



# Lithium Mining and YOU: Every Area of Law Likely to be Impacted

BY MELISSA FLATLEY, ESQ.

**Lithium has been used for psychiatry and mental health treatment for more than 150 years. However, the global demand for lithium continues to grow as the result of our increasing reliance on technology using rechargeable batteries, whether in our phones or cars, in addition to other industrial applications.**

Nevada happens to be where several of the highest quality deposits of lithium exist; it's no coincidence that Tesla, Panasonic, and most recently, Redwood Materials, are all located in our backyards. Other than having a reliable power source for our many electronic devices, what interest does a member of the State Bar of Nevada have in the lithium industry? As you think about the diverse work of our colleagues, you may realize that nearly every practice area section of the state bar faces potential impacts from the lithium boom.

## **Environment and Natural Resources**

In the spirit of this edition of *Nevada Lawyer*, this is an apropos section with which to begin. Lithium extraction requires vast resources – whether land access or water – and attorneys working in these areas are on the front lines of the lithium action.

There is active litigation going on in the U.S. District Court in Reno concerning a Bureau of Land Management (BLM) decision to adopt an Environmental Impact Statement and to allow a project in Humboldt County to move ahead; there is also a related lawsuit by tribal members seeking to prevent the project from infringing on tribal lands. A third issue has been raised by biologists and naturalists concerning an endangered plant species that would be disrupted by the proposed lithium mine.

In state district courts, several appeals cases are pending concerning judicial review of decisions by the state engineer (the head of Nevada's water permitting agency, Division of Water Resources) related to a lithium brine operation about 30 miles outside of Tonopah. As well, there are actions pending before the state engineer on new projects, changes to existing projects, and protests to new water right applications brought by other interested parties.

Though attorneys in the areas of land use, water, and the Endangered Species Act are active, practitioners in other areas of the law are not left out.

## **Intellectual Property**

Though lithium mining is experiencing novel growth in Nevada, it has been a global mining interest for almost 100 years. Extraction,

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processing, and manufacturing are likely to occur in at least three different countries.

Much of the technology and methods used in lithium mining and refining were necessarily developed in other countries where the mining is occurring. Companies using a particular technology or method are interested in protecting that intellectual property as they consider expanding to the U.S., but the legal protections for their intellectual property are not likely to apply in the U.S. without further work. This work requires specialized knowledge in those international sources of law, as well as awareness of conflicts of law issues and sometimes diplomatic or national security interests.

Whether the technology being used is developed here in the U.S. – as described in a recent article in *The Nevada Independent*, which touched on the research and development occurring in Northern Nevada in both lithium production and the recycling of lithium products, in its infancy<sup>1</sup> – or imported with corporate mining interests, the intellectual property practice will benefit.

## Tax Law

At the state’s founding in 1864, the constitution called for a legislative act to tax the net proceeds of all minerals extracted

in this state, and the rate was later set not to exceed 5 percent of the net proceeds. (Constitution Article X, §§ 1, 5).

As the administrator of Nevada’s taxes, the Department of Taxation produces an annual net proceeds of minerals bulletin with statistics and analysis of mineral operations, and the rolls of those paying the tax for a given fiscal year by industry and operator.<sup>2</sup> For the 2019-20 fiscal year (considering data prior to the pandemic), there was one lithium operation, and it generated more than \$800,000 in revenue for the general fund and Esmeralda County. In the decade between 2011 and 2020, gross proceeds of minerals in Esmeralda County increased nearly 24 percent (23.83 percent) over that time. This was the largest combined growth statewide. The net proceeds of lithium in the 2019-20 fiscal year accounted for 96 percent of the net proceeds tax generated in Esmeralda County.

Though there is currently only one taxpayer paying a net proceeds tax on lithium, this is bound to change in the near future.

## Public Lawyers

Last but not least are the attorneys working for regulatory agencies or local governments. Attorneys working in or for regulatory or licensing agencies are already part of the decisions regarding available water or air quality, for example; others

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will be defending their client's decision on judicial review. Local government attorneys will face questions on zoning, land use, housing and development, as well as transportation, and other growth issues.

These are just some of the areas where lithium will impact the work of Nevada attorneys, but there are many more: such as consumer protection issues with products manufactured from lithium, commercial liability insurance, and employment law. Ultimately, any lawyer working in Nevada will be affected by the ripples created from the booming lithium industry. Whether you are having to wait a little longer for a court appearance because of a busy docket, or you see this as an opportunity to grow professionally and expand the scope of your services, many lawyers will be impacted by the rush on Nevada lithium.

**ENDNOTES:**

1. Rothberg, Daniel. "Is Reno the next lithium capital? Companies are looking to Nevada for 'white gold,'" *The Nevada Independent*, Dec. 26, 2021, available at <https://thenevadaindependent.com/article/is-reno-the-next-lithium-capital-companies-are-looking-to-nevada-for-white-gold>
2. Data is taken from the 2020-21 Fiscal Year Bulletin and the 2019-20 Fiscal Year Bulletin, both available at [https://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net\\_Proceeds\\_of\\_Minerals/](https://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net_Proceeds_of_Minerals/)

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