



March 31, 2025

BLM Vale District Office

100 Oregon Street  
Vale, OR 97918

—via BLM Eplanning Portal

Re: HiTech Lithium Exploration Plan of Operations ([DOI-BLM-ORWA-V000-2023-0045-EA](#)).

To: Bureau of Land Management

The American Civil Liberties Union (ACLU) and the American Civil Liberties Union of Oregon (ACLU of Oregon) submit this public comment in response to the above referenced proposed lithium exploration project in the McDermitt Caldera, as requested by the Bureau of Land Management (BLM) during the scoping period. Given the extremely short notice and comment period here, and the lack of consent from Indigenous communities that preceded the recent development of the Thacker Pass mine in the Caldera, we are gravely concerned that the same human rights deficiencies will continue to be repeated in BLM's authorization of the HiTech exploration project and subsequent decisions. We therefore request that the issues below be addressed before any further exploration proceeds.

**Inadequate notice and public comment period:** the public notice and comment period of five days is wholly insufficient to ensure the public is meaningfully notified of the proposed exploration, let alone has a meaningful opportunity to participate in the Bureau's decision-making process.

**Lack of free, prior, and informed consent of affected Indigenous communities:** The McDermitt Caldera is the ancestral land of the Western Shoshone, Northern Paiute, and Bannock people.<sup>1</sup> Under human rights law, Indigenous communities have a right to self-determination, which undergirds the right to free, prior, and informed consent from affected Indigenous communities **before any mineral exploration begins.**<sup>2</sup>

**Significant risk of harm to environmental, religious, and cultural rights:** The exploration project poses significant risks of environmental damage to the Western Shoshone, Northern Paiute, and Bannock ancestral lands and their related religious and cultural rights.<sup>3</sup>

Remedying the aforementioned issues would ensure that decisions affecting Indigenous tribes in the United States, including decisions on extracting resources and expanding energy options, do not undermine Indigenous tribes' sovereignty or decimate Indigenous culture. The United States ultimately has a trust obligation to Indigenous communities, and incorporating Indigenous voices in federal decision-making is part of ensuring that the United States meets its obligations to Indigenous communities and peoples.

In 2017, more than 600,000 Indigenous communities in the United States lived within approximately six miles of an abandoned mine.<sup>4</sup> Across the U.S., Indigenous peoples ultimately lost 99 percent of their lands to colonial settlers or federal and state governments.<sup>5</sup> While the extent of traditional and ancestral lands differ greatly depending on context and are rarely equivalent to reservation boundaries in the U.S., one study has indicated that 79 percent of all known lithium reserves in the U.S. are located within 35 miles of Tribal reservations.<sup>6</sup> Without taking protective measures, a new era of mining risks continuing a devastating legacy of genocide in the United States.<sup>7</sup>

The ACLU and Human Rights Watch undertook research from September 2023 and January 2025 to [investigate](#) the human rights impacts of the only fully permitted lithium mine in the McDermitt Caldera, Thacker Pass. The ACLU and Human Rights Watch found that the permitting process and the mine's subsequent development violated a host of human rights laws and standards.<sup>8</sup> The U.S. government and BLM must ensure that these same violations do not infect the BLM's authorization of HiTech's exploration project.<sup>9</sup>

## **I. Inadequate Public Notice and Comment Period**

The proposed five-calendar-day public comment period is fundamentally incompatible with meaningful public participation and represents a profound failure of democratic processes. Five days is an unconscionably short timeframe, preventing:

- Much of the public from receiving actual notice of the proposed exploration in time to put together comments.
- The public from raising comprehensive and complex technical and scientific concerns from the expansion of the exploration footprint;
- Meaningful consultation with Tribal governments and community stakeholders; and

- Substantive public discourse on a project with potentially generational consequences.

A truly responsible scoping period should include, at minimum, a 30-day public comment period, particularly for a project that could lead to critical mineral extraction that could significantly impact Indigenous territories and ecologically sensitive landscapes.

## **II. Indigenous Rights to Free, Prior, and Informed Consent**

The McDermitt Caldera is not merely a geological formation, but a landscape rich with cultural, spiritual, and historical significance to Indigenous communities.<sup>10</sup> The proposed exploration project, which would allow HiTech to modify its exploration on approximately 100 acres of land, should not proceed without the express consent from all Indigenous communities and governments with ancestral rights to this land.<sup>11</sup>

International human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples and the International Covenant on Civil and Political Rights, which is binding on the United States, mandate that governments respect Indigenous self-determination, including getting consent from Indigenous communities before extractive projects begin.<sup>12</sup>

International standards on consent also require that consent be given from affected communities before the commencement of any exploration for minerals.<sup>13</sup>

The BLM should not authorize HiTech's further exploration of the Caldera without first obtaining the free, informed consent of Indigenous peoples with ancestral land rights in the proposed project area.<sup>14</sup>

## **III. Environmental and Cultural Preservation Considerations**

The McDermitt Caldera is a complex ecosystem with profound cultural and environmental significance.<sup>15</sup> The proposed exploration could threaten:

- Fragile desert ecosystems;
- Sacred Indigenous cultural landscapes;
- Potential archaeological and historical sites; and
- Groundwater resources critical to local communities.<sup>16</sup>

The proposed exploration could also add to the cumulative detrimental environmental impacts of the Thacker Pass lithium mine.<sup>17</sup>

## **IV. Recommendations**

The ACLU and the ACLU of Oregon recommend that BLM deny HiTech's request for modification of its current exploration activities. Further modification of the exploration plans should not proceed without free, prior, and informed consent from all Indigenous communities who have environmental, cultural, and religious rights connected to the land.<sup>18</sup> These

recommendations are outlined in more detail in our joint report with Human Rights Watch, “The Land of Our People, Forever.”<sup>19</sup>

This public comment registers the ACLU’s opposition to the HiTech exploration project proceeding without the opportunity to fully consider and address these issues, given the severely expedited notice and comment period.

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<sup>1</sup> *Id.*

<sup>2</sup> Human Rights Watch and ACLU, “*Land of Our People Forever: United States Human Rights Violations Against Numu/Nuwu/Newe*,” February 6, 2025, at 97.

<sup>3</sup> *Id.*

<sup>4</sup> Cody Nelson, “The Dizzying Scope of Abandoned Mine Hazards on Public Lands,” HIGH COUNTRY NEWS, January 28, 2022, <https://www.hcn.org/articles/south-mining-the-dizzying-scope-of-abandoned-mine-hazards-on-public-lands/> (accessed June 5, 2024).

<sup>5</sup> 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.

<sup>6</sup> Biden-Harris Administration’s Interagency Working Group on Mining Laws, Regulations, and Permitting, “Recommendations to Improve Mining on Public Lands,” p. 8.

<sup>7</sup> Human Rights Watch and ACLU, “*Land of Our People Forever: United States Human Rights Violations Against Numu/Nuwu/Newe*,” February 6, 2025.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Human Rights Watch and ACLU, “*Land of Our People Forever: United States Human Rights Violations Against Numu/Nuwu/Newe*,” February 6, 2025.

<sup>11</sup> Human Rights Watch and ACLU, “*Land of Our People Forever: United States Human Rights Violations Against Numu/Nuwu/Newe*,” February 6, 2025, at 97.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at n.442.

<sup>14</sup> *Id.*

<sup>15</sup> *See generally id.*

<sup>16</sup> *Id.* at 73-128 (discussing the religious and cultural importance of the land, including the desert ecosystems, the varying impacts of groundwater quality and quantity in relation to lithium mining in the caldera.).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Human Rights Watch and ACLU, “*Land of Our People Forever: United States Human Rights Violations Against Numu/Nuwu/Newe*,” February 6, 2025, at 14.