

Exhibit 1 -
Reno-Sparks Indian Colony and Atsa koodakuh wuh
Nuwu/People of Red Mountain's
Proposed Complaint

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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

WESTERN WATERSHEDS PROJECT,) Case No. 3:21-cv-103-MMD-CLB
<i>et al.</i> ,)
Plaintiffs,) RENO-SPARKS INDIAN
) COLONY AND ATSA
) KOODAKUH WYH NUWU
and) COMPLAINT FOR VACATUR,
) EQUITABLE AND INJUNCTIVE
RENO-SPARKS INDIAN COLONY and ATSA)	
KOODAKUH WYH NUWU/ PEOPLE OF RED)	
MOUNTAIN)	
)
Plaintiff-Intervenor,)
v.)
)
UNITED STATES DEPARTMENT OF THE)	
INTERIOR, <i>et al.</i> ,)
)

1	Defendants)
2)
3	and)
4)
5	LITHIUM NEVADA CORP.)
6)
7	Defendant-Intervenor)
8	_____)
9		

INTRODUCTION

1. This action is brought under the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101 *et seq.*, its implementing regulations and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* Plaintiffs, Reno-Sparks Indian Colony (RSIC) and Atsa koodakuh wyh Nuwu/People of Red Mountain, challenge the Bureau of Land Management, Winnemucca District Office's (BLM) and Defendant-Intervenor Lithium Nevada Corp.'s activities related to approving the destruction of a massacre site; caves and stone outcroppings where Native Americans sought refuge from American soldiers when those soldiers came to force them on to reservations; ancient obsidian quarries used by Native Americans for millennia; campsites used by Native Americans for millennia; traditional food and medicine gathering grounds; traditional hunting grounds; artifacts; and likely burial sites with Native American remains in Peehee mu'huh in northern Nevada before completing the NHPA's Section 106 required consultation process, as provided for at 36 Code of Federal Regulations (CFR) Section 800, Protection of Historic Properties (2004). The original name for Thacker Pass in the local Numic dialect spoken by members of Atsa koodakuh

1 wyh Nuwu/People of Red Mountain is “Peehee mu’huh,” which will be used
2 instead of “Thacker Pass.”

3 2. Specifically, Plaintiffs challenge BLM’s failure to comply with the NHPA in
4 issuing a Record of Decision (ROD) for the Thacker Pass Lithium Mine Project
5 (the Project) without making a reasonable and good faith effort to identify Indian
6 tribes that should have been consulted with because they attach religious and
7 cultural significance to Peehee mu’huh, in contravention of 36 CFR §
8 800.2(c)(2)(ii)(A); without providing to Indian tribes who attach religious and
9 cultural significance to Peehee mu’huh a reasonable opportunity to identify their
10 concerns about historic properties, advise on the identification and evaluation of
11 historic properties, articulate their views on the undertaking’s effects on such
12 properties, and participate in the resolution of adverse effects, also in
13 contravention of 36 CFR § 800.2(c)(2)(ii)(A); without seeking and considering the
14 views of the public in a manner that reflects the nature and complexity of the
15 undertaking, in contravention of 36 CFR § 800.2(d)(1); and for issuing a ROD
16 before a draft Memorandum of Agreement with the Nevada State Historic
17 Preservation Officer (SHPO) was made available for public comment, in
18 contravention of the 2014 BLM-SHPO State Protocol Agreement (“the
19 Protocol”).

20 3. Despite these failures and pursuant to the illegal ROD, Defendant-
21 Intervenor Lithium Nevada Corp. plans to begin physical disturbance including
22 mechanical trenching operations of Peehee mu’huh to begin as early as July 29,

1 2021. Mechanical trenching operations will destroy traditional cultural and historic
2 properties and will restrict subsequent consideration of alternatives to avoid,
3 minimize, or mitigate the Project's adverse effects on historic properties.

4 Because BLM has failed to comply with the NHPA, failed to adequately consult
5 Indian tribes or the general public, and failed to offer the MOA for public
6 comment, BLM cannot adequately avoid or mitigate adverse effects to traditional
7 cultural and historic properties in Peehee mu'huh. Any physical disturbance of
8 Peehee mu'huh must not happen until BLM is in compliance with the NHPA's
9 Section 106 consultation process.

10 JURISDICTION

11 4. This Court has jurisdiction pursuant to 28 USC § 1331 as this action arises
12 under the laws of the United States.

13 5. An actual controversy exists between the parties within the meaning of 28
14 USC § 2201(a). This Court may grant declaratory relief and additional relief,
15 including an injunction, pursuant to 28 USC §§ 2201, 2202 and 5 USC §§ 705,
16 706.

17 6. BLM's failure to comply with the requirements of the NHPA, 54 U.S.C. §§
18 300101 *et seq.*, is arbitrary, capricious, and not in accordance with the
19 procedures required by law pursuant to the APA and is thus subject to judicial
20 review. 5 USC §§ 701-706.

21 7. BLM's failure to comply with the requirements of the NHPA, 54 U.S.C. §§

1 300101 *et seq.*, also constitutes agency action that is unreasonably delayed
2 and/or unlawfully withheld as provided by Section 706(1) of the APA and is thus
3 subject to judicial review. 5 USC §§ 701-706.
4

5 **VENUE**

6 8. Venue is proper in the District of Nevada pursuant to 28 U.S.C. §§ 1391(b)
7 and (e). The BLM Winnemucca District Office and named Defendant Ester M.
8 McCullough, who issued and signed the FEIS and ROD, are located in
9 Winnemucca, Nevada. The Thacker Pass Lithium Mine Project is located in
10 Humboldt County, Nevada. The Reno-Sparks Indian Colony is located in Reno
11 and Sparks, Nevada. And, all of the members of Atsa koodakuh wyh
12 Nuwu/People of Red Mountain are located and reside in Nevada.

13 **PARTIES**

14 9. Plaintiff Reno-Sparks Indian Colony ("RSIC") is a federally-recognized
15 Tribe located in Reno and Sparks, NV. RSIC consists of 1,157 members from the
16 Paiute, Shoshone, and Washoe Nations. Ancestors of RSIC tribal members
17 traditionally hunted and gathered in Peehee mu'huh. RSIC has several residents,
18 members, and employees that have direct cultural connections to Peehee
19 mu'huh, who practice ceremony in Peehee mu'huh, who hunt and gather in
20 Peehee mu'huh, and who plan on doing so in the future. RSIC attaches cultural
21 and religious significance to Peehee mu'huh.

22 10. Plaintiff Atsa koodakuh wyh Nuwu (translates to People of Red

Mountain) is an unincorporated association of members of the Fort McDermitt Paiute and Shoshone Tribe. Atsa koodakuh wyh Nuwu members include traditional elders and spiritual leaders. Atsa koodakuh wyh Nuwu formed to preserve their ancestral teachings, maintain oral histories, and practice the traditions their people have practiced for generations. Atsa koodakuh wyh Nuwu regularly meets in Peehee mu'huh to perform ceremony; to gather traditional foods and medicines; to teach their members and the public about the traditional uses of plants, animals, and minerals found in Peehee mu'huh; to share oral histories involving the site – especially the history of the massacre of their ancestors that gave Peehee mu'huh its name and the history of how their ancestors hid in Peehee mu'huh to avoid American soldiers; to observe artifacts created by their ancestors; and to educate the public about the religious, cultural, and historic importance of Peehee mu'huh to their people. Atsa koodakuh wyh Nuwu plans on continuing to visit Peehee mu'huh to engage in similar activities in the future.

11. Defendant Bureau of Land Management is the agency responsible for preparation, approval and delivery of the Thacker Pass Lithium Mine Project Record of Decision, the Memorandum of Agreement with the Nevada State Historic Preservation Officer, and compliance with the NHPA.

12. Defendant Deb Haaland is the Secretary of the Interior and is sued in her official capacity.

13. Defendant-Intervenor Lithium Nevada Corp. ("Lithium Nevada")

1 proposes to construct, operate, reclaim, and close the Thacker Pass Lithium
2 Mine Project. Lithium Nevada has successfully intervened as a defendant in this
3 case.

4
5 **Peehee mu'huh**

6 14. Peehee mu'huh is located within the traditional territories of the
7 Nuwu (Northern Paiute) people.

8 15. The Plaintiffs' oral histories teach them that the Creator placed them
9 in their traditional territories "with the stones." This means the Plaintiffs believe
10 their ancestors have lived in their traditional territories from time
11 immemorial. Eben Declaration, ¶ 21.

12 16. Peehee mu'huh is historically significant both to the Nuwu and to
13 other Americans, in general. When American soldiers were rounding the Nuwu
14 up to violently force them on to reservations, many of the Plaintiffs' ancestors hid
15 in Peehee mu'huh. The many caves and stone outcroppings in Peehee mu'huh
16 offered a good vantage point for the Nuwu to watch for the dust kicked up by the
17 horses of approaching soldiers from either the Quinn River Valley to the east or
18 the Kings River Valley from the west. The Fort McDermitt Tribe descends from
19 essentially two families who, hiding in Peehee mu'huh, managed to avoid being
20 sent to reservations farther away from their ancestral lands. Hinkey Declaration,
21 ¶ 9.

22 17. Some of the Plaintiffs' ancestors were massacred in Peehee

1 mu'huh. In fact, this massacre is how Peehee mu'huh got its name. Peehee
2 mu'huh means rotten moon. Peehee mu'huh is named so because the Plaintiffs'
3 ancestors were massacred there while the hunters were away. When the hunters
4 returned, they found their loved ones, murdered, unburied, rotting, and with their
5 entrails spread across the sage brush in a part of the Pass shaped like a moon.

6 Hinkey Declaration, ¶ 7

7 18. The Proposed Plaintiffs believe that to build a lithium mine over
8 Peehee mu'huh, where their ancestors were massacred, would be like building a
9 lithium mine over Pearl Harbor, Arlington National Cemetery, or the Gettysburg
10 Battlefield. Hinkey Declaration, ¶ 8.

11 19. Peehee mu'huh is spiritually sacred to the Nuwu, including the
12 Plaintiffs, and other Native peoples across Nevada, western Idaho, southern
13 Oregon and northeastern California. Eben Declaration, ¶ 13.

14 20. The Plaintiffs believe that Peehee mu'huh is a singularly powerful
15 spiritual place blessed by the presence of their ancestors, other spirits, and
16 golden eagles – who they consider to be directly connected to the
17 Creator. Hinkey Declaration, ¶ 6.

18 21. Peehee mu'huh is essential to the survival of the Plaintiffs' traditions.
19 Their traditions are tied to the land. When the land is destroyed, the Plaintiffs'
20 traditions are destroyed. Hinkey Declaration, ¶ 14.

21 22. Peehee mu'huh is home to many of the Plaintiffs' traditional foods.

1 Some of the last choke cherry orchards traditionally used by the Proposed
2 Plaintiffs are found in Peehee mu'huh. The Plaintiffs gather choke cherries in
3 Peehee mu'huh to make choke cherry pudding, one of the Plaintiffs' oldest
4 breakfast foods. Hinkey Declaration, ¶ 14.

5 23. Peehee mu'huh is also a rich source of two of the Nuwu's traditional
6 staple foods: yampa (wild potatoes) and biscuit root. There are significant
7 patches of biscuit root throughout Peehee mu'huh and the Plaintiffs' ancestors
8 wild-tended these patches and grew biscuit root gardens. Hinkey Declaration, ¶
9 14.

10 24. The Plaintiffs hunt groundhogs, rabbits, and mule deer in Peehee
11 mu'huh. Mule deer are especially important to the Plaintiffs as a source of meat,
12 but the Plaintiffs also use every part of a mule deer for things like clothing and for
13 drum skins in the Plaintiffs' most sacred ceremonies. Hinkey Declaration, ¶ 14.

14 25. Peehee mu'huh is one of the last places where the Plaintiffs can find
15 their traditional medicines. CoVID-19 made Peehee mu'huh even more important
16 for gathering their medicines than before. Last summer and fall, when the
17 pandemic was at its worst on the Fort McDermitt Reservation, the Plaintiffs went
18 to Peehee mu'huh to gather toza root, which is known as one of the world's best
19 anti-viral medicines. In Peehee mu'huh, the Plaintiffs also gather ibi, a chalky
20 rock, for ulcers and both internal and external bleeding and old-growth sage
21 brush for a strong tea used to treat respiratory illnesses. Hinkey Declaration, ¶
22 15.

The Thacker Pass Lithium Mine Project

26. The Thacker Pass Lithium Mine Project is massive and complex. The Project area covers 17,933 acres of public land administered by the BLM, Winnemucca District. 10,468 of those acres are associated with the Mine Plan and 7,465 of them are associated with the Exploration Plan. Project facilities include the development of an open pit mine; waste rock storage facilities; a coarse gangue stockpile; a clay tailings filter stack; growth media stockpiles; haul and secondary roads; and additional mine facilities to support mining and lithium production operations. Thacker Pass Lithium Mine Project Record of Decision and Plan of Operations Approval (ROD), pg. 3.

27. The Final Environmental Impact Statement reports that “inventories identified over one thousand (n=1020) cultural resource sites and a component of a large cultural district: the Thacker Pass component of the Double H/Whitehouse Obsidian Procurement District (DHWOPD).” This Thacker Pass Component became its own National Register of Historic Places (NRHP)-eligible district in 2009. Thacker Pass Lithium Mine Project Final Environmental Impact Statement (FEIS) pg. 4-82

28. The Mining and Exploration Plans’ direct effects area intersect 923 archaeological and architectural resources. 56 of these are eligible for listing on the NRHP. FEIS, 4-82. The indirect effects area intersects 134 archaeological and architectural resources. 35 of these are eligible for listing on the NRHP. FEIS, 4-83.

1 29. Ground disturbing activities and project infrastructure development
2 could directly, indirectly, and cumulatively affect one or more of the NRHP
3 integrity aspects of 85 historic properties and one district. FEIS, 4-83. BLM and
4 Nevada SHPO have concurred that the Project would adversely affect 56 historic
5 properties eligible for the NRHP. FEIS, 4-83.

6 30. Even with the development of a HPTP, the FEIS explains that:
7 “there may still be permanent loss of cultural resources and a limited fragmentation
8 of the Thacker Pass component of the DHWOPD. The use of routes and utility
9 corridors surrounding the Project area would also increase and change access to
10 areas leading to potential effects through new surface disturbances, unauthorized
11 artifact collection, and vandalism at cultural resources.” FEIS, 4-85.
12

13 **The National Historic Preservation Act, Section 106 Consultation Process**

14 31. The National Historic Preservation Act (NHPA) obligates the Bureau
15 of Land Management (“BLM”), in cooperation with Indian tribes, private
16 organizations, and individuals “to administer federally owned, administered, or
17 controlled historic property in a spirit of stewardship for the inspiration and benefit
18 of present and future generations...” (54 U.S.C. § 300101(3)). When the NHPA
19 was passed, Congress explained that the purpose of the NHPA is to remedy the
20 dilemma that “historic properties significant to the Nation’s heritage are being lost
21 or substantially altered, often inadvertently, with increasing frequency” (*Montana*
22 *Wilderness Ass’n v. Fry*, 310 F.Supp. 2d 1127, 1151 (D. Montana, 2004) (quoting
23 16 U.S.C. § 470(b)(3)).

24 32. 36 Code of Federal Regulations § 800 *et seq* was promulgated to

1 govern implementation of NHPA's Section 106 consultation process. 36 CFR §
2 800.1(a) states the purposes of the section 106 process, in pertinent part:

3 "The section 106 process seeks to accommodate historic preservation concerns
4 with the needs of Federal undertakings through consultation among the agency
5 official and other parties with an interest in the effects of the undertaking on historic
6 properties, commencing at the early stages of project planning. **The goal of**
7 **consultation is to identify historic properties potentially affected by the**
8 **undertaking, assess its effects and seek ways to avoid, minimize or mitigate**
9 **any adverse effects on historic properties** (emphasis added)."
10

11 33. § 800.1(c) adds: "The agency official shall ensure that the section
12 106 process is initiated early in the undertaking's planning, so that a broad range
13 of alternatives may be considered during the planning process for the
14 undertaking."

15 34. § 800.2(d)(1) describes the important role the public plays in helping
16 federal agencies steward historic properties for the inspiration and benefit of
17 present and future generations: "The views of the public are essential to informed
18 Federal decision-making in the section 106 process."

19 35. Also, § 800.2(d)(1) requires that "[t]he agency official shall seek and
20 consider the views of the public in a manner that reflects the nature and
21 complexity of the undertaking and its effects on historic properties [and] the likely
22 interest of the public in the effects on historic properties..."

23 36. 36 CFR § 800.2(c)(2)(B)(ii) states that NHPA, Section 101(d)(6)(B)
24 "requires the agency official to consult with **any** Indian tribe or Native Hawaiian
25 organization that attaches religious and cultural significance to historic properties

1 that may be affected by an undertaking. The requirement applies regardless of
2 the location of the historic property.” (emphasis added)

3 37. The Reno-Sparks Indian Colony, Fort McDermitt Paiute and
4 Shoshone Tribe, Summit Lake Paiute Tribe, Burns Paiute Tribe of Oregon, Duck
5 Valley Shoshone-Paiute Tribe, Lovelock Paiute Tribe, Battle Mountain Band
6 Colony of the Te-Moak Tribe of Western Shoshone, Winnemucca Indian Colony,
7 Cedarville Rancheria, Ft. Bidwell Indian Community, Fallon Paiute-Shoshone
8 Tribe, and the Pyramid Lake Paiute Tribe attach religious and cultural
9 significance to Peehee mu’huh. Eben Declaration, ¶ 13.

10 38. Under § 800.2(c)(2)(B)(ii)(A),
11 “[t]he agency official shall ensure that consultation in the section 106
12 process provides the Indian tribe...**a reasonable opportunity to identify its**
13 **concerns about historic properties, advise on the identification and**
14 **evaluation of historic properties, including those of traditional religious**
15 **and cultural importance, articulate its views on the undertaking’s effects on**
16 **such properties, and participate in the resolution of adverse effects.** It is the
17 responsibility of the agency official **to make a reasonable and good faith effort**
18 to identify Indian tribes...that shall be consulted in the section 106 process.”
19

20 39. § 800.2(c)(2)(B)(ii)(A) reminds agency officials, once again, that
21 section 106 consultation should commence early in the planning process.

22 40. The Reno-Sparks Indian Colony and all the tribes who attach
23 religious and cultural significance to Peehee mu’huh have not had a reasonable
24 opportunity to identify their concerns about historic properties, advise on the
25 identification and evaluation of historic properties, articulate their views on the

1 undertaking's effects on such properties, and participate in the resolution of
2 adverse effects. Eben Declaration, ¶¶ 7-8.

3 41. § 800.2(c)(2)(B)(ii)(C) advises that "[c]onsultation with Indian tribes
4 should be conducted in a manner sensitive to the concerns and needs of the
5 Indian tribe..."

6 42. Consultation conducted in a manner sensitive to the concerns and
7 needs of Indian tribes would have accounted for the fact that the worst pandemic
8 in at least 100 years was raging around the world, especially when those Indian
9 tribes were disproportionately affected by the COVID-19 pandemic. Many tribal
10 offices, including RSIC's and Fort McDermitt's, were closed for most of 2020.

11 43. Originally, all of 36 CFR § 800 governed implementation of NHPA's
12 Section 106 consultation process, but the BLM Nevada State Office, under a
13 National Programmatic Agreement (NPA, 1997, as amended 2012) among BLM,
14 the Advisory Council of Historic Preservation (ACHP), and the National
15 Conference of State Historic Preservation Officers, replaced the procedures set
16 forth in 36 CFR § 800.3 through § 800.7 with the 2014 BLM-State Historic
17 Preservation Officer (SHPO) State Protocol Agreement ("the Protocol").

18 44. The Protocol's Preamble declares that the Protocol is "...designed to
19 enhance the participation of consulting parties, the general public and Native
20 American tribes in the section 106 process..." The Protocol does not include
21 many bright-line rules about public participation, but it does include one. Section
22 V.F.4.a-b reads:

1 “4. BLM will negotiate a [Memorandum of Agreement] addressing adverse effects
2 when BLM and SHPO agree that the adverse effects are known prior to the
3 approval of the undertaking.
4

- 5
- 6 a. The MOA establishes BLM-SHPO concurrence regarding the resolution of
7 project-related adverse effects according to a [Historic Properties
8 Treatment Plan], as well as other stipulations and measures that may be
9 specified in the MOA. BLM must initiate consultation with SHPO regarding
10 eligibility, effects, and resolution of adverse effects with sufficient lead time
11 to allow for development of an MOA on a schedule meeting the
12 undertaking’s anticipated DR or ROD. BLM will also consult with Indian
13 tribes and other consulting parties, as appropriate. The MOA must be
14 signed by the appropriate parties prior to BLM’s issuance of a DR or ROD
15 for the undertaking.
16

- 17
- 18 b. Draft PAs and MOAs should be made available for public comment.”
19 (emphasis with original.)
20

21 45. Despite BLM and SHPO agreeing that adverse effects to historic
22 properties in Peehee mu’huh were known prior to approval of the undertaking,
23 the MOA was not signed by the appropriate parties prior to BLM’s issuance of the
24 ROD. Nor were draft Programmatic Agreements or Memorandums of Agreement
25 made available for public comment.

26 46. Inexplicably, the Notice of Availability of the Final Environmental
27 Impact Statement for the Proposed Thacker Pass Project, published December
28 4, 2020, stated that “[t]he BLM and Nevada SHPO recently executed a
29 Memorandum of Agreement to resolve adverse effects to the 57 historic
30 properties.” But, then, the Record of Decision contradicted the Notice of
31 Availability and stated:

1 “In accordance with the requirements of Section 106 of the National Historic
 2 Preservation Act, the BLM coordinated and consulted with the State Historic
 3 Preservation Office (SHPO). The BLM received a letter dated Wednesday,
 4 October 7, 2020, providing the SHPO’s concurrence on the cultural resource report
 5 and finding of adverse effect. A Memorandum of Agreement and treatment plan
 6 are being prepared, and the BLM will continue to consult with the SHPO on the
 7 Project and treatment plan in accordance with programmatic protocols.”
 8

9 **Consultation Timeline**

10 47. Proposed Plaintiffs’ counsel submitted a Freedom of Information Act
 11 request to BLM requesting documentation on BLM’s efforts at tribal consultation
 12 on June 10, 2021. This request was confirmed on the same day. The statutory
 13 20-day timetable has passed and BLM has not responded to that request.

14 48. According to the ROD, the following is the extent of BLM’s “Native
 15 American Consultation” prior to issuing the ROD:

16 “The BLM has been in contact with tribal governments regarding this Project from
 17 its early stages (October 2018) and through the ensuing National Environmental
 18 Policy Act (NEPA) process.
 19

20 In December 2019, BLM sent certified letters to Fort McDermitt, Pyramid Lake,
 21 Summit Lake, and Winnemucca Indian Colony “initiating formal consultation.”
 22 These tribes are also on the Project EIS mailing list to receive updates, and the
 23 BLM notified the tribes of the availability of the draft EIS in July 2020. The tribes
 24 also received notification and copies of the final EIS by certified mail in
 25 December 2020. No comments or concerns have been raised during formal
 26 government to government consultation for the Project by the tribes.” ROD, pg. 5.
 27

28 49. This was contradicted in a letter received by the RSIC on July 12,
 29 2021 from Kathleen Rehberg, Field Manager, BLM Winnemucca, Humboldt River
 30 Field Office who stated that only the Fort McDermitt Paiute-Shoshone tribe, the

1 Summit Lake Paiute tribe, and the Winnemucca Indian Colony were invited to
2 consult on the project and its impact. Rehberg Letter.

3 50. In a case similar to this one, the 10th Circuit ruled: “The record
4 reveals that the Forest Service did request information from the Sandia Pueblo
5 and other local Indian tribes, but a mere request for information is not necessarily
6 sufficient to constitute the ‘reasonable effort’ section 106 requires.” *Pueblo of*
7 *Sandia v. United States*, 50 F.3d 856, 860 (10th Cir.1995)

8 51. In another case similar to this one, the BLM offered documentation
9 of consultations with tribes different from the plaintiffs, with other agencies, and
10 with the public. However, the federal district court noted:

11 “While this other consultation appears to be required and serves other important
12 purposes, it doesn’t substitute for mandatory consultation with the Quechan Tribe.
13 In other words, that BLM did a lot of consulting in general doesn’t show that its
14 consultation with the Tribe was adequate under the regulations. Indeed, [the BLM]
15 grouping tribes together (referring to consultation with ‘tribes’) is unhelpful: Indian
16 tribes aren’t interchangeable, and consultation with one tribe doesn’t relieve the
17 BLM of its obligation to consult with any other tribe that may be a consulting party
18 under NHPA.” *Quechan Tribe of Fort Yuma Indian Reservation v. US Dept. of*
19 *Interior*, 755 F.Supp.2d 1104, 1118 (SD Calif. 2010)
20

21 52. *The Quechan Tribe* court also stated: “...the BLM’s communications
22 are replete with recitals of law (including Section 106), professions of good intent,
23 and solicitation to consult with the Tribe. But mere pro forma recitals do not, by
24 themselves, show BLM actually complied with the law. *Id.*

25 53. Furthermore, federal courts have ruled “[c]ontact, of course, is not

1 consultation, and ‘consultation with one tribe doesn’t relieve the [agency] of its
2 obligation to consult with any other tribe.” *Standing Rock Sioux Tribe v. U.S.*
3 *Army Corps of Engineers*, 205 F.Supp.3d 4, 32 (D. DC 2016) (citing *Quechan*
4 *Tribe of Fort Yuma Indian Reservation v. U.S. Dep’t of Interior*, 755 F.Supp.2d
5 1104, 1112, 1118 (S.D.Cal. 2010))

6 54. The only so-called consultation the BLM can demonstrate for the
7 Thacker Pass project are mere pro forma recitals, requests for information, and
8 feeble attempts at contacting a fraction of the number of tribes who attach
9 religious and cultural significance to Peehee mu’huh.

10 55. On November 5, 2020, BLM and the SHPO entered into a
11 Memorandum of Agreement approving the HPTP. Despite the FEIS (4-85)
12 stating that the HPTP would be approved through consultation with local Native
13 American tribes, no tribes participated in preparing this HPTP.

14 56. On January 15, 2021, the Record of Decision was published.

15 57. On May 13, 2021, Lithium Nevada Corporation informed the
16 Plaintiffs that it intended to begin ground disturbance as soon as June 23, 2021.
17 Talasi Brooks Declaration, ¶ 7.

18 58. On June 3, 2021, Reno-Sparks Indian Colony delivered a letter to
19 BLM officially requesting government-to-government consultation about historic
20 properties in Peehee mu’huh under the NHPA. See: RSIC June 3
21 Correspondence to BLM Winnemucca.

22 59. On June 24, Atsa koodakuh wyh Nuwu delivered a letter to BLM

1 requesting that BLM halt plans to physically disturb Peehee mu'huh until tribes
2 who attach religious and cultural significance to the site can be adequately
3 consulted under the NHPA and requesting that BLM recognize Atsa koodakuh
4 wyh Nuwu as consulting party under the NHPA. See: Atsa koodakuh wyh Nuwu
5 June 24 Correspondence to BLM Winnemucca.

6 60. On July 12, 2021, the RSIC received a short response from Kathleen
7 Rehberg, Field Manager, BLM Humboldt River Field Office, denying RSIC's
8 request for NHPA, Section 106 consultation on historic properties affected by the
9 Thacker Pass Project. The letter stated that the consultation period for the public
10 and Native American tribes opened in January 2020 and closed November 5,
11 2020. With this illegal rejection of RSIC's request for government-to-government
12 consultation under the NHPA, section 106, it became clear to RSIC that it must
13 seek a court order to engage in NHPA, Section 106 consultation. See: Rehberg
14 Letter.

15 **CLAIMS FOR RELIEF**

16 61. Proposed Plaintiffs incorporate by reference the allegations of all the
17 foregoing paragraphs as if fully set forth herein.

18 62. BLM's failure to make a reasonable and good faith effort to identify
19 Indian tribes that should have been consulted with because they attach religious
20 and cultural significance to Peehee mu'huh before issuing a ROD for the Thacker
21 Pass Lithium Mine Project violates the NHPA and is unlawful.

22 63. BLM's failure to provide to Indian tribes who attach religious and

1 cultural significance to the Peehee mu'huh a reasonable opportunity to identify
2 their concerns about historic properties, advise on the identification and
3 evaluation of historic properties, articulate their views on the undertaking's effects
4 on such properties, and participate in the resolution of adverse effects violates
5 the NHPA and is unlawful.

6 64. BLM's failure to seek and consider the views of the public in a
7 manner that reflects the nature and complexity of the Project and its effects on
8 historic properties and the likely interest of the public in the effects on historic
9 properties before issuing a Record of Decision for the Thacker Pass Lithium Mine
10 Project violates the NHPA, is unlawful.

11 65. BLM's failure to make a draft Memorandum of Agreement available
12 for public comment before issuing a Record of Decision for the Thacker Pass
13 Lithium Mine Project violates the NHPA and is unlawful.

14 **RELIEF**

15 66. WHEREFORE, for all the foregoing reasons, Plaintiffs request that
16 this Court issue:

17 67. A judgment declaring that BLM's activities connected to plans for
18 physical disturbance of Peehee mu'huh, pursuant to an Historic Properties
19 Treatment Plan or otherwise, fail to comply with the NHPA.

20 68. A judgment declaring that BLM failed to comply with the

1 requirements of the NHPA, and that such failure is arbitrary, capricious, and not
2 in accordance with the procedures required by law pursuant to the APA, 5 USC
3 §§ 701 through 706.

4 69. A judgment declaring that BLM failed to comply with the NHPA and
5 that such failure constitutes agency action that is unreasonably delayed and/or
6 unlawfully withheld as provided by Section 706(1) of the APA.

7 70. A judgment and order setting aside the illegally issued ROD pending
8 compliance with the NHPA, including compliance with the 2014 BLM-SHPO
9 Protocol Agreement.

10 71. A judgment and order enjoining the BLM from authorizing any
11 physical disturbance in Peehee mu'huh pending compliance with the NHPA,
12 including compliance with the 2014 BLM-SHPO Protocol Agreement.

13 72. A judgment granting Proposed Plaintiffs their costs and reasonable
14 attorneys fees incurred in bringing this action, pursuant to the Equal Access to
15 Justice Act (EAJA), 28 U.S.C. § 2412 et. seq. and any other applicable statutory
16 or equitable principles; and

17 73. Any other relief this court deems just and proper.

18 Respectfully submitted this 20th day of July, 2021.

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17 **Certificate of Service**

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19 I hereby certify that on July 20, 2021, I filed the foregoing using the United States
20 District Court CM/ECF, which caused all counsel of record to be served
21 electronically.

22 By: /s/Julie Cavanaugh-Bill
23 Julie Cavanaugh-Bill (State Bar No. 11533)