

ENVIRONMENTAL JUSTICE WORKING GROUP CASE STUDIES

Appendix To The Recommendations For The California State Lands Commission Environmental Justice Policy Update

November 2018



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CASE STUDIES

The following case studies are drawn from the experience of California Native American Tribes and environmental justice (EJ) communities to illustrate the need for a strong Environmental Justice Policy at the California State Lands Commission (SLC). Perspectives of low-income Latino, African American, Asian Pacific American and Native American communities are often different from those of more affluent European American communities with respect to recreational activities, ports, and fossil fuel operations because of the ways the distinct communities experience environmental, economic, and cultural impacts of those activities.

Together, these stories serve to illustrate the [recommendations](#) developed by the Environmental Justice Working Group. Each case study that follows provides references to specific recommendations for those readers who are interested.

1. ANCESTRAL LAND RETURN TO KASHIA POMO HEALS LANDS AND COMMUNITIES

By: Angela Mooney D'Arcy, Executive Director at Sacred Places Institute for Indigenous Peoples

Relevant EJ Working Group Recommendations:

- V.1. California Native American Tribes and Indigenous Peoples, d) Support California Native American Tribes around land returns and tribal management and/or co-management of restored lands as part of a just transition.
- V.5. Public Access and Conservation, a) Support Native people's ability to engage in cultural activities on their homelands and engage with traditional cultural practitioners in development of conservation and invasive species control plans; b) Conserve coasts, oceans, and inland waterways, including using expanded cultural perspectives of how Native Americans and communities of color traditionally use or enjoy these natural resources. Challenge narrow racial views of acceptable uses of these areas.

In 2015, 688 acres of ancestral coastal homelands were returned to the Kashia Pomo people who have called what is now known as northern Sonoma County home for at least 12,000 years. A coalition of organizations and agencies, including the Trust for Public Land, worked with the Kashia Pomo Tribe to purchase the property from a family that had title to the land from which the Kashia were forcibly removed over 150 years ago.



Terray Sylvester, courtesy of The Trust for Public Land

The issue of ancestral land return is important for Indigenous Nations, EJ communities, and the public because restoring tribal access to ancestral lands supports healing landscapes and communities.

For thousands of years the Kashia lived in balance with these coastal lands and waters. The first acts of environmental racism in California occurred when settler colonists landed on the coasts of California shores. At the time of contact 150 years ago, the Kashia Pomo were violently displaced from their coastal ancestral homelands. All but 40 acres of their ancestral territory, including all coastal lands, were lost when the Tribe was moved to an inland reservation with no access to water. Indigenous people were often forcibly removed from their ancestral homelands and traditional ways of living sustainably in relationship with local ecosystems, and then discouraged or outright prohibited from returning home.

The more than 150 Native Nations in this state have been fighting since those first acts of violent displacement to protect the lands and waters within their ancestral territories and undo the environmental damage caused by the introduction of new species and systems of agriculture that did not consider local ecologies or long-term principles of sustainability.

The Kashia Pomo land return is an example of how public agencies like SLC can support environmental justice for Indigenous Nations today. The nearly 700-acre Kashia Coastal Reserve located in northern Sonoma County includes coastal prairie and redwood forests and offers the promise of coastal access for Kashia people and the public. As part of the agreement, the Kashia will utilize traditional management practices to guide forest restoration efforts. In addition to supporting the Tribe's access, the Kashia have agreed to allow the California Coastal Trail to extend across their newly reacquired lands, thus facilitating the first public access to this area in generations. The Kashia Coastal Reserve now serves as a place where tribal members can engage in traditional cultural practices such as medicine-and food-gathering and ceremony. The Reserve will also serve as a gateway to educate the public about historic and contemporary Kashia culture.

This case study highlights why it is so important for state agencies like SLC, the largest land holder in the state, to articulate a commitment to land return when possible. Too often the project of ancestral homeland return to Indigenous Nations is characterized as a zero sum game with the Indigenous Nations "winning" at the expense of existing recognized land holders and/or the public. The story of the Kashia land return demonstrates how such policies benefit everyone and contribute to long-term healing of lands and peoples.

Resources:

- Dancing in the Balance, Plus M Productions, Bay Area Open Space Council.
- [Home at Last, Mary Catherine O'Connor, Lands & People, Fall/Winter, 2016.](#)
- [The Trust for Public Land, Kashia Coastal Reserve.](#)

2. TESORO OIL TERMINAL EXPANSION PROJECT REVIEW IGNORED IMPACTS TO EJ COMMUNITY

By: Roger Lin, Clinical Supervising Attorney, Environmental Law Clinic, UC Berkeley School of Law; Shana Lazerow, Legal Director, Communities for a Better Environment; Bahram Fazeli, Director of Research and Policy, Communities for a Better Environment.

Relevant EJ Working Group Recommendations:

- IV.2. Community Engagement, c) Notices for projects and meetings.
- IV.3. EJ Analysis, b) EJ Assessment and transparency; c) Quality EJ analysis; g) Equitable legal practices
- V.3. Oil and Gas Operations, d) Prevent the expansion and renewal of marine and coastal oil terminals and pipelines.

In January 2015, SLC issued a notice of availability and intent to certify a final environmental impact report (EIR) for a new 30-year lease to allow Tesoro Petroleum Company to expand the Avon Marine Oil Terminal in Martinez, Contra Costa County. The EIR stated that the purpose of the project was to “continue operations at, and maintain the level of refined petroleum product exported through, the existing Avon Terminal, thereby maintaining the operation and viability of Tesoro’s associated Golden Eagle Refinery.”¹ This project was slated to enable lower quality oil feedstocks to be refined in California, which would result in increased health impacts to frontline communities already overburdened with refinery pollution.

Communities for a Better Environment (CBE), which for decades has worked with EJ communities impacted by the oil industry, learned about this oil terminal expansion proposal late in the process. Neither CBE, nor affected community residents in Martinez, received sufficient notice of this proposal as indicated by the few public comments submitted into the record. The potential health impacts of this project raised concerns for CBE given its extensive research on increased fuel imports to California of lower quality oil feedstocks. Lower quality crude presents significant worker and public health, and safety issues at and around oil refineries including at the Golden Eagle Refinery.² CBE and its community members were concerned that the EIR did not comment on the quality of crude being imported through state lands in this project.

Considering the lack of public process, CBE was forced to litigate the approval of the project with a limited record. The project EIR that the SLC certified disclosed neither the quality of crude to be imported, associated potential worker and public health impacts, impacts on sensitive and protected species, nor that the project expanded the marine terminal to enable the use of massive oil tankers at least twice the size of those that used the terminal prior to the project approval.



¹<http://www.slc.ca.gov/info/Reports/Avon/NOA.pdf>

² <http://www.cbecal.org/wp-content/uploads/2013/03/Widespread-Corrosion-at-the-Richmond-Refinery-022113.pdf>

Throughout the litigation, CBE uncovered documents confirming the latter expansion. However, the court ruled that CBE's claims "were not exhausted" at the administrative level, before the SLC, and that CBE should have raised those comments earlier. That was impossible as CBE and affected community residents neither received adequate notice nor engagement regarding the approval of this oil refinery expansion. Further, the SLC threatened CBE with massive costs for the record, suggesting CBE would be liable for more than \$120,000 if it chose to pursue its members' concerns in court. CBE reached out directly to State Lands Commissioners seeking relief but the threat was never retracted. SLC's problematic demand was extremely detrimental to public engagement and should serve as a lesson for future engagement on projects that affect EJ communities. Here is what SLC should have done differently:

- Undertake a good faith effort in early and extensive outreach, and meaningful engagement, to inform environmental justice groups, community groups, public health organizations, sensitive receptors, environmental groups, community leaders and residents of the scope of the project, and potential impacts, and seek input proactively.
- Allow sufficient time for residents and activists to review the project proposal and potential health/environmental impacts, and to engage with SLC staff regarding various aspects of the project. Time also should be allowed for impacted community and EJ groups to provide comments throughout the environmental review process.
- Fully analyze all the potential health impacts of the project by performing a Health Impact Assessment and a comprehensive Cumulative Impacts Assessment.
- Genuinely and comprehensively explore all alternatives and mitigation measures.
- Avoid threatening EJ communities and organizations with financial penalties and show appreciation for EJ organizations that step up to identify gaps in SLC's analysis and are using their limited nonprofit resources to engage the community.
- Provide resources for EJ organizations working on behalf of members and residents to explore safer alternatives to this fossil fuel expansion project.

Resources

- [Lawsuit Targets 30-Year Plan For Bay Area Marine Terminal Receiving Ships Full Of Dangerous Crude Oil.](#)
- [Tesoro Refinery Expansion Poses Risk To Community.](#)

3. STATE LANDS COMMISSION REJECTS LNG TERMINAL ON OXNARD COAST

By: Lucas Zucker, Policy and Communications Director, Central Coast Alliance for a Sustainable Economy (CAUSE)

Relevant EJ Working Group Recommendations:

- IV.2. Community Engagement, a) Public participation; c) Notices for projects and meetings.
- IV.3. EJ Analysis, b) EJ Assessment and transparency; c) Quality EJ analysis.
- V.3. Oil and Gas Operations, e) Stop new fossil fuel power plants, liquefied natural gas, and other fossil fuel export terminals from being built in EJ communities and elsewhere within Commission jurisdiction.

From 2003 to 2007, community members in Oxnard fought the proposal by BHP Billiton to build a liquefied natural gas (LNG) terminal off the city's coast. BHP Billiton is the world's largest mining company and Oxnard is a predominantly Latino working-class immigrant community. BHP Billiton's proposed LNG terminal would have been the largest source of air pollution in Ventura County, with gas pipelines running beneath densely populated residential neighborhoods, schools, and hospitals. The LNG proposal threatened the health and safety of this community and SLC had the opportunity to reject the project in order to protect public health.

A large public relations campaign by BHP Billiton argued that the project was necessary to maintain a reliable supply of power, a claim which later proved untrue. Oxnard has long been seen as a sacrifice zone for polluting projects that are unwanted in nearby affluent communities. The community had limited resources to fight a well-funded project that had political support from Governor Schwarzenegger. Local EJ advocates argued that Oxnard was targeted for a dangerous and polluting project because of the linguistic, educational, economic, and social disadvantages of its people and that clean energy alternatives had not been considered, an approach that would not have been viable elsewhere on the California coast. Ultimately, the SLC voted 2-1 to reject the project after nearly 3,000 local residents mobilized to attend an SLC hearing on the issue in Oxnard.

This is an important example of SLC Commissioners taking a stand for EJ and is the kind of outcome a successful Environmental Justice policy would hopefully encourage and support. However, there are lessons to be learned from this project for future decisions with major EJ implications. For example, key advocates involved in the issue said they had little interaction with SLC staff, don't remember significant translated information for this majority Spanish-speaking community, nor official acknowledgement or analysis of the project as an EJ issue.



If a strong Environmental Justice policy had been in place, staff would have devoted additional resources to proactive outreach and accessibility for this community that historically has major barriers to engagement. Official staff analysis would have identified EJ concerns for a project proposed for an EJ community, and required a more thorough examination of possible alternatives and potential impacts. In the end, accessibility measures employed by SLC, like holding a large public hearing in Oxnard, and the understanding of SLC Commissioners helped the community achieve environmental justice in this case.

Resources:

- [CAUSE: Environmental Justice and Health Equity.](#)
- [Proposed LNG Terminal Off Oxnard Terminated By State Commission.](#)
- [Residents Speak Out About Proposed Coastal Gas Plant.](#)
- [California Rejects Natural Gas Terminal For BHP Billiton.](#)

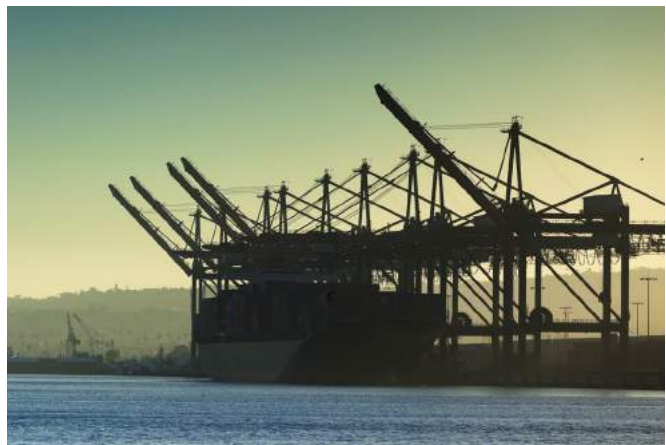
4. HARBOR COMMUNITY BENEFIT FOUNDATION'S OFF-PORT MITIGATION PROJECTS HELP EJ COMMUNITIES IN LOS ANGELES

By: Taylor Thomas, Research and Policy Analyst, East Yard Communities for Environmental Justice.

Relevant EJ Working Group Recommendations:

- IV.1. Staff and Commission, c) Agency program reforms.
- IV.2. Community Engagement, d) Account for benefits.
- V.4. Ports and Transportation, a) Push for the clean-up of ports and freight, given the incompatible land uses with residential communities; b) Promote clean transportation and zero emission vehicle adoption to reduce pollution at ports.

The Harbor Community Benefit Foundation (HBCF), in partnership with the Los Angeles Board of Harbor Commissioners, administers the Port Community Mitigation Trust Fund (PCMTF). The PCMTF was established to mitigate the off-port impacts of port operations in Wilmington and San Pedro, which are EJ communities overburdened by multiple sources of pollution. This was a landmark process that underwent approval through the State Lands Commission – a port had to establish through a study that there was a direct connection between its operations and health impacts in adjacent communities.



The ports of Long Beach and Los Angeles are the single-largest fixed sources of pollution in the Greater Los Angeles region. The communities adjacent to the ports and the facilities that support their operations experience elevated exposure to pollution and cumulative health impacts. However, these negatively impacted communities are often excluded from decision-making processes, and their concerns are rarely heard and prioritized when assessing port-related projects. HBCF seeks to mitigate impacts from such projects by providing grants to address quality-of-life issues in these communities.

HBCF has funded many projects and technologies that have contributed to better air quality in the region. Notably, HBCF commissioned an Off-Port Land Use Impact Study that highlighted how port adjacent communities experience many of the negative impacts of goods movement but receive little-to-no economic benefits because the vast majority of port and port-related jobs and workers do not live in the adjacent communities. Given the SLC's oversight of California ports, it is important to understand that on-port pollution travels to off-port communities and that mitigation funds are valuable in helping address historic transportation emission burdens on impacted communities. Without groundswell advocacy from surrounding communities, this program would not have materialized. We emphasize that this case shows how critical it is for EJ communities to not only be included in decision-making processes, but have decision-making power in projects that will affect their communities.

Resources:

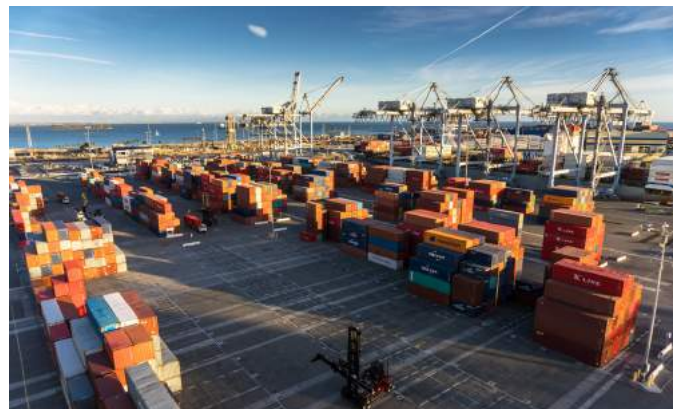
- [Who Benefits from the POLA?](#)
- [Harbor Community Benefit Foundation](#)

5. PORT OF LONG BEACH COMMUNITY GRANTS PROGRAM – A LESSON IN IMPROVING FUNDING FOR EJ PROJECTS

By: Taylor Thomas, Research and Policy Analyst, East Yard Communities for Environmental Justice

Relevant EJ Working Group Recommendations:

- IV.1. Staff and Commission, c) Agency program reforms.
- IV.2. Community Engagement, d) Account for benefits.
- V.4. Ports and Transportation, a) Push for the clean-up of ports and freight, given the incompatible land uses with residential communities; b) Promote clean transportation and zero emission vehicle adoption to reduce pollution at ports.



The ports of Long Beach and Los Angeles are the single-largest fixed sources of pollution in the Greater Los Angeles region. The communities adjacent to the ports and the facilities that support their operations experience elevated exposure to pollution and cumulative health impacts. These communities are often not included in the decision-making processes concerning port-related projects. Finding and deploying resources to alleviate these transportation impacts to EJ communities is important. The Community Grants Program, managed by an advisory council selected by the Mayor of Long Beach, funds projects and programs in the communities adjacent to the Port of Long Beach to mitigate negative impacts from port operations. Initially, the Port of Long Beach attempted to avoid funding off-port projects by stating that it needed approval from the State Lands Commission before considering a program, asserting that the Commission would be hesitant to establish a precedent for ports providing continuous funding streams to mitigate off-port impacts. Following the results of a “CEQA-like” review, the Commission found that there was a nexus between off-port impacts and on-port operations and allowed the Port to move forward with crafting this grants program.

The Community Grants Program has since been able to fund numerous groups and projects in Long Beach, such as asthma education programs and air filtration systems. The road to getting effective projects fully funded has been somewhat difficult, and suggesting the need for program improvements. Before the grants program existed, mitigation projects were sometimes funded on a case-by-case basis through a CEQA process. This was an ineffective process that allowed port projects to move forward while only covering a portion instead of the full mitigation costs of a project’s lifetime. Community advocates raised concern about this this discrepancy over many years and, to avoid litigation, in 2015 the Port of Long Beach set out to address it through continuous funding for mitigation projects. Funding pollution reduction programs for EJ communities should not face so many hurdles. SLC should glean lessons from this case in easing barriers to environmental, economic, and health benefits that are due EJ communities. Specifically, we call on the Commission to use its authority to fully mitigate impacts on port-adjacent communities, and ensure that municipal managers of granted lands accommodate EJ communities’ participation needs in project decisions.

Resources:

- [POLB Community Grants Program](#)
- [Community Impact Study](#)

6. POPULAR NEWPORT BEACH FIRE RINGS POLLUTION CONCERN HAS RACE AND CLASS IMPLICATIONS FOR PUBLIC ACCESS

By: Marce Gutiérrez-Graudiņš, Director, Azul

Relevant EJ Working Group Recommendations:

- IV.2. Community Engagement, a) Public participation.
- a) V.5. Public Access and Conservation, b) Conserve coasts, oceans, and inland waterways, including using expanded cultural perspectives of how Native Americans and communities of color traditionally use or enjoy these natural resources. Challenge narrow racial views of acceptable uses of these areas; d) Actively encourage public access to the state's natural areas especially for disadvantaged communities that live nearby but haven't traditionally been able to enjoy them.

Newport Beach is a recreation destination with popular fire rings that local people and visitors have enjoyed for decades. However, in March 2012, the Newport Beach City Council voted unanimously to remove 60 fire rings on the basis of alleged pollution concerns. This posed a problem to non-coastal residents who had enjoyed the rings as an affordable and easily accessible gathering place for beach bonfires and other recreational activities in a locality known for its expensive real estate and amenities. Newport Beach has a median property value of \$1.58 million. In short, this fire ring ban would effectively curtail recreational access to the beach for anybody not lucky enough to own coastal property. The chain of events following the ban could have been averted if the California Coastal Commission had an EJ policy that required an analysis of the EJ implications of such action.

In May 2012, the Newport Beach City Council applied to the Coastal Commission to remove the rings. The Coastal Commission waited for the South Coast Air Quality Management District (AQMD) to weigh in. In June of that year, AQMD staff made a proposal based on Rule 444 (beach burning) that would eliminate fire rings located within 700 feet of homes. All of Newport Beach's fire rings were located within this distance, making the application for removal an effective ban. This led to a larger problem, as other cities realized the AQMD's ruling could potentially affect them and lead to a district-wide or, worse yet, state wide beach bonfire ban. What followed included partial ring operation, legislative proposals and interagency discussions until the rings were reinstated in 2015.

Unfortunately, EJ was never seriously considered as a factor even though racially-coded discriminatory language was used in many residents' correspondence calling for ring removal. Additionally, Newport Beach City Council already had a shameful racist history of curtailing beach facility access to ethnic groups. In 2003, Councilman Richard Nichols declared in a local paper his aversion to expanding a grassy picnic area in Corona del Mar because "with grass we usually get Mexicans coming in there early in the morning and they claim it as theirs, and it becomes their personal, private grounds all day."



He followed this comment to the Los Angeles Times with "To get this [meeting] rip-roaring ... they [council members] contacted everybody in the Mexican community, including many of those who are for Mexico, including those that feel this is their country." He continued by saying that "They are trying to activate many of the pro-Mexican organizations. In general, most of those organizations want to see California turned over to Mexico."

This was a public controversy driven by local authorities and affluent property owners who felt entitled to determine which people deserved to enjoy local beaches. In the issue of the Newport Beach fire rings, the Coastal Commission was able to challenge the local power structure and defend beach access by invoking the Coastal Act. In contrast, the South Coast AQMD seemingly acted without consideration for public use and endangered recreational access statewide. Had a stronger EJ policy been in place, use of the rings would have never been banned, and more importantly, it should serve as a cautionary tale to those that seek to exclude whomever they deem unlikeable from public resources in the vicinity of their properties.

Resources:

- [About Newport Beach's Fire Rings](#)
- [Newport Beach Council Debates Nichols Flap](#)
- [Fire-Pits Controversy Timeline](#)
- [Fire Pits Approved In Newport Beach, But Not At Corona Del Mar](#)

7. COSTLY AND ENVIRONMENTALLY DAMAGING DESALINATION PROJECT TRIES TO BUY ITS WAY INTO HUNTINGTON BEACH

By: Marce Gutiérrez-Graudiņš, Director, Azul

Relevant EJ Working Group Recommendations:

- IV.1. Staff and Commission, a) SLC staff consideration of EJ.
- IV.2. Community Engagement, b) Identification of EJ communities.
- V.7. Water & Pollution, f) Analyze the impacts of desalination projects and promote transparency.

For nearly two decades, Poseidon has tried to get permits to operate a \$1 billion desalination plant in Huntington Beach, Orange County. Community members and EJ advocates understand that the desalination plant would pollute coastal waters and kill marine life. Additionally, desalinated water is some of the most energy intensive and expensive water to produce.



The Poseidon case shows how a company can exploit drought and water supply fears to sell a costly project that the public will be stuck paying for decades. Poseidon wants local ratepayers to subsidize its project with a 30-year contract that forces the water district to buy desalinated water even if it doesn't need it, which will raise water rates.

The permitting process for this project was highly problematic, particularly in choosing whose opinions were elevated, mischaracterizing advocates, and minimizing EJ concerns. For example, in an SLC staff report produced ahead of an important Commission vote in October 2017, staff incorrectly equated local Orange County grassroots groups with Los Angeles-based chambers of commerce and non-related commercial associations as equally valid voices on EJ; staff even individually listed names of pro-project, outside organizations and only footnoted local grassroots groups that were opposed to the project. As a result of these choices about who to listen to and how to characterize their perspectives, the staff report did not adequately present EJ concerns for commissioners' consideration.

The Poseidon project dragged on for two decades at the expense of needed focus on the conservation and preservation of water resources that already exist. If a good EJ policy had been in place, the public would have been made more aware of the risks and costs desalination posed both to people and the environment. And the staff report would have properly identified EJ communities and their concerns, and addressed those concerns.

Resources:

- [Poseidon Desalination Plant: What To Know About Its Pros And Cons For Southern California Water](#)
- [Bone And Brown: Poseidon Desalination Is A Bad Deal For Orange County Business And Consumers](#)
- [Desalination Leading To Deadly Lack Of Magnesium](#)

