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Pit River Tribe Extended Opposition to Fountain Wind Project

Additional submitted attachment is included below.

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October 21, 2024

Via e-filing to Docket 23-OPT-01

Leonidas Payne
Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814

**RE: Pit River Tribe Renewed and Expanded Opposition to Fountain
Wind Project**

Dear Commissioners,

On behalf of the Pit River Tribe (the "Tribe"), a federally recognized Indian tribe, I am writing to renew, reaffirm, and expand upon our strong opposition to the Fountain Wind Project ("Project"). This letter serves as a comprehensive update and consolidation of our previous objections, as well as incorporating our newer concerns expressed to both the California Energy Commission and the Shasta College Foundation Board regarding the Community Benefits Agreement ("CBA").

I. BACKGROUND

The Pit River Tribe consists of eleven autonomous bands who are aboriginal to the "100-mile square" ancestral boundary located in Shasta, Siskiyou, Modoc, and Lassen Counties. Our Constitution, adopted on August 16, 1987, and approved by the Secretary of the Department of the Interior on December 3, 1987, outlines our inherent sovereign governmental powers to protect and promote the health, safety, and general welfare of our people.

The aboriginal territory of the Tribe consists of all ancestral lands recognized by the Indian Claims Commission in its July 29, 1959, findings of fact and opinion in Docket No. 347. This includes, but is not limited to, the XL Ranch, Montgomery Creek, Roaring Creek, Big Bend, Burney, Lookout, and Likely Rancherias, as well as other properties held in trust or acquired by the Tribe.

II. PROJECT IMPACTS AND TRIBAL CONCERNS

The Tribe has clearly outlined its concerns regarding the significant impacts of the proposed Project and the undue burden it places on our community. The Project threatens to cause irreparable harm to our ancestral lands, and we are profoundly disappointed by the State's apparent lack of awareness of this situation with the passage of AB 205, which has required the Tribe to expend significant resources for many years to the detriment of the Tribe.

A. Environmental and Cultural Impacts

The Project, if approved, would result in significant adverse impacts to:

1. **Viewshed and Aesthetics:** The installation of up to forty-eight (48) 650-foot-tall wind turbines would drastically alter the landscape central to our Tribe's identity, oral traditions, history, well-being, and way of life.
2. **Water Quality:** The construction and operation of the Project pose risks to local water resources, which are vital to our community and ecosystem. As the origin of water that is used throughout the State, negative impacts to water quality extends far beyond the local area.
3. **Biological Environment:** The Project threatens local wildlife and plant species, many of which hold cultural significance for our Tribe.
4. **Economic Base:** The Project will negatively impact property values and drive people away, reducing our political power and the County's tax base.
5. **Tribal Cultural Resources:** The Project area is located within the ancestral lands of the Itsatawi, Madesi, and Atsugewi Bands of the Pit River Tribe. The topography of the Project site is central to the Tribe's identity, and changing the landscape so drastically is another state-sanctioned action that leads to further dispossession of our homelands.

B. Inadequate Compensation and Community Benefits Agreement

The Tribe unequivocally rejects the notion that any financial compensation could mitigate the damages caused by this Project. The Community Benefit Agreements, worth only \$2.17 million, and collectively spread out over ten years, fail to mitigate the far-reaching consequences of the Project. We believe that Fountain Wind approached organizations like the Shasta College Foundation because their initial Agreement—a mere \$175,000 to a union—is inadequate and weak.

Regarding the union Agreement, we must emphasize its' glaring inadequacies. A mere \$175,000 allocated to a single union fails to provide substantial benefits to the broader community or even to union members themselves. This weak agreement does not create significant long-term employment opportunities, nor does it ensure fair wages or working conditions commensurate with the scale of the project. It fails to provide for comprehensive job training programs that could benefit local workers, and it lacks any ongoing community investment or environmental stewardship. Such a limited agreement

does not address the potential job displacement in other sectors that may result from the project, nor does it compensate for the potential negative impacts on local tourism or property values. In essence, this union agreement appears to be a token gesture rather than a meaningful commitment to the economic well-being of our community.

With regard to the Shasta College Foundation CBA, we agree with the recent letter from Alan Cox, Shasta County Counsel in his assessment and concern about the inadequacy of the Agreement to provide a meaningful community benefit that would offset any project impacts. We note that the Tribe has consistently rejected payment from the project proponent because the amount offered could not reasonably be considered mitigation of the massive impacts of the project on the Tribe. The Tribe has suffered from genocide, forced removal from our lands, dispossession of our lands, and near extermination as a people. However, we survived.

Today our Tribal people are recovering our lands, revitalizing our language and culture and stepping back into the role of steward of the precious cultural and environmental resources that are found within our homelands. This project threatens all of this effort and therefore no amount of money can mitigate the impact of the project on the Tribe. We do not believe that the Shasta College Foundation was provided with all of the information before agreeing to enter into the CBA. The Foundation believes that they will only get the money if the project is approved anyway. Sadly, they sold out the Tribe and the entire community for a promise.

C. Misrepresentation of Community Support

We are convinced that Fountain Wind is using endorsements, such as that from the Shasta College Foundation, to misrepresent broader community support to the California Energy Commission. This portrayal of community backing is grossly inaccurate and undermines the true sentiments of our community. The Foundation does not appear to support the project, but instead were willing to be the beneficiary if efforts to stop it fail. That is not support.

D. Ecotourism Concerns

The Project will undoubtedly affect the ecotourism industry around the Project Site. The area is rich in recreational resources including opportunities for swimming, hunting, fishing, hiking, biking, cross-country skiing, snowmobiling, plant identification, and bird watching. The impacts to these resources are not limited just to the location of where the turbines would be placed but will be seen and felt by the surrounding Tribal Bands from all of the surrounding Counties if they are installed. The Band areas are just beginning to be considered for eco-tourism potential, but that will be damaged by the project if it proceeds.

III. LEGAL AND PROCEDURAL CONCERNS

A. Jurisdiction and Prior Denial

We reassert our belief that the California Energy Commission lacks jurisdiction to review an Energy Project application that has already been denied by the local agency. The Fountain Wind Project faced a comprehensive and exhaustive review process within Shasta County over four years, resulting in denial by both the County Planning Commission and the Shasta County Board of Supervisors.

We echo the concerns raised by Shasta County regarding the constitutional separation of powers if the Commission were to assert jurisdiction over the Project after the County's prior review and denial. Such an assertion of jurisdiction could be viewed as retroactive legislation, thereby violating the separation of powers doctrine.

B. Assembly Bill 205 (AB 205)

We believe that AB 205, which forms the basis for the Commission's asserted jurisdiction, was not intended to extend to projects that had undergone previous reviews and denials by local agencies. The legislation clearly states that the Commission's certification would be "in lieu of" any local permits or certificates, signifying a deliberate choice between the two pathways.

C. Decommissioning Concerns

We request that a Draft Decommissioning Plan be prepared prior to approval of the Project, not after it has commenced. Furthermore, we request that the CEC require a Decommissioning Fund be created and fully funded for the decommissioning costs prior to the certification of the project. The Tribe requests consultation with the Developer in drafting whatever decommissioning plan the CEC deems necessary for Project approval.

IV. VIOLATION OF INDIGENOUS RIGHTS

Approval of the Project will undoubtedly violate our rights as recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Specifically, it would violate our right "to the conservation and protection of the environment and the productive capacity of their lands or territories and resources," as well as our right "to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

V. HISTORICAL CONTEXT AND GOVERNMENT RECOGNITION

We again, must emphasize the historical context of our objections. In July 2019, Governor Gavin Newsom issued Executive Order N-15-19, acknowledging the historical wrongs done to California Native Americans. Our aboriginal territory has been exploited since colonization for its energy resources, and as recognized by this Apology, dispossession of our homelands has occurred for far too long.

The existing wind turbines on Hatchet Ridge already mark the landscape, and the installation of up to forty-eight (48) more in an extremely complex geographical area will further disrupt the way of life for all who live in the area. This Project, like others before it, is purposefully sited in a socio-economically disadvantaged area with little political capital to push back.

VI. CONCLUSION

In conclusion, we implore the California Energy Commission to heed our collective plea and disapprove this project. The weight of history and the responsibility to protect our shared future rests in this moment, and we call upon the CEC to make the courageous decision that will leave a lasting legacy of preservation, respect, and honor for Indigenous communities.

We have requested that the Shasta College Foundation rescind its participation in any agreement supporting this project. We informed them that further discussion is necessary with Shasta College Board so that all decision makers can be thoroughly informed on what they have errantly agreed to.

The Pit River Tribe remains committed to protecting our lands and heritage, and we hope you will stand with us in this crucial endeavor.

Sincerely,



Yatch Bamford (Oct 21, 2024 12:59 PDT)
Yatch Bamford
Tribal Chairman






Pit River Tribe Renewed and Expanded Opposition to Fountain Wind Project

Final Audit Report

2024-10-21

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