

DOCKETED

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Document Title:	PSA Comments from Kwaaymii Laguna Band of Indians
Description:	Comments submitted by Courtney Ann Coyle on behalf of the Kwaaymii Laguna Band of Indians concerning the CEC's staff's Preliminary Staff Assessment, Elmore North Geothermal Project
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**Notice of Availability of Preliminary Staff Assessment for
Proposed "Elmore North Geothermal Project", 23-AFC-02**

Dear CEC Commissioners and Staff,

July 25, 2024

This comment letter is sent on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians, on the PSA for the proposed BHER Elmore North Geothermal Project.

We have appreciated the CEC staff effort to consult both in the field and via Zoom to identify tribal cultural resources and analyze the effects of the proposed project on them. The following comments are geared towards improving analysis, resulting in a more complete review of proposed effects and better fulfillment of mitigation requirements.

We would also like to note that running three proceedings concurrently has been a hardship for us, even with the two-week gap between PSA publications. This burden is further magnified by the delay in access to CEC and County engagement grants. We also would have appreciated advance notice for the Technical and Mitigation Workshops.

Because the three BHER projects and PSAs relate to one another, we anticipate that many of these comments may be further amplified in our future comments on those two additional PSAs and may be informed by the upcoming workshops.

Below are specific comments:

1. Tribal Cultural Resource Determination.

First, we would like to express our appreciation of and support for the staff's finding of a Tribal Cultural Resource, the Southeast Lake Cahuilla Active Volcanic Cultural District (SELCAVCD). This Cultural District includes the Obsidian Butte, Rock Hill, Red Hills, Old Mud Pots, New Mud Pots, and Mullet Island cultural features as well as the setting within which they are located and interconnect.

We look forward to further consultations with staff to refine the tribal cultural resource analysis, including the evaluation of the historic property under the criteria, in the FSA.

2. Need for Interdisciplinary Coordination.

The quality of analysis of certain topic areas would have benefited from tribal scoping and interdisciplinary coordination and review by CEC staff. In fact, a meaningful analysis of tribal cultural resource landscapes requires an interdisciplinary approach.

One area in particular relates to noise analysis. In relation to tribal cultural resources, distance of a receptor from the project may not be the only measure. Moreover, tribal users, particularly those for cultural, education, and ceremonial purposes are often better categorized as sensitive receptors requiring a certain level of sound quality to conduct those uses. Noise from the existing facility, including alarms, already can be heard at Rock Hill and this spill over can be disruptive.

Another topic area that could have benefited from interdisciplinary analysis relates to visual impacts. The proposed project is an industrial use in a largely natural and agricultural setting. Once again, tribal cultural users are highly sensitive to visual effect. This also includes sensitivity to night lighting, an important aspect of tribal cultural use, such that the proposed project and its spill over would further diminish the dark night sky of the area. Nighttime visual simulations could be useful. Tribes are also concerned about the buildup of haze or particulates that can diminish or shroud views to cultural landmarks. In contrast, the Visual Ratings forms, as completed, appear to reflect a more general and almost pseudo-science assessment approach. It was as if the preparer of this section never visited the site in person. The assessment also does not reflect effects of the proposed project on tribal cultural uses or the experience of the sacred tribal landscape, its feeling and association.

Further, both noise and visual effects can be intensified by cumulative effects, which are discussed below.

3. Project Description Clarity.

We are concerned that the project description may not include all the facilities or components necessary for or related to the proposed project. For example, it appears the line between the proposed IID switching station and the transmission line connecting to the Coachella Valley substation was not part of the analysis. Additionally, the presence and extent of any directional or slant drilling or wells into the SELCAVCD should be fully described and shown.

4. Cumulative Effects Analysis Incomplete.

A cross-stakeholder concern is the cumulative effects analysis which appears to have omitted several proposed projects. These are not speculative, as they include those that have even issued Notices of Preparation under CEQA, including (but not limited to) the County of Imperial's Lithium Valley Specific Plan; the draft PEIR for that plan is expected to be released for public review the first part of 2025. The location of that Specific Plan encompasses the area of the proposed project as well as the SELCAVCD.

5. Water Availability.

Ms. Lucas is very concerned that insufficient water is available to support the proposed project as well as environmental quality. This concern is magnified when considering the proposed project along with the other two BHER proposed projects and other cumulative projects. There remains a significant math problem regarding water availability versus projected consumption that has yet to be addressed. Moreover, Ms. Lucas is concerned about the proposed project's contribution to the drying of the Salton Sea, California's largest lake and an important stop over on the Pacific Flyway.

6. Effect on Cultural Plants and Animals.

Ms. Lucas is concerned about the proposed project's effect on cultural plants and animals within and near the proposed project's location. For example, we have observed one (or more) packs of coyotes in the project area; they interacted with the alarm that sounded from the existing facility and was audible from Rock Hill. Coyotes are just one of the animals that are important in Tribal Legends. There is also concern for the proposed project's effect on the well-being and operations of the adjacent Sonny Bono National Wildlife Refuge.

7. Induced Seismicity.

The PSA does not analyze the potential of the proposed project, alone or in combination with other geothermal facilities, to cause or contribute to induced seismicity. A qualified, independent scientist should be retained to study this issue.

8. Site Plan Rearrangement.

Whether approached as mitigation or design features, rearrangement of site components to reduce effects should be pursued. Relative to Elmore North, this could include a general reduction of overall bulk and scale and reorienting the site design so that the profile of the facility is reduced from Rock Hill; such as by making only one stack visible from Rock Hill (i.e., orienting the stacks perpendicular to the view from Rock Hill instead of the current site plan which is parallel).

The FSA must also correct the buffer discussion to better reflect information provided during consultation and include a meaningful buffer analysis tailored to specific conditions at the SELCAVCD.

Feasible mitigation measures that reduce significant effects, even if their enactment does not lower those effects to insignificant, must still be adopted. In turn, modified site plans that reduce significant effects, can and should be incorporated into the Environmentally Superior Alternative (i.e., replacing the No Project Alternative with alternative site plans as the Environmentally Superior Alternative).

9. Construction Timing.

The PSA did not appear to address the relative timing of the construction of the proposed project; would it be concurrent with the two other BHER proposed projects? Or if serial, in what order would the facilities be constructed? Would the “man camps” associated with the proposed project contribute to Missing or Murdered Indigenous Persons?

10. Mitigation.

We support that funding for the SELCAVCD nomination be secured such that a tribally driven and managed CRHP/NRHP nomination for the SELCAVCD historic property can be prepared and submitted. This documentation would benefit the historic property as well as future generations of affiliated Indian People.

We also support additional mitigation to further offset project and cumulative effects. The development of such mitigation should be the result of tribal consultation and may include the following:

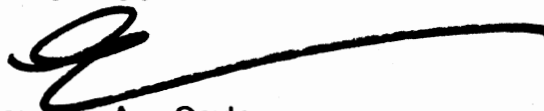
- Completion of a DPR form in consultation with affiliated tribes and filing with the appropriate Information Center;
- Direct land set aside of one or more of the cultural features making up the SELCAVCD;
- Placing a conservation easement over one or more of the cultural features making up the SELCAVCD;
- Effecting a lease assumption of one or more of the cultural features making up the SELCAVCD;
- Creation of and meaningful funding for an entity with a 100% or majority of affiliated tribal membership to support management in perpetuity of any such land set asides, lands with cultural conservation easements, and/or long term leases;

- Funding for the rehabilitation and restoration of the cultural features and lands within the SELCAVCD;
- Funding to support cultural engagement and educational activities of affiliated tribes in the SELCAVCD;
- Consulting tribes being added to the list of governmental entities to be provided notice, e.g., on noise mitigation, construction starts, etc. and be provided conceptual noise and light pollution control plans;
- Other measures developed through consultation.

In closing, Ms. Lucas has a vision for development in Imperial County that balances clean energy with the unique and irreplaceable tribal cultural and environmental resources that exist within the SELCAVCD. This vision includes protected tribal cultural features within a vibrant environment including the Salton Sea, healthy avian and wildlife species, and beautiful long range viewscoes coexisting with carefully sited and effectively monitored clean energy. This vision can only be achieved through up front, meaningful project planning that includes early tribal consultation, robust surveys and studies, accurate environmental baselines, and continued tribal engagement. Such facilities must also aspire to be good neighbors to Tribal and other community stakeholders.

It is our hope that these comments are helpful to you. We look forward to further amplifying these comments at the upcoming workshops, in comments on the other two related PSAs, and in continued consultation with staff.

Very truly yours,



Courtney Ann Coyle
Attorney at Law

Cc:

Carmen Lucas, Client File
Sierra Graves, CEC Tribal Liaison