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**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

Confederated Tribes of the Goshute
Reservation,

Appellant,

vs.

Bureau of Land Management,

Respondent.

IBLA # _____

Appeal from April 7, 2015 Record of
Decision by Elko District Manager Jill
Silvey to Approve Final Environmental
Impact Statement (DOI-BLM-NV-E030-
2013-006-EIS) and Plan of Operations
(NVN-91032) for the Long Canyon Mine
Project.

NOTICE OF APPEAL AND STATEMENT OF REASONS

Pursuant to 43 C.F.R. Part 4, the Confederated Tribes of the Goshute Reservation (“CTGR”) hereby appeal from the Record of Decision (“ROD”) dated April 7, 2015 and issued by Bureau of Land Management’s (“BLM”) Elko District Manager Jill Silvey to approve the Long Canyon Mine Project (“Project”), Plan of Operations NVN-91032, based on the Final Environmental Impact Statement (DOI-BLM-NV-E030-2013-006-EIS). This appeal is pursuant to all applicable laws and regulations, including the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, Federal Land

Policy and Management Act, 43 U.S.C. §§ 1701-1782, and the National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.*

STATEMENT OF STANDING

The CTGR is a federally recognized Indian tribe with a reservation located southeast of the Project on the Nevada-Utah border. The CTGR's aboriginal territory covers large areas of eastern Nevada, including all of the Project Area. Since time immemorial Goshute people occupied the region, using the land and its resources for homes, villages, hunting and fishing, gathering, trading, spiritual and religious ceremonies, and for traditional education. Exhibit 1 at 2.

The CTGR has standing to pursue this appeal and related petition for stay, because the CTGR and their Tribal members have a "legal cognizable interest" in the lands, cultural resources, water, fish and wildlife, and other resources that will be irreparably injured if the ROD approving Project is not stayed and set aside. 43 C.F.R. § 4.410(d). The CTGR submitted comments as part of the administrative process, visit the affected areas including the Project Area itself, intend to continue to visit the area in the immediate and foreseeable future for cultural, religious, and traditional purposes, and will be adversely affected if the Project is constructed. Exhibit 1. See *Id.* § 4.410(a-d).

From the Goshute Valley to the highest peaks, ridgelines, cliffs, and caves in the Pequop Mountains in the Project Area, the Goshute people historically made the region a prime homeland. In comments on the Draft EIS, the CTGR stated they have:

significant cultural and historical ties to the Project Area. The Project Area extends from the Pequop Mountains down into Goshute Valley in and around the Big Springs complex. This region is a massive archaeological site that holds thousands of years of continued history of our ancestors. The site has a history of continued occupation in the form of camp and village sites, hunting and fishing grounds, ceremonial areas and sacred

sites, food gathering areas, and places important for passing on traditional knowledge. Still today, our people hold the area to be a sacred area where the spirits of our ancestors dwell.

Exhibit 1 at 1-2.

The Project Area “harbors an extraordinary part” of CTGR’s cultural history, one that the CTGR “rarely come across.” Exhibit 2 at 8. “The Project Area is a sacred site” and “a national treasure” containing unique marks of Goshute cultural history ranging “[f]rom burial sites to village sites to ceremonial areas within the Project Area”. Exhibit 2 at 8.

STATEMENT OF FACTS

On July 19, 2012, the BLM issued a Notice of Intent to prepare an EIS after receiving a Plan of Operations (NVN-91032) by Newmont Mining Corporation (“Newmont”) in March of 2012. The Plan of Operations was to construct and operate an open-pit gold mine.

On July 12, 2013, the CTGR, through its representative Ed Naranjo, signed a Memorandum of Understanding to become a cooperating agency (hereinafter “Cooperating Agency Agreement”).

On September 10, 2013, the BLM notified the CTGR via email that the Preliminary Draft EIS (“PDEIS”) for the Long Canyon Mine Project had been released. The BLM took the opportunity “to remind everyone that we are looking for substantive comments on the [PDEIS] document. . . . We really appreciate your input and want to make sure we are analyzing the right resources and since you are the subject matter expert, we really look forward to hearing from you.”

The morning of September 12, 2013, the CTGR contacted the BLM and “asked for a copy of the draft cultural resources report so the Tribe can have a reasonable opportunity to develop meaningful changes and recommendations for the EIS”. However, the BLM “would not release the report and especially site-specific information on cultural resources to the CTGR without a data sharing agreement.” The BLM stated that the cultural resources report was still in draft form, not finalized. The BLM also stated it was “the eleventh hour” for the CTGR to be recommending any changes to the EIS.

On September 13, 2013, the BLM notified the CTGR that “a due date” for comments on the PDEIS was “by close of business on September 27th.”

On March 21, 2014, the BLM released the Draft EIS.

Tribal monitors began work within the Project Area in July 2014, working with Newmont’s cultural resource contractor in areas previously approved by the BLM for mining exploration and drilling. Immediately, the Tribal monitors began to recognize the massive numbers of cultural resources within the Project Area. Exhibit 2 at 3-5.

The CTGR submitted comments on the Draft EIS on September 3, 2014. In the comment letter the CTGR again requested a copy of “all cultural resources inventories used in the DEIS development.” Exhibit 1 at 5.

The BLM emailed the CTGR on September 3, 2014, “Tribal Access to Elko [BLM] Files.” The BLM Tribal Liaison, Richard Adkins, suggested that while BLM and CTGR waited for a data sharing agreement, they would allow a CTGR representative, specifically, Dr. Monte Sanford, to travel to Elko to view and have access to the files within the BLM Elko District Office. Exhibit 6 at 3.

On October 27, 2014, the CTGR received a response from the BLM via letter dated October 21, 2014, regarding the CTGR comments on the Draft EIS.

The BLM released a FEIS on January 9, 2015. Not one of the CTGR's comments, concerns, or statements regarding the Project and the EIS was included in the FEIS.

On February 3, 2015, the CTGR submitted a letter dated January 30, 2015, to the BLM requesting that they place the Long Canyon Mine Project on hold. Exhibit 2.

At 4:55pm on April 7, 2015, the BLM sent to the CTGR a signed letter purporting that they had listened to and addressed CTGR's concerns. Exhibit 6.

On April 7, 2015, the BLM "gave Newmont Mining Corp. an early 50th anniversary present with the approval of the Long Canyon Mine." (Elko Daily News article dated April 9, 2015.) Exhibit 11. BLM Elko District Manager, Jill Silvey, signed the "Record of Decision and Plan of Operations Approval" for the Long Canyon Mine Project, based on a Final Environmental Impact Statement ("FEIS") for the Project.¹

On April 8, 2015, the CTGR submitted a letter to Elko District Manager Jill Silvey regarding "CTGR concerns with the BLM pre-approval of the Long Canyon Mine Project." Exhibit 19.

On April 8, 2015, the CTGR received notice that the BLM had signed the ROD and approved the Project. Ms. Silvey rejected the Tribe's request that the additional Tribal comments be considered before a record of decision was issued.

BACKGROUND

The Project is an open-pit gold mine located in the Pequop Mountains and Goshute Valley, Elko County, eastern Nevada. The main components of the mine

¹ These documents are online at: <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=51924>

include the following: “an open pit; heap leach pad; cyanide leach mill; waster rock storage facility (WRSF); tailings storage facility (TSF), water supply well(s), growth medium stockpiles, construction material borrow pits; haul roads and access roads; access gates and fencing; ancillary facilities; natural gas pipeline and a gas-turbine electric generating plant; and an electrical power transmission line.” ROD 7.

The Project includes the rights-of-way (“ROW”) for an electrical transmission line, a natural gas pipeline, and a new water supply system (including a water pipeline) for Wendover, Utah, and West Wendover, Nevada (“Cities”) (Newmont Mining Corporation and the Cities agreed to replace the Cities’ use of Big Springs for municipal water supply. FEIS 2-29; see FEIS Appendix 2A: “Surplus Water Service Agreement”). The ROD did not authorize any of the three ROWs. The ROD reported that the ROW “applications and associated Plan of Developments (PODs) *have been submitted* for the transmission line and water pipeline associated with the Cities’ water supply.” ROD 6, emphasis added. The ROD later reported, “[a] ROW application and POD for both the transmission line as well as a pipeline associated with the Cities’ water *would be submitted.*” ROD 33, emphasis added. “A separate Grant offer letter will be issued for the pipeline right-of-way grant.” ROD 33. The ROW “application and POD for the natural gas pipeline for the project has not yet been submitted.” ROD 6.

The Project Area spans 24,779 acres. Earth-moving activities during mine construction and operation will degrade 3,879 acres of land surface, occurring both on public and private land.

On the west edge of Goshute Valley, the Johnson Springs complex, which is fed by groundwater and which includes Big Springs, forms “a system of springs, potholes,

ponds, and outflows.” This unique and limited habitat sustains a genetically distinct population of the relict dace (*Relictus solitarius*). FEIS 3-152 – 3-153. “[A]n emergency petition to list the relict dace at Big Springs pursuant to Section 4 of the Endangered Species Act was submitted on June 27, 2014 by an environmental advocacy group.” FEIS 153. While the U.S. Fish and Wildlife Service (“FWS”) did not emergency list the dace as endangered, the FWS did make a 90-day finding: “we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for the relict dace . . .” Federal Register, 80(69): 19262; see Exhibit 3. At present, the FWS is undergoing their 12-month status review of the relict dace to determine whether listing the genetically distinct population is warranted.

STANDARD OF REVIEW

A BLM decision is arbitrary, capricious, or inequitable if it is not supported by any rational basis. *Wayne D. Klump v. BLM*, 124 IBLA 176, 182 (1992). Pursuant to the APA, a federal court “shall...hold unlawful and set aside agency action, findings, and conclusions found to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or]...(D) without observance of procedures required by law.” 5 U.S.C. § 706(2). See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998), cert. denied 527 U.S. 1003 (1999) (quoting the APA).

“An agency’s action is arbitrary and capricious if the agency fails to consider an important aspect of the problem, if the agency offers an explanation that is contrary to the evidence, . . . or if the agency’s decision is contrary to the governing law. 5 U.S.C. § 706(2).” *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005). The court’s role in reviewing an agency’s decision is primarily to ensure that no arguably significant

consequences have been ignored. *Pub. Citizen v. Nat'l Highway Traffic Safety Admin.*, 848 F.2d 256, 267 (D.C. Cir. 1988); *see also TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852 (D.C. Cir. 2006).

The evaluation of the “impact” of those consequences on the quality of the human environment “is left to the judgment of the agency.” (quoting *Sierra Club v. DOT*, 753 F.2d 120, 128 (D.C. Cir. 1985)). In reviewing of an agency's finding, the court must insure that the agency took a “hard look” at the environmental consequences of its decision. *Sierra Club v. Peterson*, at 1413. In balancing the likelihood of movant’s success against the potential consequences of a stay on the other parties, it has been held that it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus more deliberative investigation. *Wyoming Outdoor Council*, 153 IBLA 379, 388 (2000) (internal quotes omitted).

The agency’s decisions must also be “fully informed and well considered.” *Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir. 1988). The court “need not forgive a ‘clear error of judgment.’” *Blue Mountains*, 161 F.3d at 1208; *see also Western Land Exchange Project*, 315 F.Supp.2d at 1086 (D. Nev. 2004) (“Although the court must defer to an agency conclusion that is ‘fully informed and well considered,’ it need not ‘rubber stamp a clear error of judgment.’” quoting *Anderson v. Evans*, 350 F.3d 815, 829 (9th Cir. 2003)).

STATEMENT OF REASONS

I. The BLM violated the National Historic Preservation Act (NHPA)

In enacting the National Historic Preservation Act (“NHPA”)², Congress declared that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people”. 16 U.S.C. § 470(b)(2). “[T]he preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations”. *Id.* § 470(b)(4). Through the NHPA, it became “the policy of the Federal Government . . . in partnership with . . . Indian tribes” to “provide leadership in the preservation of prehistoric and historic resources” in ways intended to carry out the purposes of the NHPA. *Id.* § 470-1.

The BLM is required “to assist Indian tribes in preserving their particular historic properties.” *Id.* § 470a(d)(1)(A). The BLM has a responsibility “to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes . . . and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.” *Id.* Among other types of historic properties, “[p]roperties of traditional religious and cultural importance to an Indian tribe . . . may be determined to be eligible for inclusion on the National Register.” *Id.* § 470a(d)(6)(A).

² Under the NHPA’s repealing and successor legislation, “[a] regulation, order, or other administrative action in effect under a source provision continues in effect under the corresponding title 54 provision.” Pub.L. No. 113–287, sec. 6(f).

The procedural responsibilities of the BLM are mandated “to ensure that tribal values are taken into account”. *Id.* § 470a(d)(1)(B).

Both NHPA and NEPA chiefly create procedural obligations for the BLM. “[B]oth have the goal of generating information about the impact of federal actions on the environment; and both require that the relevant federal agency carefully consider the information produced. That is, both are designed to insure that the agency ‘stop, look, and listen’ before moving ahead.” *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1097 (9th Cir.2005) (emphasis added); see also *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir.1999) (“Section 106 of NHPA is a ‘stop, look, and listen’ provision that requires each federal agency to consider the effects of its programs.”).

A. BLM Repeatedly Precluded the CTGR From Having a Fair and Reasonable Opportunity to Engage in Section 106 Consultation

Under Section 106 of the NHPA, the BLM was required to engage in the consultation “process by seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them.” 36 C.F.R. § 800.16(f). The consultation process is governed by 36 C.F.R. § 800.2(c)(2), one of Section 106's implementing regulations. Under this regulation, “[c]onsultation should commence early in the planning process, in order to identify and discuss relevant preservation issues”. § 800.2(c)(2)(ii)(A). The Ninth Circuit has emphasized that the timing of required review processes can affect the outcome and is to be discouraged. *Id.* (citing *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 785–86 (9th Cir. 2006)). The consultation requirement is not an empty formality; it is a regulatory process that must be followed by the Federal agency. Consultation with Indian tribes is encouraged “to ensure that all types of historic

properties and all public interests in such properties are given due consideration.” *Te-Moak Tribe v. U.S. Dept. of Interior*, 608 F.3d 592, 609 (9th Cir.2010) (quoting 16 U.S.C. § 470a(d)(1)(A)); *see also* Executive Order 11593 (agencies shall “administer the cultural properties under their control in a spirit of stewardship and trusteeship”).

Part of that process hinges on the identification of historic properties, whereby the BLM has an obligation to “[g]ather information from any Indian tribe . . . to assist in identifying properties.” *Id.* § 800.4(a)(4). In both identifying properties and evaluating historic significance, “[t]he agency official shall ensure that consultation in the section 106 process provides the Indian tribe . . . a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” *Id.* § 800.2(c)(2)(ii)(A).

Moreover, “[t]he Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.” *Id.* § 800.2(c)(2)(ii)(B). Undergoing the consultation process with Indian tribes, the agency official “must recognize the government-to-government relationship” and conduct “consultation with Indian tribes . . . in a manner sensitive to the concerns and needs of the Indian tribe.” *Id.* § 800.2(c)(2)(ii)(C).

The BLM failed to comply with these NHPA regulations on repeated occasions. First, the BLM failed to comply with 36 C.F.R. § 800.4(a)(4) and § 800.2(c)(2)(ii) early on in the NHPA and NEPA process, because the BLM refused to provide cultural resources information to the CTGR. (Prior to September 2013, cultural resources inventories had been conducted within the Project Area. A draft cultural resources report had been submitted to the BLM from Newmont's contractor. The cultural resources report was still only in draft form, and the EIS was still in its initial stages of development, which was well-suited for the CTGR to provide meaningful identifications and evaluations of historic properties.) In order for the CTGR to have a fair and reasonable opportunity to identify historic properties and evaluate historical significance, they required all of the cultural resources information that was available. But the BLM refused.

Identifications and evaluations of historic properties are governed by the application of "National Register criteria (36 CFR Part 63) to properties." 36 C.F.R. § 800.4(c)(1). One of the vital parts of the application of the National Register eligibility criteria for historic properties includes "the quality of significance in [Native] American history, architecture, archaeology, engineering, and culture that is present in districts, sites, . . . and objects that possess integrity of feeling and association." 36 C.F.R. § 60.4. Under 36 C.F.R. § 800.4(a)(4), the BLM was required to "[g]ather information from [the CTGR] . . . to assist in identifying properties." In order for that to happen fairly, reasonably, and meaningfully, it was clearly necessary for the CTGR to be able to obtain a copy of the cultural resources information, review that information, identify tribal values and significance of historic properties, apply the National Register criteria, and

provide those tribal evaluations back to the BLM. Instead, the BLM precluded the CTGR from having that opportunity to participate in that critical stage of the NHPA process.

The effect of such preclusion was that it undermined “the very basis of what defines and gives significance to the cultural resources.” Exhibit 1 at 5. What remained in terms of cultural historical properties was “misinformed” or went “without its connected cultural significance altogether.” Exhibit 1 at 5.

Second, the BLM suggested that if the CTGR wanted the cultural resources report, then they had to sign a data sharing agreement. The data sharing agreement required the CTGR to waive certain legal rights. Such a request by the BLM to have the CTGR waive certain legal rights and preclude them from obtaining cultural information about the CTGR’s own history, clearly violates 36 C.F.R. § 800.2(c)(2)(ii) by: 1) enforcing a process contrary to “the unique legal relationship” – a trust obligation of the highest fiduciary standard – between the Federal government and the CTGR; 2) failing to be sensitive to tribal sovereignty such that “[n]othing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights” (*Id.* § 800.2(c)(2)(ii)(B)); and 3) requesting the CTGR to waive legal rights in order to participate in the NHPA and NEPA process.

To prevent the CTGR from obtaining and reviewing the cultural resources information, the BLM treated the CTGR not as a government to whom they owe a trust obligation, and not as a sovereign government with elected officials, but rather as the general public. The CTGR are not the public. Even if the CTGR were considered the public, the BLM’s refusal to provide a copy of the cultural resources information to the

CTGR was contrary to provisions under 43 C.F.R. § 7.18(a) (“Confidentiality of archaeological resources information”). The regulation is subject to exceptions that are applicable in this case. Under the regulation, “[t]he Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, **with the following exceptions:**

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State . . .

Id. Indeed, providing the CTGR with a copy of the cultural resources information would not have risked harm to the archaeological resources or to the site itself. The CTGR’s use of cultural resources information is to protect tribal cultural resources, obtain details on its history that the Federal government continues to withhold, and importantly to be able to consult in a government-to-government manner respectful of tribal sovereignty with the BLM so that tribal values, interpretations, and evaluations are included in the NHPA process.

Furthermore, the BLM’s refusal to provide a copy of the cultural resources information to the CTGR violated 36 C.F.R. § 800.11(c). While the NHPA regulation grants the BLM with “[a]uthority to withhold information,” that authority is limited. The regulation plainly states **when** the BLM actually has that authority:

[A] Federal agency . . . shall withhold from the public disclosure information about the location, character, or ownership of a historic

property **when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.** When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

Id. (emphasis added). By withholding information from the CTGR, the BLM acted exactly contrary to the conditions of when the BLM can withhold that information. The disclosure of information did not pose a significant invasion of privacy; the disclosure did not risk harm to the historic property but rather would have furthered the protection and preservation of the historic property(s) and archaeological resources as provided under the NHPA and the Archaeological Resources Protection Act; and the disclosure did not impede the use of a traditional religious site by practitioners but rather would have fostered the use of and connection to the traditional religious site by the CTGR.

In fact, under 36 C.F.R. § 800.2, “Indian tribes are entitled to *special consideration* in the course of an agency’s fulfillment of its consultation obligations.” (quoting *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior* 755 F.Supp.2d 1104 (2010)). While that obligation is detailed elsewhere as a fiduciary duty of the highest standard (*see Pit River Tribe v. U.S. Forest Service* 469 F.3d 768, 788 (9th Cir. 2006)), by natural extension the CTGR was certainly entitled to a copy of the cultural resources information so they could actually have a fair opportunity to consult with the BLM, protect historic properties, and ensure the use of the traditional site/resources for CTGR’s religious practitioners. And most certainly, the CTGR was entitled to an opportunity to consult without BLM’s imposed limitations. In a letter to the BLM, CTGR Chairwoman Greymountain stated,

the BLM has repeatedly worked to restrict our Tribes' ability to carry out that [consultation] process. It is much like playing a game of cards with the BLM; however, the BLM will not let us see our own cards so we can have a fair game.

Exhibit 9 at 4. For the BLM to restrict the CTGR's access—to “not let us [CTGR] see our own cards”—was contrary to CTGR's entitlement under 36 C.F.R. § 800.2 and contrary to *Id.* § 800.11(c).

Third, the BLM acted in further contravention to NHPA when they suggested that the CTGR could see **part** of the cultural resources information in a redacted version. Among other information, the BLM proposed that a redacted copy without location information could be transmitted. The CTGR would then have no way to know where the cultural resources were actually located. Of course, the CTGR has, as BLM noted in the Cooperating Agency Agreement, “special expertise regarding Native American religious concerns and cultural resources in the areas potentially impacted by the Long Canyon Mine.” Exhibit 4 at 2. One of the connections that the CTGR members and elders have with cultural resources is the Native American feeling and association that connects them to the resources and the specific land areas. It is a simple resource-land-Indian connection. To omit location information of cultural resources, the BLM effectively sought to block that imperative connection that the CTGR has with the land and its cultural resources.

These acts of preclusion violate 36 C.F.R. § 800.2(c)(2)(ii) by failing to give the CTGR the opportunity to participate fairly and meaningfully in the Section 106 consultation process. Specifically, the BLM's limitation on cultural resources information failed to provide a reasonable opportunity for CTGR “to identify its concerns about historic properties, advise on the identification and evaluation of historic

properties, . . . articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(2)(ii)(A). The BLM's limitation on cultural resources information also failed to “recognize the government-to-government relationship” and failed to conduct “consultation with Indian tribes . . . in a manner sensitive to the concerns and needs of the Indian tribe [CTGR].” *Id.* § 800.2(c)(2)(ii)(C). The BLM's limited access of cultural resources information failed to recognize “the unique government relationship” between the CTGR and Federal government under *Id.* § 800.2(c)(2)(ii)(B), and further disregard for tribal sovereignty, in that the CTGR has their on governmental policies and procedures to protect the cultural information and sites about their own people, ancestors, and history.

B. BLM Violated Its Own Agreement With the CTGR

The CTGR actively tried to obtain cultural resources information from the BLM “early in the planning process” just as consultation is required under 36 C.F.R. § 800.2(c)(ii)(A). Early in the planning process, and before the BLM asked the CTGR to sign a *second* agreement (a so-called “data sharing agreement”), the CTGR signed a Cooperating Agency Agreement with the BLM, which specifically provided for the following purposes:

- 1) Establish and maintain coordination between the CTGR and BLM for their special expertise regarding Native American Religious concerns and cultural resources in the areas potentially impacted by the Long Canyon Mine . . . and
- 2) Coordinate and **communicate** Native American Religious concerns **and exchange of cultural resource information** relating to the EIS . . .

Exhibit 4 at 2 (emphasis added). The Cooperating Agency Agreement expressly noted that CTGR's role as a cooperating agency was “limited to a technical review of Native

American Religious concerns **and cultural resources** . . .” Exhibit 4 at 2 (emphasis added). The CTGR’s role as cooperating agency was detailed further: “CTGR will review any technical documents . . . and will advise the BLM on the technical adequacy and completeness of these documents.” Exhibit 4 at 2.

In order for the CTGR to carry out those provisions of the Agreement, and to have a fair and reasonable opportunity to identify properties and evaluate the tribal historical significance of those properties as provided for under the NHPA, the CTGR requested from the BLM “a copy of the draft cultural resources report.” Indeed, it was early in the NHPA and NEPA process such that the cultural resources report had not even been finalized; only a draft was available in September 2013 when the CTGR asked for the cultural information. The EIS too was still in draft stages. However, the BLM would not release the draft cultural resources report(s) to the CTGR, violating the very purpose of the Cooperating Agency Agreement for which the CTGR had signed in the first place. The BLM thereby eliminated CTGR’s ability to “review technical documents [cultural resource inventories]” and “advise the BLM on the technical adequacy and completeness of these documents.” Exhibit 4 at 2.

Even though the cultural resources report was still in draft form and the EIS was still in the administrative drafting stage, the BLM stated that it was “the eleventh hour” for the CTGR to be recommending any changes at this stage of the NHPA and NEPA process. This was two (2) days after the BLM sent notice to the CTGR that they could make changes to the draft sections of the administrative draft EIS (or PDEIS). And it was less than two (2) months after the BLM had signed the Cooperating Agency Agreement. From the very earliest of stages of the NHPA and NEPA process, the BLM

had already made their position clear as to CTGR's involvement in both the NHPA and NEPA process. That position, even though in violation of the NHPA and the Cooperating Agency Agreement, was carried forward throughout the rest of the NHPA and NEPA process until the very day that the ROD was signed. (See below)

C. BLM Failed to Properly Assess Adverse Effects

Pursuant to 36 C.F.R. § 800.5(a), the BLM official was required to “apply criteria of adverse effect to historic properties within the area of potential effects” in “consultation with . . . any Indian tribe . . . that attaches religious and cultural significance to identified historic properties.” This regulation required the BLM to “[a]pply criteria of adverse effect. The criteria of adverse effect are defined as follows:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. *Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register.* Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

36 C.F.R. 800.5(a)(1) (emphasis added). The regulations even provide specific examples of what constitute adverse effects on historic properties.

- (i) Physical destruction of or damage to all or part of the property;
- (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
- (iii) *Removal of the property from its historic location;*
- (iv) *Change of the character of the property's use or of physical features*

within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

36 C.F.R. § 800.5(a)(2) (emphasis added).

Cultural resource inventories within the Project Area “recorded a total of 308 sites; 103 of which were recommended as eligible or unevaluated (pending further research) for listing on the NRHP [National Register of Historic Properties].” FEIS 3-176. “Under the mining and processing facilities component” of the mine Project, “103 NRHP-eligible or unevaluated sites would be directly impacted through project construction/operations.” FEIS 4-125. “Under the power supply pipeline component, additional NRHP-eligible sites would be directly impacted by pipeline construction; the number of eligible sites is pending review by Nevada State Historic Preservation Office (SHPO).” FEIS 4-125.

Yet, the BLM failed to give consideration “*to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register.*” 36 C.F.R. § 800.5(a)(1) (emphasis added). In the CTGR’s DEIS Comments, the CTGR expressed great concern that “tribal interpretations and input” had been excluded. Exhibit 1 at 6.

The CTGR stressed that a “preeminent criterion” and “[a]n essential part of . . . cultural resources/sites, including the Project Area’s cultural significance, is the ‘quality of significance in [Native] American history . . . and culture . . . present in districts, sites, and objects that possess integrity of location, design, setting, . . . feeling and association.’” Exhibit 1 at 6. Further, the CTGR vividly expressed concern that the BLM’s determination of a large percentage of historic sites, which “were determined to be insignificant as to Native American history, culture, and feeling and association” ran “contrary to the significance” that the CTGR places on the area. Exhibit 1 at 6. The CTGR “was never provided an opportunity to participate at any stage of the cultural resources projects [inventories]” nor “to provide any tribal interpretations and significance of our Native American history, culture, and feeling and association of our cultural, historical and religious resources/sites.” Exhibit 1 at 6-7. Accordingly, the CTGR “had no part in the eligibility determinations and conclusions” that defined and evaluated historic properties and adverse effects. Exhibit 1 at 7.

In the same vein of exclusion, the BLM determined that the North Facilities Alternative’s—the approved alternative—mining and processing facilities would have no adverse effect on 85% of the cultural sites (of 308 sites total, 47 would be physically impacted). FEIS at 4-127. The CTGR clearly articulated and questioned the BLM’s failure to consider “all qualifying characteristics of historic properties” in their adverse effects determinations.

[W]e wonder how the BLM and Newmont have determined the feeling and association tied to our Native American history, culture and ancestors. We wonder how BLM and Newmont have determined the quality of significance of the cultural sites based on those cultural connections to this region, a region that has been inhabited for thousands of years by our ancestors and our ancestral spirits. Instead of providing our Tribe with any

opportunity to participate and provide our tribal interpretations, the BLM and Newmont's documentation of cultural significance of the sites were left blank or considered to be unknown as to the feeling and association of the sites that would relate the quality of significance in Native American history and culture. In turn, the BLM has concluded that these blanks and unknowns equate to No Effect determinations on our cultural resources and our significant [cultural] history.

Exhibit 1 at 7.

The BLM had not given "[c]onsideration to all qualifying characteristics of historic properties" before the Draft EIS nor did they afterwards when the CTGR submitted comments on the DEIS, despite the fact that the CTGR expressed to the BLM that the "massively significant cultural region within Project Area is of great importance" and should be given determinations based on Native American feeling and association. Exhibit 1 at 5-7. Most certainly, the CTGR had identifiable "qualifying characteristics of a historic property" which the CTGR expressed as "Native American history, cultural and feeling and association of [CTGR] cultural, historical, and religious resources/sites." See Exhibit 1 at 7. Pursuant to 36 C.F.R. § 800.5(a)(1), the BLM was procedurally required to incorporate into their decisions and findings of adverse effects the "consideration of qualifying characteristics" that the CTGR identified, even though those considerations may have been "identified subsequent to the original evaluation of the property's eligibility for the National Register." 36 C.F.R. § 800.5(a)(1).

It was inapposite for the BLM to draw a conclusion of "no adverse effect" on any historic properties pursuant to 36 C.F.R. § 800.5(b) after failing to consider "qualifying characteristics" that the CTGR stressed should be included and that they were willing to include. The BLM "may propose a finding of no adverse effect when the undertaking's effects **do not** meet the criteria of paragraph (a)(1) of this section." *Id.* But the qualifying

characteristics, as described above, must actually be considered first. Without the CTGR's application of criteria of adverse effect, when the CTGR was actively making efforts to do so but were shunned by the BLM, the BLM erred by prematurely making no adverse effect findings.

Alternatively, the BLM may determine "no adverse effect" if "the undertaking is modified or conditions are imposed . . . to avoid adverse effects." *Id.* The BLM modified the undertaking by approving the North Facilities Alternative and by imposing certain conditions. ROD at 8. However, the BLM failed to consider yet again all adverse effects as articulated both under 36 C.F.R. § 800.5(a)(2) and aforementioned National Register criteria. For example, the BLM disclosed physical destruction of historic properties ("Under the North Facilities Alternative, 47 NRHP-eligible or unevaluated sites would be within the footprint of disturbance of the mining and processing facilities" FEIS 4-127), but failed to address adverse effects according to other factors identified under 36 C.F.R. § 800.5(a)(2) such as the "[r]emoval of the property from its historic location." See FEIS 4-124 – 4-128. The BLM only added adverse effects through mitigation (so-called "data recovery"), which invariably is the "removal of property [cultural resources] from its historic location." See Exhibit 4 at 8. This was improper pursuant to 36 C.F.R. § 800.5(b).

The BLM also failed to provide the CTGR with an opportunity for "consulting party review" under 36 C.F.R. § 800.5(c). With any historic site for which "the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties [including Indian tribes] of the finding and provide them with the documentation". *Id.* This opens a 30-day review period for an Indian tribe or other

consulting party. *Id.* Under the regulations, the BLM additionally has the obligation to notify all consulting parties, including Indian tribes, about historic properties that will be affected by a proposed undertaking and invite the Tribes' view on the effects, and assess any adverse effects of the undertaking based on Tribal views and assessments. *Id.* § 800.4(d)(2). BLM did not, however, provide notification to the CTGR of any "finding of no adverse effect" nor did BLM provide the CTGR with the applicable documentation. The result being that the BLM precluded the CTGR from providing a review of BLM's findings, which violated both the procedural requirements under 36 C.F.R. § 800.5(c) and § 800.4(d)(2).

D. BLM's Resolution of Adverse Effects Was Improper

Under 36 C.F.R. § 800.6(a), "[t]he agency official shall consult with . . . Indian tribes . . . to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties." For the foregoing reasons, the CTGR was precluded from being able to consult with the BLM on the resolution of adverse effects without the cultural resources information. Thus, the BLM's process under 36 C.F.R. § 800.6 was improper.

II. The BLM violated the requirements of the National Environmental Policy Act (NEPA)

NEPA "has twin aims. First, it places upon [a federal] agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.2002) (citation and internal quotation marks omitted). Like the NHPA, NEPA also has substantive procedural requirements, which

must be followed by the Federal agency before an agency official approves a proposed action or alternative. Also like NHPA, NEPA is not an empty requirement. NEPA documents are required to “provide full and fair discussion” of environmental impacts. 40 C.F.R. § 1502.1. And the courts have repeatedly affirmed that federal agencies take a “hard look” at “the potential environmental consequences of a proposed action.” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005) (citation omitted); *Ore. Natural Desert Ass’n v. BLM*, 531 F.3d 1114, 1130 (9th Cir. 2008) (citing *Vermont Yankee Nuclear Pwr. Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 553 (1978)).

A. The BLM Failed to Consider Every Significant Aspect of Cultural Resources Impacts and Native American Religious and Traditional Values.

In the approved FEIS, the BLM erroneously stated that “[t]here are no known potential places of cultural and/or geographic interest to the tribes within or near the project area. No formal or informal issues or concerns have been raised to date by the various tribes regarding religious or traditional cultural property concerns for the project.” FEIS at 4-129.

This was completely contrary to the information that the BLM had before them regarding CTGR’s interests in and cultural significance of the Project Area. In comments on the DEIS, CTGR clearly articulated that their “aboriginal homelands . . . encompass the entire proposed Project Area.” Exhibit 1 at 1. The CTGR clearly stated that they still use their “aboriginal territory for hunting, fishing, gathering, sacred/religious purposes, traditional education, and other uses.” *Id.* In CTGR described further that Project Area was a place of cultural interest and significance:

We have significant cultural and historical ties to the Project Area. The Project Area extends from the Pequop Mountains down into Goshute Valley in and around the Big Springs complex. This region is a massive archaeological site that holds thousands of years of continued history of our ancestors. The site has a history of continued occupation in the form of camp and village sites, hunting and fishing grounds, ceremonial areas and sacred sites, food gathering areas, and places important for passing on traditional knowledge. Still today, our people hold the area to be a sacred area where the spirits of our ancestors dwell.

Exhibit 1 at 1-2.

The CTGR reiterated throughout their comments on the DEIS that it was essential for the BLM to include tribal input on the significance of the cultural resources at the Project Area. *Id* at 5. The CTGR stressed that the Project Area is a “massively significant cultural region” that “is of great importance.” *Id* at 6. The CTGR stressed that “[a]n essential part of some cultural resources/sites, including the Project Area’s cultural significance, is the ‘quality of significance in [Native] American history . . . and culture . . . present in districts, sites, . . . and objects that possess integrity of location design, setting, . . . feeling and association.’” *Id* at 6. The CTGR stated that the BLM’s determination that a majority of historic sites were insignificant “runs overtly contrary to the significance that the region holds” to the CTGR. *Id*.

The refusal by BLM to disclose and consider tribal cultural significance of the Project Area in the FEIS violated 40 C.F.R. § 1502.1 (an EIS “shall provide full and fair discussion of significant environmental impacts”) (see *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.2002)), § 1502.15 (an EIS “shall succinctly describe the environment of the area(s) to be affected”), § 1502.16 (an EIS must provide discussion of “any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment

and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented”), and § 1500.1(b) (“NEPA procedures must insure that environmental information is available to public officials and citizens **before** decisions are made and **before** actions are taken”) (emphasis added).

The refusal by BLM to disclose and consider tribal cultural significance of the Project Area in the FEIS also failed to meet the “hard look” requirement of NEPA. The Ninth Circuit has repeatedly held that federal agencies must take a “hard look” at “the potential environmental consequences of a proposed action.” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005) (citation omitted); *Ore. Natural Desert Ass’n v. BLM*, 531 F.3d 1114, 1130 (9th Cir. 2008) (citing *Vermont Yankee Nuclear Pwr. Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 553 (1978)).

No matter the BLM’s final decision in the ROD, and the Project’s impacts on cultural resources and sites, the BLM was still required to disclose and discuss the significant effects in the FEIS. By failing to disclose impacts on tribal importance to the area and its cultural resources, sanctity, and spiritual/religious values, the BLM failed to inform the public that it has indeed considered every significant aspect of the environmental impact its decision-making process. *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.2002). NEPA prohibits uniformed agency action. *Robertson v. Methow Valley Citizens Council* 490 U.S. 332, 109 S.Ct. 1835.

The BLM failed to inform the public that it considered impacts on cultural resources and Native American traditional and religious concerns in other ways as well. First, the BLM did not include CTGR’s comments in the FEIS that was released for

public review and comment, and later approved (detailed further under section II.C below). See FEIS Chapter 7 and Appendix 7A. The BLM erroneously stated that CTGR's DEIS Comments were "generalized comments which needed clarification" as the agency's way to avert any admittance in the FEIS that the Project Area was greatly significant to CTGR. ROD at 27. The BLM also falsely asserted that the CTGR's "generalized comments" were "regarding the Draft EIS for the Long Canyon Exploration Project" not the Long Canyon Mine Project. See ROD at 27, and compare to Exhibit 1. Second, the BLM's procedural obligations were left unfinished, specifically regarding the identification of NRHP-eligibility of historic properties and their subsequent disclosure in the FEIS. The FEIS 4-125 reported that "[u]nder the power supply pipeline component, additional NRHP-eligible sites would be directly impacted by pipeline construction; the number of eligible sites is pending review by Nevada State Historic Preservation Office (SHPO)." Instead of disclosing the actual impacts, and reporting their context and intensity, the BLM relies on a Historic Properties Treatment Plan (HPTP) that "would be developed to mitigate any adverse direct and indirect effects." FEIS 4-125, 4-126. Courts have repeatedly held that "quantified or detailed data about the effects of specific projects is necessary." *Ecology Center v. Castaneda*, 574 F.3d 652, 666 (9th Cir. 2009) (citations omitted).

B. The BLM Failed to Fully and Properly Analyze Context and Intensity

The BLM failed to require a proper environmental analysis of context and intensity. Under 40 C.F.R. § 1508.27(a), the BLM was required to analyze "the significance of . . . [the proposed Project] in several contexts such as a whole (human, national), the affected region, the affected interests, and the locality." That the BLM

failed to even acknowledge in the FEIS that the Project Area was of significant cultural importance to the CTGR set the tone the BLM's adherence to improper NEPA procedures under *Id* § 1508.27(a). "Significance varies with the setting of the proposed action. . . . [and] significance would usually depend upon the effects in the locale." *Id.* § 1508.27(a). And in this case, the Project Area locale was of great cultural significance to the CTGR as previously noted above, in Exhibit 1 at 1-2, and Exhibit 2 at 8. Accordingly, the BLM was required to analyze the effects of the proposed action in the context of "the affected interests" of the CTGR. Failing to do so violated 40 C.F.R. § 1508.27(a).

Not only was this clearly not analyzed in the FEIS (see FEIS at 3.11, 3.12, 4.11, and 4.12), but the BLM also was forthcoming that the identification and evaluation of impacts on cultural resources, in particular, were not addressed under an Indian tribal context. In a meeting between the CTGR and the BLM on March 21, 2015, the BLM acknowledged that that context was not of a tribal perspective (a primary affected interest), but of "a Caucasian perspective." Exhibit 9 at 3.

Under *Id* § 1508.27(b), the BLM also was required to consider the intensity, or "the severity of impact." The regulation requires that ten different factors "should be considered in evaluating intensity." *Id.* The BLM did not consider "[t]he degree to which the proposed action affects . . . health and safety" of CTGR tribal community. *Id.* § 1508.27(b)(2). The degree to which the permanent, irreparable destruction of tribal cultural resources, tribal cultural history, and tribal connections to ancestral artifacts and land has on the emotional, spiritual and physical health of tribal people is significant. That the BLM failed to address that intensity factor violated 40 C.F.R. § 1508.27(b)(2).

The BLM also was required to analyze “the severity of impact” according to “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources.” *Id* § 1508.27(b)(3). One of the most unique characteristics about the Project Area is the massive numbers of cultural resources on-site and the “historic and cultural” history that is embedded in those cultural resources. Indeed, the CTGR had raised this context and intensity issue to BLM several times. The CTGR stressed to the BLM that the Project Area “harbors an extraordinary part” of CTGR’s cultural history, one that the CTGR “rarely come across.” Exhibit 2 at 8. The CTGR also stressed that “[t]he Project Area is a sacred site” and “a national treasure” containing unique marks of Goshute cultural history ranging “[f]rom burial sites to village sites to ceremonial areas within the Project Area”. Exhibit 2 at 8. That the BLM failed discuss and analyze the severity of impact by excluding these unique characteristics of the Project Area further exemplifies the BLM’s adherence to improper NEPA procedure, violating 40 C.F.R. § 1508.27(b)(3).

And because of the aforementioned reasons under section I and II.A. of the Statement of Reasons, the BLM’s failure to analyze the severity of impact through other intensity factors violated *Id.* § 1508.27(b)(4) (“The degree to which the effects on the quality of the human environment are likely to be highly controversial”), § 1508.27(b)(5) (“The degree to which the possible effects . . . involve unique or unknown risks”), and § 1508.27(b)(8) (“The degree to which the action may adversely affect districts, sites, . . . or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources”).

The BLM also failed to address and analyze the intensity of impacts pursuant to § 1508.27(b)(6) (“The degree to which the action may establish a precedent for future

actions with significant effects or represents a decision in principle about a future consideration”). By approving the Project, the BLM set an unlawful precedence that averted the proper analysis and discussion of significant impacts on cultural resources and Native American traditional and religious values of the Project Area. As the CTGR previously explained in detail to the BLM,

These issues speak to the fact that the initial cultural resource inventories missed massive numbers of artifacts and grossly underestimated the cultural significance and historical context of the Project Area. It was that misrepresentation and underestimation that allowed the Project’s EIS, and its previous NEPA approvals (FONSI for mining exploration and road construction), to move forward without documenting, disclosing or mitigating the impacts on this monumental archaeological site. And now we are teetering on the cusp of the BLM handing Newmont their environmental permits and approvals without ever documenting one of the most monumental archaeological sites of Nevada, of the Great Basin, of the Western United States.

This paints a vivid picture of what the CTGR has said about the Project Areas since the beginning—that this is a massive cultural site with exceptional significance. How can we say it any clearer? How many times do we need to repeat this to the BLM before we are heard and the BLM requires proper procedures to be carried out to survey this great historical site? Without conducting the proper inventories, without assigning proper significance to these resources, and without an opportunity to provide our tribal input and perspectives, this great historical resource faces irreparable destruction and loss. Before this monumental archaeological site is totally destroyed by the Long Canyon Mine Project, we must develop a full understanding of this site and its historical significance.

Exhibit 2 at 5.

Currently, mining exploration and drilling surround the Project Area where the open-pit gold mine has been approved (Long Canyon Mine Exploration Project and the West Pequop Exploration Project).³ It is plausible that the Project’s gold mining

³ BLM documents for the Long Canyon Exploration Expansion Project are online: http://www.blm.gov/nv/st/en/fo/elko_field_office/blm_information/nepa/long_canyon_exploration.html. BLM documents for the West Pequop Exploration Project are online at: http://www.blm.gov/nv/st/en/fo/elko_field_office/blm_information/nepa/pequop_exploration.html.

operations and construction would be proposed for expansion in the future, engulfing much more land area in the Pequop Mountains and destroying much greater volumes of cultural artifacts and tribal historical sites. By approving the Project without consideration of the context and intensity of impact on tribal cultural resources and Native American traditional and religious values, the BLM effectively set precedence for future projects to come: all the BLM and Newmont have to do is avert disclosure and analysis of significant impacts about tribal issues (cultural resources, traditional and religious values, health, unique characteristics, etc.), and then the burden is solely upon the CTGR to prove that the BLM erred in the NEPA and NHPA process. These actions violate 40 C.F.R. § 1508.27(b)(6).

C. BLM Failed to Consider That Data Recovery Mitigation Was an Actual Impact on Cultural Resources and Native American Traditional and Religious Concerns.

BLM failed to consider and discuss that cultural resources mitigation in the form of “data recovery” as an actual significant impact. The FEIS stated that the cultural resources “impacts would be reduced [under the North Facilities Alternative] but similar to those described under the Proposed Action. With mitigation, impacts to cultural resources would likely be minor to moderate and long-term.” FEIS at 4-127. Similar to the Proposed Action, the FEIS stated that the impacts on cultural resources would be reduced because the BLM would require data recovery mitigation. FEIS at 4-125.

Even when the DEIS was released, the CTGR submitted their DEIS Comments to the BLM which clearly stressed that data recovery mitigation was an additional and significant impact. The CTGR submitted the following comment to BLM:

The Project proponent has moved forward and begun removing large numbers of cultural resources from the Project Area. While the BLM and

Project proponent term this erasure of our history and cultural resources as a type of mitigation known as “data recovery,” our Tribe views this removal of cultural resources as a destroyed resource and destroyed cultural connection to this important site. For example, tribal monitors have first-hand knowledge that a contractor of the Proponent has already collected numerous cultural artifacts in bags for transport an unknown off-site location. This has been done without tribal consultation and consent. This process of “data recovery”—the so-called cultural resources mitigation—is wholly inadequate as a mitigation measure that is suppose to avoid, reduce, or offset the massive amount of destruction of cultural resources and history that will occur due to the Project construction and operation.

Exhibit 1 at 8.

But the BLM again did not disclose and discuss this significant impact in the FEIS, which violated 40 C.F.R. § 1502.1 (an EIS “shall provide full and fair discussion of significant environmental impacts”) (see *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.2002)), § 1502.16 (an EIS must provide discussion of “any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented”), and § 1500.1(b) (“NEPA procedures must insure that environmental information is available to public officials and citizens **before** decisions are made and **before** actions are taken”) (emphasis added).

D. BLM Failed to Disclose CTGR’s DEIS Comments and Failed to Respond to Those Comments in the FEIS

The BLM failed to disclose and respond to the CTGR’s comments in the FEIS. Under 40 C.F.R. 1503.4(b), “[a]ll substantive comments received on the draft statement . . . should be attached to the final statement whether or not the comment is thought to

merit individual discussion by the agency in the text of the statement.” The CTGR submitted DEIS Comments on or about September 3, 2014. The BLM acknowledged receipt of those comments on the same day. But when the FEIS was released on January 9, 2015, CTGR’s concerns and comments were not included and none of the comments were included nor responded to. By letter dated January 30, 2015, the CTGR stressed that BLM had failed to include their comments and concerns in the FEIS:

From the very beginning stages of the NEPA process, the CTGR has continuously provided comments and voiced great concerns about the Project. Specifically, those concerns focused on the fact that the area is culturally and archaeologically a monumental site. After all of the meetings with BLM, after all of the correspondence with BLM, after all of our comments on the early drafts of the EIS . . . not one of CTGR’s comments to BLM—not a single comment, not a single concern—was included in the Final EIS that was published for public viewing and public comment. *Not one of our concerns was recorded. Not one of our statements was included.* Not one of our appeals to the BLM that the Project Area is of monumental significance was documented. Like the thousands, perhaps tens or hundreds of thousands, of ancient artifacts at Long Canyon that were somehow blatantly missed, so too our comments mysteriously and blatantly were left undocumented and missed.

Exhibit 2 at 3. Chapter 7 and associated Appendix 7A provide the section of the FEIS on “Comments and Responses on the DEIS.” However, comments from CTGR were purposefully excluded. By not including the CTGR’s comments in the FEIS, and by not responding to CTGR’s comments in the FEIS, the BLM violated 40 C.F.R. 1503.4(b). This exclusion of CTGR in the FEIS also violated the provision of “full and fair discussion” of environmental impacts pursuant to 40 C.F.R. § 1502.1. Thus, these violations contravened NEPA’s overarching purpose.

E. The BLM Violated Cooperating Agency Requirements

Once the BLM and CTGR entered into the Cooperating Agency Agreement in July 2013, the BLM was required to “[u]se the environmental analysis and proposals of

cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible.” 40 C.F.R. § 1501.6. As explained under section I.B. above, the BLM blocked the CTGR’s ability to obtain a copy of the cultural resources information and to participate fully and fairly in the NEPA process as a cooperating agency. The BLM first required that the CTGR had to sign a data sharing agreement. The BLM secondly suggested that the CTGR could see **part** of the cultural resources information. Third, the BLM suggested that the CTGR could send their Tribal representative to the BLM Elko District Office to review the information. Instead of providing of copy of all of the cultural information, BLM suggested, without a data sharing agreement “the documents would have to be reviewed in our office and could not be copied or taken from our office.” Exhibit 6 at 3, 2. This would have created a substantial, direct cost to the CTGR to send their Tribal representative to Elko, covering travel, living, and salary expenses for several months of review and analysis. Because the Tribe is governed by a five-member Tribal Council, there is simply no way BLM’s limitation of one individual reviewer at the Tribe’s expense can fairly permit adequate review and input from the Tribe.

Given that sharing of cultural resources information was not in contravention to government-to-government relationship between the CTGR and Federal government, and other aforementioned federal statutes and regulations, the BLM violated not only established laws, regulations, secretarial and executive orders that provide for exchange of information on a government-to-government consultation basis (as detailed under section I and III), but the BLM also violated NEPA’s cooperating agency regulations. Under 1501.6(b)(5), the BLM as lead agency failed to “fund those major activities or analyses it requests from cooperating agencies.”

F. The BLM's Approval of the Project Threatens Violations of Law

Under 40 C.F.R. § 1508.27(b)(10), the BLM was required to consider the intensity of environmental impacts as to “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” As explained under section I, the BLM’s approval of the Project violated NHPA. As explained under section II, the BLM’s approval of the Project violated NEPA. As explained under section III, the BLM’s approval of the Project breached federal trust responsibilities. On those three accounts, BLM failed to properly address §1508.27(b)(10).

But the BLM’s approval of the Project and FEIS also threatened violations of Nevada state law, which was required to be integrated as part of the intensity consideration for environmental impacts. Part of the Project required Newmont to construct a new water supply system (including a water pipeline) for Wendover, Utah, and West Wendover, Nevada (“Cities”) (Newmont and the Cities agreed to replace the Cities’ use of Big Springs for municipal water supply. FEIS 2-29 and FEIS Appendix 2A: “Surplus Water Service Agreement”). In addition to a water pipeline, the Cities would have to obtain new and temporary water rights through the Nevada State Engineer. Their proposed groundwater well locations would be located on the south edge of the Project Area in Goshute Valley in Section 21, T35N, R66E. See FEIS Figures 4.2-2 - 4.2-5.

However, in order for the Cities to obtain groundwater rights, their appropriations would first have to be approved by the Nevada State Engineer according to Nevada Revised Statutes Chapter 533 and 534. While some hydrographic basins in Nevada have over-appropriated water rights, approving new water rights that exceed the perennial

yield of the basin is unlawful under NRS 533.371(4) (“The State Engineer shall reject the application and refuse to issue a permit to appropriate water for a specified period if the State Engineer determines that . . . [t]here is no water from the proposed source of supply without exceeding the perennial yield or safe yield of that source”). In other words, groundwater appropriations that exceed the perennial yield are unlawful, and thus threaten violation of state law. According to the FEIS, in Goshute Valley hydrographic basin, “[c]urrently permitted and certified rights total 11,548.69 AFY [acre-feet per year]” and the “[p]erennial yield . . . for groundwater is 11,000 AFY.” FEIS 3-48. This corroborates the Nevada State Engineer’s finding that Goshute Valley is over-allocated, or at its allocation limit.

On February 20, 2015, when the Cities of Wendover and West Wendover applied for 1,428 AFY in Goshute Valley (Section 21, T35N, R66E) for municipal use, they applied for several changes in groundwater applications, use, and points of diversion for municipal use of groundwater at Section 21, T35N, R66E. Exhibit 12. And on February 26, 2015, the Cities applied for a change application at a point of diversion of Section 13, T36N, R66E for mining and milling purposes. Exhibit 12. On March 13, 2015, the Cities applied for temporary groundwater rights in the amount of 28.96 cfs, or roughly 20,678 AFY at Section 21, T35N, R66E. Exhibit 12. Any appropriation to the Cities would result in exceeding the perennial yield since the Goshute Valley is already over-appropriated. However, the potential violation of NRS 533.371(4) to complete the Cities’ component of the Project failed to make disclosure in the FEIS. And thus, the BLM violated its procedural obligation to properly address the impact intensity pursuant to 40 C.F.R. § 1508.27(b)(10).

The change in water use/appropriation between Newmont and the Cities was a significant part of the Project. However, the FEIS failed to analyze and disclose significant impacts, and failed to acknowledge significant impacts, associated with these water rights changes (change applications or new water right applications). In addition to failing to disclose that new water rights could threaten violation of state law, the FEIS asserted: “the potential cumulative impacts to groundwater resources would be negligible to minor.” FEIS at 5-33. In the BLM’s own admission, however, a major and “significant” effect is one where “[a]n impact is not in compliance with applicable regulatory standards and thresholds.” FEIS at 4-2. An effect is also “significant” if “[t]here are profound or complete changes in management or utilization of the resource.” *Id.* Even under the BLM’s own definition of “significant”, they failed disclose that impacts on groundwater resources was actually significant given the potential to violate state law through over-appropriation. Further, the BLM failed to take this significant aspect into account in the intensity and context of impact, and thereby violated 40 C.F.R. § 1508.27(b)(10) and § 1508.27(a).

Under 40 C.F.R. 1502.16, the BLM was required to identify in the FEIS “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.” For the above reasons under II.F., the BLM also violated its disclosure requirement under § 1502.16.

III. The BLM breached its federal trust responsibility owed to the Tribe.

The Federal government is charged with “moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in

dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. The trust responsibility restrains government action that affects Indians and therefore is an important source of protection for Indian rights.” *Seminole Nation v. U.S.*, 316 U.S. 286 (1942). In *Navajo Tribe of Indians v. United States*, the Court of Claims reiterated the importance of the trust responsibility to federal agencies:

We have noted, with great frequency, that the federal government is the trustee of the Indian tribes' rights, including fishing rights. *See, e.g., Joint Bd. of Control v. United States*, 862 F.2d 195, 198 (9th Cir. 1988). This trust responsibility extends not just to the Interior Department, but attaches to the federal government as a whole [T]he fiduciary obligation of the United States and any liability for breach of that obligation must be determined in light of the relationships between the government and the particular tribe.

Navajo Tribe of Indians v. United States, 624 F.2d 981, 988 (Ct. Cl. 1980). Justice Marshall in *Cherokee Nation v. Georgia* provided the original language that led to the tribal trust doctrine, stating that Tribes “occupy a territory to which we assert a title independent of their will They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants” *Cherokee Nation v. Georgia* 30 U.S. 1, 15 (1831). Congress has placed a fiduciary-like trust responsibility on all federal agencies and actions that occur beyond Indian reservation boundaries. See *Nance v. EPA* 645 F.2d 701 (9th Cir. 1981).

In this case, BLM breached its trust obligation by not conducting government-to-government consultation with the CTGR as required under the NHPA Section 106 process, Executive Order 13175, Interior Secretarial Order 3317, and related consultation requirements provided in Executive Orders and Presidential Memoranda.

For example, the BLM failed to uphold its policy on consultation, which requires “government-to-government exchange of information” and “enhanced communication

that emphasizes trust, respect, and shared responsibility.” Exhibit 7, Sec. 4.b. Secretarial Order 3317 also requires the consultation to involve Indian tribes “in a meaningful way.” *Id.* Sec. 4.a. The BLM also was required to “help ensure that . . . [the] Federal action is . . . reflective of tribal input.” *Id.* Sec. 4.c.

Government-to-government consultation must be “**open and transparent without compromising the rights of Indian tribes.**” Exhibit 7, Sec. 4 (emphasis added). Requiring the CTGR to sign a second agreement—a “data sharing agreement”—in order to provide a copy of the cultural resources information, the BLM acted contrary to their own Secretarial Order 3317. In a data sharing agreement that BLM representative Bryan Mulligan prepared for and sent to CTGR Chairwoman Greymountain on May 8, 2014 (“BLM’s Agreement”), the BLM specifically sought to compromise CTGR’s legal rights in several ways. For example, the BLM’s Agreement that they drafted for the CTGR read:

A) The Tribe agrees to maintain the confidentiality of records containing any archaeological and cultural resource information received from the BLM under this Memorandum by ensuring all information is kept in a centralized secure location, **with access limited to the Tribal Chair and designated Tribal Representative for the sole purpose of consultation with the BLM.**

B) **The Tribe agrees that the cultural resource information** provided by the BLM will not be duplicated or shared outside of the Tribe and **will not be used for any purpose other than consultation with the BLM.**

Exhibit 5 at 3, “V. Tribal Responsibilities” (emphasis added).

The cultural resources information about the CTGR’s own tribal history clearly has other significant uses and purposes to the CTGR beyond “consultation with the BLM.” For example, the CTGR has a legal right to use cultural information to educate their people, to enhance their understanding of their own history, to protect their historical

resources and ancestral connections. These are just a few legal rights the CTGR has in the use of cultural resources information; there are many others.

Because the CTGR cannot be expected to waive legal rights for a purpose already provided for under established laws, the CTGR drafted a separate but similar data sharing agreement (“CTGR’s Agreement”) that specifically omitted compromises to the CTGR’s legal rights. See Exhibit 10 (this copy includes BLM’s mark-ups). For example, the CTGR replaced “will not be used for any purpose other than consultation with the BLM” with a clause that ensured CTGR’s rights: “The Tribe agrees that the cultural resource information provided by the BLM will not be duplicated or shared outside of the Tribe except where the Tribal Council determines by resolution that duplication and/or sharing outside of the Tribe is important to protect and further important Tribal interests.” Exhibit 10 at 7 (Stipulations II.A.2). In response, the BLM commented at CPR44 in their mark-up version, “I don’t believe there can be any exceptions for sharing outside the Tribe.” Another BLM representative stated, “Agreed. The tribe should not have the sole authority to authorize this type of sharing . . .” *Id.*

In a second example, the CTGR included in the CTGR’s Agreement a stipulation on “Intellectual Property Rights of Tribal People.” Exhibit 10 at 8. The stipulation read:

The BLM understands that, initially, all data they receive from any source, including but not limited to the Tribe, will remain the Tribe’s intellectual property until either party has given BLM permission to release any portion or all of it. This understanding pertains to notes, documents, emails, photographs, recordings, maps, GPS data, and any other information collected from the informants or Tribe.

Id. BLM responded again in a manner that would compromise CTGR’s legal rights. In one comment [CPR49], the BLM said, “I do not think we can agree to this. The data belongs to the BLM.” BLM comment HBS50 stated simply: “Agreed. Delete. We cannot

agree to this.” And a comment from HBS51 read, “This decision is the Authorized Officer under law and regulation.” *Id.*

In a third and illustrative example, the CTGR inserted a statement in their CTGR Agreement regarding rights and legal responsibilities. The statement read,

This MOU [Data Sharing Agreement] shall not be used in any way to prejudice or harm the Tribe, Tribal interests, Tribal resources, Tribal rights, and Tribal people. Nothing in this MOU constitutes an implied or express waiver of Tribal sovereign immunity.

Exhibit 10 at 8, V.F. The BLM provided its suggestion: “Tricky wording. I would avoid stating this.” *Id.*

The BLM even sought to omit mention of the trust responsibility in the CTGR’s Agreement. The CTGR stated in Exhibit 10 at 2, “WHEREAS, the United States and its administrative agencies, including the BLM have a trust responsibility to protect and safeguard tribal interests, including but not limited to Tribal cultural resources”. But the BLM commented, “[t]he tribe seems to have been very careful not to use the term trust asset . . . but they use the words trust responsibility.” Following up, BLM comment HBS10 stated: “Agree . . . I would delete this Whereas ”. *Id.*

These examples illustrate BLM’s blatant aversion to recognize and practice the trust responsibility owed to the CTGR. In at least four ways, the BLM acted counter to the requirement under Secretarial Order 3317, which seeks to ensure that CTGR’s legal rights are not compromised, in carrying out the trust responsibility: 1) when BLM would not provide a copy of the cultural resources information to CTGR; 2) when BLM would offer some of the cultural information in a redacted version but exclude other essential information; 3) when BLM provided their BLM Agreement that required the CTGR to

waive legal rights; and 4) when BLM would not approve CTGR's Agreement because the CTGR included their legal rights.

These four instances also were a breach of trust that violated Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Exhibit 8. Under EO 13175, President Clinton reaffirmed that it was the policy of Federal agencies to "respect Indian tribal self-government and sovereignty" and "honor tribal treaty and other rights". *Id.* Sec. 3(a). EO 13175 also established that the "Federal Government shall grant Indian tribal governments the maximum administrative discretion possible." *Id.* Sec. 3(b). But even those policies were not followed by the BLM. In a letter from the CTGR, serious concerns were raised as to BLM's urgency to sign the Project ROD.

When you [BLM District Manager Jill Silvey] came to the CTGR Council meeting on April 3, 2015, you presented a response to some of our prior comments. That response was marked "Draft". The CTGR requested that you give us until Monday [April 6, 2015] or Tuesday [April 7, 2015] to formulate a response to the "Draft". You agreed. . . .

Based on your conversation with Paul Echo Hawk [on April 7, 2015], we are concerned about your indication that you had to immediately sign the ROD to approve the Project because private mineral rights "trump" other federal laws and regulations. You also indicated to Paul Echo Hawk that you could not wait any longer because the matter had been "elevated" by an authority above you.

. . . In your conversation with Paul Echo Hawk you would not even agree to wait until midnight tonight for the Tribes' comments. The gold at the Long Canyon Mine project site is not going anywhere. In contrast, the destruction of Tribal cultural resources and remains is permanent and federal law affords the Tribes a right to consultation and comment before federal action to approve such mining activity.

Exhibit 9 at 1. Instead of waiting until the CTGR Tribal Council had an opportunity to meet and approve a forthcoming document, the BLM approved the ROD.

The Department of Interior policy in Secretarial Order 3317 that their “Bureaus and offices” must act “without compromising the rights of Indian tribes” is reflected in the NHPA regulations. The NHPA regulations expressly states that “[n]othing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.” 36 C.F.R. § 800.2(c)(2)(ii)(B). The policy also is reflected in the NHPA regulations in that agency official “must recognize the government-to-government relationship” and conduct “consultation with Indian tribes . . . in a manner sensitive to the concerns and needs of the Indian tribe.” *Id.* § 800.2(c)(2)(ii)(C). Thus, the BLM also breached the trust responsibility by violating consultation requirements clearly spelled out in Secretarial Order 3317 and Executive Order 13175.

The aforementioned violations of NHPA and NEPA (under I. – III. herein) also equally breached the trust responsibility. The Ninth Circuit has emphasized that federal agencies owe a fiduciary duty to all Indian tribes, and that at a minimum this means agencies must comply with general regulations and statutes. *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 788 (9th Cir.2006). *See also* 36 C.F.R. § 800.2(c)(2)(ii)(B) (mentioning the “unique legal relationship” between federal government and Indian tribes). Violation of this fiduciary duty to comply with NHPA and NEPA requirements during the process of reviewing and approving projects vitiates the validity of that approval and requires that it be set aside. *Id.*

PRAYER FOR RELIEF

For the foregoing reasons, there were clear and repeated showings that BLM’s process to approve the Project was “arbitrary, capricious, an abuse of discretion, or

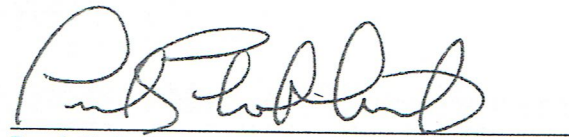
otherwise not in accordance with law” (5 U.S.C. § 706(2)(A)), or “without observance of procedure required by law” (§ 706(2)(D)). See also *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 375–376, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, 412, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976). Accordingly, the ROD approving the FEIS and Plan of Operations must be set aside.

CONCLUSION

The CTGR respectfully requests the IBLA to issue an order finding that the April 7, 2015 ROD approving the FEIS and Plan of Operations for the Long Canyon Mine violates applicable provisions of law including the NEPA, NHPA, and the BLM’s federal trust responsibility.

DATED: May 5, 2015.

ECHO HAWK LAW OFFICE

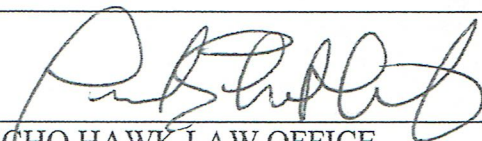
A handwritten signature in black ink, appearing to read "Paul C. Echo Hawk", is written over a horizontal line.

Paul C. Echo Hawk

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May 2015, I caused to be served a true and correct copy of the foregoing in accordance with applicable rules by the method indicated below, and addressed to the following:

Interior Board of Land Appeals Office of Hearings & Appeals U.S. Department of Interior 801 N. Quincy Street, Suite 300 Arlington, VA 22203 Tel: 703-235-3750 Fax: 703-235-8349	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Email <input type="checkbox"/> Telecopy (Fax) <input type="checkbox"/> Federal ECF
Regional Solicitor Pacific Southwest Region U.S. Department of the Interior 2800 Cottage Way, Room E-2753 Sacramento, CA 95825-1890 Tel: 916-978-5690 Fax: 916-978-5694 janell.bogue@sol.doi.gov	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Email <input type="checkbox"/> Telecopy (Fax) <input type="checkbox"/> Federal ECF
Jill Silvey, District Manager BLM, Elko District Office 3900 East Idaho Street Elko, NV 89801 Tel: 775-753-0200 Fax: 775-753-0385 Email: jsilvey@blm.gov	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Email <input type="checkbox"/> Telecopy (Fax) <input type="checkbox"/> Federal ECF
Gavin Jangard Newmont Mining Corporation 1655 Mountain City Highway Elko, NV 89801-2800 Fax: 775-778-2513 Gavin.Jangard@Newmont.com	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Email <input type="checkbox"/> Telecopy (Fax) <input type="checkbox"/> Federal ECF


for ECHO HAWK LAW OFFICE