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Wishtoyo Foundation Comments in Opposition of Mission Rock Energy Center (15-AFC-02)

Additional submitted attachment is included below.



December 16, 2016

VIA e-Comment

California Energy Commission
Attn: Karen Douglas, Presiding Member Commissioner
1516 Ninth Street
Sacramento, CA 95814

RE: Wishtoyo Foundation Comments in Opposition of Mission Rock Energy Center (15-AFC-02)

Dear Karen Douglas and the California Energy Commission,

On behalf of the Wishtoyo Foundation (“Wishtoyo”), we submit the following comments opposing the Mission Rock Energy Center, LLC (“Mission Rock,” “Project,” or “MREC”) and request further analysis on the impacts of the Project including, but not limited to, tribal cultural resources, natural cultural resources, tribal cultural landscape resources, and environmental justice concerns.

Wishtoyo is a non-profit organization in Chumash traditional territory with over 700 members composed of Chumash Native Americans, Ventura County residents, Santa Barbara County residents, and Los Angeles County residents. Wishtoyo’s mission is to preserve, protect, and restore Chumash culture, the culture of all Ventura County’s diverse communities, and the environment. Wishtoyo also shares traditional Chumash beliefs, cultural practices, songs, dances, stories, and value with the public to instill environmental awareness and responsibility for sustaining the health of our land, air, and water for the benefit of future generations.

Since 1997, Wishtoyo has been involved in federal, state, and local proceedings to protect the Santa Clara River, its species, and its Chumash cultural resources from pollution, new



developments, water diversions, and dams. Wishtoyo has lead the Santa Clara River Estuary restoration feasibility study, conducted trash clean ups throughout the watershed and in Santa Paula, and have stream teams monitoring the water quality and the ecological condition of the Santa Clara River, from the Estuary, through Santa Paula, all the way to Valencia. Further, Wishtoyo provides educational programs to promote environmental and cultural stewardship in the Santa Clara River watershed. Wishtoyo has been and will remain deeply involved in land use planning and environmental issues impacting the Santa Clara River generally, and the issue of power plants in the Santa Clara River Valley specifically.

The Project, if approved, will be built in Chumash traditional territory in the Santa Clara River Valley. Wishtoyo has numerous concerns about the proposed Project including negative impacts to; (1) Chumash tribal cultural resources; (2) tribal cultural landscape resources; and (3) natural cultural resources. Lastly, if approved, MREC will be built immediately upwind from the Santa Paula community that, based on CalEnviroScreen 2.0 criteria and the acknowledgement by Eric Knight of the CEC, is considered an environmental justice community.¹ The Project is also in conflict with the City Council of Santa Paula Resolution 7007 officially opposing the Project.²

Wishtoyo respectfully requests the CEC to not approve the MREC Project because of the significant impacts to the environment and the inadequate analysis of the MREC Application on

¹ Office of Environmental Health Hazard Assessment (OEHHA), CalEnviroScreen Version 2.0, *available at* <http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-20> (The census tract where the Calpine project is proposed is in the top 25% of state-designated environmental justice communities, including being in the 96th percentile for pesticides, 82nd for hazardous waste, 81st for groundwater threats, 76th percentile for contaminated drinking water, 76th percentile for solid waste facilities. In terms of vulnerable population, it is in the 96th percentile for children/seniors and the 92nd percentile for low education levels.)

² Resolution of the City of Santa Paula filed by Latham & Watkins LLP to the CEC. Docket Number 15-AFC-01, Project Title: Puente Power Project, TN# 214387 (11/7/2016) *available at* http://docketpublic.energy.ca.gov/PublicDocuments/15-AFC-01/TN214387_20161107T110011_Resolution_of_the_City_of_Santa_Paula_regarding_Mission_Rock_En.pdf. Also *available at* <https://webcache.googleusercontent.com/search?q=cache:E5WB9C-rEwEJ:https://santapaulaca.iqm2.com/Citizens/FileOpen.aspx%3FType%3D30%26ID%3D1952+&cd=2&hl=en&ct=clnk&gl=us>.



the Project's impacts on Chumash tribal cultural resources, tribal landscape cultural resources, natural cultural resources, and environmental justice concerns.

Consultation

Wishtoyo request the Project consult with any Native Americans that might attach religious and cultural significance to the Santa Clara River Valley area and specifically in the Project area, which is in Chumash traditional range. Further, Wishtoyo requests proper AB52 consultation³ with all Native Americans, including those on the Native American Heritage Commission ("NAHC") list, who might attach religious and cultural significance in the Project site and general area. The Project must also notify the public of all non-confidential information to provide assurance that Chumash people are being consulted with and impacts to tribal cultural resources are being mitigated in a Native and tribally defined manner.

The project applicants have initially contacted everyone on the NAHC list who is associated with the Santa Clara River Valley. Wishtoyo understands and respects the need to keep cultural resource information confidential, but the public need to be assured proper AB52 consultation has or is taking place.⁴ Further, the public needs assurance that consultation does not end prematurely, Chumash concerns are properly accommodated for, and any impacts to tribal cultural resources are avoided, and if avoidance is feasible, preserved in as defined by Chumash

³ Any CEQA compliance project that has a "notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015" must follow the AB 52 consultation requirements. AB 52, Sec. 11 (c) (Sept. 2014) *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52.

⁴ "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Gov. Code, § 65352.4.)



people.⁵ Proper AB52 consultation will ensure tribal cultural resources analysis is proper and Native informed mitigation measures are implemented.

Furthermore, Wishtoyo contends that all Chumash tribes, bands, and clans should be consulted with and not just those on the NAHC's list. Consultation with those traditionally and culturally associated with a project area has always been a best practice in the CEQA process. While many different Chumash tribes, bands, and clans are represented on the NAHC's list, not all Chumash entities are represented. All Chumash tribes, bands, and clans should be consulted with to assure adequate analysis of the impacts of the Project on tribal cultural resources.⁶

The United Nations Declaration of the Rights of Indigenous People (UNDRIP) provides additional support that consultation with Native Americans is an international legal norm for projects impacting cultural resources, like the MREC Project. UNDRIP is supported by the United States of America and endorsed by the State of California, including Article 18 stating "Indigenous people have the right to participate in decision-making in matters which would affect their rights." (Declaration on the Rights of Indigenous Peoples, Article 18, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (Sept. 12, 2007); United States State Department, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of*

⁵ "Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns." (Governor's Office of Planning and Research, *Tribal Consultation Guidelines: Supplement to General Plan Guidelines*, STATE OF CALIFORNIA 16 (Nov. 17th, 2005) available at https://www.opr.ca.gov/docs/011414_Updated_Guidelines_922.pdf.)

⁶ Consulting with all Chumash tribes, bands, and clans is also required to respect the inherent sovereignty held by Native Americans and ensure a government-to-government relationship. (See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) (holding "The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial").

*Indigenous Peoples*⁷ (“United States today proudly lends its support to the United Nations Declaration on the Rights of Indigenous Peoples”); California Assembly Joint Resolution, Indigenous Peoples: Declaration of Rights, No. 42 (Aug. 11, 2014)⁸ (resolving through a joint resolution California to endorsing the principles of UNDRIP, including Article 18, right to participate in decision making matters affecting Indigenous rights)); *Gonzalez v. Ocwen Home Loan Servicing*, 74 F. Supp. 3d 504, fn. 9 (2016) (“UN Declarations are generally not legally binding," but rather "represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.") Article II of UNDRIP grants the “right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts.” (Declaration on the Rights of Indigenous Peoples, Article 11, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (Sept. 12, 2007).) With the United States and the State of California supporting and endorsing the principles set forth in UNDRIP, the CEC should reflect the United States and California commitments to move towards abiding to the principles of UNDRIP and consult with the indigenous people with religious and cultural ties to the Project site and area.

Because there were no formal consultations with all Chumash tribes, bands, and clans, there has not been adequate analysis of the impacts of the Project on cultural and tribal resources. Without adequate analysis through proper consultation, tribal cultural resources will not be properly identified and not properly protected in a Native informed and approved manner. Wishtoyo requests confirmation that AB 52 consultation with those on the NAHC list has been

⁷ Available at <http://www.state.gov/documents/organization/184099.pdf>.

⁸ Available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ajr_42_bill_20140811_chaptered.htm

completed and that all other Chumash tribes, bands, and clans are consulted with before the approval of the MREC Project.

Tribal Cultural Resources

The Project application correctly reports the Santa Clara River Valley and the surrounding area, including the Project site, is traditional Chumash territory. The Cultural Resource section in the Project application discusses general Chumash history and mentions villages in the area including; Mupu on Santa Paula Creek north of Santa Paula, Xucu (identified in the MREC Application as Pueblo de las Canoas), Los Santos Santos Mártires San Hipólito y Casiano near present-day city of Santa Paula, Sek'spe (Sespe) near the town of Fillmore, and the likely 40 other village sites along the river that all could potentially be impacted by the Project.⁹ (MREC Application, 5.3-5 – 5.3-6). Further, the application mentions burial sites pillaged by Reverend Stephen Bowers in October of 1878, where he not only found burial sites, but groundstones and glass beads. (MREC Application, 5.3-7). While this general information is correct in discussing the fact the Project site is in the Chumash Peoples traditional territory and that it is likely burial grounds and portions of village sites are within the Project site, the application and all other following data requests inadequately discuss the impacts of the Project on particular tribal cultural resources.

While we are pleased the CEC is willing to keep important cultural resource information confidential, Wishtoyo and the Chumash people need more assurance that adequate analysis is being conducted to determine the impacts of the Project on Chumash tribal cultural resources. Documents numbered 211380 – 211394 provide some indication that cultural resource analysis

⁹ See attachment 10 for the Chester King, Ethnographic of the Chumash for more discussion on Chumash village sites.



is being performed, but there is no clear indication if particular Chumash tribal cultural resources are being identified with the best available technology and best available methods. Identification of these resources is needed to ensure these resources will be protected in a Native and tribally defined and approved manner.

Wishtooyo requests that Chumash Native Americans be notified of the specific location of any tribal cultural resource, especially burial sites, found during surveying the Project area.¹⁰ This will allow for proper assessment of the impacts of the Project on tribal cultural resources and what mitigation measures are needed to ensure proper protection of the resources.¹¹ At the very least, the NAHC as a trustee agency should be provided with the exact site locations of tribal cultural resource findings. With this specific information, the NAHC can effectively facilitate an informed decision-making process amongst all of the impacted Chumash Native American tribes, bands, and clans.

Further, there is no indication if best available and widely used technology and methods were used to locate Chumash cultural resources and burial sites. Wishtooyo requests that specially trained forensic canines¹² in combination with ground penetrating radar¹³ are utilized to identify

¹⁰ Public Resources Code, § 5097.98 mandates that Native Americans be made aware of the location of their burial sites, while the CEQA Guidelines, § 15064.5, subd. (d) states that Native Americans should be made aware of the exact location of their burials identified by the initial study. Government Code, §§ 6254.10 and 6254, subd. (r) allow for the discretionary withholding of Native American archaeological site information, but do not prohibit disclosure to Native Americans. Moreover, the State of California Tribal Consultation Guidelines specifically state that tribal designees may obtain information about a given Native American site. (State of California Tribal Consultation Guidelines – November 14, 2005, pp. 27-28).

¹¹ *Env'tl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 628-30 (the court held that an agency's refusal to provide to Native Americans a report evaluating the presence of Native American archeological resources on the Project site violated CEQA because disclosure of the report was needed to allow the Native Americans to intelligently assess the impact of the Plan on the archeological site.)

¹² Please see attachment 1 about Canine Forensics for more details about the use of forensic canines and ground penetrating radar.

¹³ Some examples of ground penetrating radar being used include a company, Ground Penetrating Radar Systems, conducting a survey at a historic grave yard in Redding; locate possible unmarked graves in Oxnard; to locate the perimeters of graves and unmarked graves at a graveyard in Los Angeles. (Ground Penetrating Radar Systems, *Past*



the location of all Native American burials and cultural remains within the project site and surrounding area. These techniques were used to reliably identify the location of Ohlone/Esselen burials in the KB Homes Development in Santa Cruz and for other development projects. Wishtoyo used forensic canines to detect the presence of Chumash ancestral remains/burials for the Santa Clara River Estuary / McGrath State Beach Campground Relocation and Estuary Restoration Feasibility Study with California State Parks. The use of specially trained canine forensics alone, or in combination with ground penetrating radar, represent the best available technology and most reliable means for the identification of Native American burials, and thus should be used to identify potential impacts to Chumash tribal cultural resources and to mitigate those impacts to a less than significant effect.

Only with the best available technology and frequently implemented practices can the Project ensure cultural resources are protected. Further, under the CEQA and California law, when cultural resources are identified, the preferred mitigation measure is avoidance, and if avoidance is not feasible, preservation in place as defined by the local tribes. (CEQA Guidelines §15126.4). Avoidance and preservation in place mitigation measures cannot be implemented if tribal cultural resources are not identified before the approval of a project. Wishtoyo requests that best available technology, best available methods, and frequently implemented practices are used to determine no tribal cultural resources will be impacted by the Project.

The MREC Application inadequately analyzes the impacts of the Project on the Chumash tribal cultural resources. The CEC should not approve the MREC Project because of the

Projects, available at <http://groundpenetratingradarcaliforniagpr.com/past-projects.html>). Please see attachment 2 about ground penetrating radar surveys in California.

significant impact the Project will have on cultural resources and specifically Chumash tribal cultural resources.

Tribal Cultural Landscape Resources

Tribal cultural landscape resources are any places where a relationship, past or present, exists between a spatial area, resource, and a group of indigenous people whose cultural practices, beliefs, or identity connects them to that place. The importance of these areas to Native American people creates the level of high viewer sensitivity, thus any project impacting the visual resources of the tribal cultural landscape is considered a significant impact on the environment and should be considered by the CEC as one of many reasons to not approve a project.

The MREC Application describes the Project having a new 6.6 mile generator tie-line, water vapor plumes, will be lit up at night, 54-foot high water storage tank, and the potential of a 60-foot high exhaust stack. (MREC Application, 5.13-2 and 5.13-10- 5.13-13). These characteristics of tall exhaust stacks, storage tanks, and water vapor plumes will substantially degrade the existing visual characteristics of the surrounding undisturbed mountainous riverine and valley, which are sacred tribal landscape cultural resources for the Chumash People.

Mati Waiya, Chumash Ceremonial Elder, has expert insight to the importance of the Santa Clara River Valley to the Chumash people. Waiya discusses the importance of the area to the Chumash people,

“[W]hen Chumash access the Santa Clara River upper watershed to honor our ancestors and to harvest: willow for traditional dwelling units (aps); soap stones for ceremonial beads, pipes and bowls; river rocks for ceremonial sweats, and white sage from the riverbanks for ceremonial blessings, we immerse ourselves in our cultural landscape, which must remain intact to preserve our culture. Our cultural landscape, the land that our



ancestors were buried in, prayed in, and utilized, contains all the wildlife in the Santa Clara watershed, undeveloped hillsides, the Santa Clara River, small creeks, mountains, valleys and our ancestor's remains.”

Many Chumash ceremonies require Chumash people to immerse themselves into the undisturbed mountain sides, riverines, and the Santa Clara River Valley to connect to their ancestors in the natural cultural historic landscape. This connection requires Chumash people to view and experience the tribal cultural landscape in the same way as their ancestors did to connect with their ancestors, and to practice their lifeways and spiritual practices/religion. Many features in the Chumash tribal cultural landscape are referenced in oral teachings or must be viewed during a ceremony. Development in the area continues to degrade Chumash tribal cultural landscape resources which limits the spaces for complete immersion into cultural landscapes necessary for their ceremonies. The tall exhaust stacks, water storage tanks, and water vapor plumes will be seen outside of the immediate Project site and will substantially degrade the existing visual characteristics of the surrounding undisturbed area Chumash people depend on. If the Project is approved and built, Chumash people would no longer be able to immerse themselves into their cultural landscape without being confronted with the sight of the MREC peaker-power plant, its exhaust stacks, tie-lines, water storage tanks, and water vapor plumes. Undisturbed cultural landscape is essential to Chumash connection with ancestors and ceremonies important to Chumash peoples' lifeways and the Project will significantly impact the Chumash lifeway and cultural and religious practices.

The MREC Application inadequately analyzes the visual impacts of the Project independently and cumulatively on the tribal cultural landscape for the community and especially for Chumash people. Wishtoyo requests adequate analysis of the impacts of the Project on Chumash tribal landscape cultural resources.

Natural Cultural Resources

Wishtoyo request more analysis of the impacts of the Project on Chumash natural cultural resources including, but not limited to; flora, fauna, air quality, water quality and quantity, risk of fire, hazardous waste, noise pollution, and Chumash access to these resources. For Chumash people, the health and wellbeing of the environment is intrinsically interconnected to Chumash culture, ceremony, and lifeways. Thus, Chumash natural cultural resources include flora and fauna, water, and air. The MREC has not conducted adequate analysis of the impacts of the Project on natural cultural resources.

a. Survey Area

The 1-mile radius from the proposed Project site and the 1,000 feet of the proposed generator tie-line tower footings and proposed pipeline routes, collectively known as the MREC survey area, is too small of a sample area to adequately analyze the impacts of air, water, and noise pollution will have on the flora and fauna in the Santa Clara River Valley area. (MREC Application, 5.2-6). Air and water pollution can and will spread throughout the Santa Clara River Valley, much farther than a 1 mile radius. There needs to be thorough direct, indirect, and cumulative impact analysis of storm water discharge from the Project on water quality and species dependent on sufficient water quality downstream of the Project all the way to the Santa Clara River Estuary that details how those impacts affect the cultural natural resources of the Chumash people. Further, a year-long sample period should be utilized to survey the flora and fauna in the area to reflect the changes various seasons have on the flora and fauna. Wishtoyo requests the CEC expand the survey area to incorporate the whole Santa Clara River Valley ecosystem to adequately analyze all the impacts of the Project on natural cultural resources.

b. Culturally Significant Plants

The Project will have significant impacts on the vegetation in the Project site and surrounding area that are important Chumash natural cultural resources. The Project's significant impacts include, but not limited to: degraded air quality, recycled water not being used to replenish surface flow and groundwater reserves, increased bacterial growth from thermal pollution, increased risk of fire from new powerlines, noise pollution impacting pollinators necessary for native plants, transfer of toxic materials from the Project site to the river during a flood, and decreased access to the river and culturally significant plants. Furthermore, the Chumash native plant collectors will be at risk of breathing and/or ingesting the Project's pollution when the collectors are hiking near and downstream of the Project site and when they handle the plants during ceremonies, weaving a basket, or building an ap. Wishtoyo requests the CEC consider the MREC's impacts on Chumash natural cultural resources, like culturally significant plants, because without this analysis the CEC will not fully understand the impacts the Project will have on the lifeways of the Chumash people.

For the Chumash people the juncus, royal willow, white sage, tule, and many other native plants are some of the culturally significant vegetation that are native to the Project site and surrounding area and will be impacted if the MREC is approved. The healthy juncus is collected and used to make Chumash baskets. Royal willow is collected and used to build aps, traditional houses of the Chumash people, as well as for medicinal purposes. White sage is collected and used in ceremonies to clean the spirit of those participating in ceremony. Lastly, tule is used for Chumash baskets and as materials to build aps. The collection process is similar to pruning and proves to be beneficial to native plants' growth and health. Chumash plant collectors cannot collect and use degraded or unhealthy native plants because the plants will be unusable for

weaving baskets, building aps, used as medicine, or for cleansing ceremonies. Further, pruning unhealthy plants further harms the plant, which goes against Chumash practices of maintaining and caring for native plants. Healthy plants needed for cultural uses are disappearing in the watershed and the Project site and surrounding areas contain some of the last native vegetation suitable for Chumash cultural uses. These culturally significant native plants are essential to the Chumash lifeways and if the Project is approved, these lifeways will be impacted.

1. Air quality

The MREC application states “[i]nstallation and operation of the MREC will be considered a major source under the VCAPCD 26.1 rule for NO_x and will trigger the offset requirements under VCAPCD Rule 26.2 for NO_x and ROC.”(MREC Application, 5.1-7). The mitigation measure proposed is “surrender of emission reduction credits as presented in Appendix 5.1H is based on the maximum operational profile for the MREC.” (MREC Application, 5.1-8). This mitigation measure of surrendering emission reduction credits do not work to limit the amount of NO_x in the surrounding Santa Clara River Valley area. Thus, the increased amounts of NO_x in the area will have a substantial impact on the environment and people.¹⁴

Applicants do not provide adequate analysis of the impacts of NO₂, NO_x, and other GHG on natural cultural resources. The application mentions when NO_x (NO, NO₂) converts to NHO₃ it can be taken up by plants in the area, but may lead to encourage growth of nonnative species that

¹⁴ See generally Office of Air Quality and Standards, *NOX How Nitrogen Oxides Affect The Way We Live And Breathe*, EPA (last accessed 11/29/2016) available at <https://nepis.epa.gov/Exe/ZyNET.exe/P10006ZO.txt?ZyActionD=ZyDocument&Client=EPA&Index=1995%20Thru%201999&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C95THRU99%5CTXT%5C0000020%5CP10006ZO.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3> (providing information about the health and environmental harms of NO_x).

are destructive and consume more water than native plants. (MREC Application, 5.2-18).¹⁵ The Project does not provide any mitigation measures to prevent the growth of nonnative plant species that will overtake native plants. Further, there is no analysis of the cumulative and indirect impacts of increased NHO₃ in the soil at the Project site and in the area. For example, increased growth of exotic non-native plants in the area will impact the agriculture that surrounds the Project. To combat this increased amount NHO₃, farmers will have to increase their use of pesticides to kill invasive weeds in their crops. These pesticides are harmful to the people and animals breathing in and consuming the chemicals and harmful to people, animals, and plants throughout the watershed when the chemicals are washed downstream.

Healthy and strong growth of native plants are not only essential to a healthy ecosystem, they are also essential to the Chumash way of life. For example, *juncus textilis* is an important plant to traditional Chumash basket weaving. (KCET Video, Tending the Wild: Weaving Community).¹⁶ If the juncus is pushed out by nonnative plants or isn't healthy enough for weaving, the Chumash people lose an important natural cultural resource. The same is true for the royal willow used for aps, traditional housing structures. (*Id*). White sage and tule must also be healthy and plentiful before the plants can be collected and used for Chumash ceremonies and aps. Increased nitrogen loading in the soil and water will encourage the growth of nonnative invasive plant species and will put at risk the juncus, royal willow, and many other native plants important to Chumash lifeways. Wishtoyo request an analysis of the impacts of NO_x and other air pollutants on the

¹⁵ "Invasive species have contributed to the decline of 42% of U.S. endangered and threatened species, and for 18% of U.S. endangered or threatened species, invasives are the main cause of their decline." US Forest Services, Invasive Plants, (last accessed 12/2/2016) *available at* <http://www.fs.fed.us/wildflowers/invasives/>.

¹⁶KCET, Tending the Wild: Weaving Community, (last accessed 11/29/2016) *available at* <https://www.kcet.org/shows/tending-the-wild/episodes/weaving-community-how-native-peoples-are-rediscovering-their> (a short documentary on the importance of juncus and royal willow for Chumash People.) Please see attachment 3.



vegetation of the Santa Clara River Valley and how it will impact Chumash lifeways.

Furthermore, there is no discussion of the impacts of air quality on different animal species, including those important to Chumash people. Wishtoyo requests an analysis of the impacts of NOx and other air pollutants on the native riparian vegetation and animals of the Santa Clara River Valley and how it will impact Chumash lifeways.

2. Water Reduction

The MREC Project will utilize around 170 acre-feet per year of recycled water from the Limoneira Company in its cooling system. (MREC Application, 5.15-6). In a time of drought, and considering the Santa Clara River and its underlying connected groundwater is deprived of the in-stream flows and water levels needed to sustain and protect: steelhead, pacific lamprey, Western Yellow Billed Cuckoo, Southwestern Willow Flycatcher, the Pond Turtle, native riparian vegetation (needed to sustain Chumash cultural and religious practices), other native and endangered species, and recreational use for humans such as inner tubing and kayaking, a reasonable use and waste analysis under Article X Section 2 of the California Constitution and California Water Code must be conducted to ensure that use of this water for the Project, as opposed to agricultural use and or leaving the water in the Santa Clara River or groundwater hydrologically connected to the Santa Clara River is reasonable. Furthermore, as provided by the California Public Trust Doctrine, an analysis must be performed to determine the impact of the project's use of the water on the in-stream flow public trust protected human and wildlife uses and resources of the Santa Clara River. (*Nat'l Audubon Soc'y v. Superior Court*, (1983) 33 Cal.3d 419, 445-47.) These uses include, but are not limited to sufficient flows to sustain and protect Steelhead, pacific lamprey, Western Yellow Billed Cuckoo, Southwestern Willow Flycatcher, the Pond Turtle, native riparian vegetation (needed to sustain Chumash cultural and

religious practices), other native and endangered species, and recreational use for humans such as inner tubing and kayaking.

Furthermore, an analysis must be conducted to determine whether the planned disposal of recycled water is reasonable and consistent with the California Public trust doctrine and reasonable use and waste provisions of the California Constitution. Any use of unappropriated recycled water should be reviewed and approved by the State of California under the requirements of California Public Trust Doctrine and Article X, section 2 of the California Constitution to take the public trust into account and ensure reasonable use when allocating water resources. Cal. Const. Art. X, § 2., Cal. Water Code § 100.)

3. Stormwater

The MREC Application does not adequately analyze the impacts of the Project's discharges of polluted stormwater to the Santa Clara River. While the application states the stormwater will be collected through the primary wastewater collection system and routed into sumps and onsite oil-water separator before discharging, the public needs more water quality and species impact analysis of the impacts of the stormwater once it is discharged. (MREC Application, 5.15-12.)

The analysis of the Projects stormwater Best Management Practices (BMPs) are also insufficient to determine the project's impacts on receiving waters and their beneficial uses. The Project Application does not discuss if its "primary wastewater collection system" "sumps and onsite oil-water separator" are the Best Available Technology (BAT)/Best Conventional Technology (BCT) available to prevent levels of concern of a concentration of pollutants in the Project's stormwater discharge.

Particularly concerning and common pollutants that are regularly found in stormwater discharges from Electricity Generating Stations/Facilities like the project include, but are not

limited to; heavy metals such as iron and zinc; oil and grease; fuel and fuel additives; total suspended solids; coolant; pH-affecting substances; toxic substances associated with facility operations such as ammonium hydroxide, sodium nitrite, sodium hypochlorite, sulfuric acid; and fugitive and other dust, dirt, and debris.¹⁷ The MREC Application does not discuss the impacts of any of these pollutants on the people, animals, plants, watershed, and the environment. These pollutants, if discharged through stormwater, will significantly harm the environment, including culturally significant plants and animals important and sacred to the Chumash people downstream, including juvenile and adult endangered Southern California Steelhead that suffer severe sublethal impacts from discharges of even trace concentrations of dissolved copper. (See: http://www.nmfs.noaa.gov/pr/pdfs/consultations/copper_salmon_nmfsnwfsc83.pdf (last visited 12/16/16).)

Wishtoyo request the CEC require adequate analysis of the impacts of the Project's stormwater discharge independently and cumulatively on the people, animals, plants, watershed, and environment in and around the Project area and downstream into the estuary and ocean. Further, Wishtoyo requests the CEC to determine what the BAT/BCT is available to ensure the Project is in compliance with applicable laws, and protective of all human and wildlife beneficial uses.

4. Wastewater and thermal pollution

The MREC Application does not adequately analyze the impacts of the Project's wastewater. The MREC Application's wastewater collection, treatment, discharge, and disposal plan is to pipe the wastewater from the Project facilities to a sanitary sewer system, Green Compass, for

¹⁷ Please see attachment 4 for a notice letter discussing stormwater concerns with a different generating station that are similar to the concerns Wishtoyo has with the MREC Project.

treatment. (MREC Application, 5.15-13). There is no analysis of the impacts of the pipeline breaking or failing when piping wastewater out of the Project facilities. There has been no analysis on the thermal pollution caused by Green Compass discharging wastewater that was used to cool the facility. Heated water increases bacteria growth and toxic conditions, which affects culturally significant plants and exposes Chumash plant gathers to the bacteria when gathering and weaving the plants.

Further, there is no analysis on the impacts of the wastewater when it arrives to Green Compass's facilities nor how Green Compass will dispose or discharge the wastewater. The public should be informed if Green Compass will treat the wastewater, what the treatment process will be, and what concentrations the wastewater will be treated to. The public should also know Green Compass's plan to dispose and discharge the wastewater, where the discharge will be, and the environmental impacts of this discharge. Lastly, MREC Application states they have a "will-serve letter stating that Green Compass... will receive wastewater from the project site" and states the letter is included in Appendix 5.15B, but there is no Appendix 5.15B in the Project Docket Log. (MREC Application, 5.15-13). The public should be informed on the Green Compass process of treating wastewater and be assured all impacts are properly mitigated. Green Compass, as the parent company to Santa Clara Waste Water, ran the Santa Paula facility that exploded in November 2014 because of improper storage of hazardous substances.¹⁸ This

¹⁸ See Marjorie Hernandez, Santa Clara Waste Water defendants told to return to court next month, Ventura County Star (Jan. 19, 2016) available at <http://archive.vcstar.com/news/local/santa-paula/santa-clara-waste-water-defendants-told-to-return-to-court-next-month-29b8cde9-87e2-25e3-e053-010000-365869011.html>. Please see attachment 5 for a copy of the news article.

A Ventura County grand jury issued a 71-count indictment in August against Santa Clara Waste Water, Green Compass, and nine company officials and employees including CEO William Mitzel. The indictment was spawned by an explosion and spot fires at the company's plant at 815 Mission Rock Road on Nov. 18, 2014, that caused several injuries, led to evacuations of businesses and homes, and required the treatment of dozens of people for potential exposure.

incident is enough to show more analysis is needed on how the wastewater will be transported and treated to ensure the public is fully aware of all impacts associated with the Project.

Wishtoyo request additional analysis of the impacts of the transportation and treatment of wastewater from the Project to Green Compass facilities.

5. Fire hazard

The MREC Application does not discuss any potential harms associated with increasing the amount of tie-lines in the area. (MREC Application, 2-9.) Increased amounts of power lines in the area increase the risk of a fire caused by the failure or falling of powerlines. These fires can cause considerable amount of damage to the area and can destroy culturally significant plants important to Chumash people. One example of a fire cause by down powerline was on May 23, 2014 when a helicopter hit powerlines near the 900 block of Corporation Road causing a small fire in the riverbed.¹⁹

Wishtoyo requests the CEC require adequate analysis of the impacts of increased powerlines and increased risk of fire on the Project site and in the area. Fires cause considerable harm to people, plants, and the environment as a whole. Proper analysis should be required to ensure the public knows of all risks associated with increasing the amount of powerlines in the area.

6. Noise pollution and impacts to pollinators

The Project has inadequate analysis on the impacts of noise on the community and the wildlife in the area. The MREC Application concedes that “combustion turbine inlets,

The defendants are accused of conspiracy to commit a crime, handling hazardous waste with a reckless disregard for human life, disposal of hazardous waste, committing violations causing injuries and other charges.

¹⁹ Santa Paula News, *Las Vegas man Killed in Helicopter Crash West of Santa Paula*, Santa Paula News (May 28, 2014) available at http://www.santapaulatimes.com/news/archivestory.php/aid/28874/Las_Vegas_man_killed_in_helicopter_crash_west_of_Santa_Paula.html. The newspaper sites other helicopter crashes in Ventura county including a crash along the Santa Clara River in the Piru area and north of Somis. Please see attachment 6 for a copy of the news article.

transformers, pump motors, and cooling tower fan gearboxes, have been known to sometimes produce significant tones,” but concludes there is “no significant tones.” (MREC Application, 5.7-13 – 5.7-14). What the Application does not consider is the location of the Project in a narrow valley which can increase sound pressure up to 30dBA over what is predicted at flat ground studies like, the ISO 9613-2 Acoustics - Sound Attenuation during Propagation Outdoors Model (ISO, 1996) used in the MREC Application. (Van Renterghem et al.: Sound propagation in valley-slope configurations²⁰ and MREC Application, 5.7-12). Furthermore, the Application’s “potential noise control measures” are not support with any proof of effectiveness in mitigating the estimated noise levels that exceed county guidelines. (MREC Application, 5.7-13).

The MREC Application applies a 60 dBA as the general noise threshold for all bird species to determine the Project will have no significant impact on wildlife in the Project site and general area. (MREC Application, 5.2-19.) The Application does not analyze the impacts of noise on spectral sensitivity of different species. For example, research has found that compressors from natural gas wells had an impact on the western scrub jay, causing the birds to avoid the area. (Clinton D. Francis, et. al., Noise pollution alters ecological services: enhanced pollination and disrupted seed dispersal²¹). The western scrub jay is a predator to the black-chin hummingbird and the areas where the western scrub jay avoided became heavily populated by the black-chin hummingbird. (*Id.* at 2733). The black-chin hummingbird pollinated the scarlet gilia, common

²⁰ Available at http://users.ugent.be/~tvrenter/publicaties/JASA_Unterinntal.pdf. (“The calculations further show that the terrain profile is responsible for an increase in sound pressure level at distant, elevated points up to 30 dBA compared to a flat ground situation. Complex temperature profiles account for level changes between –3 dBA and +10 dBA relative to a homogeneous atmosphere. This study shows that accurate sound level prediction in a valley-slope configuration requires detailed numerical calculations.”) *Id.* at 2522. Please see attachment 7 for a copy of the study.

²¹ Available at <http://rspb.royalsocietypublishing.org/content/royprsb/279/1739/2727.full.pdf>. (“[O]ur data demonstrate that the frequency of species interactions can change without a direct effect of noise on the interaction itself, suggesting that noise exposure may trigger changes to numerous ecological interactions and reverberate through communities.”) *Id.* at 2732. Please see attachment 8 for a copy of the study.

flower in New Mexico, five times more in noisy areas than non-noisy areas. (*Id.* 2730).

Furthermore, the piñon pines that rely on the western scrub jays to spread its seeds, had four times more seedlings in the non-noisy areas compared to the noisy areas. (*Id.* at 2731). Thus, in this instance, the compressors of the natural gas wells impacted not only the western scrub jay, but also the reproduction of the scarlet gilia and piñon pines.

Culturally significant plants on the Project site and in the surrounding area rely on pollinators to survive and reproduce. The CEC should require more analysis on the Project’s noise and how it will impact the pollinators, birds, and animals in the Project site and surrounding areas. Pollinators are essential to culturally significant native plants reproduction in the area and without them the riparian vegetation will be significantly impacted, which will impact the Chumash peoples’ lifeways dependent on healthy and plentiful native plants.

The CEC should also require adequate analysis on the Project’s noise pollution on the endangered birds, Coastal California Gnatcatcher, Least Bell’s Vireo, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, which live in the riparian vegetation in or near the Project site. “Taking” of an endangered species is prohibited under the Endangered Species Act. (16 U.S.C. § 1538(a)(1).) A “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” (16 U.S.C. § 1532(19).) The U.S. Fish and Wildlife Service (“USFWS”) defines “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” (50 C.F.R. § 17.3.) The CEC should require adequate analysis of the impacts of noise pollution on the Coastal California Gnatcatcher, Least Bell’s Vireo,



Southwestern Willow Flycatcher, and Western Yellow Billed Cuckoo to ensure the Project is compliant with the ESA and the California ESA.

Noise pollution impacting the wellbeing of wildlife and vegetation is an impact on interactions between species throughout the whole ecological system and will have impacts on Chumash natural cultural resources. Wishtooyo requests the CEC require adequate analysis of the impacts of noise pollution from the Project independently and cumulatively on the people, wildlife, and vegetation living in the Santa Clara River Valley.

7. Flood plain and hazardous waste

The MREC Application fails to adequately analyze the environmental impacts of hazardous and toxic materials being transferred out of the Project site in the event of flooding. The Project site is located inside the 100-year floodplain and the proposed 1-foot above calculated FEMA flood level foundations is not high enough to prevent floodwaters from entering the Project site. (MREC Application, 5.15-6.) The FEMA computations are outdated and do not incorporate climate change data to prepare for more extreme storms, causing larger and higher floods in the area.

When the Santa Clara River floods, the water from the flood will wash out all the hazardous materials on the Project site into the River, the Santa Clara River Estuary, and the Pacific Ocean. These materials will be harmful to the community in the area, to the environment, and more will impact culturally significant plants and species to the Chumash people. We are happy to see the CEC have expressed their concern for the Project's 20-container battery array and have already asked for more details on potential floodwater impacts to the battery array and if the battery containers can withstand exposure to flood waters. (Staff Status Report, 3.) Wishtooyo requests the CEC staff to continue to require adequate analysis of the impacts of the Project being built in

the floodplain to ensure the hazardous materials stored on the Project site does not get washed out during a flood event and cause harm to the community, environment, and native plants.

8. Access to culturally significant plants

Chumash people who collect culturally significant plants for ceremonies, baskets, and houses need access to the Santa Clara River and riparian vegetation. The more development, especially dangerous development, that is approved and built along the Santa Clara River limits the access of Chumash people to collect riparian plants. The Project, if approved, will be a dangerous facility that will, rightly so, build a fence to keep people out of the Project site. This fence and the dangerous facilities will independently limit access for Chumash people to the Santa Clara River. Further, it will cumulatively add to the many other development sites that create a wall along the river's edge denying the Chumash people to access riparian native plants. The CEC should require adequate analysis of the impacts of the Project independently and cumulatively on Chumash peoples' access to culturally significant plants and to the Santa Clara River. If approved, the MREC would introduce more barriers to the river and culturally significant plants that Chumash people depend on for cultural continuity.

c. Culturally Significant Animals

1. California Condor

The MREC Application fails to discuss the impacts of the project on the California Condor as a Chumash natural cultural resource. The application mentions the Project is in sensitive condor habitat and mentions the Los Padres National Forest is part of the Condor Recovery Program, but does not provide adequate analysis of the impacts of the Project on condors at the Project site or in the Santa Paula area. (MREC Application, 5.2-3). The Project will cause condors to avoid the Project site. Further, the noise, emissions, development of the Project site,



increase powerlines, and the loss and destruction of the local habitat for roosting, foraging, and feeding will prevent any recovery of the condor living and visiting at the Project site and in the area. Not only is this an environmental impact, but it is a natural cultural resource impact on the Chumash lifeways. The Project is located in historic condor habitat and there is documentation of historic and recent condor sightings in the Santa Clara River Valley. (Landmark Village (Newhall Ranch) FEIR.²²) Wishtoyo request the CEC to require adequate analysis of condor roosting, foraging, feeding, and/or flying overhead at or near the Project site and in the Project area.

The California condor is important to the Chumash People because the condor is a symbol of Chumash continuance as a people connected to traditional lifeways.²³ Moreover, the condor plays a substantial role in the Chumash funeral ceremonies. Condor feathers are offer to the deceased as their last rite of passage to raise their spirits to the upper world. The condor cleans not only the land, but the souls of deceased. The presence of the condor, whether it be flying overhead, foraging for food, roosting in a tree, or cleaning itself near the river, or the knowledge of condors living and thriving in the area is integral to sacred ceremonies, cultural sites, prayers, and burial sites. The importance of the condor to Chumash People can be seen in the performance of the condor dance during ceremonies as well as in Chumash cave art and baskets.²⁴ The presence of condors are necessary for these important Chumash ceremonies, dances, and connection to ancestors and traditional lifeways.

²² Available at <http://planning.lacounty.gov/lmv>

²³ See California State Parks, Wings of the Spirit: California Condor, (last accessed 11/29/2016) available at http://www.parks.ca.gov/?page_id=23527 for more information of the importance of the California Condor for the Chumash people. Please see attachment 9 for a copy of the article and to see pictures of cave art and baskets showing the significance of the condor for the Chumash people.

²⁴ Please see attachment 9 for pictures of Chumash cave art and baskets.

If approved, the Project will decrease the presence of the condor living, roosting, foraging, and flying overhead in and around the Project site and area. Without the presence of the condor in the area, the Chumash people will be significantly impacted by the Project. The Chumash people will not be able to perform their last rite ceremonies for their deceased, they will not be able to collect condor feathers in their cultural landscapes in the project area, and the condor will not visit their ancestors' burial sites. The decreased presence of the condor in the Project site and area is an impact on the Chumash natural cultural resources. Furthermore, the Project will impact the Chumash cumulatively. Currently there are very few spaces for the Chumash to connect with the condor and if the Project is approved and built, the Project's pollution, tie lines, water vapor plumes, and stacks will further limit the spaces Chumash people can connect with the condors and their ancestors.

Wishtoyo request the Project adequately analyze the impacts of the Project and the cumulative impacts on the current condors in the Project site and general area as well as the impacts hindering future local presence of the condor at the Project site.

2. Endangered Species

The MREC Application discusses the five potential endangered species that have a potential to occur, and have been identified within one mile of the Project. (MREC Application, 5.2-9.) These five endangered species include the Coastal California Gnatcatcher, Least Bell's Vireo, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Southern California Steelhead. (MREC Application, 5.2-9.) The Applicants have incorrectly concluded that they will not have any adverse effects on the endangered species, thus are not required to consult with the US Fish and Wildlife Services ("USFWS") and the National Marine Fisheries Service ("NMFS") under the Endangered Species Act ("ESA"). (MREC Application, 5.2-26, 5.2-29.)

As discussed earlier, the Project will have adverse impacts on the riparian vegetation, water quality, and in-stream flows. These adverse impacts will also effect the following endangered and threatened species: Coastal California Gnatcatcher, Least Bell’s Vireo, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Southern California Steelhead, which all rely on healthy riparian vegetation, flowing water, and clean water. In addition, as discussed above, noise impacts will result in harm, harassment, degradation of critical habitat, and avoidance of the project area for the Least Bell’s Vireo, Southwestern Willow Flycatcher, Coastal California Gnatcatcher, and Western Yellow Billed Cuckoo.

The ESA and California ESA prohibits “take” of endangered and threatened species listed under the act. (16 U.S.C. § 1538(a)(1).) Section 9 of the ESA prohibition against taking also applies to species listed as threatened unless specifically exempted. (50 C.F.R. § 1538(a)(1)(B).) To “take” a listed species means, inter alia, to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” (Id. § 1532(19).) “Take” includes indirect as well as direct harm and need not be purposeful. (*See Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, 515 U.S. 687, 704 (1995).) A “take” also includes any significant habitat modification or degradation which kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. (50 C.F.R. § 222.102.) A private party can be protected from section 9 liability if consultation with USFWS is performed and a reasonable and prudent alternative and incidental take statement is set forth in a biological opinion. The Project will “take” various endangered and threatened species through significant habitat modification and degradation, thus consultation with the USFWS is required to ensure a reasonable and prudent alternative and incidental take statement can be developed.

The Least Bell's Vireo, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Coastal California Gnatcatcher have particular riparian vegetation requirements where they nest in and forage from. Alternations to their native riparian habitat, through invasive non-native plants, can result in profound effects on their survival and populations. The Vireo have experienced a sharp decline in population due to habitat fragmentation and the spread of non-native plant species. (Stillwater Sciences, *Least Bell's Vireo*, THE SANTA CLARA RIVER PARKWAY.²⁵) The Vireo is sensitive to the direct loss and degradation of habitat that “result from or are exacerbated by urbanization and other development within and near riparian areas.” (*Id.*) The Southwestern Willow Flycatcher also requires dense riparian thickets and near lentic (quiet, slow-moving, swampy, or still) water. (U.S. Fish and Wildlife Service. 2002, Southwestern Willow Flycatcher Recovery Plan, Albuquerque, New Mexico, i-ix+ 210 pp., Appendices A-O.)The Western Yellow Billed Cuckoo are typically found in areas with more than 75% native riparian vegetation and prefers open woodland with clearings and low, dense, scrubby vegetation, often along watercourses. (2015 United Water Avian Surveys, 5.) Fewer than 30 pairs remain, down from at least 15,000 a century ago. (*Id.*)

The Coastal California Gnatcatcher requires un-fragmented coastal sage scrub for nesting and forage. (Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Coastal California Gnatcatcher, US Fish and Wildlife Service.²⁶) Similar to the Vireo, the Gnatcatcher was “listed as threatened on March 30, 1993, because of habitat loss and fragmentation resulting from urban and agricultural development (58 FR 16742). Aside from habitat loss and fragmentation, other management issues concern fire, nonnative plants, and

²⁵ Last accessed (12/9/2016) available at <http://parkway.scrwatershed.org/theriver/species/least-bell-s-vireo.html>.

²⁶ Available at <https://www.gpo.gov/fdsys/pkg/FR-2007-12-19/html/07-6003.htm>

predation.” (*Id.*) If the Project is approved, the riparian vegetation will be destroyed because of Project’s NOx pollution, use of large quantity of water, thermal pollution, and overgrown by non-native plants, which will in turn harm the habitat of the Vireo, Flycatcher, Cuckoo and Gnatcatcher, thus impacting endangered species. The likely impacts of the Project on these endangered species, including noise impacts, triggers the requirement of the MREC to consult with the USFWS under the ESA.

Southern California Steelhead require plentiful, clean, and healthy water in the Santa Clara River to spawn, develop, and live. The Santa Clara River watershed is significant to the survival and recovery of the Southern California Steelhead (“Steelhead”) and has been designated by NMFS as providing one of the top Steelhead restoration opportunities in the species’ entire range. (National Marine Fisheries Service, Southwest Region, Protected Resources Division, Long Beach, California. 2011. *Southern California Steelhead Recovery Plan. January 2012*, 1-4, 2-14, 7-5.²⁷) The Steelhead use the Santa Clara River as a migration corridor and the steelhead smolt and adults use the estuary for rearing and acclimating before migrating to the ocean. The Project’s discharges of polluted stormwater containing toxic metals such as copper and other contaminants, and containing thermal pollution, will impact the steelhead adjacent to the Project and in the estuary downstream. Analysis of, and prevention of these harms is required, as is consultation with NMFS to ensure no impacts, including direct, indirect, and cumulative sub-lethal toxicity impacts downstream in the Santa Clara River and its Estuary from stormwater discharges.

²⁷ Available at

http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/south_central_southern_california/southern_california_steelhead_recovery_plan_executive_summary_012712.pdf



The Coastal California Gnatcatcher, Least Bell's Vireo, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, Steelhead, and other native species will be impacted by the Project's increased water, air, thermal, hazardous, and noise pollution harming the animals' habitat requiring un-fragmented dense riparian vegetation and healthy water. These specific and cumulative impacts are considered "takes" and will have adverse impacts on endangered species, thus Project proponents should be required to consult with the USFWS and NMFS under the ESA before the CEC hearing and potential siting of the Project.

Wishtoyo request the CEC require the Project proponents to consult with the USFWS, NMFS, and California Department of Fish and Wildlife, and provide more adequate analysis on the impacts of the Project on endangered species before approving the Project.

Overall, the MREC Application inadequately analyzes the impacts of the Project on the Chumash natural cultural resources. As discussed above, the Project proponents must conduct further analysis of the impacts of the Project including, but not limited to; flora, fauna, air quality, water quality and quantity, risk of fire, introduction of hazardous waste, noise pollution, and Chumash access to these resources. For Chumash people, the health and wellbeing of the environment is intrinsically interconnected to Chumash culture, ceremony, and lifeways. The CEC should not approve the MREC Project because of the significant impact the Project will have on the biological and natural cultural resources at the Project site and in the Project area.

Environmental Justice

MREC will be built immediately upwind from the Santa Paula community that, based on CalEnviroScreen 2.0 criteria and the acknowledgement by Eric Knight of the CEC, is considered



an environmental justice community.²⁸ Further, Ventura County is a serious nonattainment county for ozone under federal environmental standards²⁹ and nonattainment for ozone under California environmental standards.³⁰ The Project site is less than a half mile away from the Ventura County Jail. The majority of the inmate population are from minority communities, thus should also be considered by the CEC as part of the environmental justice community. (Vera, Incarceration Trends.³¹) In 2014, Ventura County had 1,007 Latino, 112 Black, 29 Asian/Pacific Islander, 3 Native American, and 668 White people incarcerated. (*Id.*) The community in and around Santa Paula as well as the incarcerated community in Todd Road jail are environmental justice communities that are already suffering from a mix of environmentally harmful pollutants and industries. The MREC Application does not provide adequate analysis of its impacts nor cumulative impacts on both environmental justice communities. Wishtoyo requests the CEC require more analysis of the impacts and cumulative impacts of the Project on the Santa Paula residents as well as the Todd Road Jail residents.

Further, the CEC should work towards including the community in all stages of the MREC siting process. For example the Dec. 19, 2016 Status Conference is going to be held at 2pm at the California Energy Commission headquarters in Sacramento, California. The time and

²⁸ Office of Environmental Health Hazard Assessment (OEHHA), CalEnviroScreen Version 2.0, *available at* <http://oehha.ca.gov/calenviroscreen/report/calenviroscreen-version-20> (The census tract where the Calpine project is proposed is in the top 25% of state-designated environmental justice communities, including being in the 96th percentile for pesticides, 82nd for hazardous waste, 81st for groundwater threats, 76th percentile for contaminated drinking water, 76th percentile for solid waste facilities. In terms of vulnerable population, it is in the 96th percentile for children/seniors and the 92nd percentile for low education levels.)

²⁹ EPA, Current Nonattainment Counties for All Criteria Pollutants, EPA (Sept. 22, 2016) *available at* <https://www3.epa.gov/airquality/greenbook/ancl.html>

³⁰ California Environmental Protection Agency Air Resources Board, State Standard Area Designations <https://www.arb.ca.gov/desig/adm/adm.htm>

³¹ *Available at* <http://trends.vera.org/rates/ventura-county-ca?incarceration=disparity&incarcerationSource=api,black,latino,aian,white>. See also Nicholas Bookout, The EPA's 2020 Environmental Justice Action Agenda: A Call to Protect Our Nation's Youth from Hazardous Conditions While Incarcerated, Youth Justice (July 28, 2015) *available at* <http://www.campaignforyouthjustice.org/news/blog/item/the-epa-s-2020-environmental-justice-action-agenda-a-call-to-protect-our-nation-s-youth-from-hazardous-conditions-while-incarcerated>



location create a barrier for community members to attend and voice their concerns about the MREC Project. Wishtoyo request all future meetings be held in a local location and during the evening to ensure the community will be able to attend and voice their opinions. Further, the meetings should provide language translators to ensure community members can understand and participate in all CEC meetings.

The MREC Application inadequately analyzes the cumulative impacts of the air, water, and noise pollution from the Project with all other polluting industries in the Santa Clara River Valley and how those cumulative impacts affect underrepresented communities, including Chumash communities. (MREC Application, 5.10-18).

Conclusion

Wishtoyo respectfully requests the CEC to not approve the MREC Project because of the significant impacts to the environment and the inadequate analysis of the MREC Application on the Project's impacts on Chumash tribal cultural resources, tribal landscape cultural resources, natural cultural resources, and environmental justice concerns.

Thank you for your time and consideration in reviewing these comments. Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Geneva EB Thompson".

Geneva EB Thompson
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