



RENO-SPARKS INDIAN COLONY
★ **CULTURAL RESOURCES PROGRAM**

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April 14, 2022

Mr. Kelly R. McGuire, Principal
Far Western Anthropological Research Group, Inc.
2727 Del Rio Place
Davis, California 95618

and

Mr. D. Craig Young, Principal
3656 Research Way, Suite 32
Carson City, NV 89706

Dear Mr. McGuire and Mr. Young:

The purpose of this correspondence is to provide the Reno-Sparks Indian Colony's (RSIC) perspective on the unprincipled proposed excavations that Far Western Anthropological Research Group, Inc. (Far Western) is planning to undertake at the Paiute and Shoshone peoples important Traditional Cultural Property, PeeHee Mu'huh (Thacker Pass). The RSIC recognizes Thacker Pass as a Traditional Cultural Property (TCP), although not formerly designated, PeeHee Mu'Huh has all the associated elements of a TCP, according to the RSIC and Bulletin 38.

The RSIC understands that Far Western may be receiving its final permits from the Bureau of Land Management Humboldt River Field Office (BLM) to proceed with the proposed excavations.

1. Project Legality

According to our analysis and past experiences, the BLM arbitrarily and capriciously rushed the permitting process for the Thacker Pass Lithium Mine Project (Project) and fast-tracked the nation's largest and most complex lithium mine. This has caused BLM to fail to meet its responsibilities under the National Environmental Policy Act (NEPA), Native American Graves and Repatriation Act (NAGPRA), Archeological Resources Protection Act (ARPA) and National Historic Preservation Act (NHPA). Fast-tracking the permitting process also limited administrative and public review of the Project. The Federal Government has failed to uphold its fiduciary responsibility to conduct meaningful government to government consultation with federally recognized tribes. The BLM did not make a reasonable or good faith effort to identify Indian tribes

that should have been consulted in the NHPA Section 106 process. Six Tribes have sent official communications to BLM stating they were not consulted and stating their opposition to the desecration of the sacred site at Peehee Mu'huh.

BLM did not provide tribes who attach cultural and religious significance to Peehee Mu'Huh a reasonable opportunity to identify concerns about historic properties, advise on the identification and evaluation of historic properties (including those of traditional religious and cultural importance), articulate views on the Thacker Pass Lithium Mine Project's effects on such properties, and participate in the resolution of adverse effects as required by the NHPA before the Thacker Pass Record of Decision (ROD) and Plan of Operations (POO) was issued. In fact, BLM did not even contact the RSIC before issuing the ROD and POO.

The RSIC understands that in 2017, Secretary of Interior David Bernhardt created Secretary Order (SO) 3355. SO 3355 ordered federal agencies to complete Final Environmental Impact Statements (EIS) within one year from the issuance of a Notice of Intent to prepare an EIS. SO 3355 was revoked because it was found to be inconsistent with, or present obstacles to, the policy set forth in Executive Order 13990. On April 16, 2021 Department of Interior (DOI) established SO 3398 and stated: "It is Department policy to listen to the science; to address societal inequities and create opportunities for the American people; to conserve and restore our land, water, and wildlife; to reduce greenhouse gas emissions; to create jobs through a growing clean energy economy; and to bolster resilience to the impacts of climate change."

2. Cultural Resource Surveys and Archeological Work

In 2018, Far Western conducted the Cultural Resource Survey and in September 2018 provided a Draft Class III Inventory of 12,963 Acres for Lithium Nevada's Thacker Pass Project, Humboldt County, Nevada to BLM.

No federally recognized Tribe participated, reviewed, or commented during the drafting of the 2018 inventory. Due to the lack of participation by any Tribe, the RSIC finds it morally reckless and possibly in violation of federal law that only 57 sites have been determined to be eligible under Criterion D of the National Register of Historic Places. It is further concerning that these archeological investigations have excluded significant spiritual and social aspects of the production of cultural items that have been raised by the descendants of the very Native Americans being studied. This culturally insensitive disregard for Native spirituality causes damage to our tribal people's sense of self-worth and cultural value today. Archeologists study our ancestors and then create theories without regard for our dynamic and living culture. This type of archeological approach, being run for profit, is disrespectful to Native American Peoples and cultures.

3. The September 1865 Massacre in Thacker Pass

These aforementioned reports, as well as the ROD based on the final EIS (January 15, 2021), and the November 2020 Memorandum of Agreement (MOA), which includes the Historic Properties Treatment Plan, (HPTP), authored by Far Western, fail to mention or investigate the September 12, 1865 US Government sanctioned massacre of Paiute people by the Nevada Calvary. This is a direct violation of the NHPA. As a result of the lack of consultation, the entire ROD, MOA and HPTP is in violation of NEPA, NHPA, NAGPRA and BLM's own internal policies and guidelines.

BLM and Far Western have determined eligibility of the sites without the proper investigation into PeeHee Mu'Huh. This is concerning because both the 2019 Final Technical Report, MOA, and 2020 HPTP fail to mention the September 12, 1865 massacre of our Paiute and Shoshone ancestors. This significant historical event seems to be deliberately overlooked or possibly is being hidden. PeeHee Mu'huh is a historic location where a horrifying massacre occurred. This is a well-documented event detailed in at least nine primary and secondary sources that we are aware of, and it was sanctioned by the U.S. Government.

There are likely to be Native American human remains at Peehee Mu'huh. In 1868, a federal surveyor reported "I found the remains of an Extensive Indian Camp. It was at these camps that Captain R. C. Payne, with Co E. & 1st Nevada cavalry, attacked and whipped a body of Indians on September 12, 1865. There are many Indian skulls and other remains to be scattered over this portion of the Township." This surveyor was working on the western edge of Thacker Pass. The Indian Camp, located in what is now the lithium mine's indirect APE, was attacked from the east (the soldier's camped at the mouth of Willow Creek, northeast of the current location of Orovida, NV). Contemporary accounts tell us that one survivor, Ox Sam, fled north and west to Disaster Peak, and that the massacre spread out across "many miles." It is nearly certain that the ancestors killed at Thacker Pass ran primarily west, northwest, and north as they were being shot in the back, which would put their remains squarely inside the area of the proposed lithium mine.

In 1865 ancestors of the massacred were prohibited to return to the scene of the crime to bury their dead. According to Paiute oral history, our dead relatives are still at Peehee Mu'huh.

According to Far Western's 2018 Class III Inventory, there have been 34 previous inventories' in and around Thacker Pass. On August 27, 2021, during the Nevada Federal Court's preliminary injunction hearing, Lithium Nevada's attorney stated that there is no evidence of human remains in this area because all of Lithium Nevada's contractors, this does include archeologists, have been all over in this area and none of these contractors have noticed human remains. This prejudicial remark must be based on what a non-native recognizes as a massacre, especially since the incomplete archeological inventory and historical survey failed to investigate the 1865 massacre or even know that it had occurred in the first place. We and our allies uncovered this information about what is likely the most significant historical and archeological event in the history of Thacker Pass. Further, less than 4% of the project area has been disturbed. That means 96% of the land where our ancestors' remains lay are still undisturbed.

This historical event also involved important people and events to Paiute and American history. That includes Ox Sam, one of three known survivors of the massacre (his story is documented in the written historical record and oral histories tell us of two other relatives, a grandmother and granddaughter, who survived and fled) who would go on to become an important figure in the history of the Northern Paiute people, and all the peoples of the Boise Valley. The Snake War was the most-deadly Indian War in the west, with thousands of people killed on both sides. The September 1865 Indian camps, soldier's camps, massacre site, troop movements and survivors constitute a significant historic event. BLM and Far Western's reports fail to properly investigate these historical events and significant people at Thacker Pass.

These are all important contributing elements to American History. These are all contributing elements to the National Register of Historic Places criteria for evaluation under Criterion A and Bulletin 38, avoided by BLM

and Far Western. This is concerning when BLM and Far Western failed to properly engage Tribes for this type of evaluation and failed to include important events occurring on this Native American historic property in its reporting. This is American History. It is our Paiute history. We are still here. The Paiute people are important, not just for the artifacts on and in the ground that may yield information and academic acclaim for archeologists. Our culture is alive and we have a strong relationship to the land at PeeHee Mu'huh.

Again, the RSIC recognizes Thacker Pass as a Traditional Cultural Property. Although not formerly designated, Peehee Mu'huh has all the associated elements of a TCP, according to the RSIC and Bulletin 38. The RSIC hasn't even mentioned **Sentinel Rock** and its traditional & current use and religious significance!

By BLM fast-tracking the permitting process it provided limited administrative and public review of the Project. How can we call archeology a science practicum when BLM and Far Western has ignored the 1865 massacre? This is inconsistent with protecting public health, environment and culture. The RSIC is requesting Far Western to not participate in hastily judged and speedy inventories that have overlooked the significant events that can be evaluated through the National Registers Criteria.

4. ARPA Permit

The BLM Nevada State Office issued an ARPA permit in September 2021, and in November 2021, the RSIC appealed this decision.

As part of the trust responsibility as a federal agency, the BLM continues to fail its fiduciary responsibility to the RSIC to follow ARPA's implementing regulations at 43 CFR § 7 *et seq.* to notify all of the Indian tribes which may consider the Thacker Pass Lithium Mine Project site as having religious or cultural importance at least 30 days before issuing an Archaeological Resources Protection Act permit.

On Thursday, September 23, 2021, I spoke with BLM Humboldt River Field Office Manager Kathleen Rehberg and BLM Winnemucca Archaeologist Mark Hall and arranged for a consultation meeting on October 5, 2021 regarding the ARPA permit. On September 29, 2021 the RSIC received an email from BLM with a letter stating that the ARPA permit would be issued during the week of September 27. When I spoke with Rehberg and Hall on September 23, they likely knew that BLM Winnemucca was planning on issuing the ARPA permit during the week of September 27. It was an act of bad faith and dishonesty not to disclose the plans for issuing the ARPA permit during the week of September 27, especially when I understood the October 5 meeting was a consultation meeting for the ARPA permit.

I spoke with the former BLM Nevada State Archaeologist Brian Hockett on Thursday, September 30, 2021 and, he confirmed that he had just signed the ARPA permit. He also explained that he was retiring that same day. It appears BLM rushed the ARPA permit to get Mr. Hockett to sign before he retired and before an interim archaeologist took his place.

On October 21, 2021, RSIC attorney and I met with BLM Winnemucca and discussed the ARPA appeal process, MOA, HPTP amendments and revisions, new massacre evidence, and NAGPRA consultation. Our attorney again stated RSIC's repudiation of BLM's issuance of an ARPA permit for the Thacker Pass Lithium Mine

Project, again requested a conference with the Federal land manager to review the disputed decision, pursuant to 43 CFR § 7.36(a); and again requested any published bureau appeal procedures, pursuant to 43 CFR § 7.36(c).

In this meeting, RSIC pointed out how the HPTP is utterly devoid of any mention of the historical, cultural and spiritual significance of Thacker Pass to regional Tribes; lacks any discussion of the Peehee Mu'huh massacre (a separate inter-tribal conflict documented in our oral history) or the September 12, 1865 massacre; and declares that no Tribe has brought any concerns about the Project or the effects the Project will have on cultural resources and historic properties that regional Tribes attach religious and cultural significance to. RSIC asked if BLM was willing to revise the HPTP to reflect new information about historic properties that the Tribes had presented BLM with. BLM declined to revise the HPTP.

5. BLM NAGPRA Violation

We have informed the BLM they are in direct violation of NAGPRA's implementing regulations at 43 CFR § 10, stating to them that:

BLM fails to conduct meaningful government to government consultation on NAGPRA's implementing regulations at 43 CFR § 10 *et. seq.* In support of RSIC's disputation and appeal of BLM's violation under 43 CFR § 10.3(b)(2) of the NAGPRA implementing regulations, this notification obligates BLM to refrain from excavation until after consultation with the appropriate Indian tribes and known lineal descendants, pursuant to § 10.5.

RSIC then listed off NAGPRA's consultation requirements.

RSIC has continuously directed BLM to the NAGPRA implementing regulations that require BLM to initiate NAGPRA consultation and has asserted that it is almost certain that human remains, funerary objects, sacred objects or objects of cultural patrimony will be found in parts of Thacker Pass authorized to be excavated under the HPTP [see 43 CFR § 10.5(b)].

The RSIC has provided to BLM all documentation of the September 12, 1865 massacre and according to 43 CFR § 10.5(b): "Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or *may* result in the intentional excavation or any inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency must..." take the long list of steps described in § 10.5(b). BLM has declined to begin the NAGPRA consultation process in violation of NAGPRA. If Far Western (or any other archeological firm) proceeds with this archeological dig, they may be party to this violation of federal law.

It is important to note that the NAGPRA regulations do not require proof of human remains, funerary objects, sacred objects, or objects of cultural patrimony in a project area to trigger NAGPRA consultation. NAGPRA consultation is triggered when a planned activity *may* result in intentional excavation or any inadvertent discovery of human remains, etc. RSIC has offered plenty of evidence that human remains may be

intentionally excavated or inadvertently discovered in the Thacker Pass project area and by digs described in the HPTP.

March of this year, all are claims have been denied.

6. Conclusion

Although, BLM is sanctioning your excavations at Thacker Pass, Far Western's proposed actions are considered unethical and wrong by us. The RSIC has promoted, engaged and participated with Far Western in several aspects (reviewing and responding to your cultural resource inventories & reports; requesting Ruby Pipeline to contract with Far Western and assisting with the Ruby Pipeline tribal monitoring project; visiting Far Western Davis, CA laboratory with Nevada Tribal members). I remind Far Western, the RSIC has never falsely claimed that there were ancestral remains in a project area to halt a project to any federal, state or local agencies or even with any archeological firm.

The RSIC does not want any artifacts or burial sites in Thacker Pass or anywhere in the surrounding area to be taken for any reason. Taking these artifacts and disturbing burial sites would constitute yet another shameful chapter in a long history of settlers trying to destroy or commit genocide on Native history and culture.

I should not have to remind you of your own [ethical principles](#) (specifically regarding accountability and commercialization) as archaeologists (see also [AIA Code of Professional Standards](#) sections I-7, II-2, II-3, and II-4). In a recent article, Lucy Gill of the Archaeological Research Facility at UC Berkeley stated that "Without meaningful, ongoing consultation with all tribes that attach religious and cultural significance to Peehee Mu'huh, which the BLM has not engaged in, such invasive archaeological work can amount to the further desecration of Indigenous sacred sites. This isn't how ethical archaeology is done."

Due to BLM's inadequate consultation with indigenous peoples, Far Western will be supporting this and violating the ethical principles of the archeological discipline. What's worse, you are about to violate the ethics of the human family. Given the strong indigenous opposition to the proposed excavations and, from an indigenous perspective, to us, what you are about to do at Peehee Mu'huh is essentially looting and grave-robbing.

A federal agency has falsely approved the FEIS, ROD, HPTP. By excavating Peehee Mu'huh, Far Western will be demonstrating that major contracts, money and academic papers are more important to your organization than approaching archeology in a moral way and respecting federally recognized Tribe's legitimate concerns of the desecration of its ancestral's past life ways including its sacred sites.

Far Western should be advised that six regional Tribes in addition to the Inter-Tribal Council of Nevada and the National Congress of American Indians have all stated their opposition to the Thacker Pass Lithium Mine, and that continuing to move forward with archeological digs in Peehee Mu'huh will damage your professional reputation throughout Indian Country.

Please take all these objections into consideration and seriously recognize that we need to re-vision the

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relationship between Archaeology and Indigenous Peoples. Please don't consider tribal monitors as the only relationship between tribes and archeological firms. Central to this is the need for archeological firms to base its work and science on morality and ethics rather than extraction of fast tracked projects that forever negatively adversely affect Native American ancestors, sacred sites and knowledge.

Due to the aforementioned flaws in BLM's fast tracking and illegal actions, the RSIC is requesting Far Western (and any other archeological firm that may be participating in unprincipled excavations) to immediately halt the planned archeological digs and refuse to participate in the desecration of Thacker Pass for corporate greed.

Sincerely,

A handwritten signature in blue ink that reads "Michon R. Eben". The signature is fluid and cursive, with the first name "Michon" being more prominent than the last name "Eben".

Michon R. Eben
Cultural Resource Manager
THPO

CC: Summit Envirosolutions, Inc.
Register of Professional Archeologists
Society for American Archeology
Archeological Institute of America
Great Basin Anthropological Association
Nevada Archeological Association
National Association of Tribal Historic Preservation Officers