

DOCKETED

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AMERICAN CIVIL LIBERTIES UNION

San Diego and
Imperial Counties

P.O. Box 1825
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California Energy Commission
715 P Street
Sacramento, CA 95814

RE: Docket Nos. 23-AFC-01, 23-AFC-02, and 23-AFC-03

Dear CEC Commissioners and Staff,

The ACLU of San Diego & Imperial Counties (ACLU-SDIC) is based in San Diego with an office in El Centro to serve the Imperial Valley community. One of three ACLU affiliates in California, we are a nonpartisan, nonprofit leader in the fight to defend and preserve the rights and liberties guaranteed by the U.S. Constitution and federal and state law. Our mission is to protect and expand fairness, equity and freedom through community engagement, policy advocacy and impact litigation.

People who live in the Imperial Valley, especially those most impacted by lithium extraction in the north end, deserve to live in a clean and healthy environment where they can thrive and prosper. They should be active participants in decisions that impact the well-being of their communities on their own behalf and on their families and neighbors' behalf.

The ACLU-SDIC recognizes the tremendous opportunity that Berkshire Hathaway Energy Renewables' (BHER) three geothermal projects will bring to the Imperial Valley. Racial, economic, health and environmental equity must be prioritized in these projects. The region's most impacted residents must be heard and engaged when discussing plans that impact their futures.

The ACLU-SDIC joins with other frontline Imperial Valley organizations to emphasize the need for the California Energy Commission (CEC) to implement more accessible ways for all Imperial Valley residents to meaningfully engage with the certification process. We also request that the CEC provide ample community workshops to help community members understand the Preliminary Staff Assessments (PSA) environmental considerations and opportunities for feedback beyond written comments. The July 31 and August 1 PSA workshops were scheduled with very little notice to residents. Posted on Friday, July 19, this notice gave the public only seven business days to make arrangements to participate in an extensive, two-day-long workshop.

We witnessed firsthand the frustration of community members who could not understand the technical language used by the CEC and BHER during the workshops. We also heard from

community members that the Spanish translation was inadequate. The CEC must make every effort possible to ensure the public is aware of potential impacts by providing adequate terminology that is understandable and ensuring that Spanish translators and interpreters are capable of providing culturally competent translations of technical language.

We note that the July 31 and August 1 workshops were not publicly posted on the docket as stated by the CEC, shortening the time allotted for the public to provide written comment before the September 4 deadline. Going forward, we strongly urge the CEC to give a 30-day notice for upcoming workshops and public engagements and offer evening options to allow for more robust and meaningful participation from working families. The CEC should also publish an official public-facing calendar of future events related to the certification, provide culturally competent Spanish translation and interpretation, and host in-person meetings in the north end of Imperial County, offering transportation for people who need it.

Lastly, the ACLU-SDIC recognizes that geothermal projects must include the highest mitigation measures against potential environmental harm. In that vein, we offer the following observations:

- BHER is one of the companies pioneering direct lithium extraction (DLE) technology, however, there is no environmental analysis of BHER's three projects in the PSA. We are concerned that the PSA does not have a proper analysis of cumulative impact of these geothermal projects, nor does it consider the highest mitigation measures for air quality, water use, hazardous waste materials and other environmental topics.
- The ACLU-SDIC was in attendance at the August 1 workshop and witnessed the discussion between the Imperial Irrigation District, BHER and the CEC regarding water resources. We were left with the impression that further analysis and discussion were to be conducted, and an updated analysis was to be posted on the CEC docket. To date, this has not occurred, and the PSA's current analysis of water resources is incomplete and inadequate.

The ACLU-SDIC urges the California Energy Commission to implement measures for robust and meaningful public engagement for all geothermal projects under consideration in the Imperial Valley. We also urge the CEC to implement the highest measures of environmental protections by considering a cumulative analysis of DLE that is being planned by Berkshire Hathaway Energy Renewables.

Thank you for your careful consideration of our concerns and recommendations.

Sincerely,

Norma Chávez-Peterson
Executive Director, ACLU of San Diego and Imperial Counties