

**UPDATE TO THE
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
76TH SESSION**

**IN RELATION TO
EARLY WARNING AND URGENT ACTION PROCEDURE DECISION 1(68)
& CONCLUDING OBSERVATIONS 6(72) (UNITED STATES)**

**SUBMITTED BY
THE TIMBISHA SHOSHONE TRIBE, THE TE-MOAK TRIBE OF
WESTERN SHOSHONE AND THE WELLS BAND OF WESTERN
SHOSHONE**

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I. Introduction

1. The petitioners submit this update to inform the Committee on the Elimination of Racial Discrimination (the “Committee” or “CERD”) of the United States’ (“U.S.”) ongoing failure to implement the recommendations contained in paragraphs 8 to 10 of its Decision 1(68) of 2006 and as reiterated “in its entirety” in paragraph 19 of its 72nd Session concluding observations. To date, not only has the U.S. continued to refuse to engage in good faith dialogue, it has gone ahead with approval of massive open pit gold mining in the well-known spiritual area Mt. Tenabo and continues to harass Western Shoshone peoples and allow permitting of new and ongoing harmful development activities - including recent reports of radioactive water “inching” its way out of the Nevada Test Site - to occur on Western Shoshone traditional lands.
2. In its Decision 1(68), the Committee expressed concern over U.S. treatment of the Western Shoshone and their ancestral lands. Specifically, the Committee found the United States’ “obligation to guarantee the right of everyone to equality before the law” was “not respected” and urged the U. S. to “pay particular attention to the right to health and cultural rights of the Western Shoshone peoples”.¹ The Committee called on the United States to “take immediate action to initiate a dialogue” with the Western Shoshone and to freeze, desist and stop further harmful activities on Western Shoshone ancestral land until a final decision or settlement is reached.²
3. In February 2008 CERD reviewed the United States’ overall compliance with the Convention on the Elimination of All Forms of Racial Discrimination based on information provided in the United States’ Fourth, Fifth and Sixth Periodic Reports³ (“U.S. Periodic Report”). The United States responded to Decision 1(68) in its periodic report rather than through a separate communication under the early warning and urgent action procedures.⁴ CERD’s 2008 concluding observations noted the U.S.’ explanations with regard to the situation of the Western Shoshone. The Committee then informed the U.S. that it “strongly regrets” that the State party had not followed up on the recommendations contained in Decision 1(68).⁵ The decision was reiterated in its entirety and the U.S. was urged to implement all the recommendations contained therein.⁶ CERD gave the U.S. one year to provide information on what it has done to implement Decision 1(68).⁷

¹ Committee for the Elimination of Racial Discrimination, Early Warning and Urgent Action Procedure, Decision 1(68), 20 February – 10 March 2006, CERD/C/USA/DEC/1, at paras. 7-8.

² *Id.* at paras. 9-10.

³ Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, April 2007, CERD/C/USA/6 (“US Periodic Report”).

⁴ *Id.* at paras. 342 -350 and Annex II.

⁵ Concluding Observations of the Committee on the Elimination of Racial Discrimination – United States of America, CERD/C/USA/CO/6, May 8, 2008 at paras. 19 (“2008 Concluding Observations”).

⁶ *Id.*

⁷ *Id.* at para. 45.

4. On January 13, 2009, the U.S., under the Bush administration, released its response to CERD's concluding observations ("U.S. Response").⁸ The U.S. Response addresses the Western Shoshone situation in two short paragraphs, reiterating the identical argument from its periodic report and entirely failing to respond to the Committee's request for information on implementation of recommendations issued in the concluding observations.⁹
5. Despite efforts to determine if the new administration under President Obama, which took office on January 20, 2009, has adopted the former administration's position on the matter, no response has been received.¹⁰

II. The U.S. Approves Massive Open Pit Gold Mine on Mount Tenabo

6. Notwithstanding CERD's recommendations and specific mention of Mount Tenabo in Decision 1(68), mining operations not only continue unabated but are escalating as Barrick Gold, a Canadian corporation, proceeds with the Cortez Hills Expansion Project, officially approved by the U.S. Department of Interior, Bureau of Land Management ("BLM") on November 12, 2008.¹¹ With U.S. permission, Barrick has already started explosive blasting to construct this massive open pit cyanide heap leach mine on the southern flank of Mt. Tenabo. The mine expansion will result in dewatering of over 16.5 billion gallons of water, a new 2,200 foot hole in the actual mountain itself, new surface disturbance of 6,792 acres, in addition to cyanide emissions, dewatering, mercury contamination and other harmful byproducts.¹² Construction has resulted in the invasion of traditional lands by miles-long conveyor belts,¹³ pipelines, roads and transmission lines, as well as the transformation of vast stretches of valley into plastic-covered heap leach pads. The mine is scheduled to begin producing ore in the first quarter of 2010, with continued exploration threatening further mine expansion.¹⁴
7. As mentioned in previous filings, Mount Tenabo is of great cultural and spiritual significance to the Western Shoshone. The mountain has a prominent role in local Shoshone creation stories and is the site of ancient burials. To this day, the Western Shoshone conduct

⁸ United States Response to Specific Recommendations Identified by the Committee on the Elimination of Racial Discrimination, January 13, 2009.

⁹ *Id.* at 6-7.

¹⁰ Julie Cavanaugh-Bill and Seánna Howard contacted various members of the Obama transition team to no avail. Western Shoshone delegates Joyce McDade and Larson Bill then traveled to Washington, DC in early February 2009 but again met with no response with regard to the new administration's position.

¹¹ Cortez Hills Expansion Project, Record of Decision and Plan of Operations Amendment Approval, US Department ("Dept.") of the Interior, Bureau of Land Management ("BLM"), Nov. 2008 (hereinafter "Cortez Record of Decision") available at:

http://www.blm.gov/pgdata/etc/medialib/blm/nv/field_offices/battle_mountain_field/blm_information/nepa/cortez_hills_expansion.Par.31482.File.dat/Cortez%20ROD_Final_signed.pdf last visited Jul. 26, 2009.

¹² US Dept. of the Interior, BLM, "Cortez Hills Expansion Project Final Environmental Impact Statement" Sept. 2008 (hereinafter "Cortez Final EIS") at 3.1-17 & 3.1-29 available at:

http://www.blm.gov/pgdata/etc/medialib/blm/nv/field_offices/battle_mountain_field/blm_information/nepa/cortez_hills_final.Par.35702.File.dat/c_Vol_II_Cover_through_Sect_3-1.pdf last visited Jul. 26, 2009.

¹³ See photos of: conveyor belt with the existing Cortez mine visible on the left and the road-scarred foothills of Mt. Tenabo on the left; pipelines; road and transmission line construction; heap pads [App. 1].

¹⁴ 2008 Annual Report, Barrick Gold Corporation, 42 available at: <http://barrick.com/Investors/AnnualQuarterlyReports/default.aspx>

ceremonies, hunt and gather medicinal and food plants in Mount Tenabo and its environs. The mining activities have already closed access to a ceremonial and gathering site and threaten the health and survival of plants essential to Western Shoshone customs, as well as an adjacent natural spring sacred to the Western Shoshone.¹⁵

8. In the Snake's Den canyon at the foot of the mountain, Barrick has been bulldozing thousands of acres of pinyon forest, a staple Western Shoshone traditional food, destroying trees of spiritual significance, burying stretches of mountain beneath mounds of waste rock and creating a criss-cross of gravel roads that are traversed at all hours by dump trucks hauling away the guts of the mountain.¹⁶ These mining activities are rapidly killing off the remaining pinyon forest.¹⁷ This forest contains mature trees bearing harvestable pine nuts and will take 75-100 years to become re-established.¹⁸ Although the U.S. has acknowledged the threat to the existing pine nut crop, it now cites the "lack of harvestable pine nuts" as a factor in its decision to approve the mining project.¹⁹
9. Not only has Barrick interfered with Western Shoshone use of the area through construction activities but it has perpetrated physical attacks on a Western Shoshone elder and her companion as they observed the mine construction from a public road.²⁰ Moreover, the U.S. is threatening legal action against a Western Shoshone elder for "interference" with "federally permitted" removal of Western Shoshone traditional objects from Western Shoshone lands, obtained without the consent of the Western Shoshone peoples.²¹
10. Although the U.S. cites in the annex to its 2007 Periodic Report "tribal involvement" in the Cortez Hills Plan of Operations and the establishment of the Cortez Hills Tribal Working Group,²² neither of these mechanisms has involved adequate and effective consultation with the Western Shoshone peoples prior to the use of their traditional lands. Moreover, both of these mechanisms have been discontinued since 2008.²³
11. On November 21, 2008 the South Fork Band Council of Western Shoshone, the Timbisha Shoshone Tribe, the Western Shoshone Defense Project, and Great Basin Mine Watch filed a

¹⁵ See photo of gathering site - up until the time of its closure this year, this restricted area was the site of the spring gatherings and other ceremonies [App. 2]; photo of sego lilies which the Western Shoshone collect for their edible bulbs [App. 3]; photo of mining and road construction on Pitch Mountain which threatens the adjacent Shoshone Wells natural spring [App. 4].

¹⁶ See photo of mining operations on Mt. Tenabo [App. 5]; photo of late Western Shoshone grandmother, Mary Dann's prayer trees which have been sawed down. Mt. Tenabo is visible behind Mary's prayer tree with mounds of tailings and bulldozed trees at its base [App. 6].

¹⁷ See photo of sick pinyon trees turning brown and grey in contrast to the green junipers amongst them [App. 7].

¹⁸ Cortez Final EIS, *supra*, note 12 at 3.9-23.

¹⁹ See *Id.* at 3.9-23 in contrast to Cortez Record of Decision, *supra* note 11, at 23.

²⁰ See ltr from B. Locke, Western Shoshone Defense Project to A. Regent, President and CEO, Barrick Gold Corporation, July 29, 2009 [App. 8].

²¹ See correspondence between B. Ridley and D. W. Furtado, BLM, Mount Lewis Field Officer [App. 9].

²² US Periodic Report, *supra* note 3 Annex II at 14 and 15.

²³ Statement by Gerald Dickson, U.S. BLM, Battle Mountain District, July 14, 2009. "Involvement" of interested parties in the formulation of the Cortez Hills Plan of Operations ended before its finalization in November, 2008. The Cortez Hills Tribal Working Group, whose aims were limited to development of measures to mitigate mining impact on tribal resources disbanded even earlier than that.

complaint in the Reno Federal District Court seeking declaratory and injunctive relief to stop the mine pending a full hearing on the merits of the case.²⁴ On January 26, 2009 the Federal Court in Reno denied the injunction request to stop the new Barrick Cortez Hills mine pit on Mt. Tenabo. The case is now on appeal with a decision pending from the 9th Circuit Court in San Francisco.

III. The U.S. Continues to Issue Debt Collection Notices

12. Despite the recommendations of the Committee to stop imposing grazing fees, trespass and collection notices and to rescind existing notices, the United States continues to harass the Western Shoshone in this manner. On May 13, 2008, Western Shoshone elder Carrie Dann received a debt collection notice in the amount of \$6,433,231.40 from a private collections agency on behalf of the U.S. Department of the Interior for non-payment of cattle grazing fees, an activity that is a traditional and customary use of her ancestral lands.²⁵ On June 23, 2009, five representatives of the U.S. BLM came to Ms. Dann's home, provided oral reaffirmation of her outstanding debt and stated that the same policies currently remain in effect that in the past have resulted in confiscation of her livestock.²⁶ The U.S. also continues to threaten other Western Shoshone with confiscation of their personal property.²⁷

IV. The U.S. Continues Ongoing Resource Extraction and Other Harmful Activities

13. Gold Mining. In addition to the Barrick Cortez Project at Mt. Tenabo, the U.S. continues to move forward on additional gold mining expansions throughout Western Shoshone territory without Western Shoshone consent.²⁸
14. Radioactive Water. A public news source reported on August 1, 2009 that radioactive water is seeping out beyond the Nevada Test Site boundary where 928 nuclear tests were conducted between 1951 and 1992. Although levels of tritium being found are 3,000 times above the safe drinking water limit, the U.S. Department of Energy will simply "adopt a long-term monitoring plan".²⁹ The Department will not remediate the site as "there is no current technology to clean up the contamination".³⁰ Instead, they will wait to see if the contamination reaches public water wells and if that happens, they will be "required" to provide water to affected communities.³¹ This information was received within a few days of

²⁴ *Thanksgiving the "Cortez Way" – U.S. Ignores Western Shoshone Objections – Barrick Gold Readies Itself to Carve up Mount Tenabo Spiritual Area*, Press Release, Nov. 21, 2008 [App. 10]. The Te-Moak Tribe of Western Shoshone joined the lawsuit in December.

²⁵ See debt collection notice attached to Oct., 11, 2008 letter from IPLP and WSDP to CERD.

²⁶ Statement by C. Dann regarding June 23, 2009 home visit by K. Miller, Elko District Manager, U.S. BLM accompanied by four BLM colleagues.

²⁷ See Ltr from Dept of the Treasury, Financial Management Service to R. Yowell, Feb. 1, 2008 [App. 11].

²⁸ *Examples of Large New Gold Mining Activities in Western Shoshone Territory* prepared by the WSDP, July 2009 (please note this list is not comprehensive and only includes larger-scale and/or immediate threats to cultural or spiritual areas) [App. 12]; See also Ltr from John F. Ruhs, Bureau of Land Management, Dec. 8, 2008 which advised of a proposed 3920 acre expansion of the Bald Mountain Mine [App. 13].

²⁹ Keith Rogers, *Radioactive water inching its way out of the Nevada Test Site*, LAS VEGAS REVIEW-JOURNAL, Aug. 1, 2009 [App. 14].

³⁰ *Id.*

³¹ *Id.*

this update. Despite the fact that the Test Site lies within Western Shoshone territory and several Western Shoshone communities in the near vicinity have long voiced concerns with annual gatherings and protests at the Test Site, the petitioners have no knowledge of any Western Shoshone representative being consulted, let alone included in the \$35 million “monitoring project”.

15. Nuclear Waste. The dangers of U.S. nuclear effects are not only coming from the Test Site. Plans to store high-level nuclear waste at Yucca Mountain are also continuing. On June 3, 2008 the U.S. Dept. of Energy (“DOE”) submitted an application and its final environmental impact statements to the U.S. Nuclear Regulatory Commission (“NRC”) seeking authorization to construct a high-level nuclear waste repository at Yucca Mountain.³² On September 8, 2008, the NRC made a decision to “docket” the application, meaning that a 3-4 year limitation period begins to run for the NRC to authorize construction of the facility.³³ The NRC has indicated that they will only be able to meet this deadline if they receive adequate resources from Congress.³⁴ Although the new administration has signaled its lack of support for the facility, Congress continues to unveil proposals to advance the project and the NRC has indicated that it will move ahead in its review process as long as the application is not formally withdrawn.³⁵
16. Uranium Mining. Plans are underway to conduct exploratory drilling for uranium on the foothills of Merritt Mountain in Western Shoshone territory. The exploration will involve the drilling of 150 wells and creation of containment ponds near three Native American sites. The Western Shoshone have asked the U.S. Forest Service to provide them with information and consult with the Western Shoshone leadership about the project. However, the onus should not be on the Western Shoshone to seek out this information and consultation as the United States has a duty to consult with the affected indigenous communities when engaging in activities that could affect their interests in their lands and resources.³⁶
17. Massive Water Grab. Besides the fear of water becoming “radioactive”, the largest immediate threat to the precious water resources on which the Western Shoshone depend, is a plan to tap aquifers in and adjacent to Western Shoshone lands and pipe down water to Las Vegas, Nevada. The Southern Nevada Water Authority is proposing a groundwater development project which would involve the construction of a pipeline to divert 200,000 acre feet per year to the rapidly developing Las Vegas Valley.³⁷ This project threatens plant and wildlife across the territory in the already arid desert region.

³² See ltr from E.F. Sproat, III to M. F. Weber, June 3, 2008 [App. 15].

³³ *NRC Dockets Yucca Mountain Application, Adopts DOE's Environmental Impact Statement, US Nuclear Regulatory Commission*, News Release, Sept. 8, 2008 [App. 16].

³⁴ *Id.*

³⁵ See Keith Rogers, *Senator offers Yucca proposal*, LAS VEGAS REVIEW JOURNAL, July 22, 2009 available at: <http://www.lvrj.com/news/51386352.html>.

³⁶ Field Trip notes from T. Howard, Cultural Resource Director (Shoshone-Paiute Tribes), Oct. 2, 2008 [App. 17].

³⁷ Southern Nevada Water Authority, Clark, Lincoln and White Pine Counties Groundwater Development Project, available at <http://www.nvgroundwaterproject.com/html/index.html>. See also Ltr from Penelope Dun Woods to Larson Bill, April 4, 2008 [App. 18].

18. Spiritual and Cultural Areas. The Western Shoshone spiritual area of Rock Creek and the nearby cultural area of Tosawihi Quarry are threatened due to encroaching mines and their associated dewatering and pollution, proposed fencing that could restrict access to sacred waters nearby, and planned construction of a natural gas pipeline corridor that would cross the immediate vicinity of these areas.³⁸ Western Shoshone access to Rock Creek was recently imperiled by the proposed sale of privately held adjacent lands. At the same time as Western Shoshone representatives were cooperating with the BLM to secure public financing for the purchase and preservation of the lands, a subsidiary of Great Basin Gold Limited, a Canadian mining company, obtained the lands through a confidential sale.³⁹
19. Hot Springs. For the Western Shoshone, hot springs are spiritual areas and continue to be used for healing, bathing and ceremonial purposes. Over the last three years, the BLM has auctioned off nearly \$50 million in geothermal leases on 472 thousand acres of land in and adjacent to Western Shoshone ancestral lands.⁴⁰ The Yomba and Timbisha Tribes of Western Shoshone unsuccessfully appealed the BLM's decision to issue three geothermal leases on Western Shoshone territory even though the Department of the Interior noted "the importance of hot springs to Native American religious practices".⁴¹
20. Oil and Gas, Energy leases and Transmission Corridors. Across Western Shoshone lands, there is a massive push for energy extraction – from the ground, the air and the sun, all without consent of the Western Shoshone. In an effort to support the rapid pace of development in the Las Vegas valley of Nevada, Great Basin Transmission LLC, has secured approval to build a 234-mile transmission line along a utility corridor that crosses Nevada from south to north and will eventually exceed a length of 500-miles to reach into neighboring Idaho.⁴² Great Basin is already selling transmission rights with construction expected to begin before 2010.⁴³ This is in addition to the electric and water authorities who

³⁸ The BLM is currently reviewing the proposed Hollister Underground Mine Project, a 124-acre gold mining project with an anticipated dewatering rate of up to 1,500 gallons per minute in the vicinity of Western Shoshone sacred waters. See Ltr from K. Miller, U.S. DOI, BLM to C. Dann, July 30, 2009 [App. 19]; U.S. DOI, BLM, Ruby Pipeline Project Draft EIS June 2009, available at: http://www.blm.gov/nv/st/en/fo/elko_field_office.html.

³⁹ The Company is claiming through a press release that the purchase was to protect the area for Shoshone interests, however no Shoshone were involved in the purchase and none of the underlying documentation has been received by Western Shoshone representatives as of the time of this filing. *Great Basin Gold Purchases Rock Creek Lands to Protect Important Western Shoshone Cultural Site*, Press Release, June 15, 2009 available at: <http://www.greatbasingold.com/index.html?lf=1;pg=25;ai=1151;pcat=2009>.

⁴⁰ August 2007: \$11,669,821 for 122,849.270 acres; August 2008: \$28,207,806 for 105,211.540 acres; July 2009: \$8,909,445 for 243,727.158 acres. 2007 and 2008 sales results available at: http://www.blm.gov/nv/st/en/prog/minerals/leasable_minerals/geothermal0/ggeothermal_leasing/prior_sales.html; 2009 sales results available at:

http://www.blm.gov/nv/st/en/prog/minerals/leasable_minerals/geothermal0/ggeothermal_leasing.html

⁴¹ Appeal from the Decision of Record and Finding of No Significant Impact, 175 IBLA 237 United States Department of the Interior, July 31, 2008 at 243 [App. 20].

⁴² United States Department of the Interior, Bureau of Land Management, "Southwest Intertie Project Southern Portion Environmental Assessment" July 2008 available at: http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/energy/egan_energy_projects/southwest_intertie/swip_final_ea.html last visited Jul. 26, 2009.

⁴³ LS Power Announces Memorandum of Understanding with Western Area Power Administration for the Southwest Intertie Project, Press Release, LS Power, Jul. 16, 2009, available at: <http://www.swipos.com/>

plan to build their own transmission lines but are farther behind in the permitting process.⁴⁴ The U.S. is currently developing a program to allow for the auctioning of leases to solar power developers, for which applications in Nevada have tripled over a 2 month period.⁴⁵ The BLM has also announced that in September 2009 it will auction off oil and gas leases for 152 thousand acres of land.⁴⁶ There are presently 39 wind energy projects spanning 337 thousand acres of land currently undergoing BLM review as well as a 30,700-acre project proposal traversing the Nevada-Idaho border.⁴⁷

V. Requests to the Committee

21. In order to encourage U.S. implementation of Decision 1(68) the Western Shoshone respectfully urge the Committee to continue to monitor the United States' follow up with the Committee's recommendations and asks that the Committee take the following steps to promote remedial action by the United States:
- a. Issue a communication to the United States expressing concern over the harmful activities occurring on Western Shoshone traditional lands which are incompatible with Decision 1(68); requesting that the United States follow Decision 1(68); and requiring the United States to report back to the Committee on measures it has taken to comply with Decision 1(68); and
 - b. Conduct a site visit to Western Shoshone territory to conduct monitoring and fact-finding and to observe, first hand, the harm being inflicted and further threatened on their land, resources and people.

⁴⁴ *Id.*

⁴⁵ Fed. Register, Vol 73 No 104, May 29, 2008, 30908-30912, "Notice of Intent to Prepare a Programmatic [EIS] to Evaluate Solar Energy Development, Develop and Implement Agency-Specific Programs, Conduct Public Scoping Meetings, Amend Relevant Agency Land Use Plans, and Provide Notice of Proposed Planning Criteria," available at: <http://solareis.anl.gov/documents/index.cfm>; Phoebe Sweet, *Eager applicants line up to build plants: Federal agency has no formal policy for approving plans for Nevada desert*, LAS VEGAS SUN, Sept. 11, 2008 [App. 21].

⁴⁶ See Notice of Competitive Oil and Gas Lease Sale, July 24, 2009, US DOI, available at: <http://www.blm.gov/nv/st/en.html>.

⁴⁷ Wind Energy Project Applications, April 27, 2009, available at: <http://www.blm.gov/nv/st/en.html>; China Mountain Wind Energy Development Project, Info available at: <http://www.id.blm.gov/planning/nepa/databases/project.php?id=1216>

List of Appendices

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