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Opposition to Fountain Wind Project - Pit River Tribe

Additional submitted attachment is included below.

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May 13, 2025

California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814

Re: Pit River Tribe Comment on Fountain Wind Project Staff Assessment –Cultural, Tribal Cultural, Wildfire and Water Impacts (Docket No. 23-OPT-01)

Dear Commissioners,

This letter is submitted on behalf of the Pit River Tribe (“Tribe”), a federally recognized Tribe comprised of eleven autonomous bands whose ancestral territory encompasses the proposed Fountain Wind Project (“Project”) area and surrounding region. We submit this formal public comment to express our strong and united support with the California Energy Commission Staff Recommendation that “the CEC not certify the project because the project conflicts with local land use ordinances and substantial evidence supports a finding that the project is not required for public convenience or necessity (TN262350_20250325T150037_Fountain Wind Project Staff Assessment) (“Staff Assessment”).

At the outset, the Tribe affirms its support for the CEC Staff’s Recommendation that the project does not receive CEC certification. The Fountain Wind Project would impose multiple significant and unavoidable environmental impacts, particularly to sacred tribal cultural landscapes and public safety through wildfire risk.

Even with the proposed mitigation measures identified in the Fountain Wind EIR, the impacts to our cultural survival, spiritual landscapes, and public safety are much greater than the report fully conveys. We have identified a number of reasons why the Staff Assessment should be followed, as set forth below.

I. The Staff’s Recommendation Maintains Consistency with CEQA, AB 52, and the State’s Duty to Protect Native American Heritage.

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The Pit River Tribe's principal objection to the Fountain Wind Project centers on the irreparable harm that would occur to the overall Tribal Cultural Landscape if the Project is constructed. The Project area includes sacred sites, ceremonial areas, ancestral trade routes, and ecological features that the Tribe considers inseparable from the natural setting of the proposed project site. These separate features do not constitute isolated or static "resources" that can be cordoned off, excavated, or catalogued for mitigation purposes. Rather, they constitute a living cultural and spiritual geography—one that continues to hold significant meaning, power, and function for the Pit River people today.

Through formal consultation with the California Energy Commission, the Tribe identified specific areas of cultural and ceremonial importance within the project footprint. Despite these disclosures, the project proposes to install forty-eight (48) 610-foot-tall wind turbines across the landscape. These structures will obstruct and desecrate sacred viewsheds that are integral to tribal ritual observance and spiritual practices. In addition, the turbine's continuous operation of mechanical components and associated lighting would introduce artificial sound and visual interference, undermining the quiet necessary for ceremonial connection with the land. This level of industrialization stands antithetical to the sanctity of the site and would sever the intergenerational continuity of knowledge, practice, and presence that defines the Tribe's relationship with its homelands.

The Staff Assessment correctly recognizes the gravity of these effects, stating "Because the project would cause a significant and unavoidable adverse change to the visual setting of a tribal cultural landscape, the impact would show significance and unavoidability." *See*, Staff Assessment, 5.4-110. This acknowledgment alone should foreclose any presumption that Fountain Wind, LLC can mitigate such impacts. The harm posed to the cultural landscape does not manifest theoretically—it changes the fundamental nature of a place that is sacred, relational, and alive.

The Inadequacy of Mitigation-by-Monitoring

Although the Staff Assessment concedes that cultural impacts will demonstrate significance and unavoidability, it nonetheless proposes a series of mitigation measures that remain procedural in nature and wholly inadequate to address the type and scope of harm anticipated. These include cultural monitoring during ground disturbance (Condition of Certification CUL-1, 5.4-55), worker environmental awareness training (CUL-4, 5.4-57), and coordination protocols in the event of inadvertent discoveries (CUL-3, 5.4-56). While such measures may offer value in contexts involving unanticipated findings or archaeological compliance, they prove insufficient—and inappropriate—when dealing with known, sacred, and still-utilized ceremonial landscapes.

These actions do nothing to prevent or reduce the core impact of the project: the permanent desecration of an active spiritual landscape through industrial encroachment. Monitoring does not shield sacred sites from mechanical disruption. Training does not prevent turbines from intruding on prayer spaces. Coordination protocols, by definition, come after damage occurs. These measures assume the harm will occur and simply assign a procedure for how to respond, effectively converting mitigation into a bureaucratic ritual that offers no protection and no dignity to the

landscape or the Tribe. As the Staff Assessment admits, “Even with the implementation of staff’s proposed conditions of certification, many of the project’s impacts on cultural and tribal cultural resources would remain significant and unavoidable.” *See*, Staff Assessment, 5.4-113.

This does not constitute mitigation. It constitutes an admission of failure. And in the context of tribal cultural resources, where the spiritual and cultural stakes are immeasurable, that failure carries intergenerational consequences. The Tribe’s cultural practices, worldviews, and legal rights deserve more than monitoring—they demand respect, avoidance, and meaningful protection.

Tribal Consultation Did Not Influence Project Design

The Tribe participated in four consultation meetings with CEC staff throughout 2024. While staff acknowledged the cultural significance of the Project area and the Tribe’s extensive concerns, the project design and footprint remained unchanged despite this input.

Under the CEQA and AB 52, consultation is not satisfied through dialogue, it involves consideration of feasible measures to avoid or minimize impacts. The absence of any such measures—despite the Tribe’s detailed input—reflects a procedural, rather than substantive, approach to tribal consultation.

A Feasible, Less Harmful Alternative Exists

Staff correctly identifies the Battery Energy Storage System (BESS) Alternative as the CEQA Environmentally Superior Alternative: “The BESS Alternative would avoid the proposed project’s significant and unavoidable impacts... and would maintain consistency with State and local LORS.” *See*, Staff Assessment, 8-1. This alternative achieves the basic project objectives without the massive destruction of the cultural landscape, however without a full cultural evaluation, we cannot yet state the Tribe’s position regarding the BESS Alternative. The availability of such an option eliminates any justification for imposing the irreversible harm that the Fountain Wind Project would have on this significant tribal cultural landscape.

II. Wildfire Hazard and Emergency Response Impacts

The Project Would Significantly and Unavoidably Increase Wildfire Risk

The Staff Assessment concludes that the Fountain Wind Project would introduce vertical infrastructure (again, up to 610 feet tall) that would impede aerial wildfire suppression, resulting in a significant and unavoidable impact under CEQA:

“The proposed project wind turbines would introduce an impediment to aerial firefighting which would present a significant and unavoidable impact to wildfire emergency response.” *See*, Staff Assessment, 5.7-56

This risk is not speculative. The project would occupy a remote, heavily forested region with steep terrain and limited access – precisely the kind of landscape where aerial fire suppression is essential. The project’s interference with these critical operations cannot be fully mitigated, even with best practices or procedural controls.

From a Tribal perspective, this represents more than a technical or logistical hazard—it threatens the safety of Tribal communities, the continued health of a forest that is critical to climate resiliency, and the preservation of cultural resources that remain vulnerable to fire.

The Project Site Lies Within a Fire-Scarred Cultural Landscape

The proposed project site lies within lands already devastated by the 1992 Fountain Fire, a catastrophic event that the Tribe remembers not only as an environmental disaster but as a cultural loss. Entire areas of ancestral territory—including medicinal plant habitats, ceremonial spaces, and traditional gathering sites—burned or underwent permanent alteration.

Despite these lessons, the proposed project would reintroduce fire risk by:

- Creating ignition sources through electrical infrastructure;
- Widening roads and clearing forests, increasing edge effects and wind exposure;
- Introducing permanent impediments to suppression in a high-risk zone.

CEC staff clearly state that “Because the project would impair aerial firefighting, should a fire start on or near the project site it has the potential to result in substantial impacts to biological and aquatic resources on the project site and surrounding region including the adjacent National Forest Lands.” *See*, Staff Assessment, 5.2-109.

These lands exist not just as forests—they exist as the cultural and spiritual homelands of the Pit River people, and they include sensitive, cultural sites that are still in use today.

The Project Threatens Emergency Response and Public Safety

The Staff Assessment identifies the Project’s potential to endanger rural and tribal communities by reducing the effectiveness of wildfire emergency response. The turbines’ vertical presence and rotating blades make aerial attack impossible in key areas of the site, posing direct risks to:

- Residents of tribal housing and rural off-grid communities nearby;
- Emergency responders attempting to protect life and property;
- Traditional cultural landscapes that are integral to the Tribe’s way of life.

The Moose Camp and Smith Camp areas and nearby forest lands, used by tribal members and local residents for recreation and ceremony, lie within 300 feet of the main project access road and would directly experience effects from fire behavior modified by the project. There is simply no way to mitigate the harm that would come to these communities if there is an ignition nearby.

III. Objection to Hazardous Materials Use and Storage During Construction and Operation

The Pit River Tribe raised significant concerns regarding the volume, variety, and volatility of hazardous materials proposed for transport, use, and storage throughout the Fountain Wind Project’s lifecycle. As Section 5.7 of the Staff Assessment details, the project would introduce a

range of toxic, flammable, and reactive materials to an ecologically sensitive and culturally significant landscape.

a. The Project Involves a Broad Inventory of Hazardous Materials

The Staff Assessment acknowledges that the project would involve the transport, storage, and use of the following hazardous substances, including but not limited to:

- Diesel fuel – Over 5,000 gallons stored on-site;
- Gasoline, propane, hydraulic fluids, gear oils, and antifreeze;
- Herbicides – For vegetation control;
- Cleaning solvents and adhesives;
- Dielectric fluids – Up to 10,000 gallons in transformers;
- Explosives – For excavation and trenching during construction.

Workers will transport these materials over rural roads and store them in areas adjacent to sensitive habitats, drainages, and sacred lands, including lands used for tribal ceremonies and medicinal plant gathering.

b. Explosive Use in Volcanic Bedrock Raises High-Risk Red Flags

The use of explosives presents particular concern, as the project site includes underlying volcanic bedrock, and the plan calls for blasting to create turbine foundations, trenches, and roads. Explosives not only pose obvious blast and ignition hazards, but they also generate ground vibration that can destabilize rock formations and cause unintended damage to undiscovered or unrecorded tribal cultural resources, which prevail in the area.

No feasible mitigation exists to prevent adverse impacts to sensitive cultural sites located near proposed blasting zones.

c. Spill Containment Measures Demonstrate Inadequacy for High-Risk Landscape

The proposed spill prevention measures (SPCC Plans) rely heavily on compliance with LORS (laws, ordinances, regulations, and standards) and the containment of fuel and chemical spills via temporary berms, drip pans, and staff training. However, the rugged terrain, frequent high winds, and proximity to waterways and forested areas make these measures unreliable and insufficient, especially in the event of:

- Fuel spills during transport or refueling;
- Explosive or chemical accidents during construction;
- Leaks from aboveground diesel tanks;
- Transformer or battery malfunctions during operations.

Given the remote location and limited access for emergency response, any hazardous release could go undetected or uncontained for critical hours—putting waterways, wildlife, and tribal communities at unacceptable risk.

Moreover, the high potential for chemical spills could negatively impact Tribal Beneficial Uses of water in the Project Area. The Tribe has been working to establish specific Tribal Beneficial Uses in the Tribe's territory, and this Project would be located in the center of that territory. The potential impact to water quality, which is integral to the local fishing and tourism industry is not worth the risk.

d. Cumulative Risks Compound Fire Hazards and Cultural Impacts

These materials exacerbate the fire risks already identified as significant and unavoidable in the Staff's wildfire assessment. Diesel fuel, lubricants, and herbicides all possess high flammability and could serve as ignition sources in the event of equipment malfunction, human error, or mechanical failure.

Moreover, the cultural harm of spills or contamination would prove irreparable. A fuel leak into a stream or spring used for ceremonial bathing or traditional harvesting may destroy tribal access to that resource for generations. No mitigation offered in the Staff Assessment could meaningfully prevent or reverse this type of damage.

e. Regulatory Compliance Does Not Equal Mitigation

While the Staff Assessment proposes multiple Conditions of Certification (e.g., HAZ-1 through HAZ-3), these do not provide protection in the context of tribal values and the site's environmental sensitivity. Compliance with federal and state regulations (e.g., DTSC, SPCC, Cal/OSHA) may address worker safety or spill reporting—but it does not protect the documented tribal cultural landscape from irreversible chemical contamination. The Staff Assessment's findings conclude: "Improper use and storage of these materials could lead to leaks and spills potentially resulting in worker exposure or environmental contamination." *See*, Staff Assessment, 5.7-27.

IV. Water Supply, Quality, and Groundwater Resource Impacts

The Pit River Tribe strongly objects to the conclusions and mitigation strategies presented in Water Resources, Section 5.16. The project proposes to extract groundwater, install an onsite septic system, and conduct major construction across a sensitive watershed landscape—all while offering insufficient data, incomplete planning, and inadequate protections for the water systems upon which tribal life and ecosystem health depend.

The Tribe further emphasizes the Staff Assessment's findings that the lack of hydrogeological analysis, failure to secure a safe, licensed water source, and potential for surface water degradation from construction runoff and septic failure represent unacceptable and unmitigable environmental and cultural risks.

Groundwater Use Poses an Unquantified Risk to Regional Water Supplies

The project proposes to extract “5.6 [acre-feet per year] of groundwater for operational needs”¹ See, Staff Assessment, 5.1-10, yet the viability of this groundwater resource remains completely unproven. The Tribe finds this unacceptable. The aquifer lacks characterization, located in fractured volcanic bedrock rather than a known alluvial basin, and no data confirms whether nearby wells—many of them domestic—would experience effects from project pumping. No adequate groundwater modeling, drawdown prediction, or flow gradient mapping exists.

The failure to complete the necessary aquifer testing—including pump tests, slug tests, and monitoring well installation—means the project could easily cause:

- Loss of access to potable or ceremonial water by nearby residents and tribal members;
- Long-term drawdown of a fragile aquifer that no Groundwater Sustainability Agency manages; and
- Degradation of surface water flows reliant on shallow groundwater interactions.

This uncertainty directly violates CEQA’s mandate for informed environmental decision-making.

Wastewater Disposal Poses Serious Risks to Groundwater and Surface Water Quality

The project proposes an onsite septic system for the Operations & Maintenance (O&M) facility, despite the fact that the soil type at the proposed location explicitly rates as having “very limited” suitability for wastewater infiltration: “The soil at the O&M building site... rates as very limited with respect to wastewater disposal by infiltration.” See, Staff Assessment, 5.16.4.

The septic system would occupy Windy and McCarthy stony sandy loams, which do not reliably filter or retain wastewater effluent. Failure of this system could lead to contamination of groundwater and nearby springs—many of which the Tribe uses for cultural bathing, plant gathering, and ceremonial preparation. These Tribal Beneficial Uses, which the Tribe has worked over many years to identify are at risk if this Project is approved.

Surface Water and Wetland Resources Face Direct Risk from Construction and Runoff

The project would disturb 868 acres of land, including areas adjacent to streams, springs, and riparian zones. While the Staff asserts that a Stormwater Pollution Prevention Plan will reduce impacts, the site’s steep slopes, shallow soils, and seismic conditions make control measures difficult to maintain or enforce.

Moreover, the Staff Assessment acknowledges that concrete, blasting chemicals, oils, and herbicides could enter stream systems through direct or indirect means. Many of these watercourses flow intermittently and remain vulnerable, providing seasonal habitat for culturally important fish and amphibians. The significant cultural and health benefits of nearby water features cannot be protected by compliance checklists. Contamination of even one spring or stream could

¹ 5.6 acre feet is equal to 1,824,767 gallons

sever intergenerational relationships between people and place that form the core of Pit River identity, and create new health risks for the local and tribal community.

No Licensed or Reliable Potable Water Source Exists

The applicant originally identified Hat Creek Construction & Materials, Inc. (HCC) as the backup water supplier, but later confirmed that HCC lacks licensing to provide potable water under California law: “HCC currently lacks licensing as a private water source per California Health and Safety Code 111120. *See*, Staff Assessment, 5.16.4. This means that no certified, legally permitted source of drinking water exists for project operations, disallowing certification to proceed.

V. Conclusion

In light of the deep procedural and cultural failures identified in the Staff Assessment and highlighted in this comment letter, the Pit River Tribe respectfully submits the following recommendations to the California Energy Commission. These recommendations do not just represent requests for regulatory accountability—they originate from the Tribe’s inherent sovereignty, environmental stewardship, and enduring connection to the land and waters of our ancestors since time immemorial.

First and foremost, **the Tribe requests the Commission adhere to the Staff Recommendation to deny certification of the Fountain Wind Project.** This request fully aligns with the findings and conclusions of the CEC Staff, who determined that the project would result in multiple significant and unavoidable impacts, particularly with respect to wildfire hazards, tribal cultural resources, and water systems. These findings do not derive from speculation; they derive from verifiable deficiencies in planning, consultation, and environmental protection. Approval of this project would represent a profound failure to follow CEQA and the State’s moral and legal commitments to the Pit River Tribe.

Second, the Tribe calls on the Commission to formally reject the conclusion in Section 5.16 that the project’s water impacts show “less than significance.” This conclusion contradicts the record. Profound data gaps exist, unresolved threats to tribal wells and springs persist, and unmitigated risks to water quality, public health, and spiritual practices remain. Until full aquifer modeling exists and culturally appropriate protections for water resources are identified, no finding of insignificance is defensible.

Finally, the Tribe calls on the Commission to treat water not as a mere utility or construction input, but as a sacred, finite, and life-giving resource central to tribal identity, health, and ceremony. For the Pit River people, water exists as kin. Simply avoiding contamination does not suffice; we must respect its place in a cultural and ecological system that predates this project and will outlast it.

In conclusion, the Fountain Wind Project, as proposed, poses unacceptable and unmitigable risks involving the entire Tribal Cultural Landscape, fire, and water, to the Pit River Tribe and our homeland. The Commission has the opportunity and obligation to reject this project.

Sincerely.

A handwritten signature in black ink, appearing to read 'Yatch Bamford'. The signature is fluid and cursive, with the first name 'Yatch' written in a stylized, almost illegible manner, and the last name 'Bamford' written more clearly in a cursive script.

Yatch Bamford

Chairman, Pit River Tribe