

**YACHAY WASI Sacred Sites Event - Submission 20 – USA –  
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**The Continuing Struggle to Protect the Sacred at Indian Pass**



**Indian Pass, California, USA**

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**Submitted on behalf of the Quechan Indian Nation of the Fort Yuma Reservation,  
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As background, over the last decade, the Quechan Indian Nation has collaborated with other tribal governments, environmental, historic preservation and labor groups, and federal entities to gain the only denial of an open pit hardrock mine in American history.

The mine was proposed for the Indian Pass area, once ancestral tribal lands, now owned by the U.S. and managed by the Bureau of Land Management. The mine site is located in an area now withdrawn from future mining claims by BLM to protect Native American religious and heritage values. It is also adjacent to designated federal wilderness, critical habitat for the federally-listed desert tortoise and an Area of Critical Environmental Concern for Native cultural values. However, in 2001, a new federal administration rescinded the denial so that Glamis Gold Ltd.'s Imperial mine could be reconsidered, without consulting with the Quechan Tribal Government.

Since our last report to you in 2002, the Quechan have taken a number of steps to continue to protect its irreplaceable sacred area from the ongoing threat of open pit gold mining.

**Legislative:** The Quechan, from 2003-2005, helped draft and pass precedent-setting mining reclamation, sacred place consultation and confidentiality laws for the State of California. These laws remain in place today, and are helping not just the Quechan, but tribes throughout the state, to better protect their sacred places.

**Judicial:** In 2004, when the Department of Interior lawyer, William G. Myers III, who recommended the mine rescission, was nominated to the United States Ninth Circuit Federal Court of Appeals by the President, the mine dispute catapulted the Quechan to the forefront of the successful U.S. Senate filibuster in opposition to his nomination. The Tribe worked with other tribes and intertribal organizations to organize the first effort by tribes to become involved in national judiciary issues. To this day, Mr. Myers has not been seated on the Court.

**Media:** The Tribe has made an effort to outreach to the larger communities and those communities have repeatedly recognized the value of the Indian Pass area. The Quechan have been at the cutting edge in increasing the awareness of such communities to sacred place issues. For example, The National Trust for Historic Preservation listed Indian Pass in its 11 Most

Endangered Historic Places List in the U.S. in 2002. In 2006, the California Wilderness Coalition listed Indian Pass in its List of 10 Most Threatened Wild Places in California.<sup>1</sup>

**NAFTA:** And now the Quechan are poised at the front of indigenous participation in disputes under the North American Free Trade Agreement (NAFTA). In 2003, Glamis filed a claim against the United States pursuant to NAFTA Chapter 11 asserting that the California mining measures indirectly and discriminatorily expropriated the proposed mine's value. The Tribe filed a submission underscoring the nature of the sacred places and the domestic and international frameworks supporting indigenous cultural resource protection. Its brief was the first of its kind accepted in an international economic law dispute.

Cultural rights are widely recognized as human rights. Yet, the extent to which human rights law may be considered by investment tribunals remains mostly the subject of academic debate. This dispute may well bring such issues to center stage. Some academics argue that human rights obligations could be used to mitigate the level of damages owed. We believe human rights norms are relevant in interpreting the substantive provisions of an investment treaty and establishing the reasonableness of the challenged measures. Moreover, such obligations, legitimate objectives of public interest, can be used to further justify the challenged measures to completely defeat a claim. Otherwise, investment principles would be allowed to trump human rights principles by default.<sup>2</sup>

While Indian Pass remains in threatened status, the Quechan continue to actively use their traditional ways and beliefs, in conjunction with legislative, media, legal and policy strategies, to protect their sacred area and to improve the State, National and International frameworks for these kind of disputes. We respectfully request the support of the Panel, Forum, the United Nations and other indigenous peoples to protect this sacred area from destruction by this Canadian open pit cyanide heap leach gold mine.

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<sup>1</sup> See also, *American Indian Report*, November 2002; *Sierra Magazine*, November/December 2002; *Preservation*, March/April 2003.

<sup>2</sup> To read the NAFTA submissions in this matter, including those of the Tribe, visit the United States Department of State website at: <<http://www.state.gov/s//c10986.htm>>.