



CRITICAL MINERALS ON U.S. PRIVATE LANDS: CULTURAL HERITAGE AND FREE, PRIOR, & INFORMED CONSENT

FACT SHEET

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A substantial portion of known U.S. lithium deposits (reserves and resources) are located near Native American reservations, making the clean energy transition inseparable from the interests and rights of Indigenous communities. Under current U.S. law, only consultation is required, generally not consent, allowing mining to proceed even if Tribes object. Free, Prior and Informed Consent (FPIC) gives Indigenous peoples decision-making authority over projects that affect their homelands, as recognized in international frameworks including the UN Declaration on the Rights of Indigenous Peoples. To address these gaps, robust Indigenous rights and cultural heritage protections are recommended, including FPIC requirements, protection for cultural landscapes, funding for Tribal participation, and support for Indigenous co-management.

What Are Indigenous Rights and Cultural Heritage Protections?

Free, Prior and Informed Consent (FPIC) provides Indigenous peoples with the authority to approve or reject projects that affect their lands, territories, resources, or rights. Unlike consultation, which seeks Tribal input but does not guarantee decision-making power, FPIC requires that consent be *free* (voluntary and without coercion), *prior* (secured before any approval and in line with Indigenous timelines), and *informed* (based on complete impact information provided in culturally appropriate ways).¹ Cultural heritage protection goes beyond preserving historic buildings or artifacts. Indigenous cultural heritage is connected to living landscapes where communities

maintain ongoing spiritual, ceremonial, and subsistence relationships. For example, the Western Shoshone see entire watersheds as interconnected cultural systems. For the Ojibwe, wild rice (manoomin) is a relative, a food source, a ceremonial element, and an indicator of ecosystem health. Traditional territories are ancestral homelands where Indigenous peoples maintain cultural, spiritual, and historical connections, regardless of current land ownership.

Why Indigenous Rights and Cultural Heritage Protections Matter for Private Land Mining

- **Regulatory gaps result in uneven protections.** One study found that about 79% of all known U.S. lithium deposits (reserves and resources) are within 35 miles of Native American reservations.² Mining on private land typically does not require federal environmental review. If mining takes place entirely on private property without federal permits or funding, there is no federal requirement for Tribal engagement, even if projects impact off-reservation sacred sites, water sources, or traditional use areas.³
- **International standards require consent, not just consultation.** The Initiative for Responsible Mining Assurance (IRMA), an independent certification system for mining operations, requires that companies obtain FPIC from affected Indigenous communities before proceeding.⁴ IRMA also designates critical cultural heritage sites as "no-go" areas where mining cannot occur. These protections are largely absent from U.S. private land regulation.
- **There are documented cases of limited Tribal engagement.** For example, consultation for the Thacker Pass lithium mine consisted of three rounds of mailings during the COVID-19 pandemic, when Tribal offices were closed.⁵ The project was approved over opposition from at least five Tribal governments. Industry research suggests that projects with genuine FPIC tend to have better outcomes, while inadequate consultation often leads to litigation and delays.⁶
- **Collaborative consent processes can support community well-being and project viability.** In August 2025, the Shoshone-Paiute Tribes signed an unprecedented Relationship Agreement with Integra Resources for the DeLamar project in Idaho—the first agreement of its kind in the Lower 48 states.⁷ Developed over five years, the agreement establishes a framework for co-management, benefit-sharing, and cultural preservation throughout the mine's operation.

Current Policy and Gaps

Federal Framework

The 1872 General Mining Law governs most hardrock mining but contains zero Indigenous consultation requirements.⁸ The National Historic Preservation Act (NHPA) requires considering cultural resources when federal permits, funding, or other federal actions are involved, focuses on individual sites rather than landscapes, and gives Tribes no veto power.⁹ The American Indian Religious Freedom Act remains largely symbolic without enforcement power.¹⁰

In May 2025, the Supreme Court rejected Apache Stronghold's challenge to the Resolution Copper mine at Oak Flat, Arizona—a site sacred to multiple Tribal Nations, leaving in place lower-court rulings that underscore how current law provides no veto power over projects affecting sacred lands.¹¹

In 2023, the Biden Administration's Interagency Working Group on Mining Regulations, Laws, and Permitting issued a report with more than 60 recommendations, but it did not create any enforceable Tribal consent rights.¹² Native Americans make up about 1 percent of the U.S. population but are disproportionately exposed to health and environmental risks associated with mining.¹³

State Variations and Private Land Gaps

- **California (stronger protections):** Assembly Bill 52 requires state agencies to "actively seek agreement" with Tribes on projects subject to environmental review.¹⁴
- **Minnesota (stronger protections):** The Fond du Lac Band used its Clean Water Act authority to enforce Tribal water quality standards, contributing to the revocation of a key federal wetlands permit for the PolyMet mine when it could not meet downstream Tribal standards.¹⁵
- **Nevada (weaker protections):** Despite major lithium deposits, there are no state FPIC requirements. Private projects proceed with minimal oversight. Burial sites have felony protections but other sacred sites do not.¹⁶
- **Arizona (weaker protections):** Allowed Resolution Copper to proceed despite Apache religious freedom concerns. Limited state cultural heritage authority creates "enforcement deserts" where federal jurisdiction does not apply.

Voluntary Standards

Under the Initiative for Responsible Mining Assurance (IRMA) standard, mines are required to conduct cultural heritage screening, assessment, and implement damage mitigation measures.¹⁷ IRMA distinguishes between replicable cultural heritage and

critical cultural heritage, creating no-go zones for the latter. Companies can pursue IRMA certification voluntarily while legislative reforms advance.

Four Critical Policy Gaps

Gap 1: No Consent Authority, Only Advisory Consultation

- U.S. law provides consultation in limited cases but generally does not require Tribal consent for mining projects, leaving Indigenous nations with voice but not veto power.
- Tribes invest resources in consultations only to be ignored. At Thacker Pass, Western Shoshone opposition was documented but dismissed. At Oak Flat, 20 years of Apache engagement have so far failed to stop approval of a mine that would ultimately destroy the sacred site. This exhausts Tribal capacity and leads to litigation that delays projects anyway.

Gap 2: Inadequate Protection for Cultural Landscapes

- Current laws focus on discrete archaeological sites rather than cultural landscapes, watersheds, and territories Indigenous communities identify as sacred.
- At Thacker Pass, the significance of the massacre site and the broader landscape was not fully addressed. For the Ojibwe, wild rice waters have spiritual importance that cannot be replaced. Mining infrastructure can create barriers to ceremonial access, even when companies attempt to avoid specific sites.

Gap 3: No Benefit-Sharing Requirements

- U.S. regulations include no requirements for benefit-sharing or economic partnerships with affected Indigenous communities, unlike international standards.
- Companies extract resources from traditional territories while Indigenous communities experience the impacts without receiving economic benefits. One-time payments do not provide sustainable prosperity or support for long-term monitoring.

Gap 4: Insufficient Tribal Capacity Support

- Meaningful participation requires technical expertise in hydrogeology, toxicology, and law that many Tribal governments cannot access without sustained funding.
- Companies have access to consultant teams, while Tribes may lack resources for independent technical review. Traditional governance processes that require consensus often need more time than typical mining project timelines allow.

NWF Policy Recommendations for Responsible Private Land Mining

Recommendation 1: Pass New Mining Law to Require Tribal Consent

- Pass modern legislation establishing binding FPIC for projects affecting traditional territories, sacred sites, or shared resources regardless of land ownership. Define affected territories beyond reservations, create enforcement mechanisms with penalties for non-compliance, and establish multi-year federal funding for Tribal capacity building including independent technical experts in hydrogeology, toxicology, and environmental law. Constitutional authority exists through the Indian Commerce Clause and Treaty Power.

Recommendation 2: Create Critical Cultural Heritage Designations

- The Interior Department should develop a federal designation framework for sites of outstanding cultural significance that cannot be replaced, similar to Wilderness Area protections. Congress should provide statutory authority through standalone legislation building on the Chaco Cultural Heritage Area Protection Act model.
- Establish Tribal-controlled nomination processes protecting sacred information, with buffer zones recognizing impacts beyond physical boundaries (viewsheds, groundwater, spiritual integrity).

Recommendation 3: Require Impact Benefit Agreements

- Require Impact Benefit Agreements for all projects on or near Indigenous territories including profit-sharing, equity stakes, board representation, employment priorities, and long-term monitoring funding controlled by Tribes.
- Follow Canada's model of over 500 formal Indigenous agreements, with some including revenue-sharing or royalty frameworks over the life of the mine.^{18,19}

Recommendation 4: Ensure Indigenous Co-Management and Strengthen State Protections

- Recognize Tribes as co-regulators for water quality. States with mining activity should require meaningful consultation with minimum 12-18 month timelines to accommodate traditional governance processes. Require cultural impact frameworks developed by Tribal experts that evaluate landscapes rather than discrete sites.
- Support Indigenous-led monitoring teams and integrate Traditional Ecological Knowledge into restoration planning. Provide technical assistance and funding to enable Tribal participation in permitting processes.

Conclusion

Indigenous rights and cultural heritage protections are necessary to ensure that the clean energy transition respects the sovereignty and cultural connections of Native peoples who have served as stewards of these lands since time immemorial. With many lithium reserves located near reservations, respecting Indigenous consent is essential for achieving both climate and conservation goals. Current protections on private lands are inadequate, leading to consultation without consent, insufficient cultural landscape protections, lack of benefit-sharing, and exclusion of Indigenous perspectives. Strengthening U.S. Indigenous rights policy requires establishing FPIC requirements, creating critical cultural heritage designations, mandating benefit-sharing agreements, and ensuring Indigenous co-management. The National Wildlife Federation's mission to protect wildlife and wild places for future generations compels us to advocate for critical mineral development that respects the rights and leadership of Indigenous peoples.

This paper was written with the assistance of the 2025 Fellows of the Dow Sustainability Program, University of Michigan. For more information, please contact Dr. Simone H. Stewart, Senior Industrial Policy Specialist StewartS@nwf.org

Cover page: The remote village of Unalakleet, Alaska, sits along the Unalakleet River, on one side, and the coast of the Bering Sea on the other. The village is about 400 miles northwest of Anchorage. (Photo by Werner Slocum / NREL, from Department of Energy/Flickr)

Endnotes

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