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Shasta County

DEPARTMENT OF RESOURCE MANAGEMENT
1855 Placer Street, Redding, CA 96001

Sean Ewing
Director
Adam Fieseler
Assistant Director

May 27, 2025

Leonidas Payne, Project Manager
California Energy Commission
715 P Street
Sacramento, CA 95814
leonidas.payne@energy.ca.gov

Re: Evaluation of CEC's Staff Assessment for the Fountain Wind Energy Project – Water Resource Impacts Analysis (TN# 262350)

On March 26, 2025, the County received a Staff Assessment (“SA”) from CEC staff which includes a Draft Environmental Impact Report (“DEIR”) prepared to evaluate the potential environmental effects of the construction and operation of the Fountain Wind Project (“Project”) (23-OPT-01) in compliance with the California Environmental Quality Act (“CEQA”), the CEQA Guidelines, the Warren-Alquist State Energy Resources Conservation and Development Act, and California Code of Regulations, title 20, chapter 5, article 4.1 (Opt-In Certification Program). (TN# 262350)

Accordingly, the County hereby submits the following comments on the Water Resources Impacts Analysis (Section 5.16) in the Fountain Wind Project DEIR.

Project Description

The proposed project is a wind energy generation development proposed by Fountain Wind LLC (applicant) in unincorporated Shasta County. The proposed project is located approximately 1 mile west of the existing Hatchet Ridge Wind Project, 6 miles west of Burney, 35 miles northeast of Redding, and immediately north and south of State Route 299. The proposed project would be located entirely on private property, managed for timber production and harvesting, where public access is currently restricted. The project area includes thirty-seven parcels in which the project components will be sited and encompasses approximately 16,108 acres. The proposed project site boundary encompasses approximately 2,855 acres within the overall project area. Overall, the project would have a total nameplate generating capacity of up to 205 MW. Associated infrastructure and facilities would include:

- Up to 48 wind turbine generators, approximately 610 feet tall, rising above the existing tree canopy;

□ Suite 101

AIR QUALITY MANAGEMENT DISTRICT
(530) 225-5674
Fax (530) 225-5237

□ Suite 102

BUILDING DIVISION
(530) 225-5761
Fax (530) 245-6468

■ Suite 103

PLANNING DIVISION
(530) 225-5532
Fax (530) 245-6468

□ Suite 201

ENVIRONMENTAL HEALTH DIVISION
(530) 225-5787
Fax (530) 225-5413

□ Suite 200

ADMINISTRATION
(530) 225-5789
Fax (530) 225-5807

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- 34.5-kilovolt (kV) overhead and underground electrical collector system;
- an on-site substation to receive electricity from the turbines via the electrical collector system;
- overhead and underground fiber-optic communication lines and/or a microwave relay system;
- an onsite switching station to connect the project to the existing regional grid operated by the Pacific Gas and Electric Company (PG&E);
- a temporary 10-acre construction and equipment laydown area;
- up to nine (9) temporary 2-acre laydown areas distributed throughout the project site to store and stage building materials and equipment;
- up to three (3) permanent meteorological evaluation towers (METs);
- temporary, episodic deployment of mobile Sonic Detection and Ranging (SoDAR) or Light Detection and Ranging (LiDAR) systems within identified disturbance areas (e.g., at MET locations);
- two (2) storage sheds;
- up to three (3) temporary five (5) acre concrete batch plants; and
- an operation and maintenance (O&M) facility with employee parking, including a septic system and a new operational water supply well.
- Over 500 acres of permanent forest clearing and conversion of forested working lands.

Prior Docketed Comments

On October 3, 2024, Shasta County offered comments (TN# 259437) to the CEC regarding water resources and water supply analysis information submitted to the CEC by the applicant, Fountain Wind LLC (“Applicant”). These comments are hereby incorporated by reference and discussed below where appropriate.

CEQA Requirements

CEQA applies to “discretionary projects proposed to be approved or carried out by public agencies.” (Pub. Res. Code § 21080[a]). The term “project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. This includes the direct physical impact of mitigation measures (CEQA Guidelines § 15378[a],[c]–[d]). This definition ensures that the action reviewed under CEQA is the development or other activities that will result from the approval. A “project” has two essential elements. First, it is an activity that may cause a direct (or reasonably foreseeable indirect) physical environmental change. Second, it is an activity directly undertaken by a public agency, an activity supported in whole or in part by a public agency, or an activity involving the issuance by a public agency of some form of entitlement, permit, or other authorization. (Pub. Res. Code § 21065). CEQA requires the CEC to evaluate and disclose the environmental impacts of the proposed Fountain Wind Energy Project and to reduce those impacts to the extent feasible.

CEQA and subsequent case law generally defines the level of detail required to make an environmental document legally adequate and defensible. In the absence of the necessary level of detail within a project application, it is the responsibility of the lead agency, in this case the CEC, to request additional information or conduct additional analysis in order to operate within the standard of care required to prepare a legally defensible document.

Section 15151 of the CEQA Guidelines provides the following standards from which adequacy of a CEQA document is judged:

An EIR should be prepared with sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible.

Further, an EIR's analysis of significant environmental impacts must identify and describe the significant direct and indirect environmental impacts that will result from the project in both the short term and the long term. (CEQA Guidelines §15126.2(a).)

Given this, an EIR must disclose information that is indispensable to a reasoned analysis of an issue. (*People ex rel Bonta v. County of Lake* (2024) 105 CA5th 1222, 1236 [although project factors that can cause wildfire were identified, extent of the increased risk was not explained].) An EIR's impact findings are legally inadequate if they are unsupported by evidence in the record. (*Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 Cal.App.4th 91, 103.) As well, as EIR should make a reasonable effort to set forth the context for findings that an impact is significant by describing the scope and magnitude of the impact when it is reasonably feasible to do so. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.)

The CEC's Evaluation of Water Resources Impacts Fails to Comply with CEQA

We have reviewed the Staff Assessment, including the DEIR, and related documents for the Fountain Wind Energy Project and have determined that the CEC, as lead agency, has failed to satisfy the requirements of CEQA in its review of the water resources impacts resulting from the Project. For the reasons set forth below, and to afford the public and decision-makers their rightful critical examination of new essential information, we urge the CEC to address inadequacies identified in these comments.

The DEIR Fails to Evaluate and Reach a Significance Conclusion As To The Project's Impacts To Groundwater Supplies and Groundwater Recharge.

Under Section 5.16.2.1, "Methodology and Thresholds of Significance," the DEIR states:

The California Environmental Quality Act (CEQA) guidelines, Appendix G, provide a checklist of questions that lead agencies typically address when assessing impacts related to water resources (or hydrology and water quality in CEQA). To assess potential

impacts concerning water resources, staff has reviewed online sources of maps, literature and information of the surrounding area, as well as site-specific information provided by the project applicant. Specific quantitative thresholds of significance are not applicable to this evaluation.

(DEIR, p 5.16-7.) Accordingly, DEIR page 5.16-9 – 5.16-11 contains the DEIR’s evaluation of water resources threshold of significance (b), which states: “***Would the project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?***”

However, as detailed below, the DEIR’s analysis of the potential impact of the operation of the Project to groundwater supplies and/or groundwater recharge violates CEQA by failing to reach a significant conclusion of any kind and, instead, states only that the impacts are “**unknown.**” (DEIR, p. 5.16-10 [emphasis added].)

The DEIR explains that the basis for the CEC’s failure to reach a significance conclusion is **not** that the impact is too speculative for evaluation after investigating whether reasonable analysis of the impact can feasibly be provided (see e.g. CEQA Guidelines §§15144–15145) but rather it is based on a **lack of necessary information** to assess the impacts of using onsite wells and the lack of any alternative source of potable water.

As the DEIR explains:

the **local groundwater resource has not been assessed**, thus staff cannot determine whether the proposed onsite well would be able to provide adequate supply for operations or impact nearby existing wells. Therefore, **the impacts from the proposed well are unknown.**

(DEIR, p. 5.16-10 [emphasis added].) Further, the DEIR discloses that Hat Creek Construction and Materials Inc. (“HCC”), the Project’s supplier of non-potable water during construction:

would **not be providing potable water during project operations.** Moreover, HCC is not currently licensed as a private water source per California Health and Safety Code section 111120. In order for a water supplier to be able to provide potable water to the project during operations it would need to be licensed as a private water source operator through the program administered by CDPH per California Health and Safety Code Section 111120.

(DEIR, p. 5.16-10 [emphasis added].)

Accordingly, the DEIR concludes that, as “the applicant has not identified an alternative source of water even though **it is not known if local groundwater is available in sufficient amounts to meet operational project demand,**” there is a “**lack of necessary information to assess the impacts of using onsite wells,** as described in subsection 5.16.4 ‘Conclusions and

Recommendations,’ [such that] staff is **not able to determine the environmental impacts of operational water use.**” ((DEIR, p. 5.16-10 [emphasis added].))

The CEC discloses that the DEIR’s failure to reach any significance determination as to the potential impact of the operation of the Project to groundwater supplies and/or groundwater recharge is **not** because it is not possible, or too speculative, to reach a significance determination, but rather because the Applicant did not provide the data repeatedly requested by the CEC.

- The DEIR states: “The information provided by the applicant regarding an onsite well does not provide adequate analysis to characterize the groundwater resource and establish whether the well could meet operational needs or impact any neighboring wells. An aquifer characterization study would be needed to properly assess viability of the groundwater resource and the impact of the project extraction on neighboring well users.” (DEIR, p. 5.16-16)
- The DEIR also states that “Staff made numerous data requests for groundwater characterization data; however, the applicant never performed the needed aquifer characterization studies...” (Id.):

While, as the DEIR notes, “the applicant provided a letter from HCC that indicates the ability to supply the required 5.6 AFY needed during project operations as an alternative to the onsite well, [] in response to comments from Shasta County, the applicant informed the county that HCC would **not** be providing potable water during project operations.” (DEIR, p. 5.16-17 [emphasis added].)

Further, the DEIR acknowledged that “to the extent feasible, staff assessed the environmental impacts of the project as proposed **assuming** [] viability of onsite groundwater extraction as the operational water supply. If [this] project component[] changes, staff may have to revisit its analysis.” (Id. [emphasis added].)

An EIR must indicate whether a project’s environmental impacts would be potentially significant. (*Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656.) As such the DEIR cannot just punt and say “Impacts Unknown.” Further, under CEQA when a standard accepted methodology is available to assess the significance of a potential impact, an EIR must evaluate the impact; **this did not occur here**. (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm’rs* (2001) 91 CA4th 1344, 1370.) As such the DEIR’s evaluation of Project’s impacts to groundwater supplies and groundwater recharge fails to comply with CEQA.

The DEIR Improperly Evaluates The Project’s Impacts To Water Supply Sufficiency.

DEIR page 5.16-13 contains the DEIR’s evaluation of water resources threshold of significance (f), which states: “***Would the project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?***”

The DEIR states that, in operation, the Project's impacts as to threshold of significance (f) would be "Less Than Significant with Mitigation Incorporated." (DEIR, p. 5.16-13.) However, the analysis provided to support this determination present absolutely **no basis** for this conclusion. In fact, to the contrary, the DEIR states:

As discussed in criterion "b", the selected option for project water supply would be groundwater extraction. The **storage capacity and resiliency of the volcanic rock aquifer is unknown** and therefore the ability for groundwater extraction to supply water during drought conditions cannot be estimated. Likewise, **the impact of project groundwater extraction** on other local water users during times of drought is **difficult to assess**. As discussed in criterion "b", the applicant originally included HCC as an option for supplying potable water but has since stated that HCC water **would not be used as potable water during project operation**.

(DEIR, p. 5.16-13.)

An EIR must indicate whether the project's environmental impacts would be potentially significant if mitigation measures were not adopted and separately determine whether the mitigation measures described in the EIR would substantially reduce or avoid the identified significant impacts. (*Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656.)

Here the DEIR, on its face, does not provide substantial evidence to support its determination that there will be adequate water supplies during Project operation; in fact it says the opposite. The DEIR discloses that the impact of groundwater extraction to supply the Project during operation is "difficult to assess," and that the Applicant's off-site water provide, HCC, **cannot supply** the Project with potable water during operation. (DEIR, p. 5.16-13.) The DEIR improperly evaluates the Project's impacts to water supply sufficiency.

The DEIR Improperly Evaluates The Project's Impacts Related to Wastewater.

DEIR page 5.16-14 contains the DEIR's evaluation of wastewater resources threshold of significance (g), which states: "***Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?***"

The DEIR states that, in operation, the Project's impacts as to threshold of significance (g) will be "Less Than Significant with Mitigation Incorporated" as the "applicant would be required to comply with septic system design requirements per COC WATER-7 and therefore project operations would not be expected to violate water quality standards or waste discharge requirements, and impacts would be less than significant with mitigation." (DEIR, p. 5.16-14.)

However, in direct contradiction of this determination, the DEIR states: "Staff has identified [a] component[] of the project related to water resources that **may not be viable** due to the lack of additional information or action that would be needed for a determination to be made."

(DEIR, p. 5.16-16 [emphasis added].) Specifically, the Project “include[s] the use of an onsite septic system to process wastewater during project operation” **but**

The soil at the O&M building site where the septic system would be constructed was identified as Windy and McCarthy stony sandy loams. This soil type is noted as having a very limited rating with respect to wastewater disposal by infiltration (USDA 2023). **Therefore, the project would not meet requirements of the local designated permitting agency for a septic system at the project site.**

(Id.)

As such, the DEIR concedes that “[t]o the extent feasible, staff assessed the environmental impacts of the project as proposed assuming a septic system could be installed” but that, if it, cannot -- which the DEIR says **is** the case -- “staff may have to revisit its analysis.” (DEIR, p. 5.16-17.)

An EIR must indicate whether the project’s environmental impacts would be potentially significant if mitigation measures were not adopted and separately determine whether the mitigation measures described in the EIR would substantially reduce or avoid the identified significant impacts. (*Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656.) Here, in violation of CEQA, the DEIR, on its face, does not provide substantial evidence to support its determination that there will be “Less Than Significant with Mitigation Incorporated” as to wastewater resources; in fact it says the opposite. The DEIR improperly evaluates the Project’s impacts related to wastewater.

DEIR Mitigation Measure WATER-7 Is Ineffective.

Given that the DEIR discloses that “the project **would not meet requirements of the local designated permitting agency** for a septic system at the project site,” there is no substantial evidence to support the DEIR’s determination that Mitigation Measure WATER-7, which **requires** that a local designated permitting agency issues a septic system permit, would actually reduce Project’s impacts to wastewater resources to a less than significant level. (DEIR, p. 5.16-16 [emphasis added].)

Mitigation Measure WATER-7 provides:

The project owner shall submit to the Shasta County Environmental Health Division (SCEHD) for review and comment, site-specific design parameters for installing a septic system at the project site. **If determined to be appropriate for site conditions, the septic system design shall be submitted to the CPM for approval.** The septic system design shall comply with the SWRCB’s onsite wastewater treatment system (OWTS) regulations (California Code of Regulations, title 27). The project owner shall operate the septic system following an operations and maintenance manual prepared

by a qualified professional per SWCRB OWTS policy (SWCRB 2023). The project owner shall monitor the septic system for detectable effects on groundwater or surface water consistent with the requirements of the approved operations and maintenance manual.

(DEIR, p. 5.16-20 [emphasis added].)

As disclosed in the DEIR, “the project **would not meet requirements of the local designated permitting agency** for a septic system at the project site,” and thus, WATER-7 can never be implemented because, per the requirements of WATER-7, the Project site cannot be determined by the local designated permitting agency, SCEHD, “to be **appropriate for site conditions**.” (DEIR, pp. 5.16-16 [emphasis added]; 5.16-20 [emphasis added].)

A mitigation measure, such as WATER-7, does not comply with CEQA when, as here, its efficacy is not apparent and there is no evidence in the record showing it will be effective in remedying the identified environmental problem. (*Gray v. County of Madera* (2008) 167 Cal.App4th 1099, 1116 [rejecting mitigation measures proposed to address project’s adverse impacts on water levels in wells used by neighboring landowners because mitigation measures would force them to change the way they use water].) Mitigation measures, such as WATER-7, that are unrealistic and which cannot be implemented create an illusory analysis and should not be included in an EIR. (*Cleveland Nat’l Forest Found. v. San Diego Ass’n of Gov’ts* (2017) 17 Cal.App.5th 413, 433.)

DEIR Mitigation Measure WATER-8 Constitutes Impermissible Deferral Under CEQA

The DEIR’s failure to fully evaluate and reach a significance conclusion as to the Project’s impacts to water resources is not mitigated by Proposed Condition of Certification WATER -8, a mitigation measure whose provisions do not comply with CEQA and do not provide a substitute for the DEIR’s failure to disclose to the public the Project’s impacts on water resources.

WATER-8 provides:

Water supply for project construction shall be provided by Hat Creek Construction & Materials, Inc. (HCC). To address the lack of information regarding the onsite groundwater resource to meet operational needs, the owner shall provide verification of a viable potable water supply prior to the start of operation.

Project water use for construction shall not exceed 310 acre-feet and operational water use shall not exceed 5.6 AFY. The project owner shall record daily project water use and shall identify the water source.

(DEIR, pp. 5.16-20-21.)

Mitigation measures should describe the specific actions that will be taken to reduce or avoid an impact. And, while there are some exceptions to the rule that it is inappropriate to defer formulation of a mitigation measure to the future, WATER-8 does not fall into any of those exceptions. (CEQA Guidelines §15126.4(a)(1)(B).) Indeed, “loose or open-ended performance criteria” such as WATER-8 are prohibited because they provide no assurance that adequate mitigation will occur. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 945.) Ultimately, WATER-8 is not even a mitigation measure – it is just the statement of an assumption that the Applicant will somehow find “a viable potable water supply prior to the start of operation,” even though the DEIR has already disclosed that:

As discussed in criterion “b”, the selected option for project water supply would be groundwater extraction. The **storage capacity and resiliency of the volcanic rock aquifer is unknown** and therefore the ability for groundwater extraction to supply water during drought conditions cannot be estimated. Likewise, **the impact of project groundwater extraction** on other local water users during times of drought is **difficult to assess**. As discussed in criterion “b”, the applicant originally included HCC as an option for supplying potable water but has since stated that HCC water **would not be used as potable water during project operation**.

(DEIR, p. 5.16-13.)

Further, to the extent that the WATER-8 presumes that HCC will be able to supply potable water for Project operations, the County has already addressed this subject. As detailed in the County’s October 3, 2024 comments (TN# 259437)

there is **no indication that the wells from where the groundwater will be extracted are permitted to operate at the levels that the Applicant contemplates**. For instance, and without limitation, Shasta County requires a valid permit to drill, destroy, deepen, or recondition a water well. Permits are obtained from the Environmental Health Division (“EHD”) after submission of a completed application, plot plan, and fees. EHD staff must be present to verify proper placement of the annular seal around the well casing. Annular seals are usually placed around the top 20 feet of casing but may on occasion be placed just a few feet or as much as several hundred feet deep when required by local conditions. Moreover, Water Code section 13750.5 requires that any person digging, boring, drilling, deepening, reconditioning, or destroying a water well, cathodic protection well or monitoring well possess a C-57 Water Well Contractors License. A well permit must clearly identify the driller and C-57 contractor's license number. Well permits also can have limitations, based on engineering standards and supply restrictions, on the volume of groundwater that can be extracted. **There is no evidence from the documentation**

submitted by the Applicant that the well or wells that Hat Creek Construction and Materials, Inc. plans to use to supply the proposed project satisfy these requirements.

As detailed above, the DEIR's Water Resources analysis is deeply flawed and violates CEQA in multiple ways.

Sincerely,



Adam Fieseler
Assistant Director
Department of Resource Management
County of Shasta