

Building Community Power

Community Benefits
Agreements Across the
Global Energy Supply Chain

James J. A. Blair, Emmett Hopkins, Tai Kondo
Koester, Kate Berry, Alida Cantor, Dustin
Mulvaney, Thea Riofrancos, Toni Symonds,
Noel Vineyard, Bryce Sprauer, Bethani Turley,
Thien-Kim Bui, Reva Butensky, and Lorena De
La Puente Burlando

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The Climate and Community Institute (CCI) is a progressive climate and economy think tank. Our growing staff and network of over 60 academic and expert fellows creates and mobilizes cutting-edge research at the nexus of inequality and the climate crisis. We fight for a transformational agenda that will rapidly and equitably decarbonize the economy by focusing on material benefits for working people.

Authors

James J. A. Blair, Emmett Hopkins, Tai Kondo Koester, Kate Berry, Alida Cantor, Dustin Mulvaney, Thea Riofrancos, Toni Symonds, Noel Vineyard, Bryce Sprauer, Bethani Turley, Thien-Kim Bui, Reva Butensky, and Lorena De La Puente Burlando.

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Community Benefits Agreements (CBAs)—legally binding agreements between community groups and project developers—are one tool that communities can deploy to exert control over their futures.

Executive Summary

To confront the climate crisis at scale, a global shift from fossil fuels to renewable energies is essential. It may not solve all social and ecological problems, but such a shift would bring massive benefits to communities around the world, including stabilizing global temperatures, reducing air pollution, expanding zero emissions energy, and creating jobs and localized investments in the process. It is also an opportunity for communities to build power: when communities are organized, know their rights, and navigate the landscape of policymaking and investment, they can gain material benefits from the energy transition. Community benefits agreements (CBAs)—legally binding agreements between community groups and project developers—are one tool that communities can deploy to exert control over their futures.

Over the past two years, the Climate and Community Institute (CCI) conducted research spanning the globe on best practices for CBAs, interviewed communities actively involved in CBA negotiations, and considered policy design with some of the preeminent scholars and practitioners of CBAs and the energy transition. Our most consistent finding is that when communities get organized early in the process, know their rights and the opportunities for pressure and participation, and work in coalition with allies, they have the power to shape the political economy of the energy transition: how burdens and benefits are distributed, how projects are designed and governed, and even whether or not it is worth letting a project move forward at all. Crucially, we also find that by studying the entire supply chain of the energy transition—from extraction to processing, manufacturing, and transportation, as well as electric power generation, storage, and transmission—we were able to identify latent opportunities for cross-sectoral organizing and equitable governance. In general, legally binding CBAs that treat communities as reciprocal partners tend to generate more enduring local support for policies that invest in the green economy.

That research resulted in the present in-depth report, written primarily for an audience of community organizers and advocates working with Tribes, environmental justice groups, and labor

Strong CBAs result from organized communities taking collective action to build power, in two senses of the word.

movements. It may also be helpful for project developers seeking to establish trust and positive relations with communities. The report includes a wide range of detailed case studies, as well as policy analysis and recommendations with concrete requirements, standards, and resources. It can be read as a linear narrative or with a “choose your own adventure” mentality if some case studies, policies, or recommendations are more relevant than others for readers. An accompanying toolkit is designed to support community organizers and advocates more directly in initiating, negotiating, and enforcing CBAs with interactive worksheets, templates, sample documents, and other resources.

Taking Power Across the Global Energy Supply Chain

The CBA is often the last move for communities. Too often, communities have little power in a project’s planning process, and the project developer is usually keen to limit dissent and speed up the project by establishing an agreement. Our report attempts to counter this dynamic by identifying ways for communities to take action early by building in legally binding and enforceable “high-road” CBA commitments—high-quality wages, benefits, training, and other provisions outlined below—instead of just taking peanuts at the end.¹ Too often, the power imbalance between community groups and project developers is so lopsided that it is hard for the community to gain meaningful commitments, investments, or safeguards through a CBA.

Strong CBAs result from organized communities taking collective action to build power, in two senses of the word. First, communities need to build power to have a seat at the table in negotiating a legally binding and enforceable CBA. Community power creates the conditions for social and economic empowerment at the local level. “Community” may include workers, as well as Indigenous peoples and local residents affected by potential impacts. Second, by ensuring that communities benefit from the energy transition, CBAs set the conditions for rapid deployment of zero emissions energy, in turn

¹ Carol Zabin, *Putting California on the High Road: A Jobs and Climate Action Plan for 2030* (UC Berkeley Labor Center, 2020), <https://laborcenter.berkeley.edu/putting-california-on-the-high-road-a-jobs-and-climate-action-plan-for-2030/>.

redistributing cleaner power back to communities in a virtuous circle. Our report analyzes the limits and possibilities of CBAs to uphold Indigenous sovereignty, deliver environmental justice, and build solidarity across the global energy supply chain.

CBAs are commonly understood in the United States as having a relatively narrow application, primarily for negotiating labor and hiring in urban redevelopment projects. There is a longer history, however, of negotiated settlement agreements within and beyond the United States with Indigenous peoples and local communities over water, land, territory, and resources. CBAs are not an American invention restricted to US cities, and global cases of legally binding agreements negotiated between multinational companies and local communities offer cautionary tales, as well as models for advancing Indigenous rights, benefit-sharing, and community ownership. It is especially critical to consider such agreements when it comes to absentee corporations in the extractive industries that have long stamped a footprint in the Global South—an extractivism rooted in imperialism and colonialism—and now play an increasingly prominent role in providing materials for batteries and infrastructure, both offshore and onshore.

Our supply chain solidarity approach explores a diverse range of agreements throughout the global production network of renewable energy and electrified transportation. For instance, CBAs for manufacturing have built in labor and hiring standards and racial justice principles established through urban development CBA negotiations. CBAs for renewable energy infrastructure projects tend to function as a bureaucratic means of distributing modest fees through local or state governments that may or may not yield significant benefits for directly affected communities. Extractive development projects for materials needed in manufacturing of batteries and renewable energy technologies present new challenges and opportunities for implementing CBAs that support Indigenous sovereignty and environmental justice in rural areas. We explore case studies at each of these different nodes in the supply chain—extraction, processing, manufacturing, and transportation, as well as electric power generation, storage, and transmission—in addition to outlining relevant international legal norms and federal, state, and municipal policy frameworks.

CBAs are fluid, flexible, and may differ significantly depending on the context.



Leveraging CBA Provisions to Build Community Power

CBAs are fluid, flexible, and may differ significantly depending on the context. At any given link in the supply chain, strong CBAs should offer a mix of provisions based on local priorities that matter most for community members. Based on a review of CBAs across the supply chain, we have thematically categorized the general provisions they contain from governance to financial, labor, environmental, and enforcement provisions. Our report provides examples of relevant case studies to illustrate each of the following provisions, as well as strategies that communities have used for effective negotiation.

Governance

Communities have the power to set the terms and manage the outcomes of CBAs. Governance provisions allow communities to provide input on project design and management, and may include:

1. Recognition of Indigenous rights, Tribal cultural resources, and associated obligations to free, prior, and informed consent (FPIC)
2. Identification of representatives and CBA decision-making authorities
3. CBA duration, amendment, and expiration date
4. Outline of decision-making processes, reporting, and meeting requirements
5. Cross-referencing existing community development plans



Financial

Communities have the power to negotiate CBAs that go beyond “pay to play” corporate handouts with revenue set aside for related uses.

Different financial arrangements resulting from CBAs may include:

1. Direct payments (one-off or recurring)
2. Grants for defined community needs (e.g., infrastructure, parks, scholarships, affordable housing, early childhood education, waste management, etc.)
3. Trust accounts or community benefits funds held by a third party for money management

4. Partial ownership or carried shares of profits from operations with mitigation measures for risk and liability (e.g., free equity or no-interest loans)
5. Diversified revenues with fixed payments and royalties on produced/extracted commodities (e.g., kWh of energy, tons of copper, percentage of revenue, etc.)



Labor

Communities have the power to build a local workforce and bring lasting economic development through CBAs. These provisions may include:

1. High-road, family-sustaining jobs with equitable hiring and promotion practices to remove barriers for local workers (i.e. transportation and childcare)
2. Wage commitments with union neutrality
3. Job-related health and safety
4. Commitments to contracts with disadvantaged local business enterprises
5. Workforce training, including on-the-job training and apprenticeship utilization requirements



Environmental

Communities have the power to demand that CBA provisions go beyond required regulations and mitigation measures to follow environmental justice principles that strive toward net environmental benefits and cultural revitalization. Environmental provisions may include:

1. Bans on specific development practices
2. Net-positive benefits beyond compensatory mitigation
3. Monitoring and information transparency requirements with penalties for pollution and remediation
4. Funding of third-party studies and capacity building for analyzing project impacts
5. Plans for phasing out and shutting down through decommissioning



Enforcement

Communities have the power to hold companies and governments accountable through CBAs. Enforcement provisions may include:

1. Dispute resolution process and/or arbitration clause(s)
2. Transparency, mandated data sharing and reporting requirements, and outline of penalties or legal obligations for not adhering to the CBA
3. Identification of roles and responsibilities of organizations party to the agreement
4. Assumption of contract obligations in the event of acquisition, bankruptcy, foreclosure, etc.
5. Ability to re-open or renegotiate contingent on environmental review

Key Strategies for CBA Negotiation

Drawing lessons from the case studies examined in our report, as well as our community review sessions, we identified key strategies that have been critical for community coalitions to successfully negotiate a strong CBA. These include:

- Organize and act to provide meaningful input early and often.
- Beware of required mitigation and compliance disguised as community benefits.
- Take an intentional approach to inclusivity for either a broad or close-knit coalition.
- Participate in community advisory groups.
- Empower trusted local leaders to assume the role of negotiators.
- Find a stable, well-resourced organization to anchor the negotiation process.
- Increase leverage by communicating across the supply chain about shared experiences.

Cautions and Alternatives: Beyond CBAs

This report is not meant to promote CBAs if it is not appropriate for communities to engage in negotiations on unacceptable or unmitigable

projects. In fact, we stress that CBAs are no substitute for human rights principles enshrined in international law, such as free, prior, and informed consent (FPIC). We include implications of CBAs for upholding FPIC, we take seriously critiques of CBAs as a form of “greenwashing,” and we outline Indigenous-centered approaches for “working in a good way” beyond monetizing benefits.

Top Recommendations

To encourage governments, community organizers, advocates, as well as developers to raise the floor for stronger community benefits in the energy transition, we offer the following recommendations:

- 1. Require CBAs:** Governments can mandate CBAs as a contingency for permitting or financing with clear criteria that maximize community representation and address concerns from each of the above categories of provisions.
- 2. Establish clear and consistent standards for CBAs:** Communities can define what provisions need to be included in a strong CBA.
- 3. Set the stage for CBA negotiation:** The public sector can build the conditions to give communities more power to negotiate fair agreements.
- 4. Directly equip communities to negotiate for CBAs:** Organizers can advocate for more resources to support communities that require further assistance.

This report provides detailed examples and suggestions for governments, organizers, advocates, experts, and practitioners to build community power through each of these recommendations. Our accompanying [CBA toolkit](#) offers further practical guidance and interactive worksheets, templates, sample documents, and other resources for entering into effective negotiations for a strong and enforceable CBA.

How can Indigenous peoples and environmental justice communities minimize burdens and maximize benefits in agreements related to extractive industries and renewable energy?

Introduction

This report analyzes the limits and possibilities of community benefits agreements (CBAs) to build community power across the supply chain in the energy transition.² An urgent shift toward renewable energy is necessary to turn away from fossil fuels and mitigate global climate change. But under what conditions can CBAs—legally binding agreements between community groups and project developers—make that transition more just? How can Indigenous peoples and environmental justice communities minimize burdens and maximize benefits in agreements related to extractive industries and renewable energy?

To investigate these questions, we conducted research on global and national benefit-sharing agreements across the supply chain for electric vehicles and renewable energy to inform the best practices and flag the most significant cautionary tales. We examined the relevant academic literature and reviewed example documents of agreements, which we interpret broadly not only to include well-known CBAs for urban development in the United States but a wider range of legally binding negotiated agreements between communities and companies worldwide. We collected relevant publications from academic journal databases and civil society groups and categorized them by relevance to the supply chain stage to synthesize key findings. We compared different kinds of provisions in these agreements and consulted existing CBA reports and toolkits. Building on that work, we selected a range of case studies spanning the supply chain, conducted interviews, and compiled a database of CBA policies and provisions to connect key lessons that span the global production network of renewable energy and electrified transportation, from upstream extraction to downstream distribution and consumption.

² While we use the somewhat simplistic term “supply chain” throughout, this report builds on the critical work of social scientists who have developed more relational concepts, such as global production network, global commodity chain or global value chain. These more expansive concepts go beyond the linear flow of a conventional supply chain—from raw material to consumer products—to interrogate intersecting social, economic, political and ecological dynamics. See: G. Gereffi and M. Korzeniewicz, *Commodity Chains and Global Capitalism* (Praeger, 1994); Gary Gereffi et al., “The Governance of Global Value Chains,” *Review of International Political Economy* 12, no. 1 (2005): 78–104; Gavin Bridge, “Global Production Networks and the Extractive Sector: Governing Resource-Based Development,” *Journal of Economic Geography* 8, no. 3 (2008): 389–419; Gavin Bridge and Erika Faigen, “Towards the Lithium-Ion Battery Production Network: Thinking beyond Mineral Supply Chains,” *Energy Research & Social Science* 89 (July 2022): 102659, <https://doi.org/10.1016/j.erss.2022.102659>.

Our research draws from numerous case studies conducted by the authors, and was based on a mix of methods including interviews, focus groups, literature review, document analysis, and policy analysis. The report is not exhaustive, and a limitation to our wide scope is that some case studies involve more direct interview data and long-term community engagement, while others are based more on secondary source literature review. However, throughout the research process, we spoke with community organizers and advocates who have engaged in CBA negotiations and conducted multiple points of community and peer review so that the contents of the report best reflect the needs and experiences of community members, Tribal nations, workers, negotiators, and facilitators.

Before delving into our rich set of global and US case studies, policies, and provisions, in what follows we (1) **outline our vision of how stronger CBAs may help build supply chain solidarity**; (2) **make a crucial distinction between CBAs and the more fundamental principle of free, prior, and informed consent (FPIC)**; and (3) **examine ways that communities can intervene to build power before developers break ground on any given project**.

Supply Chain Solidarity for Stronger Community Benefits

In this report, we explore a wide range of global and local cases that, in aggregate, offer a window onto how communities can build solidarity across diverse yet interconnected stages of energy and mineral supply chains, including: extraction, processing, manufacturing, and transportation, as well as electric power generation, storage, and transmission.

Minerals to manufacturing



Extraction refers to the development of nonrenewable “energy transition minerals”—material inputs for technologies, devices, and infrastructures related to decarbonizing the energy system—such as lithium, copper, zinc, manganese, cobalt, platinum, palladium, and antimony. We also draw on more conventional cases of mineral extraction, such as oil and gold, insofar as they provide relevant precedents for CBAs in the energy transition.



Processing natural resources into materials can involve many types of preparation, chemical conversions, or refinement to make them into products, fuels, or parts that can be used in manufacturing or assembly. The continuous emissions, effluents, and community hazards from processing can in some cases make them candidates for strong CBAs.



Manufacturing refers to the production of the physical goods, technologies, and infrastructures that furnish energy generation, storage, and consumption: solar panels, lithium batteries, and e-mobility (electric cars, buses, and rail). This can encompass making raw materials into products or assembly of manufactured products into final goods.

Renewable electricity



Electric power generation refers to energy to produce electricity. We examine case studies of wind, solar, and hydrogen, while also drawing lessons from good neighbor agreements for oil refining.



Energy storage capacities can also be integrated with renewable energy assets. Storage facilities can include utility-scale battery storage, microgrid long-duration storage, or hydroelectric pumped storage.



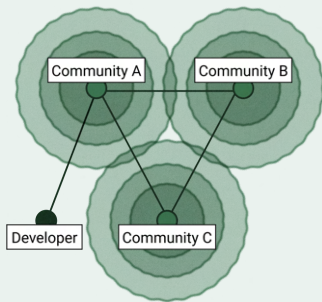
Transmission refers to high-voltage, long-distance power lines that play a particularly essential role in renewable energy distribution, given the facts of intermittency as well as geographically diverse renewable energy assets.

Each of these stages of the supply chain plays a role in the energy transition. In many cases, however, there are potentially more specific links between these nodes in a global production network. For example, the output of a lithium mine is an input for a battery manufacturing facility, which could in turn produce an essential component for either an electric vehicle or bus, or stationary storage on a grid.

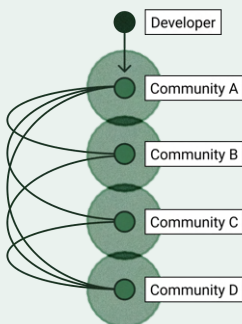
Indeed, in US states like Nevada, multiple stages of the supply chain are being developed in a regional cluster, though not necessarily in a coordinated fashion. Multiple lithium mines, including Thacker Pass—a joint venture between Lithium Americas and General Motors (GM)—are permitted and/or under construction within a few hours of Tesla’s Gigafactory Nevada. This factory produces battery cells, packs, and modules as well as electric motor components. Within the same “Lithium Loop” is a hub of battery recycling facilities, including Redwood Materials, Aqua Metals, and American Battery Company. These supply chains are not exclusively local. For example, GM entered into a joint venture with Lithium Americas to supply battery factories in Michigan, Ohio, Tennessee, and Indiana from the Thacker Pass mine, which is expected to become a key source of lithium for the car company’s electric fleet.

Government and industry boosters have similarly framed California’s proposed Lithium Valley development near the Salton Sea in Imperial County to include a wide range of “green industrial” land uses centered on geothermal energy and lithium extraction. While such energy and extraction projects may advance decarbonization efforts, they will not likely provide as many high-road long-term jobs as manufacturing. Careful planning is needed to maximize benefits of economic development through a more holistic approach, whether by vertical integration or horizontal linkages across the supply chain. Ultimately, the cumulative impacts and benefits will matter more for communities and their environments than a collection of one-off projects with disparate outcomes.

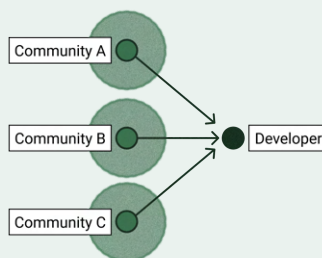
Given our focus on CBAs, these relationships between the firms and sectors addressed in the report raise the question of the implications for community power and supply chain solidarity. A few hypothetical possibilities emerge.



First is the possibility of **diffusion**: communities at one node of a global production network learn from their counterparts at a different node. This could look like a community affected by a solar generation project organizing to win concessions from the developer, thereby inspiring an adjacent community affected by the transmission line that would distribute that energy to bargain for a similar outcome.



A second possibility of coordination would be more explicit **relationship-building** between communities affected along the same supply chain, coordinating to mutually inform one another of potential harms or governance pitfalls, as well as to maximize the benefits they receive from projects.



This directly relates to a third possibility: communities combining forces to put **simultaneous pressure** on either a single firm involved in multiple nodes or multiple firms along the same supply chain.

Last, it is worth noting that these mechanisms are even more applicable in situations of vertical integration, such as the example of GM's ownership stakes in a lithium mine, which harkens back to a Fordist production model.

Regardless of whether communities work together, understanding supply chains is fundamental to determining the scope of a given project, whether or not it is acceptable to the community in the first place based on its potential impacts, identification of intervention points in the project's development, and negotiation of community benefits that meet both community needs and align with the project.

CBA's are no substitute for consent and consultation

The ILO's Indigenous and Tribal Peoples Convention (No. 169) recognizes the right to prior consultation in advance of any "legislative or administrative measures which may affect them directly."

Starting in the late 1980s, a new international legal regime recognized the rights of Indigenous peoples to territorial self-determination and cultural integrity. Acknowledging the centuries of genocide, dispossession, and forced assimilation—and noting the particular role of extractive sectors in perpetuating these harms—international bodies such as the International Labor Organization (ILO) and the United Nations (UN) established a range of rights for Indigenous peoples.

The ILO's Indigenous and Tribal Peoples Convention (No. 169) recognizes the right to prior consultation in advance of any "legislative or administrative measures which may affect them directly."³ ILO Convention 169 specifically zooms in on mining, noting that even when governments are the owners of subsoil resources, they ought to consult the Indigenous peoples prior to extraction, and, germane for our purposes, these communities "shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages."⁴

The UN Declaration on the Rights of Indigenous Peoples goes further, clarifying that the aim of consultation is consent, and establishing the now-canonical verbiage of "free, prior, and informed consent" as the north star of interactions between Indigenous peoples and corporations and/or governments.⁵ This phrasing has itself become institutionalized, usually referred to by its acronym FPIC.⁶

³ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), accessed March 16, 2025, https://normlex.ilo.org/dyn/nrmlx_en?f?p=NORMLEXPUB:55:0::NO::P55_TYPE%2CP55_LANG%2CP55_DOCUMENT%2CP55_NODE:REV%2Cen%2CC169%2C%2FDocument.

⁴ C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), 169.

⁵ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

⁶ Cultural Survival et al., "Securing Indigenous Peoples' Right to Self-Determination: A Guide on Free, Prior and Informed Consent," Cultural Survival, September 2023, <https://www.sirgecoalition.org/fpic-guide>. For a database of protocols for FPIC developed by Indigenous peoples, see: European Network on Indigenous Peoples (ENIP), "Free, Prior and Informed Consent Protocols of Indigenous Peoples," accessed March 11, 2025, <https://fpic.enip.eu/en/>.

FPIC, Right to Know, and Right to Say No

Free, prior, and informed consent (FPIC) is a principle recognized in the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP) designed to ensure the engagement and incorporation of Indigenous peoples in decision-making based on their rights to land, territory, and resources.⁷ FPIC is an ongoing process that includes both the process of engagement and dialogue as well as the right to give or withhold consent.⁸ Expectations for meaningful FPIC may vary from nation to nation or community to community.⁹ According to the United Nations Economic and Social Council's Permanent Forum on Indigenous Issues, common elements of FPIC include the following:

- **Free** should imply no coercion, intimidation or manipulation.
- **Prior** should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of indigenous consultation/consensus processes.
- **Informed** should imply that information is provided that covers (at least) the following aspects:
 - a. The nature, size, pace, reversibility and scope of any proposed project or activity;
 - b. The reason(s) for or purpose(s) of the project and/or activity;
 - c. The duration of the above;
 - d. The locality of areas that will be affected;
 - e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;

⁷ UNDRIP, 2007.

⁸ Cultural Survival, First Peoples Worldwide, and SIRGE Coalition, "Securing Indigenous Peoples' Right to Self-Determination: A Guide on Free, Prior and Informed Consent." For a database of protocols for FPIC developed by Indigenous peoples, see: European Network on Indigenous Peoples (ENIP), "Free, Prior and Informed Consent Protocols of Indigenous Peoples."

⁹ For example, for the Little Salmon/Carmacks First Nation, expectations for meaningful FPIC include: "early engagement; to be fully informed; space for self-defined internal processes; ongoing engagement with proponents and the Crown; mitigation of resource barriers; enforceability of commitments; contextually relevant processes; appropriate representation; agreed upon definitions of terminology; mitigation of power imbalances; and mutual agreement on the consent process itself." See: Emily Martin et al., "Expectations for Meaningful Free, Prior, and Informed Consent: An Exploration by the Little Salmon/Carmacks First Nation," *The Extractive Industries and Society* 23 (September 2025): 101653, <https://doi.org/10.1016/j.exis.2025.101653>.

- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others);
- g. Procedures that the project may entail.
- **Consent** [should include consultation, participation and consent.] Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest-holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth, as appropriate. This process may include the option of withholding consent...Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.¹⁰

Community right to know (CRTK) implies being fully informed about a planned project and about its potential impacts. This is central to FPIC and is also relevant to non-Indigenous residents of fenceline communities in proximity to polluting industries.¹¹ In the United States, CRTK was established through the 1986 Emergency Planning and Community Right-to-Know Act (EPCRA), in response to the disastrous explosion at the Union Carbide chemical plant in Bhopal, India.¹² The UN's 1992 Río Declaration on Environment and Development enshrined CRTK in international law.¹³ A community's right to know should include appropriate access to transparent information, the right to participate in the decision-making process, and the right to justice from potential harm. CRTK may be provided through emergency planning notification and response procedures, hazardous and toxic chemical inventory reporting standards and requirements, as well as independent expertise and analysis. CRTK is applicable before engagement and dialogue occurs, during negotiations, and over the lifetime of a project.

¹⁰ United Nations Economic and Social Council and Permanent Forum on Indigenous Issues, Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples, E/C.19/2005/3 (2005), <https://documents.un.org/doc/undoc/gen/n05/243/26/pdf/n0524326.pdf>.

¹¹ Alison E. Adams et al., "Forty Years on the Fenceline: Community, Memory, and Chronic Contamination," *Environmental Sociology* 4, no. 2 (2018): 210–20, <https://doi.org/10.1080/23251042.2017.1414660>.

¹² US EPA, "Emergency Planning and Community Right-to-Know Act (EPCRA)," 2013, <https://www.epa.gov/epcra>; Kim Fortun, *Advocacy after Bhopal: Environmentalism, Disaster, New Global Orders* (University of Chicago Press, 2009).

¹³ United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, A/CONF.151/26 (Vol. 1) (Rio de Janeiro, 1992), <https://doi.org/10.4324/9780429310089-10>.

FPIC also includes the **right to say no**, which is invoked if consent is not given for a project or if consent is later revoked. The right to say no means that Indigenous and/or fenceline communities should have an equal opportunity to be involved in decision-making before a project begins or at any time during the lifetime of a project.

Mining and energy developers often frame negotiated agreements as evidence of adequate consultation, even if FPIC is not fully implemented or operationalized in the process of development.¹⁴ For example, some Indigenous communities in proximity to a proposed development site may be included in agreements, even though others are excluded.¹⁵ Whether or not FPIC is obtained from all Indigenous peoples with shared or neighboring ancestral territories and cultural resources, developers may present CBAs as proof of “social license to operate”¹⁶ by demonstrating accountability and corporate social

¹⁴ Boreal Leadership Council, *Free, Prior and Informed Consent in Canada: A Summary of Key Issues Lessons and Case Studies towards Practical Guidance for Developers and Aboriginal Communities* (Ottawa, 2012), <https://fpic.info/en/resources/free-prior-and-informed-consent-canada-summary-key/>; Philippe Hanna and Frank Vanclay, “Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent,” *Impact Assessment and Project Appraisal* 31, no. 2 (2013): 146–57, <https://doi.org/10.1080/14615517.2013.780373>; Guillaume Peterson St-Laurent and Philippe Le Billon, “Staking Claims and Shaking Hands: Impact and Benefit Agreements as a Technology of Government in the Mining Sector,” *The Extractive Industries and Society* 2, no. 3 (2015): 590–602, <https://doi.org/10.1016/j.exis.2015.06.001>; Martin Papillon and Thierry Rodon, “Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior, and Informed Consent in Canada,” *Environmental Impact Assessment Review* 62 (January 2017): 216–24, <https://doi.org/10.1016/j.eiar.2016.06.009>; Ben Bradshaw et al., “Impact and Benefit Agreements and Northern Resource Governance: What We Know and What We Still Need to Figure Out,” in *Resources and Sustainable Development in the Arctic* (Routledge, 2018).

¹⁵ David Szablowski, “Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice,” *Canadian Journal of Development Studies / Revue Canadienne d'études Du Développement* 30, nos. 1–2 (2010): 111–30, <https://doi.org/10.1080/02255189.2010.9669284>; Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press, 2014); Alexander Dunlap, “A Bureaucratic Trap: Free, Prior and Informed Consent (FPIC) and Wind Energy Development in Juchitán, Mexico,” *Capitalism Nature Socialism*, 2017; Martin Papillon and Thierry Rodon, “Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior, and Informed Consent in Canada,” *Environmental Impact Assessment Review* 62 (January 2017): 216–24, <https://doi.org/10.1016/j.eiar.2016.06.009>; Audra Simpson, “The Ruse of Consent and the Anatomy of ‘Refusal’: Cases from Indigenous North America and Australia,” *Postcolonial Studies*, 2017.

¹⁶ Jason Prno and D. Scott Slocombe, “Exploring the Origins of ‘Social License to Operate’ in the Mining Sector: Perspectives from Governance and Sustainability Theories,” *Resources Policy* 37, no. 3 (2012): 346–57, <https://doi.org/10.1016/j.resourpol.2012.04.002>; John R. Owen and Deanna Kemp, “Social Licence and Mining: A Critical Perspective,” *Resources Policy* 38, no. 1 (2013): 29–35, <https://doi.org/10.1016/j.resourpol.2012.06.016>; Bruce Harvey, “Social Development Will Not Deliver Social Licence to Operate for the Extractive Sector,” *The Extractive Industries and Society* 1, no. 1 (2014): 7–11, <https://doi.org/10.1016/j.exis.2013.11.001>; Jim Cooney, “Reflections on the 20th Anniversary of the Term ‘Social Licence,’” *Journal of Energy & Natural Resources Law* 35, no. 2 (2017): 197–200, <https://doi.org/10.1080/02646811.2016.1269472>.

responsibility (CSR).¹⁷ Showing positive environmental, social, and governance (ESG) impacts has become one of the most significant ways for developers to reduce risk for investors.¹⁸

Corporate responsibility assurance has become even more complicated with the recent proliferation of multi-stakeholder auditing standards that have created new forms of institutional layering for governance of FPIC.¹⁹ The Initiative for Responsible Mining Assurance (IRMA) has sought to set a higher standard for disclosure and transparency, based on the notion that such auditing could help build momentum for more robust regulations. IRMA also specifically requests or leaves room for Indigenous peoples to determine their own standards.

Nonetheless, grassroots climate justice activists have raised concerns about the way firms market their membership within responsible mining networks as a form of greenwashing or community-washing.²⁰ For example, the industry has tried to establish the Consolidated Mining Standard Initiative (CMSI), which labor and human rights advocates have argued represents a lowest-common-denominator standard that is designed to rubber stamp business as usual.

¹⁷ Richard Cowell et al., "Acceptance, Acceptability and Environmental Justice: The Role of Community Benefits in Wind Energy Development," *Journal of Environmental Planning and Management* 54, no. 4 (2011): 539–57, <https://doi.org/10.1080/09640568.2010.521047>; Matthew Himley, "Regularizing Extraction in Andean Peru: Mining and Social Mobilization in an Age of Corporate Social Responsibility," *Antipode* 45, no. 2 (2013): 394–416, <https://doi.org/10.1111/j.1467-8330.2012.01001.x>; Stuart Kirsch, *Mining Capitalism: The Relationship between Corporations and Their Critics* (University of California Press, 2014); J. P. Laplante and Catherine Nolin, "Consultas and Socially Responsible Investing in Guatemala: A Case Study Examining Maya Perspectives on the Indigenous Right to Free, Prior, and Informed Consent," *Society & Natural Resources* 27, no. 3 (2014): 231–48, <https://doi.org/10.1080/08941920.2013.861554>; Robyn Mayes et al., "'Our' Community: Corporate Social Responsibility, Neoliberalisation, and Mining Industry Community Engagement in Rural Australia," *Environment and Planning A: Economy and Space* 46, no. 2 (2014): 398–413, <https://doi.org/10.1068/a45676>; Leah S. Horowitz, "Culturally Articulated Neoliberalisation: Corporate Social Responsibility and the Capture of Indigenous Legitimacy in New Caledonia," *Transactions of the Institute of British Geographers* 40, no. 1 (2015): 88–101, <https://doi.org/10.1111/tran.12057>; Fabiana Li, *Unearthing Conflict: Corporate Mining, Activism, and Expertise in Peru* (Duke University Press, 2015); Jessica Smith, *Extracting Accountability: Engineers and Corporate Social Responsibility* (The MIT Press, 2021).

¹⁸ Aparna Sankaran, "ESG Remains the Top Focus for Miners, but Capital Risks Increase as Mineral Demand Pressure Builds amid Energy Transition," *Ernst & Young*, October 12, 2023, https://www.ey.com/en_gl/newsroom/2023/10/esg-remains-the-top-focus-for-miners-but-capital-risks-increase-as-mineral-demand-pressure-builds-amid-energy-transition.

¹⁹ Teresa Kramarz et al., "Redundancies, Layers, and Dilemmas: Comparing Private Standards and Public Regulations in Lithium Mining," *The Extractive Industries and Society* 18 (June 2024): 101479, <https://doi.org/10.1016/j.exis.2024.101479>; Martin Obaya et al., "From Local Priorities to Global Responses: Assessing Sustainability Initiatives in South American Lithium Mining," *The Extractive Industries and Society* 19 (September 2024): 101509, <https://doi.org/10.1016/j.exis.2024.101509>; Public Citizen, "Public Citizen Public Consultation Submission to the Consolidated Mining Standard Initiative," December 16, 2024, <https://www.citizen.org/wp-content/uploads/Public-Citizen-Submission-to-Consolidated-Mining-Standard-Initiative-Final.docx.pdf>.

²⁰ Yes to Life, No to Mining, *10 Reasons Certification Schemes Are Not a Solution* (2023), https://yestolifenotomining.org/wp-content/uploads/2023/05/YLNM-Anti-certification-statement_EN.pdf.

These universal standards range widely. Multi-stakeholder auditing may serve as a starting point, but each Indigenous people or local community is uniquely positioned to determine the requisite rules of consent and consultation to a project in their territory. Despite potential shortcomings with regard to FPIC, advocates of negotiated benefits agreements for mining and energy projects suggest that these legally binding contracts may provide additional ways for Indigenous communities to assert sovereignty and self-determination.²¹ In doing so, it is critical that negotiators and representatives inform, engage, and consult community members throughout the entire process. We return to this topic toward the end of this report in a section called Cautions and Alternatives.

Whether a CBA, consultation, or consent is on the table, in order to have a meaningful impact, communities must have the opportunity to make their voices heard early in the process, at the design phase, well before earth is moved for development.

²¹ Anthony Bebbington et al., "Mining and Social Movements: Struggles Over Livelihood and Rural Territorial Development in the Andes," *World Development* 36, no. 12 (2008): 2888–905; Ciaran O'Faircheallaigh and Sally Babidge, "Negotiated Agreements, Indigenous Peoples and Extractive Industry in the Salar de Atacama, Chile: When Is an Agreement More than a Contract?," *Development and Change* 54, no. 3 (2023): 641–70, <https://doi.org/10.1111/dech.12767>.

Communities can intervene before ground is broken

Whether a CBA, consultation, or consent is on the table, in order to have a meaningful impact, communities must have the opportunity to make their voices heard early in the process, at the design phase, well before earth is moved for development.

Extraction and energy development is often most contentious before it begins. Well before mining or even construction commences, companies negotiate contracts with national (and in some cases sub-national) governments to secure concessions and contracts, obtain environmental and other permits, and recruit workers for construction and operation. These decisions often occur long before companies approach local communities (in violation of FPIC), whether through direct outreach and/or through official channels of participation in hearings, information sharing, and consultation.²² At each of these steps, the company's goal is to avoid conflict with government functionaries, workers' unions, Indigenous peoples, and frontline communities—thus keeping the project moving forward and maintaining financier interest by reducing risk. Each of these stages also amounts to what economists refer to as a "sunk cost": the money and personnel hours invested in acquiring permits, exploring the land and resource, meeting with community members, and constructing the physical infrastructure are all difficult or impossible to recoup if the project does not advance. The implication is clear: community pushback, protest, or litigation can have an outsize impact at these early stages before a project is approved, determining the difference between a mine or renewable facility that is built versus not built at all, or a construction process that is smooth versus one subject to delays, pauses, and investor skittishness.

For different but complementary reasons, the planning and pre-development stage is also particularly consequential for directly affected communities. Indeed, research shows that communities are more likely to protest and engage in "high-intensity" conflict at this indeterminate early phase of extractive development (compared to communities that have a longer history of living adjacent to toxic

²² Marcela Torres-Wong and Adrian Jimenez-Sandoval, "Indigenous Resource Governance as an Alternative to Mining: Redefining the Boundaries of Indigenous Participation," *The Extractive Industries and Society* 9 (March 2022): 101001, <https://doi.org/10.1016/j.exis.2021.101001>.

industries or projects).²³ Especially when a community has not previously suffered the impacts of large-scale mining, a huge open-pit copper or lithium mine appears as a stark fork in the road. In such contexts, mining and energy development entails a major land use change carrying with it a host of novel environmental harms, and may be incompatible with existing place-based livelihoods and cultural practices, or even threaten entire economic sectors like agriculture or tourism.²⁴ The stakes are high, and grievances as well as direct actions must be understood from this perspective. Additional—and tragically common—factors can increase the chance of land defense or protest: the exclusion of communities from decision-making, the repression of dissent, the violation of codified rights, and the intersection of environmental harms and sacred sites. Each of these factors increases the willingness of community members to engage in contentious action, including by putting their literal bodies on the line—despite the concrete possibility of corporate retaliation, state criminalization, and even injury or death.²⁵

²³ Bebbington et al., “Mining and Social Movements”; Li, *Unearthing Conflict*; Nick Estes and Jaskiran Dhillon, eds., *Standing with Standing Rock: Voices from the #NoDAPL Movement* (University of Minnesota Press, 2019); Mirja Schoderer and Marlen Ott, “Contested Water- and Miningscapes – Explaining the High Intensity of Water and Mining Conflicts in a Meta-Study,” *World Development* 154 (June 2022): 105888, <https://doi.org/10.1016/j.worlddev.2022.105888>.

²⁴ James J. A. Blair et al., “The ‘Alterlives’ of Green Extractivism: Lithium Mining and Exhausted Ecologies in the Atacama Desert,” *International Development Policy*, no. 16 (April 2023): 16, <https://journals.openedition.org/poldev/5284>.

²⁵ Mary Menton and Philippe Le Billon, eds., *Environmental Defenders: Deadly Struggles for Life and Territory* (Routledge, 2021).

Community Intervention Points: It is imperative to understand where communities have leverage at various stages of resource development and government permitting in order to avoid community participation and CBA negotiations being treated merely as a way to keep potential opposition out of the regulatory approval process. By approaching research and engagement as nodes along a continuum, community members and advocates may leverage high-risk inflection points.

Exploration Although the community could successfully dissuade developers at this early stage, it can be hard for the public to even learn about a project at this stage or uncover information about the company's intentions. Nonetheless, information may be obtained through alerts on mining cadastre repositories, freedom of information to access exploration licenses, or grassroots community networks reporting visits by geologists. If there are serious concerns about unmitigable impacts, community organizers and advocates could encourage governments to declare a no-mining zone or a ban at the regional or national level.



Permitting This is a high leverage point because the company has not yet invested a lot of physical resources into developing the site and can still decide to walk away, but is motivated to make a deal to avoid risks of permits being withheld on account of community resistance. Community organizers and advocates have consistently stressed that communities can participate more in the CBA process by initiating the process early and maximizing leverage with information before projects are permitted and companies have the upper hand.



Development Communities may have less leverage to stop the project once construction has begun, but they may find the company highly motivated to appease resistance because of the larger scale of resources already invested into the project. At this point, a project remains financially vulnerable with investors committed. Any delays due to litigation or direct actions may have significant impacts on economic viability.



Operation Once operation is underway, community and labor coalitions may still organize for collective bargaining agreements and CBAs. Workers have power to withhold labor and strike, and communities can cut off the flow of goods with road blockades and other direct actions. Communities may have more leverage if there are plans for mergers or acquisitions, changes in local subcontractors, or expansion of the project that require further permitting.



Decommissioning The closure of a facility may seem like an unlikely place for effective intervention. However, if the owner of the company has other locations and/or lines of business, they may be particularly vulnerable and open to negotiations due to pending final inspections, WARN (Worker Adjustment and Retraining Notification) notices, and the need to finance other projects. The company may also be vulnerable because they may not have met prior pre-extraction commitments and do not have the promise of future jobs to keep politicians silent.

From the corporate and often governmental perspective, opposition through direct action or litigation is a cost to be reduced and a risk to be mitigated or managed. But from the perspective of ensuring the best outcomes for communities, landscapes, and ecosystems, these tactics are vital tools of social accountability and may provide more meaningful involvement in governance. Indeed, in many jurisdictions—where rights-based protections or formal avenues of participation are lacking—they are the only means for communities to relay their grievances.

Across different communities facing new development projects, there is a continuum of resistance that ranges from outright opposition to negotiation.

Across different communities facing new development projects, there is a continuum of resistance that ranges from outright opposition to negotiation. Some community groups reject a development project in its entirety, while others are not opposed to a mine or development per se but take issue with specific aspects—whether economic, environmental, cultural, or some combination of issues.

In the case of a community group outright opposing a project, the group may demand that the government not grant, or rescind, the company's concession and/or permits. The group may engage in protest, direct action, and litigation. This more oppositional form of protest is increasingly common in recent years and is also especially common in Latin America.²⁶ In some cases, it can lead to greater leverage for concurrent or future negotiation efforts.

In the case of a community group with concerns about particular aspects of a project, the group may try to engage the company in negotiations to demand guarantees around community priorities, such as local hiring, organized labor employment opportunities, a cut of royalties, a different project design to reduce impacts on the water system or sacred sites, or a more robust monitoring system.

²⁶ Begüm Özkaynak et al., *Towards Environmental Justice Success in Mining Conflicts: An Empirical Investigation*, no. 14 (EJOLT, 2015), 1–96, http://www.ejolt.org/wordpress/wp-content/uploads/2015/04/EJOLT_14_Towards-EJ-success-mining-low.pdf; Philippe Le Billon and Päivi Lujala, "Environmental and Land Defenders: Global Patterns and Determinants of Repression," *Global Environmental Change* 65 (November 2020): 102163, <https://doi.org/10.1016/j.gloenvcha.2020.102163>; "Environmental Activists: Land and Environmental Defenders," Global Witness, accessed February 6, 2025, <https://en/campaigns/environmental-activists/>.

Evidence suggests that in battles over extraction and energy development, organized resistance can shift from opposition to negotiation to opposition and back again.

While such typologies of social movements can be analytically useful, reality is, unsurprisingly, messier. These two community orientations are not mutually exclusive, and communities should be understood as heterogeneous rather than monolithic.²⁷ In a given context, some residents may favor total rejection and employ direct actions like blockades and occupations, while others may prioritize obtaining the best possible settlement with a powerful company. They also blend over time: it is not unusual for organized community groups to reject a project in its current form but then pivot to negotiation, either if the project is moving forward despite their opposition or they sense an opening with more sympathetic government officials. Corporations may also co-opt social movements and silence resistance by supporting counter-protests in the name of security, sustainability, and corporate social responsibility.²⁸

The opposite trajectory can also occur. Community groups may start with an attempt at negotiation but then lose the trust that corporate and/or government interlocutors are bargaining in good faith. For example, community groups may be excluded from important meetings, find deliberations to be superficial, or learn something new about environmental impacts, promised economic benefits, the history of the corporation's prior behavior, or corporate lobbying that raises their eyebrows. In such cases, such as the ongoing saga of lithium mining expansion in the Atacama Desert discussed in the next section, community organizations may abandon negotiations and engage in more militant tactics to put renewed pressure on company representatives or government officials. At this juncture, they may also seek to widen their coalition, perhaps reaching out to environmental advocacy groups or transnational networks to amplify their campaign against the mine. Evidence suggests that in battles over extraction and energy development, organized resistance can shift from opposition to negotiation to opposition and back again. Sometimes the process stretches for so many years that investors

²⁷ J. Peter Brosius et al., "Representing Communities: Histories and Politics of Community-Based Natural Resource Management," *Society and Natural Resources* 11(1998): 157-68; Michael Watts, "Antinomies of Community: Some Thoughts on Geography, Resources and Empire," *Transactions of the Institute of British Geographers* 29, no. 2(2004): 195-216; Marcela Torres-Wong and Adrian Jimenez-Sandoval, "Indigenous Resource Governance as an Alternative to Mining: Redefining the Boundaries of Indigenous Participation," *The Extractive Industries and Society* 9(March 2022): 101001, <https://doi.org/10.1016/j.exis.2021.101001>.

²⁸ Kirsch, *Mining Capitalism*; Marina Welker, *Enacting the Corporation: An American Mining Firm in Post-Authoritarian Indonesia* (University of California Press, 2014).

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lose interest, effectively stalling the project until and unless a new firm expresses interest.

Regardless of the specific repertoire of contention, the general insights of the scholarship on social movements apply to conflicts over energy and extraction. Communities achieve better outcomes when they are organized and mobilized as early as possible in the process, identify their sources of strategic leverage, use a range of pressure tactics simultaneously, engage in popular education on the mine and its impacts, count on the support of allied organizations as well as aligned political leaders, identify openings in the political opportunity structure, and face weak or fragmented elites. Whether their goal is to stop the mine or secure more jobs, protect the water system or increase local revenues, these are the tried and true methods of social movements based around building community power.²⁹ As a corollary, CBAs that are the result of such processes of struggle and empowerment may be more robust, including in their enforcement, than those that result from the corporation taking the initiative with the goal of stamping out concerns or impressing investors or state officials. CBAs that originate in collective action still have pitfalls if trust is broken or becomes harder to establish, but grassroots organizing is critical for marginalized communities to shape and even transform the deeply asymmetric power relations at play in energy, extractive, and manufacturing sectors.

²⁹ Marc Edelman, "Social Movements: Changing Paradigms and Forms of Politics," *Annual Review of Anthropology* 30 (2001): 285–317; Bebbington et al., "Mining and Social Movements"; Carwil Bjork-James et al., "Transnational Social Movements: Environmentalist, Indigenous, and Agrarian Visions for Planetary Futures," *Annual Review of Environment and Resources* 47, no. 1 (2022): 583–608, <https://doi.org/10.1146/annurev-environ-112320-084822>; James J. A. Blair et al., "From Watershed Moment to Hydrosocial Movement: Patagonia Without Dams and the Free-Flowing Rivers Network in Chile," *Human Organization* 82, no. 3 (2023): 288–303, <https://doi.org/10.17730/1938-3525-82.3.288>.

Global Context on Negotiated Agreements for Energy and Extractive Industries

Privately negotiated agreements for mining and extractive development projects, often located on Indigenous territories, have become the norm across much of the globe.³⁰ CBAs signed between local or Indigenous peoples and resource developers may be variously labeled impact and benefit agreements, community development agreements, land use agreements, community benefit funds, or benefit-sharing agreements, among other terms, depending on the national context.

Countries with a long history of intensive mineral resource extraction rooted in colonialism, such as Papua New Guinea and South Africa, have crafted influential legal policy and regulation mandating community development agreements and/or trust funds.³¹ In Ghana, agreements may not be required by law, but best practices have been developed based on voluntary standards, including the series of benefit agreements regarding social responsibility, local employment, and development funding, negotiated between global mining corporation Newmont and ten local communities in proximity to the Ahafo Gold Project.³² While these agreements may be designed to deliver jobs and compensation, many community members have been excluded from participating in the process due to power imbalances.³³ Moreover, the social and environmental costs have been tremendous:

³⁰ Jimeno Santoyo, *Possibilities and Perspectives of Indigenous Peoples with Regard to Consultations and Agreements within the Mining Sector in Latin America and the Caribbean*; ERM, "Mining Community Development Agreements – Practical Experiences and Field Studies. Final Report for The World Bank"; O'Faircheallaigh, "Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon"; O'Faircheallaigh, *Negotiations in the Indigenous World*.

³¹ ERM, *Mining Community Development Agreements – Practical Experiences and Field Studies. Final Report for The World Bank*; Ciaran O'Faircheallaigh, "Using Revenues from Indigenous Impact and Benefit Agreements: Building Theoretical Insights," *Canadian Journal of Development Studies / Revue Canadienne d'études Du Développement* 39, no. 1 (2018): 101–18, <https://doi.org/10.1080/02255189.2017.1391068>.

³² ERM, *Mining Community Development Agreements – Practical Experiences and Field Studies. Final Report for The World Bank*; Benjamin Boakye et al., "Implementing the Ahafo Benefit Agreements: Seeking Meaningful Community Participation at Newmont's Ahafo Gold Mine in Ghana," SSRN Scholarly Paper no. 3661951, Rochester, NY, June 1, 2018, <https://doi.org/10.2139/ssrn.3661951>.

³³ Boakye et al., "Implementing the Ahafo Benefit Agreements."

Global agreements for benefit-sharing and co-ownership of equity with Indigenous peoples offer models for collective prosperity in the energy transition away from fossil fuels.

the project displaced 9,500 people and a cyanide spill in 2009 contaminated the local water system.³⁴

In other instances, Indigenous communities have sought to develop their own mining and resource governance projects in lieu of corporate development, with mixed outcomes. There is a long history of violence and dispossession surrounding mining in Latin America.³⁵ However, near Mount Mismi in Colca Valley, Peru, an Andean family became mining entrepreneurs, despite competition from corporate actors like Buenaventura Mining Co.³⁶ In Bolivia, miners' unions contend with mining cooperatives—small-scale independent miners—that have been vilified for profiting off extraction of public resources, despite having played a key role in bringing to power former president Evo Morales, an Indigenous peasant, and his broader Movimiento al Socialismo (MAS).³⁷ Other communities have formed Indigenous resource governance models to go beyond corporate or state-led participatory mechanisms and even stop mining development, such as the community of Capulálpam de Méndez in Oaxaca, Mexico.³⁸

CBAs are not yet as common globally in renewable energy infrastructure or manufacturing projects. Nonetheless, global agreements for benefit-sharing and co-ownership of equity with Indigenous peoples offer models for collective prosperity in the energy transition away from fossil fuels. For example, the Tauhara North II Rotokawa A Geothermal Project in New Zealand includes 35 percent ownership by local iwi (Māori), and the proposed Terra Initiative solar project in Colombia would be 49 percent-owned by the Arhuaco people who are poised to receive energy and land back through power purchasing agreements.³⁹ Similarly, the Waasigan

³⁴ Earthworks, "Ahafo Gold Mine Implicated in Human Rights Abuses and Irresponsible Practices," *Earthworks*, September 27, 2011, https://earthworks.org/blog/wassa_ghana/.

³⁵ Miguel Lévano Muñoz, *Renewed Violence around Las Bambas Mining Project: Will We Learn from Past Mistakes?*, October 25, 2016, <https://politicsofpoverty.oxfamamerica.org/renewed-violence-around-las-bambas-mining-project-will-we-learn-from-past-mistakes/>.

³⁶ Eric Hirsch, "Investment's Rituals: 'Grassroots' Extractivism and the Making of an Indigenous Gold Mine in the Peruvian Andes," *Geoforum* 82 (June 2017): 259–67, <https://doi.org/10.1016/j.geoforum.2016.08.012>.

³⁷ Andrea Marston, *Subterranean Matters: Cooperative Mining and Resource Nationalism in Plurinational Bolivia* (Duke University Press, 2024).

³⁸ Torres-Wong and Jimenez-Sandoval, "Indigenous Resource Governance as an Alternative to Mining," March 2022.

³⁹ Indigenous Peoples Rights International and Business & Human Rights Resource Centre, *Exploring Shared Prosperity: Indigenous Leadership and Partnerships for a Just Transition* (2024), https://media.business-humanrights.org/media/documents/2024_Shared_prosperity_report_EN.pdf.

Transmission Line project in Canada allows Gwayakocchigewin Limited Partnership (GLP), a consortium of eight First Nations, to invest in a 50 percent equity stake.⁴⁰

These co-ownership initiatives show considerable promise for upholding sovereignty by returning land, territory, and resources back to Indigenous peoples in the process of mitigating climate change by transitioning to renewable energy. However, co-ownership of equity may bring significant risk and liability to communities in extractive sectors like mining, requiring strong measures for transparency and accountability.⁴¹ Moreover, CBAs are no substitute for free, prior, and informed consent (FPIC), even when partnerships are established between companies and Indigenous peoples for fair and equitable benefit-sharing through co-ownership models.⁴²

Global Case Studies

In what follows, we take a deeper dive into specific policies and practices regarding community benefits across the globe. First, we examine norms and standards regarding community benefits for the use of land, territory, and resources in Canada, Australia, and Chile, three countries with a long history of conflicts and contracts over mining. Then, we analyze compensation schemes implemented for development of wind energy in Norway and the United Kingdom (UK), which offer lessons for how communities may seek to leverage potential funds from proposed renewable energy infrastructure projects. These examples are far from exhaustive, but they provide a glimpse of established frameworks that may predate or exist parallel to CBAs in the United States.

⁴⁰ Finn, Kate R., Maranda Compton, and Melanie Matteliano. "Tribal Benefit Agreements: Designing for Sovereignty." Tallgrass Institute and Lepwe, 2025, 34. <https://www.tallgrassinstitute.org/articles/tallgrass-institute-releases-tribal-benefit-agreements-report-new-research-examines-best-practices>.

⁴¹ Nyamucherera, Obrian F., and Mukasiri Sibanda. *Tracing Progress towards Revenue Transparency and Revenue Sharing in the Zimbabwe Extractives Sector (2013-2019)*. Publish What You Pay, 2020. <https://pwyp.org/benefit-sharing-zimbabwe-case-study/>; Kabore, Elie. *The 1% Gold Revenue Campaign - A Benefit Sharing Campaign by PWYP Burkina Faso*. Publish What You Pay, 2020. <https://pwyp.org/benefit-sharing-burkina-faso-case-study/>; O'Donnell, Brendan. *Citizens' Groups Use Revenue Disclosures to Advocate for Local Service Funding*. Publish What You Pay, 2021. <https://pwyp.org/citizens-groups-use-revenue-disclosures-to-advocate-for-local-service-funding/>.

⁴² Indigenous Peoples Rights International and Business & Human Rights Resource Centre, "Exploring Shared Prosperity."



The Baffinland iron ore mine near Mary River, Nunavut, Canada. The mine is covered by the Mary River Project Inuit IBA, signed in 2013 between Baffinland Iron Mines and Qikitanii Inuit Association. Photo by The Cosmonaut, [Wikimedia Commons](#), licensed under [CC BY-SA 2.5 CA](#).

Canada

Agreements offer resources but government still has a duty to consult: Impact and benefit agreements

In Canada, Indigenous peoples' and First Nations' rights to territories and natural resources are protected under the Canadian Constitution Act, 1982. Impact benefit agreements, or Impact and benefit agreements (IBAs), are formal, often confidential legal agreements between companies and Indigenous Nations, which include First Nations, Inuit, and Métis. Provincial or territorial governments may play a limited role, but IBAs are usually negotiated directly between resource developers and Indigenous Nations.⁴³ They are private

⁴³ Bradshaw et al., "Impact and Benefit Agreements and Northern Resource Governance."

contracts that have been used to set out conditions between the parties with respect to protecting against impacts and bringing benefits to Indigenous peoples.⁴⁴ IBAs in Canada began around the 1970s, though environmental and Indigenous rights concerns were not commonly addressed in relation to mining and fossil fuel extraction until the late 1980s and early 1990s.⁴⁵ While it is legally required for the Canadian government to consult with Indigenous holders of land claims and treaty rights, and IBAs may provide legal clarity in provinces with ongoing disputes over territorial tenure and rights, there is not a legal requirement for companies to consult. Therefore, IBAs are generally considered a part of a business' ESG (environmental, social, and governance) credentials.⁴⁶

Common elements and provisions of IBAs include:

- revenue sharing or compensation
- training and hiring employment targets
- support for local business
- infrastructure and community development
- cultural protections
- environmental measures and monitoring
- provisions around enforceability and implementation.⁴⁷

According to experts on Indigenous negotiations at The Firelight Group, employment targets for IBAs may range from 20 to 50 percent (or more) Indigenous workforce. Employment targets may also vary from a tiered approach to a gradual increase over time, as well as diversity-driven or skill-based targets. Penalties or incentives for non-compliance are built into IBAs. Penalties may amount to \$1 million or more per year, additional training obligations, or \$100,000 per unfilled job (retroactive). Incentives may come in the form of

⁴⁴ Ginger Gibson and Ciaran O'Faircheallaigh, "IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements," The Gordon Foundation, 2015.

⁴⁵ Cathleen Knotsch and Jacek Warda, *Impact Benefit Agreements: A Tool for Healthy Inuit Communities?* (National Aboriginal Health Organization, 2009); Myriam Laforce et al., "Mining Sector Regulation in Quebec and Canada: Is a Redefinition of Asymmetrical Relations Possible?," *Studies in Political Economy / Recherches En Économie Politique* 84, no. 1 (2009): 47–78, <https://doi.org/10.1080/19187033.2009.11675046>.

⁴⁶ Maggie Cascadden et al., "Best Practices for Impact Benefit Agreements," *Resources Policy* 70 (March 2021): 101921, <https://doi.org/10.1016/j.resourpol.2020.101921>; Kim Baird et al., "Insights from First Nations, Government and Industry Leaders on Criteria for Successful Impact Benefit Agreements," *Environmental Management* 73, no. 6 (2024): 1106–20, <https://doi.org/10.1007/s00267-024-01975-5>.

⁴⁷ Knotsch and Warda, "Impact Benefit Agreements: A Tool for Healthy Inuit Communities?"; Gunton et al., "Impact Benefit Agreement Guidebook"; Gunton, Werker, and Markey, "Community Benefit Agreements and Natural Resource Development: Achieving Better Outcomes"; Baird et al., "Insights from First Nations, Government and Industry Leaders on Criteria for Successful Impact Benefit Agreements"; Ontario Human Rights Commission, "Employment and Contracting Provisions in Impact and Benefit Agreements Are Special Programs under Ontario's Human Rights Code."

bonuses or additional contracts when exceeding hiring commitments. Training and employment programs are significant in IBAs, ranging from \$1 million to \$5 million. This funding may support:

This funding may support:

- program committee, staff, and advisors
- recruitment strategies and community hiring initiatives
- mentorship, apprenticeship, and career advancement programs
- scholarships (\$30K to \$100K per year)
- cultural safety and anti-discrimination measures
- building training facilities: partially or fully funded by proponents (millions of dollars)
- reporting, monitoring, and annual program review

Financial payments to Nations may be achieved through a variety of fiscal instruments, including fixed cash payments, volumetric royalties, price-based royalties, profit-sharing, and equity interest.⁴⁸

To account for market volatility, some IBA models combine different payment mechanisms.⁴⁹

- The Raglan Agreement, signed in 1995 by five different Inuit Nations and the Raglan nickel mine currently operated by Glencore in the Nunavik region of Quebec, provides single and multiple fixed payments that increase over the life of the project, as well as a 4.5 percent annual share of profit.⁵⁰
- The Mary River Project Inuit IBA, signed in 2013 between Baffinland Iron Mines and Qikitan Inuit Association in North Baffin Island, Nunavut, follows a similar combined payment model of fixed advanced and extension payments—contingent on receiving a water license and other decisions—subtracted from a 1.19 percent annual royalty on net sales revenue.⁵¹
- The Meliadine Inuit IBA, first signed in 2015 between Agnico Eagle Mines and Kivalliq Inuit Association, targets 50 percent Inuit employment across

⁴⁸ Gibson and O'Faircheallaigh, "IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements," 146; Simon Fraser University, "Impact Benefit Agreement Database."

⁴⁹ Gunton et al., "Designing Fiscal Regimes for Impact Benefit Agreements."

⁵⁰ Gibson and O'Faircheallaigh, "IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements," 141; Simon Fraser University, "Impact Benefit Agreement Database."

⁵¹ Simon Fraser University, "Impact Benefit Agreement Database."

all Nunavut gold mining operations and includes \$3 million in milestone payments, \$4.4 million in training programs, 1.2 percent net smelter royalties, and \$30,000 per year for scholarships.⁵²

In addition to the content of the agreement, for an effective IBA, the timing of the negotiation process is critical in relation to other parallel planning activities in Canada, such as an environmental impact assessment (EIA). Many projects do not go to EIA, but according to seasoned negotiators Ginger Gibson and Ciaran O’Faircheallaigh, the ideal approach for Indigenous Nations is to maximize leverage, for example by negotiating an IBA before EIA approval, but with enough information available to build robust mitigation measures into the IBA.⁵³

IBAs are meant to be mutually beneficial, as they lend companies more secure prospects of long-term project success while sharing benefits and mitigating risks, but effectiveness hinges on the context, content, structure, and implementation of the agreement.⁵⁴ Some Indigenous Nations see them as helpful in improving economic and social futures, and often as the best (or only) available option. But some critiques include: challenges with capacity and balance of power; lack of transparency given that many agreements are private and involve “gag orders,” confidentiality clauses, or non-disclosure agreements; and the need for more social and health benefits beyond economic and job benefits.⁵⁵

Critical scholars Guillaume Peterson St-Laurent and Philippe Le Billon argue that the settler state (the “Crown” or the federal and provincial government), rather than defend the interests of Indigenous Nations, tends to enforce the letter of the IBA through its courts.⁵⁶ If an IBA has

⁵² “Meliadine Project Inuit Impact & Benefit Agreement.”

⁵³ Gibson and O’Faircheallaigh, “IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements,” 46–48.

⁵⁴ Cascadden et al., “Best Practices for Impact Benefit Agreements”; Baird et al., “Insights from First Nations, Government and Industry Leaders on Criteria for Successful Impact Benefit Agreements.”

⁵⁵ Knotsch and Warda, “Impact Benefit Agreements: A Tool for Healthy Inuit Communities?”; Szablowski, “Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector?”; Caine and Krogman, “Powerful or Just Plain Power-Full?”; Mills and Sweeney, “Employment Relations In The Neostaples Resource Economy: Impact Benefit Agreements And Aboriginal Governance In Canada’s Nickel Mining Industry”; Baird et al., “Insights from First Nations, Government and Industry Leaders on Criteria for Successful Impact Benefit Agreements.”

⁵⁶ Guillaume Peterson St-Laurent and Philippe Le Billon, “Staking Claims and Shaking Hands: Impact and Benefit Agreements as a Technology of Government in the Mining Sector,” *The Extractive Industries and Society* 2, no. 3 (2015): 590–602, <https://doi.org/10.1016/j.exis.2015.06.001>.

been poorly negotiated or suffers from conflict of interests, the state may reinforce these biases. Thus, while IBAs may appear to advance project benefits for companies and Nations, the absence of government oversight in negotiations may risk a loss of accountability and enforcement of regulations, including the state's responsibility to consult Indigenous peoples.⁵⁷

New efforts looking forward

In an effort to align with the UN Declaration on the Rights of Indigenous Peoples and to center Indigenous participation and ownership in energy and resource development, Canada's natural resource agency has several new intersecting efforts related to benefits and resources. Canada is currently in the process of developing a National Benefits-Sharing Framework (NBSF) to ensure Indigenous Nations benefit directly from natural resource development projects in their territories. NBSF discussions began in 2021, with engagement sessions taking place in 2022 and 2023 to hear from Indigenous people and shape the NBSF.⁵⁸ A key part of the NBSF includes an Indigenous Loan Guarantee Program to provide Indigenous Nations with access to capital for resource project development; this program was funded at \$5 billion in loan guarantees for Indigenous Nations in 2024.⁵⁹ Canada's Indigenous Natural Resource Partnerships (INRP) Program is a federal grant program that funds economic participation of Indigenous Nations in natural resource sectors for the energy transition. The program has experienced high demand.⁶⁰ Parallel to these programs from the Government of Canada, the First Nations Major Projects Coalition (FNMPC) is a non-profit coalition of First Nations leaders working for increased Indigenous leadership around resource management and

⁵⁷ Emilie Cameron and Tyler Levitan, "Impact and Benefit Agreements and the Neoliberalization of Resource Governance and Indigenous-State Relations in Northern Canada," *Studies in Political Economy* 93, no. 1 (2014): 25–52, <https://doi.org/10.1080/19187033.2014.11674963>; Peterson St-Laurent and Le Billon, "Staking Claims and Shaking Hands," 2015; Clifford Gordon Atleo and Jonathan Martin Boron, "Extractive Settler Colonialism: Navigating Extractive Bargains on Indigenous Territories in Canada," in *Extractive Bargains: Natural Resources and the State-Society Nexus*, ed. Paul Bowles and Nathan Andrews (Springer International Publishing, 2023), https://doi.org/10.1007/978-3-031-32172-6_5.

⁵⁸ Natural Resources Government of Canada, "National Benefits-Sharing Framework," Natural Resources Canada, August 8, 2023, <https://natural-resources.canada.ca/our-natural-resources/indigenous-peoples-and-natural-resources/national-benefits-sharing-framework/25261>.

⁵⁹ Katherine Koostachin, "Federal Update on the Status of Implementation of the United Nations Declaration Action Act, 2021 (UNDA)," April 18, 2024, <https://www.sussex-strategy.com/posts/federal-update-on-the-status-of-implementation-of-the-united-nations-declaration-action-act-2021-unda>.

⁶⁰ Natural Resources Government of Canada, "Indigenous Natural Resource Partnerships," Natural Resources Canada, July 11, 2019, <https://natural-resources.canada.ca/our-natural-resources/indigenous-peoples-and-natural-resources/indigenous-natural-resource-partnerships/22197>.

environmental protection through strategic partnerships with private corporations.⁶¹

Independently, a 2023 ruling by the British Columbia Supreme Court found that the government has a duty to consult Indigenous peoples when granting mineral claims. The court gave the province 18 months to update the mineral tenure system in consultation with Indigenous Nations and it remains to be seen what impact this will have on Indigenous leverage over mining projects within their territories.⁶²

Because these efforts are in progress, time will tell how implementation will take place, how the federal government will engage with and incorporate feedback from Indigenous peoples, and how FPIC will be integrated into decision-making. IBAs may serve as a tool for some members of particular Indigenous Nations to prosper economically from resource development and extraction, but they are no substitute for the federal or provincial government's duty to consult. Indigenous political mobilization has been central to achieving positive outcomes.⁶³

Australia

Corporations have the edge over communities in competitions over land and funding: Indigenous land use agreements and community benefit funds

In Australia, community benefits agreements are also a common means by which mining companies, energy developers, and other industries gain a so-called "social license" to use and access land, water, and other resources from territories belonging to Indigenous and settler rural communities.⁶⁴ Under the CBA umbrella, a range of

⁶¹ First Nations Major Projects Coalition, "FNMPC – Stronger Together," August 21, 2023, <https://fnmpc.ca/>.

⁶² *Gitxaala v British Columbia* (Chief Gold Commissioner), No. S219179 (Supreme Court of British Columbia September 26, 2023). <https://canlii.ca/t/k0cbd>.

⁶³ Ciaran O'Faircheallaigh, "Explaining Outcomes from Negotiated Agreements in Australia and Canada," *Resources Policy* 70 (March 2021): 101922, <https://doi.org/10.1016/j.resourpol.2020.101922>.

⁶⁴ Ciaran S O'Faircheallaigh, "Aboriginal-Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development," *Canadian Journal of Development Studies* 30 (January 2010): 69–86, <https://doi.org/10.1080/02255189.2010.9669282>; Padmapriya Muralidharan, *Building Stronger Communities: How Community Benefit Funds from Renewable Energy Projects Support Local Outcomes* (RE-Alliance, 2023), https://assets.nationbuilder.com/vicwind/pages/3152/attachments/original/1702433630/Building_Stronger_Communities_%E2%80%93_Community_benefit_funds.pdf?1702433630.

agreement types and tools have been developed as a means of securing assets from local communities and compensating them for the impacts of extractive and energy projects on their lands, resources, livelihoods, and health. Common agreement types in Australia include Indigenous land use agreements (ILUAs) and community benefit funds (CBFs).



Mining equipment at the Weipa bauxite mine in Queensland Australia. Weipa is part of an Indigenous Land Use Agreement between mining companies and multiple Indigenous communities in northern Queensland. Photo from Department of Geography at UC Berkeley, [PICRYL](#), licensed under public domain.

Under the CBA umbrella, a range of agreement types and tools have been developed as a means of securing assets from local communities and compensating them for the impacts of extractive and energy projects on their lands, resources, livelihoods, and health.

Indigenous Land Use Agreements (ILUA)

ILUAs function as agreements between Indigenous peoples and developers to ensure recognition of sovereignty and the provision of services and employment to Indigenous communities in return for acceptance of extractive projects to mine, build energy infrastructure, or co-manage ecological conservation projects on their ancestral lands.⁶⁵ These agreements allow Indigenous communities to seek compensation for extraction and use of their ancestral lands. Compensation for the use of Indigenous land in an ILUA can include direct payments to community members or a community trust, agreements to employ Indigenous community members, the construction of infrastructure like roads and schools, and the provision of health services.⁶⁶ These agreements are legally enabled through the Australian Native Title Act 1993 which recognized Indigenous rights to their ancestral lands and established the process of Indigenous peoples applying through federal courts to be granted legal titles to that land.⁶⁷ Indigenous communities and corporations are at liberty to bargain these agreements as they and the state see fit.

To be valid under these laws, ILUAs, once agreed upon, are registered and evaluated by the National Native Title Tribunal, a national agency which oversees these agreements. Signatories to these agreements include the Registered Native Title Body Corporate (RNTBC) which holds the granted title, the entity seeking the use of Indigenous land, and other relevant parties like Indigenous advocacy organizations and land trusts. State governments are required to be signatories to ILUAs when the agreements between parties include the relinquishment of a portion of titled lands back to the state for allocation to industry signatories.⁶⁸

The apparatus produced by ILUAs can vary in complexity, ranging from simple contracts between a single developer and a single

⁶⁵ National Native Title Tribunal, "ILUA Factsheet," n.d., accessed January 16, 2025, <https://www.nntt.gov.au/Information%20Publications/ILUA%20factsheet-2024.pdf>.

⁶⁶ Stephenson and Wishart, "Better Protecting Native Title and Indigenous Land Use Agreements."

⁶⁷ Native Title Act 1993 (2013). <https://www.legislation.gov.au/C2004A04665/2013-06-29>.

⁶⁸ National Native Title Tribunal, "ILUA Factsheet."

Indigenous land holder, to agreements managed by NGO-like organizations with directors, staff, and multiple tiers of governance when multiple developers are interfacing with a coalition of Indigenous land rights holders. A prime example of this latter, more complex structure is the Western Cape Communities Co-Agreement (WCCCA), which administers an ILUA between eleven different Indigenous land holders (Traditional Owners), four Indigenous Community Councils, and Comalco, a bauxite mine operator that was later acquired by the transnational mining corporation Rio Tinto in the Western Cape area of Queensland, Australia.⁶⁹ Additional signatories to the agreement include the Queensland Government and the Cape York Land Council. In this agreement the Queensland Government is a required party due to the relinquishment of lands by the signatory RNTBCs. The Cape York Land Council is an NGO serving as an advocate on behalf of Indigenous land holders. Benefits of the agreement include employment, training, cultural protections and awareness, support for ranger programs and education, relinquishment of unused land, and royalties to charitable trusts, 60 percent of which goes to long-term investments. The company's annual contribution is \$2.5 million and Queensland Government's annual contribution is \$1.5 million.⁷⁰

For ILUAs, payments from the state and corporations happen both at the signing of the agreement and when the corporation or their subsidiaries interact with the Indigenous land. From the Adnyamathanha Body Corporate Indigenous Land Use Agreement in South Australia signed in 2012, the state was required to pay \$55,000 AUD within 40 days of the agreement being finalized. Following on from this, any corporation wishing to prospect on the land protected by the agreement was required to pay the Indigenous corporation \$9,000 AUD "within 10 days of either obtaining authorization for exploration activities other than early exploration activities in the area or the explorer wants a heritage clearance survey completed."⁷¹ This particular agreement included provisions for the Indigenous

⁶⁹ "Western Cape Communities Co-Existence Agreement," *Western Cape Community Trust*, n.d., accessed January 16, 2025, <https://www.westerncape.com.au/welcome/our-agreement/>.

⁷⁰ Indigenous Studies Program The University of Melbourne, "Comalco Indigenous Land Use Agreement (ILUA)(Western Cape Communities Co-Existence Agreement)," ATNS - Agreements, Treaties and Negotiated Settlements Project, 2011, <https://database.atns.net.au/agreement.asp?EntityID=453>.

⁷¹ Simon Fraser University, "Impact Benefit Agreement Database."

corporation to request additional funds to survey and catalog artifacts from locations of particular cultural importance.

More recent agreements like the Great Sandy Desert Project ILUA signed in 2020 include further language about non-extinguishment of Indigenous land title.⁷² In these kinds of agreements, such non-extinguishment clauses mean that any actions taken on Indigenous land, which may resemble giving the company ownership, do not apply. These clauses are thus meant to protect Native title while also allowing development.

In more direct agreements, mines offer to trade more directly with the communities located in proximity to where they are building.

In the Agreement between the Far West Coast Native Title Group and Iluka Resources (2007), the terms for granting the mine access to the area for ~2 years were as follows:

Iluka Resources [is permitted] to:

- proceed with mineral sands mining at the Jacinth-Ambrosia deposit;
- tap and pipe the underground water supply to the mine; and,
- construct a sealed road from the Eyre Highway between Nundroo and Yalata to the mine (a distance of 92km).

[In return,] Iluka Resources have agreed to:

- establish a charitable trust for the purposes of improving living standards and enhancing education and employment opportunities for members of the Native Title Group;
- provide an indigenous art development grant of \$30,000 over three years;
- provide four educational scholarships in 2008 to indigenous students; and,
- reinstate the mine area upon completion of the mining operation[.]

The Agreement acknowledges that the Far West Coast people are the traditional owners of the area and does not extinguish the native title interests held by the Native Title Group.

⁷² Indigenous Studies Unit University of Melbourne, "Agreements under the Native Title Act 1993 (CTH)," Agreements, Treaties and Negotiated Settlements, accessed January 16, 2025, <https://www.atns.net.au/agreement>.

Cultural heritage survey requirement

As at signing, the Agreement remained subject to the carrying out of a final cultural heritage survey of the area. Expected completion of the survey was set for February 2008[.]⁷³

This agreement was set up with non-extinguishment clauses, while also adding direct support for Indigenous art development and student funding alongside a charitable trust.

However, other ILUAs have also been established with the express purpose of extinguishing Native title, and an ILUA may not prevent future harm to cultural resources on Native land. In the Arcella and DBYNG Indigenous Land Use Agreement (2021), the Djabugay-Bulway-Yirrgay-Nyakali-Guluy People agreed to extinguish their title to land for an undisclosed amount of compensation. Mining giant Rio Tinto signed an ILUA with the Puutu Kunti Kurrama and Pinikura (PKKP) People in 2012, but in 2020 this iron ore mining operation controversially blasted two 47,000-year-old rock shelters at Juukan Gorge in the Pilbara region of Western Australia.⁷⁴ Outdated legislation left such sacred sites vulnerable to destruction, but in June 2025, the PKKP Aboriginal Corporation and Rio Tinto signed a landmark co-management agreement that is supposed to set a new standard for traditional owners to engage early in project design with a heritage protocol for cultural resource protection.⁷⁵

Community Benefit Funds (CBFs)

The other common CBA structures in Australia are Community Benefit Funds (CBFs). These agreements are relatively common throughout Australia in places where industrial scale renewable energy is being constructed. The purpose of a CBF is to ensure that

⁷³ Indigenous Studies Program The University of Melbourne, "Agreement between the Far West Coast Native Title Group and Iluka Resources," 2011, <https://database.atns.net.au/agreement.asp?EntityID=4485>.

⁷⁴ Agreements, Treaties and Negotiated Settlements Project, "RTIO and PKKP People Indigenous Land Use Agreement (ILUA)," November 15, 2012, https://database.atns.net.au/agreement_print.asp?EntityID=6238; Clare Wright, "Friday Essay: Masters of the Future or Heirs of the Past? Mining, History and Indigenous Ownership," *The Conversation*, January 28, 2021, <http://theconversation.com/friday-essay-masters-of-the-future-or-heirs-of-the-past-mining-history-and-indigenous-ownership-153879>.

⁷⁵ Mietta Adams, "Juukan Gorge Traditional Owners Sign Landmark Deal with Rio Tinto," *ABC News*, June 2, 2025, <https://www.abc.net.au/news/2025-06-02/rio-tinto-pkkp-aboriginal-corporation-sign-agreement/105365876>.

residents benefit from the new energy installations. In a CBF, a company utilizing a tract of land for a solar farm near a town, for example, would agree to establish a trust, and pay that trust some amount of their proceeds to be utilized by the community for planned projects, or dispersed through grants to community members and organizations.⁷⁶ While project proponents may not disclose exact funds, contributions range from \$800 – \$1,800 per MW per year for wind and \$150 – \$800 per MW for solar.⁷⁷ Importantly, CBFs can be utilized by any community and are not restricted to those holding Native land titles. This indicates a broader role for community benefits beyond upstream resource extraction on Indigenous lands, with wider applications for downstream electricity generation in the energy transition.

In Australia, there are numerous reasons to be cautious when analyzing the structure of community benefits agreements. One reason is that CBAs have been used as a rationale for state governments to justify reductions in the support they provide to those local communities, citing the increased support for communities from corporate CBA signatories.⁷⁸ There are questions about how enforceable an agreement can be when a third party acquires the right to use the land from the original corporate signatory.⁷⁹ It is also common that communities are not only crowded out, but under-resourced and legally overmatched in their negotiations with corporations, resulting in unfair agreements disproportionately benefiting companies; this is of particular concern with the mining industry.⁸⁰

Competition and conflict in disbursement of funds

Within these structures, there are also issues with the ways that funds are disbursed. As noted above, funds through these

⁷⁶ Muralidharan, "Building Stronger Communities: How Community Benefit Funds from Renewable Energy Projects Support Local Outcomes."

⁷⁷ Muralidharan, 9.

⁷⁸ O'Faircheallaigh, "Aboriginal-Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development."

⁷⁹ Stephenson and Wishart, "Better Protecting Native Title and Indigenous Land Use Agreements."

⁸⁰ O'Faircheallaigh, "Aboriginal-Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development"; Cleary, *Too Much Luck*; Stephenson and Wishart, "Better Protecting Native Title and Indigenous Land Use Agreements."

agreements are commonly dispersed using competitive grant schemes in which community groups, governments, and NGOs can apply for funding for specific community-focused projects from the company operating in their community. This raises a handful of important concerns:

First, the grants are competitive, meaning that NGOs and community groups with grant writing experience and institutional backing may have an advantage in accessing funds, using them in ways that align with their own goals as well as those of the community. One example is the NGO MADALAH, whose mission is to help young Indigenous Australian students access education. They do this by working with mining-sourced CBFs to provide boarding school tuition scholarships to Indigenous students. While the organization does provide these education opportunities, many of the schools to which students are sent are Catholic or non-denominational Christian institutions.⁸¹ Many of the corporations sponsoring the CBFs with which MADALAH works are also corporate sponsors of the NGO itself.⁸² All of this muddies the boundaries of where the corporation stops and the community starts.

Second, the companies providing the community benefit funds have authority over what kinds of projects do or do not get funded. Funds can then be restricted if applications do not align with corporate values. For example, Pacific Blue, a subsidiary of a Chinese state-owned enterprise's community benefit fund program, has guidelines that exclude the following applications:

Projects that do not align with Pacific Blue's corporate values, including projects that, in the opinion of Pacific Blue, are environmentally, socially or economically unsustainable or do not benefit the local community (this includes applications for air conditioning and heating – except where appliances are powered by a renewable energy source such as solar panels).⁸³

⁸¹ "Partner Schools," MADALAH, n.d., accessed March 6, 2025, <https://madalah.com.au/school-partners/>.

⁸² "Our Partners & Supporters," MADALAH, n.d., accessed March 6, 2025, <https://madalah.com.au/our-partners-and-supporters/>.

⁸³ Pacific Blue, *Community Benefit Fund Program Guidelines* (Docklands, 2023), https://www.pacificblue.com.au/sites/default/files/2023-09/Community%20Benefit%20Fund%20Program%20Guidelines%20-%201%20August%202023_0.pdf.

Thus, for projects to be funded, they first need to meet the aims and objectives of the programs as interpreted by Pacific Blue, have endorsements from prominent members of the community, and have necessary permission from relevant governing bodies before funds can be apportioned. While the funds are presented as for the benefit of the publics impacted by Pacific Blue's developments, their own eligibility and allocation structures leave very little of the process in the hands of the public they are intended to support.

While CBAs in Australia are common and, in many instances, useful tools for compensating communities for accepting extractive and energy projects, they are not a foolproof means of ensuring Indigenous and settler rural communities benefit most from industrial development on the lands they call home.

Chile

Communities can formalize resistance through agreements: Benefit-sharing agreements for lithium in the Atacama Desert

The Atacama Desert in northern Chile is an area with a long history of extraction and dispossession. Building on early exports of nitrates and copper, Chile expanded development of copper, gold, fertilizer, and lithium, among other natural resources, under the neoliberal dictatorship of Augusto Pinochet in the 1980s.⁸⁴ Since then, the Atacama Desert has been a key site for global energy transition mineral extraction with massive open-pit mines for copper and vast pools of pumped brine for lithium.⁸⁵ This includes the Minera Escondida and Minera Zaldívar copper mines, as well as major lithium mines operated by Sociedad Química y Minera de Chile (SQM) and Albemarle.

⁸⁴ Manuel Tironi and Javiera Barandiarán, "Neoliberalism as Political Technology: Expertise, Energy, and Democracy in Chile," in *Beyond Imported Magic: Essays on Science, Technology, and Society in Latin America*, ed. Eden Medina et al. (MIT Press, 2014); Javiera Barandiarán, *Science and Environment in Chile: The Politics of Expert Advice in a Neoliberal Democracy* (The MIT Press, 2018); Amir Lebdioui, "Chile's Export Diversification since 1960: A Free Market Miracle or Mirage?," *Development and Change* 50, no. 6 (2019): 1624–63, <https://doi.org/10.1111/dech.12545>; Anita Carrasco, *Embracing the Anaconda: A Chronicle of Atacameño Life and Mining in the Andes* (Rowman & Littlefield, 2020), <https://rowman.com/ISBN/9781498575164/Embracing-the-Anaconda-A-Chronicle-of-Atacameño-Life-and-Mining-in-the-Andes>.

⁸⁵ Martin Arboleda, *Planetary Mine: Territories of Extraction under Late Capitalism* (Verso, 2020); Beatriz Bustos-Gallardo et al., "Harvesting Lithium: Water, Brine and the Industrial Dynamics of Production in the Salar de Atacama," *Geoforum* 119 (February 2021): 177–89, <https://doi.org/10.1016/j.geoforum.2021.01.001>.



Satellite imagery of the footprint of lithium brine extraction in Chile's Atacama Desert. Photo by Nuno Luciano, [Flickr](#), licensed under [CC BY 2.0](#).

These controversial operations have been exposed to widespread scrutiny and litigation for Indigenous rights violations and exhaustion of water resources in an arid environment with protected wetlands and biodiverse wildlife.⁸⁶ Yet, landmark benefit-sharing agreements have been struck between Indigenous Atacameño/Lickanantay

⁸⁶ Ingrid Garcés and Gabriel Alvarez, "Water Mining and Extractivism of the Salar de Atacama, Chile," in *Environmental Impact V*, ed. J. Casares Long, vol. 245, WIT Transactions on Ecology and the Environment (WIT Press, 2020), 10.2495/EID200181; Bárbara Jerez Henríquez et al., eds., *Salares Andinos: Ecología de Saberes Por La Protección de Nuestros Salares y Humedales* (Fundación Tanti, 2021); Bárbara Jerez et al., "Lithium Extractivism and Water Injustices in the Salar de Atacama, Chile: The Colonial Shadow of Green Electromobility," *Political Geography* 87 (2021): 102382; James J. A. Blair et al., *Exhausted: How We Can Stop Lithium Mining from Depleting Water Resources, Draining Wetlands, and Harming Communities in South America*, R: 21-10-A (Natural Resources Defense Council (NRDC), 2022), <https://www.nrdc.org/sites/default/files/exhausted-lithium-mining-south-america-report.pdf?tkd=8231967>.

peoples and the lithium industry.⁸⁷ Hailed by the Chilean government and both lithium corporations, and promoted as an example of the “value sharing” approach, these voluntary agreements offer globally relevant insights into the promises and pitfalls of community benefits agreements. Specifically, we can observe the challenging conditions under which local communities negotiate for redistribution of revenue for economic development, environmental monitoring, and Indigenous-led conservation.

While some Indigenous communities may have initially welcomed the potential for local jobs and economic prosperity from mining, starting in the early 2000s residents vocally objected to environmental burdens, including sewage dumping and alleged unauthorized use of freshwater at SQM’s mining camp near the village of Toconao.⁸⁸ More generally, SQM has been the center of a series of sensational corruption scandals ranging from illegal campaign financing to underpaying royalties, tax fraud, violating labor law, illegally claiming mining and water rights, deceptive environmental monitoring, and lacking Indigenous consultation.⁸⁹ Several rounds of road blockades, hunger strikes, and lawsuits have followed SQM’s agreements with the Chilean government to expand lithium mining in 2018 and 2024.⁹⁰

⁸⁷ O’Faircheallaigh and Babidge, “Negotiated Agreements, Indigenous Peoples and Extractive Industry in the Salar de Atacama, Chile.”

⁸⁸ “Atacameños se enfrentan con Soquimich por contaminación y uso de aguas,” *El Mostrador*, February 18, 2007, <https://www.elmostrador.cl/noticias/pais/2007/02/18/atacamenos-se-enfrentan-con-soquimich-por-contaminacion-y-uso-de-aguas/>.

⁸⁹ Rocío Montes, “New Chilean Corruption Scandal Ensnarers Pinochet’s Son-in-Law,” Spain, *El País*, April 6, 2015, https://english.elpais.com/elpais/2015/04/06/inenglish/1428314018_216580.html; Michelle Carrere, “Chile Renews Contract with Lithium Company Criticized for Damaging Wetland,” *Environmental News, Mongabay Environmental News*, December 26, 2018, <https://news.mongabay.com/2018/12/chile-renews-contract-with-lithium-company-criticized-for-damaging-wetland/>; Dave Sherwood, “Chilean Regulators Scrap Lithium Miner SQM’s Environmental Plan,” *Reuters* (Santiago), August 1, 2020, <https://uk.reuters.com/article/us-chile-lithium-sqm-idUKKBN24X3Q6>; Donald V Kingsbury, “Energy Transitions in the Shadow of a Dictator: Decarbonizing Neoliberalism and Lithium Extraction in Chile,” *The Anthropocene Review*, SAGE Publications, May 11, 2022, 20530196221087790, <https://doi.org/10.1177/20530196221087790>; CIPER Chile, “Archivos De SQM,” *CIPER Chile*, n.d., accessed March 30, 2022, <https://www.ciperchile.cl/tag/sqm/>.

⁹⁰ Felipe Brion Cea, “Corfo Sella Pacto Con SQM y Triplica Cuota de Extracción de Litio Del Salar de Atacama,” *La Tercera*, January 17, 2018, <https://www.latercera.com/noticia/sqm-corfo-sellan-acuerdo-salar-atacama-tras-largo-arbitraje/>; Jonathan Flores, “Comunidades atacameñas bloquean ruta internacional en rechazo al acuerdo entre Corfo y SQM,” *Region-de-Antofagasta, BioBioChile - La Red de Prensa Más Grande de Chile*, January 30, 2018, <http://www.biobiochile.cl/noticias/nacional/region-de-antofagasta/2018/01/30/comunidades-atacamenas-bloquean-ruta-internacional-en-rechazo-al-acuerdo-entre-corfo-y-sqm.shtml>; Natalia Figueroa, “Atacameños (Lickanantay) iniciaron huelga de hambre exigiendo anular acuerdo entre CORFO Y SQM | Mapuexpress,” January 31, 2018, <https://www.mapuexpress.org/2018/01/31/atacamenos-lickanantay-iniciaron-huelga-de-hambre-exigiendo-anular-acuerdo-entre-corfo-y-sqm/>; Dave Sherwood, “Indigenous Groups in Chile’s Atacama Push to Shut down Top Lithium Miner SQM,” *Reuters* (Santiago), August 14, 2020, <https://www.reuters.com/article/us-chile-lithium-sqm-idUSKCN25A2PB>; Mauricio Becerra, “Comunidades indígenas suspenden negociación con SQM y Codelco,” *El Ciudadano*, April 16, 2024, <https://www.elciudadano.com/especiales/litio-chile/litio-chile-comunidades-suspenden-dialogo-con-sqm-codelco/04/16/>; “Consejo de Pueblos Atacameños ‘no participa ni suscribe’ acuerdo entre SQM y Codelco,” *El Mostrador*, June 3, 2024, <https://www.elmostrador.cl/mercados/2024/06/03/consejo-de-pueblos-atacamenos-no-participa-ni-suscribe-acuerdo-entre-sqm-y-codelco/>.

Benefit-sharing agreement: Consejo de Pueblos Atacameños (CPA) and Albemarle

To counter dissent and preempt further conflicts, the lithium industry has redoubled its corporate social responsibility efforts in villages encircling the Atacama salt flat. In 2012, the US-based company Rockwood (later acquired by Albemarle) entered into a benefit-sharing agreement (locally known as a *convenio*) with the fenceline community of Peine. This initiated a relationship based on sharing of royalties that expanded in 2016 with another agreement between Albemarle and the broader Consejo de Pueblos Atacameños (CPA), an Indigenous council that represents 18 different communities. Under this agreement, three percent of the company's revenue from the operation would be distributed to those 18 communities and the CPA. Another 0.5 percent of revenue would go to studies, planning, Indigenous entrepreneurship, scholarships, and monitoring. In recent years, this has amounted to \$10 to \$15 million per year. It has allowed for the CPA to establish its own Indigenous-led Environmental Unit (UMA) tasked with monitoring and mapping the Atacama salt flat.

While, compared to the Albemarle case, SQM's relationship with the CPA has arguably been more strained by decades of tensions, the company has invested in sustainable development initiatives for local Atacameño/Lickanantay communities through a fixed conglomerate annual rate of \$10 to \$15 million (rather than a percentage of revenue).⁹¹ This funding is transmitted to 16 different communities via the Chilean government agency Corporación de Fomento de la Producción (CORFO), which administers a reserve bank account through its own agreements with the communities. SQM has also struck direct agreements with four different communities that established environmental working tables and funding for communities to hire independent experts, but the specific amount and details of voluntary contributions have not been disclosed. SQM has claimed that these details are confidential at the request of local communities, but the lack of transparent data and government oversight have made it difficult to assess their impact.

Instead, SQM has sought corporate responsibility assurance through multi-stakeholder auditing standards, such as the Initiative for Responsible Mining Assurance (IRMA). In 2023, IRMA commended SQM

⁹¹ Dave Sherwood, "Inside Lithium Giant SQM's Struggle to Win over Indigenous Communities in Chile's Atacama," *Reuters* (Santiago), January 15, 2021, <https://www.reuters.com/article/us-chile-lithium-sqm-focus-idUSKBN29K1DB>.

Advocates of negotiated agreements for mining projects suggest that these contracts have provided ways for Indigenous communities to assert agency with additional leverage for making aspirational demands.

for achieving 75 percent of the IRMA Standard criteria for social responsibility, environmental responsibility, business integrity, and planning for positive legacies—despite all the outrageous public scandals discussed above.⁹² Activists and community leaders have objected to the relatively low participation of Indigenous residents (with no participation of non-Indigenous environmental advocates), and therefore over-reliance on interviews and focus groups with company personnel, in the auditing process.⁹³

SQM and Albemarle have also tried to demonstrate “horizontality” in corporate social responsibility programs by investing in programs intended to benefit the community broadly, beyond simply mitigating against mining impacts. This has included development of a solar plant and a sewage water treatment plant in the community of Camar, a hotel for tourism formed out of a former worker camp in Toconao, as well as the provision of mobile dental trucks and mobile X-ray facilities for mammograms. Since 2006, SQM’s agronomists have also provided fertilizer for local farmers, and its Vino Ayllu initiative is one of the first Indigenous cooperatives for commercial wine production at high altitude.⁹⁴

On the surface, these programs may seem beneficial, but they have also pitted residents against one another. For example, SQM’s farming and vineyard initiatives have transformed drought-tolerant agroecological plots into thirsty monoculture plantations.⁹⁵ This has exacerbated conflicts over access to the already-depleted water supply.

In December 2023, SQM and state-run copper firm Codelco signed a memorandum of understanding to partner on an expansion of operations by 33 percent through 2060. To protest a lack of prior consent or consultation and demand more participation in negotiations, 500 community members blocked public roads used to

⁹² IRMA, *SQM Salar de Atacama Audit Packet* (2023).

⁹³ Yes to Life, No to Mining, *10 Reasons Certification Schemes Are Not a Solution*.

⁹⁴ Blair et al., “The ‘Alterlives’ of Green Extractivism.”

⁹⁵ Blair et al., “The ‘Alterlives’ of Green Extractivism.”

access the salt flat in early 2024.⁹⁶ As a result of these direct actions, the companies proposed a new governance model in 2025 to enhance Indigenous input on decision-making.⁹⁷

Advocates of negotiated agreements for mining projects suggest that these contracts have provided ways for Indigenous communities to assert agency with additional leverage for making aspirational demands. In the case of the benefit-sharing agreement with Albemarle, the CPA has included what O’Faircheallaigh and Babidge call “declarative statements” in the language of the agreements.⁹⁸ Through these statements, the CPA has sought to make demands from extractive industries, but also to hold state authorities—who may not even be parties to the agreements—accountable for stronger regulation.⁹⁹ This contrasts with the prevalence of gag orders in other agreements, such as some IBAs in Canada.¹⁰⁰

Indeed, the CPA’s benefit-sharing agreements have set an important precedent for fenceline communities to follow for claiming rights and revenue in the early extractive stage of the energy storage supply chain. While these agreements may have been initiated mainly by companies to improve their reputation for downstream purchasers and investors, they have formalized complex relationships with communities while leaving open the possibility of continued resistance against those same companies, as well as the Chilean government in new phases of proposed development.

⁹⁶ Alexander Villegas et al., “Protest at Chile’s Lithium Salt Flats Snarls Roads to SQM, Albemarle,” *Americas, Reuters*, January 10, 2024, <https://www.reuters.com/world/americas/protest-chiles-lithium-salt-flats-snarls-roads-sqm-albemarle-2024-01-10/>.

⁹⁷ Daina Beth Solomon, “Exclusive: As Chile Revs up Lithium Plans, Indigenous People Demand More Control,” *Americas, Reuters*, April 8, 2025, <https://www.reuters.com/world/americas/chile-revs-up-lithium-plans-indigenous-people-demand-more-control-2025-04-07/>.

⁹⁸ O’Faircheallaigh and Babidge, “Negotiated Agreements, Indigenous Peoples and Extractive Industry in the Salar de Atacama, Chile.”

⁹⁹ O’Faircheallaigh and Babidge, “Negotiated Agreements, Indigenous Peoples and Extractive Industry in the Salar de Atacama, Chile.”

¹⁰⁰ Co-ownership and equity arrangements have also begun to emerge for lithium extraction in Chile. In 2025, the Canadian firm Wealth Minerals Ltd. formed a joint venture called Kuska Minerals SpA with the Quechua Indigenous Community of Ollagüe to develop lithium in the Ollagüe salt flat. The community holds a 5% stake in ownership with preferential rights and a member on the Board of Directors. See: Wealth Minerals. *Wealth Minerals and the Quechua Indigenous Community of Ollagüe Form Kuska Minerals Joint-Venture to Develop the Kuska Project in the Salar de Ollagüe*. May 27, 2025. <https://wealthminerals.com/wealth-minerals-and-the-quechua-indigenous-community-of-ollague-form-kuska-minerals-joint-venture-to-develop-the-kuska-project-in-the-salar-de-ollague/>; Flores Fernández, Cristián, Ramón Morales Balcázar, Viviana Herrera Vargas, and Devin Holterman. *Canadian Lithium Investments in Chile: Extractivism and Conflict*. Observatorio Plurinacional de Salares Andinos, MiningWatch Canada, and Beyond Extraction, 2022.



A floating offshore wind turbine. Photo by lange x, [Pexels](#), licensed under [Pexels](#).

In the cases of the UK and Norway, policy interventions for community benefits have come in the form of compensation or mitigation mechanisms and project approval processes.

Norway and the United Kingdom

Compensation schemes show potential but benefits are unevenly distributed: Community benefits funding for wind farms

Wind power is anticipated to be a major contributor to renewable electricity growth around the world. Wind and solar power are expected to make up 95 percent of global renewable energy additions through 2030.¹⁰¹ Wind power's growth has, in some locations, come alongside policies and projects that promise community benefits, allowing for a comparative analysis of legal and regulatory considerations. Governments in both Norway and the UK have leasing and permitting processes, respectively, that may require impacts to be mitigated or compensated by developers, which is meant to encourage development in areas with fewer negative impacts on the

¹⁰¹ "Electricity – Renewables 2024 – Analysis," IEA, 2024, <https://www.iea.org/reports/renewables-2024/electricity>.

Offshore wind farms have several potential mechanisms to compensate communities as the industry expands.

environment or communities.¹⁰² In the cases of the UK and Norway, policy interventions for community benefits have come in the form of compensation or mitigation mechanisms and project approval processes.

Norway

Onshore wind farms in Central Norway have been accused in recent years of violating the rights of Indigenous Sami reindeer herders, prompting extensive protests and a Supreme Court ruling in favor of the Sami herders in 2021.¹⁰³ In 2023, a group of reindeer herders was awarded annual compensation of 7 million Norwegian kroner (\$675,000 USD) in exchange for continued operation of one wind farm. A second wind farm came to a settlement with herders in 2024, which included annual compensation and additional grazing lands.¹⁰⁴ As part of the court ruling, Sami herders have a veto right over whether the operation of both wind farms can extend past 2045. These settlement agreements have been viewed as including distributional justice (in the form of compensation) and procedural justice (in the form of the veto on future operating licenses).¹⁰⁵ In addition to these cases, Norway implemented a special taxation regime for onshore wind farms in 2023 to compensate municipalities for environmental consequences from wind farm operations.¹⁰⁶

Offshore wind farms have several potential mechanisms to compensate communities as the industry expands. First, there are ongoing debates regarding whether Norway's onshore wind taxes, including a proposed 35 percent resource rent tax, will extend to offshore wind. Second, there are mechanisms for compensation in the case of pollution or damage to fishing grounds. If damage occurs, the state is required to compensate for financial losses to commercial

¹⁰² Magnus N. Ryenbakken and Ceciel T. Nieuwenhout, "Efficient Floating Offshore Wind Realization: A Comparative Legal Analysis of France, Norway and the United Kingdom," *Energy Policy* 183 (December 2023): 113801, <https://doi.org/10.1016/j.enpol.2023.113801>.

¹⁰³ Nora Bull, "Dispute over Norway Wind Farm Continues despite Partial Deal," *Energy*, *Reuters*, December 19, 2023, <https://www.reuters.com/business/energy/dispute-over-norway-wind-farm-continues-despite-partial-deal-2023-12-19/>.

¹⁰⁴ Terje Solsvik and Nora Bull, "Norway Ends Dispute with Reindeer Herders over Wind Farm," *Sustainability*, *Reuters*, March 6, 2024, <https://www.reuters.com/sustainability/norway-ends-fosen-wind-farm-dispute-2024-03-06/>.

¹⁰⁵ Lilja Mósesdóttir, "Energy (in)Justice in the Green Energy Transition. The Case of Fosen Wind Farms in Norway," *Technology in Society* 77 (June 2024): 102563, <https://doi.org/10.1016/j.techsoc.2024.102563>.

¹⁰⁶ Siv Madland et al., "Renewable Energy in Norway," CMS Expert Guide, accessed January 21, 2025, <https://cms.law/en/int/expert-guides/cms-expert-guide-to-renewable-energy/norway>.

fishers, and wind farm developers are liable for financial loss arising from pollution as well as expenses in preventing or mitigating pollution.¹⁰⁷ The permitting agency can attach conditions to compensate or mitigate negative impacts of the project. However, through a loophole, offshore wind projects are exempted from having to perform extensive environmental assessments, which opens pathways for community complaint and formal litigation.¹⁰⁸

Notably, these settlement agreements and compensation processes are not CBAs, particularly where the focus is on simply compensating for damages or losses. However, they are relevant in that they demonstrate the potential for communities to assert power in determining the terms of energy projects. It is particularly notable that Indigenous communities were able to use litigation to win community compensation, assert rights to grazing lands, and assert veto rights for future licenses in the area in accordance with Article 27 of the United Nations International Covenant on Civil and Political Rights (ICCPR).¹⁰⁹

United Kingdom

The UK is considered a leader in Europe for offshore wind, with the most wind farms of any country, a large market, and clear regulatory structures regarding compensation schemes for community benefits.¹¹⁰ Offshore wind developments must undergo environmental assessment and stakeholder engagement, and the permitting agency can attach mitigation or compensation requirements to account for negative impacts, but community benefits are considered voluntary measures offered by a developer beyond the required permitting process.¹¹¹ Similar to the prominent role of financial provisions in other global cases, community benefits for wind farm projects in the UK

¹⁰⁷ Inge Ekker Bartnes et al., "Norway," in *Offshore Wind Worldwide: Regulatory Framework in Selected Countries (4th Edition)*, ed. Christian Knütel and Anna Leah Tabios Hillebrecht (Hogan Lovells, 2023), <https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2023-pdfs/offshore-wind-handbook-2023.pdf>.

¹⁰⁸ Ryenbakken and Nieuwenhout, "Efficient Floating Offshore Wind Realization."

¹⁰⁹ Mósesdóttir, "Energy (in)Justice in the Green Energy Transition. The Case of Fosen Wind Farms in Norway."

¹¹⁰ John Glasson, "Community Benefits and UK Offshore Wind Farms: Evolving Convergence in a Divergent Practice," *Journal of Environmental Assessment Policy and Management* 22, no. 01n02 (2020): 2150001, <https://doi.org/10.1142/S1464333221500010>; Scott Tindall et al., "United Kingdom," in *Offshore Wind Worldwide: Regulatory Framework in Selected Countries (4th Edition)*, ed. Christian Knütel and Anna Leah Tabios Hillebrecht (Hogan Lovells, 2023), <https://www.hoganlovells.com/-/media/hogan-lovells/pdf/2023-pdfs/offshore-wind-handbook-2023.pdf>.

¹¹¹ Ryenbakken and Nieuwenhout, "Efficient Floating Offshore Wind Realization."

center mainly on a monetary annual payment or community benefits fund. The site-specific benefits funded and bundled together in a community benefits agreement may vary widely but typically take the form of community buildings and facilities, education and jobs, health, and community services.¹¹² Recently, there has been increased interest in community benefits agreements, with 2/3 of the operational or under-construction offshore wind projects in the UK including community benefits funding.¹¹³

However, this increased prevalence has not translated to a just or even distribution in the amount of community benefits funding.

These disparities have led to critiques and grievances regarding community benefits funds in the UK more generally, including an unbalanced power relationship between communities and developers, skepticism of low levels of funding compared to the large financial returns of the projects, and accessibility of the funds to the local communities.¹¹⁴

The annual rate of compensation varies greatly depending on the project (from ~£55 to ~£1500 per MW pa annually).¹¹⁵

In the case of the 2019 Aberdeen Offshore Wind Farm community benefits fund for a 96 MW project, the local community played an active role in deciding on the geographical scale and scope of funding (£3 million total or c£1500 per MW pa) in coordination with a Local Community Liaison Officer. In contrast, the community benefits fund for the Beatrice Offshore Windfarm Limited (588 MW)

¹¹² Glasson, "Community Benefits and UK Offshore Wind Farms," 2020.

¹¹³ Glasson, "Community Benefits and UK Offshore Wind Farms."

¹¹⁴ Gordon Walker and Patrick Devine-Wright, "Community Renewable Energy: What Should It Mean?," *Energy Policy* 36, no. 2 (2008): 497–500, <https://doi.org/10.1016/j.enpol.2007.10.019>; Cowell et al., "Acceptance, Acceptability and Environmental Justice"; Bob Evans et al., "Urban Wind Power and the Private Sector: Community Benefits, Social Acceptance and Public Engagement," *Journal of Environmental Planning and Management* 54, no. 2 (2011): 227–44, <https://doi.org/10.1080/09640568.2010.505829>; Peter A. Strachan and David R. Jones, "Navigating a Minefield? Wind Power and Local Community Benefit Funds," in *Learning from Wind Power: Governance, Societal and Policy Perspectives on Sustainable Energy*, ed. Joseph Szarka et al., Energy, Climate and the Environment Series (Palgrave Macmillan UK, 2012), https://doi.org/10.1057/9781137265272_9; Sandy Kerr et al., "Understanding Community Benefit Payments from Renewable Energy Development," *Energy Policy* 105 (June 2017): 202–11, <https://doi.org/10.1016/j.enpol.2017.02.034>; Catriona Macdonald et al., "What Is the Benefit of Community Benefits? Exploring Local Perceptions of the Provision of Community Benefits from a Commercial Wind Energy Project," *Scottish Geographical Journal* 133, nos. 3–4 (2017): 172–91, <https://doi.org/10.1080/14702541.2017.1406132>; Benjamin J.A. Walker et al., "Community Benefits or Community Bribes? An Experimental Analysis of Strategies for Managing Community Perceptions of Bribery Surrounding the Siting of Renewable Energy Projects," *Environment and Behavior* 49, no. 1 (2017): 59–83, <https://doi.org/10.1177/0013916515605562>; David Rudolph et al., "Community Benefits from Offshore Renewables: The Relationship between Different Understandings of Impact, Community, and Benefit," *Environment and Planning C: Politics and Space* 36, no. 1 (2018): 92–117, <https://doi.org/10.1177/2399654417699206>; Glasson, "Community Benefits and UK Offshore Wind Farms," 2020.

¹¹⁵ John Glasson, "Community Benefits and UK Offshore Wind Farms: Evolving Convergence in a Divergent Practice," *Journal of Environmental Assessment Policy and Management* 22, no. 01n02 (2020): 2150001, <https://doi.org/10.1142/S1464333221500010>.

involved consultation with government councillors in the region, but developers ultimately set a “non-negotiable” amount of £6 million total or c£500 per MW pa for a £2.6 billion project.¹¹⁶

Summary: global agreements

Canada and Australia are home to many of the largest transnational mining, extraction, and energy corporations, some of which are involved with CBAs in projects all over the world.

These cases from around the world offer important lessons for the early origins and lasting impact of CBAs. In this global setting, CBAs are rooted in local histories of colonialism and dispossession. In response to movements for decolonization and environmental justice, the mining and energy industries have had to react to mounting criticism over human rights violations and environmental damage. In this complex situation, CBAs are no panacea capable of solving the myriad entrenched problems associated with settler colonialism and extractive capitalism. Still, as these examples show, CBAs may allow communities to build power by changing the terrain of conflict and securing some benefits in return for the use of their land, territory, and resources. While we do not pretend to be exhaustive in scope, our selection of cases has provided a foundation for understanding conflict and negotiation with some of the so-called mining and energy powerhouses of the world.

Canada and Australia are home to many of the largest transnational mining, extraction, and energy corporations, some of which are involved with CBAs in projects all over the world. These Canadian and Australian mining/extraction/energy mega-corporations provide their more localized subsidiaries with experience in deploying CBAs. Corporate consolidation is also relevant because transnational corporations can leverage CBAs as part of their ESG (environmental, social, and governance) approaches in ways that both facilitate their competition within their industry and that attract financial capital and shareholder interest to operations in specific locales. In deploying CBAs, transnational corporations may seek to meet their ESG goals and in doing so position themselves to be more competitive within the mining and energy industries. In turn, for communities, organizing for potential CBAs may be a useful starting point to recognize, probe, and

¹¹⁶ Glasson, “Community Benefits and UK Offshore Wind Farms,” 2020.

It is critical for communities to maintain control over how community benefit funds are distributed, especially when corporations try to set the terms.

assess consolidated corporate expertise to determine how best to approach negotiation.

However, CBA negotiation and community acceptance of a project should not be confused with FPIC. IBAs in Canada offer considerable resources through revenue sharing and other provisions in private contracts, but it is important to stress that the government still has the duty to consult. Similarly, in Australia, ILUAs and CBFs offer communities compensation for extraction and use of land, territory, and resources, but this may not require extinguishing Native land title. It is critical for communities to maintain control over how community benefit funds are distributed, especially when corporations try to set the terms.

The case of benefit-sharing agreements for lithium mining in the Atacama Desert in Chile demonstrates that Indigenous peoples may formalize resistance through private contracts with companies, without giving up the larger struggle for sovereignty. While these agreements may allow mining companies to greenwash unsustainable activities, the CPA has been able to redistribute revenue for environmental monitoring, which has provided evidence for further claims and litigation during proposed mining expansion. Moreover, the communities have been able to leverage the contracts to make broader demands for stronger regulation from the Chilean government.¹¹⁷

Benefit-sharing agreements should be treated as a floor, rather than a ceiling.

In Chile, and elsewhere in Latin America, grassroots environmental and social movement resistance to mining amid extreme wealth inequalities and scarce state-funded social benefit programs set the neoliberal conditions for direct agreements between companies and communities. Marginal returns on investment may offer concrete opportunities for Indigenous and local communities from otherwise destructive activities of extractive industries, but things should not end there. If understood as a baseline, these agreements may serve as a springboard for more Indigenous resistance through water protection, land defense, community organizing, and supply chain solidarity, and, in specific zones of ecological or cultural sensitivity, moratoria on mining.

¹¹⁷ O'Faircheallaigh and Babidge, "Negotiated Agreements, Indigenous Peoples and Extractive Industry in the Salar de Atacama, Chile."

Too often, uneven power relations in the distribution of community benefits have resulted in perpetual inequality rather than prosperity in marginalized communities near mineral resource extraction and renewable energy development, even when companies proclaim having a social license to operate. As we have seen in the cases of wind farms in Norway and the UK, local conflicts have become common through compensation schemes that may or may not benefit communities in a just and equitable way. Turbine siting and wind farm development has also resulted in intense conflicts elsewhere in the world, such as the Isthmus of Tehuantepec in Oaxaca, Mexico and Andalusia, Spain.¹¹⁸ Analyzing the latter case, anthropologist David Hughes observed that wealthy landowners who control land earn rent and royalties from wind farms, while working-class village residents living close to the turbines receive relatively few benefits in terms of jobs or resources. As a potential remedy, Hughes has proposed to delink wind rights from land ownership, and instead socialize or nationalize wind itself, so that all residents may benefit. With strong community organizing to build power, this notion of renewable energy resources—sunlight, wind, and heat—as public goods may support a more just and sustainable transition for all.

¹¹⁸ Sofia Avila-Calero, "Contesting Energy Transitions: Wind Power and Conflicts in the Isthmus of Tehuantepec," *Journal of Political Ecology* 24, no. 1 (2017): 1, <https://doi.org/10.2458/v24i1.20979>; Dominic Boyer, *Energopolitics: Wind and Power in the Anthropocene*, Illustrated edition (Duke University Press, 2019); Cymene Howe, *Ecologics: Wind and Power in the Anthropocene*, Illustrated edition (Duke University Press, 2019); Alexander Dunlap, "More Wind Energy Colonialism(s) in Oaxaca? Reasonable Findings, Unacceptable Development," *Energy Research & Social Science* 82 (December 2021): 102304, <https://doi.org/10.1016/j.erss.2021.102304>; David McDermott Hughes, *Who Owns the Wind?: Climate Crisis and the Hope of Renewable Energy* (Verso, 2021).

In the United States, CBAs are considered legally binding contracts negotiated between a project developer and a community coalition, Tribe, or worker group.

CBAs in the United States

In the United States, CBAs are considered legally binding contracts negotiated between a project developer and a community coalition, Tribe, or worker group.¹¹⁹ They may also be embedded into development agreements involving government regulators through tripartite arrangements.¹²⁰ CBAs in the United States are commonly associated with securing the “right to the city” amid gentrification and urban redevelopment of multipurpose megaprojects like stadiums, arenas, hotels, office buildings, retail, and luxury apartments.¹²¹ Yet before CBAs took hold in US cities, Tribes negotiated agreements related to their water rights. Tribal water settlements may be considered precursors of CBAs, with slight variations, but both are formal, legally enforceable benefit-sharing agreements.¹²²

Negotiated Agreements with Tribes for Water Rights

In 1978, because of massive groundwater losses on their reservation associated with surrounding development in central Arizona, the Ak-Chin Indian Community negotiated the first Congressionally authorized water rights settlement.¹²³ In the past half-century, 35 separate negotiated water rights settlements by/for/with Tribes have been federally authorized through legislation.¹²⁴ As of 2025, there

¹¹⁹ Julian Gross et al., *Community Benefits Agreements: Making Development Projects Accountable* (Good Jobs First and the California Public Subsidies Project, 2002); Jovanna Rosen, *Community Benefits: Developers, Negotiations, and Accountability* (University of Pennsylvania Press, 2023).

¹²⁰ Laura Wolf-Powers, “Community Benefits Agreements and Local Government,” *Journal of the American Planning Association* 76, no. 2 (2010): 141–59, <https://doi.org/10.1080/01944360903490923>; Michael Hankinson, “Externalities or Extortion? Privatizing Social Policy through Community Benefits Agreements,” *Harvard Journal of Real Estate*, 2013; Leonie B Janssen-Jansen and Menno van der Veen, “Contracting Communities: Conceptualizing Community Benefits Agreements to Improve Citizen Involvement in Urban Development Projects,” *Environment and Planning A: Economy and Space* 49, no. 1 (2017): 205–25, <https://doi.org/10.1177/0308518X16664730>.

¹²¹ Neil Smith, *The New Urban Frontier: Gentrification and the Revanchist City* (Routledge, 1996); Patricia E. Salkin and Amy Lavine, “Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements,” *Journal of Affordable Housing & Community Development Law* 17, no. 1/2 (2007): 113–44; Madeline Janis, “Community Benefits: New Movement for Equitable Urban Development,” *Race, Poverty & the Environment* 15, no. 1 (2008): 73–75; Julie Gobert, “Environmental Justice, Community Benefits and the Right to the City. The Case of Detroit,” *Justice Spatiale/Spatial Justice*, 2010; David Harvey, “The Right to the City,” in *The City Reader*, 6th ed. (Routledge, 2015).

¹²² For an in-depth analysis of the unique nature of agreements with US Tribal nations, or “Tribal benefit agreements (TBAs),” and how they differ from CBAs, see: Finn, et al. “Tribal Benefit Agreements.”

¹²³ Lloyd Burton, *American Indian Water Rights and the Limits of Law*, Revised ed. edition (University Press of Kansas, 1991).

¹²⁴ Congressional Research Service, *Indian Water Rights Settlements*, legislation no. R44148 (2024), <https://www.congress.gov/crs-product/R44148>.

were at least six bills in the 119th Congress for the water rights of the Acoma, Laguna, Jemez, Santa Ana, and Zia Pueblos; the Tule River Tribe of California; the Fort Belknap Indian Community; the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe; the Ohkay Owingeh Pueblo; and the Zuni Tribe. In addition, several other settlement amendment negotiations involving Tribes have been ongoing.¹²⁵

In addition to Tribes, negotiations over water rights involve state and federal government and sometimes major water users, such as irrigation districts or water wholesalers. For example, in Nevada the Truckee–Carson Irrigation District’s actions were important to settlement of the Pyramid Lake Paiute and Fallon Paiute-Shoshone Tribes and in Arizona the Salt River Project, a water developer and wholesaler, was involved in the Fort McDowell Yavapai Tribe’s settlement negotiations along with several other Arizona settlements.¹²⁶

While negotiated water rights agreements are designed to clarify and quantify water rights, many agreements provide a means to turn figurative “paper water” into literal “wet water” for Tribes.¹²⁷ For some Tribes this means retaining water in streams and lakes on their reservations, while for others it means developing infrastructure so Tribes can use water for domestic, irrigation, or other uses.

Negotiated tribal water settlements commonly establish new trust funds to be used by Tribes.

An example is the Northeastern Arizona Indian Water Rights Settlement Act of 2024 in which the federal government alone contributes a record \$5 billion, of which one third is dedicated to a major pipeline project and two thirds go into separate trust accounts for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe.¹²⁸ In another recent case, the Zuni Indian Tribe Water Rights Settlement Act of 2025 not only establishes two trust accounts for the Tribe but also entails transferring federal lands in and around the Zuni Salt Lake

¹²⁵ Congressional Research Service, *Indian Water Rights Settlements*.

¹²⁶ Kate A. Berry, “Of Blood and Water,” *Journal of the Southwest* 39, no. 1 (1997): 79–111; Daniel C. McCool, *Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era* (University of Arizona Press, 2002).

¹²⁷ McCool, *Native Waters*.

¹²⁸ Congressional Research Service, *Indian Water Rights Settlements*.

and Sanctuary into a special status for co-management to protect the land, water, and cultural resources.¹²⁹ These negotiations may take years or decades from inception to seeing actual results.

While Tribal water settlements may involve water developers as well as Tribes, they differ from CBAs in their reliance on government, especially for funding.

While Tribal water settlements may involve water developers as well as Tribes, they differ from CBAs in their reliance on government, especially for funding. Tribal water settlements also come after resource development—sometimes decades after—making them reparation-like, although the "trigger" for negotiation may be a proposed or new project (sometimes by a Tribe but also a developer or the state or federal government). Unlike some CBA negotiations, in which community coalitions demand a seat at the table, negotiated Tribal water settlements occur because of the power of Tribes and can result in major cash awards and/or access to water.

CBAs for Urban Redevelopment Projects

The first comprehensive urban redevelopment CBA in the United States was signed in 2001 by the Figueroa Corridor Coalition for Economic Justice in negotiations over the L.A. Live project, including a hotel, theater, convention center, housing complex, plazas, restaurants, and retail businesses adjacent to the Staples Center sports arena in Los Angeles, California.¹³⁰ After a decade of intensified turmoil and civil uprisings for racial justice in Los Angeles, the L.A. Live CBA marked a new era in which disenfranchised communities not only fought against discrimination and displacement, but also sought to address underlying structural inequalities by demanding something in return for more equitable development.¹³¹ Provisions of this landmark agreement included parks, open space and recreational facilities, targeted job opportunities with living wages for local residents, permanent affordable housing, basic services, and

¹²⁹ S.564 Bill: Zuni Indian Tribe Water Rights Settlement Act of 2025 (2025). <https://www.congress.gov/bill/119th-congress/senate-bill/564/text/is>.

¹³⁰ Smith, *The New Urban Frontier*; Gross et al., *Community Benefits Agreements: Making Development Projects Accountable*; Salkin and Lavine, "Negotiating for Social Justice and the Promise of Community Benefits Agreements"; Gobert, "Environmental Justice, Community Benefits and the Right to the City. The Case of Detroit"; David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso, 2013); Leland Saito and Jonathan Truong, "The L.A. Live Community Benefits Agreement: Evaluating the Agreement Results and Shifting Political Power in the City," *Urban Affairs Review* 51, no. 2 (2015): 263–89, <https://doi.org/10.1177/1078087414527064>.

¹³¹ Gross et al., *Community Benefits Agreements: Making Development Projects Accountable*; Mike Davis and Robert Morrow, *City of Quartz: Excavating the Future in Los Angeles*, New Edition edition (Verso, 2006); Janis, "Community Benefits"; Saito and Truong, "The L.A. Live Community Benefits Agreement."

solutions to concerns over traffic, parking, and public safety. A land trust was eventually established to ensure that affordable housing needs of local residents and families were met.¹³²

Equitable and inclusive community organizing has been critical to the success of urban CBAs in the United States.

The Figueroa Corridor Coalition for Economic Justice represented more than 30 community organizations, ranging from labor, environmental, faith-based, public health, immigrant rights, and tenants groups. Strategic Action for a Just Economy (SAJE) and Los Angeles Alliance for a New Economy (LAANE) supported the coalition with grassroots community and labor organizing, as well as critical research and analysis of environmental impact reports and coordination on negotiation.¹³³

Other CBAs that have intended to ensure union jobs and affordable housing have nonetheless been accused of ignoring and excluding local residents. The 2005 Atlantic Yards CBA for the Barclays Center stadium megaproject in Brooklyn, New York offers a cautionary tale for failing to represent all community members' concerns over aspects, such as traffic, parking, and forced displacement, despite the efforts of eight organizations to ensure housing and jobs for low-income residents. This agreement exacerbated community divisions over the project and led to at least 37 lawsuits.¹³⁴

The main provisions of urban-US CBAs tend to include good jobs, living wages, equitable hiring and promotion commitments, measures to address barriers to employment (i.e., transportation and childcare), recreational facilities, and affordable housing, among other benefits.¹³⁵ "Good jobs" may be defined as providing: family-sustaining wages and comprehensive benefits; safe working conditions; equitable hiring and employment practices; a diverse, equitable, and inclusive workforce with an accessible workforce pipeline; transparency and accountability; and the capacity for workers to

¹³² Salkin and Lavine, "Negotiating for Social Justice and the Promise of Community Benefits Agreements"; Saito and Truong, "The L.A. Live Community Benefits Agreement."

¹³³ Salkin and Lavine, "Negotiating for Social Justice and the Promise of Community Benefits Agreements"; Saito and Truong, "The L.A. Live Community Benefits Agreement."

¹³⁴ Freeman, "Atlantic Yards and the Perils of Community Benefit Agreements"; Markey, "Atlantic Yards Community Benefit Agreement"; De Barbieri, "Do Community Benefits Agreements Benefit Communities."

¹³⁵ Gross et al., *Community Benefits Agreements: Making Development Projects Accountable*; Thomas A. Musil, "The Sleeping Giant: Community Benefit Agreements and Urban Development," *Urban Lawyer* 44 (2012): 827.

organize.¹³⁶ Equitable hiring goals and practices have benefited populations historically disadvantaged by income status, ZIP Code, gender, and race/ethnicity. Commitments may also include a target percentage for promotional positions. CBAs usually apply to long-term operations and maintenance, though they may be combined with project labor agreements and apprenticeship programs for local construction contracting through high-road partnerships.¹³⁷

While CBAs have been widely acclaimed for delivering economic justice to disadvantaged communities beyond “Not in My Back Yard” (NIMBY) disputes in the United States, their terms do not typically include key aspects that are common among negotiated agreements in global mining and energy projects, particularly benefit-sharing of revenue streams.¹³⁸ This has started to shift with the increasing prevalence of fee-based CBAs for renewable energy projects like solar in the United States, as we outline below, but CBA provisions are still not consistent across sectors. Again, most US CBAs have been focused on urban redevelopment projects, rather than extractive and renewable energy industries that tend to be sited in rural areas with different socioeconomic and ecological dynamics and, in some cases, greater challenges for coalition building, potentially requiring more unlikely alliances.¹³⁹

Domestic mining for transition minerals is booming, and renewable energy infrastructure development is expanding to meet growing demand for electrified transportation and energy storage. According to MSCI, “97% of nickel, 89% of copper, 79% of lithium and 68% of cobalt reserves and resources in the U.S. are located within 35 miles of Native American reservations,” and many mining development

¹³⁶ We thank Athena Last and colleagues at Jobs to Move America for providing this definition of “good jobs” in their review of this report.

¹³⁷ Gross et al., *Community Benefits Agreements: Making Development Projects Accountable*.

¹³⁸ Steven P. Frank, “Yes in My Backyard: Developers, Government and Communities Working Together through Development Agreements and Community Benefit Agreements,” *Indiana Law Review* 42 (2009): 227; De Barbieri, “Do Community Benefits Agreements Benefit Communities.”

¹³⁹ Patricia E. Salkin and Amy Lavine, “Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations,” *UCLA Journal of Environmental Law and Policy* 26 (2008): 291; Partnership for Working Families, “Common Challenges in Negotiating Community Benefits Agreements,” 2016, <https://www.powerswitchaction.org/resources/common-challenges-in-negotiating-community-benefits-agreements>; Zoltán Grossman and Winona LaDuke, *Unlikely Alliances: Native Nations and White Communities Join to Defend Rural Lands* (University of Washington Press, 2017); Jackson C. Rose and Julia H. Haggerty, *Community Benefit Agreements and Funds* (Resources & Communities Research Group, 2018); Sophia Borgias et al., “Unlikely Alliances in Action: Balancing Alignment and Autonomy in Rural-Urban Water Conflicts,” *Society & Natural Resources* 0, no. 0 (2024): 1–19, <https://doi.org/10.1080/08941920.2024.2367462>.

projects threaten to desecrate Tribal cultural resources in contemporary and ancestral territories across the United States.¹⁴⁰ Mining and energy development projects also threaten the environmental health of marginalized Black and Latino/a/x rural and farmworker communities.¹⁴¹ Multinational developers accustomed to incorporating communities through negotiated agreements elsewhere in the world may already be well prepared to negotiate CBAs with elite enclaves that may not represent the interests of all community members, and it is critical that community coalitions and environmental justice advocates develop strategies to organize for just and equitable outcomes.¹⁴²

These divergent norms and standards regarding agreements for US CBAs focused, on the one hand, on water rights and urban redevelopment projects, and on the other, extractive and energy projects, raise the question: How can CBAs advance domestic policy toward a just transition in the United States?

The Role of Government in Encouraging and Distributing Community Benefits

Federal policy

Before Donald Trump was inaugurated as President for a second term in 2025, community benefit considerations had begun to play an increasingly prominent role in United States domestic energy and climate policy, supporting efforts toward a just transition. Public policies intended to onshore the production, processing, and recycling of transition minerals, battery manufacturing, and

¹⁴⁰ Samuel Block, "Mining Energy-Transition Metals: National Aims, Local Conflicts," 2021, <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>.

¹⁴¹ Jared Naimark, *Environmental Justice in California's "Lithium Valley": Understanding the Potential Impacts of Direct Lithium Extraction from Geothermal Brine* (Comite Civico del Valle and Earthworks, 2023), <https://earthworks.org/resources/lithium-valley/>; Alexa Britton et al., "Hydrosocial Imaginaries of Green Extractivism: Water-Energy Transitions and Geothermal Lithium Development at the Salton Sea in Imperial Valley, California," *The Extractive Industries and Society* 20 (December 2024): 101567, <https://doi.org/10.1016/j.exis.2024.101567>; Chris Benner and Manuel Pastor, *Charging Forward: Lithium Valley, Electric Vehicles, and a Just Future* (The New Press, 2024); Katie Myers, "Deja vu Comes to Arkansas as Lithium Follows Oil," *Grist*, September 25, 2024, <https://grist.org/energy/deja-vu-comes-to-arkansas-as-lithium-follows-oil/>.

¹⁴² Rebecca Traylor, *The Beneficial Use of Community Benefits Agreements in Furthering the Environmental Justice Movement*, 2017; Emily Fenster, *Community Coalitions & Community Benefit Agreements: Opportunities to Ensure Climate Change Mitigation Through Collaborative Planning*, Department of Planning, Public Policy and Management, University of Oregon, 2018, <https://scholarsbank.uoregon.edu/xmlui/handle/1794/25072>; Grossman and LaDuke, *Unlikely Alliances*; Borgias et al., "Unlikely Alliances in Action."

renewable energy infrastructure opened the door to community and labor benefits. These policies, and the benefits agreements they occasioned, were not without contention. As our report shows, the politics of CBAs are riven with differing visions and priorities on the ground as communities navigated complex realms of corporate and governmental power. But such local organizing is itself the precondition for a truly just transition. The Trump-Vance administration has now shut that door through a litany of executive orders designed not only to “unleash” American energy dominance through more reliance on fossil fuels and mining, but also to revoke prior mandates for community benefits from climate change mitigation.¹⁴³ Nonetheless, it remains critically important to document, track, and analyze these modifications to federal policy, especially when pages for climate change, community benefits, environmental justice, and other progressive values have been removed from federal websites under Trump. In what follows, we take stock of the legacy of community benefits guidelines for energy development established under the administration of former President Joe Biden and assess some of their virtues, as well as their shortcomings.

Some of the federal investments spurred by Bipartisan Infrastructure Law (BIL)/Infrastructure Investment and Jobs Act (IIJA) enacted in 2021, as well as the 2022 Inflation Reduction Act (IRA), were implemented with requirements for community benefits plans (CBPs): non-binding conditional commitments that factored into the scoring of grant and loan applications. Unlike CBAs, which are legally binding contracts, CBPs are looser guidelines that are meant to encourage grant and loan applicants to establish local partnerships through community engagement, ideally resulting in project labor agreements and CBAs.¹⁴⁴

Together, the IRA, IIJA, and Creating Helpful Incentives to Produce Semiconductors (CHIPS) amounted to over \$2.2 trillion in public investments.¹⁴⁵ These federal programs were outcomes of the Biden

¹⁴³ The White House. “Unleashing American Energy.” Executive Orders, January 20, 2025. <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>.

¹⁴⁴ Marisa Sotolongo, *Community Benefits Policy and Energy Justice* (The Initiative for Energy Justice, 2024).

¹⁴⁵ William D. Eggers et al., “Executing on the \$2 Trillion Investment to Boost American Competitiveness,” Deloitte Insights, March 16, 2023, <https://www2.deloitte.com/us/en/insights/industry/public-sector/infrastructure-bill-projects-agency-execution.html>.

The 2022 Inflation Reduction Act institutionalized CBPs into public policy by requiring these plans as part of funding opportunities in the federal government.

administration's green industrial policy that has provided tax credits, subsidies, and loans to corporations.¹⁴⁶ Although their implementation has been limited by changing administration, the role of these programs in attempting to standardize the concept of community benefits at the national level merits closer examination. The use of these instruments helped create a sense of accountability in that federal investments could be linked to requirements that communities receive benefits and workers could obtain better opportunities and higher-wage, high-road jobs. Coupled with the Justice40 Initiative, which required 40 percent of benefits from 500+ federal programs to flow to disadvantaged communities, several mechanisms have been implemented that were meant to direct federal investments toward more equitable outcomes from these infrastructures.

The 2022 Inflation Reduction Act institutionalized CBPs into public policy by requiring these plans as part of funding opportunities in the federal government. The IRA, IIJA, and CHIPS poured billions of dollars into clean energy investments, and these policies had provisions that were intended to ensure that both labor and communities receive a portion of the funding. The IRA supported 646 energy projects, producing 334,565 jobs as of August 2024.¹⁴⁷ It brought over \$110 billion into the EV and battery sectors, \$22 billion of which went toward extraction and production of battery materials, including mining.¹⁴⁸

The Department of Energy (DOE) under the Biden administration developed a CBP framework that is directly linked to public investments in infrastructure. Nearly all BIL/IRA funding administered through the DOE through 2025 required a CBP focused on four components: community and labor engagement; quality jobs investment; diversity, equity, inclusion, and access; and the Justice40 Initiative—a goal that 40 percent of investments must flow to disadvantaged communities. The DOE evaluated CBPs as part of its loan and grant application framework, substantially weighing CBP

¹⁴⁶ Brent Cebul, "Bidenomics: Farewell to an Idea?," *The New York Review of Books*, January 15, 2025, <https://www.nybooks.com/online/2025/01/15/bidenomics-farewell-to-an-idea/>.

¹⁴⁷ Cebul, "Bidenomics."

¹⁴⁸ "Donald Trump Wins US Election Bringing Future of IRA into Question," Benchmark Source, November 6, 2024, <https://source.benchmarkminerals.com/article/donald-trump-wins-us-election-bringing-future-of-ira-into-question>.

scores among other criteria; CBPs amounted to 20 percent of a project's technical merit score with most grant programs. CBPs were included in proposals that awarded over \$63 billion in new public funding.

Even though it has now been repealed, this CBP mandate, grounded by its four-prong policy framework, began to normalize the link between public investment in private industry and documented community benefits.¹⁴⁹ This has had significant implications for projects that will be part of global energy supply chains. More than \$3 billion was invested across 25 projects by DOE using support from the BIL/IIJA that enabled investments in Battery Materials Processing and Battery Manufacturing and Recycling Programs. This includes projects related to raw materials development, separation and processing, component and battery manufacturing, and recycling of critical minerals like graphite, lithium, and manganese. Of these projects, more than half have in place project labor agreements and 90 percent are located in disadvantaged communities.¹⁵⁰ Similarly, the DOE required CBP implementation through awarding \$7 billion to seven hydrogen hubs across 18 states, primarily in disadvantaged communities.¹⁵¹ However, as of June 2025, four of the hydrogen hubs were slated by DOE for cancellation and the proposed elimination of a key tax credit could further undermine the programs.¹⁵²

“ We created the Community Benefits Plan approach at DOE because we knew that project developers that engage early and meaningfully with communities and workers see clear benefits, from shorter permitting and siting timelines to lower litigation risk to better-performing systems. As we transition our entire economy to more sustainable and resilient infrastructure and projects, it's critically

¹⁴⁹ Sara Wilson, “MEMORANDUM FOR ALL DOE FUNDING AGREEMENTS OR AWARDS,” January 27, 2025, <https://www.cogr.edu/sites/default/files/CBP%20and%20DEI%20Notification%20to%20existing%20recipients%20-%201.27.2025.pdf>.

¹⁵⁰ Chris Voloschuk, “Battery Recyclers among Those Selected for DOE Funds,” *Recycling Today*, September 27, 2024, <https://www.recyclingtoday.com/news/battery-recyclers-among-those-selected-for-doe-funds/>.

¹⁵¹ Maggie Field, “It Takes a Community: Hydrogen Hubs and Community Benefits Plans Explained,” *Clean Air Task Force*, November 16, 2023, <https://www.catf.us/2023/11/takes-community-hydrogen-hubs-community-benefits-plans-explained/>.

¹⁵² Hydrocarbon Processing, “U.S. Weighs Funding Cuts to Four of Seven Hydrogen Hubs,” March 27, 2025, <https://www.hydrocarbonprocessing.com/news/2025/03/us-weighs-funding-cuts-to-four-of-seven-hydrogen-hubs/>.

important to do so in collaboration with people and places. Even if the CBP approach isn't used at the federal level in the coming years, developers are continuing to do the work because they see the benefits on the ground.¹⁵³

Kate Gordon, CEO of California Forward

Gordon is a former Senior Advisor at the DOE who oversaw the development of the department's community benefit plan framework, which was proposed to be applied to billions of dollars of energy transition funding.

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CBPs offered by loan and grant recipients have emphasized permanent operations and maintenance, as well as construction jobs, university and trade school training for new job pathways, and other workforce development opportunities. They may also ensure some percentage of workers are hired locally or from local Tribes. Some of the community benefit indicators included:

- **Community and workforce agreements**
  - project labor agreements
  - collective bargaining agreements
  - community workforce agreements
  - community benefits agreements
- **Community advisory councils**
- **Training programs**
  - apprenticeships
  - pre-apprenticeships
  - local targeted recruitment

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<sup>153</sup> Kate Gordon, personal communication to authors, 2025.



## Selected CBPs published by DOE Loan Programs Office, 2024.

| Company/<br>Project Name             | Industry Sector                                         | CBP Elements                                                                                                                                                                                                                                                                                           | Loan<br>Amount     | Direct<br>Community<br>Payments | Location                                                                                    |
|--------------------------------------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------------------|---------------------------------------------------------------------------------------------|
| <b>CellLink</b>                      | Manufacturing<br>(automotive circuit wiring<br>harness) | Job training and career and technical<br>education curriculum development                                                                                                                                                                                                                              | \$362<br>million   | None                            | Texas                                                                                       |
| <b>Viejas Microgrid</b>              | Solar energy                                            | Long-term power purchasing agreement<br>at a lower cost than traditional utilities;<br>buy-out ownership provision for the<br>Viejas Band of Kumeyaay Indians; job<br>creation prioritizing Native<br>American/Tribal-owned businesses,<br>veteran-owned businesses, and<br>contractors <sup>154</sup> | \$72.8<br>million  | Indirect:<br>Tribally owned     | Tribal lands of the<br>Viejas Band of the<br>Kumeyaay Indians<br>near Alpine,<br>California |
| <b>Holtec Palisades</b>              | Nuclear energy                                          | Job creation and workforce training                                                                                                                                                                                                                                                                    | \$1.52<br>billion  | None                            | Michigan                                                                                    |
| <b>LongPath<br/>Technologies Inc</b> | Methane emissions<br>monitoring                         | Job creation and technical training<br>program                                                                                                                                                                                                                                                         | \$162.4<br>million | None                            | U.S. oil and gas<br>production<br>regions <sup>155</sup>                                    |
| <b>Li-Cycle</b>                      | Lithium battery recycling                               | Job creation; community engagement                                                                                                                                                                                                                                                                     | \$475<br>million   | None                            | Rochester, New<br>York                                                                      |
| <b>AES Marahu</b>                    | Solar energy with battery<br>storage                    | Job creation; "stakeholder relations" and<br>"community relations" guidelines; dual<br>land use program for appropriate<br>agricultural activities to co-locate                                                                                                                                        | \$861.3<br>million | None                            | Puerto Rico                                                                                 |

## Implications of CBPs for CBAs

While CBAs have not been required to receive DOE funding, applications for projects that include a CBA were evaluated as meeting the CBP requirements under the Biden administration. More specifically, DOE recognized the value of CBAs and stated that CBAs support disinvested communities by:

- Highlighting job creation opportunities,
- Initiating commitments for local and diverse hiring and training opportunities
- Requiring the payment of living wage and other benefits,

<sup>154</sup> Oxendine, "Indian Energy Closes Financing for Largest-Ever Tribal Microgrid Project in Southern California."

<sup>155</sup> In May 2025, Li-Cycle filed for Chapter 15 bankruptcy, but planned to resume construction of its proposed project. It has not accessed the loan because of debt issues. Multinational mining firm Glencore has bid on some of Li-Cycle's assets and already owns part of the company. See: Oklobzija, "Li-Cycle Files for Bankruptcy, Glencore May Want Rochester Hub."

- Encouraging education partnerships between developers and community schools,
- Support for local small businesses with local vendor requirements
- Creating a new funding source for community-selected improvement projects, including parks, playgrounds, affordable housing, childcare facilities, and senior centers.
- Laying the groundwork for accessing state and/or local economic incentive packages.

The DOE also asserted that CBAs can provide significant benefits to developers in the following ways:

- CBAs offer a framework for cooperation between the developer, government, and community groups.
- CBAs can help developers access needed public subsidies to reduce financial risks.
- The engagement required for developing CBAs can generate a tangible list of community benefits that help mobilize public testimony and written statements supporting the project during the government approval process and reduce community opposition.

The DOE encouraged local governments to support the CBA process by:

- Keeping community coalitions apprised of new proposed developments
- Encouraging developers to enter good-faith negotiations with community coalitions
- Respecting the negotiating process and honoring CBAs
- Folding key elements of CBAs into public-private partnership agreements for added enforcement

The DOE claimed that CBAs may result in unique benefits to community members by creating commitments and accountability for project deliverability, including:

- Targets for job creation, local and diverse hiring and training, and living wage and other benefits
- Education partnerships between developers, communities, and schools
- Support for local small businesses
- Improvements to open spaces, parks and playgrounds, affordable housing, and rehabilitation
- Support for senior centers, childcare facilities, and state and/or local economic incentive packages

Under the Biden administration, federal agencies publicized CBAs as a strategy for promoting equity in economic development. The DOE Office of Energy Justice and Equity and Department of Labor (DOL) both offered resources in the form of “resource guides” and “toolkits” for developers and communities interested in developing CBAs. While promoted and encouraged by the Biden administration, there were no requirements for CBAs, including for federally funded projects.

The Initiative for Energy Justice offered recommendations to public sector officials for “benefits reallocation policies” in a report on energy justice cases.<sup>156</sup> Core recommendations included the following:

1. **Transparency and accountability:** This is a key requirement not just for procedural justice, but for substantive and restorative justice tenets, and it is meant to improve the DOE’s enforcement of CBP details, since “the CBP is not a legally binding agreement itself, but part of a developer’s funding application.”<sup>157</sup>
2. **Center disadvantaged communities:** “To advance energy justice—and, in particular, restorative justice—the public sector should conceptualize CBAs as benefits reallocation policies that focus specifically on benefitting disadvantaged and marginalized communities and low-income individuals and households. The

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<sup>156</sup> Sotolongo, *Community Benefits Policy and Energy Justice*.

<sup>157</sup> Sotolongo, *Community Benefits Policy and Energy Justice*.

public sector should recognize that HCAs [Housing and Community Assistance programs] may not fulfill benefits reallocation goals for disadvantaged communities (such as the federal Justice40 Initiative or state environmental justice policies), and should require additional benefits reallocation mechanisms that specifically benefit these communities.”<sup>158</sup>

3. **Create benefits reallocation mandates for large-scale projects:** These address the risk that large or “non-place-based” infrastructure projects are exempted, through “first-source hiring programs, revenue sharing, community program funding, community or public ownership requirements, and other state-initiated mechanisms.”<sup>159</sup>
4. **Share co-benefit tracking methodologies across states:** These should be explicitly and publicly defined by the DOE.

## Challenges and Limitations of CBPs

While CBPs may have been a step in the right direction for making loan guarantees and other public-private partnerships for energy development more equitable for communities, critics have argued that these market-making initiatives still primarily benefit businesses and middlemen rather than working people.<sup>160</sup> Part of the reason they have fallen short for workers and communities is that rather than requiring legally binding agreements, CBPs offer less stringent guidelines. These conditional commitments might help streamline environmental review and development, yet they may offer relatively few opportunities for public outreach and engagement. While community partnership documentation has been required, each letter's criteria and weight are unclear, which may lead to false or limited community partnership and engagement. Corporate loan applicants tend to strike deals instead with intermediaries, contractors, universities, and non-profit organizations that have played an increasingly prominent role in administering funds and technical assistance. This, in turn, has added layers of administrative

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<sup>158</sup> Sotolongo, *Community Benefits Policy and Energy Justice*.

<sup>159</sup> Sotolongo, *Community Benefits Policy and Energy Justice*.

<sup>160</sup> Cebul, “Bidenomics.”

Instead of providing a strong foundation for concrete jobs and economic development, CBPs may ultimately feel more like quicksand for fenceline communities.

red tape in the form of subgrant competitions for communities that may stand to benefit more directly from funds.<sup>161</sup>

Instead of providing a strong foundation for concrete jobs and economic development, CBPs may ultimately feel more like quicksand for fenceline communities. It remains to be seen how these policies may endure or transform under future administrations, but on January 27, 2025, the Directors of DOE instructed grantees to “cease all activities associated with DEI and CBP.”<sup>162</sup> Up to 92 percent of IRA funding was invested in projects proposed in Republican majority states.<sup>163</sup> Unfortunately, many of these states have “right-to-work” laws that may make it difficult for CBPs to be implemented and enforced through legally binding CBAs with labor unions. Moreover, some states, such as Georgia and Alabama, have prohibited companies from receiving state tax incentives or subsidies if they agree to neutrality and card check agreements. Tennessee went a step farther by adopting legislation to restrict employers from entering into CBAs when seeking state economic development incentives.<sup>164</sup> Whether supportive or not, state policy will likely play an increasingly important role in establishing frameworks for community benefits going forward.

## State policy

### California Energy Commission Opt-In Certification Program

A California Energy Commission (CEC) certification process allows energy project developers to obtain approval by way of state review, instead of local government. The Opt-In Certification Program was a result of Assembly Bill 205 in 2022 and aims to reduce permitting timelines by allowing renewable energy projects 50 MW or greater, energy storage projects 200 MWh or greater, transmission lines, manufacturing facilities, and non-fossil hydrogen producers to bypass local review and seek CEC approval. Project developers get a

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<sup>161</sup> Cebul, “Bidenomics.”

<sup>162</sup> Wilson, “MEMORANDUM FOR ALL DOE FUNDING AGREEMENTS OR AWARDS.”

<sup>163</sup> Benchmark Source, “Donald Trump Wins US Election Bringing Future of IRA into Question.”

<sup>164</sup> SB 1074, Pub. L. No. Pub. Ch. 151 (2025). <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1074&ga=114>; HB 1096, Pub. L. No. Pub. Ch. 151 (2025). <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1096&GA=114>.

The language around CBAs in the CEC Opt-In Certification Program is relatively stronger than most other policies because project applicants need to have a legally binding, enforceable agreement that benefits a coalition of one or more community-based organizations.

270-day expedited environmental review once a project is certified, and that certification requires one or more CBAs to be in place within 45 days of the start of the 270-day expedited California

Environmental Quality Act (CEQA) review.<sup>165</sup> The language around CBAs in the CEC Opt-In Certification Program is relatively stronger than most other policies because project applicants need to have a legally binding, enforceable agreement that benefits a coalition of one or more community-based organizations. California Native American Tribes with cultural or historical connections to project site locations are invited for consultation. Project applicants also must pay prevailing wages or have a project labor agreement in place.

As of September 2025, nine energy projects have started the CEC process (see table below). Four of these projects have completed applications; one has been approved (Darden), one denied (Fountain Wind), and two more (Soda Mountain Solar and Potentia-Viridi Battery Energy Storage) started the 270-day CEQA review in July and August 2025, respectively. This effort to bypass local government for approvals mirrors trends in other states like New York, Illinois, and Washington, where local jurisdiction over renewable energy siting has been preempted by state law. The State of Ohio has undertaken the opposite and given local governments more jurisdiction over wind and solar facilities.<sup>166</sup>

Utility-scale solar projects on the CEC docket with CBA development plans attached to applications seeking approval include the ones in the table below. The CEC process allows developers to establish multiple CBAs for a single project. The value of the CBA is the amount of direct payments to the groups listed in the CBAs of the period in the contract terms. For example, the developer of the Darden solar project disclosed that they intend to offer “over \$2 million” over the course of ten years and \$5 million throughout the life of the project, though some local residents have expressed concerns about how

<sup>165</sup> California Energy Commission, “Opt-In Certification Program,” California Energy Commission, accessed February 24, 2025, <https://www.energy.ca.gov/programs-and-topics/topics/power-plants/opt-certification-program>.

<sup>166</sup> Senate Bill 52: Revise Law Governing Wind Farms and Solar Facilities (2021). [https://search-prod.lis.state.oh.us/api/v2/general\\_assembly\\_134/legislation/sb52/05\\_EN/pdf/](https://search-prod.lis.state.oh.us/api/v2/general_assembly_134/legislation/sb52/05_EN/pdf/).



these investments will be spent.<sup>167</sup> In the CEC Opt-In process, applicants can request to have the financial terms redacted.

## Proposed CBAs in California's Opt-In certification process.

| Project name                                                                           | County         | Capacity | Value of CBA in direct payments                                                                                                       | Status                                                                                             |
|----------------------------------------------------------------------------------------|----------------|----------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <b>Fountain Wind Project</b>                                                           | Shasta         | 205 MW   | \$2.8 million <sup>168</sup>                                                                                                          | Denied by CEC, May 2025                                                                            |
| <b>Darden Clean Energy Project - Intersect Power</b>                                   | Fresno         | 1,150 MW | Greater than \$2 million <sup>169</sup>                                                                                               | Approved by CEC, June 2025; Pre-construction                                                       |
| <b>Perkins Renewable Energy Project - Intersect Power</b>                              | Imperial       | 1,150 MW | \$1.5 million <sup>170</sup>                                                                                                          | Application under review; determined incomplete, July 2025                                         |
| <b>Compass Energy Storage Project - Repsol Renewables</b>                              | San Diego      | 250 MW   | Community benefit strategy mentions potential partners                                                                                | Application under review; determined incomplete, October 2024                                      |
| <b>Soda Mountain Solar Project - NextEra</b>                                           | San Bernardino | 300 MW   | Community benefit strategy mentions potential partners but no monetary value; CBAs must be in place in September 2025                 | Draft Environmental Impact Report in preparation; CEC determined application complete, July 2025   |
| <b>Corby Battery Energy Storage System Project - ENGIE North America</b>               | Solano         | 300 MW   | Community benefit plans mention potential partners; \$510,000 proposed; Solano County asking for more                                 | Application under review; determined incomplete, December 2024                                     |
| <b>Potentia-Viridi Battery Energy Storage System Project - Obra Maestra Renewables</b> | Alameda        | 400 MW   | Community benefit strategy lists five potential partner organizations but no monetary value and CBAs must be in place by October 2025 | Draft Environmental Impact Report in preparation; CEC determined application complete, August 2025 |
| <b>Prairie Song Reliability Project - Coval Infrastructure</b>                         | Los Angeles    | 1,150 MW | No community benefit strategy or CBA available                                                                                        | Application in preparation, August 2025                                                            |
| <b>Viracocha Hill Battery Energy Storage System Project - Ignus</b>                    | Alameda        | 90.7 MW  | No community benefit strategy or CBA available                                                                                        | Application under review; completeness check in progress, June 2025                                |

The 205 MW Fountain Wind Project was the first to complete the CEC Opt-In application but was denied by the CEC in spring 2025.<sup>171</sup> To

<sup>167</sup> Branson-Potts, Hailey. "Permits Were Expedited for This California Clean Energy Project. Were Residents Sidelined?" California. Los Angeles Times, August 25, 2025. <https://www.latimes.com/california/story/2025-08-25/battery-solar-project-darden-fresno-county-community-impacts>.

<sup>168</sup> Fountain Wind, "Benefits," Repsol, accessed February 24, 2025, <https://www.fountainwind.com/benefits/>.

<sup>169</sup> California Energy Commission, Darden Clean Energy Project Staff Assessment, nos. 23-OPT-02 (2025), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=261842&DocumentContentId=98317>.

<sup>170</sup> California Energy Commission, "Perkins Renewable Energy Project," California Energy Commission, accessed February 24, 2025, <https://www.energy.ca.gov/powerplant/solar-photovoltaic-pv/perkins-renewable-energy-project>.

<sup>171</sup> Shasta County, CA, "Fountain Wind Project Application Deemed Complete by CEC," November 1, 2023, <https://www.shastacounty.gov/community/page/fountain-wind-project-application-deemed-complete-cec>.

The concern with the Opt-In process is that it becomes the venue for controversial and impactful projects to seek approval.

initiate the review process the applicant proposed a CBA with \$2.8 million in funding for local schools, public safety, fire protection, and workforce development.<sup>172</sup> However, this project was previously rejected at least twice by the Shasta County Board of Supervisors.<sup>173</sup> Shasta County has continued to voice resolute local opposition to the project due to potential impacts on cultural resources, Tribal cultural resources of the Pit River Tribe and other Tribal nations, increased fire risks, impacts on biological resources, and state overreach. The staff recommendation also noted that the project did not control the land throughout the entirety of the proposed project duration.<sup>174</sup>

This juxtaposition of requiring community benefits while also taking away local control of approval of projects will be an ongoing tension to follow as this process evolves. The Soda Mountain Solar Project in San Bernardino County, with an application in preparation before the CEC, had a key groundwater well permit denied by local officials in 2016. The project had grabbed headlines earlier in the year when Edward O. Wilson and James Lovelock published an op-ed in *The New York Times* describing the project's impact on bighorn sheep and other desert flora and fauna.<sup>175</sup> The CEC docket already shows letters of opposition to the project from groups like the Center Biological Diversity, Defenders of Wildlife and the Desert Tortoise Protection Council.<sup>176</sup> The concern with the Opt-In process is that it becomes the venue for controversial and impactful projects to seek approval.

The CEC's Clean Transportation Program has also embraced CBAs through its battery manufacturing grant program PowerForward.<sup>177</sup> Grants to manufacturers are scored based on several categories including community benefits, which can constitute up to 10 of the

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<sup>172</sup> National Renewable Energy Laboratory, "WINDExchange: Wind Energy Community Benefits Guide," 2023, <https://windexchange.energy.gov/community-benefits-guide#advantages>.

<sup>173</sup> Shasta County, CA, "Fountain Wind Project Update," accessed February 24, 2025, <https://www.shastacounty.gov/community/page/fountain-wind-project-update>.

<sup>174</sup> California Energy Commission, "Fountain Wind Project," California Energy Commission, current-date, <https://www.energy.ca.gov/powerplant/wind/fountain-wind-project>.

<sup>175</sup> Thomas E. Lovejoy and Edward O. Wilson, "Opinion | A Mojave Solar Project in the Bighorns' Way," Opinion, *The New York Times*, September 12, 2015, <https://www.nytimes.com/2015/09/12/opinion/a-mojave-solar-project-in-the-bighorns-way.html>.

<sup>176</sup> California Energy Commission. "Soda Mountain Solar." Docket Log. Accessed September 5, 2025. <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=24-OPT-03>.

<sup>177</sup> California Energy Commission, "Zero-Emission Vehicle Related Manufacturing," California Energy Commission, accessed June 14, 2025, <https://www.energy.ca.gov/programs-and-topics/programs/zero-emission-vehicle-related-manufacturing>.

total possible 45 points. While this program only had a one-time \$35 million fund to support projects, its approach could be adopted for other research, development, and demonstration programs. This approach to grant evaluation had letters of support on the docket from worker-centered and community-focused groups for its potential to create high-road jobs and bring benefits to disadvantaged communities.<sup>178</sup>

Other California agencies have also begun to require CBAs. In December 2012, the California High-Speed Rail Authority (CHSR) signed a CBA with local California labor unions and contractors based in economically disadvantaged areas.<sup>179</sup> California's Department of Toxic Substances Control (DTSC) has also begun to establish a CBA program for cleanup sites in vulnerable communities.<sup>180</sup>

### New York State Accelerated Renewable Energy Growth and Community Benefit Act

In 2024, New York State passed the Renewable Action Through Project Interconnection and Deployment (RAPID) Act, a law that requires community benefits as part of their accelerated renewables deployment effort.<sup>181</sup> The policy moved the Office of Renewable Energy Siting into the Department of Public Service and requires any rulemaking be approved by the Public Commission. It requires any project larger than 25 MW to obtain permits through the renamed Office of Renewable Energy Siting and Transmission. As a condition of permit approval, a provision requiring host community benefits will be required. The program has \$1,000/MW of support available for local government agencies and community intervenors. Renewable energy projects also require a Net Conservation Benefit Plan to mitigate any impacts to habitat or surface waters. The consultation

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<sup>178</sup> California Energy Commission, "Docket Log: 21-TRAN-05," accessed June 14, 2025, <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-TRAN-05>.

<sup>179</sup> "Community Benefits Agreement," California High Speed Rail Authority, accessed February 24, 2025, <https://hsr.ca.gov/business-opportunities/general-info/community-benefits-agreement/>.

<sup>180</sup> "Community Benefits Agreement," Department of Toxic Substances Control, accessed February 24, 2025, <https://dtsc.ca.gov/cleanup-in-vulnerable-communities-initiative-cvci/cba/>.

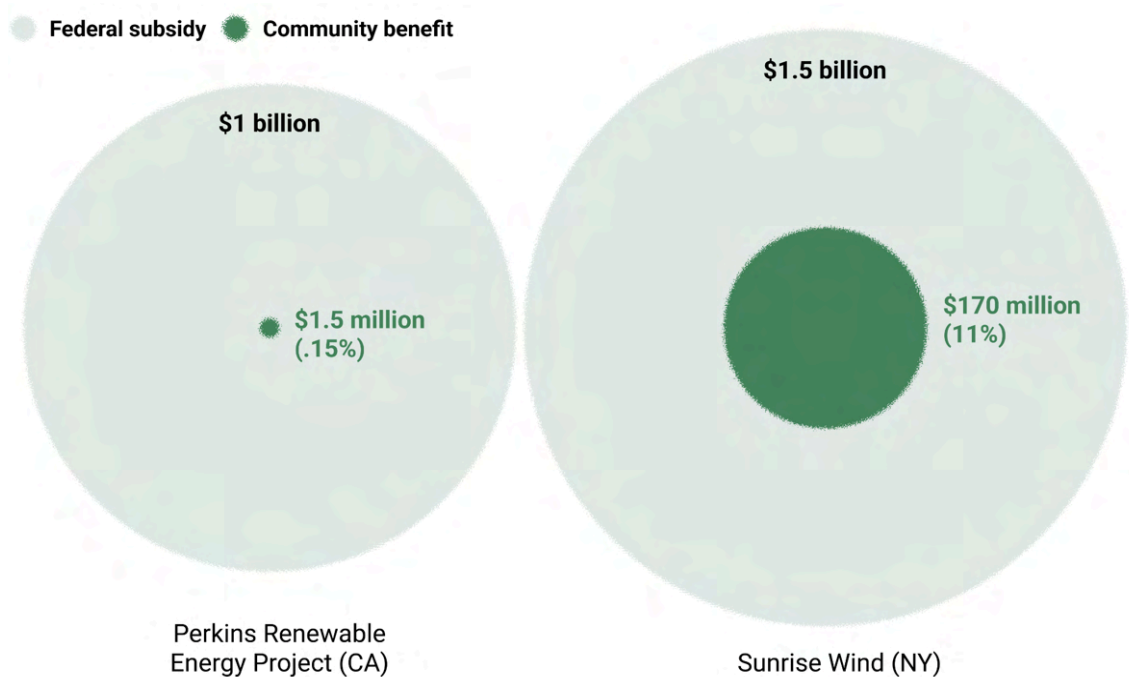
<sup>181</sup> Ekin Senlet et al., *RAPID Action: NYS Office of Renewable Energy Siting and Transmission Proposes Changes to Its Renewable Generation Siting Framework*, December 31, 2024, <https://www.barclaydamon.com/alerts/rapid-action-nys-office-of-renewable-energy-siting-and-transmission-proposes-changes-to-its-renewable-generation-siting-framework>.

process also requires consultation with Indigenous peoples and historic preservation groups. Projects that have been approved by the RAPID Act include Oxbow Hill Solar, Empire Wind 1, Sunrise Wind, and Hoffman Falls Wind.

## Relative value between direct federal investments in projects and direct community investments by project developers in California and New York.

| Location                       | Project and Company                               | Subsidy                                                                                        | Federal subsidy (\$) | Community benefit (\$) | Benefit as % of subsidy |
|--------------------------------|---------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------|------------------------|-------------------------|
| Imperial County, California    | Perkins Renewable Energy Project, Intersect Power | 30% US Investment Tax Credit (ITC) + 10% energy community bonus + 10% domestic content bonus   | \$1 billion          | \$1.5 million          | 0.15%                   |
| Offshore Long Island, New York | Sunrise Wind, Ørsted                              | 30% U.S. Investment Tax Credit (ITC) + 10% energy community bonus + 10% domestic content bonus | \$1.5 billion        | \$170 million          | 11%                     |

## Scale of federal subsidies and community benefits



The two respective state policies requiring CBAs for accelerated renewable energy development in California and New York offer a basis for comparison. These projects have leveraged similar federal subsidies. However, when we compare the financial benefits to communities as a percentage of those subsidies, we find significant disparities. For example, the Sunrise Wind Project in New York

provides community benefits equivalent to 11 percent of the federal subsidy, while the Perkins Renewable Energy Project in California offers just a tiny fraction: benefits equivalent to 0.11 percent of the subsidy.

## Municipal policy

### Detroit Community Benefits Ordinance

Once home to a thriving automobile industry in the mid-twentieth century, community members in Detroit, Michigan have experienced disinvestment, structural racism, and environmental injustice since the 1970s due to white flight to suburbs and outsourcing of auto industry labor around the world.<sup>182</sup> Community leaders in Detroit sought to recuperate underfunded public benefits from subsidized development projects, and CBAs that had become common in urban redevelopment projects offered models. In 2014, the Equitable Detroit Coalition was formed with support from the Sugar Law Center to organize and advocate for a citywide ordinance that would require CBAs for subsidized development projects. The coalition proposed requiring development projects valued at \$15 million or more that receive at least \$300,000 in tax incentives to enter a legally binding CBA.<sup>183</sup>

However, the Detroit City Council proposed a less stringent requirement with support from the mayor and the private sector, and in 2016, Detroit adopted the city council's proposed Community Benefits Ordinance (CBO) through a ballot initiative. Community organizations have expressed disappointment about the proposal that was adopted, but Detroit's CBO does require developers of certain projects to negotiate a CBA with a Neighborhood Advisory

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<sup>182</sup> Gobert, "Environmental Justice, Community Benefits and the Right to the City. The Case of Detroit"; Sarah Gargaro, "A Seat at Whose Table? Analyzing Detroit's Community Benefit Ordinance as a Tool for Environmental Justice," *Michigan Journal of Environmental & Administrative Law* 13, no. 1 (2023): 218–54, <https://doi.org/10.36640/mjeal.13.1.seat>; Glencora Haskins and Lavea Brachman, "Advancing Future-Forward Mobility in Detroit's Legacy Automotive Cluster," *Brookings*, May 21, 2024, <https://www.brookings.edu/articles/advancing-future-forward-mobility-in-detroits-legacy-automotive-cluster/>; Abas Shkempi et al., "Linking Environmental Injustices in Detroit, MI to Institutional Racial Segregation through Historical Federal Redlining," *Journal of Exposure Science & Environmental Epidemiology* 34, no. 3 (2024): 389–98, <https://doi.org/10.1038/s41370-022-00512-y>.

<sup>183</sup> Devashree Saha et al., *Detroit's Community Benefits Ordinance: Lessons Learned About the Community Engagement Process and Its Outcomes* (World Resources Institute, 2024), <https://www.wri.org/research/detroits-community-benefits-ordinance-lessons-learned-about-community-engagement-process>.

Council (NAC).<sup>184</sup> The CBO process is triggered when a development project meets one or more of the following requirements:

- Is \$75 million or more in value
- Receives \$1 million or more in property tax abatements
- Receives \$1 million or more in value of city land sale or transfer

When the CBO process begins, the city conducts community outreach engagement over a 3-month period, usually over 5 to 6 formal community meetings, with the NAC serving in a leadership role as an intermediary between the community and the developer. Eligible members of the NAC must be all of the below:

- Residents of the impacted area
- Nominated by residents of the impacted area
- At least 18 years of age

The NAC consists of 9 members, who are selected as follows:

- 2 elected by residents of the impacted area
- 4 selected by the City of Detroit Planning and Development Department (with preference given to residents expected to be directly impacted by the project)
- 2 selected by the at-large Council Members
- 1 selected by the local District Council Member whose district contains the largest portion of the project

In November 2024, the World Resources Institute and Data for Progress assessed Detroit's CBO in a working paper. The authors found that Detroit's CBO has started to level the playing field by giving community members a seat at the table in conversations on development projects. Provisions on jobs and affordable housing were incorporated across 11 different projects, and many agreements also included community funding, education and training, green space, childcare, scholarships, local hiring, and home improvement. However, they and other researchers have also highlighted significant challenges that reflect inadequate community engagement. Local advocates and members of NACs expressed ongoing concerns about the high threshold for projects to trigger the CBO process,

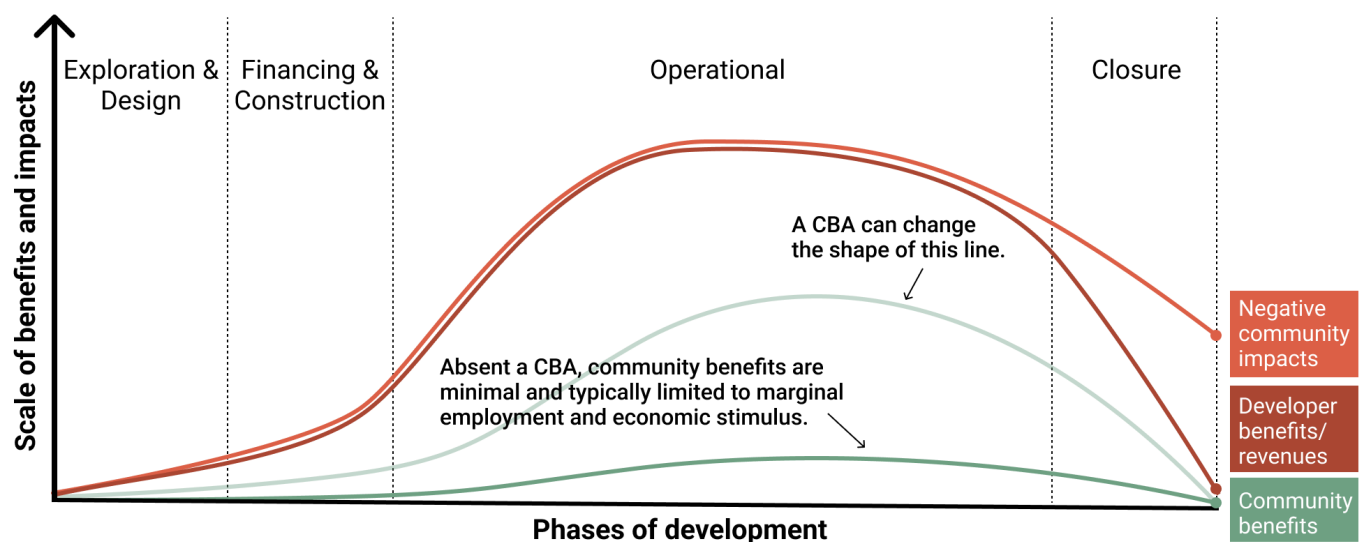
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<sup>184</sup> "Community Benefits Ordinance," City of Detroit, December 3, 2024, <https://detroitmi.gov/departments/planning-and-development-department/community-benefits-ordinance>.



underrepresentation of directly affected community members in the NAC selection process, the lack of adequate training and resources for NAC members, insufficient benefits relative to project impacts, and ineffective and unclear enforcement mechanisms.<sup>185</sup> The government ultimately makes final decisions on all projects. There are provisions for monitoring, but the city has the authority on enforcement.

## Comparing the timing and scale of community impacts and benefits with developers' benefits and revenue stream.



This points to potential shortcomings of mandating CBAs through government policy more broadly. Even if community members have a seat at the table, the government may still be able to rubber stamp a project and dismiss potential contract violations, depending on the way requirements for enforcement and transparency mechanisms are designed and implemented. Moreover, when governments require negotiated benefits agreements to be in place for subsidized projects, the timeline for negotiations is often hurried.<sup>186</sup> The industry may reap the benefits of these arrangements long before the community sees any benefits.

<sup>185</sup> Saha et al., *Detroit's Community Benefits Ordinance*.

<sup>186</sup> Lisa Berglund, "Early Lessons From Detroit's Community Benefits Ordinance," *Journal of the American Planning Association* 87, no. 2 (2021): 254–65, <https://doi.org/10.1080/01944363.2020.1823243>.

To improve Detroit's CBO, and to strengthen government requirements for CBAs more generally, WRI and Data for Progress recommend ensuring more equitable local representation in negotiations, sufficient resources and education for advisory council members, strong monitoring, enforcement, and transparency mechanisms, community impact assessments to address environmental justice and racial equity in community benefits, and analysis of pathways to full or partial community ownership.<sup>187</sup> Such equity sharing and community ownership may be achieved to address mistrust and distribute benefits more horizontally, through cooperatives or limited liability corporations. Nonetheless, community ownership requires significant capital, so financial mechanisms should be in place to mitigate risk.<sup>188</sup> It may be feasible to obtain financial support for community ownership of infrastructure projects that benefit the public, but other sectors like mineral extraction bring considerable risk and liability, presenting unique challenges. The next section of our report offers a series of case studies in which community coalitions have organized for or negotiated CBAs for proposed mineral resource extraction projects.

## Case Studies Across the Supply Chain in the United States

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<sup>187</sup> Saha et al., *Detroit's Community Benefits Ordinance*.

<sup>188</sup> First Nations Major Projects Coalition, *Ownership Model Handbook: First Nations Project Ownership and Access to Capital for Investment in Major Infrastructure Projects* (2019), <https://fnmpc.ca/wp-content/uploads/FNMPCOwnershipModelHandbookFebruary2019.pdf>.



## Upstream: Extractive Industries

### Alaska

#### State and corporate revenue-sharing

##### **Constitutionally mandated dividend for oil and gas**

Oil and gas extraction is a major industry in Alaska, generating 47 percent of the state's revenue according to a recent industry report.<sup>189</sup> With some of the largest oil fields in the United States, Alaska has a long history of benefit-sharing around oil and gas extraction, much of which is based on a shareholder model.<sup>190</sup> There are several components to benefit-sharing in Alaska.



The Trans Alaska Pipeline transports oil from Alaska's north slope to ports on the Gulf of Alaska for shipping. Photo by Robzor, [Pixabay](#), licensed under [Pixabay](#).

First, the Alaskan Constitution contains a provision that mandates sharing of mineral revenues. The Alaska Permanent Fund (APF) is a mechanism through which every resident of Alaska receives a share

<sup>189</sup> McKinley Research Group, LLC, *The Role of Oil & Gas Industry in Alaska's Economy* (Alaska Oil & Gas Association, 2023).

<sup>190</sup> Maria S. Tysiachniouk and Andrey N. Petrov, "Benefit Sharing in the Arctic Energy Sector: Perspectives on Corporate Policies and Practices in Northern Russia and Alaska," *Energy Research & Social Science* 39 (May 2018): 29–34, <https://doi.org/10.1016/j.erss.2017.10.014>.

of oil and gas revenue. The stated goal of the APF is to “convert a non-renewable natural resource into a renewable financial resource.”<sup>191</sup> The APF dates to the discovery of oil in the state: in 1969 oil was discovered, and as the Trans-Alaska Pipeline was constructed in 1974, decision-makers advocated for putting a portion of oil and mineral royalties into a permanent fund. The Alaskan Constitution was amended via a majority vote in 1976 to implement the APF. Article IX, Section 15 of the Alaska State Constitution states the following:

At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments.<sup>192</sup>

The APF has been active since 1976. Every eligible state resident receives an annual Permanent Fund dividend based on the value of the APF. In 2022, this amounted to \$3,284 per person; in 2023, it was \$1,312; in 2024, it was \$1,702.<sup>193</sup>

Second, revenue from Alaskan oil and gas is distributed to Native Alaskans through their role as shareholders of regional and village corporations, created in 1971 through the Alaska Native Claims Settlement Act (ANCSA).<sup>194</sup> There are 12 Alaska Native regional corporations that own land and hold subsurface mineral rights in Alaska. The Native regional corporations (many of which are engaged in many diversified business operations beyond natural resource

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<sup>191</sup> “History of the Alaska Permanent Fund,” Alaska Permanent Fund Corporation, accessed January 30, 2025, <https://apfc.org/who-we-are/history-of-the-alaska-permanent-fund/>.

<sup>192</sup> “Alaska’s Constitution,” accessed January 30, 2025, <https://ltgov.alaska.gov/information/alaskas-constitution/>.

<sup>193</sup> State of Alaska Department of Revenue, “Permanent Fund Dividend – Summary of Dividend Applications & Payments,” Permanent Fund Dividend, January 2025, <https://prd.pfd.alaska.gov/Division-Info/summary-of-dividend-applications-payments>.

<sup>194</sup> ANCSA was the largest land claims settlement in US history. Under ANCSA, Alaska Natives received 45 million acres of land, which was divided among over 200 village corporations and 12 regional corporations. The regional corporations also shared a settlement payment of \$962.5 million. The land claims settlement was different from the reservation system of the lower 48 states in that it established the regional and village corporation system in order to disburse the settlement payment and boost Alaska’s economy through creation of Alaska Native-owned business entities. ANCs are business entities and land held under ANCSA is considered private property. Village corporations typically own the surface land rights, while the regional corporations own the subsurface land rights, putting them in a position where they can develop oil, gas, and minerals. See: Mariel J Murray, “Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress,” *Congressional Research Service*, December 22, 2021, <https://crsreports.congress.gov/product/pdf/R/R46997>.

development) had a combined revenue of over \$9 billion in 2017 and \$10.5 billion in 2018.<sup>195</sup> Acknowledging that not all regions have equal access to natural resources, ANCSA Section 7(i) stipulates that 70 percent of Native corporation revenue from timber or subsurface natural resources must be shared across the regional corporations to account for differences in geographic location of oil and mineral resources, and a share of revenues also goes to 200 more local-scale Alaska Native village corporations.<sup>196</sup> Approximately 80,000 enrolled Native Alaskans hold shares in regional corporations and village corporations, and individuals receive annual dividends of between approximately \$300 to \$3,700 from resource development.<sup>197</sup> Alaska Native corporations also use their revenue to provide scholarships, internships, funding for cultural programs and language revitalization, and other community support.

The fact that Alaska's benefit-sharing system is enshrined in the state constitution is notable. The Indigenous-owned corporations created under ANCSA are another notable factor.<sup>198</sup> However, other research assessing Indigenous rights indicates that many Arctic mining and petroleum companies are not prepared to respect Indigenous rights.<sup>199</sup> Some of the concerns around the Alaska benefit-sharing model include critiques around equity and distribution of shares through ANCSA: there are concerns that the model is not equitable, and eligibility requirements that rely upon inherited or gifted shares can exclude younger Indigenous residents. There are also debates over extraction projects between and among different village corporations and regional corporations, especially where extraction places big burdens on local communities. Finally, researchers studying benefit-sharing in the region have described broader

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<sup>195</sup> Resource Development Council, "Native Corporations Overview," accessed March 10, 2025, <https://www.akrdc.org/alaska-native-corporations>.

<sup>196</sup> NRCS, "Alaska Native Corporations," accessed March 10, 2025, <https://www.nrcs.usda.gov/sites/default/files/2022-10/Alaska%20Native%20Corporations.pdf>.

<sup>197</sup> ANCSA Regional Association, *Economic Impacts*, n.d., accessed March 10, 2025, <https://ancsaregional.com/economic-impacts/>.

<sup>198</sup> Maria S. Tysiachniouk et al., "Towards Understanding Benefit Sharing between Extractive Industries and Indigenous/Local Communities in the Arctic," *Resources* 9, no. 4 (2020): 4, <https://doi.org/10.3390/resources9040048>.

<sup>199</sup> Indra Overland, "Ranking Oil, Gas and Mining Companies on Indigenous Rights in the Arctic," SSRN Scholarly Paper no. 3023161 (Social Science Research Network, 2016), <https://papers.ssrn.com/abstract=3023161>.

concerns articulated by Indigenous people around resource dependency and the paternalism of the oil industry.<sup>200</sup>

### **Corporate Agreements and Community Concerns over Mining in Alaska**

Mining is another significant extractive industry in Alaska. The proposed Donlin Gold mine of Donlin Gold LLC (DG) is a joint venture of two Canadian mining corporations, Barrick Gold Corp and NOVAGOLD, who claim that the project will become the world's largest pure gold mine.<sup>201</sup> DG has been in discussions about mineral extraction for over 20 years with the Calista Corporation (Calista), an Alaska Native regional corporation established under ANCSA for western Alaska, which has more than 37,300 Native stakeholders, mostly from Central Alaskan Yup'ik Tribes and groups.<sup>202</sup> DG says that Calista's Board selected this land through ANCSA because of the potential for mineral development and that they were invited to develop property for the benefit of shareholders.<sup>203</sup> Calista has an agreement with DG to secure a hiring preference for its shareholders, spouses, and descendants. DG has also negotiated with the Kuskokwim Corporation (KC), a corporation encompassing 10 Alaskan Native villages along the middle Kuskokwim River.

#### **Donlin Gold LLC's (DG) agreement with Kuskokwim Corporation (KC)**

This includes a surface use agreement, an agreement for the construction and operation of Jungjuk (Angyaruaq) Port, an agreement to support education in the form of a college scholarship competition, and workforce development and training through an independent nonprofit they formed, Donlin Gold Kuskokwim Education Foundation.<sup>204</sup> In addition, DG maintains the Kuskokwim River ice road, funds Bethel Search and Rescue, supports culture camps, and has other

<sup>200</sup> Andrey N. Petrov and Maria S. Tysiachniouk, "Benefit Sharing in the Arctic: A Systematic View," *Resources* 8, no. 3 (2019): 3, <https://doi.org/10.3390/resources8030155>.

<sup>201</sup> "Southwest Alaska Tribes File Two Separate State Appeals Challenging the Donlin Gold Mine," *Earthjustice*, October 2, 2023, <https://earthjustice.org/press/2023/southwest-alaska-tribes-file-two-separate-state-appeals-challenging-the-donlin-gold-mine>.

<sup>202</sup> "Calista Corporation June 2024 Statement on Proposed Donlin Gold Project," Calista Corporation, accessed January 30, 2025, <https://www.calistacorp.com/news/june-2024-statement-on-proposed-donlin-gold-project/>; Donlin Gold, "The Impact of Mining in the Kuskokwim, Episode 4," 2022, <https://www.georgetowntcenvr.com/miningwebinar>.

<sup>203</sup> Donlin Gold, "The Impact of Mining in the Kuskokwim, Episode 4."

<sup>204</sup> Donlin Gold, "The Impact of Mining in the Kuskokwim, Episode 4"; DONLIN GOLD KUSKOKWIM EDUCATIONAL FOUNDATION – THE KUSKOKWIM CORPORATION, n.d., accessed January 30, 2025, <https://kuskokwim.com/dgkef/>.



local projects. There has been opposition because of impacts from building a 315-mile-long natural gas pipeline to power the mine.<sup>205</sup> In 2018, DG also signed an agreement with the Alaska Mental Health Trust Authority, who own properties where they plan compensatory mitigation of wetlands. DG expects to disturb 2,800 acres of wetlands along the middle Kuskokwim River, and its compensatory mitigation efforts involve purchasing a deed restriction for 1,933 acres of wetlands and limiting surface development at a site far from the mine site, at Tyonek in the Cook Inlet near Anchorage.<sup>206</sup>

Calista asserts that the proposed Donlin Gold mine “will not impair our environment or subsistence way of life [...] [will] balance economic development needs with environmental protection and the preservation of subsistence practices [...] and [has] well-defined mechanisms in place for dialogue and to provide adaptive management processes in Project implementation.”<sup>207</sup>

Despite these assurances, there has been significant resistance to the project by Alaskan Native residents, other locals, and environmental groups. A 2021 survey completed by the Orutsararmiut Native Council (ONC) gauged local residents’ and Tribal members’ experiences and perceptions of the safety and environmental protection assurances of the project in relation to subsistence reliance on the Kuskokwim River. It found that of the more than 300 survey respondents, 76.5 percent opposed the proposed mine and only 10.5 percent supported it, even though 88 percent indicated they were Calista Corporation shareholders. Furthermore, 89.3 percent of respondents were aware that the mine would affect their community in some way, and 66 percent of respondents were aware of the risks associated with transporting mercury and cyanide used in the mining process.<sup>208</sup> It has been reported that the agreement negotiations did

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<sup>205</sup> Sage Smiley et al., “Pipeline Proposed to Power Donlin Mine Could Have Impacts from Y-K Delta to Cook Inlet,” *Science and Environment*, KYUK, May 29, 2024, <https://www.kyuk.org/science-and-environment/2024-05-28/pipeline-proposed-to-power-donlin-mine-could-have-impacts-from-y-k-delta-to-cook-inlet>.

<sup>206</sup> Meredith Witte, “Compensatory Mitigation: What Is It?,” *The Native Village of Georgetown Environmental Department*, January 9, 2019, <https://www.georgetowncenvr.com/blog/2019/01/10/compensatory-mitigation-what-is-it>.

<sup>207</sup> Calista Corporation, “Calista Corporation June 2024 Statement on Proposed Donlin Gold Project.”

<sup>208</sup> “Tribal Citizens Voice Strong Opposition to Donlin Gold in Recent Orutsararmiut Native Council Survey,” *The Delta Discovery, Inc.*, November 10, 2021, <https://deltadiscovery.com/tribal-citizens-voice-strong-opposition-to-donlin-gold-in-recent-orutsararmiut-native-council-survey/>.

not include input from shareholders and there was not a vote of shareholders to weigh in on the decision.<sup>209</sup>

Specific environmental harms include the potential for releases of mercury from the mine and its impacts on water quality, fish, and people throughout the lower Kuskokwim River and Yukon–Kuskokwim Delta. There are also concerns about the extensive impacts from building a natural gas pipeline for powering the project that extends from the mine site to Cook Inlet, over 200 miles.<sup>210</sup> The ONC and two villages have filed suit in federal court to stop the Donlin Gold mine because of alleged flaws in the environmental and subsistence analyses that formed the basis for the federal authorization of the project. There are also two lawsuits in state court opposing the project approval process.<sup>211</sup> Despite the development of CBAs and the Calista and Kuskokwim Native corporations supporting the development of the Donlin Gold mine, most Yukon–Kuskokwim Tribes and villages, along with the regional health corporation and regional Tribal consortium, are on record opposing the mine, with the Village of Crooked Creek being only Native village that has filed an amicus brief in support of federal agencies.<sup>212</sup>

Other mining projects elsewhere in Alaska have generated similar conflicts. Another mine project in western Alaska is the proposed Graphite One mine in the Seward Peninsula. Graphite is used in manufacturing battery anodes for batteries. Graphite One's EIS process is ongoing, and a community meeting on the proposed project held in Nome in April 2024 drew over 60 people. Participants raised concerns about mining impacts on water quality, wildlife, noise,

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<sup>209</sup> "Tribal Citizens Voice Strong Opposition to Donlin Gold in Recent Orutsarmiut Native Council Survey."

<sup>210</sup> Riley Board and Sage Smiley, "Pipeline Proposed to Power Donlin Mine Could Have Impacts from Y-K Delta to Cook Inlet," KBBI AM 890, May 29, 2024, <https://www.kbbi.org/2024-05-28/pipeline-proposed-to-power-donlin-mine-could-have-impacts-from-y-k-delta-to-cook-inlet>.

<sup>211</sup> Board and Smiley, "Pipeline Proposed to Power Donlin Mine Could Have Impacts from Y-K Delta to Cook Inlet"; "Orutsarmiut Native Council (ONC), Tuluksak Native Community, and Organized Village of Kwethluk v. US Army Corps of Engineers, US Bureau of Land Management, and US Department of Interior," Complaint for declaratory and injunctive relief, 2023, <https://www.courthousenews.com/wp-content/uploads/2024/09/orutsarmiut-native-council-vs-blm.pdf>; "Orutsarmiut Native Council (ONC) and Native Village of Eek v. John Boyle, Alaska Department of Natural Resources, and Donlin Gold, LLC," Notice of Appeal, 2023, <https://earthjustice.org/wp-content/uploads/2023/10/onc-et-al-notice-of-appeal-10-2-23.pdf>.

<sup>212</sup> Mother Kuskokwim Tribal Coalition, "Mother Kuskokwim Tribal Coalition Deeply Disappointed in Alaska's Congressional Delegation's Support for Donlin Gold Mine," Earthjustice, April 23, 2024, <https://earthjustice.org/press/2024/mother-kuskokwim-tribal-coalition-deeply-disappointed-in-alaskas-congressional-delegations-support-for-donlin-gold-mine>.

air quality, and subsistence hunting and berry picking.<sup>213</sup> Similar to the Donlin Gold mine case, there are significant differences between the Native regional corporation, which supports the project, and several Native villages, which are skeptical about the project. The mining corporation has hired a local consulting firm, Uqaqti Consulting, to manage local communications and community engagement.

## Nevada

### Voluntary measures for mining

Mining is a key industry in Nevada. During the 2021–2022 fiscal year, mining in Nevada produced \$9.3 billion in gross proceeds.<sup>214</sup> Nearly three-quarters of gold produced in the US came from mines in Nevada, making the state the fifth largest gold producer in the world.<sup>215</sup> In addition to gold, many other minerals are mined in “the Silver State,” including of course silver, as well as copper and lithium.<sup>216</sup>

As in many other parts of the world, the mining industry in Nevada showcases its commitment to ESGs and sustainability—socially as well as environmentally. In Nevada informal approaches to “community engagement” have often been taken by mines, actions that require less commitment, are more ad hoc, and are relatively easy for mining corporations to control. For example, the statewide mining industry association touts a wide variety of voluntary contributions made possible through mining, including charitable donations to local nonprofits, education, small business programs, and first responders.<sup>217</sup> A more specific example is from Albemarle, operator of Silver Peak mine, the only lithium brine evaporation mine in North America currently in production at the time of writing. There

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<sup>213</sup> Ben Townsend, “Graphite One Community Meeting: Economic Promise Meets Environmental Worry – KNOM Radio Mission,” News, <https://Knom.Org/>, April 24, 2024, <https://knom.org/2024/04/24/graphite-one-community-meeting-economic-progress-meets-environmental-worry/>.

<sup>214</sup> Division of Local Government Services Nevada Department of Taxation, “Net Proceeds of Minerals Bulletin,” 2022, <https://epubs.nsla.nv.gov/statepubs/epubs/377719-2021-2022.pdf>.

<sup>215</sup> Kate A Berry et al., *Extracting Ore, Mining Groundwater: Governmental Indicators and the Politics of Water Rights for the Mining Industry in Nevada, USA*, 17, no. 2 (2024); Mike Visher and Lucia Patterson, “Major Mines of Nevada 2021: Mineral Industries in Nevada’s Economy,” Nevada Bureau of Mines and Geology, 2022, <https://pubs.nbmgs.unr.edu/Major-mines-of-Nevada-2021-p/p033.htm>.

<sup>216</sup> Rob Ghiglieri and Lucia Patterson, “Major Mines of Nevada 2023: Mineral Industries in Nevada’s Economy,” NBMG Publications, 2024, <https://pubs.nbmgs.unr.edu/product-p/p035.htm>.

<sup>217</sup> *Mining in Nevada* – Nevada Mining Association, May 10, 2022, <https://nevadamining.org/mining-in-nevada/>.

is little evidence that Albemarle relies much on CBAs in Nevada, although they deploy CBAs in some of their other mining operations, as outlined above in the case of the Atacama Desert in Chile. Only 6 percent of Albemarle's employees in the US are covered by any sort of collective bargaining agreement, and Albemarle mentions no other CBAs in place at Silver Peak mine.<sup>218</sup>



Thacker Pass Lithium Mine under construction in 2024. Photo by Emmett Hopkins.

Another example is Loneer, the operator of the proposed Rhyolite Ridge lithium mine, which embraces a voluntary approach to addressing endangered species issues. A plant species around their mine site, Tiehm's buckwheat, was classified as an endangered species in December 2022 and 910 acres were designated as critical habitat, all of which are part of the mining project. As a result, this endangered plant species is at direct risk of extinction from the project. Loneer's approach has been to take a few voluntary measures and establish a protection plan, rather than to abandon their mining

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<sup>218</sup> Albemarle, 2023 Sustainability Report (2023), [https://www.albemarle.com/sites/default/files/2024-06/Albemarle%202023%20Sustainability%20Report%20061124\\_0.pdf](https://www.albemarle.com/sites/default/files/2024-06/Albemarle%202023%20Sustainability%20Report%20061124_0.pdf).

plans or develop a CBA. In November 2024, the Center for Biological Diversity sued the US Bureau of Land Management (BLM) for approving the project with a fast-tracked environmental review that excluded a full review by the public and the agency.<sup>219</sup> In 2025 Eureka County, Nevada signed a development agreement with Loneer, which is focused on mitigation from mining development. The agreement provides Loneer with some tax relief, help with easements and right-of-ways, and promises to expedite government permitting in exchange for Loneer helping Eureka County with funds to expand their emergency and law enforcement services because these are expected to have increased demands as a result of the new mine. The agreement also has Loneer building its own wastewater treatment facility, finding their own solid waste disposal site, giving hiring preferences to local residents, and providing scholarships for local students who pursue college education in mining-related fields.<sup>220</sup>

Not all mines operating in Nevada avoid CBAs. An example is Coeur Mining's 2020 agreement with Crawford Cattle LLC that mitigates their Rochester mine's disturbance of a sage grouse habitat at the mine. Under this CBA, the mine, located in Pershing County, funds 3,000 acres of habitat enhancement and secures conservation credits at the ranch's lands in Elko and Humboldt Counties.<sup>221</sup> Such voluntary mitigation or compensation is somewhat unconventional to include in a CBA, but Coeur Rochester mine also made quite modest voluntary community contributions in the form of a few college scholarships, paid internships, and delivering holiday meals; the Rochester mine's community contributions in 2023 were only about \$60,000.<sup>222</sup> Another example is Kinross Gold's Nevada operations at their Round Mountain and Bald Mountain mines. Kinross has adopted both a "Safety and Sustainability Policy" with respect to working with

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<sup>219</sup> Jeniffer Solis, "Conservation Groups Sue U.S. Dept. of Interior over Rhyolite Ridge Lithium Mine," *Nevada Current*, November 7, 2024, <https://nevadacurrent.com/2024/11/07/conservation-groups-sue-u-s-dept-of-interior-over-rhyolite-ridge-lithium-mine/>.

<sup>220</sup> County of Esmeralda, State of Nevada, and Loneer Rhyolite Ridge LLC. "Development Agreement By and Between Esmeralda County and Loneer Rhyolite Ridge LLC." 2025. <https://cms2.revize.com/revize/esmeraldanew/Development%20Agreement%20Esmeralda%20County%20Rhyolite%20Ridge%20Loneer%20Draft%20031225%20REDLINE%20to%20draft%20dated%20011625.pdf>.

<sup>221</sup> Coeur Mining, "Coeur Rochester – Environment: Sage Grouse. Copy of Nevada Dept. of Conservation & Natural Resources Press Release. First-of-Its Kind Land Conservation Agreement Will Protect Greater Sage-Grouse Habitat, Support Rural Economy.," June 4, 2020, <https://www.coeur.com/operations-projects/rochester-nv/default.aspx>.

<sup>222</sup> Coeur Mining, *2023 ESG Report* (2023), [https://s201.q4cdn.com/254090064/files/doc\\_downloads/2024/04/coeur-esg-report-16-may-2024-compressed.pdf](https://s201.q4cdn.com/254090064/files/doc_downloads/2024/04/coeur-esg-report-16-may-2024-compressed.pdf).



Indigenous communities and has developed a “Site Responsibility Plan” that guides their work with local communities, the key elements of which are engagement, evaluation, monitoring, and action.<sup>223</sup> In addition to several forms of ad hoc voluntary community engagement and contributions, since 2007 the Round Mountain mine has enacted a formal agreement with the Western Shoshone people of Big Smoky Valley that covers cultural monitoring and college scholarships, and the Bald Mountain mine has been developing a cultural monitoring agreement with the Duckwater Shoshone Tribe since 2016.<sup>224</sup>

Other mines in Nevada have developed agreements addressing specific water issues that relate to community concerns. The Polish corporation KGHM, the current operator of the Robinson copper mine, developed an agreement in 2017 to pay White Pine County to use their water rights; however, the mine terminated the agreement midway through the 3-year agreement.<sup>225</sup> At Robinson mine, KGHM’s plans for expansion—along with the mine’s previous owner’s—involved massive dewatering that threatened to impact Murray Springs, the City of Ely’s main municipal water source.<sup>226</sup> In response, KGHM struck an agreement with Ely to address the mine’s impact and improve upon the City of Ely’s municipal water and stormwater system.<sup>227</sup> In another instance, Newmont Mining Corporation, a US company, developed a water rights agreement with the sister cities of West Wendover, NV and Wendover, UT in 2016 before mining started. This CBA required that the mine pay cash to the cities, which involves paying for the construction of two new city wells and making annual energy payments to pump groundwater and do road maintenance.<sup>228</sup> In turn,

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<sup>223</sup> Kinross Gold, *The Kinross Approach to Sustainability*. (2020), [https://s2.q4cdn.com/496390694/files/doc\\_downloads/sustainability/2020/12/k.4.263-Kinross-Sustainability-Policy\\_Dec11.pdf](https://s2.q4cdn.com/496390694/files/doc_downloads/sustainability/2020/12/k.4.263-Kinross-Sustainability-Policy_Dec11.pdf).

<sup>224</sup> Kinross Gold, “Corporate Responsibility Report,” 2017, 82, [https://s2.q4cdn.com/496390694/files/doc\\_downloads/corp-responsibility/2017/2017-Corporate-Responsibility-Report.pdf](https://s2.q4cdn.com/496390694/files/doc_downloads/corp-responsibility/2017/2017-Corporate-Responsibility-Report.pdf); Kinross Gold, *2023 Sustainability Report: Strong Fundamentals, Trusted Partner*. (2023), [https://s2.q4cdn.com/496390694/files/doc\\_downloads/sustainability/2024/Kinross-Gold-2023-Sustainability-Report-Final.pdf](https://s2.q4cdn.com/496390694/files/doc_downloads/sustainability/2024/Kinross-Gold-2023-Sustainability-Report-Final.pdf).

<sup>225</sup> Amanda Hilton, “Letter to Mr. Richard Howe, Chairman of White Pine County Commission,” February 27, 2020, <https://www.whitepinecounty.net/DocumentCenter/View/5140/2b1a>.

<sup>226</sup> Henry Brean, “Mine Could Evacuate Ely’s Water Supply,” *Las Vegas Review-Journal*, February 24, 2010, <https://www.reviewjournal.com/news/mine-could-evacuate-elys-water-supply/>.

<sup>227</sup> Nevada Mining Association, *Robinson Nevada Mining Co. Assists City of Ely with Nearly \$4 Million for Water System Enhancements - Nevada Mining Association*, Post, April 18, 2012, <https://nevadamining.org/robinson-nevada-mining-co-assists-city-of-ely-with-nearly-4-million-for-water-system-enhancements/>.

<sup>228</sup> “Appendix 2A Surplus Water Service Agreement Among Newmont and the Cities,” 2013.



the mine can use the cities' water rights, gains control over a regionally significant spring, and secures a pact between the mine and the cities that was hailed by the Nevada governor.<sup>229</sup>

In 2019, Newmont Mining, mentioned above, through a joint venture with Barrick, a Canadian mining corporation, formed Nevada Gold Mines for their operations in Nevada. In a few short years, this joint venture has become the world's largest gold producer.<sup>230</sup> Nevada Gold Mines highlights its voluntary contributions, including an early learning center, children's advocacy center, museum, senior center, and city infrastructure development.<sup>231</sup> In less than a year after forming, Nevada Gold Mines proposed a single CBA with seven Tribes, which covered a wide range of issues, including mutual cultural awareness, post-mining reclamation, employment, community wellness programs, and educational scholarships.<sup>232</sup> This CBA was summarily rejected by three of the Tribes, who sent a letter to Nevada Gold Mines explaining line by line the problems with the language and framing of the proposed agreement.<sup>233</sup> Although some of the Tribes eventually signed this agreement with Nevada Gold Mines, this CBA has generated divisions within and between Tribes related to representation, taxation, and Tribal consultation.<sup>234</sup>

### **The Controversial CBA for the Thacker Pass Lithium Mine**

The development of Lithium Americas' proposed Thacker Pass lithium mine has been one of the most publicly visible mining situations of recent years. In 2022 a CBA was signed by the mine and the Tribal Council of the Fort McDermitt Shoshone Paiute Tribe, which would have the mine building a preschool, a

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<sup>229</sup> City of West Wendover, "Newmont Cuts the Ribbon on the Long Canyon Gold Mine," September 28, 2016, <https://www.westwendovercity.com/Home/Components/News/News/80/15>.

<sup>230</sup> Dean Belder, "Top 10 Gold-Mining Companies," *Investing News Network*, August 13, 2024, <https://investingnews.com/daily/resource-investing/precious-metals-investing/gold-investing/top-gold-mining-companies/>.

<sup>231</sup> Nevada Gold Mines, "Community Benefit Footprint," 2023, [https://s25.q4cdn.com/322814910/files/doc\\_downloads/ngm/NGM\\_2023\\_Community\\_Impact\\_Report.pdf](https://s25.q4cdn.com/322814910/files/doc_downloads/ngm/NGM_2023_Community_Impact_Report.pdf).

<sup>232</sup> Nevada Gold Mines, "Collaborative Agreement - Revised," 2020, <https://www.documentcloud.org/documents/21171430-collaborative-agreement-2020-update/>.

<sup>233</sup> Colin L. Thomas, "The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation Letter to Nevada Gold Mines," November 9, 2020, <https://www.documentcloud.org/documents/21171429-the-shoshone-paiute-tribes-of-the-duck-valley-indian-reservation-letter-to-nevada-gold-mines/>; Daniel Rothberg and Nick Bowlin, "How a Mega Gold-Mining Merger Tightened a Company's Hold on Northern Nevada," *The Nevada Independent*, January 3, 2022, <https://thenevadaindependent.com/article/how-a-mega-gold-mining-merger-tightened-a-companys-hold-on-northern-nevada>.

<sup>234</sup> Rothberg and Bowlin, "How a Mega Gold-Mining Merger Tightened a Company's Hold on Northern Nevada."

community center, and a greenhouse for the Tribe, as well as a hiring and training program for Tribal members.<sup>235</sup> This CBA has been controversial among Fort McDermitt Tribal members. Some see mining as inevitable and are drawn to the potential for employment at the mine, while others have decried the mine's potential harms to "traditional land, significant cultural sites, water, air, and wildlife including greater sage grouse, Lahontan cutthroat trout, pronghorn antelope, and sacred golden eagles."<sup>236</sup> Former Tribal Chair Maxine Redstar has pointed to the mix of opinions among Tribal members, saying:

I'm not going to put a price on culture. I'm not going to put a price on tradition. But we're a small tribe. We're an indigent tribe. So it's hard to balance. It's hard to balance that. I respect the voice of our older members of the tribe. But I also have young people that are looking for guidance, that are looking toward being here for a very long time.

More broadly, approaches taken to Tribal consultation by Lithium Americas and the US Bureau of Land Management have been litigated by the Burns Paiute Tribe, Summit Lake Tribe, and Reno-Sparks Indian Colony and have been the subject of hundreds of media articles.

The mine has also been in dialogue with the local ranching community about a CBA. The issues being discussed include relocating an elementary school because of mine traffic, transportation safety issues, and local hiring plans. As recently as February 2025, Lithium Americas announced in a community meeting that construction of a new school was on hold due to corporate uncertainties about funding. Meanwhile, a local rancher sued the State of Nevada over water rights, arguing that the project will degrade his water rights and impact his ability to continue raising crops and cattle. This litigation was settled out of court in August 2025 with the promise that a CBA would be developed to secure benefits for the communities of Oroville and McDermitt.<sup>237</sup> Despite a graphic on their website that asserts that Lithium Americas is "being a good neighbor," the proposed mine and the CBA processes have exhausted and polarized residents and have been designed to deploy voluntary measures in ways that the mine corporation controls.<sup>238</sup>

<sup>235</sup> Lithium Americas, "Slideshow: Thacker Pass - Getting It Done through Key Partnerships," December 2023, <https://usea.org/sites/default/files/event-/AEMA.pdf>.

<sup>236</sup> People of Red Mountain, "People of Red Mountain Statement of Opposition to Lithium Nevada Corp's Proposed Thacker Pass Open Pit Lithium Mine," *Sierra Nevada Ally*, May 20, 2021, <https://sierranevadaally.org/2021/05/20/people-of-red-mountain-statement-of-opposition-to-lithium-nevada-corps-proposed-thacker-pass-open-pit-lithium-mine/>; Daniel Rothberg, "We're Just Somebody Little: Amid Plans to Mine Lithium Deposit, Indigenous, Rural Communities Find Themselves at the Center of the Energy Transition," *The Nevada Independent*, June 20, 2021, <https://thenevadaindependent.com/article/were-just-somebody-little-rural-indigenous-communities-on-the-frontlines-of-energy-transition-amid-plans-to-mine-major-lithium-deposit>.

<sup>237</sup> Alonzo, Amy. "Settlement Reached in Messy Thacker Pass Water Dispute." *The Nevada Independent*, August 15, 2025. <https://thenevadaindependent.com/article/settlement-reached-in-messy-thacker-pass-water-dispute>.

<sup>238</sup> People of Red Mountain, "People of Red Mountain Statement of Opposition to Lithium Nevada Corp's Proposed Thacker Pass Open Pit Lithium Mine"; Rothberg, "We're Just Somebody Little."



Sibanye-Stillwater Mining Company's mining operations in Montana's Beartooth Mountains. Photo by James St. John, [Flickr](#), licensed under [CC BY 2.0](#).

## Montana

### Enduring mining oversight and mitigation through a focused good neighbor agreement

In rural south-central Montana, Sibanye-Stillwater Mining Company (Sibanye), one of the world's largest precious metal miners, operates two underground mines to extract platinum and palladium destined for manufacturing catalytic converters in automobiles. Mine pollution threatens local rivers whose clean waters are crucial for agriculture and the area's world-class trout fishery, and mine traffic presents a serious safety issue on narrow rural roads. Following a dispute over a planned mine expansion in the late 1990s, Sibanye's predecessor Stillwater Mining Company and a conservation group called the Northern Plains Resource Council (NPRC), together with its two affiliate groups, Stillwater Protective Association and Cottonwood



Resource Council, agreed to negotiate an agreement that aimed to address community concerns and avoid costly litigation.<sup>239</sup>

The process of negotiating an agreement brought together strange bedfellows already accustomed to long legal battles over mine development. Indeed, Northern Plains and its affiliate groups had previously sued the State of Montana over the mine's permits, a process that went on for nearly a decade. But after the state legislature changed the very laws on which Northern Plains' lawsuit was based, a judge dismissed the lawsuit without prejudice, meaning that the substantive issues were unresolved and could be taken up at a later date, but this effectively required the conservation groups to start the process from scratch.



(Left) Water sampling to assess mine impacts to the Stillwater River, as required by the Good Neighbor Agreement. Photo by Tai Kondo Koester.  
(Right) The Stillwater River in Montana. Photo by James St. John, [Flickr](#), licensed under [CC BY 2.0](#).

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<sup>239</sup> "Good Neighbor Agreement," Northern Plains Resource Council, accessed February 10, 2025, <https://northernplains.org/good-neighbor-agreement/>; Erickson, Teresa. *A Seat at the Table: Stillwater Good Neighbor Agreement, From Conflict to Collaboration*. Northern Plains Resource Council, 2025. [https://northernplains.org/wp-content/uploads/2025/05/GNA\\_Seat\\_at\\_the\\_Table\\_WEB.pdf](https://northernplains.org/wp-content/uploads/2025/05/GNA_Seat_at_the_Table_WEB.pdf).



“ We could sue and try to hold back the timeframe of the [mining] development and hope they go away. But we decided against that [because] that was kind of fruitless. We were aware [of] good examples of failures in trying to delay, where you spend a lot of money and there's no influence at all. And so we just had to make that hard decision of [choosing] a different option—is there some way that we can make the performance of this company, this development acceptable?<sup>240</sup>

**Jerry Iverson, local rancher and NPRC member**

For Iverson and NPRC, the decision to negotiate with the mining company was motivated by the dismissal of the lawsuit and the prospect of having to start the litigation process anew, knowing that there was no guarantee of success. Negotiating became primarily about securing power and influence over mine development:

“ We wanted long-term power. We wanted to have influence on how the development occurred and what the impacts were. And the company does not want to give that away. We kind of had to take it. We had to be a sufficient threat to the company that they would be willing to give up some of their power in order for us to allow them into our community.<sup>241</sup>

**Jerry Iverson**

The negotiation process itself also presented significant challenges in rural Montana, where resource extraction has long driven the local economy. According to local rancher Paul Hawks, who also

<sup>240</sup> Jerry Iverson, personal communication to authors, 2024.

<sup>241</sup> Jerry Iverson, personal communication to authors, 2024.

participated in the original good neighbor agreement (GNA) negotiations as an NPRC member, existing local deference toward resource extraction led NPRC and its affiliates to only negotiate on their relatively narrow set of issues: “In no way were we representing the local officials or the voters of the county. We were just our own group. A lot of the county was against what we were doing because they basically thought we were going to shut the mine down and they wanted those jobs.”<sup>242</sup> For Iverson, limiting negotiations to NPRC, its affiliates, and the mining company ensured that NPRC’s values and influence would not be diluted: “Our opponents were not at the table with us. We had pretty strict values, [and] only people that supported our values would join our group and form a coalition of similarly valued people. And that’s what we had in our negotiations. We weren’t negotiating for everybody. We were negotiating just for ourselves.”<sup>243</sup>



(Left) Sibanye-Stillwater Mining Company's mining operations in Montana's Beartooth Mountains. Photo by James St. John, [Flickr](#), licensed under [CC BY 2.0](#). (Right) Surface of the capped tailings storage facility at the Stillwater Mine. Photo by Tai Kondo Koester.

In 2000, the parties successfully finalized negotiations on the good neighbor agreement (GNA), which established a complex framework for addressing the mines’ lifetime environmental and social impacts beyond federal and state regulations. The GNA directs the mining company to cover the cost of the Agreement’s implementation, including:

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<sup>242</sup> Paul Hawks, personal communication to authors, 2024.

<sup>243</sup> Jerry Iverson, personal communication to authors, 2024.



- hiring a manager and administrator employed as full-time staff of NPRC;
- funding two technical advisors chosen by the citizen groups;
- implementing an adaptive management plan for water to track pollution and its impacts;
- requiring progressive investments in mitigation efforts upon discovery of pollution exceedances;
- directing certain mine-owned parcels be placed under conservation easements;
- banning mine-sponsored housing outside of municipal boundaries; and
- managing traffic through a busing and carpool program for mine employees.<sup>244</sup>

In exchange, NPRC and its affiliates relinquished the right to sue over new mine permits while retaining the right to arbitrate to enforce the GNA.<sup>245</sup> Each of the two mine sites covered by the GNA is governed by a four-member oversight committee, including two voting members each from the mining company and NPRC.<sup>246</sup> The oversight committees have the ability to make decisions over a broad set of issues, such as:

- mitigation steps for mining activity;
- implementing and enforcing the GNA's adaptive management plan for water quality;
- managing employee busing and traffic plans;
- coordinating community outreach efforts regarding mine developments and safety;

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<sup>244</sup> "Good Neighbor Agreement between Stillwater Mining Company and Northern Plains Resource Council, Cottonwood Resource Council and Stillwater Protective Association"; Sibanye-Stillwater, "US PGM Factsheet: The Good Neighbor Agreement."

<sup>245</sup> Northern Plains Resource Council, "Good Neighbor Agreement."

<sup>246</sup> Ray Levy-Uyeda, "Can a Mining Corporation Ever Truly Be a Good Neighbor?," *Environment*, *The Guardian*, September 2, 2020, <https://www.theguardian.com/environment/2020/sep/02/mining-corporation-montana-good-neighbour-agreement>.

- researching and implementing new technology/best management practices; and
- reviewing and commenting on mine permit applications prior to submission to state and federal agencies.

For Hawks, another key element of the GNA is the contract's language that ties it to the physical mines as opposed to the company: "At some point down the road, [the company is] going to be sold to somebody else. Certainly in mining, that's the way it goes. They're there to make a profit, sell [the project] to somebody else. So you have to have strong language that carries with the project—so ours is tied to the mines, not to a company."<sup>247</sup> Tying the GNA to the physical mines has made it particularly durable to the mining industry's inherent volatility, allowing it to persevere through ownership changes in 2003, 2013, and 2017.<sup>248</sup>

Although the GNA remains in effect nearly a quarter-century after its signing, the Agreement is not without challenges. The GNA has suffered the strains of an ever-expanding scope of work—driven in part by changing mining operations—that demands serious time and energy from volunteer community members. The budget has ballooned to cover the costs of third-party engineering contractors.<sup>249</sup> There remains debate between Sibanye and NPRC over the costs of mine closure that will satisfy the Agreement's bonding requirements. There are also challenges posed by divisions within the community. Those sympathetic to the mines perceive backers of the GNA to be placing undue restrictions on mining activity, thereby stifling economic development. Changing rural demographics, driven by an influx of retirees, have exacerbated divisions, reflecting broader conflicts statewide over wealth and political leanings.<sup>250</sup>

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<sup>247</sup> Paul Hawks, personal communication to authors, 2024.

<sup>248</sup> Douglas Kenney et al., *Evaluating the Use of Good Neighbor Agreements for Environmental and Community Protection: Final Report* (Natural Resources Law Center, 2004), [https://scholar.law.colorado.edu/books\\_reports\\_studies/19](https://scholar.law.colorado.edu/books_reports_studies/19).

<sup>249</sup> Levy-Uyeda, "Can a Mining Corporation Ever Truly Be a Good Neighbor?"; Amanda Eggert, "Forest Service Forwards Plan to Keep East Boulder Mine Operating," *Montana Free Press*, December 1, 2023, <http://montanafreepress.org/2023/12/01/forest-service-forwards-plan-to-keep-east-boulder-mine-operating/>.

<sup>250</sup> Darrell Ehrlick, "Residents Demand More Protection from East Boulder Mining Company • Daily Montanan," *Daily Montanan*, September 10, 2021, <https://dailymontanan.com/2021/09/10/residents-demand-more-protection-from-east-boulder-mining-company/>.



The Salton Sea, an important wetland for migratory birds in Southern California. Photo by Circe Denyer, [Public Domain Pictures.net](https://www.publicdomainpictures.net/), licensed under [CC0 Public Domain](https://creativecommons.org/licenses/publicdomain/0.0/).

## California

### Refusing to Become a Green Sacrifice Zone in Imperial Valley

Despite a long history of environmental injustice and economic disinvestment, recently, it has been estimated that the Salton Sea geothermal resource area in Imperial Valley, California may contain up to 18 million metric tons of lithium that can be extracted.<sup>251</sup> That is enough lithium to make over 375 million batteries for electric vehicles (EVs), which is more than the total number of vehicles currently on US roads. The novel extraction method, geothermal direct lithium extraction (DLE), is a chemical process that has been framed as “more sustainable and environmentally superior” to the conventional methods of obtaining lithium through open-pit mining or brine

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<sup>251</sup> Patrick Dobson et al., *Characterizing the Geothermal Lithium Resource at the Salton Sea*, November 22, 2023, <https://escholarship.org/uc/item/4x8868mf>.

evaporation.<sup>252</sup> In 2020, California began to transform Imperial Valley into “Lithium Valley,” invoking the Golden State’s previous tech-boom nominalization of “Silicon Valley.”<sup>253</sup>

Nonetheless, life-cycle assessments suggest that geothermal DLE may be even more resource-intensive than conventional extraction methods, depending on the sources of energy and water needed for drilling and extracting lithium.<sup>254</sup> Pollution from heavy agriculture, border traffic, as well as dust and toxic lake spray from the rapidly receding Salton Sea have already put fenceline communities in the “Northend” of Imperial County, such as Brawley, Westmorland, and Calipatria, in the 99th percentile for asthma and the 92nd percentile for cardiovascular disease, according to CalEnviroScreen.<sup>255</sup> While they have not opposed Lithium Valley—given the strong local desire for jobs and economic development—environmental justice advocates from Komite Civico del Valle and Earthworks have raised concerns that the cumulative impacts of development could worsen their environmental health even further.<sup>256</sup> They have refused to let Imperial Valley become a “green sacrifice zone,” or an export zone for renewable energy and EV battery materials that faces environmental destruction and economic disinvestment instead of sorely needed

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<sup>252</sup> Silvia (Chair) Paz et al., *Report of the Blue Ribbon Commission on Lithium Extraction in California*, CEC-300-2022-009-F (California Energy Commission, 2022), <https://www.energy.ca.gov/publications/2022/report-blue-ribbon-commission-lithium-extraction-california-pursuant-assembly>.

<sup>253</sup> Benner and Pastor, *Charging Forward*.

<sup>254</sup> Maria L. Vera et al., “Environmental Impact of Direct Lithium Extraction from Brines,” *Nature Reviews Earth & Environment*, Nature Publishing Group, February 23, 2023, 1–17, <https://doi.org/10.1038/s43017-022-00387-5>; Vanessa Schenker et al., “Is Lithium from Geothermal Brines the Sustainable Solution for Li-Ion Batteries?,” *Renewable and Sustainable Energy Reviews* 199 (July 2024): 114456, <https://doi.org/10.1016/j.rser.2024.114456>; James J. A. Blair et al., “Lithium and Water: Hydrosocial Impacts across the Life Cycle of Energy Storage,” *WIREs Water* 11, no. 6 (2024): e1748, <https://doi.org/10.1002/wat2.1748>; Schenker, Vanessa, and Stephan Pfister. “Current and Future Impacts of Lithium Carbonate from Brines: A Global Regionalized Life Cycle Assessment Model.” *Environmental Science & Technology*, American Chemical Society, March 26, 2025. <https://doi.org/10.1021/acs.est.4c12619>.

<sup>255</sup> The Salton Sea was previously a part of the larger Ancient Lake Cahuilla, which resulted from periodic flooding of the Colorado River. The basin of the Salton Sea had dried up until the early 1900s when there was a malfunction with a gate that caused water from the Colorado River to flood the basin. As a result, the Salton Sea became an important wetland for migratory birds, as well as an agricultural sump. In 2003, a water transfer agreement diverted more water to cities like San Diego and Los Angeles, and this has negatively impacted the Salton Sea, which has been rapidly receding. This recession of the sea is causing more of the shoreline (referred to locally as the playa) to become exposed, releasing dust and toxic lake spray into the air that harm community members. Moreover, the Colorado River has entered a long-term drought accelerated by climate change, which will have serious knock-on effects for water availability in the region. See: Biddle, Trevor, Rajrupa Chakraborty, Qi Li, Mia Maltz, Jo Gerrard, and David Lo. “The Drying Salton Sea and Asthma: A Perspective on a ‘Natural’ Disaster.” *California Agriculture* 76 (April 2022): 27–36. <https://doi.org/10.3733/ca.2022a0003>; Abman, Ryan, Eric C. Edwards, and Danae Hernandez-Cortes. “Water, Dust, and Environmental Justice: The Case of Agricultural Water Diversions.” *American Journal of Agricultural Economics*, 2024, 1–18. <https://doi.org/10.1111/ajae.12472>; OEHA, “CalEnviroScreen,” November 27, 2014, <https://oehha.ca.gov/calenviroscreen>.

<sup>256</sup> Naimark, *Environmental Justice in California’s “Lithium Valley”: Understanding the Potential Impacts of Direct Lithium Extraction from Geothermal Brine*.

ecological restoration and community benefits.<sup>257</sup>

Even though it has been framed around the promise of lithium, Imperial County's ambitious Specific Plan for Lithium Valley includes a laundry list of potential industrial activities (in addition to offices, agriculture, and community-oriented uses), including:

- Airport
- Agrivoltaics
- Anaerobic Digesting Facility
- Automobile Wrecking and Recycling Yard
- Battery Energy Storage Systems (On-site and Commercial Scale)
- Business Industrial Parks
- Commercial-Scale Solar
- Data Centers
- Desalinization
- Electrical Vehicles Charging Stations (Passenger and Heavy Duty Vehicles)
- Floatovoltaics [sic] or Waterway-Covering Solar
- Geothermal Energy and Operations
- Geothermal Pipelines and Wells
- Green Hydrogen
- Hydrogen Fuel Station (Passenger and Heavy Duty Vehicles)
- Intermodal Rail Hub
- Logistics and Wholesale Distribution
- Manufacturing and Assembly
- Mineral Recovery, Conversion, Processing, and Production
- On-Site Solar

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<sup>257</sup> Dayna Scott and Adrian Smith, "Sacrifice Zones' in the Green Energy Economy: Toward an Environmental Justice Framework," *McGill Law Journal / Revue de Droit de McGill* 62, no. 3 (2017): 861-98, <https://doi.org/10.7202/1042776ar>; Alida Cantor and Sarah Knuth, "Speculations on the Postnatural: Restoration, Accumulation, and Sacrifice at the Salton Sea," *Environment and Planning A: Economy and Space* 51, no. 2 (2019): 527-44, <https://doi.org/10.1177/0308518X18796510>; Christos Zografos and Paul Robbins, "Green Sacrifice Zones, or Why a Green New Deal Cannot Ignore the Cost Shifts of Just Transitions," *One Earth* 3, no. 5 (2020): 543-46, <https://doi.org/10.1016/j.oneear.2020.10.012>; Andrea Brock et al., "Volatile Photovoltaics: Green Industrialization, Sacrifice Zones, and the Political Ecology of Solar Energy in Germany," *Annals of the American Association of Geographers* 111, no. 6 (2021): 1756-78; Clemens Greiner et al., "The Political Ecology of Geothermal Development: Green Sacrifice Zones or Energy Landscapes of Value?," *Energy Research & Social Science* 99 (May 2023): 103063, <https://doi.org/10.1016/j.erss.2023.103063>; Diego Marin et al., *Sacrifice Zones for Sustainability? Green Extractivism and the Struggle for a Just Transition* (EEB (European Environmental Bureau), 2023), <https://eeb.org/library/sacrifice-zones-for-sustainability-green-extractivism-and-the-struggle-for-a-just-transition-2/>; Ryan Juskus, "Sacrifice Zones: A Genealogy and Analysis of an Environmental Justice Concept," *Environmental Humanities* 15, no. 1 (2023): 3-24, <https://doi.org/10.1215/22011919-10216129>; Leonie Alena Saleth and Ingrid Varov, "Anticipating Lithium Extraction in Northern Portugal: A Sacrifice Zone in the Making?," *Journal of Political Ecology* 30, no. 1 (2023): 1, <https://doi.org/10.2458/jpe.4849>; Naimark, *Environmental Justice in California's "Lithium Valley": Understanding the Potential Impacts of Direct Lithium Extraction from Geothermal Brine*; Britton et al., "Hydrosocial Imaginaries of Green Extractivism."





The John L. Featherstone (Hudson Ranch I) Geothermal Power Plant, operated by Cirq, where EnergySource Minerals is developing lithium. Photo by James Blair.

- Outdoor Storage of Trucks, Trailers, Shipping Containers
- Rail
- Recycling Centers
- Subsurface Geothermal Directional Drilling
- Temporary Contractors Equipment and Storage Yard
- Utilities
- Wastewater Treatment Plant
- Water Storage Facility Regional Scale<sup>258</sup>

<sup>258</sup> Rick Engineering Company. "Lithium Valley Draft Specific Plan." County of Imperial, February 2025. [https://imperialcounty.org/wp-content/uploads/2025/02/February25DraftLVSP\\_combined.pdf](https://imperialcounty.org/wp-content/uploads/2025/02/February25DraftLVSP_combined.pdf).



Environmental justice advocates have raised concerns about potential cumulative impacts of this massive development project related to water consumption, air quality, hazardous waste, Tribal cultural resources, and seismic activity, especially in an arid desert that already has high rates of pollution and extreme heat.<sup>259</sup> Tribal leaders and elders from the Kwaaymii Laguna Band of Indians, the Fort Yuma Quechan Indian Tribe, and the Agua Caliente Band of Cahuilla Indians have decried the lack of meaningful consultation and consent.<sup>260</sup> The proposed development area for Lithium Valley features sacred sites, such as mud pots, mud volcanoes, and lava domes, including Obsidian Butte, Southern California's only source of the culturally important black rock.<sup>261</sup> The Salton Sea region is home to several disadvantaged communities, particularly Mexican migrant farmworkers and their families.

### Mitigation Disguised as Community Benefits

In Imperial Valley, the necessary mitigation of local constraints in order to develop has historically been framed as the main benefit of development for the community.

<sup>259</sup> Shohreh F. Farzan et al., "Assessment of Respiratory Health Symptoms and Asthma in Children near a Drying Saline Lake," *International Journal of Environmental Research and Public Health* 16, no. 20 (2019): 20, <https://doi.org/10.3390/ijerph16203828>; Jill E. Johnston et al., "The Disappearing Salton Sea: A Critical Reflection on the Emerging Environmental Threat of Disappearing Saline Lakes and Potential Impacts on Children's Health," *Science of The Total Environment* 663 (May 2019): 804–17, <https://doi.org/10.1016/j.scitotenv.2019.01.365>; Naimark, *Environmental Justice in California's "Lithium Valley": Understanding the Potential Impacts of Direct Lithium Extraction from Geothermal Brine*; Margaret Slattery et al., "What Do Frontline Communities Want to Know about Lithium Extraction? Identifying Research Areas to Support Environmental Justice in Lithium Valley, California," *Energy Research & Social Science* 99 (May 2023): 103043, <https://doi.org/10.1016/j.erss.2023.103043>; Britton et al., "Hydrosocial Imaginaries of Green Extractivism."

<sup>260</sup> Imperial County Appeal Hearing on the Hell's Kitchen Lithium Project, January 23, 2024. [https://imperial.granicus.com/player/clip/2496?view\\_id=2&redirect=true](https://imperial.granicus.com/player/clip/2496?view_id=2&redirect=true) (02:18:10 – 2:22:50, 02:26:10 – 02:27:55, 02:32:10 – 02:35:35).

<sup>261</sup> Gates, Thomas, and Kristina Crawford. *Ethnographic Assessment of the Importance of Obsidian Butte to the Native American Community, Imperial County, California*. Docket 02-AFC-2C. California Energy Commission, 2010; Shackley, M. Steven. "Natural and Cultural History of the Obsidian Butte Source, Imperial County, California." *California Archaeology* 11, no. 1 (2019): 21–43. <https://doi.org/10.1080/1947461X.2019.1581977>; Britton et al., "Hydrosocial Imaginaries of Green Extractivism."



“Communities are often being sold mitigation as community benefits. If there is an increase of 100 trucks a day, and we have to build a road, that is mitigation, not a community benefit. If there is a need for clean water for wastewater, that is mitigation, not community benefit. That’s how communities lose, a lot of times being robbed.”<sup>262</sup>

**Luis Olmedo, Executive Director of Comite Civico del Valle**

A cautionary tale for false promises of public benefits in Imperial Valley has been utility-scale solar development.<sup>263</sup> Imperial Valley’s designated solar development zones, such as the Chocolate Mountains and Imperial Valley East Solar Energy Zones (SEZs), offer expedited environmental permitting, yet no utility-scale solar projects have been constructed on public lands in Imperial County at the time of writing due to the low availability of transmission infrastructure. However, transmission connections are abundant on Imperial Valley’s vast agricultural lands, where growers have voiced relatively little opposition to solar development. Amid long-term drought planning for the Colorado River, farmers have been incentivized to either conserve water and fallow crops or sell land to renewable energy developers. In the last decade, Imperial County approved nearly 24,000 acres of solar development, primarily on agricultural land.<sup>264</sup> This brought in more than \$30 million for Imperial County, but it also eliminated jobs for field laborers who already lost work opportunities due to the IID’s water transfer agreements.<sup>265</sup> These dynamics have had compounding impacts on air quality in the region with even less irrigation runoff flowing to the Salton Sea, which has increased dust pollution in the atmosphere from the exposed playa on the shoreline. Meanwhile, as they adapt to stressors of climate change, such as drought and extreme heat, local residents have struggled to pay water and electricity bills.

<sup>262</sup> Luis Olmedo, public comment in community meeting, Niland, CA, May 4, 2023.

<sup>263</sup> Dustin Mulvaney et al., “Sunrise at the Salton Sea: Environmental Justice, Land Use Change, and Hydrosocial Dynamics of Solar Energy Transitions in the Imperial Valley, California,” *Sustainability Science*, ahead of print, June 4, 2025, <https://doi.org/10.1007/s11625-025-01698-4>.

<sup>264</sup> Sammy Roth, “Want to Solve Climate Change? This California Farm Kingdom Holds a Key,” *Climate & Environment*, *Los Angeles Times*, January 17, 2023, <https://www.latimes.com/environment/story/2023-01-17/want-to-solve-climate-change-this-california-farm-kingdom-holds-the-key>.

<sup>265</sup> In 2025, the IID passed a resolution to limit solar expansion on agricultural lands. See: Everwine, Eric. “IID Board Draws Line on Farmland Solar Expansion.” *Calexico Chronicle*, July 2, 2025. <https://calexicochronicle.com/2025/07/02/iid-board-draws-line-on-farmland-solar-expansion/>.



“ Sometimes we don’t hear about these things until the deal’s done. Just one concrete example is with solar... We have one of the largest solar farms in the world, but one of the benefits should have been that for all the community here, there are some subsidies, right? Because we’re in a desert, people pay a lot of money for their AC and electricity during the summer. I wish that our county negotiated where every family, every household gets relief, because we’re doing the service for the world. Every resident gets a small benefit, right, a small paid reduction for their bills.<sup>266</sup>

**Daniela Flores, Imperial Valley Equity and Justice**

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Community groups and labor unions have formed multiple community coalitions to campaign for legally binding and enforceable CBAs that may allow fenceline communities to minimize these burdens and maximize potential benefits in the Salton Sea region. In early 2022, the Lithium Valley Community Coalition (LVCC) formed to have a seat at the decision-making table. The LVCC successfully negotiated a memorandum of understanding (MOU) for a detailed CBA should the application be approved with a company called SunVapor. However, the project was ultimately not funded for development. Nonetheless, the LVCC was successful in securing the landmark Senate Bill 125 tax bill.

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<sup>266</sup> Daniela Flores, personal communication to authors, 2023.



(Left) William A. Cooper, Executive Director, Becoming Project, Inc. Photo courtesy of William Cooper. (Right) The Valle Unido por Beneficios Comunitarios community coalition. Photo courtesy of Comité Cívico del Valle.

### A volumetric tax for public benefit

In 2022, labor and community organizers campaigned successfully for the landmark tax legislation of Senate Bill 125—a lithium extraction excise tax. The tax, which CTR and EnergySource vehemently opposed, is volumetric, i.e., based on how many metric tons of lithium carbonate equivalent are produced.<sup>267</sup> Twenty percent of tax revenue will go to Salton Sea Restoration Fund, and the other 80 percent of revenue will go to Imperial County. Of that 80 percent, the County must distribute at least 30 percent of the funds to Imperial County communities that are most directly and indirectly impacted by the lithium extraction activities. However, it is important to note that the original bill had reserved the full 30 percent for the directly affected communities, but the County's distribution plan opened it up to a much wider area, leaving far less funding for fenceline Northend communities.<sup>268</sup> The county also received \$5 million to produce a Programmatic Environmental Impact Report, conduct a Health Impact Assessment, foster community engagement through trusted messengers in the region, and hire an ombudsperson. Senate Bill 797 established a Lithium Extraction Tax Citizens Oversight Committee, while Senate Bill 154 provided \$80 million for the San Diego State Brawley Center. The lithium excise tax was only made possible

<sup>267</sup> The volume-based tax rate is \$400 per metric ton for the first 20,000 tons of lithium carbonate equivalent extracted, \$600 per metric ton extracted over 20,000 up to 30,000 metric tons, and \$800 per metric ton for lithium carbonate equivalent extracted over 30,000 metric tons. See: Imperial County. "Lithium Excise Tax Funding Plan." September 10, 2024. <https://lithiumvalley.imperialcounty.org/community/lithium-excise-tax/>.

<sup>268</sup> Imperial County. "Lithium Excise Tax Funding Plan."

because local labor, environmental, and social justice advocates acted through grassroots organizing on social media, phone trees, friend groups, and professional networks to raise the question on everyone's minds, as Christian A. Torres from Comit  Civico del Valle put it: "If lithium is a public resource, why should there not be a public benefit?"<sup>269</sup>

While the tax legislation marked a key victory for community and labor organizers, Imperial County's management of the funds has been geared more toward boosting development and filling the County's coffers rather than benefiting the most directly affected communities. Even though the tax allowed the County to award community engagement and outreach grants to community-based organizations, the County has been far behind schedule in drafting and circulating drafts of the Lithium Valley Specific Plan and Programmatic Environmental Impact Report (PEIR). This has meant that community-based organizations have not had the materials needed to provide for local residents in the first place. Even so, the County refused to grant a no-cost extension on funds for community engagement and outreach when it would be most crucial during the public comment periods for the Specific Plan and PEIR. (The County has stated that a new RFP would be issued for community engagement around the Specific Plan and PEIR, but it was not available at the time of writing, after the comment period already passed for the Specific Plan.)

Frustration about these shortcomings on community engagement and outreach was abundantly clear in public comments on the County's proposed Lithium Excise Tax Funding Plan, which the Board of Supervisors hastily approved in September 2024.<sup>270</sup> Community members objected to the tax allocation structure, which left only 15 percent for Directly Affected Communities, using population as the sole determinant for distribution rather than other potential considerations, such as proximity to development or community needs.

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<sup>269</sup> Christian A. Torres, personal communication to authors, 2023.

<sup>270</sup> Imperial County, "Lithium Excise Tax Funding Plan,"



“ Right now, the way that they deploy resources is based on population. The city with the highest population gets the most resources. Small places like here in Niland or Calipatria, where you don’t have the high population, but the greater need, get the least resources.<sup>271</sup>

**William Cooper, The Becoming Project**

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Moreover, while the Tax Funding Plan designated Tribes as Indirectly Affected Communities, it fell short of engaging them as sovereign nations and still failed to address direct impacts on Tribal cultural resources.

The three main geothermal lithium companies pursuing projects under development near the Salton Sea include:

1. EnergySource Minerals, which received its environmental approval in 2021 to install a DLE facility at the Hudson Ranch geothermal plant that is now operated by Cyrq, has an off-take agreement with Ford Motor Company, and received a conditional commitment for a direct loan of up to \$1.36 billion from the DOE at the very end of Biden’s presidency;
2. Berkshire Hathaway Energy Renewables (BHER), which currently operates 10 out of the 11 existing geothermal plants near the Salton Sea, as well as a joint venture with Oxy (Occidental Petroleum) for a DLE pilot plant, but has not secured federal funding and suspended an application for three new proposed geothermal plants that had been under environmental review by the California Energy Commission (CEC); and

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<sup>271</sup> William Cooper, personal communication to authors, 2024.



3. Controlled Thermal Resources (CTR), which received approval from Imperial County in 2023 to develop stage one of a new geothermal lithium project called Hell's Kitchen and has off-take agreements with Stellantis and General Motors.

Controlled Thermal Resources boasts a project labor agreement with the building trades for construction (including IBEW, which had initially been part of the LVCC), but these projects tend to rely heavily on contractors and imported labor. Developers have not committed to a CBA that might ensure more enduring union jobs for operations and maintenance or manufacturing. The Hell's Kitchen project in particular has been mired in litigation.<sup>272</sup>

In 2024, another coalition called Valle Unido por Beneficios Comunitarios formed after the building trade unions and some community groups left LVCC. Valle Unido brought together local organizations—Comite Civico del Valle, Imperial Valley Equity and Justice, and The Becoming Project—as well as external groups like Earthworks, Jobs to Move America (JMA), UAW Region 6, and ACLU San Diego and Imperial Counties. Building on the goals of LVCC, Valle Unido sought to ensure that Lithium Valley delivers strong local economic development with robust environmental and social justice standards by calling on developers to make legally binding commitments to local jobs with the following: family-sustaining wages and benefits for disadvantaged community members; a diverse, equitable, and inclusive training and apprenticeship pipeline for Imperial County residents; safe working conditions; respect for workers' rights and Indigenous rights; and environmental benefits and processes such as expanded air quality monitoring and funded public

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<sup>272</sup> The Hell's Kitchen project has faced several rounds of litigation due to serious unresolved environmental health concerns. On March 13, 2024, Comite Civico del Valle and Earthworks issued a joint petition, challenging Imperial County's approval of CTR's Hell's Kitchen geothermal lithium project. The petition argues that Imperial County violated the California Environmental Quality Act (CEQA) by approving the project despite a deeply flawed EIR that fails to adequately analyze and mitigate impacts related to water supply, air quality, and hazardous waste, among other items. The petition also argues that the County failed to comply with legal requirements for Tribal consultation, such as meaningful consultation with affected Tribes or requiring Tribal-specific mitigation measures. The Imperial County Superior Court issued its judgment on February 26, 2025 denying Comite Civico del Valle and Earthworks' petition, but Comite Civico del Valle and Earthworks filed an appeal on Friday, March 7, 2025, in California's 4th District Court of Appeal, and the litigation is ongoing at the time of writing. In a separate case involving CTR, in October 2024, the US Environmental Protection Agency (EPA) announced a settlement acknowledging that CTR had destroyed about 1,200 acres of wetlands by illegally dredging and ditching to extend IID channels, which allowed water from the wetlands to drain into the Salton Sea. After that acknowledgment of illegal ditching and dredging, the same wetlands caught on fire in November 2024, though the cause is unknown. Despite these unresolved concerns, CCV and Earthworks have made it clear that they are not opposed to lithium development, as long as reasonable environmental mitigations are in place alongside enforceable community benefits. See: Blair, James J. A., Vanessa Galaviz, and Jordan R. Sisson. "The Devil Is in the Details: Environmental Health Impacts of the Hell's Kitchen Lithium and Power Project." Comite Civico del Valle and Earthworks, 2025, <https://ccvhealth.org/site/hells-kitchen>; Arturo Bojorquez, "EPA Settles Case with Hell's Kitchen Geothermal over Wetlands Discharge Impacting on Salton Sea," *Imperial Valley Press* (San Francisco), October 19, 2024, [https://www.ivpressonline.com/featured/epa-settles-case-with-hell-s-kitchen-geothermal-over-wetlands-discharge-impacting-on-salton-sea/article\\_37c80a3c-8d90-11ef-af33-ff36a76cc73c.htm](https://www.ivpressonline.com/featured/epa-settles-case-with-hell-s-kitchen-geothermal-over-wetlands-discharge-impacting-on-salton-sea/article_37c80a3c-8d90-11ef-af33-ff36a76cc73c.htm).

health studies.<sup>273</sup> The coalition has tried to build supply chain solidarity, advocating for good jobs and environmental commitments across the global production network for energy and electrified transportation.

Members of the coalition have also spoken out in solidarity with Tribal elders and leaders from the Quechan Tribe and the Kwaaymii Laguna Band of Indians who have objected to inadequate consultation and Tribal cultural resource protection in proposed Lithium Valley development projects.<sup>274</sup> Carmen Lucas, who is a Tribal monitor, expert, and elder from the Kwaaymii Laguna Band of Indians, has proposed to designate parts of this landscape as the Southeast Lake Cahuilla Active Volcanic Cultural District (SELCAVCD) and has advocated for listing this Tribal cultural resource in the National and State Registers of Historic Places.<sup>275</sup>

### Good Neighbor for Good Ol' Boys

While they have expressed interest in coming to the table to negotiate strong CBAs, labor and environmental justice advocates have also been disappointed with Imperial County's proposed policy guidelines for a Good Neighbor Community Benefits Agreement (GNCBA), based on 6 pillars:

1. Local & Priority Hiring
2. Workplace Safety & Quality Standards
3. Education & Skill-Building
4. Community Engagement
5. Advancing Infrastructure
6. Supporting the Local Economy<sup>276</sup>

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<sup>273</sup> "No More Empty Promises," Valle Unido, accessed February 10, 2025, <https://www.valleunido.org>.

<sup>274</sup> Jared Naimark, "Valle Undio Coalition Letter in Support of the Southeast Lake Cahuilla Active Volcanic Cultural District," California Energy Commission, December 13, 2024, 260665, 23-AFC-03, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=260665&DocumentContentId=96965>.

<sup>275</sup> Coyle, Courtney Ann and Lucas, Carmen. "Comment Letter #11 in Chambers Group, Inc." *Final Environmental Impact Report for the Hell's Kitchen Power Co1 and Lithium Co1 Project*, 2023. <https://www.icpds.com/planning/environmental-impact-reports/final-eirs/cup21-0020-21-hell-s-kitchen-power-and-lithium-feir>; Coyle, Courtney Ann, and Carmen Lucas. "Comments from Kwaaymii Band of Laguna Indians on Black Rock Geothermal Project." California Energy Commission, September 4, 2024. <https://efiling.energy.ca.gov/GetDocument.aspx?tn=259013&DocumentContentId=95083>; Coyle, Courtney Ann and Lucas, Carmen. "Kwaaymii Laguna Comments on draft Lithium Valley Specific Plan" (public review draft January 2025). [https://lithiumvalley.imperialcounty.org/wp-content/uploads/2025/07/LVSP\\_Public\\_Comments\\_Combined.pdf](https://lithiumvalley.imperialcounty.org/wp-content/uploads/2025/07/LVSP_Public_Comments_Combined.pdf)

<sup>276</sup> Imperial County. "Good Neighbor Community Benefit Agreement Program." 2024. [https://lithiumvalley.imperialcounty.org/wp-content/uploads/2024/09/Good-Neighbor-CBA\\_20240823.pdf](https://lithiumvalley.imperialcounty.org/wp-content/uploads/2024/09/Good-Neighbor-CBA_20240823.pdf).

Coalition members have called this policy “watered-down” because it is unenforceable and inadequate due to the lack of detail, community engagement, and participation in determination of the parameters. Beyond the 6 pillars described by the County, CBAs may also include a wider range of provisions, as described throughout this report. The County’s Good Neighbor policy requires companies to engage 70 percent of community organizations from 10 categories of community organizations:

- Agriculture
- Commerce
- Education
- Environmental
- Faith-Based
- Health and Wellness
- Location-Based Community Group
- Sovereign Tribe
- Labor
- Veteran<sup>277</sup>

While this gives the appearance of a regulation, it actually allows developers the freedom to reward what locals refer to as the “good ol’ boys” from elite enclaves, especially the dominant land-owning farmer aristocracy, while ignoring the significant needs of community coalitions or Tribes. Developers may decide not to engage 3 out of the 10 categories—e.g., environmental justice groups, Tribes, and labor unions—and still be eligible for an agreement under this policy. Furthermore, a developer might engage one union but not others—some community groups but not others, and so on—while still meeting the criteria for that category. Coalition members have argued that they should be able to determine their own transparent criteria for CBA provisions without the County seeking to control the negotiation process with weak standards or uneven participation.

Still, there is a strong local desire for good jobs and community benefits. The collaboration of external groups has helped to build supply chain solidarity and provide strategic resources and technical support to uplift organizers, but the ultimate control of negotiations has remained in the hands of local leaders from groups like Comite

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<sup>277</sup> Imperial County. “Good Neighbor Community Benefit Agreement Program.”

Civico del Valle, Imperial Valley Equity and Justice, and The Becoming Project to ensure best outcomes for those that will be living through the development.



Aerial view of the Hermosa Mine. Photo courtesy of Patagonia Area Resource Alliance.

## Arizona

### Developer-led CBAs on the frontline of the energy transition minerals boom

Supplying 74 percent of US-produced copper and containing extensive deposits of other minerals, Arizona is a major producer of precious metals in the United States. Mining represents a major share of the Copper State's economy, contributing approximately \$15.4 billion in economic activity in 2020.<sup>278</sup> Interest in the state's mineral resources has only grown with increased demand for metals used in renewable energy technology. Pointing to demand for copper and other metals in electric vehicles and other advanced technologies, mining companies have proposed several new projects in Arizona. Alongside these proposals, CBA negotiations in Arizona have emerged largely as part of developers' efforts to obtain public support

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<sup>278</sup> Arizona Mining Association, "Arizona Mining 2020 Economic Impact," accessed February 11, 2025, <https://www.azrockproducts.org/wp-content/uploads/AMA-2020-Economic-QUICKFACTS-1.pdf>.

to operate new mines.<sup>279</sup> Two projects in particular, the proposed Resolution Copper mine and the Hermosa manganese/zinc mine, offer examples of these new mine developments and associated CBA efforts.

### Resolution and religious rights

Perhaps the most contentious of new Arizona mining projects is the Resolution Copper mine, a proposed underground mine 60 miles east of Phoenix. According to the mining operator Resolution Copper, a joint venture owned by Rio Tinto and BHP, it “is expected to become the largest copper mine in North America, capable of producing up to 25 percent of U.S. copper demand each year.”<sup>280</sup> Resolution’s plans involve mining up to 7,000 feet underground via a method known as block-caving, which will permanently destabilize the site as a consequence. A study commissioned by the San Carlos Apache Tribe estimates that the mine will use approximately 250 billion gallons of water over its lifetime to cool its underground operations, manage tailings, and control dust, among other needs.<sup>281</sup> Water used by the mine would be supplied by nearby groundwater pumping.

The project area is located on land previously held by the US Forest Service (USFS) and overlaps with cultural sites important to the Apache people. Known to the Apache as Chí’chil Biłdagoteel (Oak Flat), the site is home to Emory oaks, a culturally significant food source. In 2014, ownership of the proposed mine site was transferred from the USFS to Resolution Copper thanks to then-Senators John McCain (R-AZ) and Jeff Flake (R-AZ), who inserted a legislative rider for a land exchange in a must-pass Congressional defense spending

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<sup>279</sup> Other energy transition metal projects in Arizona have not featured CBAs. One major example is Arizona Lithium’s Big Sandy project, located on federal land adjacent to an exclave of the Hualapai Indian Reservation in Mohave County. Exploratory drilling and future lithium mine development threaten a sacred spring on the reservation by altering groundwater levels. In July of 2024 the Bureau of Land Management (BLM) issued an Environmental Assessment that concluded the project would have no significant impacts, removing a major hurdle for mine development. The Hualapai Tribe has elected to pursue litigation over the project, asserting that the BLM’s review process was insufficient and fails to consider the springs as a site eligible for protections under the National Historic Preservation Act (Hualapai Indian Tribe v. Debra Haaland, 2024). On August 8, 2024, a federal judge granted a temporary restraining order suspending drilling operations until the court hears initial arguments. See: Josh Kelety, “Tribe, Ranchers Say Proposed Lithium Mine in Wikeup Will ‘Ruin’ Their Water,” *Phoenix New Times*, June 11, 2021, <https://www.phoenixnewtimes.com/news/wikeup-lithium-mine-big-sandy-hualapai-tribe-ranchers-water-hawkstone-11561652>; Sonner, “Judge Blocks Arizona Lithium Drilling That Tribe Says Is Threat to Sacred Lands,” *Prescott eNews*, August 22, 2024, <https://prescottenews.com/2024/08/22/judge-blocks-arizona-lithium-drilling-that-tribe-says-is-threat-to-sacred-lands-associated-press/>.

<sup>280</sup> Resolution Copper, “Project Overview,” April 15, 2024, <https://resolutioncopper.com/project-overview/>.

<sup>281</sup> David Abbott, “New Study: Resolution Copper Mine Will Use 250 Billion Gallons of Water as Drought Ravages Arizona,” *Arizona Mirror*, October 1, 2021, <https://azmirror.com/2021/10/01/new-study-resolution-copper-mine-will-use-250-billion-gallons-of-water-as-drought-ravages-arizona/>.



authorization bill. The land exchange and project have been strongly opposed by the San Carlos Apache Tribe and Apache Stronghold, an Indigenous organization leading the Tribe's efforts to stop the project.<sup>282</sup> Other local communities, particularly the nearby mining town of Superior, have expressed support for the project owing to its potential to create jobs.

Following the required NEPA process to complete the land exchange, the USFS under the Trump administration issued an Environment Impact Statement (EIS), paving the way for the completion of the land exchange and mine construction. This EIS was subsequently withdrawn by the Biden administration, which determined that additional time was necessary to "understand concerns raised by the Tribes and the public and the project's impacts to these important resources."<sup>283</sup> Nevertheless, as a consequence of the 2014 budgetary rider, the land transfer must eventually be executed barring new legislation undoing the transfer.

The land exchange has been the subject of a lawsuit filed by Apache Stronghold, which argues that the land exchange and subsequent mine development would prevent the Apache from exercising their constitutionally protected religious rights at Oak Flat. On March 1, 2024, the US Court of Appeals for the 9th Circuit upheld a lower court's ruling against Apache Stronghold's claims. The 9th Circuit Court ruled 6–5 against Apache Stronghold, determining that the mine would not pose a substantial burden on the Apache people's First Amendment religious rights.<sup>284</sup> Apache Stronghold subsequently appealed the decision to the US Supreme Court.<sup>285</sup> In May of 2025, the Supreme Court declined to hear the case, effectively upholding the

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<sup>282</sup> Apache Stronghold, "About Us - San Carlos, AZ," accessed February 11, 2025, <http://www.apache-stronghold.com/about-us.html>; San Carlos Apache Tribe, "San Carlos Apache Tribe Requests United Nations to Demand the U.S. Protects Oak Flat," *The Gila Herald*, May 2, 2024, <https://gilaherald.com/san-carlos-apache-tribe-requests-united-nations-to-demand-the-u-s-protects-oak-flat/>.

<sup>283</sup> Annette McGivney, "Biden Administration Pauses Transfer of Holy Native American Land to Mining Firm," *Environment*, *The Guardian*, March 2, 2021, <https://www.theguardian.com/environment/2021/mar/02/arizona-oak-flat-biden-administration-pauses-transfer-native-american-site-mining-resolution-copper>.

<sup>284</sup> Debra Utacia Krol, "Oak Flat Copper Mine Lawsuit Is Headed to the Supreme Court after 9th Circuit Ruling," *The Arizona Republic*, May 14, 2024, <https://www.azcentral.com/story/news/local/arizona-environment/2024/05/14/apache-stronghold-to-appeal-resolution-copper-case-to-supreme-court/73688120007/>.

<sup>285</sup> Becket Law, "Apache Stronghold Will Ask Supreme Court to Save Oak Flat," May 14, 2024, <https://becketfund.org/media/apache-stronghold-will-ask-supreme-court-to-save-oak-flat/>; Maxine Joselow, "On Stolen Land': Tribes Fight Clean-Energy Projects Backed by Biden," *Washington Post*, March 4, 2024, <https://www.washingtonpost.com/climate-environment/2024/03/04/tribes-clean-energy-biden-sunzia/>.



lower court's ruling against Apache Stronghold. In a dissenting opinion joined by Justice Clarence Thomas, Justice Neil Gorsuch wrote, "While this Court enjoys the power to choose which cases it will hear, its decision to shuffle this case off our docket without a full airing is a grievous mistake—one with consequences that threaten to reverberate for generations." At the time of writing, the fight for Oak Flat remains unresolved: on June 9, 2025 a federal judge in Arizona temporarily halted the Oak Flat land exchange by barring the federal government from proceeding with the transfer until 60 days after the issuance of the final EIS, which is expected on June 16, 2025.<sup>286</sup> Assuming the existence of legal deficiencies in the final EIS, the ruling gives Apache Stronghold and other mine opponents an opportunity to file new motions for an injunction on the transfer.

With these contentious politics as a backdrop, CBA development has largely been led by the project developer. Resolution Copper, through a facilitator, has convened a "Community Working Group" (CWG) since 2012 "to better understand the concerns of the community and establish more open and direct lines of communication for accurate information with the diverse stakeholders in this project."<sup>287</sup>

Resolution invited both project supporters and opponents to participate in these discussions. Project opponents, including Tribes and environmental groups, initially participated in the CWG but later stopped. In 2024, the work of the CWG culminated in the signing of a Good Neighbor Agreement (GNA), signed by Resolution, various community groups from the mining town of Superior, and local governments. Tribes and environmental groups did not sign the GNA, raising questions about its legitimacy.<sup>288</sup> According to the text of the agreement, the GNA serves largely to maintain an open line of communication between Resolution and the local community and provides no direct community payments, local hiring guarantees, environmental mitigations, or reclamation commitments. The GNA directs Resolution to seek CWG input on development and provides the CWG members with a forum to request additional project

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<sup>286</sup> Joe Duhownik, "Judge Halts Oak Flat Mine, Giving Apache Another Chance to Block Copper Pit on Sacred Land," TucsonSentinel.Com, June 9, 2025, [http://www.tucsonsentinel.com/local/report//060925\\_oak\\_flat\\_impact/](http://www.tucsonsentinel.com/local/report//060925_oak_flat_impact/).

<sup>287</sup> "Community Working Group," Superior Community Working Group, 2023, <https://superiorazcwg.org/about/>.

<sup>288</sup> Resolution Copper, "Resolution Copper and the Superior, AZ Community Working Group Sign Landmark Good Neighbor Agreement," March 22, 2024, <https://resolutioncopper.com/resolution-copper-and-the-superior-az-community-working-group-sign-landmark-good-neighbor-agreement/>.

information, submit problems, or request further studies, audits, or assessments. The GNA also requires Resolution to continue funding the CWG for the duration of the project.

The Resolution GNA does little to meet the demands of Indigenous and environmental groups opposed to the project, perhaps evincing why these groups ended their CWG participation. While Resolution has publicly announced modifications to its mining plans to avoid particular Apache landmarks on the site, these mitigations are not included in the GNA.<sup>289</sup>



A public meeting between Patagonia community members and Hermosa Mine owner, South32, to discuss a potential “community protections” agreement. Photo courtesy of Caroline Schafer, Patagonia Area Resource Alliance.

### Shifting responsibilities in the Hermosa manganese/zinc project Advisory Panel

New mine projects and CBA negotiations are also occurring elsewhere in Arizona. Located in a historic mining district near the town of Patagonia, the Hermosa Mine project is seeking to produce two federally designated “critical minerals”—manganese and zinc—which the developer South32 touts as “essential minerals for powering the nation’s clean energy future.”<sup>290</sup> Australian-based South32 acquired the project from a small firm in 2018 and has moved quickly to position itself to commence mining as soon as the

<sup>289</sup> Resolution Copper, “Cultural Heritage,” accessed February 11, 2025, <https://resolutioncopper.com/cultural-heritage/>.

<sup>290</sup> South32, “About Us,” [https://South32hermosa.Com/en\\_US](https://South32hermosa.Com/en_US), January 27, 2025, [https://south32hermosa.com/en\\_US/about](https://south32hermosa.com/en_US/about).

necessary permitting approvals are given. South32 has already conducted exploratory drilling and constructed a water treatment plant and tailings facility to manage existing mine waste from historic activity. If fully developed, mine activity would expand onto lands administered by the USFS.



Mine development has become increasingly noticeable in the otherwise quiet grasslands and oak forests of the Patagonia Mountains. Commercial truck traffic travelling to and from the mine site has spurred concerns over safety on rural roads. Photo by Tai Kondo Koester.

The project has met opposition from environmental and local community groups concerned about the impacts the project will have on scarce water resources in a global biodiversity hotspot recognized by scientists as one of the top regions in the world most in need of research and protection for species survival.<sup>291</sup> In the early years of the Hermosa project, local environmental groups successfully sued the USFS on its initial approvals for exploratory drilling, arguing the USFS failed to adequately consider drilling's impacts to endangered species. South32 acquired the Hermosa project from the junior company in mid-2018. After its acquisition, South32 operated on only private, patented lands requiring only state permits and with no federal oversight. South32 has since submitted plans to the USFS to use USFS public lands to construct a tailings facility, triggering a NEPA review process. As a project pursuing federally designated "critical minerals," the NEPA review was fast-tracked by the Biden administration under Title 41 of the 2015 Fixing America's Surface Transportation Act (FAST-41), which was intended to coordinate environmental reviews, hold agencies accountable to timetables, and resolve any disputes for projects addressing national priorities as

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<sup>291</sup> Edward O. Wilson, *Half-Earth* (Liveright, 2016).

determined by the federal government.<sup>292</sup> Public comment for the scoping period closed on June 20, 2024. A draft EIS is expected in May 2025 and a final decision is expected in May 2026.

Like the Resolution project to the north, the developer South32 formed a working group, the Hermosa Project Advisory Panel, as a forum where local stakeholders could ostensibly provide input on the mine development process, including on efforts at mitigating the potential environmental impacts. The Advisory Panel has met monthly since 2021 and includes 17 members representing the Town of Patagonia, Santa Cruz County, business groups, and environmental organizations, among other entities.<sup>293</sup>

For Carolyn Shafer, who represents a local grassroots group called the Patagonia Area Resource Alliance (PARA) at Advisory Panel meetings, the Advisory Panel represents a “classic mining industry social license effort to say they consulted with the community.”<sup>294</sup>

The Advisory Panel began considering an agreement with South32 after Shafer pointed to examples elsewhere in the mining industry, namely the Sibanye–Stillwater “Good Neighbor Agreement” in Montana. While the company initially appeared receptive to drafting a similar kind of agreement, it contracted a consultant to draft agreement language that Advisory Panel members broadly perceived as weak and unsatisfactory. South32 refused to give the Panel any power in providing input or drafting language. According to Shafer, South32 repeatedly failed to answer questions about water consumption over the course of these discussions, leading many Advisory Panel members, including some that were initially supportive of the project, to become more skeptical of the company’s plans.

Ultimately, the Advisory Panel elected to “hand off” the work of negotiating an agreement to three local government entities: Santa

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<sup>292</sup> Johanna Bozuwa and Dustin Mulvaney, “A Progressive Take on Permitting Reform: Principles and Policies to Unleash a Faster, More Equitable Green Transition,” *Roosevelt Institute and Climate and Community Project*, 2023, [https://rooseveltinstitute.org/wp-content/uploads/2023/08/RI\\_Progressive\\_Permitting\\_Report\\_202308.pdf](https://rooseveltinstitute.org/wp-content/uploads/2023/08/RI_Progressive_Permitting_Report_202308.pdf).

<sup>293</sup> Notably, the Advisory Panel has no Tribal representation. According to Shafer and PARA, South32 has claimed in Advisory Panel meetings to have consulted with local area Tribes. See: Advisory Panel on the South32 Hermosa Project, “About Us: Our History – The Advisory Panel on the South32 Hermosa Project,” n.d., accessed February 11, 2025, <https://sccadvisorypanelonsouth32hermosa.com/about-us/>.

<sup>294</sup> Carolyn Shafer, personal communication to authors, 2024.

Cruz County, the Town of Patagonia, and the City of Nogales. In Shafer and PARA's view, these governmental entities are better suited to negotiating an agreement as they can be held to account via the democratic process. This suggests a level of trust in local governments that may not be as well established with other grassroots groups in other locations, such as Imperial Valley, California. Subsequently, these local governments have largely agreed to take on the responsibility of drafting an agreement.<sup>295</sup> In Santa Cruz County's case, taking on drafting an agreement has complemented its engagement with the federal FAST-41 process. For PARA, shifting responsibility to formal governments also eliminates any obligation to sign an agreement with South32. In Shafer's words, not signing an agreement is a deliberate strategy that enables PARA "to maintain [its] independence to monitor [South32's] activity and litigate when necessary."<sup>296</sup>

South32 has met the shift of agreement drafting responsibilities from the Advisory Panel to local governments with less enthusiasm. In June, South32 announced a restructuring of the Advisory Panel that reduced the number of panel members to 15 and imposed restrictions that prevented the participation of members South32 deemed to have "conflicts of interest" and who supported efforts of organizations potentially working to have South32's federal permit application rejected or delayed.<sup>297</sup> Project critics like Shafer and PARA were not invited to participate in the new Advisory Panel, subsequently accusing South32 of stacking the Advisory Panel with supporters. While these developments suggest that the Advisory Panel's supposed purpose of fostering a dialogue over the Hermosa project has been a failure, for Shafer the Advisory Panel has served as the necessary catalyst to organize the community.

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<sup>295</sup> Angela Gervasi • Nogales International, "Supes Appoint Contractor to Craft 'Good Neighbor Agreement' with South32," Nogales International, February 22, 2024, [https://www.nogalesinternational.com/news/supes-appoint-contractor-to-craft-good-neighbor-agreement-with-south32/article\\_3a215366-d1b0-11ee-8359-53afce484b9f.html](https://www.nogalesinternational.com/news/supes-appoint-contractor-to-craft-good-neighbor-agreement-with-south32/article_3a215366-d1b0-11ee-8359-53afce484b9f.html); Katya Mendoza, "Santa Cruz County Greenlights Consultant for Hermosa Mine Project, Sparks Debate on Environmental Priorities," AZPM, February 20, 2024, <https://about.azpm.org/s/98170-santa-cruz-county-greenlights-consultant-for-hermosa-mine-project-sparks-debate-on-environmental-priorities/>.

<sup>296</sup> Carolyn Shafer, personal communication to authors, 2024.

<sup>297</sup> Carolyn Shafer, "South32 Stacks Advisory Panel," *Patagonia Regional Times*, June 6, 2024, <http://patagoniaregionaltimes.org/south32-stacks-advisory-panel/>.





“For our county [the Advisory Panel] was hugely successful because it allowed for representatives from a broad spectrum of organizations throughout the county to come to understand that these jobs and economy that are being promised come at a significant environmental cost. That was a huge outcome of the Panel. Not the one [South32] wanted, but an important one for this county. So, I view it as it was a success. And the fact that they disbanded it and blew it up was an embarrassment.”<sup>298</sup>

Carolyn Shafer, Patagonia Area Resource Alliance (PARA)

## Idaho

### A perpetual frontier for minerals

With significant mineral deposits, Idaho has a history of mining dating to the 19th century. Efforts to develop domestic supply chains of energy transition metals have led to renewed interest in the state's mineral resources. CBA development in the state is linked to this new wave of extraction.

### Antimony or Community?<sup>299</sup>

The Stibnite Gold Project, located on USFS land in central Idaho's Salmon River Mountains, is perhaps the most controversial of new “critical” mineral projects in the state. The project aims to restart mining for gold and antimony in a historic mining district dormant since World War II. Perpetua Resources (formerly Midas Gold), the Canadian company behind Stibnite, has explicitly linked its plans to extract antimony with broader US narratives around establishing

<sup>298</sup> Carolyn Shafer, personal communication to authors, 2024.

<sup>299</sup> Michael Watts, “Antinomies of Community: Some Thoughts on Geography, Resources and Empire,” *Transactions of the Institute of British Geographers* 29, no. 2 (2004): 195–216



domestic supply chains for energy technology, so often justified in terms of national security. In this vein, Perpetua's marketing materials emphasize the importance of the mineral in munitions manufacturing and note that "China, Russia and Tajikistan control more than 90 percent of global [antimony] production."<sup>300</sup> Perpetua's arguments have found a receptive audience in the Biden administration: using the Defense Production Act, the US Department of Defense conditionally awarded Perpetua \$59.4 million in funding for activities related to mine permitting and construction readiness.<sup>301</sup> Additionally, Perpetua has inked an agreement with Ambri, a US battery manufacturer, to supply the company with antimony from the Stibnite Gold Project for batteries that would store energy from wind and solar.<sup>302</sup>

Despite this apparent potential to assist US clean energy production, the Stibnite Gold Project presents significant environmental and social risks. Sited at the headwaters of the Salmon River, pollution from the Stibnite Gold Project poses a threat to a river system critical for the survival of the inland Northwest's salmon populations and the Indigenous peoples that depend upon them. Over a century of dam-building, logging, and mining have decimated Idaho's salmon populations. On its reservation in northern Idaho, the Nez Perce Tribe operates a fish hatchery with funding it receives annually from the federal government's dam mitigation funds. The Tribe has stocked hatchery-born salmon in the Salmon River watershed and worked to restore habitat by decommissioning old logging roads.<sup>303</sup> The Tribe has expressed concerns that mining pollution would contaminate waterways, undermining its efforts to restore salmon populations central to Tribal foodways.

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<sup>300</sup> "Antimony," Perpetua Resources, accessed February 12, 2025, <https://perpetuaresources.com/antimony/>.

<sup>301</sup> "Perpetua Resources Receives up to an Additional \$34.6 Million Under the Defense Production Act," Perpetua Resources | Corporate, February 12, 2024, <https://www.investors.perpetuaresources.com/investors/news/perpetua-resources-receives-up-to-an-additional-34-million-under-the-defense-production-act>.

<sup>302</sup> Perpetua Resources, "Antimony."

<sup>303</sup> Brandon Loomis, "Clean Energy or Healthy River? Why Lines in the Debate Aren't as Clear at This Western Mine," *The Arizona Republic*, December 29, 2023, <https://www.azcentral.com/story/news/local/arizona-environment/2023/12/29/idaho-mine-clean-energy-needs-against-indigenous-survival/71758189007/>.

Tribal opposition to the mine carries potential legal ramifications. The Nez Perce Tribe has argued that mining and its associated environmental impacts would violate its treaty rights. The mine site is located within the boundaries of an area guaranteed to the Tribe for traditional uses by an 1855 treaty with the United States, and the Tribe argues that mine pollution would result in “substantial, irreparable, and lasting harm” to the Tribe’s ability to exercise its treaty rights.<sup>304</sup> Although the case appears ripe for litigation, the Tribe has elected to participate in the NEPA process for the Stibnite Gold Project for the time being.

Perpetua has argued that the Stibnite Gold Project will improve salmon habitat. Unremediated tailings piles at the historic mine site continue to leach toxins into the Salmon River, and a flooded open pit blocks salmon from accessing the River’s upper reaches. Perpetua has incorporated cleanup of the tailings piles and rechanneling of the Salmon River into its mining plans, asserting that its efforts will improve water quality, channel connectivity, and restore salmon habitat. While these remediation efforts are widely considered necessary for salmon habitat restoration, environmental groups and the Nez Perce Tribe oppose Perpetua’s proposals to further expand mining, which includes construction of an additional three open pits.<sup>305</sup>

Perpetua Resources has endeavored to build public support for the project and obtain a “social license” to operate, although its efforts have largely dodged the complicated Indigenous politics over salmon.

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<sup>304</sup> Shannon F. Wheeler, “Nez Perce Tribe’s Comments on the Stibnite Gold Project Draft Environmental Impact Statement. [Cover Letter for the Nez Perce Tribe’s Official Comments to the US Forest Service on the Stibnite Gold Project Draft Environmental Impact Statement].,” October 27, 2020, <https://nezperce.org/wp-content/uploads/2020/12/2020-10-27-Payette-NF-NPT-Comments-Stibnite-Gold-Project-Draft-Environmental-Impact-Statement-DEIS.pdf>.

<sup>305</sup> Jack Healy and Mike Baker, “As Miners Chase Clean-Energy Minerals, Tribes Fear a Repeat of the Past,” U.S., *The New York Times*, December 27, 2021, <https://www.nytimes.com/2021/12/27/us/mining-clean-energy-antimony-tribes.html>.

**Community agreement between Perpetua and local governments**

In November of 2018, Perpetua signed a “Community Agreement” with local governments including three Idaho counties (Adams, Idaho, and Valley) and numerous communities in central Idaho (Cascade, Council, Donnelly, New Meadows, Riggins, Yellow Pine).<sup>306</sup> Most of these communities are located far away from the mining site. Notably, however, the Community Agreement does not include the Nez Perce Tribe or environmental groups, and Perpetua does not appear to have negotiated with either interest group. Additionally, two local governments invited to sign the Agreement, the City of McCall and Valley County, have elected to wait until the USFS issues a final EIS.<sup>307</sup>

The Agreement established the “Stibnite Advisory Council,” which serves as a formal communication channel between Perpetua and local communities.<sup>308</sup> Although not required under the Agreement, Perpetua and the Stibnite Advisory Council have pursued water monitoring around the Stibnite site since 2021.<sup>309</sup> However, the Agreement does not contain any language requiring project mitigations.<sup>310</sup> Interestingly, the Agreement requires the participation of the signatories in the USFS NEPA process: all signatories must submit official comments during the USFS NEPA comment period. While the Agreement places no restrictions on comment content, signatories have largely been supportive of the project, lending Perpetua the appearance of local support in the official NEPA process. Here are the financial provisions of the agreement:

- It establishes the “Stibnite Foundation,” which aims to fund community projects in signatory communities.
- It directs Perpetua to make contributions to the Stibnite Foundation according to a schedule tied to major project milestones.
- It establishes that, once the mine becomes operational, Perpetua makes annual payments amounting to 1 percent of mine profits.<sup>311</sup>

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<sup>306</sup> “Community Agreement Effective This 30th Day of November, 2018 among the Cities of Cascade, Council, Donnelly, McCall, New Meadows, and Riggins and the Village of Yellow Pine and Adams, Idaho and Valley Counties and Midas Gold,” November 30, 2018, <https://perpetuaresources.com/wp-content/uploads/2019/01/2018-11-19-Community-Agreement-Effective-Nov-30.pdf>.

<sup>307</sup> Monica Gokey, “McCall Says ‘No’ To Stibnite Mine Agreement,” Oise State Public Radio News, January 9, 2019, [https://mediad.publicbroadcasting.net/p/idaho/files/mccall\\_press\\_release.pdf?\\_ga=2.196226220.1247447361.1546883663-1451899594.1524173755](https://mediad.publicbroadcasting.net/p/idaho/files/mccall_press_release.pdf?_ga=2.196226220.1247447361.1546883663-1451899594.1524173755).

<sup>308</sup> “About Us,” *Stibnite Advisory Council*, n.d., accessed February 12, 2025, <https://stibniteadvisorycouncil.com/about-us/>.

<sup>309</sup> “Independent Water Monitoring Program,” *Stibnite Advisory Council*, n.d., accessed February 12, 2025, <https://stibniteadvisorycouncil.com/water-monitoring/>.

<sup>310</sup> Perpetua Resources notes that the final USFS EIS would contain project mitigations.

<sup>311</sup> “Community Agreement Effective This 30th Day of November, 2018 among the Cities of Cascade, Council, Donnelly, McCall, New Meadows, and Riggins and the Village of Yellow Pine and Adams, Idaho and Valley Counties and Midas Gold.”

On September 6, 2024, the USFS issued a draft record of decision authorizing the project.<sup>312</sup> The decision goes against comments submitted by the Nez Perce Tribe on the project's draft EIS, which then called the USFS' analysis "deeply flawed" and criticized the agency for "refusing to acknowledge the primacy [of its 1855 Treaty]" with the United States over mining.<sup>313</sup>

### **Cobalt Belt without community benefits**

Other projects in Idaho are illustrative of wider ambitions to pursue energy transition metals, albeit without any accompanying CBA development. In 2021, Jervois Global, an Australian mining company, initiated construction of its Idaho Cobalt project located at a remote site in Lemhi County, representing the first and only cobalt project in the United States. The area is within the Idaho Cobalt Belt, a 34-mile northwest trending deposit in the Salmon River Mountains.<sup>314</sup>

According to Jervois, cobalt from the project would assist the US in meeting growing demand for domestically produced sources of the material, which is used in battery technologies.<sup>315</sup> While labor and human rights advocates have sharply interrogated the popular romantic "blood cobalt" narrative for sensationalizing suffering, most cobalt currently available on the market is sourced from the Democratic Republic of Congo, which presents significant ethical concerns surrounding the notoriously poor labor conditions and devastating environmental impacts of mining in the country.<sup>316</sup>

Much like Perpetua Resources' project, Idaho Cobalt is located in a historic mining district. The new project is located directly adjacent to the open pit and tailings of the Blackbird Mine, which opened in 1949 as the United States' only cobalt mine during its three decades of

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<sup>312</sup> Clark Corbin, "Feds Issue Draft Approval to Resume Mining at Idaho's Historical Stibnite Gold Mine," *Idaho Capital Sun*, September 6, 2024, <https://idahocapitalsun.com/2024/09/06/feds-issue-draft-approval-to-resume-mining-at-idahos-historical-stibnite-gold-mine/>.

<sup>313</sup> Wheeler, "Nez Perce Tribe's Comments on the Stibnite Gold Project Draft Environmental Impact Statement. [Cover Letter for the Nez Perce Tribe's Official Comments to the US Forest Service on the Stibnite Gold Project Draft Environmental Impact Statement]."

<sup>314</sup> Arthur A. Bookstrom, "The Idaho Cobalt Belt," *Northwest Geology* 42 (2013): 149–62.

<sup>315</sup> Ian Max Stevenson and Kevin Fixler, "Idaho Cobalt Mine Could Help Transition U.S. to Green Energy, but at What Cost?," *Idaho Statesman*, December 18, 2022, <https://www.idahostatesman.com/news/local/environment/article270107742.html>.

<sup>316</sup> Holtz, "Idaho Is Sitting on One of the Most Important Elements on Earth"; Deberdt and Le Billon, "The Green Transition in Context—Cobalt Responsible Sourcing for Battery Manufacturing"; Radley, "Green Imperialism, Sovereignty, and the Quest for National Development in the Congo; Umpula and Dummett, "The Blood Cobalt Narrative."

operation.<sup>317</sup> The area is now a designated Superfund site, thanks to heavy metals contamination in the mine's namesake Blackbird Creek, and has been the focus of EPA-directed remediation efforts since the 1990s.<sup>318</sup> While historic mining has left painful scars on the landscape, Jervois has sought to extract cobalt through underground mining, potentially reducing impacts to the surface.

Unlike other mine projects in Idaho and the wider US West, Idaho Cobalt has not been the subject of significant, organized opposition.<sup>319</sup> Despite some conservation and recreation groups' concerns related to water pollution impacts to fish and wildlife, the economic development and jobs prospects have earned the mine local support, particularly in the small town of Salmon, the closest significant population center.<sup>320</sup>

Reflecting this subdued politics, the project's path through permitting has been remarkably smooth. In 2019, Jervois acquired the site from previous owners that had worked with the USFS to complete an EIS and secured necessary permits.<sup>321</sup> To supplement mitigations required in the final USFS EIS and to address pollution concerns, Jervois established the Upper Salmon Conservation Action Program in partnership with the Idaho Conservation League, a statewide environmental advocacy group.<sup>322</sup> Through the program, the company agreed to voluntarily contribute \$150,000 per year over the life of the project to support projects protecting and restoring fish and wildlife habitat in the Upper Salmon River Basin.<sup>323</sup>

However, the last few years have been tumultuous for the Idaho Cobalt project. Initially, Jervois appeared set to begin mining in 2023

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<sup>317</sup> Holtz, "Idaho Is Sitting on One of the Most Important Elements on Earth."

<sup>318</sup> A lawsuit by the State of Idaho in 1982 through 1995 led to the Superfund listing of the Blackbird Mine site. Remediation of the site is ongoing (Holtz, 2022).

<sup>319</sup> Stevenson and Fixler, "Idaho Cobalt Mine Could Help Transition U.S. to Green Energy, but at What Cost?"

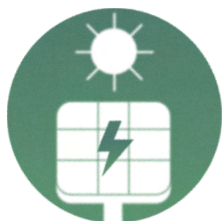
<sup>320</sup> Holtz, "Idaho Is Sitting on One of the Most Important Elements on Earth."

<sup>321</sup> Andrew Zaleski, "Can Idaho's Newest Cobalt Mine Dig Responsibly?," *Popular Science*, May 17, 2022, <https://www.popsci.com/energy/cobalt-mine-environmental-impact/>.

<sup>322</sup> Idaho Conservation League and Jervois, "Upper Salmon Conservation Program Soliciting Restoration Proposals for 2023," February 2, 2023, <https://idahoconservation.org/blog/upper-salmon-conservation-program-soliciting-restoration-proposals-for-2023/>.

<sup>323</sup> Jervois, "Upper Salmon Projects with Idaho Conservation League Advanced," March 29, 2023, <https://jervoisidahocobalt.com/wp-content/uploads/2022/06/220517-JRV-and-ICL-projects-final.pdf>.

with construction of the mine nearly complete. Less than two weeks after issuing a press release in March of 2023 announcing near-completion of the mine, Jervois announced that it would be suspending the project and reducing its workforce from 300 to 30, citing inflation of construction costs and low global cobalt prices.<sup>324</sup> Local commitments have also been cut, including the Upper Salmon Conservation Action Program. As of this writing, the project remains mothballed. However, the pause on the project has not diminished Jervois' faith in future development of the Idaho Cobalt Belt: the company has \$15 million from the US DOD for additional exploratory drilling in the area.<sup>325</sup> Moreover, Jervois now faces competition for Idaho's cobalt resources—other companies based in the US, Australia, and Canada have begun exploring the Idaho Cobalt Belt for developable deposits of the element.



## Downstream

Shifting the focus in the US energy storage supply chain away from upstream extractive industries, the following case studies offer a window onto processing, manufacturing, and transportation, as well as electricity generation, storage, and transmission. The previous cluster of case studies began by examining benefits from fossil fuels—Alaska's oil and gas dividend program—before analyzing potential benefits that may accrue from energy transition mineral extraction projects. The intermediary stage of processing such energy transition minerals for batteries or renewable energy systems is not covered in this report because the vast majority of that processing occurs in China, where CBAs have not been customary. However, when it comes to the downstream side of the supply chain, there are lessons to learn from fenceline communities that have already been living in proximity to polluting industries, such as oil and gas refining.

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<sup>324</sup> Jervois, "Jervois Suspends Final Construction at Idaho Cobalt Operations," March 29, 2023, <https://www.thenewswire.com/press-releases/1AqRFZ82d-jervois-suspends-final-construction-at-idaho-cobalt-operations.html>.

<sup>325</sup> Emily Jones, "Jervois Enters \$15M Agreement with U.S. Military to Accelerate Cobalt Exploration, Extraction in Central Idaho," *Idaho Mountain Express Newspaper*, September 1, 2023, [https://www.mtexpress.com/news/business/jervois-enters-15m-agreement-with-u-s-military-to-accelerate-cobalt-exploration-extraction-in-central/article\\_6c0aae0a-4839-11ee-8217-3764ec4a7b85.html](https://www.mtexpress.com/news/business/jervois-enters-15m-agreement-with-u-s-military-to-accelerate-cobalt-exploration-extraction-in-central/article_6c0aae0a-4839-11ee-8217-3764ec4a7b85.html).



## Processing

### Environmental and community investment agreement between an industrial facility and a fenceline community

The city of Richmond in the San Francisco Bay Area has hosted a Chevron refinery for more than a century. The fenceline community living around the facility has dealt with pollution from particulate matter, soot, smog-forming pollution, heavy metals, BTEX (benzene, toluene, ethylbenzene, and xylenes), and other severe pollutants. Activists have long argued that Chevron's facility should be shut down and that communities deserve remuneration of some kind for the pollution burden deriving from a profitable oil refinery.

In 2014, Chevron and Richmond agreed to an environmental and community investment agreement as part of a major modernization project for the facility. This agreement included building new equipment to reduce air pollution emissions, replacing an old hydrogen plant, and installing new monitoring equipment, among other requirements, as part of the approval of the project.<sup>326</sup> The plan included a commitment to the community of \$80 million in categories of community programs, scholarship programs, public safety, free internet, competitive grants programs, greenhouse gas reduction, building an on-site solar farm at the facility, and jobs training and skills development support. The annual report a decade later shows the distribution of these programs, totaling \$80 million over 10 years.<sup>327</sup>

#### GHG Reduction Programs - \$30 million

- Transportation and Transit Programs - \$20.75 million
- Climate Action Plan - \$1 million
- Urban Forestry - \$2 million
- Rooftop Solar, Energy Retrofit, Zoning Ordinance Update - \$6.25 million

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<sup>326</sup>City of Richmond, "FY 2022 - 23 Environmental & Community Investment Agreement (ECIA) Annual Report," 2024.

<sup>327</sup> Joel Umanzor, "Richmond Will Get \$550M from Chevron to Take Oil Refining Tax off Ballot," *Richmondside*, August 14, 2024, <http://richmondside.org/2024/08/14/richmond-city-council-oks-chevron-settlement/>.

### Community Programs – \$50 million

- Scholarship program – \$35 million
- Competitive grant program – \$6 million
- Job training program – \$6 million
- Public safety programs – \$2 million
- Free internet access – \$1 million<sup>328</sup>

In 2024, Chevron and Richmond entered into a new agreement that will pay the city \$550 million over the next ten years. The city had proposed a Richmond Refining Business License Tax on the November 2024 ballot that would have generated an estimated \$60 million to \$90 million in general fund revenue annually, but the ballot measure was removed when the agreement was made.<sup>329</sup>

### Manufacturing and Transportation

#### Leveraging Public Purchasing for Electric Bus and Railcar Manufacturing

There have been several promising CBAs for manufacturing of electric buses and railcars, a central focus for community and labor organizers affiliated with Jobs to Move America (JMA). JMA has developed a sophisticated approach to coalition building for CBAs, grounded in research and policy tools like the US Employment Plan (USEP) that incentivizes manufacturers applying for public funding to build strong labor and equity provisions into their bids for purchasing contracts.<sup>330</sup>

This approach has gained significant traction in Southern California. In 2017, JMA helped to build a community-labor coalition that resulted in a CBA between the Sheet Metal, Air, Rail, and Transportation Workers Union (SMART) and electric bus manufacturer BYD for apprenticeship and pre-apprenticeship programs for jobs at BYD's facility in Lancaster, California. This resulted in an award of around \$1

There have been several promising CBAs for manufacturing of electric buses and railcars, a central focus for community and labor organizers affiliated with Jobs to Move America (JMA).

<sup>328</sup> City of Richmond, "FY 2022 – 23 Environmental & Community Investment Agreement (ECIA) Annual Report."

<sup>329</sup> Umanzor, "Richmond Will Get \$550M from Chevron to Take Oil Refining Tax off Ballot."

<sup>330</sup> Jobs to Move America, *The U.S. Employment Plan: Good Jobs and Equity*, April 10, 2020, <https://jobstomoveamerica.org/resource/u-s-employment-plan-2/>.

million from California's High Road Training Partnership (H RTP).<sup>331</sup> Similarly, in 2020, JMA brokered a CBA between Proterra, an electric bus manufacturer, and United Steelworkers Local 675 that included a pre-hire training program targeting local residents from disadvantaged and historically underrepresented backgrounds near Proterra's City of Industry facility in LA County. This training partnership also led to a \$650,000 grant from the Golden State's H RTP to develop certified apprenticeships.<sup>332</sup>

In the Midwest, rail manufacturer CRRC struck a similar deal through a CBA, which boosts employment with a pre-apprenticeship and workforce training program for marginalized communities on the South Side of Chicago.<sup>333</sup> Even when CBAs have not been established, JMA has pushed transit agencies to commit to good-jobs policies by using USEP for procurement. For example, the Chicago Transit Authority (CTA) applied USEP to procure railcars and buses. In the Northeast, Amtrak also followed this model in their \$2 billion purchase of new high-speed trains from Alstom Transport.<sup>334</sup>

In the Deep South, "right to work" laws may pose barriers for labor organizing, but significant funding and tax incentives have attracted large-scale growth in manufacturing, and JMA and unions like UAW have acted.

### **The New Flyer CBA in Anniston, Alabama**

One of the most significant CBAs in the South was signed in 2022 between the Greater Birmingham Ministries (GBM), JMA, and the electric bus manufacturer

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<sup>331</sup> "BYD Apprenticeship Readiness Training," *Jobs to Move America*, April 17, 2018, <https://jobstomoveamerica.org/resource/byd-apprenticeship-readiness-training/>.

<sup>332</sup> "Our CBA with Electric Bus Builder Proterra," *Jobs to Move America*, January 4, 2021, <https://jobstomoveamerica.org/resource/our-cba-with-electric-bus-builder-proterra/>. Unfortunately, Proterra closed this facility and shortly thereafter went bankrupt.

<sup>333</sup> "Our CBA with Railcar Manufacturer CRRC," *Jobs to Move America*, April 16, 2016, <https://jobstomoveamerica.org/resource/our-cba-with-railcar-manufacturer-crrc/>.

<sup>334</sup> "The U.S. Employment Plan: Good Jobs and Equity," *Jobs to Move America*, April 10, 2020, <https://jobstomoveamerica.org/resource/u-s-employment-plan-2/>.

New Flyer for their facilities that employ around 750 people in Anniston, Alabama.<sup>335</sup> According to a 2023 report by researchers at Alabama A&M University, the University of Warwick, Jackson State University, and JMA, in addition to equitable hiring and promotion commitments, key provisions of the CBA include:

- A designated community organization to assist employees in making and resolving complaints through New Flyer's internal complaint process about perceived harassment or discrimination
- Participation by the Coalition Partners in identifying employees to participate on New Flyer's environmental health committee in Anniston which regularly discusses employee safety matters
- Independent safety training by an external expert
- An extension by New Flyer of hiring protections for systems-impacted people (so-called 'ban the box' rules) that it already follows in California and Minnesota to applicants in Anniston, Alabama
- A commitment to increase Spanish bilingual capacity in New Flyer's outreach, recruitment, human resources, training materials, and workplace communications
- Provisions to allow employees to attend a semi-annual debt [financial literacy] clinic hosted by a Coalition Partner at the New Flyer Anniston facility during non-work time<sup>336</sup>

In January 2024, a majority of the workers at New Flyer in Anniston signed a union card to join the International Union of Electrical Workers-Communications Workers of America (IUE-CWA). Because a neutrality agreement was already in place, the workplace unionized rapidly, and a collective bargaining agreement was ratified by 99.39 percent of the workers on May 16, 2024. This agreement increases wages 38 percent by 2026 with cost-of-living increases, restrictions on forced overtime, expanded vacation, paid time off, parental leave, and a paid holiday on Juneteenth.<sup>337</sup> Workers at New Flyer's other

<sup>335</sup> Last, Athena Nicole. "A Case Study of the New Flyer of America Inc. Community Benefits Agreement: Lessons Learned in the Bus Manufacturing Industry." Jobs to Move America Jay Mehta Community Benefits Agreement Resource Center, 2025, [https://jobstomoveamerica.org/wp-content/uploads/2025/07/0425-JMA\\_CBARC-Case-Study.digital.f-1.pdf](https://jobstomoveamerica.org/wp-content/uploads/2025/07/0425-JMA_CBARC-Case-Study.digital.f-1.pdf); Emily Erickson and Berneese S. Herbert, *Job Quality and Community Well-Being in Mississippi and Alabama's Manufacturing Facilities* (Jobs to Move America, 2023), <https://jobstomoveamerica.org/resource/job-quality-and-community-well-being-in-mississippi-and-alabamas-manufacturing-facilities/>.

<sup>336</sup> Erickson and Herbert, *Job Quality and Community Well-Being in Mississippi and Alabama's Manufacturing Facilities*, 101.

<sup>337</sup> Ella Fanger, "The Win for EV Workers in the South You Didn't Hear About | The Nation," *The Nation*, July 1, 2024, <https://www.thenation.com/article/economy/new-flyer-union-alabama/>.

There is a consistent focus on building coalitions among community groups and the labor movement with progressive positions on racial and economic justice.

plants in Kentucky, New York, and Minnesota are also represented by IUE-CWA, making it the largest union in the public transit bus manufacturing sector in the United States.

These CBAs have demonstrated JMA's capacity to use a blend of community and labor organizing, critical research, and legal expertise to make bus and railcar manufacturing a more just and equitable industry across diverse regions of the United States. This approach is rooted in lessons learned through the urban redevelopment CBA negotiations at the turn of the 21st century. There is a consistent focus on building coalitions among community groups and the labor movement with progressive positions on racial and economic justice. Provisions of these CBAs mainly concern good jobs, equitable hiring, training, and recruitment, and JMA has found significant leverage in public purchasing agreements.

However, because these CBAs are in the manufacturing sector, they do not tend to include benefit-sharing of revenue, which may be more common in global agreements for mining and energy, or in domestic utility-scale solar development. Unlike manufacturing, value derives primarily from nature in mining and energy generation, resulting in different land use changes and environmental impacts. Therefore, similar to CBAs for urban redevelopment, these CBAs for EV, bus, and railcar manufacturing offer important lessons for labor-community coalition building for legally binding contracts, but additional considerations may be needed to support Indigenous peoples, farmworkers, and environmental justice communities in proximity to extractive industries or energy production facilities.

### Black Farmers Organize to Repair Harm from Battery Plant

The labor movement has made significant progress in securing labor-management agreements to preserve neutrality for unionization in battery manufacturing across the United States. For instance, United Auto Workers (UAW) has entered into an agreement with Sparkz, Inc. for a battery manufacturing plant in Rancho Cordova, near Sacramento, California.<sup>338</sup> Workers have also won major UAW

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<sup>338</sup> David Shepardson, "Battery Startup Sparkz Strikes Partnership with Auto Workers Union," Autos & Transportation, *Reuters*, April 25, 2023, <https://www.reuters.com/business/autos-transportation/battery-startup-sparkz-strikes-partnership-with-auto-workers-union-2023-04-25/>.

The labor movement has made significant progress in securing labor-management agreements to preserve neutrality for unionization in battery manufacturing across the United States.

agreements with Ultium, a joint venture between General Motors and LG Energy Solution in Lordstown, Ohio and Spring Hill, Tennessee.<sup>339</sup> This indicates momentum for a just transition for battery manufacturing workers, but disadvantaged communities in Tennessee have also experienced displacement and dispossession due to battery plant development, and a coalition has organized for community benefits to repair harm to Black farmers.

In 2021, Ford Motor Company announced plans to build a large manufacturing facility in Stanton, Tennessee to produce electric trucks and batteries for EVs. Ford's BlueOval City was proposed as an "all-new \$5.6 billion mega campus" to provide a vertically integrated manufacturing plant including battery production, recycling, and production and assembly of electric trucks (the battery chemistry they will produce has not been publicly disclosed).<sup>340</sup> The state of Tennessee offered \$900 million in subsidies and incentives to attract Ford to open the plant on a 3,600-acre property in the region. State contributions included construction of a new road interchange, funding for water treatment facilities, and funding for workforce training. In December 2024, the US Department of Energy also finalized a broader \$9.63 billion loan for Ford and South Korean battery manufacturer SK to build battery manufacturing plants in Tennessee, as well as in Kentucky, where BlueOval SK workers voted to unionize with UAW in August 2025.<sup>341</sup>

Following the announcement of the facility in Tennessee, several Black farmers were forced to sell their land via eminent domain, and the majority-Black city of Mason (a small town of around 1,300 people) was pressured to dissolve its city charter. These actions caused significant community concern and prompted community

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<sup>339</sup> Kalea Hall, "GM-LG Tennessee Battery Plant Workers Approve First Union Contract with Company," Autos & Transportation, *Reuters*, March 6, 2025, <https://www.reuters.com/business/autos-transportation/gm-lg-tennessee-battery-plant-workers-approve-first-union-contract-with-company-2025-03-05/>.

<sup>340</sup> Ford Motor Company, *Ford to Lead America's Shift to Electric Vehicles with New BlueOval City Mega Campus in Tennessee and Twin Battery Plants in Kentucky; \$11.4B Investment to Create 11,000 Jobs and Power New Lineup of Advanced EVs*, September 27, 2021, <https://corporate.ford.com/articles/electrification/blue-oval-city.html>.

<sup>341</sup> Shepardson, David. "US Finalizes \$9.63 Billion Loan for Ford, SK On Joint Battery Venture." *Reuters*, December 16, 2024. <https://www.reuters.com/business/autos-transportation/us-finalizes-963-billion-loan-ford-sk-joint-battery-venture-2024-12-16/>; Mayhugh, Justin. "UAW Statement on Union Election at BlueOval SK." *UAW | United Automobile, Aerospace and Agricultural Implement Workers of America*, August 28, 2025. <https://uaw.org/uaw-statement-on-union-election-at-blueoval-sk/>.



organizing.<sup>342</sup> A community coalition, BlueOval Good Neighbors, arose in response. Supported by the broader advocacy group Tennessee For All, BlueOval Good Neighbors has responded to the proposed facility with the goal of mitigating impacts and ensuring community economic development.

#### Key Demands of BlueOval Good Neighbors

In 2024, BlueOval Good Neighbors released a statement seeking a legally binding CBA that includes the following elements:

1. Community decision-making power in the development of BlueOval City, including a Community Board with a paid staff member
2. Commitment to local hiring of at least 50 percent of workers, workforce development including educational opportunities, and union neutrality
3. Specific measures to ensure affordable housing and protection from displacement of existing residents
4. Repairing harm to Black farmers caused by land grabs, including land transfers and creation of a community land trust
5. Protecting air and water quality by taking measures to prevent fires and toxic spills, establishing a cleanup fund for potential hazards, creating a comprehensive safety plan, and conducting ongoing monitoring
6. Investing in community facilities and cultural preservation<sup>343</sup>

Meanwhile, Ford has proposed an alternative \$9 million “Good Neighbor Plan” in conjunction with its own Equitable Growth Advisory Council, which includes restoring a historic African American schoolhouse into a community center, as well as other local investments and environmental commitments, such as groundwater monitoring.<sup>344</sup> BlueOval Good Neighbors has argued that Ford’s Advisory Council does not constitute true community engagement because it allows for community input but does not give community members actual power to make decisions.<sup>345</sup> The CBA proposal from

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<sup>342</sup> Adam Friedman, “West Tennessee Group Makes Another Push for Ford to Negotiate a Community Benefit Agreement • Tennessee Lookout,” *Tennessee Lookout*, June 25, 2024, <https://tennesseelookout.com/2024/06/25/west-tennessee-group-makes-another-push-for-ford-to-negotiate-a-community-benefit-agreement/>.

<sup>343</sup> BlueOval Good Neighbors, “Key Demands Summary.”

<sup>344</sup> Stephenson, Cassandra. “Ford Releases \$9M ‘Good Neighbor Plan’ for Areas Surrounding BlueOval City.” *Tennessee Lookout*, January 24, 2025. <https://tennesseelookout.com/2025/01/24/ford-releases-9m-good-neighbor-plan-for-areas-surrounding-blueoval-city/>.

<sup>345</sup> Cassandra Stephenson, “What to Know: The New Ford BlueOval City Plant Poised to Reshape West Tennessee,” *Tennessee Lookout*, September 13, 2024, <https://tennesseelookout.com/2024/09/13/what-to-know-the-new-ford-blueoval-city-plant-poised-to-reshape-west-tennessee/>.

BlueOval Good Neighbors has sought a binding agreement that would alleviate concerns about rapid growth, including impacts on housing, community infrastructure, and environmental impacts, and to ensure that the benefits of development are equitable.<sup>346</sup>

Despite these efforts, Tennessee has become a more hostile environment for CBAs now that legislation has been passed to prohibit employers seeking state economic development incentives from entering into CBAs or similar legal contracts “if the agreement or contract imposes obligations or conditions on the employer regarding employment practices, benefits, or operations that are not directly related to the performance of the employer’s duties under the economic development incentive.”<sup>347</sup> The considerable subsidies and incentives already offered to Ford by the State of Tennessee may thus present new legal barriers for a potential CBA. The facility was originally anticipated to be opened in 2025, but the timeline has been pushed back.<sup>348</sup>

## Electric Power Generation, Storage, and Transmission

### CBA Commitments for Offshore Wind

CBAs in the wind industry are relatively common in Europe and in the United States. Research from the National Renewable Energy Laboratory (NREL) on community benefits from wind projects in the United States found 37 percent (205 of 546) of wind developments had community benefits.<sup>349</sup> In Europe, CBAs are most widespread in the UK, Germany, and Denmark, but can be found elsewhere (see Norway and UK cases described earlier). Berkeley Law’s Center for Law, Energy & the Environment (CLEE) notes that European offshore wind developments typically involve funds supported by redirecting a small percentage of electricity revenues to communities, rather than negotiated contracts. US projects, though, have benefit rates set or

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<sup>346</sup> Elton Holmes and Shannon Whitfield, “Neighbors of Ford BlueOval City Seek Community Benefits Agreement,” *Tennessee Lookout*, April 8, 2024, <https://tennesseelookout.com/2024/04/08/neighbors-of-ford-blueoval-city-seek-community-benefits-agreement/>.

<sup>347</sup> SB 1074; HB 1096.

<sup>348</sup> Stephenson, Cassandra. “Ford Delays Mass Production of Electric Truck at BlueOval City until 2028.” *Tennessee Lookout*, August 11, 2025. <https://tennesseelookout.com/briefs/ford-delays-mass-production-of-electric-truck-at-blueoval-city-until-2028/>.

<sup>349</sup> Matilda Kreider et al., “Benefits and Burdens: Exploring the Role of Community Benefits in Wind Energy Development,” with NREL, 2024.

negotiated in contracting or built into bids for offshore leases managed by US Department of the Interior's Bureau of Ocean Energy Management (BOEM). One shortcoming of the fund approach in a study of offshore wind projects from the United Kingdom is that the value of the benefit per project has not increased over time.<sup>350</sup>

### Coalition building for offshore wind CBAs in California

California's offshore energy development has historically been relegated to Southern California, with extensive oil and gas platforms in state and federal waters. Efforts to expand offshore oil development in central and northern California were stalled by local opposition in the 1980s. Nonetheless, the first-ever floating offshore wind (FOSW) energy auction in California was held in 2022, and BOEM awarded leases to five companies on June 1, 2023. This includes three wind projects to be developed off Morro Bay in the Central Coast: Atlas Wind, to be built and operated by Equinor (formerly Statoil, Norway's national oil company); Golden State Wind by the developer Ocean Winds; and Even Keel Wind proposed by Invenergy. Off the coast of Humboldt County in Northern California, leases for projects were won by RWE Offshore Wind Holdings, LLC as well as California North Floating, LLC, a subsidiary of Copenhagen Infrastructure Partners.<sup>351</sup> An earlier CBA with Trident Winds was widely covered, but it was canceled because the developer did not win one of the offshore auctions.<sup>352</sup> Developers with winning bids on lease areas within BOEM-managed wind energy areas (WEAs) off the California coast "received credits—reductions in the amount that developers were required to pay [to the US Treasury] for the lease—in exchange for commitments to CBAs."<sup>353</sup>

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<sup>350</sup> Glasson, "Community Benefits and UK Offshore Wind Farms," 2020.

<sup>351</sup> Louise Bedsworth and Katherine Hoff, *Offshore Wind & Community Benefits Agreements in California* (Center for Law, Energy & the Environment, 2024).

<sup>352</sup> Sabin Center for Climate Change Law, "Community Benefits Agreements Database," n.d., accessed December 20, 2023, <https://climate.law.columbia.edu/content/community-benefits-agreements-database>.

<sup>353</sup> Katherine Hoff and Katie Segal, *Offshore Wind & Community Benefits Agreements in California* (Center for Law, Energy, & the Environment, 2023), <https://www.law.berkeley.edu/wp-content/uploads/2023/06/CBA-Policy-Paper.pdf>.



With the arrival of wind energy development, Humboldt Bay will see the construction of a heavy lift terminal to serve wind turbine assembly. Photo by JJG53, [Flickr](#), licensed under [CC BY-NC-ND 2.0](#).

CLEE's report on offshore wind CBAs in California offers several recommendations, including forming a coalition to speak as one voice with developers to make clearer and non-contradictory demands.<sup>354</sup> They also suggest values mapping with affected communities. For the financial resources necessary for CBAs, establishing a board to oversee disputes and ensure equity in distribution of funds can be helpful. CLEE's report also notes that accessing funds is difficult for smaller organizations and may require proxies to serve organizations that may be administratively under-resourced.

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<sup>354</sup> Hoff and Segal, *Offshore Wind & Community Benefits Agreements in California*.

Recognizing the impact the offshore wind industry could have on communities, BOEM incentivized CBAs in the bidding process for offshore wind projects in the Pacific Northwest division.<sup>355</sup> Projects would receive bonuses to bids for having CBA commitments in the five zones along the North and Central Coasts of California. These bonuses are differentiated between general and lease area benefits, with lease area benefits going to one or more local organizations or Tribes. The five winning bids for California's 2022–2023 offshore wind lease auction had CBA commitments of over \$29.1 million in lease area benefits and \$52 million in general benefits.<sup>356</sup> In addition to the CBAs, the developers also agreed to use an additional \$51 million on workforce and supply chain development, which added to bidding credit commitments. The auctions for the wind lease areas also took in \$757,100,000 according to BOEM.<sup>357</sup>

#### **A campaign to share lease sale revenue from offshore wind with onshore communities in Humboldt**

Organizing around the 2022–2023 lease sale for offshore wind in California, the Redwood Region Climate and Community Resilience Hub (CORE Hub), a program of the Humboldt Area Foundation and the Wild Rivers Community Foundation, convened a new coalition called the North Coast Community Benefits Network. The Network includes a broad range of community groups, including Tribal nations, local governments, environmental organizations, labor and community leaders, and academics.<sup>358</sup> In a public comment submitted to BOEM, the coalition proposed that 50 percent of federal revenues from the lease sale should be distributed locally to Tribes, Tribal Fisheries, local communities, and environmental research and monitoring.<sup>359</sup> This would

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<sup>355</sup> Bureau of Ocean Energy Management, "Decision Memorandum, California Final Sale Notice," October 12, 2022, <https://www.boem.gov/renewable-energy/state-activities/california>.

<sup>356</sup> Bedsworth and Hoff, *Offshore Wind & Community Benefits Agreements in California*.

<sup>357</sup> John Engel, "California's First-Ever Offshore Wind Auction Nets \$757M from Developers," *Factor This*, December 7, 2022, <https://www.renewableenergyworld.com/wind-power/offshore/californias-first-ever-offshore-wind-auction-nets-757m-from-developers/>.

<sup>358</sup> Redwood CORE Hub, *Historic Lease Sale for Offshore Wind In California Advances Amidst Calls for Greater Community Investments in the North Coast*, October 20, 2022, <https://redwoodcorehub.org/comments-and-final-sale-notice-media-release/>.

<sup>359</sup> David Finigan et al., "Comment from Redwood Region Climate and Community Resilience (CORE) Hub," Bureau of Ocean Energy Management, August 1, 2022, <https://www.regulations.gov/comment/BOEM-2022-0017-0068>.



include extended credits with regional investments in community benefits, workforce, and supply chain development.<sup>360</sup>

Crowley Wind Services was selected as the original heavy lift terminal developer. After initial refusal, the coalition was able to convince Crowley Wind Services to engage in CBA negotiations. These were proceeding until Crowley decided to release their exclusive right to negotiate. The Humboldt Bay Harbor and Recreation District (HBHRD) reissued an RFP for the design of the terminal and will later release another one for the build with the expectation that the selected developer will understand the need to engage in CBA negotiations.



The northern California coast is the traditional homeland of several Tribal nations, including Blue Lake Rancheria, the Bear River Band of the Rohnerville Rancheria, the Wiyot Tribe, and the Yurok Tribe. Photo by MPSharwood, [Wikimedia Commons](#), licensed under [CC BY-SA 4.0](#).

The coalition has conducted extensive research and has engaged in persistent advocacy to yield community benefits not just from offshore wind developers that are already incentivized to negotiate CBAs for credits, but also to hold accountable port infrastructure developers, such as heavy lift terminal operators. They have done so by refusing to separate CBA negotiations from the environmental review process, which offers a wealth of information on significant impacts to leverage. Additionally, the coalition has called for meaningful Tribal engagement and a community advisory committee as well as

<sup>360</sup> Jana Ganion et al., "To Expand Clean Energy Offshore, Bring the Benefits to Communities Onshore," *The Hill*, December 9, 2022, <https://thehill.com/opinion/energy-environment/3767860-to-expand-clean-energy-offshore-bring-the-benefits-to-communities-onshore/>.



several other committees centered on the heavy lift terminal project. Thus far, they have been successful.<sup>361</sup>

The Blue Lake Rancheria, with support from the North Coast Community Benefits Network, has advocated for the Humboldt Bay Harbor District to adopt a resolution to implement a green port strategy. This too was successful.<sup>362</sup> Safety is also a key priority, particularly for Tribes like the Yurok, Wiyot, and Blue Lake Rancheria, the latter of which has sought protections to prevent an increase in missing and murdered Indigenous people (MMIP), a statistic often disproportionately high in proximity to extractive industries. Such policies and procedures might include vehicle identification, employee agreements, accountability metrics, and more. The HBHRD also adopted an MMIP protections resolution.<sup>363</sup>

“The ethos of the Tribe is you don’t just raise concerns. You bring to the table solutions.”<sup>364</sup>

Heidi Moore-Guynup, Blue Lake Rancheria

In 2024, the California Public Utilities Commission unanimously voted to establish a centralized procurement model to acquire 7.6 GW of offshore wind via the Department of Water Resources from 2027 through 2035.<sup>365</sup> However, on January 20, 2025, immediately upon entering office, Donald Trump halted all new approvals for offshore wind, and federal agencies, including BOEM, froze communications with developers regarding permits.<sup>366</sup> It remains to be seen how this may impact CBA negotiations that have already been underway.

<sup>361</sup> “HUMBOLDT BAY OFFSHORE WIND HEAVY LIFT MARINE TERMINAL PROJECT,” accessed May 22, 2025, <https://humboldtbay.org/humboldt-bay-offshore-wind-heavy-lift-marine-terminal-project-3>.

<sup>362</sup> Humboldt Bay Harbor, Recreation, and Conservation District, “Resolution 2024-01 Adopting a Green Terminal Strategy,” 2024, <https://humboldtbay.org/sites/humboldtbay.org/files/Resolution%202024-01%20Adopting%20a%20Green%20Terminal%20Strategy.pdf>.

<sup>363</sup> “Resolution 2024-04 Affirming Commitment to the Prevention of Sex Trafficking and MMIP,” Humboldt Bay Harbor, Recreation, and Conservation District, 2024, [https://humboldtbay.org/sites/humboldtbay.org/files/Resolution%202024-04%20Affirming%20Commitment%20to%20the%20Prevention%20of%20Sex%20Trafficking%20and%20MMIP\\_SIGNED.pdf](https://humboldtbay.org/sites/humboldtbay.org/files/Resolution%202024-04%20Affirming%20Commitment%20to%20the%20Prevention%20of%20Sex%20Trafficking%20and%20MMIP_SIGNED.pdf).

<sup>364</sup> Heidi Moore-Guynup, personal communication to authors, 2024.

<sup>365</sup> Lauren Kubiak, “CPUC Sends Strongest Signal Yet to Advance Offshore Wind,” *NRDC Expert Blog*, August 22, 2024, <https://www.nrdc.org/bio/lauren-kubiak/cpuc-sends-strongest-signal-yet-advance-offshore-wind>.

<sup>366</sup> Jael Holzman, “Offshore Wind Faces Its ‘Worst Case Scenario’ Under Trump,” *Heatmap*, February 25, 2025, [https://getpocket.com/read/e2ad7p80T576fy9720Abz6et82gcTZ0837aR5dUM8ch9dhL10GT2aJdka57Ild77\\_e8fad80e3b1e0e3a8c00b6ef58fb09b5](https://getpocket.com/read/e2ad7p80T576fy9720Abz6et82gcTZ0837aR5dUM8ch9dhL10GT2aJdka57Ild77_e8fad80e3b1e0e3a8c00b6ef58fb09b5).

## Potential for CBAs in Oregon's floating offshore wind (FOSW), but timing deemed premature due to siting disputes

Along with other breezy coastal states like California and Maine, Oregon is a potential site for commercial development of offshore wind energy. Such development would contribute to the national goals of reaching 15 GW of FOSW energy by 2035 (set by the Biden-Harris administration).<sup>367</sup> Oregon House Bill 2021 framed targets to reduce greenhouse gas emissions from electricity sold in Oregon to 100 percent below baseline emission levels by 2040, as well as provisions that energy siting and transmission facilities provide community benefits.<sup>368</sup> Also in 2021, Oregon legislation passed House Bill 3375 requiring the Oregon Department of Energy (ODOE) to conduct a legislative report identifying the benefits and challenges of integrating up to 3 GW of FOSW by 2030, which ODOE produced in September 2022.<sup>369</sup> With support from the DLCD, the Oregon Legislature requested Oregon Consensus conduct an assessment of whether the timing was right for a collaborative process creating a CBA for FOSW leasing in Oregon.<sup>370</sup> The assessment process, conducted with fishing groups, seafood processors, and Oregon Tribes on the southern coast, concluded in May 2023 that the timing for a CBA was not appropriate and could be considered premature because there are active, unresolved disputes to the siting of the proposed wind energy areas.

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<sup>367</sup> US White House, "Fact Sheet: Biden-Harris Administration Announces New Actions to Expand US Offshore Wind Energy," September 15, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/15/fact-sheet-biden-harris-administration-announces-new-actions-to-expand-u-s-offshore-wind-energy/>.

<sup>368</sup> Enrolled House Bill 2021, HB 2021-C (2021). <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>.

<sup>369</sup> The ongoing process of FOSW development in Oregon started in 2022 when BOEM convened an intergovernmental task force to identify draft wind energy "call areas" (approximately 18 miles offshore) in the ocean that would be suitable for FOSW leasing. In Fall 2022, "BOEM invited Tribes and Oregon state agencies to assist in identifying key observation points" from which to conduct meteorological visual simulations of potential wind farms. As of February 2024, the "call areas" were narrowed down to "Wind Energy Areas" (WEAs) (sited off the coast of Coos Bay and Brookings) for BOEM to auction to private energy firms for assessment of feasibility, including environmental assessment (NEPA) and permitting review (state-led federal consistency review, conducted by the Department of Land Conservation and Development (DLCD) under the authority of the federal Coastal Zone Management Act). Enrolled House Bill 3375, HB 3375-A (2021). <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3375/Enrolled>; Oregon Department of Energy, "State of Oregon: Energy in Oregon - Floating Offshore Wind Study: Benefits & Challenges for Oregon," 2022, <https://www.oregon.gov/energy/energy-oregon/Pages/fosw.aspx>; Bureau of Ocean Energy Management, "Oregon Activities | BOEM.Gov," accessed March 3, 2025, <https://www.boem.gov/renewable-energy/state-activities/Oregon>; Bureau of Ocean Energy Management, "BOEM Finalizes Wind Energy Areas in Oregon," February 13, 2024, <https://www.boem.gov/newsroom/press-releases/boem-finalizes-wind-energy-areas-oregon>; Oregon Coastal Management Program Oregon Department of Land Conservation and Development, "Federal Consistency," accessed March 3, 2025, <https://www.oregon.gov/lcd/OCMP/Pages/Federal-Consistency.aspx>.

<sup>370</sup> Bobby Cochran et al., *Oregon Consensus Assessment Floating Offshore Wind: Community Benefit Agreements* (Oregon Consensus, 2023), <https://oregonconsensus.org/projects/offshore-wind-community-benefit-assessment/>.

According to the assessment report, there was consistency among Oregon stakeholders and Tribal governments about the central principles considered necessary for potential future CBAs. Benefits considered high priority included workforce training and economic development opportunities, investments in sustainable and thriving fisheries, local energy resilience, and benefits to frontline coastal communities investing in housing, education, and healthcare. Those involved in the CBA assessment noted that benefits agreements should be community-wide but also should prioritize those most impacted by offshore wind development, from working families to low-income residents, Tribes, and people of color. Oregon's coastal communities have identified challenges where benefits could be helpful, including transitions from resource industries, local energy resilience and infrastructure, and struggling anchor institutions like hospitals and schools. The report noted the potential for future CBAs, such as auction proceeds going to local communities most impacted by offshore wind development.<sup>371</sup>



A floating offshore wind turbine similar to the kind proposed for the Humboldt Wind Energy Area. Photo from [US Department of Energy](#), licensed under [CC0 1.0](#).

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<sup>371</sup> Cochran et al., *Oregon Consensus Assessment Floating Offshore Wind: Community Benefit Agreements*.

The assessment also found that premature negotiations of CBAs could limit the ability of those opposed to the current wind energy areas to leverage BOEM to reconsider the locations, and that CBAs could be “perceived as an attempt to prematurely ‘buy off’ or ‘compensate’ fishing groups, individuals in the seafood community, and Tribes without a comprehensive understanding of the potential impacts and benefits of wind development.”<sup>372</sup> Community leaders have also referenced the variety of remaining unanswered questions regarding potential impacts of FOSW.<sup>373</sup>

Despite years of consistent public concerns around a lack of conclusive research regarding environmental impacts, BOEM finalized its Environmental Impact Statement on August 13, 2024, finding “no significant impacts” for issuing leases to WEAs in Oregon’s outer continental shelf.<sup>374</sup> On August 29, the Department of Interior announced the Final Sale Notice, setting October 15, 2024 as the auction date. Five companies qualified to submit bids to the lease area auction; however, only one company expressed interest to BOEM. After three years of attempts to collaborate with BOEM to extensively analyze potential impacts and consider alternative WEAs that would exclude critical marine habitats, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) filed a lawsuit in Oregon Federal District Court against the federal government, citing BOEM’s violations of NEPA, which obliges federal agencies to assess environmental impacts of their proposed projects prior to making decisions, as well as BOEM’s failure to comply with legal obligations of the National Historic Preservation Act to protect cultural resources.<sup>375</sup> BOEM announced on September 27, 2024 that it would postpone Oregon’s FOSW auction.<sup>376</sup>

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<sup>372</sup> Cochran et al., *Oregon Consensus Assessment Floating Offshore Wind: Community Benefit Agreements*, 11.

<sup>373</sup> Cochran et al., *Oregon Consensus Assessment Floating Offshore Wind: Community Benefit Agreements*.

<sup>374</sup> Bureau of Ocean Energy Management, “BOEM Finalizes Environmental Review of Wind Leases Offshore Oregon,” August 13, 2024, <https://www.boem.gov/newsroom/press-releases/boem-finalizes-environmental-review-wind-leases-offshore-oregon>.

<sup>375</sup> Morgan Gaines, “TRIBE FILES LAWSUIT TO STOP BOEM’S WIND ENERGY LEASE SALE AND REQUIRE MORE EXTENSIVE ANALYSIS OF WIND ENERGY IMPACTS,” *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians*, September 17, 2024, <https://ctclusi.org/tribe-files-lawsuit-to-stop-boems-wind-energy-lease-sale-and-require-more-extensive-analysis-of-wind-energy-impacts/>.

<sup>376</sup> Monica Samayoa, “Offshore Wind Looked like a Sure Thing for Oregon — until It Wasn’t. What Went Wrong?,” OPB, October 23, 2024, <https://www.opb.org/article/2024/10/23/oregon-wind-energy-offshore-turbine-technology-climate-renewable-boem-greenhouse-gas-emissions/>.

Utility-scale solar development paired with battery energy storage systems has played an increasingly prominent role in the shift away from fossil fuels in the energy grid, particularly in states like California.

Previously, Oregon's 2024 legislative session passed House Bill 4080, which directed the Department of Energy and the Department of Land Conservation and Development (DLCD) "to develop an Offshore Wind Energy Roadmap that defines standards to be considered in the processes related to offshore wind energy development and approval."<sup>377</sup> The Oregon Offshore Wind Energy Roundtable meetings hosted by DLCD started in November 2024. According to the Work Group Charters Draft document, the Community Benefit and Other Legally Enforceable Agreements Workgroup is currently participating in ongoing meetings to discuss the following topics: CBAs tied to BOEM leases and other large infrastructure projects, project labor agreements, Tribal benefit agreements, good neighbor agreements, joint ownership agreements between community and developers where both the benefits and the risks of a project are shared, recommendations and options for the State of Oregon for potential template agreements, and the timelines and resources needed to advance the recommendations.<sup>378</sup> The Oregon Sea Grant, a cooperative program between NOAA and Oregon State University, is participating in the DLCD Roadmap Roundtable and also hosted a public webinar on an introduction to offshore wind energy CBAs.<sup>379</sup>

### Disparities in CBA Payments for Solar + Battery Energy Storage System

Utility-scale solar development paired with battery energy storage systems has played an increasingly prominent role in the shift away from fossil fuels in the energy grid, particularly in states like California.<sup>380</sup> Benefit agreements with these kinds of projects are either on an individual basis, through county programs, or through state programs aiming to facilitate project siting. The public benefit agreement for Viking Energy Farm in Imperial County, for example, is a county program aiming to backfill the loss of sales tax and revenues from agricultural activities, and those funds are collected in Imperial

<sup>377</sup> Oregon Coastal Management Program Oregon Department of Land Conservation and Development, "Oregon Offshore Wind Energy Roadmap," accessed March 3, 2025, <https://www.oregon.gov/lcd/ocmp/pages/offshore-wind-roadmap.aspx>; Enrolled House Bill 4080, HB 4080-B (2024). <https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/HB4080>.

<sup>378</sup> Oregon Department of Land Conservation and Development, "Oregon Offshore Wind Energy Roadmap."

<sup>379</sup> *An Introduction to Offshore Wind Community Benefit Agreements*, directed by Oregon Sea Grant, 2024, 2:07:59, <https://www.youtube.com/watch?v=-eOyxgLOJEA>.

<sup>380</sup> Dustin Mulvaney, *Solar Power: Innovation, Sustainability, and Environmental Justice*, (University of California Press, 2019).

County's general fund, which then can be used to support local programs and grants. Kern, San Bernardino, Riverside, and Butte Counties all have similar programs to make up for tax losses because of utility-scale solar property tax exemptions, whereas elsewhere, goals are to facilitate siting (California's property tax exemption for solar is sunseting in 2027). Host benefit agreements are encouraged in New York, which considers workforce and community benefits criteria in electricity procurement and state-level siting decisions in the spirit of managing land use conflicts. In California, CBAs are required in the state's streamlined Opt-In approval pathway that allows developers to bypass local government, and solar energy and storage projects are among the first to enroll in the process. However, as we outline in what follows, the value of these CBAs is a small fraction of the expected financial returns from the projects and is also small compared to government subsidies such as tax credits and grants. Disparities in community benefits for the same technologies in different places suggest unbalanced power relationships between community and developers in negotiation, resulting in an inequitable distribution of funds.

Two of the first 6 projects that are under consideration for the CEC Opt-In program described above include the Darden Clean Energy Project (Fresno County) and the Perkins Renewable Energy Project (Imperial County), both 1.150 GW solar and storage systems by Intersect Power. The CEC Staff Assessment and Draft Environmental Impact Report (EIR) for the Darden Clean Energy Project was released in February 2025,<sup>381</sup> and the CEC approved the project in June 2025.

The Darden project will invest over \$2 million across several individual CBAs with partner organizations, referred to as the Darden Project Investment Plan. The developer claims that 1 percent of the Darden project profits will be invested in areas from economic opportunity and public transportation access to air pollution, affordable housing and healthy food access. This is relatively low in the global context for benefit-sharing (e.g., 3.5 percent for Albemarle in Atacama, Chile or 4.5 percent for the Raglan Agreement in Canada), not to mention a significantly higher value proposition for co-ownership and co-equity agreements for benefit-sharing.

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<sup>381</sup> California Energy Commission, *Darden Clean Energy Project Staff Assessment*.



The Perkins Renewable Energy Project intends to pursue a project labor agreement according to the CEC docket where the project has been reviewed. The project developers have proposed a \$1.5 million CBA with Imperial County—less than the Darden Clean Energy Project, even though it would be constructed and operated by the same company. The Perkins project is on BLM-managed public lands and would occupy the entire Imperial East Solar Energy Zone (SEZ) and some private land. The Perkins Renewable Energy Project application was deemed incomplete by CEC and the project is still under review.

Owing to the structure of the CEC Opt-In process, community benefits must be arranged prior to and in place by the start of the review process. This information asymmetry can make it challenging for communities to negotiate for benefits and mitigations, a recurring theme throughout this report. A public comment to the Darden project from Rural Communities Rising, a 501(c)(3) nonprofit, states the following:

[They are] conducting comprehensive community outreach and engagement and building a board of directors that is representative of all impacted rural communities in western Fresno County—with the goal of a united voice for working with energy developers and ‘community determined community benefits’ that meet the needs of participating impacted community members.<sup>382</sup>

These first approvals will set the bar for the quality of these outcomes. The first completed Opt-In application, the Fountain Wind Project, was denied by the CEC in May 2025. The project had previously been rejected at the county level and had several unavoidable biological resource impacts and unresolved land-ownership questions.<sup>383</sup>

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<sup>382</sup> Rural Communities Rising Comments – Darden Clean Energy Project – Comments about Social and Economic Impact Assessment– ECNorthwest 11-7-23 (2025). <https://efiling.energy.ca.gov/GetDocument.aspx?tn=261470&DocumentContentId=97866>.

<sup>383</sup> Shasta County, CA. “CEC Staff Recommends Denial of Fountain Wind Project.” March 26, 2025. <https://www.shastacounty.gov/community/page/cec-staff-recommends-denial-fountain-wind-project>.

## Comparisons of CBAs for solar projects across different areas in the US.

| Project                                 | Place                         | Term of art                         | Total community benefit value |             | Notes                | Megawatt | \$/MW     | Acres | \$/acre  |
|-----------------------------------------|-------------------------------|-------------------------------------|-------------------------------|-------------|----------------------|----------|-----------|-------|----------|
| <b>South Ripley Solar Project</b>       | Ripley, NY, Chautauqua County | Host Community Agreement            | \$472,500                     | <div></div> |                      | 270      | \$1,750   | 1,500 | \$315    |
| <b>Excelsior Energy Project</b>         | Byron, NY                     | Host Community Agreement            | \$1,006,522                   | <div></div> |                      | 280      | \$3,595   | 3,443 | \$292    |
| <b>Mount Morris Solar Farm</b>          | Mount Morris, NY              | Host Community Agreement            | \$10,000,000                  | <div></div> |                      | 177      | \$56,497  | 1,000 | \$10,000 |
| <b>Wright Solar Park</b>                | Merced County, CA             | Solar Benefits Agreement            | \$500,000                     | <div></div> |                      | 233      | \$2,146   | 1,392 | \$359    |
| <b>Darden Clean Energy Project</b>      | Fresno County, CA             | Community Benefits Plan             | \$2,000,000                   | <div></div> | At least             | 1,150    | \$1,739   | 9,500 | \$211    |
| <b>Perkins Renewable Energy Project</b> | Imperial Valley, CA           | Community Benefit Agreement         | \$1,500,000                   | <div></div> | Still negotiating    | 1,150    | \$1,304   | 7,295 | \$206    |
| <b>Alpine Solar</b>                     | Los Angeles County, CA        | N/A (confidential)                  | \$500,000                     | <div></div> | In cash and land     | 92       | \$5,435   | 800   | \$625    |
| <b>Kahana Solar</b>                     | Maui, HI                      | Community Benefits Package          | \$1,375,000                   | <div></div> |                      | 20       | \$68,750  | 220   | \$6,250  |
| <b>Savio Solar, Ma'ili</b>              | Oahu, HI                      | Community Benefit Agreement options | \$1,200,000                   | <div></div> | Up to \$2M suggested | 8        | \$250,000 | 24    | \$83,333 |
| <b>Viking Energy Farm</b>               | Imperial Valley, CA           | Public Benefit Agreement            | \$2,668,600                   | <div></div> |                      | 150      | \$17,792  | 604   | \$4,419  |

The above table shows a few example CBAs across the US with a wide range of values normalized by the capacity of the solar project and its area in acres. They show most projects fall within about a fourfold difference on a per capacity basis, and a threefold difference in value per acre. However, some projects are able to secure on the order of ten times more. Overall, CBAs are a small portion of the overall cost of a building project. To put these numbers in context, it cost \$2.2 million per MW to build a utility-scale solar project paired with energy storage in 2023.<sup>384</sup> That means a 1 GW solar project would cost over \$2 billion. A \$1.5 million CBA for a project that is estimated to cost \$2.5 billion to build puts the value of the CBA at 0.001 percent of the overall cost.

<sup>384</sup> Galen Barbose et al., "Tracking the Sun, 2024 Edition," *Berkeley Lab*, 2024, <https://emp.lbl.gov/tracking-the-sun/>.

## Indigenous Energy Sovereignty Without Borders: Solar Plus Storage Microgrid

While utility-scale solar and storage projects may perpetuate social and environmental inequalities, smaller-scale community solar projects may be paired with long-duration storage to open new pathways for empowering communities and supporting Indigenous energy sovereignty.

### The Viejas Enterprise Microgrid Project

Supported by the US DOE for the Viejas Band of Kumeyaay Indians near Alpine, California, this project generates 15 MW of solar plus 70 MWh of non-lithium long-duration energy storage.<sup>385</sup> The Tribe had experienced an increasing number of blackouts from fires and power safety shutoff events that were costing them lost revenues due to lost business. The Viejas Enterprise Microgrid (VEM) managed by Indian Energy—a 100 percent tribally owned company—is designed with 15 MW of solar canopy over a carport/parking lot at a commercial center owned by the Tribe, 70 MWh non-lithium long-duration energy storage, and an advanced microgrid control system.

The Tribe was interested in alternative technologies to lithium batteries because of concerns about fire.<sup>386</sup> The battery system includes 60 MWh zinc flow batteries and 10 MWh of vanadium batteries.<sup>387</sup> The VEM project is owned by three Tribes overall, including the Viejas Band of Kumeyaay Indians, the Sault Ste. Marie Tribe of Chippewa Indians in northern Michigan, and the Turtle Mountain Band of Chippewa Indians in North Dakota, and it is supported by a DOE loan guarantee. The community benefits associated with the CBP for this project include activities around workforce development, education, training, apprenticeships, and equitable careers.

Indian Energy is part of an Indigenous Energy Sovereignty program that is dedicated to deploying 100 percent renewable energy. In February of 2024, Indian Energy and Indian Power signed the

<sup>385</sup> U.S. Department of Energy, "Viejas Microgrid," September 2024, <https://www.energy.gov/lpo/viejas-microgrid>.

<sup>386</sup> "Viejas Casino & Resort Solar & Storage Microgrid," *Invinity Energy Systems*, n.d., accessed March 15, 2025, <https://invinity.com/viejas-microgrid/>.

<sup>387</sup> Eos Energy Enterprises, "Eos Energy Announces Expansion of Existing Project with Indian Energy and the California Energy Commission," July 2, 2024, <https://investors.eose.com/news-releases/news-release-details/eos-energy-announces-expansion-existing-project-indian-energy>.

Collaborative Social and Economic Development Agreement with the Federation of Rural and Farm Communities, comprising Peoples of Native Origin of the Americas of Mexico. This included 68 Indigenous Tribes and 10 additional ethnic groups in Mexico that are not recognized as official Tribes by the Mexican National Institute due to small population size and unclaimed territories.<sup>388</sup> The purpose is to unify Tribes in California and Mexico in the planning and development of ten renewable energy projects by 2035. In addition to the Viejas Band, the projects involve the La Posta Band of Mission Indians, Campo Kumeyaay Indians, Ewiiapaayp Band of Kumeyaay Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, Los Coyotes Band of Cahuilla and Cupeno Indians, and Pala Band of Mission Indians. The Tribe hosting the microgrid suggests that this project makes the Viejas Band of Kumeyaay Indians the national leader in the push for energy sovereignty.<sup>389</sup>

### Hydrogen Hubs Lack Transparency on Community Benefits

In 2023, the US DOE announced \$7 billion in funding for the creation of regional clean hydrogen hubs. The IIJA defined clean hydrogen as “hydrogen produced with a carbon intensity equal to or less than 2 kilograms of carbon dioxide-equivalent produced at the site of production per kilogram of hydrogen produced.”<sup>390</sup> Across the US, 7 regional hubs were selected that represent a variety of energy sources to produce hydrogen: nuclear, renewables, and natural gas/fossil fuels.<sup>391</sup> Hydrogen is intended to be used for hard-to-decarbonize sectors such as transportation and heavy-duty trucking.

As part of the competitive selection of hubs to be funded, DOE required that all funding applications submit a CBP, which accounted for 20 percent of the overall application review score, in order to

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<sup>388</sup> 1. Indian Energy et al., “Indian Energy Community Benefits Plan for the Viejas Enterprise Microgrid (VEM) and Beyond,” July 2024.

<sup>389</sup> Brian Martucci, “Tribal Microgrid Project Is First with Long-Duration Storage to Get DOE Loan Guarantee,” *Utility Dive*, September 19, 2024, <https://www.utilitydive.com/news/tribal-microgrid-project-is-first-with-long-duration-storage-to-get-doe-loan-EOS-Invinity/727520/>.

<sup>390</sup> US DOE, “Clean Hydrogen Production Standard Guidance,” 2023, <https://www.hydrogen.energy.gov/library/policies-acts/clean-hydrogen-production-standard>.

<sup>391</sup> OCED, “H2Hubs Local Engagement Opportunities,” Energy.Gov, accessed June 15, 2024, <https://www.energy.gov/oced/h2hubs-local-engagement-opportunities>.

prioritize tangible community benefits, although not all hubs will include a CBA or PLA.<sup>392</sup> Of the 7 selected hubs, 5 have released high-level community benefits commitments summaries, and only one, the Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) in California, has released their CBP for “Phase 1” and beyond.<sup>393</sup>

During the Biden administration, the Office of Clean Energy Demonstrations’ (OCED) engagement process, which included public listening sessions in each meeting, revealed grievances about the hydrogen hubs and CBPs, particularly sentiments about the lack of transparency around the hub projects and community engagement.<sup>394</sup> Advocacy groups have argued that community engagement meetings have felt perfunctory, with little transparency about how community engagement can translate into decisions around the projects and its funding, as well criticism about a lack of information other than generalized maps.<sup>395</sup>

Shortly after Trump’s inauguration, the DOE released a memo to pause programs that require the use of CBPs or enforce Biden’s Justice40 initiative.<sup>396</sup> This memo has led to confusion about whether the funds promised for hydrogen hub development will be dispersed or not.<sup>397</sup>

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<sup>392</sup> Maggie Field, “It Takes a Community: Hydrogen Hubs and Community Benefits Plans Explained,” *Clean Air Task Force*, November 16, 2023, <https://www.catf.us/2023/11/takes-community-hydrogen-hubs-community-benefits-plans-explained/>.

<sup>393</sup> ARCHES, “Overview of the ARCHES Community Benefits Plan,” <https://archesh2.org/>, 2023, <https://archesh2.org/community-benefits-2/>.

<sup>394</sup> Batoul Al-Sadi, “Seven Months After the DOE Hydrogen Hub Announcement: Where Are We Now on Community Engagement?,” *Natural Resources Defense Council*, May 22, 2024, <https://www.nrdc.org/bio/batoul-sadi/seven-months-after-doe-hydrogen-hub-announcement-where-are-we-now-community>; Reid Frazier, “Groups Call for Freeze on Hydrogen Hub Talks over Lack of Transparency,” *The Allegheny Front*, 2024, <https://www.alleghenyfront.org/hydrogen-hub-arch2-lack-of-transparency/>.

<sup>395</sup> Kathiann Kowalski, “Advocates Frustrated by Lack of Transparency, Engagement on Regional...,” *Canary Media*, December 6, 2024, <https://www.canarymedia.com/articles/enn/advocates-frustrated-by-lack-of-transparency-engagement-on-regional-hydrogen-hub-projects>.

<sup>396</sup> Jael Holzman, “Trump’s Other Funding Freeze Attacks Environmental Justice,” *Heatmap News*, 2025, <https://heatmap.news/politics/trump-doe-justice40-community-benefit>.

<sup>397</sup> Leigh Collins, “Billions of Dollars of Promised US Hydrogen Hub Funding Will Be Disbursed, despite Trump Order, Says Leading Republican,” *Policy, Hydrogeninsight.Com*, 2025, <https://www.hydrogeninsight.com/policy/billions-of-dollars-of-promised-us-hydrogen-hub-funding-will-be-disbursed-despite-trump-order-says-leading-republican/2-1-1769833>.

## Indigenous Refusal of Compensation for Pumped Storage

Pumped storage hydropower represents a large component of existing utility-scale energy storage. With dozens of projects in the permitting pipeline, it is an energy technology that could gain importance in the future.<sup>398</sup>

The Swan Lake North Pumped Storage Hydroelectric Project (Swan Lake) is a permitted closed-loop pumped storage hydroelectric project in pre-construction phase as of early 2025, the first to be built in the United States in 30 years.<sup>399</sup> Upon completion, Swan Lake will occupy 2,040 acres of land northeast of Klamath Falls in rural Klamath County, Oregon. This land is managed by the Bureau of Land Management (711 acres), the Bureau of Reclamation (19 acres), and other state, county, and private landholders (1,310 acres).<sup>400</sup>

Described by its developer Rye Development as a key piece of infrastructure that can store renewably produced energy, contribute to the resilience of the electrical grid, and help Oregon reach its clean energy goals, Swan Lake may also offer other basic benefits, like jobs and the promise of additional tax revenue that can fund public services, like schools and libraries.<sup>401</sup> Rye Development and the Southern Oregon Building and Construction Trades Council signed a memorandum of understanding (MOU) on February 6, 2020 to build Swan Lake under a project labor agreement (PLA).<sup>402</sup>

However, these indirect benefits also come with drawbacks: the promises of “green” energy have been increasingly employed to justify ongoing Indigenous dispossession from land, water, and cultural

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<sup>398</sup> Surabhi Karambelkar et al., “Pumped Storage Hydropower in the United States: Emerging Importance, Environmental and Social Impacts, and Critical Considerations,” *WIREs Water* 12, no. 2 (2025): e70017, <https://doi.org/10.1002/wat2.70017>.

<sup>399</sup> Roman Battaglia, “Pending Approval, Work Could Start This Year on a New, Controversial Energy Project near Klamath Falls,” *OPB News*, April 9, 2024, <https://www.opb.org/article/2024/04/09/klamath-falls-oregon-pumped-water-energy-storage-project/>.

<sup>400</sup> “BLM Authorizes Swan Lake Land Use for Pumped Storage Project near Klamath Falls,” Bureau of Land Management, October 17, 2019, <https://www.blm.gov/press-release/blm-authorizes-swan-lake-land-use-pumped-storage-project-near-klamath-falls>.

<sup>401</sup> ECONorthwest, “Swan Lake North - Economic and Fiscal Impacts from Operations and Construction,” 2015, <https://slenergystorage.com/documents/Swan%20Lake%20North%20-%20Economic%20and%20Fiscal%20Impacts%20from%20Operations%20and%20Construction%20-%20ECONorthwest%20-%20January%202015.pdf>.

<sup>402</sup> Don McIntosh, “Swan Lake Energy Storage Signs Project Labor Agreement,” *NW Labor Press*, March 5, 2020, <https://nwlaborpress.org/2020/03/swan-lake-energy-storage-signs-project-labor-agreement/>.



resources, leading to conditions of environmental injustice.<sup>403</sup> A final environmental impact statement issued by the Federal Energy and Regulatory Commission noted that project construction and operation would significantly affect important cultural resources belonging to the Klamath Tribes, as well as land and soils, water quality, and recreation.<sup>404</sup>



The mouth of the Klamath River, California. Photo by Linda Tanner, [Flickr](#), licensed under [CC BY-NC-ND 2.0](#).

To address adverse cultural impacts, a \$40 million compensation package was offered to the Klamath Tribes by Copenhagen Infrastructure Partners (CIP), Swan Lake's owner. This includes:

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<sup>403</sup> Sarah Sax, "Cultural Resources Are Not a Renewable Thing for Us.," *High Country News*, January 1, 2022, <http://www.hcn.org/issues/54-1/north-renewable-energy-cultural-resources-are-not-a-renewable-thing-for-us/>; B. 'Toastie' Oaster, "Green Colonialism Is Flooding the Pacific Northwest," *High Country News*, February 28, 2023, <http://www.hcn.org/issues/55-3/indigenous-affairs-green-colonialism-is-flooding-the-pacific-northwest/>; Alida Cantor et al., "Energy Storage and Environmental Justice: A Critical Examination of a Proposed Pumped Hydropower Facility in Goldendale, Washington," *Antipode* 0, no. 0 (2023): 1-23, <https://doi.org/10.1111/anti.12994>.

<sup>404</sup> Federal Energy Regulatory Commission, "Final Environmental Impact Statement for the Swan Lake North Pumped Storage Project (P-13318-003)," January 25, 2019, <https://www.ferc.gov/final-environmental-impact-statement-swan-lake-north-pumped-storage-project-p-13318-003-issued>.

- \$22 million for land acquisition
- \$10 million for a tribal museum
- \$5 million for a sober living facility
- \$2 million for education
- promises to employ Tribal members in union-wage jobs<sup>405</sup>

This compensation package was rejected by the Klamath Tribes' General Council on September 9, 2023, due to Tribal concerns that accepting the compensation package would effectively forfeit sovereign rights and condone the desecration of sacred sites. A movement has since been underway to hold a referendum vote, even as Swan Lake continues working to complete pre-construction requirements.<sup>406</sup>

### Transmission Line with Tribal Benefits

Despite their important role in carrying electricity long distances, research and policy analysis examining CBAs in transmission are somewhat limited. While it does not focus on CBAs, a toolkit from the National Wildlife Federation is a key resource that highlights specific ways to enhance community participation in arrangements with transmission infrastructure.<sup>407</sup> The NWF proposes 5 pillars of responsible and fair clean energy transmission:

1. Minimizes impact to wildlife habitat in siting transmission infrastructure while prioritizing already disturbed areas
2. Centers and empowers local communities and Tribal nations
3. Applies mitigation measures that conserve and restore ecosystems and wildlife habitat populations

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<sup>405</sup> Paul Chamless, "\$40 Million Swan Lake Hydro Energy Project Compensation Package Rejected by Klamath Tribes General Council," *Klamath Tribes News*, January 23, 2024, <https://www.klamathtribesnews.org/2024/01/23/40-million-swan-lake-hydro-energy-project-compensation-package-from-cip-rejected-by-klamath-tribes-general-council/>.

<sup>406</sup> Oregon Department of Energy, "Oregon Energy Facility Siting Project Updates: June 2024," 2024, <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/EFSC-Project-Updates.aspx>; Chamless, "\$40 Million Swan Lake Hydro Energy Project Compensation Package Rejected by Klamath Tribes General Council."

<sup>407</sup> Veronica Ung-Kono, *Clean Energy Transmission: National Wildlife Federation's Toolkit for Community Participation* (National Wildlife Federation, 2024), <https://www.nwf.org/Home/Educational-Resources/Reports/2024/Clean-Energy-Transmission-Toolkit>.

4. Applies proactive, interregional long-term planning that equitably invites collaboration among communities, state, regional, and federal stakeholders, regulators, and Tribes
5. Responsible transmission development maximizes coordination of decision-makers<sup>408</sup>

One key example of the second pillar—centering and empowering local communities and Tribal nations—is the transformative relationship established between the Morongo Band of Mission Indians and the utility Southern California Edison.

#### **Morongo Band of Mission Indians agreement with Southern California Edison**

This case involved the expansion of an existing 48-mile transmission corridor from the Devers substation near Palm Springs to Grand Terrace and San Bernardino, California. A right-of-way contract between the utility and Tribe was set to expire.<sup>409</sup> The utility would have had to spend a \$0.5 billion to reroute the line because of eminent domain restrictions on Tribal lands. As a result, access to land was a critical point of leverage for the Tribe.

The National Wildlife Federation notes this as a good example of FPIC because the Tribe held a decision-making role about the project on Tribal lands that will yield concrete benefits. Through Morongo Transmission LLC, the Tribe is now a part-investor in the transmission line. The utility makes direct payments to the Tribe, expanding the Tribe's capacity to build, own, and deliver solar, wind, and battery power to the Southern California Edison (SCE) electricity grid. SCE also passes energy cost savings to Tribal members.<sup>410</sup> The project was approved by the California Independent System Operator in 2011 and completed in 2021, making the Morongo Band of Mission Indians the first Native American Tribe to be approved as a participating transmission owner in the United States.<sup>411</sup>

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<sup>408</sup> Ung-Kono, 8–9.

<sup>409</sup> For further analysis on right-of-way agreements with Tribal nations, see: Finn, et al. "Tribal Benefit Agreements."

<sup>410</sup> Ung-Kono, *Clean Energy Transmission: National Wildlife Federation's Toolkit for Community Participation*.

<sup>411</sup> Morongo Band of Mission Indians, *Morongo Becomes First Native American Tribe to Be Approved as a Participating Transmission Owner in Nation*, July 19, 2021, <https://morongonation.org/news/morongo-becomes-first-native-american-tribe-to-be-approved-as-a-participating-transmission-owner-in-nation/>.

# Common Provisions of CBAs

As the above case studies demonstrate, CBAs are fluid, flexible, and may differ significantly depending on the context. At any given link in the supply chain, strong CBAs should offer a mix of provisions based on local priorities that matter most for community members. Based on a review of CBAs across the supply chain, in what follows, we have thematically categorized the general provisions they contain and provided examples from a broader set of agreements that goes beyond our case studies.



## Governance

**Communities have the power to set the terms and manage the outcomes of CBAs.** CBAs have historically been seen as legally binding agreements between a developer and a community, but with somewhat limited engagement from the government. Different levels of government have begun to introduce policy guardrails for CBAs that may facilitate access to funding for development. Yet, when governments are captured by industry, non-binding CBPs or “good neighbor” policies may become watered down. Through proactive community engagement and outreach, community coalitions and companies can negotiate CBAs with or without participation from local, state, or federal governments. Communities can define the scope of a CBA and make collective decisions about how it is administered. Governance provisions allow communities to provide input on project design and management, and may include those listed in the following table.

## Selected Examples of Governance Provisions

### Recognition of Indigenous rights, Tribal cultural resources, and associated obligations to FPIC

The Western Cape Communities Co-Existence Agreement, Ely Bauxite Mining Project Agreement, and the Weipa Township Agreement between Rio Tinto and 12 Aboriginal “Traditional Owner” groups recognize Indigenous title to the land mined by Rio Tinto.<sup>412</sup>

<sup>412</sup> The University of Melbourne, “Comalco Indigenous Land Use Agreement (ILUA) (Western Cape Communities Co-Existence Agreement).”



**Identification of  
representatives and CBA  
decision-making  
authorities**

In Nashville, Tennessee, a “Community Benefits Agreement” covering the site of a new Major League Soccer stadium directed the signatories to establish a six-member “Community Advisory Committee,” including two representatives from the developer, two representatives from a community coalition, and two residents from each of the two adjacent affected “Promise Zones” hosting the development. Together, the Committee serves as a decision-making body implementing the CBA and ensures compliance with CBA provisions.<sup>413</sup>

**CBA duration,  
amendment, and  
expiration date**

In 2011, a division of the Chevron Corporation and the City of Richmond signed the “Environmental and Community Investment Agreement” aimed at addressing issues relating to a major modernization project at Chevron’s oil refinery in Richmond, California. The Agreement set a 10-year lifetime commencing with the operation of a new plant or a period where Chevron was to pay the City of Richmond \$3 million annually in ten installments, whichever was longer.<sup>414</sup>

**Outline of  
decision-making  
processes, reporting,  
and meeting  
requirements**

The L.A. Live/Staples Center “Community Benefits Agreement” between the developers LA Arena Land Company and Flower Holdings, LLC, and a coalition of over 20 community groups, set a schedule for quarterly meetings of its “Advisory Committee.” During these meetings, developers were to seek community input on the project and the implementation of the CBA.<sup>415</sup>

**Cross-referencing  
labor-management  
agreements or  
community  
development plans**

Article IX of the 2022 agreement between the Greater Birmingham Ministries (GBM), Jobs to Move America (JMA), and the electric bus manufacturer New Flyer for their facilities in Anniston, Alabama states that a labor-management agreement, such as a collective bargaining agreement, will control wherever there is a conflict of a term, right, or obligation under the agreement.<sup>416</sup>

<sup>413</sup> Stand Up Nashville and Nashville Soccer Holdings, LLC, “Nashville MLS Soccer Community Benefits Agreement,” September 3, 2018, <https://mediaassets.wcpo.com/html/pdfs/MLS-CBAs/NashvilleCommunityBenefitsAgreement.pdf>.

<sup>414</sup> City of Richmond, California and Chevron Products Company, a Division of Chevron U.S.A. Inc., “CHEVRON REFINERY MODERNIZATION PROJECT ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT.”

<sup>415</sup> Figueroa Corridor Coalition for Economic Justice et al., “Attachment A: Community Benefits Program,” May 29, 2001, [https://juliangross.net/wp-content/uploads/2024/09/Staples\\_CBA.pdf](https://juliangross.net/wp-content/uploads/2024/09/Staples_CBA.pdf).

<sup>416</sup> New Flyer of America Inc. et al., “Community Benefits Agreement,” May 24, 2022, [https://jobstomoveamerica.org/wp-content/uploads/2023/02/CBA\\_05-24-2022\\_New-Flyer-Executed.pdf](https://jobstomoveamerica.org/wp-content/uploads/2023/02/CBA_05-24-2022_New-Flyer-Executed.pdf).



## Financial

**Communities have the power to negotiate CBAs that go beyond “pay to play” corporate handouts with revenue set aside for related uses.** Current CBA examples and their fiscal approaches for benefit-sharing should be considered a floor rather than a ceiling for redistributing royalties. Different financial arrangements resulting from CBAs may include those in the following table.

### Selected Examples of Financial Provisions

#### Direct payments (one-off or recurring)

Under a “Host Community Agreement” with the Town of East Hampton and the Trustees of the Freeholders and Commonalty of the Town of East Hampton, offshore wind developer South Fork Wind paid the Town and Trustees \$500,000 within 90 days of the agreement’s signing. South Fork Wind also agreed to pay the Town and Trustees annually for 25 years, beginning with a \$700,000 payment within 6 months of the wind facility becoming fully operational and increasing 2% each year.<sup>417</sup>

#### Grants for defined community needs (e.g., infrastructure, parks, scholarships, affordable housing, early childhood education, waste management, etc.)

A “Community Agreement” between mining company Perpetua Resources Corp. and multiple nearby municipalities in central Idaho directed the company to establish a charitable trust, the Stibnite Foundation, to provide grants to local non-profit organizations and the municipalities themselves. Upon the commencement of Perpetua’s mining operations, the company will offer a minimum of \$500,000 in grant funding per year.<sup>418</sup>

See also: Chevron Modernization Project Environmental and Community Investment Agreement, Richmond, California. This agreement supports both educational support but also environmental and public health monitoring because it is a major polluting facility.<sup>419</sup>

<sup>417</sup> South Fork Wind, LLC et al., “Host Community Agreement,” December 14, 2020, <https://ehamptonny.gov/DocumentCenter/View/6969/South-Fork-Wind-Host-Community-Agreement—Updated-12-14-20>.

<sup>418</sup> “Community Agreement Effective This 30th Day of November, 2018 among the Cities of Cascade, Council, Donnelly, McCall, New Meadows, and Riggins and the Village of Yellow Pine and Adams, Idaho and Valley Counties and Midas Gold.”

<sup>419</sup> City of Richmond, California and Chevron Products Company, a Division of Chevron U.S.A. Inc., “CHEVRON REFINERY MODERNIZATION PROJECT ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT.”



**Trust accounts or  
community benefits  
funds held by a third  
party for money  
management**

As part of the “Integrated Benefits Package,” the islanders of Lihir, Papua New Guinea are the beneficiaries of a trust account established by gold miner Lihir Gold Ltd. From 2006–2011, the company contributed approximately \$35 million to the trust. Portions of the trust are put toward community projects.<sup>420</sup>

**Partial ownership or  
carried shares of profits  
from operations with  
mitigation measures for  
risk and liability (e.g.,  
free equity or no-interest  
loans)**

Through Morongo Transmission LLC, the Morongo Band of Mission Indians is a part-investor in a transmission line. The utility makes direct payments to the Tribe, expanding the Tribe’s capacity to build, own, and deliver solar, wind, and battery power to the Southern California Edison (SCE) electricity grid. SCE also passes energy cost savings to Tribal members.<sup>421</sup> The project was completed in 2021, making the Morongo Band of Mission Indians the first Native American Tribe to be approved as a participating transmission owner in the United States.<sup>422</sup>

**Diversified revenues with  
fixed payments and  
royalties on  
produced/extracted  
commodities (e.g., kWh  
of energy, tons of copper,  
percentage of revenue,  
etc.)**

The Raglan Agreement, signed in 1995 by five different Inuit communities and the Raglan nickel mine currently operated by Glencore in the Nunavik region of Quebec, provides single and multiple fixed payments that increase over the life of the project, as well as a 4.5% annual share of profit.<sup>423</sup>

See also: Under a “Benefit-Sharing Agreement,” 18 Atacameño communities and the non-profit Consejo de Pueblos Atacameños (CPA) in Chile receive 3.5% of Albemarle’s revenues from lithium extraction on the Atacama salt flats. Three percent of the revenue is divided among the 18 communities and the CPA. The remaining half percent is distributed to CPA for studies, plans, programming for Indigenous entrepreneurship, and the establishment of an environmental monitoring unit.<sup>424</sup>

<sup>420</sup> “Integrated Benefits Package Revised Agreement Between Lihir Gold Limited and The People of Lihir Represented by: The Lihir Mining Area Landowners Association Inc. and The Nimamar Rural Local-Level Government,” 2007, <https://s3.amazonaws.com/rgi-documents/aa6595f8d634a7ab6e83dd00a8711306d8ff5b8e.pdf>.

<sup>421</sup> Ung-Kono, *Clean Energy Transmission: National Wildlife Federation’s Toolkit for Community Participation*.

<sup>422</sup> Morongo Band of Mission Indians, *Morongo Becomes First Native American Tribe to Be Approved as a Participating Transmission Owner in Nation*.

<sup>423</sup> Simon Fraser University, “Impact Benefit Agreement Database.”

<sup>424</sup> “Convenio de Cooperación, Sustentabilidad y Beneficio Mutuo Entre Consejo de Pueblos Atacameños, Comunidad Indígena Atacameña De Río Grande y Otras y Rockwood Litio LTDA.,” February 21, 2016, [https://www.chululo.cl/incs/docs/convenio\\_rockwood\\_cpa\\_2016\\_02\\_21\\_.pdf](https://www.chululo.cl/incs/docs/convenio_rockwood_cpa_2016_02_21_.pdf).



## Labor

**Communities have the power to build a local workforce and bring lasting economic development through CBAs.** CBAs that ensure well-paying jobs, including union jobs, for operation and maintenance may bring more lasting benefits than project labor agreements (PLAs) that are typically established for the construction of a project. Labor provisions in CBAs have the capacity to bring more enduring benefits to the local workforce that can build labor power across different stages of the supply chain. These provisions may include those in the following table.

### Selected Examples of Labor Provisions

**High-road, family-sustaining jobs with equitable hiring and promotion practices to remove barriers for local workers (i.e., transportation and childcare); wage commitments with union neutrality**

In Nashville, Nashville Soccer Holdings (NSH), the developer of a new Major League Soccer stadium, agreed to establish a “Hiring and Workforce Development Program” under a “Community Benefits Agreement” with Stand Up Nashville, a local non-profit organization. The program requires NSH to consider applicants from Nashville’s federally determined “Promise Zones” before other candidates for job openings in guest services (including box office, ticket sales, ushers, and attendants), janitorial, custodial and maintenance, and field maintenance, and pay such employees at least \$15.50 per hour.<sup>425</sup>

See also: L.A. Live community benefits agreement, Los Angeles, California.<sup>426</sup>

**Job-related health and safety**

The 2022 agreement between the Greater Birmingham Ministries (GBM), Jobs to Move America (JMA), and the electric bus manufacturer New Flyer for their facilities in Anniston, Alabama includes participation in an environmental health committee focused on employee safety matters, as well as independent safety training by an external expert.<sup>427</sup>

<sup>425</sup> Stand Up Nashville and Nashville Soccer Holdings, LLC, “Nashville MLS Soccer Community Benefits Agreement.”

<sup>426</sup> Figueroa Corridor Coalition for Economic Justice et al., “Attachment A: Community Benefits Program.”

<sup>427</sup> New Flyer of America Inc. et al., “Community Benefits Agreement.”

**Commitments to seek contracts with disadvantaged local business enterprises**

In Morro Bay, California, Castle Wind, the developer of a proposed offshore wind farm, signed a “Community Benefits Agreement” with two local fishermen’s associations. Under the Agreement, the fishermen’s associations were given the right of first offer to provide certain qualified services to Castle Wind during construction and operation of the offshore wind project. The proposed wind farm never came to fruition as Castle Wind was outbid for an offshore wind lease with the Bureau of Ocean Energy Management in an auction for the call areas.<sup>428</sup>

**Workforce training, including on-the-job training and apprenticeship utilization requirements**

In 2017, Jobs to Move America (JMA) helped to build a community-labor coalition that resulted in a CBA between the Sheet Metal, Air, Rail, and Transportation Workers Union (SMART) and electric bus manufacturer BYD for apprenticeship and pre-apprenticeship programs for jobs at BYD’s facility in Lancaster, California. This resulted in an award of around \$1 million from California’s High Road Training Partnership (H RTP).<sup>429</sup>



## Environmental

**Communities have the power to demand that CBA provisions go beyond required regulations and mitigation measures to follow environmental justice principles that strive toward net environmental benefits and cultural revitalization.** CBAs are never a substitute for adequate environmental impact reviews. These are separate processes that should be carried out. Nonetheless, CBAs may draw from and complement the planning process; already overburdened communities may only learn about potential impacts through the permitting process. Communities can use CBAs to access information early in the process and propose solutions to unresolved concerns that go above and beyond required environmental impact avoidance, minimization, and mitigation. Whether these solutions are narrow or holistic, it is critical that CBAs do not just shift environmental burdens from one place to another,

<sup>428</sup> City of Morro Bay and Castle Wind LLC, “Community Benefits Agreement Castle Wind Morro Bay Offshore Wind Farm Project,” November 29, 2018, <https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/CBAs/08.%20Morro%20Bay%20Executed.pdf>.

<sup>429</sup> “BYD Apprenticeship Readiness Training.”

and from one community to another. Funds may be used to clean up past contaminated sites and support Indigenous-led conservation, impact assessment, cultural revitalization, and Guardian monitoring programs. Environmental provisions may include those in the following table.

## Selected Examples of Environmental Provisions

### **Bans on specific development practices**

In central Montana, Sandfire Resources, an Australian mining corporation, is constructing its Black Butte Copper Project. Under a “Mining Practices Agreement” between Sandfire and the Meagher County Stewardship Council, a local community group, the company has agreed to not pursue open-pit mining during any phase of the project on any parcel of land in its operations.<sup>430</sup>

### **Net-positive benefits beyond compensatory mitigation**

Negotiated between a developer and a coalition of over 20 community organizations, the “Community Benefits Agreement” covering the Los Angeles Sports and Entertainment District Project (adjacent to the Staples Center) in downtown Los Angeles required the developer to build public green and open space as part of project construction. Community organizations identified the Figueroa Corridor, the project’s host neighborhood, as having less than a quarter of the parkspace acreage required by the City. With the Agreement’s green space provisions, park construction efforts worked to reduce this deficit.<sup>431</sup>

### **Monitoring and information transparency requirements with penalties for pollution and remediation**

The “Good Neighbor Agreement” between Northern Plains Resource Council, a grassroots conservation group, and Sibanye-Stillwater, a multinational mining corporation, covers two platinum/palladium mines in south-central Montana. The Agreement established a “Comprehensive Surface Water, Ground Water, and Aquatic Resources Protection Program,” which involves ongoing water quality monitoring for known pollutants against scientifically established baselines—stricter than requirements in Montana state law—and directs remedial actions up to a defined

<sup>430</sup> Sandfire Resources America Inc. and Meagher County Stewardship Council, “Mining Practices Agreement,” April 26, 2019, [https://firebasestorage.googleapis.com/v0/b/mcsc-5c727.appspot.com/o/MiningPracticesAgreement\\_4.26.19\\_signed.pdf?alt=media&token=5c675850-13fe-4223-bd04-ed56e5b955c2](https://firebasestorage.googleapis.com/v0/b/mcsc-5c727.appspot.com/o/MiningPracticesAgreement_4.26.19_signed.pdf?alt=media&token=5c675850-13fe-4223-bd04-ed56e5b955c2).

<sup>431</sup> Figueroa Corridor Coalition for Economic Justice et al., “Attachment A: Community Benefits Program.”

funding level for pollutant exceedances. The program is overseen by an oversight committee with representatives from both Northern Plains and Sibanye-Stillwater, which together review the water quality program and approve of any remedial steps.<sup>432</sup>

See also: Los Angeles World Airports and LAX Coalition Community Benefits Agreement.<sup>433</sup>

**Funding of third-party studies and capacity-building for analyzing project impacts**

The Northern Plains Resource Council/Sibanye-Stillwater “Good Neighbor Agreement” (see above) directs Sibanye-Stillwater to annually fund third-party studies assessing fisheries populations in downstream sections of the Stillwater and Boulder Rivers, the watersheds in which the company is mining. Both rivers are blue-ribbon trout streams and well-known whitewater runs important for the local tourism economy.<sup>434</sup>

**Plans for phasing out and shutting down through decommissioning**

In the 2000 “Environmental Agreement” covering DDMI’s Diavik Diamond Mine (see above), DDMI was required to prepare and submit a Reclamation and Abandonment Plan pursuant to Canadian federal law and provide the Minister of Indian Affairs and Northern Development (an arm of the federal government of Canada) with \$15 million in an initial “Security Deposit” followed by annual contributions that together summed to an amount equal to the estimated cost of mine reclamation and closure during any given year of operation. DDMI was also required to provide funding for an “Additional Security Deposit” available to the federal government in case of default by DDMI, contingencies, or other unexpected environmental liabilities.<sup>435</sup>

<sup>432</sup> “Good Neighbor Agreement between Stillwater Mining Company and Northern Plains Resource Council, Cottonwood Resource Council and Stillwater Protective Association”; Sibanye-Stillwater, *US PGM Factsheet: The Good Neighbor Agreement*.

<sup>433</sup> Los Angeles World Airports and LAX Coalition, “Community Benefits Agreement: LAX Master Plan Program,” 2004, [https://www.lawa.org/sites/lawa/files/documents/LAX\\_CBA\\_Final.pdf](https://www.lawa.org/sites/lawa/files/documents/LAX_CBA_Final.pdf).

<sup>434</sup> “Good Neighbor Agreement between Stillwater Mining Company and Northern Plains Resource Council, Cottonwood Resource Council and Stillwater Protective Association”; Sibanye-Stillwater, *US PGM Factsheet: The Good Neighbor Agreement*.

<sup>435</sup> “Environmental Agreement Between: Her Majesty the Queen in Right of Canada and the Government of the Northwest Territories and Diavik Diamond Mines Inc. and Dogrib Treaty 11 Council and Lutsel K’e Dene Band and Yellowknives Dene First Nation and 2 North Slave Métis Alliance and Kitikmeot Inuit Association,” March 8, 2000, <https://database.atns.net.au/agreement.asp?EntityID=1873&SubjectMatter=24>.



## Enforcement

### **Communities have the power to hold companies and governments accountable through CBAs.**

CBAs represent the end of a complex process of negotiation, but they formalize an ongoing relationship between communities and companies that may not always remain harmonious. While the state is an important backstop to keep industry compliant, CBAs can also be used to fill in the gaps when government policies lack teeth and fail to deliver for the public good. This is why strong enforcement mechanisms with specific accountability measures are crucial for any CBA. Enforcement provisions may include those in the following table.

## Selected Examples of Enforcement Provisions

### **Dispute resolution process and/or arbitration clause(s)**

A “Host Community Agreement” between offshore wind developer Vineyard Wind and the Town of Barnstable, Massachusetts established a dispute resolution in the event of a conflict between the parties. The resolution sets timeframes for requesting a mediation process, selecting a mediator, and outlines options in the event mediation is unsuccessful. The framework allows for judicial relief (i.e., litigation) only after all other options including mediation have been exhausted.<sup>436</sup>

### **Transparency, mandated data sharing and reporting requirements, and outline of penalties or legal obligations for not adhering to CBA**

The 2022 agreement between the Greater Birmingham Ministries (GBM), Jobs to Move America (JMA), and the electric bus manufacturer New Flyer for their facilities in Anniston, Alabama includes detailed language about transparency and accountability, including how specific provisions of the agreement may be amended and waived without constituting a waiver of any other provisions.<sup>437</sup>

### **Identification of roles and responsibilities of organizations party to the agreement**

In Menlo Park, California, a “Community Compact” between Facebook and a coalition of local community organizations clearly stipulates each party’s commitments as part of the Compact, the creation of

<sup>436</sup> Town of Barnstable and Vineyard Wind LLC, “Host Community Agreement,” 2018, <https://vineyardwind.app.box.com/s/efzup1n6isjrifyflojehy8a9f70e5am>.

<sup>437</sup> New Flyer of America Inc. et al., “Community Benefits Agreement.”



a working group with equal representation from both parties, and a clearly defined enforcement clause.<sup>438</sup>

**Assumption of contract obligations in the event of acquisition, bankruptcy, foreclosure, etc.**

A "Host Community Agreement" between the City of Portsmouth, RI and SouthCoast Wind, an offshore wind developer, includes language that clarifies that the Agreement is binding to both parties, their respective affiliates, successors, and assigns.<sup>439</sup>

**Ability to re-open or renegotiate contingent on environmental review**

The Chevron Modernization Project Environmental and Community Investment Agreement in Richmond, California is renegotiated upon renewal of key operating permits with the city.<sup>440</sup>

## Key Strategies for CBA Negotiation

- **Organize and act to provide meaningful input early and often.**

The earlier that a community gets organized, the more effective their actions may be. Extractive and energy projects have a long lead time, including for garnering sufficient financial investment. Early public hearings as well as early decisions around permits are critical junctures for project viability, and thus especially opportune moments for communities to organize, gather knowledge, consult experts, and make their voices heard. This may involve grassroots coalition building or establishment of a formal community benefits advisory board made up of diverse but complementary perspectives, including but not limited to Tribes, environmental justice, labor, racial justice, and faith groups. The early adoption of a community benefit policy may allow communities to avoid fighting battles on every project in a more systematic way.

- **Beware of mitigation disguised as community benefits.** During negotiations, community representatives can be clear about which items are (1) baseline compensatory mitigations, which

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<sup>438</sup> Community Groups et al., "Compact to Increase Equity, Opportunity and Access in Silicon Valley," November 23, 2016, <https://www.youthunited.net/what-we-got-goin-on/2016/12/16/etb-fb-community-compact>.

<sup>439</sup> Town of Portsmouth and SouthCoast Wind Energy LLC, "Host Community Agreement," 2024, <https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/CBAs/Portsmouth%20-%20SouthCoast%20HCA.pdf>.

<sup>440</sup> City of Richmond, California and Chevron Products Company, a Division of Chevron U.S.A. Inc., "CHEVRON REFINERY MODERNIZATION PROJECT ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT."

should be the company's responsibility, to reduce or neutralize a project's impacts on water supply, air quality, traffic, infrastructure maintenance, or other community resources; and which items are (2) community benefits, compensating the community above and beyond baseline mitigations. Not doing so can result in a watered-down CBA that does not protect communities from harm, nor contribute to overall community benefit (see Imperial Valley case).

- **Take an intentional approach to inclusivity for either a broad or close-knit coalition.** Best practices usually suggest that a broad and inclusive process allows communities to build a coalition that best represents the interests of diverse members (as in the L.A. Live or Humboldt County offshore wind examples). The negotiating process in such cases may be complex and potentially challenging for reaching consensus, so democratic structures should be in place to allow a small number of representatives from the community to negotiate transparently and make informed decisions. Some groups may seek to stay nimble in negotiations to prioritize demands through close-knit coordination without a broad coalition, intentionally not expanding to include many different groups with potentially divergent interests (as in the Montana case). This may yield enduring benefits for some community members, but it also risks marginalizing other parties who might have valid interests or concerns. There is a spectrum between inclusivity and exclusivity that has implications for negotiation complexity, timelines, community power, and equitable distribution of benefits. Groups should be intentional about where on that spectrum they would be best positioned to meet their goals considering the local circumstances.

## Spectrum of Community Coalition Inclusivity



- **Participate in community advisory groups.** Despite the common trend of community advisory groups with a pro-company bias, engagement can potentially yield positive results when they are part of the planning process, even if not in moving directly toward community benefit investments. In the Patagonia, Arizona example, this type of forum—although created to service the company's agenda—gave community members a chance to interact with the company while developing a common understanding of the issues and building solidarity toward a more unified community position.
- **Empower trusted local leaders to assume the role of negotiators.** Negotiators need to act as legitimate

representatives of community interests and wishes. Handing off benefit negotiation to elected councils can, in theory, provide democratic accountability and allow community groups to retain independence to oppose and litigate against the company if needed (as in the Patagonia, Arizona example). This requires that trust has been established between local government and community groups, which has not been the case in other locations, such as Imperial Valley, California, where Imperial County, captured by industry, has largely been adversarial to environmental justice organizations and Tribes. In that case, it may be best for community coalitions to build enough power to negotiate directly with the developer.

- **Find a stable, well-resourced organization to anchor the process.** Whether negotiating, litigating, or protesting, the process of engaging with a mining or energy development will likely be years-long and resource-intensive. Many small Tribes or community groups do not have the financial and staff resources or expertise needed to sustain these efforts and succeed by themselves. Established translocal organizations may offer relevant expertise and stability for coordination, as well as necessary funding and capacity to negotiate and implement the agreement (e.g., Redwood CORE Hub in Humboldt County, California).
- **Increase leverage by communicating across the supply chain.** Cases analyzed in this report throughout the global supply chain show that what may be standard provisions in agreements for one stage—e.g., direct payments to communities near extractive or generation projects—may not be common in more labor-intensive stages like manufacturing, in which more emphasis is placed on jobs and hiring. Yet, these different provisions are not mutually exclusive, and it may be necessary for advocates who may be accustomed to organizing with communities and workers in the manufacturing sector to expand their toolkit if organizing with Tribes and fenceline communities near extractive industries—and vice versa. By building solidarity across the supply chain, communities may bridge these gaps in accepted norms of CBA standards and customize agreements that include the right combinations of financial, labor, and other provisions best suited

for supporting their priorities in relation to a proposed project. This is currently a nascent strategy, but we have observed increasing conversations between and among affected communities across the supply chain, which may even be impacted by the same company's operations (including across national borders). Coordinated approaches from coalitions, such as Western Mining Action Network (WMAN) and UAW, can increase leverage by applying pressure from multiple angles to build supply chain solidarity from upstream to downstream. This approach may also broaden community knowledge about both the range of impacts as well as the local organizing tactics that have been effective in adjacent sectors and projects.

# Cautions and Alternatives: Beyond CBAs

## Reconsidering FPIC, Right to Know, and Right to Say No

This report is not meant to promote CBAs if it is not appropriate for communities to engage in negotiations on unacceptable or unmitigable projects. CBAs are no substitute for human rights principles enshrined in international law, such as free, prior, and informed consent (FPIC).

Advances in the codification of Indigenous rights—such as ILO 169 or the UN Declaration on the Rights of Indigenous Peoples, which established FPIC—did not emerge out of a vacuum, nor from the good will of states or multilateral organizations. Instead, the origins of these rights can be found in a longer trajectory of Indigenous self-organization and political empowerment, rooted in material struggles over control of land, territory, and resources. In Latin America, where such struggles have been acute, we have seen the rise of nation-wide Indigenous organizations, Indigenous political parties and presidents, national constitutions that incorporate and expand on international legal norms, and court cases fought and won to defend rights—including on the regional level, at the Inter-American Court of Human Rights. Indeed, it is not surprising that two thirds of the signatories of ILO 169 are Latin American states.

Rights like FPIC are therefore the outcomes of long periods of organizing and powerbuilding. But such legal advances do not end the struggle for recognition or redistribution.<sup>441</sup> In many cases, these remain “parchment” rights—existing on paper, but either rarely or superficially applied in practice.<sup>442</sup> FPIC is often wrongly portrayed as a PowerPoint presentation that either downplays the potential

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<sup>441</sup> Coulthard, *Red Skin, White Masks*.

<sup>442</sup> Alexander Dunlap, “A Bureaucratic Trap: Free, Prior and Informed Consent (FPIC) and Wind Energy Development in Juchitán, Mexico,” *Capitalism Nature Socialism*, 2017.



environmental and social harms or cloaks them in overly technical language—or, even worse, does not even present them in the native language of the Indigenous people or Nation in question. Corporations go through the procedural motions because doing so is required to secure a permit, concession, or contract. But relatively little to no deliberation on the part of community members is entertained—let alone the possibility of a community deciding to reject a project—thus making the prior consultation process another form of “extractive violence.”<sup>443</sup>

Indeed, from Guatemala to Ecuador and beyond, the deficit of substantive implementation has given rise to a movement practice known as “community consultations” or “self-consultations” (auto-consulta) in which organized community groups present residents with a referendum: “Are you in favor of this mine being built or not?”<sup>444</sup> Since processes are part and parcel of anti-mining resistance, such consultations often register overwhelming opposition. At the same time, frontline organizations also continue to demand that states and corporations respect official forms of consultation and consent, taking legal and direct action to defend their rights.

Moreover, some communities demand more than consent—which can presume the goal is agreeing to the project in question—instead demanding recognition of the right to say no. In other words, the politics surrounding legal norms like FPIC underscores that communities deploy multiple tactics in their struggle to resist mining and/or transform the terms of extraction. This reveals the close connection between formal venues of participation and more contentious forms of direct action.

What does this all mean for CBAs? It depends on the case and context. In some settings, CBAs are direct outcomes of processes of consultation and consent. In others, corporate-initiated CBA

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<sup>443</sup> Audra Simpson, “The Ruse of Consent and the Anatomy of ‘Refusal’: Cases from Indigenous North America and Australia,” *Postcolonial Studies*, 2017; Philippe Le Billon and Nicholas Middelndorp, “Empowerment or Imposition?: Extractive Violence, Indigenous Peoples, and the Paradox of Prior Consultation,” in *Our Extractive Age: Expressions of Violence and Resistance*, ed. Judith Shapiro and John-Andrew McNeish (Routledge, 2021), [https://library.oapen.org/bitstream/handle/20.500.12657/48472/9781000391589.pdf?sequence=1&fbclid=IwAR1bwgX4S0kXK008WYabg6ISX15hxZjfKQHak\\_cgSvXZm2ZUgiyNkr93teY#page=86](https://library.oapen.org/bitstream/handle/20.500.12657/48472/9781000391589.pdf?sequence=1&fbclid=IwAR1bwgX4S0kXK008WYabg6ISX15hxZjfKQHak_cgSvXZm2ZUgiyNkr93teY#page=86); Melisa Escosteguy et al., “We Are Not Allowed to Speak”: Some Thoughts about a Consultation Process around Lithium Mining in Northern Argentina,” *The Extractive Industries and Society* 11 (September 2022): 101134, <https://doi.org/10.1016/j.exis.2022.101134>.

<sup>444</sup> Laplante and Nolin, “Consultas and Socially Responsible Investing in Guatemala: A Case Study Examining Maya Perspectives on the Indigenous Right to Free, Prior, and Informed Consent.”

negotiations might be intended to sidestep more substantive processes: the type that frontline communities have envisioned when they demand the enforcement of FPIC or engage in their own internal deliberations. FPIC deployed as a community demand on governments to ensure corporations abide by the law and respect Indigenous peoples as stewards of the land is altogether different from FPIC as a box for a corporation to tick off to obtain a necessary permit from government officials. Yet, again, neither pattern is itself dispositive: a corporation might be the first mover, but communities may organize to derail and force a renegotiation of the proposed CBA. Or, on the contrary, what starts out as a community demand can be co-opted by more powerful actors, leading to demobilization and quiescence. As we have argued throughout this report, the facts on the ground are fundamentally the products of dynamic power relations and complex event sequences, resulting in a wide range of “political settlements” along the global frontiers of resource extraction.<sup>445</sup>

## Critiques of Greenwashing

One critique of CBAs is a commentary on corporate social responsibility (CSR) initiatives more broadly: that these initiatives serve merely as a form of “greenwashing.” Greenwashing is a set of marketing or communication efforts by a company that attempt to persuade the public into thinking the company is more environmentally and/or socially friendly and responsible than it is in reality.

Companies may offer benefits to communities as a form of greenwashing to improve their public image.<sup>446</sup> On the flip side,

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<sup>445</sup> Anthony Bebbington et al., “Political Settlements and the Governance of Extractive Industry: A Comparative Analysis of the Longue Durée in Africa and Latin America,” ISID Working Paper No. 81, Effective States and Inclusive Development Research Centre, preprint, Social Science Research Network, June 3, 2017, <https://doi.org/10.2139/ssrn.2986786>; Anthony Bebbington et al., “Socio-Environmental Conflict, Political Settlements, and Mining Governance: A Cross-Border Comparison, El Salvador and Honduras,” *Latin American Perspectives* 46, no. 2 (2019): 84–106, <https://doi.org/10.1177/0094582X18813567>.

<sup>446</sup> Thea Riofrancos, “What Green Costs,” *Logic Magazine*, December 7, 2019, <https://logicmag.io/nature/what-green-costs/>; Daniel Macmillen Voskoboynik and Diego Andreucci, “Greening Extractivism: Environmental Discourses and Resource Governance in the ‘Lithium Triangle,’” *Environment and Planning E: Nature and Space* 5, no. 2 (2021): 787–809, <https://doi.org/10.1177/25148486211006345>; Jerez et al., “Lithium Extractivism and Water Injustices in the Salar de Atacama, Chile: The Colonial Shadow of Green Electromobility”; Mighty Earth, *GM Wants “Everybody In” on Greenwashing* (2023), <https://peopleofredmountain.com/2023/06/17/general-motors-caught-greenwashing/>; Alexander Dunlap et al., “The Political Ecologies of ‘Green’ Extractivism(s): An Introduction,” *Journal of Political Ecology* 31, no. 1 (2024): 1, <https://doi.org/10.2458/jpe.6131>; Matthew Archer and Filipe Calvão, “Sustaining Decarbonisation: Energy Storage, Green Extractivism, and the Future of Mining,” *Antipode* 0, no. 0 (2024): 1–21, <https://doi.org/10.1111/anti.13066>; Britton et al., “Hydrosocial Imaginaries of Green Extractivism.”

communities may accept benefits that are less-than-meaningful if they fear there is no alternative, or that the alternative is simply not receiving any benefits at all.

Communities may use CBAs as a powerful tool to negotiate directly with developers, but CBAs have also been criticized for leaving an absence of state regulations. Communities can sign a legally binding agreement with project owners to hold them accountable, but it remains critical for formal government protections to be in place to ensure negative environmental or social impacts are mitigated adequately.<sup>447</sup> Whereas state and government agencies have the power to reject projects that do not meet social and environmental baselines, communities can be left with no way to say “no,” with little power to negotiate strong terms of an agreement. It is therefore crucial for community members to participate in the formal planning process, whether or not CBA negotiations occur.

Co-ownership is one model that may help to bolster equity between communities and companies. Nonetheless, research shows that joint ventures and equity-sharing arrangements vary widely and must be carefully designed to mitigate risk and liability if they are to increase meaningful participation and well-being.<sup>448</sup>

## **“Working in a good way” beyond monetizing benefits**

Approaches are being designed to move beyond colonial frameworks in ways that focus on building relationships, practicing relational assessment, and building institutional structures that last.<sup>449</sup> These Indigenous-centered approaches are often referred to as “How to Come Correct” or “Working in Good Ways.”<sup>450</sup> Principles of community

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<sup>447</sup> Peterson St-Laurent and Le Billon, “Staking Claims and Shaking Hands,” 2015.

<sup>448</sup> Anthony Kung et al., “Indigenous Co-Ownership of Mining Projects: A Preliminary Framework for the Critical Examination of Equity Participation,” *Journal of Energy & Natural Resources Law* 40, no. 4 (2022): 413–35, <https://doi.org/10.1080/02646811.2022.2029184>.

<sup>449</sup> Nicki Ferland et al., *WORKING IN GOOD WAYS: A Framework and Resources for Indigenous Community Engagement* (Community Engaged Learning Program, University of Manitoba, 2021), <https://www.readkong.com/page/working-in-good-ways-a-framework-and-resources-for-2649111>; Finn, et al. “Tribal Benefit Agreements.”

<sup>450</sup> The Sogorea Te’ Land Trust, *How to Come Correct: Protocols, Guidelines and Invitations by the Sogorea Te’ Land Trust*, 2023, [https://sogoreate-landtrust.org/slt\\_resources/how-to-come-correct-2/](https://sogoreate-landtrust.org/slt_resources/how-to-come-correct-2/).

engagement, framed as principles that should be followed by those seeking to engage with communities, include:

- **Literacy and preparation:** prepare before community engagement by developing basic knowledge of community histories, cultures, and experiences;
- **Reflection:** engage in reflexive practice to develop critical self-awareness;
- **Relationship building:** develop relationships that precede, sustain, and outlive programs and formal partnerships;
- **Reciprocity:** ensure that communities experience mutual benefits and recognize—financially and otherwise—the work that community members put into building relationships;
- **Protocols:** follow nation- and community-specific practices that demonstrate respect for Indigenous ways of knowing, being, and doing;
- **Humility:** recognize expertise within communities and give back in meaningful ways;
- **Collaboration:** work in partnerships where communities have comparable or greater power in decision-making.<sup>451</sup>

The speed of development may be influenced by this approach to community engagement. Development timelines may slow down within this framework or may even back up. Yet, the common observation that one must “go slow to go fast” suggests that efforts to “move at the speed of trust” and focus on practicing relational assessment may be more successful in the long run.<sup>452</sup> It may help avoid lengthy lawsuits or other setbacks caused by insufficient community support.

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<sup>451</sup> Ferland et al., *WORKING IN GOOD WAYS: A Framework and Resources for Indigenous Community Engagement*; The Sogorea Te’ Land Trust, *How to Come Correct: Protocols, Guidelines and Invitations by the Sogorea Te’ Land Trust*.

<sup>452</sup> adrienne maree brown, *Emergent Strategy: Shaping Change, Changing Worlds* (AK Press, 2017).

# Policy Recommendations

With close consideration of the above cautions and alternatives, CBA policies may have the capacity to become an important part of a more just transition in the United States. Legally binding and enforceable CBAs that treat communities as reciprocal partners tend to generate more enduring local support for policies that invest in the green economy. This can lead to a virtuous cycle in which communities may push for more government investment in the energy transition. If the government and companies give communities more control, this may lead to better and more durable outcomes for all. This all points to the need for higher minimum expectations for CBAs.

## 1. **Require CBAs:** Governments can mandate CBAs as a contingency for permitting or financing

- Federal, state, and local governments should require projects receiving government loans or approval to negotiate legally binding and enforceable CBAs that go beyond watered-down policies, plans, or guidelines. CBAs should be a part of the executed agreement for financing or permitting, and they should ideally address concerns relevant to directly affected communities from each category of the provisions listed above, including governance, financial, labor, environmental, and enforcement provisions.
- Congress and state legislatures can require projects on federal or state lands to pay a percentage of profits to local communities (this could be done by state legislatures for state lands as well). In some of the cases we have analyzed, payments are distributed to local counties or municipalities through taxes, royalties, or lump-sum payments. In others, fixed or combined payments are distributed directly to Tribes and/or community-based organizations. The former may be acceptable in areas with strong trust in elected officials, but the latter may be preferable in places where democratic institutions are relatively weak. These payments usually represent a negligible fraction of the return on

investment, but we suggest possible financial instruments for evening the playing field in the following set of recommendations.

- In terms of timing, CBA negotiation should ideally be required to occur before permitting approval to maximize leverage for communities, but it may also be an iterative process. Clear criteria should be in place to ensure maximum community representation and to avoid cooptation of coalitions or particular groups within coalitions. Community-based organizations involved in the process should have the ability to re-open and/or renegotiate based on information gathered during or after the environmental review process.
- Our above analysis of policy frameworks in California, New York, and Detroit offer lessons for how jurisdictions at the state and municipal level may integrate a CBA requirement into their permitting process. Clear requirements are necessary for designing and implementing enforcement and transparency in a democratic way through robust community engagement and selection of a community advisory council that is truly representative of directly affected communities. Adequate training and resources must be provided for community advisory council members to negotiate and monitor projects, especially when subsidized development is fast-tracked.

## **2. Establish clear and consistent standards for CBAs: Communities can define what provisions need to be included in a strong CBA**

- Communities should avoid double counting. Agreements may acknowledge or incorporate existing regulations and point out that they are the minimum standards that are already required under federal, state, or local law. However, a CBA should ideally go beyond required mitigations. Instead, agreements may focus on new provisions that complement and enhance rules and regulations to bring more durable benefits to the community.



- The following standards are far from exhaustive, and we recommend that communities consult legal experts with experience negotiating CBAs, but the following list of demands may be worth considering to begin building a strong foundation for a CBA:
  - **Redistribute a fair portion of profit back to the community.**
    - A strong floor might be annual benefit-sharing of at least 5 percent net revenue beyond taxes or royalties, building on international norms (e.g., 3.5 percent for Albemarle in Atacama, Chile or 4.5 percent for the Raglan Agreement in Canada).
    - An incentivized floor with tiers may encourage investment with payments that increase over time (e.g., 2.5 percent-lower percentage up front with 8–15 percent-higher percentage after return on investment and auditing is covered).<sup>453</sup>
    - Volumetric or production-based rates (e.g., tons of copper or kWh of energy) may help account for market fluctuations.
    - Revenue diversification may be achieved by combining fixed payments and royalties or other financial sources.<sup>454</sup>
    - Collaboration among communities may maximize power in negotiations and ensure fair benefit-sharing with minimal divisions.
  - **Make Tribes and/or communities partial or full owners of projects.**
    - Co-ownership and equity sharing may start at 10–50 percent based on international norms for joint ventures.<sup>455</sup> Even if it is a minority stake, communities should have

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<sup>453</sup> Gunton et al., *Impact Benefit Agreement Guidebook*.

<sup>454</sup> Gunton et al., “Designing Fiscal Regimes for Impact Benefit Agreements.”

<sup>455</sup> Indigenous Peoples Rights International and Business & Human Rights Resource Centre, *Exploring Shared Prosperity: Indigenous Leadership and Partnerships for a Just Transition*.

decision-making authority with strong voting power and dispute resolution mechanisms.

- Request for proposal (RFP) criteria must ensure fair and equitable participation for Indigenous and local businesses.
- Co-ownership and equity arrangements, including terms of any trusts or loans to fund Tribe or community stake, should be made before construction begins with access to capital and financing, and benefits should be made durable to outlast commodity boom and bust cycles.
- Equity and joint ventures in the mining sector can be especially risky. Communities may be exposed to legal and financial liabilities if a project fails or results in environmental harm. Upfront costs may be minimized with free equity, nonrecourse loans, or no-interest loan guarantees.<sup>456</sup>
- Equity and commercial opportunities should be treated separately from CBAs, which are legally binding, often rights-based agreements.
- **Provide grants for local infrastructure.**
  - Community benefit funds may help finance schools, affordable housing, parks, scholarships, local businesses, third-party studies, environmental monitoring, and much more.
  - Offer high-road, family-sustaining jobs with equitable hiring and promotion provisions, and host training initiatives for local community members.
  - Strong CBAs should go beyond PLAs for construction and cover long-term operations and maintenance for durable economic development.
  - Health and safety concerns should be addressed.

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<sup>456</sup> First Nations Major Projects Coalition, *Ownership Model Handbook: First Nations Project Ownership and Access to Capital for Investment in Major Infrastructure Projects*; Finn, et al. "Tribal Benefit Agreements," 42.

- Workforce development should include on-the-job training, as well as apprenticeships and pre-apprenticeships hosted by the company.
- **Add protections that go beyond required regulations and mitigation measures, such as restoration, that strive toward net environmental benefit.**
  - Required monitoring for water, air, Tribal cultural resources, and environmental health should cover the life of the project and beyond if impacts are expected to persist.
  - Capacity should be built for communities to participate in land use decisions and analyze project impacts.
  - Life-cycle assessments should be conducted from cradle to cradle across the supply chain. This would provide a wider view of environmental impacts than required environmental review processes, and depending on the assessment, it may also help companies demonstrate reduced ESG risks.
  - Clear plans should be included for closure, decommissioning, and bonding with penalties to mitigate pollution and cover remediation.
- **Ensure that agreements are legally enforceable and have teeth through strong monitoring mechanisms.**
  - Agreements should include a dispute resolution process and/or arbitration clauses.
  - Defined metrics, a monitoring committee, and regular reporting may hold parties accountable and ensure goals are met.
  - Failure to adhere to the CBA should be penalized by clearly identified parties responsible for enforcement.
  - Community benefits should last through potential acquisition, bankruptcy, foreclosure, etc.

- **Bring community input into project planning and development through good governance.**
  - Consultation with Indigenous peoples must adhere to FPIC, through government-to-government relations, including monitoring and protection of Tribal cultural resources.
  - Communities should be able to participate in the decision-making process to set expectations.
  - Information should be shared inclusively and transparently in regular meetings and accessible community outreach materials throughout the process, from organizing to implementation. Transparent CBA negotiations provide an ethical foundation for benefits with broader impacts when directly affected communities are centered in the process.

### **3. Set the stage for CBA negotiation: The public sector can build the conditions to give communities more power to negotiate fair agreements**

- Revise existing federal and state mining law and practices to give communities and Tribes the right of first refusal on mining claims within a clear radius defined through adequate consent, consultation, and government-to-government relations.
- Require access to key information communities in the need to negotiate a fair CBA. For example, align the timing of environmental impact assessments and permitting with a CBA process if community stakeholders file such a request with the regulatory body.
- Encourage permitting agencies to recognize commitments made in a CBA within the record of the proceeding on the premise that in the absence of the CBA, objections would have been raised during the permitting process. The long-term objective would be

for the community to have standing to raise certain mitigation issues if the developer failed to implement the CBA.

- Publish a free, open-access library of CBAs currently in force to help stimulate the development of general protocols and metrics for oversight and enforcement. If certain agreements are confidential, organizations with access might consider ways to anonymize them to de-identify parties and still disclose relevant details.
- Provide grants for communities and Tribes to contract legal and subject-matter experts for research and advocacy in support of negotiations.

#### **4. Directly equip communities to negotiate for CBAs: Organizers can advocate for more resources to support communities that require further assistance**

- Invest in community education, leadership, and organization capacity to negotiate and implement a CBA. A systematic set-aside fund deriving from a percentage of all projects may be used for community education, outreach, and engagement during the planning process, as well as training for negotiators, whether they are labor organizers, community coalitions, or legal teams. These funds may also be used for specific CBA provisions, such as first-source equitable hiring and promotion, accountability measures, and workforce development.
- Call on the State Bar to establish or expand pro bono programs that offer attorneys the opportunity to contribute their legal skills in exchange for lower or waived State Bar annual fees and/or access to free and reduced rates to attend Minimum Continuing Legal Education (MCLE) programs.
- Encourage the State Bar to expand its online directories of law firms that undertake pro bono work to specifically identify those

that assist Tribes, environmental justice organizations, labor unions, and other community groups in negotiating CBAs.

- Develop an accredited continuing education course for legal aid attorneys on how to assist clients in negotiating and drafting CBAs.
- Inform philanthropic foundations and local or state governments to consider funding capacity building that supports the multi-year nature of the CBA negotiation and the extended life cycle of a project.



## Conclusion

This report has probed the limits and possibilities of CBAs to build community power across the supply chain in the energy transition. Through a wide range of case studies within and beyond the United States, we explored how Indigenous peoples and environmental justice communities may minimize burdens and maximize benefits in agreements related to extractive industries and renewable energy.

Our analysis touched on different nodes in the global energy production network: from upstream extraction to downstream processing, manufacturing and transportation, as well as electric power generation, storage, and transmission. Through critical analysis of international legal norms, as well as federal, state, and municipal policy frameworks, we examined the conditions, provisions, and strategies through which CBAs can make the transition away from fossil fuels more just for all. As mining and energy development is accelerated to mitigate climate change, CBA design and negotiation may be hastened, so it is critical that communities organize and act to provide meaningful input early and often.<sup>457</sup>

Strong CBAs result from organized communities taking collective action to build power, in two senses of the word. First, they create the conditions for social and economic empowerment at the local level. Second, by ensuring that communities benefit from the energy transition, they set the conditions for rapid deployment of zero emissions energy, in turn redistributing cleaner power back to communities.

In contrast, without community buy-in, resistance to energy transition projects is likely to increase. Tribes and communities that feel ignored, exploited, abused, and manipulated have good reason to defend their land, protect their environment, and voice concerns about—or at least not show up to support—the policies that lead to a holistic energy transition. While some projects certainly have unacceptable or unmitigable social or environmental impacts that

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<sup>457</sup> MiningWatch Canada, *Turning Down the Heat: Can We Mine Our Way Out of the Climate Crisis?* (2020), [https://miningwatch.ca/sites/default/files/miningwatch\\_review\\_page.pdf](https://miningwatch.ca/sites/default/files/miningwatch_review_page.pdf).

merit resolute local opposition, other projects may be framed as “green” yet fail to offer timely and adequate community engagement. This undermines the political conditions for an environmentally just and economically beneficial transition to renewable energy.

Our policy recommendations are designed for governments, organizers, and advocates to build on a stronger baseline that can help to even the playing field for Tribes and communities as they prepare for CBA negotiations with project developers. To put this report’s recommendations into action, we encourage community members to explore and engage with our accompanying CBA toolkit, which offers further guidance and interactive worksheets, templates, sample documents, and other resources for entering into effective negotiations for a strong and enforceable CBA.