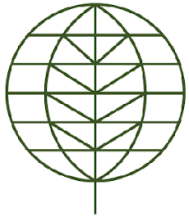


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Earthworks Comments on Draft Lithium Valley Commission Report

Additional submitted attachment is included below.



EARTHWORKS

Dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

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October 28, 2022

Dear Commissioners,

Thank you for the opportunity to provide public comment on the draft report of the Blue Ribbon Commission on Lithium Extraction in California. Earthworks works globally to protect communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. We support communities around the world who are impacted by different types of lithium mining, and through that work, have developed expertise as to how we can transition to renewable energy without creating new sacrifice zones for mining.

My name is Jared Naimark, and as Earthworks' California Mining Organizer, I support frontline communities throughout the state who are impacted by existing and proposed mining projects. This includes ongoing support for Tribes, communities, and grassroots organizations in Imperial Valley to better understand the technologies proposed for lithium extraction near the Salton Sea. California has an important opportunity to model a transition to renewable energy that is truly just and equitable, by making sure lithium extraction avoids the harms of past fossil fuel and mining projects.

I want to thank the commissioners for centering community concerns in this process, and for the impressive accomplishment of summarizing such a complex issue in the report. I appreciate the strong recommendations regarding environmental protection and Tribal consultation included in the draft report and encourage the commissioners to keep those in the final report, and build upon them with more specificity. These recommendations will be the basis for ensuring lithium development only occurs under the strongest possible safeguards for human rights and environmental justice. Please find below my detailed comments to help assist in this effort.

Thank you for your consideration,

Jared Naimark
California Mining Organizer
Earthworks

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Environmental justice

As outlined in the draft report, disadvantaged communities living near the area proposed for lithium extraction already suffer from multiple environmental injustices, including high rates of asthma due to toxic air pollution from airborne dust. Throughout the life of the Lithium Valley Commission, these communities have raised questions about what impacts lithium extraction will have, and concerns about not being exposed to further environmental health hazards. Based on these concerns, the draft commission report contains strong recommendations regarding environmental protection. Most notably, recommendation #1 on page 51 states:

The CEQA process should be considered the floor and not the ceiling by lead agencies when it comes to ensuring the review of project impacts and providing a transparent and inclusive process for community participation.

- *Lead agencies should provide additional outreach, consultation, and analyses that recognizes the specific historical, public health, and ecological context of the Salton Sea region.*
- *Consider amending CEQA or other laws to require health impact assessments. In addition, at a minimum, Imperial County should be required to perform health impact assessments for new geothermal power plants and DLE facilities.*

This is an excellent recommendation to address any potential shortcomings of the California Environmental Quality Act. The commission should strengthen and further detail this recommendation. It was disheartening to hear some commissioners at the September 29 meeting suggest that these recommendations were founded in misinformation and should be weakened or removed. While direct lithium extraction will very likely have a lower impact than other types of lithium mining, it will still have an impact on the land, air, water, and public health. Since this technology is only in the demonstration phase, and has never before been used at commercial scale, it will be important to follow a precautionary approach, to avoid or mitigate all impacts to the environment and public health. Following these recommendations will help build trust with frontline communities who are concerned about the potential impacts of lithium extraction.

These recommendations on mitigating environmental impacts should be strengthened to apply specifically to the potential impacts of geothermal energy development and direct lithium extraction. Based on Earthworks' review of the available planning documents and academic literature, these may include:

- Requiring that when waste products are tested to determine whether they are hazardous or not, the results are disclosed to the public in an accessible and prompt manner.
- Requiring that all waste is stored properly to avoid exposure to wind, and all waste facilities are built to withstand the strongest possible natural disasters.
- Prohibiting the use of water-intensive evaporation ponds at lithium facilities, since they permanently remove water from the hydrological cycle.

- Creating a comprehensive, dynamic, and publicly available plan for the use of water at lithium and geothermal facilities, with projected future growth of the industry in the context of severe drought and climate change, with different scenarios of possible future cuts to Colorado River water allocation.
- Since there is still debate in the scientific literature on the interaction between geothermal development and seismic activity, require close monitoring and further study and take all possible precautions.

Tribal Consultation, Free, Prior, and Informed Consent, and Protections for Obsidian Butte

One key pillar for a just transition is to go beyond simply Tribal consultation and implement a requirement for the Free, Prior, and Informed Consent (FPIC) of Indigenous communities. This includes the right to say no to projects that would have unacceptable impacts at any point in the planning, permitting, or construction process. The three lithium extraction projects currently in development are located in the footprint of the ancient Lake Cahuilla, ancestral lands of the Cahuilla, Quechan, and Kumeyaay peoples. At commission meetings and in the docket, Tribal leaders have raised concerns about the absence of legally required government-to-government consultation on lithium projects¹, possible environmental impacts, and impacts to cultural sites, such as Obsidian Butte. Lithium projects must not move forward until these concerns are addressed and remedied. The draft report includes a strong recommendation on this topic. Recommendation #2 on page 32 states:

Ensure all legally required and additional tribal consultation is completed. Consider legally required consultation a floor, not a ceiling. Provide funding for additional oversight by the state and establish best practices and communication protocols in coordination with Tribes to ensure meaningful consultation with Tribes occurs and provide additional time for this consultation. Recognize the needs of Tribes to obtain information, analyze, and internally consult and provide input before decisions are made and the timelines these activities require.

The commission should strengthen this recommendation by providing specific recommendations for how to implement consultation beyond legal requirements. This should include a recommendation to implement FPIC. International human rights standards enshrine Indigenous Peoples' right to Free, Prior, and Informed Consent on projects affecting their lands, resources, cultural heritage and more.² This includes the right to meaningful dialogue and the right to say "yes" or "no" to a project, and to revoke consent at any time.

Furthermore, recommendation #4 on page 32 states:

Provide for additional identification and protection of tribal cultural resources before lithium

¹ See for example, public comment TN# 244246 docketed 7/29/22 by Quechan Tribal Council President Jordan Joaquin.

² FPIC is the highest standard for protecting Indigenous rights, enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, International Labor Organization Convention 169.

recovery projects begin construction and during operations. Examples include requiring well-qualified Native Americans accompany archeologists when conducting tribal cultural site surveys.

The commission should strengthen this recommendation to include a specific recommendation to protect Obsidian Butte, which has been called for specifically by tribal elders with knowledge of the sacred site.³ Taking up the recommendations in the 2010 report by Dr. Thomas Gates, previously submitted to the docket, could serve as a good starting point for the Lithium Valley Commission.⁴ These include preservation of intact portions of the site, nomination to state and national registers of historic places, and mitigating impact of geothermal facilities on the viewshed.

Circular Lithium Economy

Investing in circular economy solutions—including recycling, reusing, and substituting minerals needed for renewable energy technology—is one of the most important ways to reduce the need for new mining and work towards a just transition to renewable energy. Research commissioned by Earthworks shows that scaling up existing battery recycling technology has the potential to reduce primary lithium demand by 25% of forecasted demand in 2040.⁵

The draft report covers this in recommendation #4 on page 40:

Support development of a circular lithium economy based in California, with environmentally responsible sourcing of raw materials, requirements for product design that supports recovery, reuse and recycling of materials, and development of an effective recovery infrastructure, built with the assistance of public-private coalitions and effective community engagement.

This commission should complement this excellent recommendation with a recommendation to reduce overall lithium demand through policies that reduce dependence on private, single-occupancy electric vehicles and instead promote electrified, multi-modal forms of transportation.

³ See for example, public comment TN #244306 docketed 8/4/22 by Preston J. Arrow-weed and public comment TN #244290 docketed 8/2/22 by Courtney Ann Coyle attorney for Carmen Lucas.

⁴ Ethnographic Assessment of the Importance of Obsidian Butte to the Native American Community, Imperial County, California prepared for the California Energy Commission January 2010.

⁵ Dominish, E., Florin, N., Wakefield-Rann, R., (2021). Reducing new mining for electric vehicle battery metals: responsible sourcing through demand reduction strategies and recycling. Report prepared for Earthworks by the Institute for Sustainable Futures, University of Technology Sydney.