*Bartell Ranch v. McCullough,* ___ F. Supp. 3d ___, 2023 WL 1782343 (D. Nev., Feb. 6, 2023).

- **Holding**: The Bureau of Land Management, in issuing ROD approving proposed lithium mine on public lands, was not required to initiate National Historic Preservation Act consultations with Tribes that had previously indicated that they did not wish to be consulted on projects being considered in area of the proposed mine, and BLM's National Environmental Policy Act analysis adequately addressed the project's impacts on cultural and historical resources.
- **Summary** The Reno-Sparks Indian Colony ("RSIC") and the Burns Paiute Tribe intervened in a lawsuit brought by environmental groups challenging the Bureau of Land Management's record of decision (ROD) regarding a corporation's plan to build a lithium mine on BLM lands. The Tribes asserted that the BLM unreasonably or in bad faith decided not to consult with the Tribes before approving the Project in violation of the National Historic Preservation Act, 54 U.S.C. § 300101, et seq. ("NHPA"). The BLM countered that as part of its land use planning, it had prepared an Ethnographic Assessment, which, after consultation with tribes, did not identify the area affected by the proposed mine as a sacred or massacre site for either Tribe, and related correspondence or telephone calls from both tribes had indicated to BLM that they did not wish to be consulted on projects being considered in the geographic area encompassing the proposed mine. Further, neither tribe requested consultation after publication of BLM's federal register notice of intent to prepare a draft EIS and amend its resource management plan, which the court held adequately initiated public consultation as required by the NHPA. Given those circumstances, the court found that BLM's decision not to consult with the Tribes before issuing the ROD was reasonable and made in good faith.

  The Burns-Paiute Tribe also asserted that in preparing the Final Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321-61 ("NEPA"), the BLM did not discuss current uses of the project area by tribes or the area's significance to local tribes. The EIS, however, incorporated by reference a 2018 cultural resource inventory that included the project area, and reviewed 38 previous cultural resource inventories conducted over 49 years that investigated the project area. While the inventories indicated that some 1000 cultural resource sites would be impacted by the project, such impacts were considered in the EIS, and a Historic Properties Treatment Plan was in development to mitigate impacts. The court held that "[u]nder the deferential standard of review … BLM took a hard enough look at the Project's impacts on cultural and historical resources, and the Court's review must accordingly end."

  While the court rejected the Tribe's NEPA and NHPA claims, it ultimately held that the ROD was arbitrary and capricious due to its failure to make a determination as to whether the corporation had discovered valuable minerals, and thus established mining rights, to approximately 1300 acres of land that the corporation intended to use to dispose of waste rock, and remanded the ROD to the BLM without vacutur to remedy the issue.
- **Relevant (2023) Deskbook Section**: 3:16, 10:17