



Written Submission of the American Civil Liberties Union (ACLU) to the Office of the United Nations High Commissioner for Human Rights

January 15, 2025

## I. Introduction

The American Civil Liberties Union (ACLU) writes to provide input for the Secretary-General's report on just transition and human rights to be submitted to the sixtieth session of the Human Rights Council. Drawing from research conducted by the ACLU and Human Rights Watch, to be detailed further in our forthcoming report, *"The Land of our People, Forever": United States Human Rights Violations against the Numu/Nuwu and Newe in the Rush for Lithium*, this submission provides information concerning the rush for transition minerals in the United States and the corresponding exploitation and abuse of Indigenous Peoples and land. Additionally, this submission builds on the ACLU's written testimony on the UN Declaration on the Rights of Indigenous People to the United States Senate Committee on Indian Affairs which recommended the United States implement protections for Indigenous self-determination, property rights, and free, prior, and informed consent.<sup>1</sup>

The ACLU is a nonprofit organization founded in 1920 to defend and preserve the individual rights and liberties guaranteed by the Constitution, laws, and treaties of the United States. With more than 4 million members, activists, and supporters, the ACLU is a nationwide organization that fights in courts, legislatures, international fora, and communities in all 50 states, Puerto Rico, and Washington, D.C., to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee. The ACLU is committed to defending the freedom and ability of Indigenous people to exercise their rights and sovereignty over themselves and their land. For decades the ACLU has defended religious rights, including through supporting the protection of sacred Indigenous land from corporate mining and extraction. Self-determination, religious freedom, and cultural survival are intimately tied to the protection of sacred sites.

The western United States is shaped by the devastating legacies of settler colonialism and exploitative extraction. The settlers' pursuit of minerals, rooted in the discovery doctrine sanctioned by the U.S. government, contributed to countless atrocities against Indigenous communities that still reverberate today, including through the lack of Indigenous land ownership.<sup>2</sup> While extractive industries have consistently characterized the relationship between Indigenous communities and the U.S. federal government,<sup>3</sup> the current rush for transition minerals threatens to further entrench the systemic inequities and discrimination Indigenous communities face when trying to safeguard their religious freedom and sacred land.

This submission details how the Thacker Pass mine, a nearly 18,000-acre open-pit lithium mine in northeastern Nevada, stands as a warning of the risks Indigenous Peoples face from this new era of mining.<sup>4</sup> It outlines the interconnections between United States' colonialism and extractive industries, the ongoing threats posed by transition mineral mining to Indigenous Peoples' human rights, including ongoing rights violations at Thacker Pass in northeastern Nevada, and just transition measures that can ensure the rights of Indigenous Peoples. This submission puts forth a set of recommendations to the United States, and to the United Nations, for domestic, regional, and global actions. These key recommendations would help bring the United States into line with human rights standards:

- The United States should reform its domestic legislation to comply with international human rights. This should include repealing the 1872 Mining Law, a law which was passed when Indigenous Peoples were not considered U.S. citizens.<sup>5</sup>
- The United States should rescind the permits for the Thacker Pass mine and ensure that the permits are not reissued without the free, prior, and informed consent of all Indigenous communities with relevant traditional and ancestral land rights.
- The United States should 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.

Across state, regional, and global levels, land reparations and restitution should be implemented as a method for operationalizing a just transition. A transition that respects human rights “must ensure the return, recognition, and respect of Indigenous lands, territories, and waters, as well as the protection of all Indigenous natural resources, ecosystems, and other means of livelihood.”<sup>6</sup>

## **II. Background: Colonialism, Extermination, Extraction, and their Legacies**

Forced dispossession, combined with government extermination policies, has led to Indigenous Peoples in the United States losing ninety-nine percent of their ancestrally occupied land.<sup>7</sup> Since its inception, the United States has systematically interned Indigenous people on reservations — smaller areas of land that were often land undesirable to settlers.<sup>8</sup> This dispossession was, and remains, sanctioned by the discovery doctrine.<sup>9</sup> In the western United State, settler colonialism and extraction have always dominated the relationship between the U.S. federal government and Indigenous people, and heavily contributed to this dispossession.<sup>10</sup> Mining, historically and currently, disproportionately impacts Indigenous people's land, health, and human rights.<sup>11</sup> In 2017, more than 600,000 Indigenous people lived within approximately six miles of an abandoned mine.<sup>12</sup> There are an estimated 250,000 abandoned mines across the western United States.<sup>13</sup> The proximity of Indigenous communities to abandoned mines and prevalence of abandoned mines across the west is evidence of the detrimental impact of dispossession for extraction. Often, the United States intentionally dispossessed Indigenous sacred sites, attempting to sever the critical spiritual and cultural connection between Indigenous communities and their land.<sup>14</sup>

### **III. Transition Mineral Mining and Violations of Indigenous Peoples Human Rights**

Now, after centuries of atrocities and dispossession, Indigenous Peoples face a new era of U.S. colonialism and extraction in the pursuit of transition minerals.

In Nevada alone, there were more than 23,490 mining exploration claims presumed to be for lithium as of September 2024 – a narrow sample that is indicative of the staggering increase in transition mineral exploration in the United States.<sup>15</sup> This rush to procure minerals necessary for electric cars and other technologies endangers Indigenous communities. In the United States, ninety-seven percent of nickel, eighty-nine percent of copper, seventy-nine percent of lithium, and sixty-eight percent of cobalt reserves and resources are located within 35 miles of Native American reservations.<sup>16</sup> The proximity of these reserves to Indigenous communities exposes sacred and ancestral lands to destructive mining practices and threatens the human and environmental health of the communities.

Indigenous communities remain intimately and spiritually connected to their lands despite centuries of conquest and colonization outlawing Indigenous sacraments and ceremonies.<sup>17</sup> In many Indigenous religious practices specific lands and geological structures hold the stories of creation; are the home of sacred plants, animals, or waters; are necessary for religious rituals; or are the resting place of ancestors, many of whom were lost to United States' atrocities.<sup>18</sup> There can be no religious freedom for Indigenous communities if the foundation of their religion is destroyed by mining.

The transition away from fossil fuels must be consistent with international human rights. The United Nations has emphasized that human rights must be at the core of climate action, ensuring that the most vulnerable populations – particularly Indigenous communities – are protected from exploitation, displacement, and environmental harm during this process.<sup>19</sup> Sustainable development cannot be achieved if it disregards the fundamental rights of individuals and communities.

### **IV. Human Rights Violations and the Thacker Pass Mine**

Thacker Pass, located on Northern Paiute, Western Shoshone, and Bannock sacred land in Nevada, serves as an example of the challenges and barriers that exist in pursuing a human rights-centered transition. Peehee Mu'huh is a sacred valley to many Numu/Nuwu and Newe peoples, whose ancestors' spirits remain connected to the land upon which the U.S. military massacred a village in 1865.<sup>20</sup> The land may also be sacred to other Tribes in the area. The Thacker Pass lithium mine, the United States' first major commercial lithium mine, is currently under construction on Peehee Mu'huh.<sup>21</sup>

The U.S. government permitted the mine without the free, prior, and informed consent of any of the twelve known Indigenous Tribes that attach religious and cultural significance to Peehee Mu'huh.<sup>22</sup> Indigenous communities are currently restricted from accessing the land for religious and cultural practices.<sup>23</sup> The mine will permanently destroy the sacred site,<sup>24</sup> and according to community members, disturb the ancestors' spirits.<sup>25</sup> Because a relationship with the land and ecosystem is vital for cultural continuity, the ongoing construction and impending operations also violate Indigenous Peoples' right to culture. Though the mine is not yet

operational, the future operations threaten the rights to water, health, life, air, and a healthy and safe environment.<sup>26</sup> A “man camp” is also under construction in a nearby town, potentially exposing Indigenous women, girls, and two-spirit people to violence and exploitation.<sup>27</sup>

Land protectors who have protested the mine’s development are now facing civil suits against them from Lithium Americas’ subsidiary, Lithium Nevada, a tactic which a protester’s attorney described as a SLAPP suit.<sup>28</sup> SLAPP suits are an intimidation tactic often used against Indigenous Peoples and environmental human rights defenders to silence dissent and stifle democratic engagement on issues of corporate power and environmental injustice because the litigation drains resources and can result in substantial fines.<sup>29</sup>

The 1872 Mining Law is responsible, in part, for setting the mine in motion. The 1872 law functions as an anachronistic and rights-abusive legal codification of the colonial extraction practices of the 1800s.<sup>30</sup> It allows private companies the nearly unencumbered ability to explore for minerals on federal public land,<sup>31</sup> the majority of which was confiscated from Indigenous people.<sup>32</sup>

Thacker Pass exemplifies the broader struggle faced by Indigenous communities as they resist extractive activities that threaten their sacred lands and cultural heritage. Similar patterns of abuse are occurring across the United States – including at Ha’Kamwe’ in Arizona on Hualapai sacred land,<sup>33</sup> the Black Hills in North Dakota on Lakota sacred land,<sup>34</sup> and Oak Flat in Arizona on Apache sacred land<sup>35</sup> – where Indigenous communities are fighting to protect their sacred land from mining interests exploring or mining for transition minerals.

To avoid further entrenching rights violative practices as the standard for the transition, it is vital that the United States assess, implement, and adhere to measures that can safeguard the rights of impacted communities. Specifically, transition measures must incorporate the fundamental right to freedom of religion, Indigenous Peoples’ right to self-determination, including free, prior, and informed consent, and the implementation of self-determination as it applies to natural environments. To operationalize a just transition, the United States must address systemic inequities perpetuated by settler colonialism, and work on the state, regional, and international levels to reform anachronistic and repressive legislation, implement international human rights laws and standards into domestic law, and establish Indigenous-led justice mechanisms.

Indigenous rights are often sidelined in the name of progress, and the human costs of the energy transition are disproportionately borne by marginalized communities.<sup>36</sup> Governments must take responsibility for ensuring that corporations respect human rights, rather than giving discretion to corporate interests. It is imperative that states uphold the principles of justice and equity, preventing corporations from exploiting vulnerable communities in the name of renewable energy development.

## **V. Just Transition Measures That Can Ensure the Rights of Indigenous Peoples**

States, including the United States, should incorporate measures that uphold Indigenous Peoples’ human rights during a just transition. Human rights due diligence is one such measure. Integrating mandatory HRDD at every stage of the life cycle of a mineral, from exploration and development to extraction, closure, and post-closure activities can help ensure Indigenous

Peoples' rights are respected.<sup>37</sup> This approach stands in contrast to the insufficient framework of voluntary audits, which often fail to provide real accountability or meaningful protection for affected communities.<sup>38</sup>

Legislative examples from the European Union, such as the proposed Corporate Sustainability Due Diligence Directive, are advancing the idea of compulsory HRDD.<sup>39</sup> States like France, Germany, and Norway have implemented laws requiring companies to identify and mitigate human rights and environmental impacts throughout their supply chains. France's Duty of Vigilance Law mandates comprehensive vigilance plans,<sup>40</sup> while Norway's Transparency Act mandates due diligence in compliance with the Organisation of Economic Co-operation and Development,<sup>41</sup> and Germany's Supply Chain Due Diligence Law requires large corporations to address rights violations in supply chains.<sup>42</sup> These mandatory corporate HRDD laws are a step in advancing the just transition, though each law has caveats that fail to ensure the full protection of harmed communities.<sup>43</sup>

Implementing comprehensive HRDD includes implementing safeguards to Indigenous Peoples' right to self-determination, including the central pillar of free, prior, and informed consent, which must be honored not only as a procedural formality but as a substantive guarantee that respects Indigenous sovereignty.<sup>44</sup> Indigenous communities should hold the right to FPIC over land they own, as well as land they use and occupy, ancestrally used and occupied, and land they hold sacred.<sup>45</sup> The process to determine which Indigenous communities hold the right to FPIC over a given territory should involve independent Indigenous experts to identify relevant stakeholders and ensure that all impacted communities are engaged, rather than a narrow set of corporate-led consultations.<sup>46</sup> Furthermore, due diligence assessments and FPIC information must be culturally accessible and transparent.<sup>47</sup> Materials should be available in local languages via culturally sensitive communication methods, to all community members and leaders, as determined by the community. These assessments must respect Indigenous worldviews and decision-making practices, creating space for meaningful and informed participation.

Recognizing and addressing power imbalances in the due diligence and consent processes is also essential. This requires a commitment to reconciliation and the acknowledgment of historic injustices that have marginalized Indigenous voices.

At Thacker Pass, the United States' lack of mandatory HRDD and FPIC allowed corporations discretion to engage in significant rights violations. Had the United States codified these rights prior to the Thacker Pass development, Indigenous communities would likely have withheld their consent to the mine, exercising their right to FPIC.<sup>48</sup>

## **VI. Recommendations**

The United States' Congress should:

- Reform its domestic legislation to comply with international human rights. This should include repealing the 1872 Mining Law, a law which was passed when Indigenous

Peoples were not considered U.S. citizens,<sup>49</sup> and which remains a legislative manifestation of the U.S. ethos of manifest destiny and a tool for land dispossession.<sup>50</sup>

- Pass legislation recognizing Indigenous peoples' traditional and ancestral land rights, cultural and religious rights, and the right to free, prior, and informed consent, and ensuring access to effective remedies for violations. This legislation should, at a minimum, encode the rights outlined 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 investigate reparations, including land restitution, for Indigenous communities who were forcibly displaced from their land by the U.S. and remain unable to access or own their traditional and ancestral land.

The United States' Department of the Interior should:

- Ensure that mining projects are not permitted without the free, prior, and informed consent of Indigenous Peoples who would be impacted by them, regardless of whether mining projects are on reservations.
- Rescind the permits for the Thacker Pass mine. Ensure that the permits are not reissued without the free, prior, and informed consent of all Indigenous communities with relevant traditional and ancestral land rights.

At the regional level, the United States should work to foster transparency and inter-governmental cooperation on transboundary mining and human rights protections in the supply chain. It should commit fully to its regional obligations as a member of the Organization of American States, including efforts to promote human rights and the just transition.

On a global scale, the United Nations Secretary General's Panel on Critical Energy Transition Minerals recommendations should be implemented in an equitable manner and with implementation overseen by a working group inclusive of Indigenous Peoples. The Secretary-General should establish a United Nations mechanism, inclusive of Indigenous Peoples and worldviews, that is tasked with "monitoring, investigating, and addressing complaints on human rights, Indigenous Peoples' rights, environment, or governance related to the extraction and processing of minerals."<sup>51</sup>

States, including the United States, should adhere to treaties they have signed or ratified. The United States must protect the rights of self-determination and freedom of religion in the International Covenant on Civil and Political Rights, and the right to non-discrimination in the International Convention on the Elimination of Racial Discrimination.

Additionally, across the state, regional, and global levels, land reparations and restitution should be implemented as a method for operationalizing the just transition. A transition that respects human rights "must ensure the return, recognition, and respect of Indigenous lands, territories, and waters, as well as the protection of all Indigenous natural resources, ecosystems, and other means of livelihood."<sup>52</sup>

Implementing these recommendations requires ongoing dialogue and collaboration across all levels, prioritizing the leadership and perspectives of Indigenous Peoples in shaping their futures and the stewardship of their lands. A commitment to HRDD, FPIC, and the recognition of Indigenous rights is vital for facilitating a just transition that respects environmental, social, and cultural dimensions.

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<sup>1</sup> Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples before the Committee on Indian Affairs, 112<sup>th</sup> Cong. 98-10 (2011) (joint written testimony from the American Civil Liberties Union and Human Rights at Home Campaign).

<sup>2</sup> See generally VILLAGE EARTH, HISTORIC LOSS ASSESSMENT: LOSS OF LIFE, LAND, AND PRECIOUS RESOURCES FOR NINE NATIVE NATIONS IN COLORADO (2023), <https://peopleofthesacredland.org/wp-content/uploads/2024/06/Village-Earth-Historic-Loss-Assessment-Dave-Digital.pdf> (last visited Dec. 24, 2024); Tristan Ahtone, et al., *Stolen Indigenous land is the foundation of the land-grant university system. Climate change is its legacy*, HIGH COUNTRY NEWS, Feb. 7, 2024, <https://www.hcn.org/articles/stolen-indigenous-land-is-the-foundation-of-the-land-grant-university-system-climate-change-is-its-legacy/>.

<sup>3</sup> NED BLACKHAWK, REDISCOVERY OF AMERICA: NATIVE PEOPLES AND THE UNMAKING OF U.S. HISTORY 432-33 (Yale Univ. Press 2023); Cody Nelson, *The Dizzying Scope of Abandoned Mine Hazards on Public Lands*, HIGH COUNTRY NEWS, Jan. 28, 2022, <https://www.hcn.org/articles/south-mining-the-dizzying-scope-of-abandoned-mine-hazards-on-public-lands/> (last visited June 5, 2024); see generally Johnnye Lewis et. al, *Mining and Environmental Health Disparities in Native American Communities*, 4 CURRENT ENV'T HEALTH REPS. 130 (2017); Alexis Bonogofsky & Garrit Voggeser, National Wildlife Federation, Honoring the River: How Hardrock Mining Impacts Tribal Communities, at 6 (Apr. 2013), <https://www.nwf.org/~media/PDFs/Wildlife/Tribal-Lands/Honoring%20the%20River%20Report.pdf>; AM. C.L. UNION et al., Shadow Report to UN Human Rights Committee: Desecration and Exploitation of the Black Hills, South Dakota Indigenous Sacred Site, at 1-6, submitted to the 139th Session of the Human Rights Committee, Geneva (Sept. 12, 2023); *The Gold Rush Impact on Native Tribes*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/goldrush-value-land/> (last visited Dec. 26, 2024); Anita Snow, *Tribe Warns US Government Against Moving Ahead with Mine*, ASSOCIATED PRESS, Apr. 7, 2023, <https://apnews.com/article/sacred-site-apaches-copper-mine-cc621f429680d2f2c2cd3fac84b2f6ff>; James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Extractive industries and indigenous peoples*, U.N. Doc A/HRC/24/41 (July 1, 2013).

<sup>4</sup> Gabriela Aoun Angueira, *Construction starts on Nevada's Thacker Pass lithium mine*, HIGH COUNTRY NEWS, Mar. 6, 2023, <https://www.hcn.org/articles/mining-construction-starts-on-nevadas-thacker-pass-lithium-mine/> (last visited Dec. 26, 2024); 'We were not consulted': Native Americans fight lithium mine on site of 1865 massacre, The Guardian, Oct. 13, 2023 <https://www.theguardian.com/us-news/2023/oct/13/native-americans-1865-massacre-lithium-mine-thacker-pass>; Maya L. Kapoor, *Nevada lithium mine kicks off a new era of Western extraction*, HIGH COUNTRY NEWS, Feb. 18, 2021, <https://www.hcn.org/issues/53-3/indigenous-affairs-mining-nevada-lithium-mine-kicks-off-a-new-era-of-western-extraction/>.

<sup>5</sup> General Mining Act of 1872, 17 Stat. 91 (codified as amended at 30 U.S.C. §§ 22-47; *The Indian Citizenship Act at 100 years Old*, 49 NATIVE AM. RTS. FUND L. REV. 1, 1 (2024).

<sup>6</sup> Just Transition: Indigenous Peoples' Perspectives, Knowledge, and Lived Experiences, *Indigenous Peoples Principles and Protocols for Just Transition*, at 5, Oct. 10, 2024 (available at <https://static1.squarespace.com/static/66a8dc6d84e4290916cd2be1/t/6717d1f90d6bfc19648e12c4/1729614330300/Indigenous+Peoples+Principles+and+Protocols+for+Just+Transition+ENG+%281%29.pdf>) (last accessed Dec. 26, 2024).

<sup>7</sup> In this submission, Indigenous peoples' land is defined as land held in trust by the United States government for Native Americans, like reservations, as well as land that was ancestrally owned, occupied, and otherwise used by Indigenous peoples. The term explicitly includes sacred sites vital for the continuation of Indigenous religious practices, regardless of what entity owns these sites under U.S. law. See Lizzie Wade, Native tribes have lost 99% of their land in the United States, SCIENCE, Oct. 28, 2021, <https://www.science.org/content/article/native-tribes-have-lost-99-their-land-united-states> (last visited Dec. 26, 2024).

<sup>8</sup> Bryan Newland (Assistant Secretary for Indian Affairs), U.S. DEP'T OF INTERIOR, Federal Indian. Boarding School Initiative Investigative Report, at 21 (Apr. 1, 2022).

<sup>9</sup> 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." Press Release, UN Office of the High Commissioner for Human rights, UN Expert Hails Vatican Rejection of the 'Doctrine of Discovery', Urges States to Follow Suit, U.N. Press Release, <https://www.ohchr.org/en/press-releases/2023/04/un-expert-hails-vatican-rejection-doctrine-discovery-urges-states-follow> (Apr. 6, 2023).

<sup>10</sup> BLACKHAWK, *supra* note 3, at 432-33, 570; Nelson, *supra* note 3; see generally Lewis et al., *supra* note 3; Kyle Whyte, *Settler Colonialism, Ecology, and Environmental Injustice*, 9 ENVIRONMENT AND SOCIETY 125, 135-40 (2018); see generally Jennifer L. Anderson, *Extractive Industries and the Transformation of American Environments*, in THE CAMBRIDGE HISTORY OF AMERICA

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AND THE WORLD 96, (Eliga Gould et al. eds., Cambridge Univ. Press 2022) (providing an overview of extractive industry throughout the decades).

<sup>11</sup> See generally Lewis et al., *supra* note 3.

<sup>12</sup> Nelson, *supra* note 3; Lewis et al., *supra* note 3.

<sup>13</sup> Jonathon Thompson, et al., *Abandoned mines cover the West*, HIGH COUNTRY NEWS, July 1, 2024, <https://www.hcn.org/issues/56-7/abandoned-mines-cover-the-west/>; Nelson, *supra* note 3.

<sup>14</sup> Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARV. L. REV. 1294, 1310-1313 (2024); see generally Kristen A. Carpenter, *Living the Sacred: Indigenous Peoples and Religious Freedom*, 134 HARV. L. REV. 2103 (2021) (reviewing Michael D. McNally, *Defend the Sacred: Native American Religious Freedom Beyond the First Amendment* (2020)); Dylan Walsh, *Near Total Loss of Historical Lands Leaves Indigenous Nations in the U.S. More Vulnerable to Climate Change*, YALE SCHOOL OF THE ENVIRONMENT, (Oct. 28, 2021), <https://environment.yale.edu/news/article/near-total-loss-historical-lands-leaves-indigenous-nations-us-more-vulnerable-climate> (quoting Justin Farrell); Justin Farrell et al., *Effects of land dispossession and forced migration on Indigenous peoples in North America*, 374 SCIENCE, Oct. 29, 2021.

<sup>15</sup> DMRE-Lithium Exploration in Nevada, NEV. DIV. OF MIN. OPEN DATA SITE, <https://data-ndom.opendata.arcgis.com/pages/lithium-claims> (last accessed Dec. 27, 2024); The energy transition is sparking America's next mining boom, THE ECONOMIST (Feb. 19, 2022), <https://www.economist.com/united-states/the-energy-transition-is-sparking-americas-next-mining-boom/21807704>; Jonathan Thompson, *Electric vehicles drive up demand for 'green metals'*, HIGH COUNTRY NEWS, Jan. 24, 2022, <https://www.hcn.org/issues/54-2/infographic-energy-industry-electric-vehicles-drive-up-demand-for-green-metals/>; Jenni Monet, 'Green colonialism': Indigenous world leaders warn over west's climate strategy, THE GUARDIAN, Apr. 23, 2023, <https://www.theguardian.com/world/2023/apr/23/un-indigenous-peoples-forum-climate-strategy-warning>.

<sup>16</sup> Samuel Block, *Mining Energy-Transition Metals: National Aims, Local Conflicts*, MSCI (June 3, 2021), <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>

<sup>17</sup> See generally Vine Deloria, Jr., *GOD IS RED: A NATIVE VIEW OF RELIGION* (1973); Protecting Sacred Sites, INDIAN LAW RES. CTR., <https://indianlaw.org/issue/protecting-sacred-sites> (last accessed Dec. 30, 2024).

<sup>18</sup> Deloria, *supra* note 17; Protecting Sacred Sites, *supra* note 2; see generally Robin Wall Kimmerer, *Braiding Sweetgrass* (2013); Robin Wall Kimmerer, *Gathering Moss*, (2003); Patty Krawec, *Becoming Kin: An Indigenous Call to Unforgetting the Past and Reimagining Our Future*, (2022).

<sup>19</sup> Human Rights Council, Rep. of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Investors, environmental, social and governance approaches and human rights*, at 7, 8, 11, 13-15, A/HRC/56/55 (May 2, 2024); Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS 'PROTECT, RESPECT AND REMEDY' FRAMEWORK, at 5, 14, 29, HR/PUB/11/04 (2011) (hereinafter, "Guiding Principles on Business and Human Rights"); U.N. GAOR, 78th Sess., Rep. of the Working Group on the issue of human rights and transnational corporations and other business enterprises Extractive sector, just transition and human rights, *Extractive sector, just transition and human rights*, at 4, 7, 9, 10, 14, A/78/155 (July 11, 2023) (hereinafter, "Extractive Sector"); see generally U.N. Human Rights Office of the High Commissioner, *Human Rights and a Just Transition: Key Messages on Human Rights Obligations for the Achievement of a Just Transition*, (2023), <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/v4-key-messages-just-transition-human.pdf>.

<sup>20</sup> US Deputy Surveyor Abed Alley Palmer's United States General Land Office 1868 Field Notes Journal, at 295, 296-317, 317-320 (Rectangular Survey Field Notes, approved on January 15, 1869 in Volume R0046); Bill Haywood, *THE AUTOBIOGRAPHY OF BIG BILL HAYWOOD*, at 26 (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 at Camp McDermitt (available through the National Archives and Records Administration) (describing the aftermath of the massacre); *The Recent Indian Fight in Queen's River Valley*, THE HUMBOLDT REGISTER (Sept. 23, 1865); *Indian Fight in Queen River Valley*, THE OWYHEE AVALANCHE, (Sept. 30, 1865). The Kings River is a tributary of the Quinn River, which used to be referred to as the Queen River. See Nev. State Board on Geographic Names, Minutes, May 16, 2017, [https://nbmg.unr.edu/geonames/Meeting\\_Minutes/5-16-2017\\_minutes.pdf](https://nbmg.unr.edu/geonames/Meeting_Minutes/5-16-2017_minutes.pdf) (last accessed October 22, 2024).

<sup>21</sup> Michael Sainato, *'We were not consulted': Native Americans fight lithium mine on site of 1865 massacre*, THE GUARDIAN (Oct. 13, 2023).



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- <sup>22</sup> *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, 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). – find
- <sup>23</sup> Lithium Americas, “Thacker Pass Construction Plan Update,” <https://lithiumamericas.com/news/news-details/2024/Lithium-Americas-Provides-a-Thacker-Pass-Construction-Plan->
- <sup>24</sup> 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](https://eplanning.blm.gov/public_projects/1503166/200352542/20030633/250036832/Thacker%20Pass_FEIS_Chapters1-6_508.pdf) (accessed May 29, 2024).
- <sup>25</sup> Michael Sainato, ‘We were not consulted’: Native Americans fight lithium mine on site of 1865 massacre, THE GUARDIAN (Oct. 13, 2023).
- <sup>26</sup> Steven H. Emerman, *Prediction of Seepage from Clay Tailings Filter Stack (CTFS) at the Lithium Nevada Thacker Pass Mine, Northern Nevada*, GREAT BASIN RES. WATCH (April 7, 2022) [https://gbrw.org/wp-content/uploads/2022/06/Exhibit-4-Thacker\\_Pass\\_Report\\_Emerman\\_Revised2.pdf](https://gbrw.org/wp-content/uploads/2022/06/Exhibit-4-Thacker_Pass_Report_Emerman_Revised2.pdf) (accessed May 29, 2024). The term “man camp” is used repeatedly in scholarly and advocacy settings to signify housing units accommodating mostly male workers in extractive industries. See, e.g., Ana Condes, *Man Camps and Bad Men: Litigating Violence Against American Indian Women*, 116 NW. U. L. REV. 515, 524-532 (2021); Lithium Americas Provides a Thacker Pass Construction Plan Update, *supra* note 24 (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.”).
- <sup>27</sup> Lithium Americas Provides a Thacker Pass Construction Plan Update, *supra* note 24 (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.”).
- <sup>28</sup> Amy Alonzo, *Free speech or interference? In rare move, Lithium Americas sues Thacker Pass protesters*, THE NEV. INDEP. (July 13, 2023).
- <sup>29</sup> Juliette Garside, ‘Designed to distress and deter’: the impact of Slapp lawsuits on journalists and free speech, THE GUARDIAN (Nov. 3, 2023).
- <sup>30</sup> *The 1872 Mining Law: Enriching Foreign Companies at Taxpayer Expense for 150 Years*, EARTHWORKS.ORG (Mar. 21, 2019), [https://earthworks.org/assets/uploads/2019/03/FS\\_1872MiningLaw\\_EW-EJ-WORC\\_201903.pdf](https://earthworks.org/assets/uploads/2019/03/FS_1872MiningLaw_EW-EJ-WORC_201903.pdf) (last accessed Dec. 30, 2024).
- <sup>31</sup> General Mining Act of 1872, *supra* note 5.
- <sup>32</sup> Dylan Walsh, *Near Total Loss of Historical Lands Leaves Indigenous Nations in the U.S. More Vulnerable to Climate Change*, YALE SCHOOL OF THE ENVIRONMENT, (Oct. 28, 2021), <https://environment.yale.edu/news/article/near-total-loss-historical-lands-leaves-indigenous-nations-us-more-vulnerable-climate> (quoting Justin Farrell); see generally Justin Farrell et al., *Effects of land dispossession and forced migration on Indigenous peoples in North America*, 374 SCIENCE, Oct. 29, 2021.
- <sup>33</sup> Keith Rushing, *Lithium Mining Threatens Arizona Tribe’s Sacred Spring*, EARTHJUSTICE (Oct. 11, 2022), <https://earthjustice.org/article/lithium-mining-threatens-arizona-tribes-sacred-spring>.
- <sup>34</sup> DeCora Hawk, *Mining is Destroying the Black Hills*, LAKOTA PEOPLE’S LAW PROJECT (May 16, 2022), <https://lakotalaw.org/news/2022-05-16/black-hills-mining>; *Lithium Rush in the Black Hills*, BLACK HILLS CLEAN WATER ALLIANCE (Jan. 4, 2024), <https://bhcleanwateralliance.org/know-the-issue/lithium-rush/>.
- <sup>35</sup> Apache-Stronghold: Defending Holy Sites Protect Chi’chil Bildagoteel (Oak Flat), <http://www.apache-stronghold.com/>.
- <sup>36</sup> Melissa Barbanell, *Overcoming Critical Minerals Shortages Is Key to Achieving US Climate Goals*, WORLD RES. INST. (May 3, 2023), <https://www.wri.org/insights/critical-minerals-us-climate-goals>; Extractive Sector, *supra* note 19, at 14, 15, 23.
- <sup>37</sup> *Civil Society Recommendations for the UNSG’s Panel on Critical Energy Transition Minerals*, PUBLISH WHAT YOU PAY (July 10, 2024), <https://pwyp.org/civil-society-recommendations-for-the-unsgs-panel-on-critical-energy-transition-minerals/>; Just Transition: Indigenous Peoples’ Perspectives, Knowledge, and Lived Experiences, *supra* note 6, at 8.
- <sup>38</sup> *Civil Society Recommendations for the UNSG’s Panel on Critical Energy Transition Minerals*, *supra* note 37, at 2.
- <sup>39</sup> *Questions and Answers: New EU Law on Corporate Value Chains*, HUMAN RTS. WATCH (May 24, 2024), <https://www.hrw.org/news/2024/05/24/questions-and-answers-new-eu-law-corporate-value-chains>.
- <sup>40</sup> Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (1) [Law 2017-399 of March 27, 2017 relating to the duty of vigilance of parent companies and contracting companies (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [Official Gazette of France], Mar. 28, 2017, p. 7; *France’s Duty of Vigilance Law*, BUSINESS & HUMAN RTS. RES. CTR. (last updated Dec. 30, 2024), <https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/>.
- <sup>41</sup> Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven) [Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions (Transparency Act)] (LOV-2021-06-18-99) (hereinafter, “Norwegian Transparency Act”),

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<https://lovdata.no/dokument/NL/lov/2021-06-18-99>; see also Norway: Law on mandatory due diligence & right to information about corporate impacts enters into force, BUSINESS & HUMAN RTS. RES. CTR. (June 15, 2022), <https://www.business-humanrights.org/en/latest-news/norway-govt-proposes-act-regulating-corporate-supply-chain-transparency-duty-to-know--due-diligence/>.

<sup>42</sup> Germany: New Supply Chain Law a Step in the Right Direction, HUMAN RTS. WATCH (June 11, 2021), <https://www.hrw.org/news/2021/06/11/germany-new-supply-chain-law-step-right-direction>; *Supply Chain Act: Act on Corporate Due Diligence Obligations in Supply Chains*, Bundesministerium für Arbeit und Soziales [Bus. & Human Rights, Fed. Ministry of Labour and Social Affairs] (2024), <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html>.

<sup>43</sup> Surya Deva, Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?, 36 LEIDEN J. INT'L L. 389, 407-413 (2023); Juliane Kippenberg, *Legal Loopholes: Germany wants certified companies to be exempted from liability for negligence in the EU supply chain law. But certifications themselves are problematic*; HUMAN RTS. WATCH (Jan. 30, 2024), <https://www.hrw.org/news/2023/01/30/legal-loopholes>; Juliette Camy, *The French law on the duty of vigilance: the challenges of the preventive approach*, CAMBRIDGE CORE BLOG (June 29, 2023), <https://www.cambridge.org/core/blog/2023/06/29/the-french-law-on-the-duty-of-vigilance-the-challenges-of-the-preventive-approach/>.

<sup>44</sup> Just Transition: Indigenous Peoples' Perspectives, Knowledge, and Lived Experiences, *supra* note 6, at 4; *Civil Society Recommendations for the UNSG's Panel on Critical Energy Transition Minerals*, *supra* note 37.

<sup>45</sup> G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, at articles 19, 28 (Sept. 13, 2007) (hereinafter, "UNDRIP"); General Recommendation 23, Rights of indigenous peoples, Committee on the Elimination of Racial Discrimination, U.N. Doc. A/52/18, annex V at 122, at ¶ 5 (Aug. 18, 1997); see also Agnes Portalewska, *Free, Prior and Informed Consent: Protecting Indigenous Peoples' rights to self-determination, participation, and decision-making*, Cultural Survival (Nov. 27, 2012), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous>.

<sup>46</sup> UNDRIP, *supra* note 45, at 19; Agnes Portalewska, *Free, Prior and Informed Consent: Protecting Indigenous Peoples' rights to self-determination, participation, and decision-making*, CULTURAL SURVIVAL (Nov. 27, 2012), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous>; see generally Study of the Expert Mechanism on the Rights of Indigenous Peoples: Free, prior and informed consent: a human rights-based approach, U.N. Doc. A/HRC/39/62 (Aug. 10, 2018).

<sup>47</sup> Guiding Principles on Business and Human Rights, *supra* note 19, at 21; UNDRIP *supra* note 45, at 19; Just Transition: Indigenous Peoples' Perspectives, Knowledge, and Lived Experiences, *supra* note 6, at 5.

<sup>48</sup> This estimation is based on documented Tribal opposition to the mine. Reno-Sparks Indian Colony and Burns Paiute Tribe sued the United States government in two separate suits in opposition to the mine. See generally *Bartell Ranch LLC v. McCullough*, 558 F. Supp. 3d 974 (D. Nev. 2021); *Reno-Sparks Indian Colony v. Haaland*, 3:23-cv-00070-MMD-CLB (D. Nev. Dec. 12, 2023). Summit Lake Paiute Tribe joined the second lawsuit against the United States government in opposition to the mine. See generally *Reno-Sparks Indian Colony v. Haaland*, 3:23-cv-00070-MMD-CLB (D. Nev. Dec. 12, 2023). The Winnemucca Indian Colony attempted to intervene in the first lawsuit in opposition to the mine, but the court rejected their intervention as untimely. Winnemucca Indian Colony Motion to Intervene, ECF No.179, *Bartell Ranch LLC v. McCullough*, 558 F. Supp. 3d 974 (D. Nev. 2021). The Duck Valley Shoshone Paiute Tribes submitted a written submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples detailing the deficiencies in the Thacker Pass permitting process. See Submission by the Shoshone Paiute Tribes of the Duck Valley to the U.N. Special Rapporteur on the Rights of Indigenous Peoples (May 2023).

<sup>49</sup> General Mining Act of 1872, *supra* note 5; *The Indian Citizenship Act at 100 years Old*, 49 NATIVE AM. RTS. FUND L. REV. 1, 1 (2024).

<sup>50</sup> See generally Michael Lopez, Tribal Rights: The 1872 Mining Law's Past and Future, 34 NAT. RES. & ENV'T 53 (2020); Martin Heinrich & Chris Wood, *This 150-Year-Old Mining Law Hurts Taxpayers and the Environment*, N.Y. TIMES (July 28, 2022).

<sup>51</sup> *Civil Society Recommendations for the UNSG's Panel on Critical Energy Transition Minerals*, *supra* note 38.

<sup>52</sup> Just Transition: Indigenous Peoples' Perspectives, Knowledge, and Lived Experiences, *supra* note 6, at 5.