

<b>DOCKETED</b>	
<b>Docket Number:</b>	20-LITHIUM-01
<b>Project Title:</b>	Lithium Valley Commission
<b>TN #:</b>	246783
<b>Document Title:</b>	Carmen Lucas, Kwaaymii Laguna Band, comments regarding the draft report
<b>Description:</b>	N/A
<b>Filer:</b>	Erica Loza
<b>Organization:</b>	Carmen Lucas, Kwaaymil Laguna Band of Indians
<b>Submitter Role:</b>	Applicant Representative
<b>Submission Date:</b>	10/25/2022 11:24:50 AM
<b>Docketed Date:</b>	10/25/2022

COURTNEY ANN COYLE  
ATTORNEY AT LAW

HELD-PALMER HOUSE  
1609 SOLEDAD AVENUE  
LA JOLLA, CA USA 92037-3817

TELEPHONE: 858-454-8687 E-MAIL: COURTCOYLE@AOL.COM FACSIMILE: 858-454-8493

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Via Email Only  
[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

October 24, 2022

**Re: Kwaaymii Laguna Band of Indians Comments on the  
Draft Report of the Blue Ribbon Commission on Lithium Extraction in California,  
dated September 21, 2022**

Dear Chair Paz, Commissioners, Staff, and Tribal Leaders,

These comments on the *Draft Report of the Blue Ribbon Commission on Lithium Extraction in California*, dated September 21, 2022 (report), are respectfully and timely submitted on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians. The comments address overarching concerns, a failure to include enumerated specific tribal concerns, and the lack of findings related to tribal values and concerns. We also request several specific text revisions. These comments supplement our verbal testimony provided at Commission meetings.

***Overarching Observations/Comments:***

The sections on Tribal Concerns lack an equivalent level of specificity and detail to other sections, lack any findings, and do not adequately reflect tribal input received. Perhaps this is not ill intentioned, but their inclusion appears like an afterthought with no commitments.

The report should address whether tribes were consulted on Assembly Bill 1657 (2020). Do the bill's required topics adequately anticipate and cover tribal concerns?

Finally, nowhere in report are affiliated tribes and tribal people referenced or listed out.

***Do a Better Job of Enumerating Specific Tribal Concerns Received During Process:***

Currently, the proposal appears to advocate another national sacrifice area proposed over traditional tribal lands in Imperial County without identifiable or proportional benefits to local

tribes or tribal people – just another form of extraction - first they came for tribal lands, now they are coming for tribal sacred places.

It also feels like another industry grab of federal and state financial incentives, which we have seen before with industrial solar, wind, and geothermal projects in Imperial County – that cause impacts to lands, waters, and resources – then operators leave – often without decommissioning or restoration plans. How is the proposed approach here going to be different this time and avoid those pitfalls?

Figure 9 shows Known Geothermal Resource Areas (KGRAs) extending into Glamis, East Mesa, and Dunes. The tribes do not support extending industry into greenfields or open space areas. We don't recall this expansion being clearly mentioned at the public meetings to which we were invited. Often these areas have tribal cultural resources. Affiliated tribes must be involved in any and all cultural surveys which must be timely and identify more than archaeological resources.

Chapter 3: Community and Tribal Priorities and Perspectives: Appreciate that these sections are placed at the front of the draft report. While there may be some overlap, community and tribal sections should be separated out for clarity and emphasis. Tribes are governments with specific trust and inter government protocols which must be followed unlike general members of the public.

*Wholesale Lack of Findings Related to Tribal Values and Concerns:*

The draft report offers no acknowledgement of tribal cultural features or sacred lands within the KGRA. Yet, the Commission received testimony that the very same natural volcanic phenomena is reflected in both the tribal cultural values and the lithium resource opportunities. Any proposal must consider the Southeast Lake Cahuilla Active Volcanic Cultural District.

- There is no mention in the report of the potential for tribal cultural resource disruption or destruction, or erasure of the evidence of tribal people from their Homelands.
- There is no mention in the report of tribal requests to protect cultural features and consider the proposed effects to the Southeast Lake Cahuilla Active Volcanic Cultural District.
- There is no mention in the report of avoiding tribal cultural resource features in project siting including lithium extraction facilities, potential transmission upgrades, pipelines, extraction of other minerals (manganese, zinc, etc.), the lithium battery supply chain, related component, or product manufacturing projects. The whole of the project needs to be reviewed, with no segmentation, pursuant to CEQA, NEPA, and NHPA.

Where are findings related to tribal issues and tribal cultural resources as well as community benefit agreements and underserved and overburdened populations? Findings appear to predominantly relate to the perceived desirability of the projects and their economic goals.

Can a List of Findings by Topic be developed? (A-20). This will help the public and Commissioners better understand and balance the findings which are presently inequitably distributed.

There is no mention of the ongoing state Truth & Healing Council effort – how is the lithium recovery proposal consistent with the Governor’s apology to tribes and the goals of the state effort to avoid another state-sponsored erasure of tribes and their connections to the land and scared places? What needs to be done to correct this?

***Specific Text Revisions Requested:***

Tribes should be specifically mentioned in recommendations including those under sections D, F, G, and text related to the Imperial County Programmatic Environmental Impact Report (PEIR), health impact assessments, water quality and quantity, how water rights will be protected, etc., as tribes are sovereign and distinct political bodies, and governmental entities – not interested members of the public or community.

Community Perspectives Recommendation 3 revise to: Provide financial and other capacity building resources to enable local community-based organizations, community residents, *and affiliated tribes* to engage with developers and local and state government agencies . . .

Community Perspectives Recommendation 5.b. revise to: Provide continuous funding, beyond that already authorized, to Imperial County for grants for engagement by *affiliated tribes and* community based organizations in Imperial County on the programmatic EIR . . .

- Rationale includes that if a Specific Plan and Programmatic EIR is to be prepared by Imperial County, compliance with both SB 18 and AB 52 is required. Tribes should not be out of pocket for the extensive coordination and consultation efforts that would be required for a project and undertaking of this magnitude. Every penny spent on such efforts represent funds that have been directed out of tribal government efforts to provide housing, medical, educational and other benefits to tribal members.
- Further, the draft report does not mention the need to fund independent technical experts/consultant for tribes. Could be based off of the Technical Resource Committee (TRC) model used by the California Department of Toxic Substances Control (DTSC) at the PG&E Topock Compressor Station clean-up project. Funding could come from state funding related to the PEIR, state research and demonstration grant funding to tribes, project mitigation measures, conditions of project approval, and/or other sources. Without such funding and neutral expertise, tribes will continue to be at a serious disadvantage during project review, planning, and implementation. Presently, tribes do

not have the resources to fully engage. Technical areas of expertise could include: lithium technologies, hydrology, engineering modeling, risk assessor, toxicology, cultural consultants, legal, etc.

- Dudek is mentioned as the County's PEIR preparer (page 59). The CEC and the County should know that tribes have voiced serious concerns in recent years about that firm's cultural technical lead making controversial, racist comments. Other firms should be engaged for working with tribes and tribal cultural resources, preferably after consultation with affiliated tribes.

Tribal Perspectives Recommendation 2 revise to: Ensure all legally required and additional tribal consultation is *timely* completed, *prior to project approval*.

Tribal Perspectives Recommendation 4 revise to: Provide for additional identification and protection of tribal cultural resources before lithium recovery projects *are approved* and during operations. Examples include requiring well-qualified, affiliated Native Americans accompany archaeologists when conducting tribal cultural site surveys, *avoiding cultural features identified by affiliated tribes, enhance and protect tribal ceremonial and cultural use of cultural places, listing cultural features on the California Register of Historic Properties and/or National Register of Historic Places, effectuating landback or comanagement of sacred places and tribal cultural features in the area to affiliated tribes, and noise and dust reduction and protection of night skies.*

Tribal Perspectives Recommendation 5 revise to: For example, if lithium recovery from geothermal brine moves forward, some of the funding resulting from the projects should be allocated: to restoration of the Salton Sea, *directly to affiliated tribes to promote tribal priorities through a simple funding mechanism, towards tribal cultural landscape protection in the area.*

Recommendation D.1. revise to: Conduct required planning and secure funding to support regional infrastructure improvements and engage a local coalition of public agencies, *affiliated tribes*, and residents to identify projects needed to protect public health and safety . . .

Recommendation Environmental Impacts, F.3. revise to: Moreover, any legislation creating funding for health impact assessments should mandate inclusion of local community groups *and affiliated tribes.*

Recommendation Economic Impacts, F.2. revise to: Ensure substantial distribution of revenue from any new taxes or fees related to lithium recovery to local communities *and tribes* to assist with community engagement, infrastructure improvements, and other priorities identified by local communities and tribes.

Recommendation Economic Impacts, F.4. revise to: Investment decisions should consider community *and tribal* priorities and include opportunities for participatory budgeting . . .

Add Recommendation Economic Impacts, F.6: Mandate that lithium recovery project developers enter into legally binding community benefits agreements with affiliated tribes.

Recommendation G.3. revise to: Establish and provide funding support for a business service center in Imperial County to facilitate access to incentive programs available for disadvantaged communities, small businesses, entrepreneurs, *affiliated tribes, and tribal members*.

Recommendation H.1. revise to: The tracking system should include permitting by federal, state, and local regulatory agencies, including a list of required permits, the status of each permit application, and upcoming opportunities for public comment *and tribal consultation*.

*Additional General Comments and Questions:*

In several places community “skepticism” about project development and benefit/harms is mentioned. These references should be expanded and made more specific.

Are there any restrictions on affiliations with which Commissioners may offer verbal or written comment? It is noted that several Commissioners have submitted their comments on the official letterhead of their employers or organizations versus as individual commenters. How might this indicate actual or perceived conflicts of interest? We also note that many comments in such letters recommend revisions that would strike benefits to tribes and communities from the report, to which we object.

More rationale must be provided for the “Lithium Valley” area to extend beyond Imperial County given the map at Figure 1 showing all the nearby KGRAs to be within Imperial County. Again, to expand the area without sufficient justification would be another extractive act upon the residents of Imperial County and could result in diminished benefits for the most impacted communities.

Hardrock mining, industrial solar, industrial wind, geothermal plants – each of these argued economic benefits for approval over community objections and impacts – but current economic demographics reveal little local gains were actually realized and even fewer benefits flowed to local tribes/affiliated tribal people who often bore the brunt of project effects.

The draft report is premature in stating comparative benefits of direct lithium extraction (versus hardrock and evaporation ponds methods) in the text and Glossary, prior to environmental review actually being conducted. Such claims risk the legitimacy of the report.

Growth induction and its effects are omitted from the draft report including its CEQA (page 46) and other sections despite the report touting the creation of a new, transformative “economic hub” or “economic ecosystem” to essentially replace the natural ecosystem.

Need to state potential cumulative effects in plain language and metrics to convey the magnitude of the potential proposal. Using the data at the bottom of page 20, for example, is it possible for there to be 71 geothermal plants?

Figure 10 Salton Sea KGRA Legend, explain what "Shoreline prior to planned drawdown" means. Also, explain source and basis for "Estimated shoreline 2030".

There is no mention of federal funds federalizing projects such that NEPA and NHPA Section 106 apply. Please explain. Will a joint EIR/EIS be prepared?

The Conclusion (page 68, paragraph 3) needs to be expanded; it states that, "the recovery of lithium from geothermal brine by itself will not create the transition to a sustainable, more equitable, high-road economy for the Salton Sea region." We couldn't agree more, and it seems this is the heart of the report. Yet, the draft report is missing the punchline of what *is* needed or envisioned to achieve this worthy goal.

Also, Chapter 5's title includes "Next Steps". However, this section does not detail any of the next steps for this Commission whose requirements remain operative until October 1, 2023.

Definitions for "participatory budgeting," "High Road job", "high-road economy", "community cobenefit agreements," and "workforce development" should be placed in the Glossary. The text also should be clearer about what it means by "cultural resources"; for example, "tribal cultural resources" is a specific category under CEQA but not used in the draft report. The report should also include the full EPA definition of Environmental Justice and address systemic and cumulative racial disparities and exclusions that have resulted in current and proposed unacceptable economic, political, and health conditions in this geographic area.

Explain what is meant in Appendices, last bullet, Public Comments on Draft Report (Placeholder, To Be Developed).(page A-1). How will tribal comments, proposed findings, and recommendations be accurately stated and included in the final report? Will tribes have an opportunity to review?

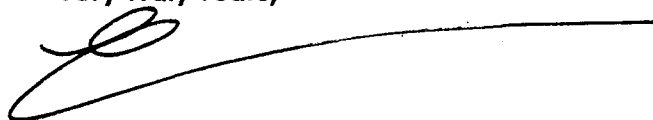
In Guest Speakers section (page A-14), please revise:  
Courtney Coyle to Courtney Ann Coyle  
Laguna Band of Mission Indians to Laguna Band of Indians

**Conclusion**

We thank the Commission and staff for their efforts on this draft report. What is done in this report could set a positive example for this type of effort throughout the state. Should staff or the Commission have any questions on these comments, suggestions, and additions, please do not hesitate to reach out.

We thank you for considering these comments and suggested revisions and again ask that you consider providing the next draft in redline for review efficiency and to better track how tribal and other comments have been incorporated.

Very Truly Yours,

A handwritten signature in black ink, appearing to be 'Courtney Ann Coyle', written over a long horizontal line.

Courtney Ann Coyle  
Attorney at Law

Cc:

Public Advisor, [publicadvisor@energy.ca.gov](mailto:publicadvisor@energy.ca.gov)

Carmen Lucas, Kwaaymii Laguna Band of Indians

Other Stakeholders