithium mine.⁵⁶⁵ “We’ve got experience with the mercury mine over there,”

⁵⁵⁸ US Environmental Protection Agency, Memorandum, Request for a Time-Critical Removal Action at the McDermitt Site, McDermitt, Humboldt County, Nevada, October 15, 2012, <https://response.epa.gov/sites/7029/files/signed%20action%20memo.pdf> (accessed December 8, 2024).

⁵⁵⁹ Ibid.

⁵⁶⁰ US Environmental Protection Agency, Pollution / Situation Report, McDermitt and Cordero Mercury Mine Sites, Removal Polrep Final, June 25, 2013, https://response.epa.gov/site/sitrep_profile.aspx?site_id=7029&counter=19957 (accessed December 8, 2024); Barrick also confirmed to Human Rights Watch its understanding that “in 2013 EPA completed several removal activities under CERCLA to address the calcine tailings discovered in and around the town of McDermitt and the Fort McDermitt Paiute and Shoshone Reservation, which are miles away from the McDermitt Mine.” Memorandum, “Responses to Human Rights Watch,” transmitted electronically by Allison Brown, Barrick, December 30, 2024.

⁵⁶¹ Memorandum, “Responses to Human Rights Watch,” transmitted electronically by Allison Brown, Barrick, December 30, 2024.

⁵⁶² US Environmental Protection Agency, Notice of Proposed Administrative Settlement Agreement and Order on Consent for Removal Action for the Cordero-McDermitt Calcine Pile Site, McDermitt, Nevada, August 16, 2017, <https://www.govinfo.gov/content/pkg/FR-2017-09-21/pdf/2017-20161.pdf> (accessed January 8, 2025).

⁵⁶³ Federal Register / Vol. 82, No. 182 / Thursday, September 21, 2017 / Notices, <https://www.govinfo.gov/content/pkg/FR-2017-09-21/pdf/2017-20161.pdf> (accessed January 8, 2025), p. 44180.

⁵⁶⁴ Memorandum, “Responses to Human Rights Watch,” transmitted electronically by Allison Brown, Barrick, December 30, 2024.

⁵⁶⁵ Human Rights Watch/ACLU interviews with David Hinkey and 62-year-old concerned Tribal resident; Human Rights Watch/ACLU telephone interview with Fort McDermitt Tribal Member and Leader, April 1, 2024.

said a Fort McDermitt tribal member.⁵⁶⁶ “We know what this means from experience. It’s something that needs to be dealt with by bringing all the different reservations all together to discuss at the same time.”⁵⁶⁷

Risks to Availability of Water

Non-governmental environmental experts, local residents, ranchers, and Numu/Nuwu and Newe people are also concerned about the mine’s negative impact on the availability of water in this already arid region.

People living in the region, including Indigenous people living on the Fort McDermitt reservation, primarily source their water from wells that draw from two hydrographic basins in the Quinn River Valley and Kings River Valley, containing spring, river, underground, and precipitation water sources.⁵⁶⁸ The two hydrographic basins provide water to the Thacker Pass mine site, the town of McDermitt, and the Fort McDermitt reservation—both the town and reservation are about 50 miles from the mine site.⁵⁶⁹ The well that services the reservation is approximately 700 feet deep, according to the most recent assessment

⁵⁶⁶ Human Rights Watch/ACLU interview with David Hinkey.

⁵⁶⁷ Ibid.

⁵⁶⁸ See Nevada Division of Water Resources, Hydrographic Regions and Basins, undated webpage, <https://tools.water.nv.gov/hydrographicregions.aspx?region=Humboldt> (accessed January 12, 2025) (indicating that the larger hydrographic regions of the Kings River Valley and the Quinn River Valley include smaller water basins designated as 30A, 30B, 33A, and 33B); While groundwater moves between basins, it may be useful to note that the geographic location of the Thacker Pass Mine coincides with basins 30A, 30B, and 33A; and the town of McDermitt, and the Fort McDermitt Reservation coincide with basins 33A and 33B. See Department of Conservation and Natural Resources, Division of Water Resources, Designated Groundwater Basins of Nevada, March 2017, https://water.nv.gov/uploads/maps-and-gis-docs/designated_basinmap.pdf (accessed January 12, 2025).

⁵⁶⁹ Bureau of Land Management, Draft Environmental Impact Statement: Thacker Pass Lithium Mine Project, Appendix P, May 2020, https://eplanning.blm.gov/public_projects/1503166/200352542/20022653/250028857/TP_DEIS_Apx%20P_Part1_Water_508.pdf (accessed January 12, 2025), p. 5; See also Nevada Division of Water Resources, Hydrographic Regions and Basins, <https://tools.water.nv.gov/hydrographicregions.aspx> (indicating that McDermitt is serviced by the Kings River Valley and Quinn River Valley hydrographic regions).

produced by the US government in 1987.⁵⁷⁰ The town of McDermitt also sources its water from two groundwater wells that supply McDermitt’s municipal water system.⁵⁷¹

The Thacker Pass mine will principally draw water from a well located five miles east of the mine.⁵⁷² According to Lithium Nevada’s plan, the mine’s projected water demand from extracting and processing minerals is 2,600 acre-feet/year (equivalent to a pumping rate of 1,612 gallons per minute, on average, for a year) for the first phase (years 1-4 of the mine) and 5,200 acre-feet/year (equivalent to a pumping rate of 3,224 gallons per minute, on average, for a year) for the second phase (years 5 to 41).⁵⁷³ Lithium Americas told Human Rights Watch that “agriculture water use in Humboldt County in 2012 was approximately 384,916 acre-feet. Our Phase 1 use represents [0.68] percent of that.”⁵⁷⁴ A 2017 state of Nevada water inventory (the most recent statewide data on water use) reported that Humboldt County pumped 260,455 acre-feet/year for agricultural irrigation in calendar year 2017.⁵⁷⁵ Therefore, Lithium Americas’ water use represents 1 percent in Phase I and 2 percent in Phase II of Humboldt County’s 2017 irrigation water use.⁵⁷⁶ People of Red Mountain, environmental groups, and local ranchers have argued that the mine’s water consumption will deplete an already-arid area.⁵⁷⁷ A Fort McDermitt religious and traditional practices leader expressed this concern to Human Rights Watch: “[The mine] is just going to dry

⁵⁷⁰ Alan H. Welch and Rhea P. Williams, “Data on ground-water quality for the McDermitt 1° x 2° quadrangle, Northern Nevada,” US Geological Survey, 1987, <https://pubs.usgs.gov/of/1985/0648e/plate-2.pdf> (accessed January 8, 2025) (listing a single well at Fort McDermitt reservation); See also US Department of the Interior Geological Survey, Appraisal of Water Resources in the Fort McDermitt Indian Reservation, Humboldt County, Nevada, 1978, <https://pubs.usgs.gov/of/1978/0139/report.pdf> (accessed November 5, 2024), p. 10 (describing one well at Fort McDermitt reservation and one “emergency well”).

⁵⁷¹ US Environmental Protection Agency, Detailed Facility Report McDermitt Water System, <https://echo.epa.gov/detailed-facility-report?fid=NV0000162&sys=SDWIS> (accessed January 2, 2025); McDermitt Water & Sewer District, 2020 Annual Consumer Confidence Report, <https://hcnv.us/DocumentCenter/View/5484/McDermitt-2020-Consumer-Confidence-Report> (accessed November 4, 2024).

⁵⁷² US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-7.

⁵⁷³ *Ibid.*

⁵⁷⁴ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁵⁷⁵ State of Nevada, Department of Conservation and Resources, Division of Water Resources, State Groundwater Pumpage Inventory: Calendar Year 2017, January 27, 2017, https://water.nv.gov/uploads/water-use-inventories-docs/Nevada_Groundwater_Pumpage_2017.pdf (accessed December 16, 2024), Table 1.

⁵⁷⁶ Phase one = 2600 acre-feet per year / 260,455 = .99 percent of the 2017 irrigation water use, as report by Nevada’s Division of Water Resources. Phase two = 5200 acre-fee per year / 260,455 = 1.99 percent of the 2017 irrigation water use.

⁵⁷⁷ People of Red Mountain, “People of Red Mountain Statement of Opposition”; “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status”; Complaint, *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB (filed February 11, 2021), https://storage.courtlistener.com/recap/gov.uscourts.nvd.148512/gov.uscourts.nvd.148512.1.o_1.pdf (accessed January 8, 2025); Complaint for Vacatur, Equitable, Declaratory and Injunctive Relief, *Western Watersheds Project, Great Basin Resource Basin and Range Watch, Wetlands Defense v US Department of the Interior*, para. 23.

everything. Maybe our whole mountain is gonna ... go dry. Maybe the whole valley is gonna go dry. And that's the thing that we don't want. I don't want to see that.”⁵⁷⁸

Great Basin Resource Watch has said the mine's water usage:

[I]s a concern because both the Kings Valley and Quinn Valley water basins where the water will be pumped from appear to already be over-allocated. This means the amount of water granted for use in water rights is greater than the basin's estimated ability to recharge. People in the ranching and farming communities in Orovada and Kings River Valley are very concerned that pumping caused by the mine would affect their domestic wells.⁵⁷⁹

BLM's EIS for the Thacker Pass project identifies a “potential reduction in surface water and groundwater quantity for current users and water-dependent resources” as an issue for the project.⁵⁸⁰ However, citing modeling and analysis submitted by Lithium Nevada as part of the planning for the mine, BLM also stated in the final EIS that impacts on groundwater levels would be limited to 2 areas, one 1.2 miles from the area of the mine pit and another extending 1.5 miles from the site of the well from which the mine's water will be sourced.⁵⁸¹ BLM also said the water rights for pumping the well required for the mine would be provided by transferring existing water from agricultural use to mining and therefore “would not increase the amount of groundwater withdrawal ... over existing conditions.”⁵⁸² In a letter to Human Rights Watch, Lithium Americas emphasized this point, stating: “[O]ur project does not have a net increase in water use. We are converting water used for agriculture to processing.”⁵⁸³

⁵⁷⁸ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

⁵⁷⁹ “Thacker Pass Lithium Mine in Humboldt County, NV: Current Status”; Regarding over allocation see also Christine M. Albano et al., “Drought Sensitivity and Trends of Riparian Vegetation Vigor in Nevada, USA (1985-2018),” *Remote Sensing*, vol. 12 (2020), doi: 10.3390/rs12091362 (accessed July 11, 2024), p. 19-20 (evidencing that the Quinn River basin is overallocated by 50% in 2018); Nevada Division of Natural Resources, Basin Assessment Map Series, November 2023, <https://water.nv.gov/documents/2023%20Basin%20Status%20Map%20Series.pdf> (accessed May 29, 2024), p. 7-8 (indicating that both Kings River and Quinn River Basins are at very high risk of disappearing and that the commitments of water usage exceed the perennial yield). (Evidencing that the Quinn River basin is overallocated by 50% in 2018).

⁵⁸⁰ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-6.

⁵⁸¹ *Ibid.* 4-6, 4-8, Appendix A, Figures 4.3-14-4-3-21.

⁵⁸² *Ibid.*, 5-5.

⁵⁸³ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

Local ranchers challenged BLM's analysis in federal court, arguing BLM erred in relying on modeling commissioned by Lithium Nevada that used inaccurate baseline data to calculate the impacts of the mine on groundwater and surface water.⁵⁸⁴ The district court rejected the ranchers' claims, stating the ranchers' arguments "reflect a technical or scientific disagreement on which the Court must defer to BLM."⁵⁸⁵ This decision was upheld on appeal by the Ninth Circuit, which found BLM had "independently examined" the data commissioned by Lithium Nevada prior to approving the mine.⁵⁸⁶

Lithium Americas told Human Rights Watch and the ACLU water usage in Phase I of the mine is the equivalent of "around five alfalfa irrigation pivots of well water per year."⁵⁸⁷ Human Rights Watch and the ACLU could not independently verify this alfalfa irrigation analogy. Lithium Americas stated: "An alfalfa pivot in Orovada area requires 3.9 acre feet of water and covers 125 acres."⁵⁸⁸ Lithium Americas told Human Rights Watch: "LAC acquired existing water rights that had previously been used in agriculture. The point of diversion (where the water is being pumped) has simply been moved."⁵⁸⁹

Risk of Air Pollution Affecting the Rights to Health and a Healthy Environment

As noted above, all people have the right to the highest attainable standard of physical and mental health. Governments, including the US, should respect, protect, and fulfil this right, including through the promotion of social determinants of good health, such as clean air, and the regulation of third parties whose practices would harm them.

In its General Comment No. 14, CESCR noted violations of the ICESCR can occur where states parties fail to "to enact or enforce laws to prevent the pollution of water, air and soil

⁵⁸⁴ Complaint, *Bartell Ranch LLC v. McCullough*, p. 2. ("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.").

⁵⁸⁵ Order, *Bartell Ranch LLC v. McCullough*, p. 33.

⁵⁸⁶ *Bartell Ranch LLC et al. v. McCullough*, Court of Appeals for the Ninth Circuit, D.C. Nos. 3:21-cv-00080-MMD-CLB, 3:21-cv-00103-MMD-CLB, (unpublished decision), July 17, 2023, <https://www.courtlistener.com/docket/59247337/307/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025), p. 7.

⁵⁸⁷ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, June 24, 2024, p. 6; Alfalfa is a crop commonly used as feed for livestock. An irrigation pivot is a rotating sprinkler, which can be as much as a kilometer wide, used to irrigate land. University of California, Division of Agriculture and Natural Resources, "Irrigating Alfalfa in Arid Regions," April 2008, https://alfalhasymposium.ucdavis.edu/irrigatedalfalfa/pdfs/ucalfalfa8293irrigation_free.pdf (accessed January 8, 2025).

⁵⁸⁸ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁵⁸⁹ *Ibid.*

by extractive and manufacturing industries.”⁵⁹⁰ Separately, CERD has affirmed the obligation of states parties, like the US, to ensure equality and non-discrimination in the enjoyment of the right to the highest attainable standard of health, which “extends to prevention and protection from negative outcomes related to ... air pollution.”⁵⁹¹

Air quality is also an essential determinant of the right to a healthy environment, discussed above. UN Special Rapporteur on human rights and the environment David Boyd also identified the ability to breathe clean air as one of the constituent elements of the right to a healthy and sustainable environment, and warned that air pollution causes widespread violations of this right.⁵⁹²

Tribal members shared their fears with Human Rights Watch and the ACLU that the quality of their air will be impacted by the Thacker Pass mine. “It’s not good for our people, it’s not good for any people to breathe that smoke or that dust that comes from these mines,” said a Fort McDermitt religious and traditional practices leader. He continued:

[W]e know that because the land is so ripped up that you get these clouds of ... almost like smoke ... [but] what is the smoke? I don’t know, whatever it is that that’s you know within the earth it’s not good for the breath. It gets in the air. If that mine gets operating we’ll all be breathing that in out here while we’re talking. We know what this means.⁵⁹³

⁵⁹⁰ UN Economic and Social Council, General Comment No. 14, para. 51.

⁵⁹¹ CERD, General recommendation No. 37, paras. 5-6, (“Articles 1 (1) and 5 (e)(iv) [of ICERD] provide everyone with the right to be free from all forms of racial discrimination and the right to equality in the enjoyment of the right to public health, medical care, social security and social services ... The right to health extends “not only to timely and appropriate health care but also to the underlying determinants of health”), paras. 22-23 (“Racial and ethnic groups have the right to a clean and healthy environment and ... the right not to be disproportionately subjected and to be protected against climate-induced health hazards, owing to their geographical location or socioeconomic situation, cultural norms and intrinsic psychological factors. This extends to prevention and protection from negative outcomes related to heat, air pollution, the increasing frequency and intensity of extreme weather events and natural disasters, or the impact on social networks and cultural traditions. Indigenous Peoples have the right to mitigation by non-harmful measures to their cultural and linguistic diversity, knowledge systems, food security, health, and livelihoods.”).

⁵⁹² UN General Assembly, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment,” January 8, 2019, <https://documents.un.org/doc/undoc/gen/g19/002/54/pdf/g1900254.pdf> (accessed November 5, 2024), paras. 17, 66, 109.

⁵⁹³ Human Rights Watch/ACLU interview with 62-year-old concerned Tribal resident.

A Fort McDermitt community member told Human Rights Watch and the ACLU that the wind almost always blows in the direction of the reservation from the mine and that it is almost always windy, and because of this when the mine burns sulfur to produce sulfuric acid, any resulting emissions may blow towards the reservation.⁵⁹⁴ An air quality monitor has been installed on the reservation by the organization Greenaction to monitor any future emissions.⁵⁹⁵

The final EIS for the mine acknowledges that air emissions will result from mining equipment, trucks, combustions emissions from the use of explosives at the mines—blasting—and fugitive dust emissions.⁵⁹⁶ The EIS also states processing of minerals, including operation of the sulfuric acid plant, would result in “emissions of criteria pollutants, HAPs [hazardous air pollutants], and greenhouse gases (GHGs).”⁵⁹⁷ Lithium Americas will have the capacity to produce 2,900 tons of sulfuric acid per day in Phase I (years 1-4) and 5,800 tons per day in Phase II (years 5-21).⁵⁹⁸ The production of sulfuric acid produces sulfur dioxide (SO₂), sulfuric acid mist, and particulates.⁵⁹⁹ Even short-term exposures to sulfur dioxide can harm the human respiratory system and make breathing difficult.⁶⁰⁰ People with asthma, particularly children, are sensitive to these effects of SO₂.⁶⁰¹ The mine will also produce 34,109 tons per year of greenhouse gas emissions during construction, 79,998 tons per year of greenhouse gas emissions in Phase I, and 132,588 tons per year of greenhouse gas emissions in Phase II (which is the equivalent of 31,556 gas-powered cars driven for a year).⁶⁰²

⁵⁹⁴ Human Rights Watch/ACLU interview with Dorece Sam.

⁵⁹⁵ Greenaction, Instagram post, March 26, 2024, https://www.instagram.com/greenaction_ej/p/C4_KsfBPofi/?img_index=1 (accessed January 8, 2025).

⁵⁹⁶ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-78.

⁵⁹⁷ *Ibid.*

⁵⁹⁸ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-109.

⁵⁹⁹ Nevada Division of Environmental Protection, Lithium Nevada’s Air Quality Operating Permit Technical Review, February 2022, https://ndep.nv.gov/uploads/land-mining-docs/BAPC_-_Thacker_Pass_-_20225_-_Tech_Review_Signed.pdf (accessed January 8, 2025), p. 6.

⁶⁰⁰ US Department of Health and Human Services, Toxicological Profile for Sulfur Trioxide and Sulfuric Acid, December 1998, https://www.ncbi.nlm.nih.gov/books/NBK598205/pdf/Bookshelf_NBK598205.pdf (accessed July 12, 2024); US Environmental Protection Agency, Sulfur Dioxide Basics, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (accessed July 12, 2024).

⁶⁰¹ US Environmental Protection Agency, Sulfur Dioxide Basics.

⁶⁰² US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, Table 2.6; Greenhouse gas equivalency calculated using I. US Environmental Protection Agency,

Given the various pollutants produced at the mine, the EIS discussed the impact on air quality around the mine.⁶⁰³ This analysis was conducted based on an air quality impact study commissioned by Lithium Nevada.⁶⁰⁴ After modeling the likely dispersal of pollutants from the mine, the study found the maximum concentrations for all pollutants, including sulfur dioxide, would be within National Ambient Air Quality Standards and within the applicable Nevada standards.⁶⁰⁵ BLM therefore concluded “the project would not have a substantial effect on air quality.”⁶⁰⁶

Great Basin Resource Watch, in litigation in federal courts, argued BLM had not adequately reviewed the mine’s potential impact on air quality.⁶⁰⁷ They argued the analysis commissioned by Lithium Nevada had underestimated likely sulfur dioxide emissions from the production of sulfuric acid.⁶⁰⁸ When asked about this perspective, Lithium Americas responded, “We disagree with Great Basin Resource Watch,” and directed Human Rights Watch to review Lithium Americas’ state issued air permit for the mine.⁶⁰⁹ The district court noted that it must give deference to scientific determinations by BLM and rejected GBRW’s arguments.⁶¹⁰ The Ninth Circuit upheld this decision on appeal.⁶¹¹

Risks of Sexual Violence

Lithium Americas is building a “workforce hub,” which is a housing camp for about 2,000 mine workers.⁶¹² This population of construction workers will temporarily live in

Greenhouse Gases Equivalencies Calculator – Calculations and References, webpage, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator#results> (accessed January 8, 2025).

⁶⁰³ US Bureau of Land Management and US Fish & Wildlife Service, Thacker Pass Lithium Mine Project Final Environmental Impact Statement, p. 4-79.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ *Ibid.*, 4-80.

⁶⁰⁶ *Ibid.*

⁶⁰⁷ Complaint for Vacatur, Equitable, Declaratory and Injunctive Relief, *Western Watersheds Project, Great Basin Resource Basin and Range Watch, Wetlands Defense v US Department of the Interior*, para. 154-166.

⁶⁰⁸ *Ibid.*

⁶⁰⁹ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

⁶¹⁰ Order, *Bartell Ranch LLC v. McCullough*, p. 21-22.

⁶¹¹ *Bartell Ranch LLC et al. v. McCullough*, Court of Appeals for the Ninth Circuit, D.C. Nos. 3:21-cv-00080-MMD-CLB, 3:21-cv-00103-MMD-CLB, (unpublished decision), July 17, 2023, <https://www.courtlistener.com/docket/59247337/307/bartell-ranch-llc-v-mccullough/> (accessed January 8, 2025), p. 7.

⁶¹² Lithium Americas, “Thacker Pass Construction Plan Update,” <https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Provides-a-Thacker-Pass-Construction-Plan-Update/default.aspx#:~:text=The%20Workforce%20Hub%20is%20a,and%20ponds%20in%20July%202023> (accessed

Winnemucca, about 70 miles from McDermitt, and work at the Thacker Pass mine, about 35 miles from McDermitt. Though the workforce will be living in Winnemucca, McDermitt remains one of the closest towns.

Indigenous communities fear the influx of workers occasioned by the mine will raise the risk of sexual violence, a phenomenon seen in other extractive industry “man camps,”⁶¹³ and exacerbating the Missing and Murdered Indigenous Women Girls and Two Spirit crisis—a well-documented pattern of higher rates of assault, abduction, and murder of Indigenous women, girls, and gender-diverse people compared to the general population.⁶¹⁴ Available data indicates that more than half of all Indigenous women in the United States have experienced sexual violence in their lifetime, and one in three have experienced rape. However, inadequate and inconsistent data collection and underreporting to police means the full extent and severity of the crisis of violence against Indigenous women, girls, and two spirit people is likely much greater.⁶¹⁵ A report by the

August 27, 2024) (stating “The Workforce Hub is a temporary full-service housing facility for construction workers in the nearby City of Winnemucca. Earthworks for the facility are completed and the delivery of the remaining housing modules is expected during Q1 2024. The housing modules are currently stored in-place to allow for staged erection to align with the Project’s construction timeline following issuance of FNTF.”); See also “An Exciting Time at Thacker Pass,” *Elko Daily*, https://elkodaily.com/news/local/business/mining/an-exciting-time-at-thacker-pass/article_43146572-cca0-11ee-8c6e-c32e58ed619a.html#:~:text=Lithium%20Americas%20will%20be%20building,more%20than%201%2C900%20private%20rooms; Rob Sabo, “Lithium in the Silver State,” *Northern Nevada Business Weekly*, October 9, 2024, <https://www.nnbw.com/news/2024/oct/09/lithium-in-the-silver-state/#:~:text=At%20the%20peak%20of%20construction,7%2C000%20total%20acres%20of%20land> (accessed August 27, 2024) (stating “the company will offer optional housing for union workers at the Workforce Hub facility in east Winnemucca. The complex will have almost 2,000 individual rooms with bathrooms, a full commercial kitchen, dining room, gym, commissary and meeting rooms”); Julia Maestresjuan, “Lithium’s workforce hub will house nearly 2000 during construction phase,” *Great Basin Sun*, <https://greatbasinsun.com/news/2023/nov/14/lithiums-workforce-hub-will-house-nearly-2000-during-construction-phase/> (accessed August 27, 2024).

⁶¹³ The term “man camp” is used repeatedly in scholarly and advocacy settings to signify housing units accommodating mostly male workers in extractive industries. See, for example, Ana Condes, “Man Camps and Bad Men: Litigating Violence Against American Indian Women,” *Northwestern University Law Review*, Vol. 116, 2021, <https://scholarlycommons.law.northwestern.edu/nulr/vol116/iss2/4> (accessed October 23, 2024), p. 515.

⁶¹⁴ US Bureau of Indian Affairs, Missing and Murdered Indigenous People Crisis, <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis> (accessed May 29, 2024); See generally, Amnesty International, *Canada: Stolen Sisters, A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, report, 2004, <https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf> (accessed January 2, 2025), p. 2.

⁶¹⁵ US Bureau of Indian Affairs, Missing and Murdered Indigenous People Crisis, <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis> (accessed May 29, 2024); Amnesty International, *The Never-Ender Maze: Continued Failure to Protect Indigenous Women from Sexual Violence in the USA* <https://www.amnesty.org/en/documents/amr51/5484/2022/en/> (accessed May 29, 2024).

National Institute of Justice, meanwhile, found that 97 percent of Indigenous female victims of violence had experienced violence from a non-Indigenous perpetrator.⁶¹⁶

Violence against Indigenous women is often driven by the legacies of colonialism, racism, and discrimination.⁶¹⁷ Dehumanizing stereotypes, including the sexualization and objectification of Indigenous women, contribute to the high rates of violence.⁶¹⁸ So too does the systemic failure of government and law enforcement to hold perpetrators accountable.⁶¹⁹

This pattern of violence against Indigenous women, girls, and two spirit people has also been associated with extractive industries.⁶²⁰ Extractive projects, like mines, can bring a large influx of workers, mostly non-Indigenous men, to temporarily reside near the project site in “man camps.”⁶²¹ Often these camps are located in rural or remote areas in close proximity to Indigenous communities or areas with high Indigenous populations, resulting in increased risks of gender-based violence and trafficking into sexual exploitation.⁶²²

After her 2017 visit to the United States, the then Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, raised her concerns about an influx of

⁶¹⁶ André B. Rosay, “Violence Against American Indian and Alaska Native Women and Men,” *NIJ Journal* 277 (2016), p. 38, <https://www.ojp.gov/pdffiles1/nij/249822.pdf> (accessed July 16, 2024).

⁶¹⁷ Sitkans Against Family Violence, “Missing and Murdered Indigenous Women, Girls, and Two-Spirit People (MMIWG2s),” <https://www.safv.org/mmiwg2s> (accessed January 2, 2025); Alessandra C Angelino MD, et. Al., “Missing and murdered Indigenous women, girls, and Two Spirit people, a paediatric health crisis,” *Lancet Child & Adolescent Health*, vol 10 (2023), doi: 10.1016, p. 741; see generally, Amnesty International, Canada: Stolen Sisters, A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada, <https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf> (accessed January 2, 2025), p. 2.

⁶¹⁸ Sophie Croisy, “Fighting Colonial Violence in ‘Indian Country’: Deconstructing Racist Sexual Stereotypes of Native American Women in American Popular Culture and History,” *Angles New Perspectives on the Anglophone World*, vol. 5 (2017), doi: 10.4000/angles.1313.

⁶¹⁹ Amnesty International, *The Never-Ending Maze: Continued Failure to Protect Indigenous Women from Sexual Violence in the USA*, report, 2022, <https://www.amnesty.org/en/documents/amr51/5484/2022/en/> (accessed May 29, 2024), p. 26-27; Summer Blaze Aubrey, “Against the Earth Begets Violence Against Women,” *Arizona Journal of Environmental Law and Policy*, vol. 10 (2019), https://static1.squarespace.com/static/6307d452a995602a1c242475/t/63d8f596ceec201c56ad3623/1675163030309/Aubrey_FINAL.pdf (accessed July 16, 2024).

⁶²⁰ *Ibid.*

⁶²¹ *Ibid.*

⁶²² *Ibid.*

temporary workers due to an oil boom in Montana and North Dakota, which was associated with rising rates of violence⁶²³ against Indigenous women and girls.⁶²⁴

Lithium Americas is engaged in construction of a “workforce hub” in Winnemucca, about 70 miles from the closest reservation via highway.⁶²⁵ It is important to note this “workforce hub” does not currently house individuals, as it is still under construction. Human Rights Watch does not know the expected demographics of the “workforce hub.” Human Rights Watch asked Lithium Americas if it “include[d] an assessment of risks of sexual violence against Indigenous women and girls in its environmental and social impact assessments and other risk analysis for the Thacker Pass mine? If not, why not?” Lithium Americas responded: “We have no tolerance for violence against anyone and will take swift responsive action should any of its employees or contractors commit an act of violence.”⁶²⁶

⁶²³ First Peoples Worldwide, “New Support Finds Increase of Violence Coincides with Oil Boom,” *University of Colorado, Boulder*, March 14, 2019 <https://www.colorado.edu/program/fpw/2019/03/14/new-report-finds-increase-violence-coincides-oil-boom> (accessed July 16, 2024).

⁶²⁴ UN Office of the High Commissioner on Human Rights, “End of Mission Statement by United Nations Special Rapporteur on the Rights of Indigenous peoples, Victoria Tauli-Corpuz of her visit to the United States of America,” March 3, 2017, <https://www.ohchr.org/en/statements/2017/03/end-mission-statement-united-nations-special-rapporteur-rights-indigenous> (accessed July 16, 2024).

⁶²⁵ Lithium Americas, “Lithium Americas Provides a Thacker Pass Plan Update.”

⁶²⁶ Letter to Human Rights Watch from Tim Crowley, Lithium Americas, December 19, 2024.

Acknowledgments

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We thank the many people who generously shared their stories for this report. We also thank the others who shared their expertise with us for this report.

Appendices

Appendix I: Human Rights Watch Letter to Lithium Americas—May 29, 2024

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May 29, 2024

Lithium Nevada / Lithium Americas

Re: Thacker Pass Lithium Mine and the
McDermitt Caldera



HRW.org

Dear Mr. Tim Crowley and Lithium Americas:

Human Rights Watch is writing to seek information related to our research on lithium production in the McDermitt Caldera, Nevada, United States.

Human Rights Watch is an independent international human rights nongovernmental organization that monitors and reports on human rights in some 100 countries worldwide. This includes work on Indigenous peoples' rights, as well as rights issues related to racial justice and equity. Human Rights Watch has also previously conducted extensive research into human rights risks associated with activities by extractive industries.

Human Rights Watch is investigating potential violations of international human rights standards and laws in connection with lithium mining in the McDermitt Caldera. The research so far has relied on multiple sources and has included close collaboration with impacted Indigenous people and community organizations. As part of our research, we are writing to request documentation that identifies the steps Lithium Americas has taken to comply with international human rights law as it applies to Indigenous people and their ancestral land.

Also, although the investigation is ongoing, we wish to raise concerns that violations of Indigenous peoples' international human rights may have already occurred, may be continuing, and may occur in the future in connection with lithium mining and exploration in the McDermitt Caldera.

Businesses have the responsibility, as reflected in the UN Guiding Principles on Business and Human Rights, to respect the human rights of Indigenous people, including by addressing "adverse human rights impacts with which they are involved."¹ The Special Rapporteur on the

¹ United Nations Human Rights Office of the High Commissioner, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", January 2012, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_on.pdf (accessed April 22, 2024), principles 11 and 23.

Rights of Indigenous Peoples affirmed that businesses' responsibilities to respect human rights include respecting the standards in the UN Declaration on the Rights of Indigenous Peoples.²

International human rights standards provide that Indigenous people have rights to their ancestral land, and that governments should obtain Indigenous people's free, prior, and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.³ Like all people, Indigenous people also have the rights to life; the highest attainable standard of health, water, a healthy environment; and to an adequate standard of living.⁴ These rights must be respected without discrimination based on race or ethnicity.⁵ International human rights law also protects Indigenous peoples' right to practice religion and culture, free of racial or ethnic discrimination.⁶ These rights incorporate access to sacred sites and cultural heritage.⁷

The Standard for Responsible Mining of the Initiative for Responsible Mining Assurance (IRMA) also references international standards on Indigenous peoples' rights regarding FPIC, ancestral land, cultural heritage, religion, and the environment.⁸ Lithium Americas has committed to undertake an audit under IRMA's standards and General Motors is a current IRMA member.⁹

² Special Rapporteur on the Rights of Indigenous Peoples, July 2013, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples," A/HRC/24/41 (2013), https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf (accessed May 10, 2024).

³ UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295, art. 10, 11, 12, 28, 29; UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27, Rights of Minorities, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), para. 7, <https://www.refworld.org/docid/453883fc0.html> (accessed May 14, 2024); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 1, 27; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976 (ratified by the United States June 8, 1992), art. 1, 27; Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, Rights of Indigenous Peoples, U.N. Doc. A/52/18, annex V (1997), para. 5, https://www.ods.un.org/library/UN_International%20Convention%20on%20the%20Elimination%20of%20Racial%20Discrimination_General%20Recommendation%2023_1997_EN.pdf (accessed May 15, 2024).

⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11, adopted January 20, 2003, para. 12(c)(i); Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25; International Covenant on Economic, Social and Cultural Rights, art. 11(1) and 12; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 24; UN General Assembly, "The Human Right to a Clean, Healthy and Sustainable Environment," Resolution 76/300, A/RES/76/300, <https://documents.un.org/doc/undoc/gen/n22/442/77/pdf/n2244277.pdf?token=89ysair88PFF7NtGZ8&cf=true> (accessed October 25, 2023).

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation 23, para. 1, 2, 3.

⁶ UN Declaration on the Rights of Indigenous Peoples, art. 11 and 12; Committee on the Elimination of Racial Discrimination, General Recommendation 23, para. 1, 2, 3; International Covenant on Civil and Political Rights, art. 5, 26, and 27.

⁷ See generally UN Human Rights Council, "Report of the Special Rapporteur on freedom of religion or belief," U.N. Doc. A/77/514 (2022) (accessed May 15, 2024); UN Human Rights Council, Expert Mechanism on the Rights of Indigenous People, "Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage," U.N. Doc. A/HRC/33/25 (amended 2016) (accessed May 15, 2024).

⁸ Initiative for Responsible Mining Assurance, Standard for Responsible Mining and Mineral Processing, June 2018, ch. 1.3, 2.1-4, 3.7., <https://responsiblemining.net/resources/#standard2> (accessed April 22, 2024).

⁹ Initiative for Responsible Mining Assurance, Members / Partners, <https://responsiblemining.net/members-partners/> (accessed on April 22, 2024).

To ensure our report is accurate, we would appreciate your response to the following questions:

Could Lithium Americas please provide its Indigenous Peoples policy, the corresponding due diligence assessment discussing Indigenous peoples' rights under the UN Declaration on the Rights of Indigenous Peoples, and the Indigenous stakeholder mapping regarding Indigenous peoples who have traditionally occupied the McDermitt Caldera and the Thacker Pass mine site?

Could Lithium Americas please provide the current human rights policy in place and the human rights risks and impact assessment for the Thacker Pass project?

Could Lithium Americas please provide a cultural heritage assessment on both past and present impacts on Indigenous peoples' cultural heritage, as well as a cultural heritage management plan, for the Thacker Pass project?

Could Lithium Americas please provide any archaeological reports that were prepared on Thacker Pass?

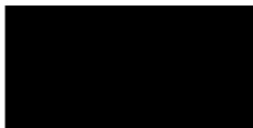
Could Lithium Americas please provide, in its entirety, a copy of the Community Benefits Agreement signed with the Fort McDermitt Tribal Council in 2022?

We would welcome any other information you would like to share in relation to the steps Lithium Americas has taken to ensure respect for Indigenous peoples' rights in its operations.

We would be very grateful to receive a written reply by June 29, 2024 so your responses can be reflected in our reporting. Please note we may, at our discretion, publish any response either in full or in part on our website. We would welcome an opportunity to meet to discuss these issues. We can be reached at [REDACTED]. We will follow up with a phone call to your office on June 5, 2024 to discuss whether we will receive a written response and to seek a meeting to understand your perspectives on the issues raised in this letter.

Thank you for your attention to this important matter.

Sincerely,



Tanya Greene, Director, US Program

Appendix II: Lithium Americas Response to Human Rights Watch May 2024 Letter—June 25, 2024

LithiumAmericas

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June 25, 2024

Abbey Rutherford
Tanya Greene
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

Dear Abbey Rutherford and Tanya Greene,

We are in receipt of your email and letter dated May 29th and appreciate the opportunity to share with you information about the decades-long accomplishments we have made with stakeholder engagement and the development of the Thacker Pass Project.

At Lithium Americas, we are proud of the fact that each of our employees and contractors show up to work every day focused on doing things the right way. The Thacker Pass Project has the potential to significantly advance America's electrification efforts, reduce carbon emissions, and strengthen domestic supply chains for critical minerals. This massive potential means nothing unless we make sure that benefits flow to our nearby stakeholders.

Commitment to Human Rights

Lithium Americas is committed to upholding the rights and interests of workers and local communities across our supply chain and operations. We are committed to upholding fundamental human rights as defined in the UN's Universal Declaration of Human Rights.

You can find our Human Rights Policy [here](#). It applies not only to every corner of our company, but to our vendors and any other external partners as well.

Engagement with Indigenous Peoples

A core tenet of LAC's Human Rights Policy is to "ensure the impact is positive and long lasting, improving livelihoods during and after our operations." This includes a commitment to "hiring locally where possible and providing training to local communities, putting special emphasis on historically disadvantaged groups such as indigenous populations and women." This commitment has been central to our project planning, which has spanned over a decade, and our commitment to Indigenous peoples' human rights has been primarily focused on the Fort McDermitt Paiute and Shoshone Tribe (FMT). Our predecessor, Western Lithium, began engaging with FMT in 2007 as FMT is the closest Native American Tribe to the Project (a 50-mile drive from the Project).

WWW.LITHIUMAMERICAS.COM

Since 2007, Western Lithium and Lithium Americas have closely engaged with FMT to understand the Tribe's culture, history and community needs both with respect to the Project and beyond. This active dialogue has allowed LAC to be transparent about the Project details and how the Project may impact the Tribe. LAC has regularly reviewed plans with tribal members, offered numerous tours, and emphasized employment opportunities and other ways the Project could benefit Fort McDermitt. Over the past several years, many tribal members have expressed interest in employment at the Project and participated in job training coordinated or provided by LAC. They have emphasized that the Thacker Pass Project allows members to stay home or return home and receive family-supporting employment.

Highlights from our engagement with FMT include the following:

- In 2018, LAC signed an Engagement Agreement with the Fort McDermitt Tribe to formalize ongoing discussions about the Thacker Pass Project and other matters of mutual interest.
- LAC hired a Community Relations Director in 2019 who is based in nearby Winnemucca and who enjoys a productive relationship with tribal members and frequently visits the community to listen, learn, and provide support.
- Following more than 20 meetings between LAC and FMT tribal representatives beginning in 2020, both parties agreed to a **Community Benefits Agreement (CBA)**, which was adopted on October 20, 2022. The CBA provides for infrastructure improvements at Fort McDermitt, additional job training and employment opportunities for tribal members, and support for cultural education and preservation. Lithium Americas has also agreed to build a \$5 million community center for the Tribe that includes a preschool, daycare, cultural facility, and playground, and build a greenhouse to provide traditional food crops, medicinal plants, and revenue from seeds for reclamation projects.
- In 2020, LAC partnered with Great Basin College to provide "BuildNV Core Construction Training" to tribal members and local community members.
- In 2021 and 2022, Lithium Americas provided tribal members and local community members job readiness training titled "Heavy Equipment Operator Training".
- Lithium Americas hosted cultural monitor training at Fort McDermitt, resulting in eleven (11) Fort McDermitt tribal members gaining employment as cultural monitors/technicians in 2022 to work alongside Far Western Anthropological Research Services as they conducted cultural field surveys at Thacker Pass.
- In 2023 LAC partnered with Sawtooth Mining to provide temporary and full-time employment opportunities to members of the Fort McDermitt Paiute - Shoshone Tribe, Duck Valley Shoshone - Paiute Tribe and the Navajo Tribe in Arizona.

The support for our Project among the Fort McDermitt Tribe is real – codified in our Community Benefits Agreement and borne out in the regular, meaningful partnership that we continue to engage in with both tribal leaders and members of the community. In March of this year, Larina Bell, the then acting Chairwoman of the Fort McDermitt Paiute Shoshone Tribe and now duly elected Tribal Chairwoman, commented on the announcement of the Department of Energy loan that will help finance construction of the Project. She said, “Thacker Pass will provide important economic and employment opportunities for members of our Tribe.” She cited a letter from her predecessor written in October 2022, stating, “Through our meetings with Lithium Americas, we have recognized their goal of securing a domestic supply of the lithium mineral, a key component of batteries that are essential in the transition to renewable energy and to build sustainable resiliency against climate change. Lithium Americas has acknowledged the Tribe’s interests and agreed to go forward with its Project with the understanding that the removal of this material must include stewardship and mitigation of potential impacts to natural resources.”

LAC has deep respect for FMT’s history and cultural heritage, and we are determined to provide them with opportunities created by our Thacker Pass Project.

Rigorous Legal Review of Regulatory Approvals

Our Project has unfortunately been the subject of lengthy legal appeals, which are commonplace in projects on federally managed lands. The appeals focused on the permitting process overseen by the Bureau of Land Management (BLM). Importantly, these appeals have been closely scrutinized by various courts – every one of which has upheld the validity of the permitting process.

A key claim brought by plaintiffs was that the BLM failed to properly notify certain tribes about the project, meaning that they were unable to raise concerns or provide information about the cultural importance of Thacker Pass to their tribe. To begin, the plaintiffs represented tribes located no closer than 200 miles from Thacker Pass, and as far away as 260 miles.

One of these closely scrutinized claims was the allegation that Thacker Pass is located on the site of a massacre of Native Americans by American soldiers that took place in 1865. The evidence concluded, and a judge agreed, that the site of the massacre is situated several miles from the Project. The plaintiffs were denied an injunction request based on this issue. The following is an excerpt from the injunctive relief ruling.

As to the Tribes’ claimed specific harm—disturbance of burial and/or massacre sites—the evidence before the Court does not support their claims. As discussed above as to likelihood of success on the merits, the 1868 field notes do not show a massacre happened within the Project area. Further, the HPTP states that archival background research and extensive pedestrian surveys yielded the historic properties in the plan, none of which are listed as burial or massacre

sites, raising the reasonable implication that there are no burial or massacre sites within the Project area. (ECF No. 65-14 at 32.) And the HPTP includes a plan if human remains are unexpectedly discovered. (Id. at 76.) In addition, at least one member of the Fort McDermitt Paiute Shoshone Tribe says that her ancestors would not be buried in the ground, suggesting that there are no burial sites within the Project area that would be disturbed by digging. (ECF No. 66-10 at 3.) Further, despite extensive trenching and digging in the Project area over the past 10 years, no human remains have been found. (ECF No. 66-2 (including pictures as attachments); see also ECF No. 66-3.) And neither the Eben nor Teeman declarations describe a specific location for the massacre and/or burial sites they believe exist within the Project area with information sufficiently specific to place those sites within the Project area. (ECF Nos. 45- 1, 62-1, 71-1, 73-2.) Thus, the Court cannot substantiate the Tribes' allegations that digging incident to the HPTP will disturb any burial sites. The Tribes have accordingly not met their burden to show irreparable harm.

The 15-year cultural inventory study referenced in the court proceedings was completed across nearly 13,000 acres at Thacker Pass from 2007 to 2022. This thorough analysis of the project site ensured that historic artifacts were properly catalogued. The findings from the study suggest the presence of historic obsidian tools as well as roads and sites related to ranching and the Civilian Conservation Corps. No human remains or funerary items were found.

As mentioned above, 11 Fort McDermitt Tribe members worked alongside expert third party Far Western Anthropological Research Services in 2022 as part of the cultural survey work. Summit Lake Paiute Tribe and the Winnemucca Indian Colony – the other closest tribes to the project area – were also consulted.

Below are key passages from the ruling in the United States District Court (dated February 6, 2023), which found in favor of the Bureau of Land Management's Record of Decision for Thacker Pass:

- *"The Court is ultimately persuaded by Federal Defendants' argument that BLM's decision not to consult Tribal Plaintiffs on the Project was reasonable and made in good faith based on the information BLM had at the time it initiated consultation for the Project."*
- *"The Ethnographic Assessment also contains information that contributed more directly to BLM's decision not to consult Tribal Plaintiffs on the Project. Specifically, several tribes identified sacred and massacre sites summarized in the Ethnographic Assessment, but none of the tribes who spoke to BLM's consultant who prepared the Ethnographic Assessment identified the Thacker Pass area as either sacred or a massacre site."*

- *“Burns Paiute Tribe apparently did not respond to any letters requesting consultation on the Ethnographic Assessment, but Charisse Snapp, identified in the Ethnographic Assessment as the tribe’s Cultural Resource Representative, is recorded as having said on a telephone call on July 28, 2005, that Burns Paiute Tribe, ‘would defer consultation to the tribes that had reservations closer to the study area.’”*
- *“The Court agrees with Federal Defendants that they ‘took the requisite hard look at the potential impacts to cultural resources from the Thacker Pass Project. More specifically, BLM reviewed 38 cultural resource inventories conducted over 49 years that investigated the Project area (both mining and exploration), along with the area of indirect effects. These inventories included a 2018 survey that inventoried 12,963 acres for the Project.”*
- *“Between 2010 and 2017, BLM consulted with tribes (including, in one instance, the Reno Sparks Indian Colony) on four projects implicating the Project area, but BLM did not learn from any of those consultations either that Tribal Plaintiffs had a special interest in the Thacker Pass area, or that the Thacker Pass area was religiously or culturally significant to them.”*

FPIC

The United States has led the world in recognizing the inherent sovereignty of its original inhabitants. In the U.S. today, federally recognized Indian tribes have full decision-making powers over their recognized territories. The Thacker Pass Project is not in a federally recognized Native American territory. If it were, mining could not happen without the express consent and approval of that Tribe. Nevertheless, as described above, LAC has undertaken active engagement to form a close relationship with the Fort McDermitt Tribe and is proud of our mutual Community Benefits Agreement that will provide support for that community for years to come.

Environmental Responsibility

We have a deep respect for the role that environmental responsibility plays in upholding human rights. Lithium Americas has gone to great lengths to ensure that the development and operation of Thacker Pass will create minimal carbon emissions and impact to the surrounding environment.

Carbon intensity for Thacker Pass is estimated to be ~40% less than mining peers when including processing. Thacker Pass benefits from having onsite sulfuric acid plants that are expected to produce ~50% of required power. By using Mechanical Vapor Recompression evaporator technology, this carbon-free power is used to electrify our most energy intensive processes, avoiding up to 10.02 tonnes of carbon emissions per tonne of lithium carbonate produced per annum (t CO₂e/t Li₂CO₃), versus a conventional triple effect evaporator with propane fired boilers and imported sulfuric acid.

Our water conservation plan supports one of our priorities – to sustainably manage water resources by limiting its use and safeguarding its quality. Thacker Pass has been designed as a zero liquid discharge (ZLD) process to maximize water recycling and reuse, and to not discharge industrial wastewater. Based on a detailed water cycle assessment, any water withdrawn for the operation is expected to be recycled and reused an average of approximately seven times within the production process. Thacker Pass lithium processing will recycle 85% of the total water used. The consumptive water requirement for operations at Thacker Pass for Phase 1 is estimated at approximately 2,850-acre feet per year, which is the equivalent of around five alfalfa irrigation pivots of well water per year.

Lithium Americas is committed to reducing our biodiversity impacts, to protecting local species, cultures and natural ecosystems and to integrating conservation into the design and life cycles of our projects and operating activities. We are actively involved in managing, protecting and mitigating habitats and ecosystems in our project areas.

Over the past 12 years, we have carefully studied the ecosystem that surrounds Thacker Pass, and have made several key design decisions based on biodiversity considerations including:

- Moving the project's location out of the Montana Mountains to protect sensitive species. The mountains support streams, wildlife and vegetation, while Thacker Pass is dry and dominated by sagebrush that has sustained fire damage and is therefore considered a lower-quality habitat area.
- Building stringent requirements into the project from this early stage including planning and permitting as well as various monitoring and mitigation measures.
- Committing to funding sage grouse habitat restoration in Northern Nevada.
- Committing to funding stream-habitat restoration projects by the Nevada Division of Wildlife north of the project area.
- Since starting work on Thacker Pass, we have invested more than \$2 million in biodiversity and culture-related projects including sagebrush restoration funds, golden eagle habitat surveys and cultural treatment.

APPENDIX

Background on Thacker Pass

Lithium was discovered at Thacker Pass in the 1970's through a permitted exploration effort by Chevron, which was looking for uranium. The uranium prospects were not advanced by Chevron, and the mineral claims were ultimately acquired by Western Lithium. In the early 2000s, Western Lithium explored the area extensively for an economically viable lithium deposit. They also permitted and operated a small clay-mining operation. Lithium Americas merged with Western Lithium in 2015 and advanced the plans to permit and build a lithium mine and processing facility at Thacker Pass. Extensive stakeholder outreach has occurred and continues today. The project is fully permitted for construction by the State of Nevada. The federal government, led by the Bureau of Land Management (BLM), which manages the public land at Thacker Pass, also issued a Record of Decision (ROD) to proceed with construction in 2021. The BLM's ROD was based on the completion of an extensive Environmental Impact Statement. Both state and federal approvals were challenged and upheld in their respective administrative and judicial courts. After validation of the ROD by the federal district and circuit courts, Lithium Americas commenced construction of the Thacker Pass Project in March 2023.

Construction Progress

Thacker Pass is in rural Humboldt County, Nevada near the Oregon border. The Project is located on public land and its boundary encompasses approximately 10,468 acres, though the footprint of the work site spans approximately 5,545 acres. The Project includes construction of mine infrastructure, processing facilities, and a sulfuric acid manufacturing plant at Thacker Pass, as well as the development of necessary infrastructure including temporary housing to accommodate a construction workforce of 2,000 skilled workers in Winnemucca, which is approximately 60 miles south of Thacker Pass. LAC has entered into a Project Labor Agreement (PLA) with North America's Building Trades Unions (NABTU) for the construction of the Thacker Pass Project. The partnership with NABTU is essential to ensure Thacker Pass is built safely and professionally with skilled labor. Thacker Pass is in a remote, underserved area of Nevada that has never experienced investment of this magnitude and the Building Trades can recruit and train local workers including those from the Fort McDermitt Paiute Shoshone Tribe, which is a 50-mile drive from the Project. The Building Trades can also recruit additional workforce from the surrounding metropolitan areas. Reno is 230 miles to the southwest of the Project, Boise is 230 miles to the northeast, Salt Lake City is 420 miles to the east, and Las Vegas is 530 miles to the south. Skilled workers are anticipated to come from these areas and beyond to work at Thacker Pass.

The Thacker Pass Project will be built through a series of thoughtful partnerships starting with NABTU and including Bechtel as the Engineering, Procurement and Construction Management (EPCM) contractor, Sawtooth Mining, and General Motors, which is Lithium Americas' largest shareholder. General Motors will receive all offtake

from Thacker Pass for at least fifteen years to manufacture as many as 800,000 electric vehicles each year and transition away from making carbon combustion automobiles.

With the PLA and EPCM in place, LAC realizes many benefits including:

1. LAC and the EPCM are actively working on a workforce development plan to identify and address any construction labor risks,
2. LAC and the EPCM have robust worker health and safety programs to address potential public and worker health and safety risks and hazards,
3. The PLA guarantees no labor disruptions during the life of the project,
4. The PLA provides the basis for coordination among various employers (i.e., prime contractors and subcontractors),
5. The PLA contains effective dispute resolution procedures specifically designed to avoid project delays, and
6. Bechtel is the EPCM and has extensive experience safely and responsibly building large projects throughout the world.

Lithium Americas' partnerships with nearby communities and local stakeholders are the foundation for the success of the Thacker Pass Project. LAC began robust discussions with key stakeholders more than a decade ago and will engage with interested groups and individuals in perpetuity to ensure the company is a good neighbor and partner with stakeholders.

LAC has undertaken extensive work to develop a project that is responsive to stakeholder input and provides insight into the benefits Thacker Pass will bring to nearby communities, the skilled and inclusive workforces it will utilize, and the economic prosperity it will create in the area. Thacker Pass will accomplish these essential goals while building a project that puts the United States on the map for producing significant quantities of lithium carbonate, which is the critical base-material for electrifying our economy and securing our country's future.

Lithium Americas is committed to hiring locally to the greatest extent possible, and we have had great success to date fulfilling that commitment. Here are pictures showing most of the workforce on-site today. Many featured here are from the surrounding areas. Some have used this job opportunity to return home having previously been forced to move away to find gainful employment.

Sawtooth Mining



Hiring Nevada Locals

- ✓ Winnemucca
- ✓ Fort McDermitt
- ✓ Battle Mountain
- ✓ Duck Valley
- ✓ Carlin
- ✓ Inlay
- ✓ Reno
- ✓ Elko

As well as:
Idaho and Wyoming

LithiumAmericas

In the coming months, Lithium Americas will increase construction hiring for the Project. At peak in 2026, we anticipate more than 2,000 skilled workers developing the Project. Our commitment to hire locally to the greatest extent possible will remain, however, there are less than 1900 residents in Humboldt County necessitating the need to recruit temporary workers from outside the area. The Project Labor Agreement with NABTU will help ensure the project is built with a skilled workforce that places safety, ethics and quality work as paramount responsibilities. The PLA requires that ten percent of the workforce will be apprentices, which will ensure that locals looking to build a career in the trades have an opportunity to start with an exceptional project like Thacker Pass.

Providing safe, comfortable housing for our construction workforce is an obligation we are addressing. Lithium Americas has purchased land within Winnemucca city limits. Winnemucca is the only incorporated city in Humboldt County. It is roughly 60 miles from our project and has a population of less than 9,000 people. Lithium Americas will provide bussing for our workforce from Winnemucca to the project and back each day.

The following is a rendering of the housing facility and a picture of the site.



All involved must also adhere to LAC's adopted [Human Rights Policy](#). All [LAC Company Policies](#) are publicly accessible on our website.

Discussed in the Human Rights Policy are additional company policies you may be interested in. They include:

- Code of Conduct
- Whistleblower Policy
- Corporate Disclosure Policy

- Securities Trading Policy
- Respectful Workplace Policy
- Diversity, Equity and Inclusion Policy

Engagement

LAC’s predecessor, Western Lithium, began engaging with the nearby Fort McDermitt Paiute and Shoshone Tribe (FMT) in 2007. LAC continued building on the positive relationships they founded when it merged with Western Lithium in 2015. Below is a breakdown of local engagement, including with the Fort McDermitt Tribe.

Fort McDermitt Paiute and Shoshone Tribe

The Fort McDermitt Paiute and Shoshone Indian Reservation is a 50-mile drive from Thacker Pass and is the closest Native American Tribe to the Project (see the map below showing the tribes in Nevada and the Thacker Pass Project location). FMT has more than 1,200 members with approximately 300 members residing at Fort McDermitt. Many tribal members have moved away from the reservation to seek employment elsewhere.



For more than a decade, LAC and its predecessor, Western Lithium, have engaged with FMT to understand the Tribe's culture, history and community needs. This active dialogue has allowed LAC to be transparent about the Project details and how the Project may impact the Tribe. LAC has emphasized employment opportunities and other ways the Project could benefit Fort McDermitt.

Over the past several years, many tribal members have expressed interest in employment at the Project and participated in job training coordinated or provided by LAC. They have emphasized that the Thacker Pass Project allows members to stay home or return home and receive family-supporting employment.

Engagement has occurred in many open, agenda-driven venues as well as informally through visits with tribal leaders and members.

LAC's active engagement with the Fort McDermitt Tribe was further enhanced with the hiring of a Community Relations Director in November 2019. That individual is Native American from the nearby Te-Moak Tribe of Western Shoshone and is responsible for regular interaction with the FMT and other interested Native Americans. She is based in nearby Winnemucca where Lithium Americas has an office that houses roughly 10 employees. The Community Relations Director frequently visits the Fort McDermitt community, attends most Tribal Council meetings, provides quarterly project updates to the tribe, shares information about workforce development and employment opportunities, and assists with the Thacker Pass Project job application process. It is common for community members, including FMT tribal members, to drop into the LAC Winnemucca office to discuss potential employment and project developments with the Community Relations Director.

In early 2020, LAC worked closely with Fort McDermitt tribal representatives and consultants to gain the Tribe's declared support of the Thacker Pass Project. Over the course of more than 20 meetings, the parties agreed to a **Community Benefits Agreement (CBA)**, which was adopted on October 20, 2022. The CBA provides for infrastructure improvements at Fort McDermitt, additional job training and employment opportunities for tribal members, and support for cultural education and preservation. Lithium Americas has also agreed to build a \$5 million community center for the Tribe that includes a preschool, daycare, cultural facility, and playground, and build a greenhouse to provide traditional food crops, medicinal plants, and revenue from seeds for reclamation projects.

Lithium Americas is not at liberty to share the detailed agreement with others but would support you having it if the Fort McDermitt Tribe chose to give it to you. You could contact Ms. Vonnie Curtis, Tribal Secretary at 775-532-8259 opt 1 and request the document.

The Fort McDermitt Tribe has an open invitation to tour the Thacker Pass site to observe construction activities and progress.

Notable engagement and activities:

- June 15, 2017: LAC representatives and the Fort McDermitt Tribal Council met and reviewed early plans for the Thacker Pass Project
- November 2018: LAC representatives hosted Tribal elders on a visit to North American Coal's Navajo Mine in New Mexico to meet North American Coal, which is the owner of Thacker Pass's contract mining company, Sawtooth Mining. The delegation also learned about North American Coal's efforts to hire local tribal members to the greatest extent possible and provide them with fulfilling, family-supporting jobs.
- October 3, 2018: FMT elders toured the Thacker Pass site.
- January 29, 2020: Lithium Americas representatives met with the Fort McDermitt Tribal Council to provide a Thacker Pass Project update and introduce LAC's Community Relations Director.
- February 13 and 26, 2020: LAC's Community Relations Director held individual meetings with 38 Fort McDermitt tribal members regarding Thacker Pass employment opportunities, learn about their specific job skills, knowledge, and job interests. A jobs skills assessment was also conducted to understand tribal members' training needs for future employment at Thacker Pass.
- March 11, 2020: LAC participated in a Thacker Pass Project update and Job Fair at Fort McDermitt. Lithium Americas representatives along with representatives of North American Coal hosted the job fair and discussed job opportunities at Thacker Pass.
- November 11, 2020 – January 4, 2021: Lithium Americas partnered with Great Basin College and Job Opportunities in Nevada (JOIN) and hosted the "BuildNV Core Construction Training Program" at Fort McDermitt. Eleven tribal and local community members trained four days a week for six weeks to learn basic skills needed to begin a career in the construction industry. Participants earned a National Center for Construction Education & Research (NCCER) certification and OSHA 10 Safety Card.
- February 9, and April 5, 2021: LAC provided Thacker Pass Project updates to the Fort McDermitt Tribal Council and FMT community.
- October 26 & 27, 2021: Lithium Americas partnered with Cashman Equipment and provided tribal members and local community members job readiness training titled "Heavy Equipment Operator Training". The training took place at Fort McDermitt and participants learned safety pre-checks and how to safely operate Caterpillar equipment such as a 5-yard dump truck, general construction

wheel loader, hydraulic excavator, and track-type dozer. Participants received a Level 1 Operator Certificate of Completion for each piece of equipment.

- March 11, 2022: Lithium Americas hosted cultural monitor training at Fort McDermitt. Thirty (30) tribal members participated in the training and became certified cultural monitors, which qualified them to assist with archeological work at Thacker Pass.
- April 13, 2022 – July 13, 2022: Eleven (11) Fort McDermitt tribal members gained employment as cultural monitors/technicians and worked alongside the Far Western Anthropological Research Services as they conducted cultural field surveys at Thacker Pass.
- August 11, 2022: The Fort McDermitt Tribal Council approved a Memorandum of Understanding for continued, formal engagement with Lithium Americas.
- October 19 & 20, 2022: Lithium Americas again partnered with Cashman Equipment and provided tribal and local community members job readiness training titled “Heavy Equipment Operator Training”, which occurred at Fort McDermitt. Participants learned safety pre-checks and how to safely operate CAT equipment such as a 5-yard dump truck, general construction wheel loader, hydraulic excavator, and track-type dozer. Throughout the training, participants completed various infrastructure improvements at Fort McDermitt including building a pad for placement of a large storage Conex, building road turnouts, building up the road leading to Tribe’s pre-school, and building landscaping mounds.
- October 20, 2022: The Fort McDermitt Tribe and Lithium Americas signed a **Community Benefits Agreement (CBA)**.
- June 12, 2023 – July 14, 2023: Twelve (12) Fort McDermitt Tribe and Duck Valley Shoshone Paiute Tribe members gained temporary and full-time employment at the Thacker Pass Project.
- August 16, 2023: Bechtel and North American Trades Building Unions (NABTU) partnered with Fort McDermitt Tribal Council members to review existing course materials, identify gaps, provide input and draft a framework for the new course of NABTU’s Native American Awareness Training for Tradespeople and Employers.

Unincorporated Communities of Orovada, Kings River Valley, McDermitt and Paradise Valley

Kings River Valley, Orovada, McDermitt and Paradise Valley are farming and ranching communities located five to fifty miles from the Thacker Pass Project respectively.

Lithium Americas began engagement with the unincorporated communities in 2013 by hosting a community picnic to discuss the Project and build relationships. Lithium Americas representatives continued to host annual gatherings (with the exception of 2020 during COVID) and provided Project updates for community members at the Orovada community center.

In January 2021, Lithium Americas received a Record of Decision (RoD) from the Bureau of Land Management (BLM) allowing for the construction of the Thacker Pass Project. Soon thereafter, the surrounding communities formed the Thacker Pass Concerned Citizens (TPCC) group to meet with LAC to understand the scope of the project and provide feedback from the community regarding potential impacts and concerns. LAC was fortunate to have an organized community group engaged in the consultation process at this stage of development.

In April 2021, following several meetings with the TPCC, LAC and TPCC engaged Collaborative Decision Resources Associates (CDR) to manage an objective facilitation process between TPCC and LAC. CDR interviewed citizens and leaders from Orovada, Kings River, McDermitt, and Winnemucca, as well as Lithium Americas to compile a comprehensive list of concerns. Afterward, the Thacker Pass Working Group (TPWG) was formed consisting of representatives from TPCC and LAC. The purpose of the TPWG is to develop agreements supported by scientific data and community support to guide the construction and operations of LAC's Thacker Pass Project. The TPWG focuses its discussions on identifying solutions that protect the safety and well-being of community members, LAC workers and contractors, and the environment.

CDR subsequently worked with the TPWG to provide better insight into the issues and efficient resolution. The process included technical presentations and discussions on water quality and quantity, air quality and dust control, noise, wildlife management, highway safety, communications, housing, employee transportation, way-of-life/community rules as well as on developing a mechanism for long term coordination and paths forward to address many of the issues.

The TPWG and LAC continue to meet regularly. Over the past two years, the group has cooperatively addressed the issues raised including relocating and the Orovada K-8 school to a new location away from LAC project-related traffic. LAC will build the new school at its expense. Construction is expected to begin in early 2024. LAC has also made road improvements to the highway intersection in Orovada and kept the communities abreast of Project developments.

TPWG notable milestones, agreements, and projects:

- January 2023: Orovada community agreed on a building site for the construction of a new modern elementary school in Orovada fully funded by LAC.
- Representatives of Lithium Americas began to work with the BLM and the Humboldt County School District to acquire forty (40) acres of BLM land for the new school.
- July 2023: Road improvements at the intersection of US 95 and SR 293 were completed. The project included a turn lane north and south bound on US 95 as well as speed limit flashing signs as drivers enter the community of Orovada. The project was fully funded by LAC.
- August 2023: Humboldt County School District and the TPWG agreed on the general building design for the new elementary school in Orovada.
- August 2023 - October 2023: The group identified various road improvements for SR 293 near the Thacker Pass Project site.
- October 2023: BLM completed the transfer of title of the 40-acre parcel for the construction of the new Orovada elementary school to the Humboldt County School District.

Humboldt County

In October 2013, LAC's predecessor Western Lithium made a presentation to the Humboldt County Commission regarding its plans to develop a mine and processing facilities at Thacker Pass.

Lithium Americas has continued regular engagement with the County Commission and other county officials over the past ten years providing regular Project updates and keeping the Commission and residents informed of the progress at Thacker Pass. LAC has highlighted the benefits the Project brings to the County through job creation, tax proceeds, and business opportunities during construction and operations.

In addition, Lithium Americas representatives often meet one-on-one with county residents to hear their input and answer questions about the Project and related infrastructure development in Winnemucca.

Notable engagement:

- October 2013: Lithium Americas' predecessor, Western Lithium, presented to the County Commission
- November 2015: Lithium Americas presented to the County Commission
- June 2017: Lithium Americas presented to the County Commission

- July 2020: Lithium Americas presented to the County Commission
- January 2023: Lithium Americas representatives held a series of meetings with Humboldt County residents to hear their input and provide information about the Project and the required train-to-truck transloading facility that Lithium Americas will build in Winnemucca to support the Thacker Pass operation.
- January 2023: Lithium Americas introduced Bechtel Corp. representatives to Humboldt County Commission, County Administrator, and county residents. Bechtel is the Engineering, Procurement and Construction Management (EPCM) contractor for the Thacker Pass Project.
- August 2023: Lithium Americas presented to the Humboldt County Commission
- November 2023: Lithium Americas provided a Thacker Pass Project update focusing on the temporary housing facility that Lithium Americas will build in Winnemucca for its construction workforce. The update was presented to the Humboldt County Commission.

City of Winnemucca

The City of Winnemucca is the county seat of Humboldt County, located 58 miles from the Thacker Pass Project with a population of ~9,000 residents. It is the closest incorporated city to the Project.

Lithium Americas and Western Lithium began active engagement with Winnemucca officials including the Mayor, Council, City Manager, and the Chief of Police in 2013. In December 2019 Lithium Americas opened an office in Winnemucca, which marked the company's official, fulltime presence in Winnemucca. The office serves as a central location for members of the community to inquire about the Thacker Pass Project.

Lithium Americas joined the Humboldt County Chamber of Commerce in 2019 and hosted a well-attended ribbon cutting ceremony at the newly opened Winnemucca office in January 2020. Lithium Americas has maintained active engagement with City officials, business owners, and residents hosting several community Open Houses to provide updates on the Project as well as inform the community about workforce development and employment opportunities.

In 2020, Lithium Americas formed key partnerships with representatives of Great Basin College, Job Opportunities in Nevada, Inc. (JOIN), and Cashman Equipment to establish workforce development training specifically designed to prepare a workforce for the construction of the Thacker Pass Project.

Lithium Americas is actively involved in the community and participates in local community events through investment in various non-profit organizations such as the

local food bank. In addition, the community relations manager serves as a member on various local boards and foundations including the Humboldt Development Authority, Mining Industry Foundation for Lowry High School, Rotary of Winnemucca, and Winnemucca Literary Club.

Noteworthy activities and engagement to date:

- November 2020: Lithium Americas partnered with Great Basin College and JOIN Inc to host the "BuildNV Core Construction Training Program" in Winnemucca. Eight local community members trained four days a week for three weeks to learn basic skills needed to begin a career in the construction industry. Participants earned a National Center for Construction Education & Research (NCCER) certification and OSHA 10 Safety Card.
- January 2020, October 28, 2021, October 26, 2022, October 25, 2023: Lithium Americas participated as the keynote speaker at the annual US 95 - I 80 Futures Economic Forum for Humboldt and Pershing Counties providing Thacker Pass Project updates and lithium discussion.
- January 2023: LAC presented its plan to build a train-to-truck Transloading Terminal in Winnemucca to the Winnemucca City Council.
- March 2023: Lithium Americas hosted a Thacker Pass security briefing with local law enforcement, DOJ, FBI, BLM, and Nevada State Police. The group also toured the Thacker Pass site.
- March 2023: Lithium Americas hosted a Winnemucca community meeting to share details about the proposed Transloading Terminal with the community.
- March 2023: LAC presented a Thacker Pass Project update to the Winnemucca Chamber of Commerce and introduced Bechtel representatives to the Chamber members.
- March 2023: LAC and Bechtel conducted thirteen (13) one-one-one meetings with local vendors and business owners regarding partnership opportunities for various goods and services for the Thacker Pass Project.
- June 2023: Construction of Lithium Americas' new office commenced to accommodate LAC's increasing fulltime presence in Winnemucca.
- July 2023: LAC and Bechtel hosted seven (7) one-on-one meetings with Winnemucca community and business leaders and local law enforcement to discuss LAC's plan to build temporary housing in Winnemucca for its anticipated construction workforce of 2000 skilled workers.

- September 2023: Earthworks for LAC's Workforce Hub located in Winnemucca commenced.
- October 2023: Deliveries of Workforce Hub module units began arriving at the WFH in Winnemucca.
- November 2023: City of Winnemucca Council approved LAC's request to lease City property for the construction and operation of LAC's proposed Transload Terminal.

The National Environmental Policy Act (NEPA)

As part of the Environmental Impact Statement required through NEPA, the BLM commissioned several cultural and archeological reports. These reports are protected from disclosure under federal law. Requests to see them should go to the BLM. The reports are:

- Final Cultural Report, Volumes I & II (Far Western) (Oct. 2019)
- Historic Properties Treatment Plan for the Thacker Pass Project, Humboldt County, Nevada (August 2020)
- Final Cultural Report Executive Summary (Far Western) (Oct. 2019)
- Treatment Plan Overview (Far Western) (Sept. 2020)
- Scope of Work and Request for Proposal – Historic Properties Treatment Plan (HPTP) 2021 Implementation (Nov. 2020)
- Thacker Pass Data Recovery Preliminary Site Treatment/Fieldwork Planning (Feb. 2021)
- BLM Cultural Resource Use Permit (ARPA) N100767 (Sept. 29, 2021)
- 100ac Class III Inventory addendum (May 2022)
- Data Recovery in Mining APE Completion Letter Reports (July 2022)
- CCC Context Report (Sept 2022)
- Hwy 95 Class III Inventory Report (March 2023)
- Data Recovery Report (April 2024)
- Obsidian Context Report (May 2024)

Initiative for Responsible Mining Assurance (IRMA)

LAC is committed to sustainably developing and operating Thacker Pass. In support of our commitment to produce sustainable lithium, we are a member of the Initiative for Responsible Mining Assurance (IRMA).

IRMA is a mine-site level certification based on the independent third-party verification and certification against a comprehensive standard for all mined materials that provides 'one-stop coverage' of the full range of issues related to the impacts of industrial-scale mines. The original IRMA standards included an IRMA-Ready (mineral exploration and development), IRMA-Mining, and IRMA-Mineral Processing standard, which were three separate standards to be measured against. The IRMA 2.0 draft standard combines the three separate standards into one all-inclusive standard.

The IRMA 2.0 draft standard proposes two new chapters in the Business Integrity Principle – Gender Equality and Gender Protections, and Mineral Supply Chain and Responsible Sourcing. IRMA proposes to remove the Cyanide and Mercury Management chapters in the Environmental Responsibility Principle and proposes to add a chapter on Management of Physical Stability and Land and Soil Management in their place. Other changes from the first IRMA draft include changes to the Financial Transparency and FPIC chapters as well as the addition of clarifying language and guidance throughout.

Inside LAC: Multicultural Employee Resource Group (ERG)

At Lithium Americas, we're proud to have a multicultural-focused Employee Resource Group (ERG), which is an employee-led forum to provide employees with support, mentorship and networking opportunities. The mission of the LAC ERG is "to learn about and celebrate the diverse cultures within our organization and the communities we serve through educational initiatives, cultural events and open dialogue. We believe that embracing our differences makes us stronger and more innovative."

LAC Cultural Awareness and Inclusion

LAC actively promotes cultural awareness and inclusion, by way of sharing stories from the inside, with the outside world. We share stories that highlight representation and involvement, employee impact, and community involvement that generate pride as well as help advance and raise the visibility of underrepresented groups such as women, minorities, the LGBTQIA+ community, and others by highlighting general awareness of the accomplishments of our employees and their contributions to moving LAC forward, spotlighting how our company is a leader in corporate integrity, as well as human dignity by helping increase and maintain diversity; attract, develop and retain talented employees of all backgrounds.

A few examples include:

Honoring Native American Heritage Month



Honoring Native American Heritage Month

Left photo: Maria Anderson, Director, Community Relations, shows a collection of cherished items that belonged to her great grandmother Mattie Buffalo (grinding stone and arrow), and a cradleboard, willow pine nut basket, moccasins and beadwork made by her grandmother, Josephine Buffalo Billie. Right photo: Aubree Barnum, VP, Human Resources (right), with her late grandmother, Dorothy B. Dick Yribar.

Lithium Americas Celebrates Hispanic Heritage Month by Recognizing the Role of DEI



Lithium Americas Celebrates Hispanic Heritage Month by Recognizing the Role of DEI

Since 1968, National Hispanic Heritage Month has been recognized by the U.S. federal government and celebrated across the country annually between September 15 to October 15, to acknowledge the history, culture and contributions of Americans whose ancestry can be traced to over 20 countries in Latin America, including Mexico, Central and South America and the Caribbean.

I hope this information is helpful to you and are happy to discuss our project with you more at your convenience.

Sincerely,



Tim Crowley
VP, Government and External Affairs

Appendix III: Human Rights Watch Letter to Lithium Americas—December 6, 2024

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December 6, 2024

Lithium Nevada / Lithium Americas

Re: Thacker Pass Lithium Mine and the
McDermitt Caldera

Dear Mr. Tim Crowley and Lithium Americas:

Thank you for your June 25, 2024, response to our letter on the Thacker Pass mine and lithium production in the McDermitt Caldera, Nevada.

We are in the process of finalizing our report on the Thacker Pass mine and are writing to share the initial findings from our research and request additional information from your company.

Our research examines the impacts of the mine on Indigenous people that have longstanding ancestral, cultural, and religious ties to the McDermitt Caldera and the Thacker Pass project site, including the mine. Indigenous people call the land that includes and extends beyond the project site Peehee Mu'huh, which was the name for a former Numu/Nuwu and Newe village. For the Numu/Nuwu and Newe, Peehee Mu'huh encompasses the land between the Double H Mountains and the Montana Mountains, connecting the Quinn River Valley and the Kings River Valley. Indigenous peoples continue to use Peehee Mu'huh for religious ceremonies and prayer, and for hunting birds and other game, gathering traditional, medicinal, and spiritual feathers and plants, gathering foods and medicines. The land is also the site of at least two massacres, including a notorious 1865 massacre of Numu/Nuwu and Newe by the United States calvary, giving it extra significance as a place of remembrance and prayer.

Over the past year, Human Rights Watch and the ACLU have interviewed 39 people about the Thacker Pass mine and its impacts, including directly affected Indigenous community members and leaders, lawyers, academics, and scientists. We have also reviewed the relevant court records, rulings, and other documents from Lithium Americas, the Bureau of Land Management (BLM), and the Department of Energy (DOE).

Our research so far indicates that the US authorization of the construction and future operation of the mine at Thacker Pass violates Indigenous peoples' rights under international human rights



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standards to their ancestral and traditional land, their freedom of religion, and their right to practice their culture. Mine construction has already deprived the Numu/Nuwu and Newe of access to their ancestral land, with fences and security guards preventing community members from conducting their religious ceremonies and prayers in the proper way, hunting birds and other game, gathering traditional, medicinal, and spiritual feathers and plants, and gathering foods and medicines.

The US government has permitted the mine without any meaningful consultation with Indigenous people and without their free, prior, and informed consent (FPIC), a violation of international human rights law. The BLM's letters to tribal governments prior to permitting the mine, which were not followed by any meetings or in-person contact with Tribes or affected Indigenous people, fall far short of the consultation and decision-making process needed to obtain Indigenous peoples' FPIC. BLM also failed to even write to several Tribal governments with ancestral, religious, and cultural connections to Peehee Mu'huh. US courts' repeated decisions upholding BLM's inadequate consultation process reflect the failure of US federal and state law to adequately integrate the requirements of FPIC contained in international human rights law.

Although international human rights law places the obligation of FPIC on governments, we are also concerned that Lithium Americas has failed to obtain Indigenous peoples' free, prior, and informed consent for its mining operations.

Lithium Americas has described your company's engagement with the Fort McDermitt Tribe, but did not discuss any consultation or consent process with other impacted Tribes or Indigenous people. It is our conclusion that Fort McDermitt Paiute and Shoshone Tribe (FMPST) leaders opposed the Historic Properties Treatment Plan (HPTP) portion of the permitting process for the mine, and that members of and people associated with the Tribe expressed their opposition to the mine directly to the Department of Interior and publicly prior to permitting and prior to the signing of the Community Benefits Agreement. After the signing of the Community Benefits Agreement, several members of FMPST, including members of the association called People of Red Mountain, also continue to oppose the mine and claim that Lithium Americas did not obtain and does not appear to have considered ways to periodically renew Indigenous people's free, prior, and informed consent, as recommended by international experts.¹

Indigenous peoples are also concerned about the mine's impact on their right to health, a healthy environment, and water. The use of acids and other chemicals during lithium processing creates a significant risk that, unless adequately controlled, toxic waste will pollute nearby waterways and ecosystems. Indigenous people, environmental groups and local ranchers have also argued that the mine's water consumption will increase water scarcity in an already arid area. Tribal members also fear that construction of the mine will impact air quality.

¹ UN Human Rights Council, "Free, prior and informed consent: a human rights-based approach," A/HRC/39/62, August 10, 2018, www.documents.un.org/undoc/gen/g18/245/94/pdf/g1824594.pdf (accessed December 6, 2024), para. 43. Stating that "Consent must be 'ongoing' with express opportunities and requirements for review and renewal set by the parties."

Community members have expressed concern that the mine, which is already bringing in an influx of largely non-Indigenous male workers,² risks increasing the already disproportionate rates of sexual and other violence that Indigenous women, girls and two spirit people experience. These concerns are backed by documented instances of other extractive industry operations on or near Indigenous land that have been associated with increased violence against women, girls and two spirit people. We are concerned that Lithium Americas does not discuss the risk of contributing to the problem of missing and murdered indigenous women, girls, and two spirit people in its proposed plans. We note that BLM, in its final Environmental Impact Statement, cited Lithium Nevada Corporation (LNC) in 2020 for a claim that a “man camp,” would not be built for the Thacker Pass project. Nevertheless, Lithium Americas is constructing a “workforce hub” in Winnemucca, which is a housing hub (or camp) for the mine’s workforce (so far made up in its majority by men).³

We are keen to integrate Lithium Americas’ perspective regarding these important issues into our final report. We have attached questions for your company in an annex to this letter but would welcome your comments in response to any aspect of these findings. **The questions found in this annex offer Lithium Americas the opportunity to respond to the findings of the report. Each question corresponds with a finding.**

We would be very grateful to receive a written reply by **December 19, 2024** (10 business days) so your responses can be reflected in our reporting. Please note we may, at our discretion, publish any response either in full or in part on our website. We would also welcome an opportunity to meet to discuss these issues. We can be reached at [REDACTED].

We will follow up with a phone call to your office on **December 18, 2024**, to discuss whether we will receive a written response and to seek a meeting to understand your perspectives on the issues raised in this letter.

Thank you for your attention to this important matter.

Sincerely,

[REDACTED]

Tanya Greene
Director, US Program

² “Labor Force Statistics from the Current Population Survey”, U.S. Bureau of Labor Statistics, last modified January 26, 2024, <https://www.bls.gov/cps/cpsaat18.htm>. According to the US Bureau of Labor Statistics, construction work in the United States is 89 percent male and mining work in the United States is 85 percent male.

³ “Lithium Americas Fact Sheet - January 2024”, Lithium Americas, fact sheet, https://s203.q4cdn.com/835901927/files/doc_downloads/thacker-pass/factsheets/2024/2025.pdf (accessed December 6, 2024). The Thacker Pass site team (which includes all types of workers – not only miners or construction workers) is 37% female, so if operating in the binary, 63% of the current workers are male.

Annex 1: Additional Questions for Lithium Americas

1. Access to Ancestral Lands, Right to Freedom of Religion, and Right to Culture

- a. What steps is Lithium Americas taking to preserve Indigenous peoples' access to the project area for the purposes of hunting, gathering religious and medicinal plants, feathers, and food?
 - i. An Indigenous community member expressed that her traditional medicines are viewed by Lithium Americas and mine operators as a nuisance. What is Lithium Americas' perspective on this allegation?
- b. Are Indigenous community members allowed access to the entire project area (including the mine site) so they can access their ancestral and sacred land for the purposes stated above? If not, what is the domestic legal justification offered by Lithium Americas for this infringement of international human rights law?
- c. Indigenous community members discussed with Human Rights Watch multiple accounts of being turned away from the project area by private security. These accounts also included being followed on the public road adjacent to the project area and being told by private security that the public road was not accessible. These allegations are in direct opposition to Indigenous Peoples' right to access their ancestral land. Has Lithium Americas' private security interacted with Indigenous community members using the public road or attempting to access the project area, mine site or adjacent lands?
 - i. Has Lithium Americas' private security engaged with any law enforcement agency to restrict access to the land?
 - ii. Has Lithium Americas' private security ever stopped, including a temporary stop, or attempted to deter a vehicle driving on the road adjacent to the project area? If so, what was the purpose of this/these vehicular stop/s and the legal basis for the stop/s.
 - iii. Does Lithium Americas' have an internal policy regarding private security engagement with the public on the road adjacent to the project area?
 - iv. What instructions or training has Lithium Americas provided to its staff, contractors and private security concerning Indigenous community members' ability to access the area?
- d. Human Rights Watch and the American Civil Liberties Union observed extensive fencing and no trespassing signs on and near the project area, including the mine site. Please describe the parameters of these restrictions

and their purpose. Please describe how the parameters and purpose intersect with Indigenous Peoples' right to access their land.

- e. Indigenous community members told Human Rights Watch that the mine's construction is killing their traditional medicines located on the land and that Lithium Americas views the medicine as a nuisance. What is the company's view on this?
- f. Indigenous community members told Human Rights Watch that the mine's construction has already disrupted traditional hunting grounds, stating that deer no longer inhabit the mine area, and that sacred medicines and foods that previously existed and flourished on the land are no longer present. What is the company's view on this?
- g. What measures is Lithium Americas taking to recognize and preserve the connections between Peehee Mu'huh and the 1865 massacre of Indigenous peoples and to create opportunities for Indigenous peoples to access the site and commemorate the massacre?
- h. Many Indigenous community members expressed that the mine will detrimentally impact the survival of the Indigenous cultural practices tied to the land. They expressed that Lithium Americas' does not care for the survival of the culture or the people. What is Lithium Americas' perspective on this allegation?

2. Free, Prior, and Informed Consent.

- a. What policies does Lithium Americas have in place, if any, that commit to respect Indigenous Peoples' rights to free, prior, and informed consent (FPIC) in accordance with international human rights standards?
 - i. Please describe how the company will obtain FPIC for new and existing mining projects.
 - ii. Why doesn't Lithium Americas human rights policy explicitly require the company to respect Indigenous Peoples' right to give to their free, prior and informed consent for projects affecting their lands or other resources?
- b. What due diligence has Lithium Americas conducted to determine if BLM conducted an adequate consultation process aimed at obtaining Indigenous peoples' free, prior and informed consent prior to permitting the Thacker Pass project?

- c. What steps has Lithium Americas taken to obtain the free, prior, and informed consent of Indigenous peoples impacted by the Thacker Pass mine project? Specifically:
- i. Does Lithium Americas believe that it has obtained the free, prior, and informed consent of the Fort McDermitt Paiute and Shoshone Tribe (FPMST)? In addition to the information on engagement with FPMST provided in your June 2024 letter, what steps did Lithium Americas take to obtain the Tribe's free, prior, and informed consent to the mine?
 - ii. What steps did Lithium Americas take to identify, in addition to the FPMST, Indigenous Peoples with ancestral, cultural, or religious links to the Thacker Pass project area, in light of the fact that the settler colonial system of Tribes and reservations is not necessarily accepted by or contiguous with all Indigenous people who might be impacted by the Thacker Pass project?
 - iii. How did Lithium Americas assess whether Tribes relocated to reservations a significant distance from the project site might have ancestral, religious, and cultural links to Peehee Mu'huh?
 - iv. What engagement and consultation, if any, has Lithium Americas had with other tribes beyond FPMST, including members of Reno-Sparks Indian Colony (RSIC), Burns Paiute Tribe (BPT), Summit Lake Paiute Tribe (SLPT), Winnemucca Indian Colony (WIC), and the Duck Valley Shoshone-Paiute Tribe (DVSPT)?
 - v. Does Lithium Americas believe that it has obtained the free, prior, and informed consent of any Indigenous peoples beyond FPMST?
 - vi. What is Lithium Americas' response to the fact that FPMST leaders opposed the HPTP portion of the permitting process for the mine, members of and people associated with the Tribe expressed their opposition to the mine directly to the Department of Interior prior to the signing of the Community Benefits Agreement, and that some people associated with the Tribe continue to oppose the mine?
 - vii. Is Lithium Americas aware of the need to create express opportunities and requirements for review and renewal of FPIC; and if so, how is it ensuring that there are such opportunities for review and renewal of FPIC?

- viii. Does LA believe it retains the free, prior, and informed consent of FMPST for the mine? What evidence is LA relying on for that assertion?
- d. Please could Lithium Americas clarify why “it is not at liberty” to share the Community Benefits Agreement signed with the Fort McDermitt Tribal Council in 2022?

3. Impacts on Water and Air

- a. What steps is Lithium Americas taking to address the risk that toxic materials will leak from the Thacker Pass mine’s tailings stack?
- b. What measures is Lithium Americas taking to address the risk of contamination of groundwater as a result of backfilling excavated mine sites?
- c. What steps is Lithium Americas taking to ensure that water consumption for the mine does not impact the availability of water in the area, especially in light of the aridity in the area and previous history of elevated contaminants in the water supply that required the municipal water district to provide access to bottled water starting in 2019 until 2021?
 - i. In Lithium Americas initial response to Human Rights Watch, Lithium Americas stated the water usage in phase one of the mine is equivalent to “around five alfalfa irrigation pivots of well water per year.” Can Lithium Americas verify this analogy?
 - ii. How will the water usage impact the accessibility of water in the already arid region of the McDermitt caldera?
 - iii. According to the Environmental Impact Statement, the mine will use 2,600 acre-feet/year (equivalent to a pumping rate of 1,612 gallons per minute, on average, for a year) for the first phase (years 1-4 of the mine) and 5,200 acre-feet/year (equivalent to a pumping rate of 3,224 gallons per minute, on average, for a year) for the second phase (years 5 to 41). For comparison, the average amount of groundwater pumped for agricultural irrigation in Humboldt County between 2011 and 2020 was about 12,338 acre-fee/year, according to a 2022 report from the Humboldt County Department of Public Works. Is it accurate that when the mine is fully operational, it will require nearly one-half as much groundwater on an annual basis as all agricultural irrigation in the county, the 13th largest in the country?

- d. What steps is Lithium Americas taking to ensure that air pollutants from the mine, including from the production of sulfuric acid, remain within national and state-level air quality standards?
- e. The Environmental Protection Agency raised concerns with the water quality mitigation and monitoring plans in the Environmental Impact Statement. Did Lithium Americas incorporate or respond to this critique?
- f. Great Basin Resource Watch commissioned an independent study by Dr. Steven Emerman to examine Lithium Americas' studies and calculate possible seepage rates. Dr. Emerman found that the levels of seepage from the filtered clay tailings would be significantly greater than predicted by Lithium Americas. What measures is Lithium Americas taking to ensure these heightened levels of seepage will not occur?
- g. Indigenous community members told Human Rights Watch that the decision makers regarding the mine are only considering the present and are not worried about the unborn and the future generations. What is the company's view on this?
 - i. Indigenous community members told Human Rights Watch and the ACLU that the company has not adequately considered the environmental and human health impacts of air pollution caused by the chemicals used in mining production and physical processing. What is the company's view on this?
 - ii. Great Basin Resource Watch argued that the EIS, based largely on scientific studies commissioned by Lithium Americas, underestimated likely sulfur dioxide emissions from the production of sulfuric acid. What is the company's view on this?
- h. Dr. Steven Emerman examined Lithium Americas' studies and calculated seepage rates of the mine's tailings. Lithium Americas stated that there were errors in Dr. Emerman's report and that the report was "not reliable and should not be considered by the [Nevada State Environmental] Commission." What errors was Lithium Americas referring to in Dr. Emerman's report?

4. Risks of Sexual Violence against Women

- a. Did Lithium Americas include an assessment of risks of sexual violence against Indigenous women and girls in its environmental and social impact assessments and other risk analysis for the Thacker Pass mine? If not, why not?

- i. If Lithium Americas did assess the impacts to Indigenous women and girls, please share any conclusions from this assessment.
- b. What measures has Lithium Americas taken to assess and mitigate the risk of sexual violence against Indigenous women and girls due to an influx of construction and mine workers linked to the Thacker Pass mine?
- c. When the workforce hub is fully constructed, what are the predicted demographics (including gender) of the workforce that will be housed at the hub?

Appendix IV: Lithium Americas Response to Human Rights Watch December 2024 Letter—December 19, 2024

LithiumAmericas

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December 19, 2024

Freddie Salas
Tanya Greene
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

Dear Mr. Salas and Ms. Greene,

We are in receipt of your letter dated December 6th. The letter concerns Lithium Americas' (LAC) Thacker Pass Project (the Project). The Project has the potential to significantly advance America's electrification efforts, reduce carbon emissions, and strengthen domestic supply chains for critical minerals—providing clean energy for future generations. As we previously shared with you in our letter dated June 25, 2024, LAC has made stakeholder engagement, including with Tribes, an important part of the development of the Project.

Initially, we note that your letter mischaracterizes or elides the intensive consultation process and environmental analyses conducted as part of permitting for the Project. The Bureau of Land Management (BLM) permitted the Project after years of government-to-government consultation with Tribes in the area, and federal courts have repeatedly upheld BLM's consultation as consistent with federal law.¹ Further, BLM produced a detailed environmental impact statement (EIS) for the Project addressing issues including air and water quality, tailings and reclamation, and water quantity. Courts have repeatedly upheld BLM's environmental analysis.² The Project has also been considered at length and permitted by multiple state agencies, including the Nevada Department of Environmental Protection (NDEP), which issued air quality, reclamation, and water pollution control permits for the Project; no challenge to those permits has succeeded. The water pollution control permit included an extensive review of design and management for the filtered tailings facility.

You focus on Free and Prior Informed Consent (FPIC), a principle that emerges from the UN Declaration of the Rights of Indigenous Peoples (UNDRIP).³ BLM fully complied with the U.S.

¹ See, e.g., *W. Watersheds Project v. McCullough*, Nos. 23-15259, 23-15261, 23-15262, 2023 U.S. App. LEXIS 18063 (9th Cir. July 17, 2023); *Bartell Ranch LLC v. McCullough*, No. 3:21-cv-00080-MMD-CLB, 2023 U.S. Dist. LEXIS 19280 (D. Nev. Feb. 6, 2023); *Bartell Ranch LLC v. McCullough*, 558 F. Supp. 3d 974, 978 (D. Nev. 2021); see also *Reno-Sparks Indian Colony v. Haaland*, 663 F. Supp. 3d 1188, 1192 (D. Nev. 2023).

² See *id.*

³ Article 19 of UNDRIP states that a government must obtain “free, prior and informed consent” from tribes “before adopting and implementing legislative or administrative measures that may affect them.” Article 10, not relevant here because the Project did not involve any relocation of

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government's understanding of FPIC when it permitted the project. In 2011, the U.S. government noted UNDRIP's "moral and political force" while clearly stating that UNDRIP is "not legally binding or a statement of current international law."⁴ Further, the U.S. government has interpreted UNDRIP's provisions on FPIC to be consistent with existing federal law requiring consultation. In the U.S. government's interpretation, FPIC "call[s] for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken."⁵ As we have previously described to HRW, and as multiple court decisions have confirmed, before permitting the Project BLM engaged in years-long consultation that fully complied with federal law and, accordingly, the U.S. government's interpretation of FPIC.⁶

You state that "the [BLM's] authorization of the construction and future operation of the mine at Thacker Pass violates Indigenous peoples' rights under international human rights standards to their ancestral and traditional land, their freedom of religion, and their right to practice their culture." This statement appears to refer to Article 12 of UNDRIP.⁷ But, as noted, UNDRIP is not binding in the United States. Further, the Treaty of Ruby Valley, which is the treaty that pertains to Western Shoshone peoples in the Thacker Pass area, does not reserve rights to access off-reservation public land. In any event, the Project's authorization is consistent with Article 12 of UNDRIP, which provides only that "States shall seek to enable the access" to "religious and cultural sites." Both BLM and LAC have sought to enable such access, consistent with federal law permitting mining on public lands and with the necessary health, safety, and operational limitations that accompany mining.

With respect to religious freedom, the Supreme Court has held, and the Ninth Circuit recently reiterated, that government actions with respect to publicly owned land, such as BLM's

indigenous peoples, provides that "[n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned."

⁴ Dep't of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, at 1 (Jan. 12, 2011).

⁵ *Id.* at 5. The U.S. government's understanding of FPIC, and consultation requirements under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), also do not require periodic renewals of FPIC—though consistent with federal policy consultation between the government and Tribes may be ongoing.

⁶ *See supra* n.1. Further, we note that, as your letter recognizes, FPIC applies to government-to-government consultation. Though LAC has extensively coordinated with Tribes in the Thacker Pass area, FPIC principles do not govern that coordination given that LAC is not a government entity.

⁷ Article 12 states that "[i]ndigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."

approval of the Project, do not impinge on Tribes' or tribal members' freedom of religion under the Free Exercise Clause or under the Religious Freedom Restoration Act.⁸

You "conclu[de]," without adducing evidence, "that Fort McDermitt Paiute and Shoshone Tribe . . . leaders opposed the Historic Properties Treatment Plan (HPTP) portion of the permitting process for the mine," and suggest that this undermines FPIC. As we state above and as HRW acknowledges, FPIC applies to government-to-government consultation rather than to concerns raised by individual members of a Tribe. LAC is not aware of any evidence that the Fort McDermitt Tribal Council opposed the HPTP. Indeed, we noted in our previous response to HRW vocal support for the Project offered by the Chairmen of the Fort McDermitt Tribe from 2022–24. The HPTP for the Project complies with the National Historic Preservation Act (NHPA) by addressing the Project's impact on cultural resources protected by the NHPA.

Further, and as we explained in response to HRW's May 29 letter, LAC has extensively coordinated with the Fort McDermitt Tribe. LAC's coordination includes a Community Benefits Agreement with the Fort McDermitt Tribe; employment of 11 Fort McDermitt Tribe members as cultural monitors/technicians during the cultural field surveys that form the backbone of the NHPA analysis for the Project; multiple job trainings for employment at LAC's projects and in the mining industry; and a partnership with Sawtooth Mining to provide temporary and full-time employment opportunities to members of the Fort McDermitt, Duck Valley, and Navajo Tribes.

You also note various concerns regarding the environmental impact of the Project. These concerns are all addressed by and exhaustively analyzed in, among other documents, BLM's EIS for the Project and NDEP's air quality, reclamation, and water pollution control permits for the Project. Additionally, as we noted in our previous response to HRW, water for the Project was previously consumptively used by agricultural users in the area. Multiple rulings, including by federal courts and the Nevada State Environmental Commission, have confirmed the propriety of these federal and state permitting processes.⁹

Finally, you express concerns—though without reference to particular issues arising from the Project or its workforce hub in Winnemucca—regarding increased gender-based violence as a result of the Project. LAC has no tolerance for violence of any kind and will take swift responsive action should any of its employees or contractors commit an act of violence. Additionally, as noted, LAC has coordinated with the Fort McDermitt Tribe, the Tribe with a reservation closest to the Project. The Fort McDermitt Reservation is a 50-mile commute from the Project and the workforce hub is even further—about 70 miles away. Other reservations are significantly further from the Project.

⁸ See *Apache Stronghold v. United States*, 95 F.4th 608, 622 (9th Cir. 2024) (relying on *Lyng v. Nw. Indian Cemetery Prot. Ass'n*, 485 U.S. 439, 108 (1988)).

⁹ See, e.g., *W. Watersheds Project*, U.S. App. LEXIS 18063; *Bartell Ranch*, U.S. Dist. LEXIS 19280;

We provide responses below to HRW's specific questions. We ask that HRW carefully consider those responses as well as the general response set forth above. We also ask that HRW carefully consider (1) the overwhelming evidence, including court decisions, that permitting processes for the Thacker Pass Project have fully complied with all relevant law including federal and state laws governing historic preservation, environmental protection, and religious freedom; and (2) LAC's sustained efforts, addressed below and in our response to HRW's May 29 letter, to coordinate with Tribes.

Sincerely,



Tim Crowley
VP, Government and External Affairs

Annex 1: Additional Questions for Lithium Americas

1. Access to Ancestral Lands, Right to Freedom of Religion, and Right to Culture

- a. What steps is Lithium Americas taking to preserve Indigenous peoples' access to the project area for the purposes of hunting, gathering religious and medicinal plants, feathers, and food?

Lithium Americas operates a fully permitted active construction site with heavy equipment that requires the utmost focus and adherence to safety policies. LAC does not oppose and has never opposed peaceful gatherings on public land adjacent to the construction site, and such gatherings have occurred.

- i. An Indigenous community member expressed that her traditional medicines are viewed by Lithium Americas and mine operators as a nuisance. What is Lithium Americas' perspective on this allegation?

We do not agree with these characterizations.

LAC has committed to building a greenhouse at the FMT community for growing traditional, medicinal foods. This commitment is part of the Community Benefits Agreement with the Tribe. Construction of the greenhouse will commence after LAC makes its Final Investment Decision.

- b. Are Indigenous community members allowed access to the entire project area (including the mine site) so they can access their ancestral and sacred land for the purposes stated above? If not, what is the domestic legal justification offered by Lithium Americas for this infringement of international human rights law?

Fort McDermitt tribal members have an open invitation to visit the site. These visits have to be scheduled for the safety of FMT members and workers at the site.

- c. Indigenous community members discussed with Human Rights Watch multiple accounts of being turned away from the project area by private security. These accounts also included being followed on the public road adjacent to the project area and being told by private security that the public road was not accessible. These allegations are in direct opposition to Indigenous Peoples' right to access their ancestral land. Has Lithium Americas' private security interacted with Indigenous community members using the public road or attempting to access the project area, mine site or adjacent lands?

Pole Creek Road is a public road that bisects the Thacker Pass Project. It remains open to all users.

Yes, LAC has interacted with Native Americans on Pole Creek Road. Here is a video showing our head of security asking if we could use that public road. [\(20+\) Video | Facebook](#)

- i. Has Lithium Americas' private security engaged with any law enforcement agency to restrict access to the land?

No

- ii. Has Lithium Americas' private security ever stopped, including a temporary stop, or attempted to deter a vehicle driving on the road adjacent to the project area? If so, what was the purpose of this/these vehicular stop/s and the legal basis for the stop/s.

No. Lithium Americas uses a contract security company that does not have vehicles equipped to pull other vehicles over.

- iii. Does Lithium Americas' have an internal policy regarding private security engagement with the public on the road adjacent to the project area?

LAC's security contractor is not authorized to pull vehicles over.

- iv. What instructions or training has Lithium Americas provided to its staff, contractors and private security concerning Indigenous community members' ability to access the area?

All LAC employees have attended Native American cultural sensitivity training. LAC is proceeding to ensure all contractors and new hires receive the training.

- d. Human Rights Watch and the American Civil Liberties Union observed extensive fencing and no trespassing signs on and near the project area, including the mine site. Please describe the parameters of these restrictions and their purpose. Please describe how the parameters and purpose intersect with Indigenous Peoples' right to access their land.

Lithium Americas operates a fully permitted active construction site with heavy equipment that requires the utmost focus and adherence to safety policies. The area

is closed to the public. All access to the site requires permission by LAC, and all visitors must receive safety training and site orientation.

- e. Indigenous community members told Human Rights Watch that the mine's construction is killing their traditional medicines located on the land and that Lithium Americas views the medicine as a nuisance. What is the company's view on this?

Answered above.

- f. Indigenous community members told Human Rights Watch that the mine's construction has already disrupted traditional hunting grounds, stating that deer no longer inhabit the mine area, and that sacred medicines and foods that previously existed and flourished on the land are no longer present. What is the company's view on this?

Thacker Pass will disturb the surface of less than 7,000 acres, which is 0.114 percent of the total area in the county. There are currently more than 100,000 acres of cultivated land in the county. Thacker Pass's land impacts are comparatively very low.

- g. What measures is Lithium Americas taking to recognize and preserve the connections between Peehee Mu'huh and the 1865 massacre of Indigenous peoples and to create opportunities for Indigenous peoples to access the site and commemorate the massacre?

The following was provided in our first response to Human Rights Watch:

A key claim brought by plaintiffs was that the BLM failed to properly notify certain tribes about the project, meaning that they were unable to raise concerns or provide information about the cultural importance of Thacker Pass to their tribe. To begin, the plaintiffs represented tribes located no closer than 200 miles from Thacker Pass, and as far away as 260 miles.

One of these closely scrutinized claims was the allegation that Thacker Pass is located on the site of a massacre of Native Americans by American soldiers that took place in 1865. The evidence concluded, and a judge agreed, that the site of the massacre is situated several miles from the Project. The plaintiffs were denied an injunction request based on this issue. The following is an excerpt from the injunctive relief ruling.

As to the Tribes' claimed specific harm—disturbance of burial and/or massacre sites—the evidence before the Court does not support their claims. As discussed above as to likelihood of success on the merits, the 1868 field notes do not show a massacre happened within the Project area. Further, the HPTP states that archival background research and extensive pedestrian surveys yielded the historic properties in the plan, none of which are listed as burial or massacre sites, raising the reasonable implication that there are no burial or massacre sites within the Project area. (ECF No. 65-14 at 32.) And the HPTP includes a plan if human remains are unexpectedly discovered. (Id. at 76.) In addition, at least one member of the Fort McDermitt Paiute Shoshone Tribe says that her ancestors would not be buried in the ground, suggesting that there are no burial sites within the Project area that would be disturbed by digging. (ECF No. 66-10 at 3.) Further, despite extensive trenching and digging in the Project area over the past 10 years, no human remains have been found. (ECF No. 66-2 (including pictures as attachments); see also ECF No. 66-3.) And neither the Eben nor Teeman declarations describe a specific location for the massacre and/or burial sites they believe exist within the Project area with information sufficiently specific to place those sites within the Project area. (ECF Nos. 45- 1, 62-1, 71-1, 73-2.) Thus, the Court cannot substantiate the Tribes' allegations that digging incident to the HPTP will disturb any burial sites. The Tribes have accordingly not met their burden to show irreparable harm.

The 15-year cultural inventory study referenced in the court proceedings was completed across nearly 13,000 acres at Thacker Pass from 2007 to 2022. This thorough analysis of the project site ensured that historic artifacts were properly catalogued. The findings from the study suggest the presence of historic obsidian tools as well as roads and sites related to ranching and the Civilian Conservation Corps. No human remains or funerary items were found.

As mentioned above, 11 Fort McDermitt Tribe members worked alongside expert third party Far Western Anthropological Research Services in 2022 as part of the cultural survey work. Summit Lake Paiute Tribe and the Winnemucca Indian Colony – the other closest tribes to the project area – were also consulted.

- h. Many Indigenous community members expressed that the mine will detrimentally impact the survival of the Indigenous cultural practices tied to the land. They expressed that Lithium Americas' does not care for the survival of the culture or the people. What is Lithium Americas' perspective on this allegation?

From our previous response to you:

Lithium Americas is committed to upholding the rights and interests of workers and local communities across our supply chain and operations. We are committed to upholding fundamental human rights as defined in the UN's Universal Declaration of Human Rights.

You can find our Human Rights Policy [here](#). It applies not only to every corner of our company, but to our vendors and any other external partners as well.

2. Free, Prior, and Informed Consent.

- a. What policies does Lithium Americas have in place, if any, that commit to respect Indigenous Peoples' rights to free, prior, and informed consent (FPIC) in accordance with international human rights standards?

From our previous response to you:

The United States has led the world in recognizing the inherent sovereignty of its original inhabitants. In the U.S. today, federally recognized Indian tribes have full decision-making powers over their recognized territories. The Thacker Pass Project is not in a federally recognized Native American territory. If it were, mining could not happen without the express consent and approval of that Tribe. Nevertheless, as described above, LAC has undertaken active engagement to form a close relationship with the Fort McDermitt Tribe and is proud of our mutual Community Benefits Agreement that will provide support for that community for years to come.

- i. Please describe how the company will obtain FPIC for new and existing mining projects.
- ii. Why doesn't Lithium Americas human rights policy explicitly require the company to respect Indigenous Peoples' right to give to their free, prior and informed consent for projects affecting their lands or other resources?
- b. What due diligence has Lithium Americas conducted to determine if BLM conducted an adequate consultation process aimed at obtaining Indigenous peoples' free, prior and informed consent prior to permitting the Thacker Pass project?

This issue was thoroughly vetted in U.S. Federal and District Courts. Below are key passages from the ruling in the United States District Court (dated February 6, 2023 and sent to you previously), which found in favor of the Bureau of Land Management's Record of Decision for Thacker Pass:

- *"The Court is ultimately persuaded by Federal Defendants' argument that BLM's decision not to consult Tribal Plaintiffs on the Project was reasonable and made in*

good faith based on the information BLM had at the time it initiated consultation for the Project.”

- *“The Ethnographic Assessment also contains information that contributed more directly to BLM’s decision not to consult Tribal Plaintiffs on the Project. Specifically, several tribes identified sacred and massacre sites summarized in the Ethnographic Assessment, but none of the tribes who spoke to BLM’s consultant who prepared the Ethnographic Assessment identified the Thacker Pass area as either sacred or a massacre site.”*
- *“Burns Paiute Tribe apparently did not respond to any letters requesting consultation on the Ethnographic Assessment, but Charisse Snapp, identified in the Ethnographic Assessment as the tribe’s Cultural Resource Representative, is recorded as having said on a telephone call on July 28, 2005, that Burns Paiute Tribe, ‘would defer consultation to the tribes that had reservations closer to the study area.’”*
- *“The Court agrees with Federal Defendants that they ‘took the requisite hard look at the potential impacts to cultural resources from the Thacker Pass Project. More specifically, BLM reviewed 38 cultural resource inventories conducted over 49 years that investigated the Project area (both mining and exploration), along with the area of indirect effects. These inventories included a 2018 survey that inventoried 12,963 acres for the Project.’”*
- *“Between 2010 and 2017, BLM consulted with tribes (including, in one instance, the Reno Sparks Indian Colony) on four projects implicating the Project area, but BLM did not learn from any of those consultations either that Tribal Plaintiffs had a special interest in the Thacker Pass area, or that the Thacker Pass area was religiously or culturally significant to them.*

- c. What steps has Lithium Americas taken to obtain the free, prior, and informed consent of Indigenous peoples impacted by the Thacker Pass mine project? Specifically:

See answer above.

- i. Does Lithium Americas believe that it has obtained the free, prior, and informed consent of the Fort McDermitt Paiute and Shoshone Tribe (FPMST)? In addition to the information on engagement with FPMST provided in your June 2024 letter, what steps did Lithium Americas take to obtain the Tribe’s free, prior, and informed consent to the mine?

- ii. What steps did Lithium Americas take to identify, in addition to the FPMST, Indigenous Peoples with ancestral, cultural, or religious links to the Thacker Pass project area, in light of the fact that the settler colonial system of Tribes and reservations is not necessarily accepted by or contiguous with all Indigenous people who might be impacted by the Thacker Pass project?
- iii. How did Lithium Americas assess whether Tribes relocated to reservations a significant distance from the project site might have ancestral, religious, and cultural links to Peehee Mu'huh?

From our previous response to you:

The 15-year cultural inventory study referenced in the court proceedings was completed across nearly 13,000 acres at Thacker Pass from 2007 to 2022. This thorough analysis of the project site ensured that historic artifacts were properly catalogued. The findings from the study suggest the presence of historic obsidian tools as well as roads and sites related to ranching and the Civilian Conservation Corps. No human remains or funerary items were found.

As mentioned above, 11 Fort McDermitt Tribe members worked alongside expert third party Far Western Anthropological Research Services in 2022 as part of the cultural survey work. Summit Lake Paiute Tribe and the Winnemucca Indian Colony – the other closest tribes to the project area – were also consulted

- iv. What engagement and consultation, if any, has Lithium Americas had with other tribes beyond FPMST, including members of Reno-Sparks Indian Colony (RSIC), Burns Paiute Tribe (BPT), Summit Lake Paiute Tribe (SLPT), Winnemucca Indian Colony (WIC), and the Duck Valley Shoshone-Paiute Tribe (DVSPT)?

Formal consultation is a government-to-government engagement. LAC has had, and continues to have, engagement with the surrounding communities.

- v. Does Lithium Americas believe that it has obtained the free, prior, and informed consent of any Indigenous peoples beyond FPMST?

See the response above.

- vi. What is Lithium Americas' response to the fact that FPMST leaders opposed the HPTP portion of the permitting process for the mine, members of and

people associated with the Tribe expressed their opposition to the mine directly to the Department of Interior prior to the signing of the Community Benefits Agreement, and that some people associated with the Tribe continue to oppose the mine?

The tribal council has not expressed this. Which FMPST community members have?

- vii. Is Lithium Americas aware of the need to create express opportunities and requirements for review and renewal of FPIC; and if so, how is it ensuring that there are such opportunities for review and renewal of FPIC?

See the response above.

- viii. Does LA believe it retains the free, prior, and informed consent of FMPST for the mine? What evidence is LA relying on for that assertion?

See the response above.

- d. Please could Lithium Americas clarify why “it is not at liberty” to share the Community Benefits Agreement signed with the Fort McDermitt Tribal Council in 2022?

Our contacts with the FMPST and others are private. You are welcome to request the document from the Tribe.

3. Impacts on Water and Air

- a. What steps is Lithium Americas taking to address the risk that toxic materials will leak from the Thacker Pass mine’s tailings stack?

The State of Nevada engaged in a rigorous water permitting process that included extensive consideration of the filtered tailings. The facility will include a lined membrane, a compacted liner and leak detection and capture systems.

- b. What measures is Lithium Americas taking to address the risk of contamination of groundwater as a result of backfilling excavated mine sites?

The water at the mine site has naturally elevated constituents including arsenic and antimony. Nevertheless, controls are planned to prevent groundwater degradation.

- c. What steps is Lithium Americas taking to ensure that water consumption for the mine does not impact the availability of water in the area, especially in light of the aridity in the area and previous history of elevated contaminants in the water supply that required the municipal water district to provide access to bottled water starting in 2019 until 2021?

LAC acquired existing water rights that had previously been used in agriculture. The point of diversion (where the water is being pumped) has simply been moved.

Which municipal water district are you referring to?

- i. In Lithium Americas initial response to Human Rights Watch, Lithium Americas stated the water usage in phase one of the mine is equivalent to "around five alfalfa irrigation pivots of well water per year." Can Lithium Americas verify this analogy?

An alfalfa pivot in the Orovada area requires 3.9 acre feet of water and covers 125 acres.

- ii. How will the water usage impact the accessibility of water in the already arid region of the McDermitt caldera?

As stated above, our project does not have a net increase in water use. We are converting water used for agriculture to processing.

- iii. According to the Environmental Impact Statement, the mine will use 2,600 acre-feet/year (equivalent to a pumping rate of 1,612 gallons per minute, on average, for a year) for the first phase (years 1-4 of the mine) and 5,200 acre-feet/year (equivalent to a pumping rate of 3,224 gallons per minute, on average, for a year) for the second phase (years 5 to 41). For comparison, the average amount of groundwater pumped for agricultural irrigation in Humboldt County between 2011 and 2020 was about 12,338 acre-feet/year, according to a 2022 report from the Humboldt County Department of Public Works. Is it accurate that when the mine is fully operational, it will require nearly one-half as much groundwater on an annual basis as all agricultural irrigation in the county, the 13th largest in the country?

According to the University of Nevada Cooperative Extension, agriculture water use in Humboldt County in 2012 was approximately 384,916 acre-feet. Our Phase 1 use represents .68 percent of that.

- d. What steps is Lithium Americas taking to ensure that air pollutants from the mine, including from the production of sulfuric acid, remain within national and state-level air quality standards?

Please review our air permit.

- e. The Environmental Protection Agency raised concerns with the water quality mitigation and monitoring plans in the Environmental Impact Statement. Did Lithium Americas incorporate or respond to this critique?

In response to those comments, in part, the BLM has created an Adaptive Management approach so that data will continue to inform monitoring and mitigation planning through the life of the project. For example, the Record of Decision provides for “the continued monitoring in conjunction with the mine’s water pollution control permit, and may require additional monitoring of seeps, springs, and non-mining wells outside the groundwater model boundary, if necessary.”

- f. Great Basin Resource Watch commissioned an independent study by Dr. Steven Emerman to examine Lithium Americas’ studies and calculate possible seepage rates. Dr. Emerman found that the levels of seepage from the filtered clay tailings would be significantly greater than predicted by Lithium Americas. What measures is Lithium Americas taking to ensure these heightened levels of seepage will not occur?

Please see our tailing impoundment permit.

- g. Indigenous community members told Human Rights Watch that the decision makers regarding the mine are only considering the present and are not worried about the unborn and the future generations. What is the company’s view on this?

Lithium Americas is building a plant that will dramatically reduce carbon emissions for the betterment of future generations. We would like to know what Human Rights Watch is doing to mitigate their office impacts to ensure future generations aren’t harmed.

- i. Indigenous community members told Human Rights Watch and the ACLU that the company has not adequately considered the environmental and human health impacts of air pollution caused by the chemicals used in mining production and physical processing. What is the company’s view on this?

Please see the Thacker Pass Environmental Impact Statement and State of Nevada air permit.

- ii. Great Basin Resource Watch argued that the EIS, based largely on scientific studies commissioned by Lithium Americas, underestimated likely sulfur dioxide emissions from the production of sulfuric acid. What is the company's view on this?

We disagree with Great Basin Resource Watch.

- h. Dr. Steven Emerman examined Lithium Americas' studies and calculated seepage rates of the mine's tailings. Lithium Americas stated that there were errors in Dr. Emerman's report and that the report was "not reliable and should not be considered by the [Nevada State Environmental] Commission." What errors was Lithium Americas referring to in Dr. Emerman's report?

This issue was adjudicated by the Nevada State Environmental Commission, which sided unanimously with LAC. The ruling of the Environmental Commission included the following findings:

- *In compliance with NAC445A.433(1), the Permit is a "zero discharge" permit.*
- *The technical reports and information submitted by LNC as part of the application process and submitted to the Commission as part of the administrative record offer reasonable support for the Division's factual determination that the design of the Clay Tailing Filter Stack, the Seepage Collection System, and the Reclaim Pond will protect the waters of the State from degradation. See NAC 445A.424(1)(b).*
- *The terms of the Permit offer reasonable parameters and monitoring requirements for the Division ensure that LNC's construction, maintenance, and closure of the Clay Tailing Filter Stack, the Seepage Collection System, and the Reclaim Pond protects the water of the State from degradation in compliance with NAC 445A.431.*

4. Risks of Sexual Violence against Women

- a. Did Lithium Americas include an assessment of risks of sexual violence against Indigenous women and girls in its environmental and social impact assessments and other risk analysis for the Thacker Pass mine? If not, why not?

We have no tolerance for violence against anyone.

- i. If Lithium Americas did assess the impacts to Indigenous women and girls, please share any conclusions from this assessment.
- b. What measures has Lithium Americas taken to assess and mitigate the risk of sexual violence against Indigenous women and girls due to an influx of construction and mine workers linked to the Thacker Pass mine?

We have no tolerance for violence against anyone.

- c. When the workforce hub is fully constructed, what are the predicted demographics (including gender) of the workforce that will be housed at the hub?

LAC welcomes all genders and races to help build Thacker Pass. Is there a particular gender or race that Human Rights Watch has an issue with?

Appendix V: Human Rights Watch Letter to Bureau of Land Management— May 29, 2024

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May 29, 2024

Re: Thacker Pass Lithium Mine and the McDermitt Caldera

HRW.org

Dear Secretary Haaland, Director Stone-Manning, State Director Raby, and District Manager Burton:

Human Rights Watch is writing to seek information related to our research on lithium production in the McDermitt Caldera, Nevada, United States.

Human Rights Watch is an independent international human rights nongovernmental organization that monitors and reports on human rights in some 100 countries worldwide. This includes work on Indigenous peoples' rights, as well as rights issues related to racial justice and equity. Human Rights Watch has also previously conducted extensive research into human rights risks associated with activities by extractive industries.

Human Rights Watch is investigating potential violations of international human rights standards and laws in connection with lithium mining in the McDermitt Caldera. The research so far has relied on multiple sources and has included close collaboration with impacted Indigenous people and community organizations. As part of our research, we are writing to request documentation that identifies the steps the Bureau of Land Management and the Department of Interior have taken to comply with international human rights law as it applies to Indigenous people and their ancestral land.

Also, although the investigation is ongoing, we wish to raise concerns that violations of Indigenous peoples' international human rights may have already occurred, may be continuing, and may occur in the future in connection with lithium mining and exploration in the McDermitt Caldera.

As a state party to the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination, the United States is bound by the terms in each

of these treaties.¹ The United States has also repeatedly expressed its support for the UN Declaration on the Rights of Indigenous Peoples.²

To ensure our report is accurate, we would appreciate your response to the following questions:

1. Could the Bureau of Land Management please provide its internal policies on the protection of Indigenous peoples' ancestral lands, including how impacted Indigenous peoples are identified for a given project, and any protections included for Indigenous peoples' right to access their ancestral land?
2. Could the Bureau of Land Management please provide information on any specific measures it adopted or adaptations it made to its normal procedures in the consultation phase of the Thacker Pass permitting process due to the Covid-19 pandemic?
3. Could the Bureau of Land Management please provide commentary on how it protected the right to free, prior, and informed consent (FPIC) regarding mining and mining exploration in the region of Thacker Pass?
4. To our knowledge, the Bureau of Land Management sent consultation letters to four Tribes. The Bureau of Land Management did not receive a single response to these letters. Please detail all dates on which letters were sent and to which addresses. Could the Bureau of Land Management please offer commentary on whether it considers these letters, and subsequent virtual meetings, without any Tribal government involvement, to constitute government to government consultation under domestic law?
5. Could the Bureau of Land Management please offer details on information conveyed to Tribes and Tribal communities regarding mining and exploration in the McDermitt Caldera? Please include dates, individuals, and Tribes, and what method the communication was conveyed (*inter alia* telephone calls, radio or television, in person visits, electronic correspondence, public meetings, and/or posting of flyers at public buildings).
6. Could the Bureau of Land Management please share any archaeological reports Lithium Americas has provided to the Bureau of Land Management?

¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969 (ratified by the United States October 21, 1994).

² US Department of State, Announcement of US Support for the United Nation Declarations on the Rights of Indigenous Peoples, Jan. 12, 2011, <https://2009-2017.state.gov/s/argis/154553.htm> (accessed May 15, 2024); US Mission to the United Nations, Explanation of Position on "Rights of Indigenous Peoples," Nov. 7, 2019, <https://usun.usmission.gov/united-states-explanation-of-position-on-rights-of-indigenous-peoples/> (accessed May 15, 2024).

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² US Department of State, Announcement of US Support for the United Nation Declarations on the Rights of Indigenous Peoples, Jan. 12, 2011, <https://2009-2017.state.gov/s/argia/154553.htm> (accessed May 15, 2024); US Mission to the United Nations, Explanation of Position on "Rights of Indigenous Peoples," Nov. 7, 2019, <https://usun.usmission.gov/united-states-explanation-of-position-on-rights-of-indigenous-peoples/> (accessed May 15, 2024).

Appendix VI: Human Rights Watch Letter to General Motors—July 8, 2024

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HUMAN
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WATCH

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July 8, 2024

Dear Ms. Barra,

I write on behalf of Human Rights Watch to seek information related to our research on the Thacker Pass lithium mine in the McDermitt Caldera, Nevada, United States.

Human Rights Watch is an independent international human rights nongovernmental organization that monitors and reports on human rights in some 100 countries worldwide. This includes work on Indigenous peoples' rights, as well as rights issues related to racial justice and equity. Human Rights Watch has also previously conducted extensive research into human rights risks associated with activities by extractive industries.

Human Rights Watch is working in close collaboration with Indigenous people and community organizations to investigate potential violations of international human rights standards and laws in connection with the Thacker Pass lithium mine. As part of our research, we are writing to request information and documentation concerning steps your company has taken to comply with international human rights law as it applies to Indigenous people and their ancestral land.

Businesses have the responsibility, as reflected in the UN Guiding Principles on Business and Human Rights, to respect the human rights of Indigenous people, including by addressing “adverse human rights impacts with which they are involved.”¹ The UN Special Rapporteur on the Rights of Indigenous Peoples affirmed that businesses' responsibility to respect human rights includes respecting the standards in the UN Declaration on the Rights of Indigenous Peoples.²

International human rights standards provide that Indigenous people have rights to their ancestral land, and governments should obtain Indigenous people's free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.³ Like all people, Indigenous people also have the rights

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¹ UN Guiding Principles on Business and Human Rights, 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed April 22, 2024), principles 11 and 23.

² Special Rapporteur on the Rights of Indigenous Peoples, “Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive industries and Indigenous Peoples,” A/HRC/24/4, July 1, 2013, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf (accessed May 10, 2024).

³ UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, A/RES/61/295, art. 10, 11, 12, 28, 29; UN Human Rights Committee, General Comment No. 23: Article 27, Rights

to life, the highest attainable standard of health, water, a healthy environment, and an adequate standard of living.⁴ These rights must be respected without discrimination based on race or ethnicity.⁵ International human rights law also protects Indigenous peoples' right to practice religion and culture, free from racial or ethnic discrimination.⁶ These rights incorporate access to sacred sites and cultural heritage.⁷

To ensure our report is accurate, we would appreciate your response to the following questions:

1. Prior to signing an equity investment and offtake agreement with Lithium Americas, what due diligence did General Motors undertake to ensure free, prior, and informed consent was obtained from all Indigenous communities that may be affected by the lithium mine at Thacker Pass?
2. As a shareholder and potential future customer of Lithium Americas, and an investor in the Thacker Pass project, what steps has General Motors taken to ensure Lithium Americas acts in accordance with international human rights law, including respect for Indigenous rights considering the religious, cultural, and spiritual importance of Thacker Pass?

We would welcome any other information you would like to share in relation to General Motors involvement in the Thacker Pass lithium mine and steps taken to ensure respect for Indigenous peoples' rights in the project.

of Minorities, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), para. 7, <https://www.refworld.org/docid/453883fc0.html> (accessed May 14, 2024); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, ratified by the United States June 8, 1992, art. 1, 27; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 1, 27; Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of Indigenous Peoples, U.N. Doc. A/52/18, annex V (1997), para. 5, https://www.eods.eu/library/UN_International%20Convention%20on%20the%20Elimination%20of%20Racial%20Discrimination_General%20recommendation%2023_1997_EN.pdf (accessed May 15, 2024).

⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11, adopted January 20, 2003, para. 12(c) (i); Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25; ICESCR, art. 11(1), 12; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 24; UN General Assembly, "The Human Right to a Clean, Healthy and Sustainable Environment," Resolution 76/300, A/RES/76/300, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/77/PDF/N2244277.pdf?OpenElement> (accessed October 25, 2023); Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25.

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation 23, Rights of Indigenous Peoples, para. 1, 2, 3.

⁶ *Ibid.*; UNDRIP, art. 11, 12; ICCPR, art. 5, 26, 27.

⁷ See generally UN Human Rights Council, Interim Report of the Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, U.N. Doc. A/77/514, October 10, 2022; UN Human Rights Council, Expert Mechanism on the Rights of Indigenous People, "Promotion and Protection of the Rights of Indigenous Peoples With Respect to Their Cultural Heritage," U.N. Doc. A/HRC/30/53 (2015).

We would be very grateful to receive a written reply by August 5, 2024 so your responses can be reflected in our reporting. Please note that we may, at our discretion, publish any response either in full or in part on our website. We would also very much welcome an opportunity to meet to discuss these issues. We can be reached at [REDACTED].

Thank you for your attention to this important matter.

Sincerely,

[REDACTED]

Tanya Greene

Appendix VII: Human Rights Watch Letter to General Motors—December 10, 2024

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Andrew Zell

December 10, 2024

Mary Barra
Chief Executive Officer
General Motors

Re: Thacker Pass Lithium Mine and the
McDermitt Caldera

Dear Ms. Barra,

We are writing to follow up on our July 8, 2024, letter regarding research on the Thacker Pass lithium mine in the McDermitt Caldera, Nevada, United States.

We are in the process of finalizing our report on the Thacker Pass mine and have not yet received a response from General Motors.

In our July 8 letter, we requested information from General Motors on the steps it had taken, as an investor in¹ and future customer for the Thacker Pass mine, to conduct due diligence over the human rights impacts of the mine and efforts to obtain free, prior, and informed consent from the Indigenous peoples affected by it. To fulfill their responsibilities under the United Nations Guiding Principles on Business and Human Rights (UNGPs), companies should conduct human rights due diligence prior to investing in a business, as well as during the life of the investment, and then use their leverage as investors to prevent, mitigate and address abuses.²

We understand that, in October 2024, General Motors and Lithium Americas signed an agreement to establish a joint venture³, which will give General Motors a 38 percent ownership stake in the Thacker Pass mine itself. The joint venture will fund, develop, construct and operate the Thacker Pass mine, with Lithium Americas managing the project on behalf of the joint venture

¹ "GM and Lithium Americas invest in U.S. lithium EV battery production", General Motors, press release, January 31, 2023, <https://news.gm.com/home.detail.html/Pages/news/us/en/2023/jan/0131-lithium.html>

² UN Working Group on Business and Human Rights, "Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights," June 2021, p. 6. <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation-reader-friendly.pdf>

³ "Unlocking Thacker Pass: General Motors to Contribute Combined \$625 Million in Cash and Letters of Credit to New Joint Venture with Lithium Americas" Lithium Americas, press release, <https://lithiumamericas.com/news/news-details/2024/Unlocking-Thacker-Pass-General-Motors-to-Contribute-Combined-625-Million-in-Cash-and-Letters-of-Credit-to-New-Joint-Venture-with-Lithium-Americas/default.aspx>



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partners. To fulfill their responsibilities under the UNGPs, companies participating in joint ventures should use their leverage to ensure the joint venture respects human rights in its operations.⁴

In view of the joint venture agreement, and General Motor's lack of response to our July 8 letter, below we provide questions for General Motors in relation to the Thacker Pass mine. **The questions found in this letter below offer General Motors the opportunity to respond to the findings of the report. Each question corresponds with a finding.**

We've also attached as an annex to this report our preliminary findings on the human rights impacts of the mine on Indigenous peoples and would appreciate any additional information General Motors would like to share prior to publication of our report.

1. What steps has General Motors taken to ensure that the funding, development, construction and operation of the Thacker Pass mine respects international human rights law, including Indigenous peoples' rights to ancestral land, freedom of religion, cultural rights, and rights to free, prior and informed consent?
2. Prior to signing an equity investment and offtake agreement with Lithium Americas in January 2023, what due diligence did General Motors undertake to ensure free, prior, and informed consent was obtained from all Indigenous communities that may be affected by the lithium mine at Thacker Pass and to consider the human rights impacts and risks associated with the mine?
3. Prior to signing an agreement with Lithium Americas to establish a joint venture in October 2024, what *additional* due diligence did General Motors undertake to ensure free, prior, and informed consent was obtained from all Indigenous communities that may be affected by the lithium mine at Thacker Pass and to consider the human rights impacts and risks associated with the mine?
4. What role does the joint venture agreement give General Motors in the development, construction, and operation of the Thacker Pass mine? How will General Motors exercise oversight over the joint venture to ensure that it respects international human rights, including Indigenous peoples' rights to ancestral land, freedom of religion, cultural rights, and to free, prior and informed consent?
5. What consultations has General Motors undertaken with Indigenous peoples whose ancestral lands and cultural and religious practices are and will be impacted by the Thacker Pass mine?

We would be very grateful to receive a written reply by **December 20, 2024 (9 business days)** so your responses can be reflected in our reporting. Please note we may, at our

⁴ UN OHCHR, "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide," June 2012, https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf, p. 5, 22.

discretion, publish any response either in full or in part on our website. We would also welcome an opportunity to meet to discuss these issues.

We can be reached at [REDACTED]

Thank you for your attention to this important matter.

Sincerely,

[REDACTED]

Tanya Greene
Director, US Program

Annex 1: Summary of Research Findings

Human Rights Watch and the ACLU's research examines the impacts of the Thacker Pass mine on Indigenous people that have longstanding ancestral, cultural, and religious ties to the McDermitt Caldera and the project site, including the mine.

Indigenous people call the land that includes and extends beyond the project site Peehee Mu'huh, which was the name for a former Numu/Nuwu and Newe village. For the Numu/Nuwu and Newe, Peehee Mu'huh encompasses the land between the Double H Mountains and the Montana Mountains, connecting the Quinn River Valley and the Kings River Valley. Indigenous peoples continue to use Peehee Mu'huh for religious ceremonies and prayer, and for hunting birds and other game, gathering traditional, medicinal, and spiritual feathers and plants, gathering foods and medicines. The land is also the site of at least two massacres, including a notorious 1865 massacre of Numu/Nuwu and Newe by the United States calvary, giving it extra significance as a place of remembrance and prayer.

Over the past year, Human Rights Watch and the ACLU have interviewed 39 people about the Thacker Pass mine and its impacts, including directly affected Indigenous community members and leaders, lawyers, academics, and scientists. We have also reviewed relevant court records and rulings and other documents from Lithium Americas, the Bureau of Land Management, and the Department of Energy.

Our research so far indicates that the US government's authorization of the construction and future operation of the mine at Thacker Pass violates Indigenous peoples' rights under international human rights standards to their ancestral and traditional land, their freedom of religion, and their right to practice their culture. Mine construction has already deprived the Numu/Nuwu and Newe of access to their ancestral land, with fences and security guards preventing community members from conducting their religious ceremonies and prayer in the proper way, hunting birds and other game, gathering

traditional, medicinal, and spiritual feathers and plants, and gathering foods and medicines.

The US government permitted the mine without any meaningful consultation with Indigenous people and without their free, prior, and informed consent (FPIC), a violation of international human rights law. The Bureau of Land Management's letters to tribal governments prior to permitting the mine, which were not followed by any meetings or in-person contact with Tribes or affected Indigenous people, fall far short of the consultation and decision-making process needed to obtain Indigenous peoples' FPIC. BLM also failed to even write to several Tribal governments with ancestral, religious, and cultural connections to Peehee Mu'huh. US courts' repeated decisions upholding BLM's inadequate consultation process reflect the failure of US federal and state law to adequately integrate the requirements of FPIC contained in international human rights law.

We are also concerned that Lithium Americas has failed to obtain Indigenous peoples' free, prior, and informed consent for its mining operations.

Lithium Americas has described to Human Rights Watch the company's engagement with the Fort McDermitt Tribe but has not discussed any consultation or consent process with other impacted Tribes or Indigenous people. FMPST [spell out] leaders also opposed the HPTP [spell out] portion of the permitting process for the mine, and members of and people associated with the Tribe have expressed their opposition to the mine directly to the Department of Interior and publicly prior to permitting and prior to the Tribal leadership's signing of a Community Benefits Agreement with Lithium Americas. After the signing of a Community Benefits Agreement, several members of FMPST, including members of the association called People of Red Mountain, have also continued to oppose the mine and have claimed that Lithium Americas did not obtain – and does not appear to have considered ways to periodically renew – Indigenous people's free, prior, and informed consent.

Indigenous peoples are also concerned about the mine's impact on their right to health, a healthy environment, and water. The use of acids and other chemicals during lithium processing creates a significant risk that, unless adequately controlled, toxic waste will pollute nearby waterways and ecosystems. Indigenous people, environmental groups and local ranchers have also argued that the mine's water consumption will increase water scarcity in an already arid area. Tribal members also fear that construction of the mine will impact air quality.

Community members have expressed concern that the mine, which is already bringing in an influx of largely non-Indigenous male workers,⁵ risks increasing the already disproportionate rates of sexual and other violence that Indigenous women, girls and two

⁵ "Labor Force Statistics from the Current Population Survey", U.S. Bureau of Labor Statistics, last modified January 26, 2024, <https://www.bls.gov/cps/cpsaat18.htm>. According to the US Bureau of Labor Statistics, construction work in the United States is 89 percent male and mining work in the United States is 85 percent male.

spirit people experience. These concerns are backed by documented instances of other extractive industry operations on or near Indigenous land that have been associated with increased violence against women, girls and two spirit people. Lithium Americas does not discuss the risk of contributing to the problem of missing and murdered indigenous women, girls, and two spirit people in its proposed plans for the mine. BLM, in its final EIS, cited Lithium Nevada Corporation (LNC) in 2020 for a claim that a “man camp,” would not be built for the Thacker Pass project. Yet Lithium Americas is constructing a “workforce hub” in Winnemucca, which is a housing hub (or camp) for the mine’s workforce (so far made up in its majority by men).⁶

⁶ “Lithium Americas Fact Sheet - January 2024”, Lithium Americas, fact sheet, https://s203.q4cdn.com/835901927/files/doc_downloads/thacker-pass/factsheets/2024/2025.pdf (accessed December 6, 2024). The Thacker Pass site team (which includes all types of workers – not only miners or construction workers) is 37% female, so if operating in the binary, 63% of the current workers are male.

Appendix VIII: General Motors Response to Human Rights Watch December 2024 Letter—January 3, 2024

Tanya Greene
Director, U.S. Program
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

Dear Ms. Greene,

Thank you for your December 10, 2024, letter to General Motors (“GM”) concerning the Thacker Pass Lithium Mine and the McDermitt Caldera. We appreciate the important work that Human Rights Watch (“HRW”) does around the world. We also recognize the gravity of the issues raised by HRW in the December 10 letter. We are grateful to HRW for sharing these observations and for the opportunity to respond.

As an initial matter, please accept our apologies for failing to respond to HRW’s July 2024 letter. This was unintentional. It appears the email from HRW was severely corrupted and the text did not reach us. In the future, please do not hesitate to follow up with GM’s ethical sourcing team at [REDACTED] and to me directly at [REDACTED].

With respect to your December 10 letter, please know that GM is committed to complying with the laws and regulations that apply to our business worldwide. We have been public and steadfast in our commitment to respecting human rights in all the communities in which we operate. This includes promotion of responsible and sustainable mining practices as we develop electric vehicles and our EV supply chain. Our collaborative approach to human rights aims to foster positive relationships with local tribes and communities, taking into consideration their interests and concerns throughout the mining process. By prioritizing ethical sourcing practices, we are committed to securing materials that not only meet our production needs but also align with our values of environmental stewardship and social responsibility.

General Motors’ approach to human rights is built on a comprehensive framework that aligns with relevant international principles such as the UN Guiding Principles on Business and Human Rights, the ILO Core Conventions, and the UN Declaration on the Rights of Indigenous Peoples. These principles are embodied in our Code of Conduct (Winning With Integrity), our Human Rights Policy, our Supplier Code of Conduct, and other key policies that reinforce our commitment to ethical business practices. Our Human Rights Policy, in particular, outlines our dedication to respecting internationally recognized human rights, while our Supplier Code of Conduct establishes expectations for our suppliers to adhere to these principles throughout their operations and supply chains. We strive to do business with companies that share our values, and we require our suppliers to commit to these shared values in our agreements. Additional information regarding our approach to human rights can be found in our Sustainability Report and related publications, available at: https://www.gm.com/content/dam/company/docs/us/en/gmcom/company/GM_2023_SR.pdf

Specific to the JV announced in October, GM is aware of the issues that have been raised by community members, stakeholders, and other interested parties with respect to Thacker Pass. We incorporated these concerns in our due diligence and investment decision, on Lithium Americas Corp. ("LAC"). LAC has been actively engaging with the local tribes in the area, including the Fort McDermitt Paiute and Shoshone Tribe ("FMPST"), to build respectful and collaborative relationships. LAC has undertaken efforts to engage and work with the Fort McDermitt Tribe and surrounding potentially impacted communities to understand any potential concerns and impacts related to the project. This includes the Community Benefits Agreement referenced in HRW's letter, as well as additional activities like conducting cultural resource surveys, engaging in dialogue, and implementing measures to protect cultural heritage and the environment.

LAC will continue to be primarily responsible for managing the JV and its activities; GM will be a minority owner of the JV and will not have management control. However, a Board of Directors, which includes representatives from GM, has been established at the JV level to oversee the operation of the JV, approve the project's budgets and business plans, and implement policies regarding, among others, human rights and stakeholder engagement. This framework is designed to maintain oversight and accountability. Additionally, a governance structure, which also includes GM representatives, has been developed under the Board of Directors to oversee human rights within the JV's operations and activities. This structure is intended to support the JV's commitment to the rights and interests of workers and local communities throughout its supply chain and operations, consistent with our agreements, GM's policies, and relevant international principles.

By working with LAC, we aim to ensure that our lithium sourcing is sustainable and meets ethical standards. For additional detail regarding the operation of the JV, the management of project and JV personnel, and the development of Thacker Pass generally, we would respectfully refer HRW to the appropriate contacts at LAC. That said, again, we are grateful for the opportunity to address these issues and welcome future engagement with HRW as the project progresses.

Thank you once again for your inquiry.

Fred Gersdorff

Appendix IX: Human Rights Watch Letter to Barrick Gold—December 12, 2024

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December 12, 2024

Mark Bristow
Chief Executive Officer
Barrick Gold

Re: Thacker Pass Lithium Mine and the
McDermitt Caldera

Dear Mr. Mark Bristow and Barrick Gold:

I am writing on behalf of Human Rights Watch and the ACLU to seek information related to our research on the Thacker Pass lithium mine in the McDermitt Caldera, Nevada, United States.

Human Rights Watch and the ACLU's research on Thacker Pass examines the impacts of the mine on Indigenous people that have longstanding ancestral, cultural, and religious ties to the McDermitt Caldera and the project site, including the mine.

In the course of our research, members of the Fort McDermitt Paiute and Shoshone Tribe have said that the risk of pollution from the lithium mine recalls the Tribe's experience with the Cordero and McDermitt mercury mines, which operated about 10 miles away from the Tribe's reservation. It is our understanding that the McDermitt mercury mine was, until its closure in 1989, operated by a company, Placer Domes US,¹ which was acquired by Barrick Gold in 2006.²

According to the EPA, the mine waste from the Cordero and McDermitt mercury mines was used as material for the construction of roads and a school in the area, including near Fort McDermitt town and near the Fort McDermitt Reservation.³ In the areas where mine waste had been deposited and at the mine sites themselves, EPA-commissioned sampling in 2010 and 2011 showed levels of

¹ John F. Childs, Ph.D., P.Geo, *Cordero Gold-Silver Project Technical Report, Opalite Mining District, Humboldt County, Nevada, USA*, effective date: August 1, 2007, https://www.silverpredator.com/documents/Cordero-43-101_09-04-07-Final.pdf, p. 9.

² "Barrick Completes Acquisition of Placer Dome," Barrick Gold, press release, March 15, 2006, <https://www.barrick.com/English/news/news-details/2006/Barrick-Completes-Acquisition-of-Placer-Dome/default.aspx>.

³ US Environmental Protection Agency, "McDermitt and Cordero Mercury Mine Sites," https://response.epa.gov/site/site_profile.aspx?site_id=7029 (accessed May 29, 2024).



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mercury and arsenic that exceeded the EPA's standards.⁴ The EPA concluded in 2012 that these hazardous substances could, if unaddressed, pose an imminent and substantial endangerment to the public health or welfare and the environment.⁵ The EPA then began a clean-up of the contaminated sites, with the exception of the mine locations, which concluded in 2013.⁶

In September 2017, the EPA stated that it had reached a settlement agreement with Barrick Gold,⁷ requiring the company to secure the waste site from the Cordero and McDermitt mines, including grading, capping, and fencing the site.⁸ Barrick Gold also agreed to pay the EPA \$230,000 in past response costs.⁹ In September 2019, the EPA stated that Barrick had completed this work.¹⁰

In order to provide important context on tribal members' concerns over the Thacker Pass lithium mine, Human Rights Watch and the ACLU plan to discuss Tribal members' descriptions of the impact of the McDermitt and Cordero mines in a forthcoming report on Thacker Pass. We would like to invite Barrick Gold to provide any additional information related to the two mines, and the McDermitt mine in particular, prior to publication of our report. The questions offer Barrick Gold the opportunity to respond to the relevant findings of the report. Each question corresponds with a finding.

Our specific questions are:

1. Does Barrick Gold still own Placer Dome US and does Barrick Gold retain any legal right to or interest in the McDermitt and/or Cordero mine sites?
2. Why, up until 2019, had Barrick Gold not secured the mine waste from the McDermitt and Cordero mines?

⁴ Ibid.; Ecology and Environment Incorporated, "Cordero and McDermitt Mercury Mine Sites, Humboldt County, Nevada, Interim Removal Assessment Report," September 12, 2011, pp. 16-17, <https://semspub.epa.gov/work/09/1135534.pdf> (accessed May 29, 2024).

⁵ US Environmental Protection Agency, Region IX, "Request for a Time-Critical Removal Action at the McDermitt Site, McDermitt, Humboldt County, Nevada" October 15, 2012, <https://response.epa.gov/sites/7029/files/signed%20action%20memo.pdf> (accessed December 8, 2024).

⁶ US Environmental Protection Agency, "Pollution / Situation Report, McDermitt and Cordero Mercury Mine Sites, Removal Polrep Final," June 25, 2013, https://response.epa.gov/site/sitrep_profile.aspx?site_id=7029&counter=19957 (accessed December 8, 2024).

⁷ *Cordero Gold-Silver Project Technical Report*, p. 31.

⁸ United States Federal Register, "Notice of Proposed Administrative Settlement Agreement and Order on Consent for Removal Action for the Cordero-McDermitt Calcine Pile Site, McDermitt, Nevada", September 21, 2017, <https://www.federalregister.gov/documents/2017/09/21/2017-20161/notice-of-proposed-administrative-settlement-agreement-and-order-on-consent-for-removal-action-for> (accessed December 8, 2024)

⁹ Ibid.

¹⁰ US Environmental Protection Agency, Region IX, "U.S. EPA and BLM announce Barrick Gold stabilizes mine waste at Cordero Mine site," news release, September 6, 2018, <https://www.epa.gov/archive/epa/newsreleases/us-epa-and-blm-announce-barrick-gold-stabilizes-mine-waste-cordero-mine-site.html> (accessed December 8, 2024)

3. Does Barrick Gold accept the EPA's findings that there were elevated levels of mercury and arsenic at the mine sites and that the historical removal of mine waste caused elevated and hazardous levels of mercury and arsenic in areas near Fort McDermitt town and the Fort McDermitt reservation?

We would be very grateful to receive a written reply to these questions and the above description by **December 30, 2024**, so your responses can be reflected in our reporting. We would welcome any other additional information or documents that you may wish to provide. Please note that we may, at our discretion, publish any response either in full or in part on our website.

Thank you for your attention to this important matter.

Sincerely,



Tanya Greene
Director, US Program

Appendix X: Barrick Gold Response to Human Rights Watch December 2024 Letter—December 30, 2024

12/30/2024

Introduction – Brief History of the McDermitt Mine and the Cordero Mine

The McDermitt Mine and Cordero Mine are located in the Opalite mining district, where mercury was mined throughout much of the 20th century. The first mining claims in the area were located as early as 1929.

a) McDermitt Mine

In 1973, a predecessor to Placer Dome U.S. Inc. (“Placer”) and another unrelated company formed a joint venture called the McDermitt Mine (“McDermitt Mine JV”), of which Placer’s predecessor owned 51%. The McDermitt Mine, located adjacent to and separate from the Cordero Mine, was operated as an open pit mine from 1975 to 1990.

Upon completion of mining operations in 1990, Placer began reclamation and decommissioning activities under direction of the Nevada Department of Environmental Protection (“NDEP”) and the Nevada Division of Water Resources. As part of those activities, Placer tested and then containerized and shipped to a hazardous material disposal facility any materials around the McDermitt Mine site area with elevated concentrations of mercury and arsenic. In 1994, Placer submitted a final report to the NDEP requesting final closure approval. The NDEP approved the final closure in December 1994.

After Barrick Gold Corporation acquired Placer’s parent corporation in 2006, the name of Placer Dome U.S. Inc. was changed to Barrick Gold U.S., Inc. (“Barrick”). Barrick is a wholly owned indirect subsidiary of Barrick Gold Corporation. Title to the McDermitt Mine remains with the McDermitt Mine JV, of which Barrick is a 51% owner.

b) Cordero Mine

Initially, it is important to note that the Calcine Pile is in no way related to the McDermitt Mine or operations by Placer, Barrick, or their predecessors. In fact, the Calcine Pile was in existence prior to the McDermitt Mine being developed and operated by Placer.

The mining claims for the Cordero Mine were located beginning in 1929. In the 1940s, the Cordero Mining Company, Inc. (a subsidiary of Sun Oil Company, now Sunoco, Inc. (“Sunoco”)) began acquiring mineral leases in the area and developed the Cordero Mine. The Cordero Mine was an underground mercury mine with associated processing facilities operated by Sunoco’s subsidiaries for several decades before closing in 1970.

The Cordero Mine operated a process that generated calcine tails (a gravel-like material). In the 1950s and 1960s, the Cordero Mine placed the calcine material in a large pile (the “Calcine Pile”) that extends onto (1) BLM lands and (2) adjacent property that later became the McDermitt Mine. Although Barrick has no direct knowledge of the movement of the calcine material prior to 2006, which is when Barrick Gold Corporation acquired Placer’s parent corporation, Barrick understands that (1) unknown parties may have used the calcine material as road base or construction material in the 1950s or 1960s, and (2) trespassers removed material from the Calcine Pile without authorization, including by cutting the perimeter fence to access the pile.

While neither Placer (nor Barrick) generated or deposited the calcine materials—indeed the Calcine Pile was already in place when the McDermitt Mine began—because of the proximity of the pile to the McDermitt Mine, Placer secured the Calcine Pile with a barb wire fencing at least as early as 1988. Placer replaced the barb wire fence with a taller, more substantial chain link fence in 1994. Later, beginning around 2010, Barrick cooperated with EPA and BLM to further secure the Calcine Pile. Ultimately, in 2017, based solely on Barrick’s ownership of land where the Calcine Pile was partially located (i.e., Barrick land and BLM land) Barrick temporarily removed a portion of the fence and placed a soil cover over the Calcine Pile to discourage trespassers from cutting the fence and accessing the calcine material. Following completion of the cover placement, Barrick reestablished the perimeter fence. EPA and BLM issued Notices of Completion to Barrick indicating the work to further secure the Cordero Calcine Pile had been completed to the satisfaction of all parties. Barrick continues to monitor the Calcine Pile to ensure it remains secured.

- 1) **Does Barrick Gold still own Placer Dome US and does Barrick Gold retain any legal right to or interest in the McDermitt and/or Cordero mine sites?**

Answer:

Please see above. Placer Dome U.S. Inc., which was renamed Barrick Gold U.S. Inc. after Barrick Gold Corporation acquired Placer’s Canadian parent corporation in 2006, remains an indirect wholly owned subsidiary of Barrick Gold Corporation.

Barrick (i.e., Barrick Gold U.S. Inc.) owns 51% of the McDermitt Mine Joint Venture, which owns the McDermitt Mine.

Neither Placer nor Barrick operated the adjacent Cordero Mine or produced the calcine material from that mining operation.

- 2) **Why, up until 2019, had Barrick Gold not secured the mine waste from the McDermitt and Cordero mines?**

Answer:

Please see above. The Premise of the Question is incorrect. The “mine waste” (Cordero’s Calcine Pile) was secured prior to Barrick Gold Corporation’s acquisition of Placer’s parent corporation in 2006 and remains secured.

Historically, trespassers removed material from the Calcine Pile, including by cutting the fence to access the pile.

- 3) **Does Barrick Gold accept the EPA’s findings that there were elevated levels of mercury and arsenic at the mine sites and that the historical removal of mine waste**

12/30/2024

caused elevated and hazardous levels of mercury and arsenic in areas near Fort McDermitt town and the Fort McDermitt reservation?

Answer:

Please see above. Barrick is not aware of "EPA's findings" referenced in this question, but nonetheless, Barrick would not accept such findings in the way framed in this question because Placer properly disposed of any material on the McDermitt Mine with elevated concentrations of arsenic or mercury.

Referring to the "mine sites" incorrectly combines both Sunoco's Cordero Mine and the McDermitt Mine. As noted above, neither Placer nor Barrick operated the adjacent Cordero Mine or produced the Calcine Pile.

Barrick understands that in 2013, EPA completed several removal activities under CERCLA to address the calcine tailings discovered in and around the town of McDermitt and the Fort McDermitt Paiute and Shoshone Reservation, which are miles away from the McDermitt Mine. In addition, Barrick understands, and believes that EPA is aware, that other mines in the area may have generated similar calcine tailings, which may also have been used for construction purposes in the area.



(left) The former Cordero mercury mine, McDermitt, Nevada, March 23, 2024.
© 2024 Alison Leal Parker/
Human Rights Watch.

(cover) Numu/Nuwu and Newe prayer riders overlooking the ongoing construction that is destroying the sacred land of Peehee Mu'huh. Nevada, March 26, 2024.
© 2024 David Calvert.

“The Land of Our People, Forever”

United States Human Rights Violations against the Numu/Nuwu and Newe in the Rush for Lithium

The Thacker Pass lithium mine is a nearly 18,000-acre open-pit mining project located on the traditional and ancestral land of the Numu/Nuwu and Newe (Northern Paiute and Western Shoshone peoples in English). The land is sacred to Indigenous peoples in part due to its connections to an 1865 massacre of Numu/Nuwu and Newe by United States cavalry.

“*The Land of Our People, Forever*” finds that the United States Bureau of Land Management (BLM) permitted the Thacker Pass mine without obtaining the free, prior and informed consent of Indigenous peoples and in violation of their rights to religion, culture, and to their ancestral lands under international human rights law and standards. The mine will also generate toxic waste that Indigenous peoples fear will cause pollution that may undermine their rights to health, a healthy environment, water, and clean air. Obtaining lithium and other minerals necessary for an urgent phaseout of fossil fuels should include protection for the rights of Indigenous peoples.

Human Rights Watch and the ACLU call on the United States to rescind the permits for the Thacker Pass mine, and to engage an independent expert body, including impacted Indigenous peoples, to assess if the permitting process can be revised to comply with the rights of Indigenous peoples. Permits for the Thacker Pass mine, and all other mines across the US, should not be issued without the free, prior, and informed consent of any impacted Indigenous peoples.