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Elk Valley Rancheria, California AB 525 Strategic Plan Comments

Additional submitted attachment is included below.

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April 12, 2024

VIA ELECTRONIC SUBMISSION

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California Energy Commission Docket Unit, MS-4 Docket No. 17-MISC-01 715 P Street Sacramento, California 95814

Re: AB 525 Strategic Plan Comments

Dear Chair Hoschild and Commissioners:

On behalf of the Elk Valley Rancheria, California, a federally recognized Indian tribe ("Elk Valley"), located in Del Norte County, California, I respectfully submit the following comments on the Draft AB 525 Offshore Wind Strategic Plan (Strategic Plan).

The Strategic Plan is a critical tool outlining the path forward for offshore wind development in California, as part of the state's efforts to fight climate change and proactively shape the industry into a model that safeguards our environment, protects cultural resources, promotes long-term community investments and ensures community safety and agency, reinforces Tribal sovereignty, creates high-road careers, and strengthens partnerships with local communities, Tribal Nations, state, and federal agencies. We appreciate the extensive efforts that CEC and collaborating agencies invested in drafting the Strategic Plan and are pleased to see that the Strategic Plan has incorporated previous comments and priorities raised by leaders across sectors and regions.

We believe that a community-centered strategic plan, backed by clear inter-agency coordination, is key to the successful development and deployment of offshore wind. The Strategic Plan must establish clear processes and recommendations that are responsive to Tribal, statewide, and region-specific concerns, interests and needs, including strong community,



cultural, economic, and environmental guardrails and investments, and thorough analysis, design, avoidance, and mitigation.

General

Offshore wind development presents a unique opportunity to address climate change while simultaneously changing the way energy projects have historically occurred. In the past, state and federal governments frequently partnered with industry to steamroll Tribal sovereignty and local agency/consent. The proposed development has the potential to alter the status quo of energy development by centering Tribal interests and community needs through a new era of strong policy and enforcement mechanisms. Positive change can be further supported through the creation of high-road localized job opportunities and implementing legally-bound investments into our communities to help them thrive.

The North Coast region has endured devastating boom-and-bust cycles associated with extractive industries like mining, logging, cannabis, and dams. These industries exploited natural resources and people to benefit those outside our region, resulting in significant environmental damage, violence, a legacy of underinvestment, and unfulfilled promises of restoration. Local Tribal Nations experienced land theft and state-sanctioned genocide, and continue to face some of the highest rates of Missing and Murdered Indigenous Peoples (MMIP) in the US. Today, our communities face challenges from a lack of capacity, infrastructure, and community services, exacerbated by chronic underinvestment. These needs are deeply felt across our region. This is why it is imperative that offshore wind is developed in collaboration with Tribal Nations and the community to ensure that urgently needed climate action and renewable energy are done in a manner that benefits and uplifts the region from the beginning.

With the development of any new large-scale energy industry, there will be direct environmental, socio-economic, and cultural impacts experienced by our communities. We provide the following general comments on the Strategic Plan, urging the California Energy Commission (CEC) to consider incorporating additional guidance and establishing guardrails for offshore wind developments and associated infrastructures.

A. The Strategic Plan should incorporate clear timelines and respective lead agencies.

The Draft Strategic Plan presents a compelling vision, with promising concepts for the effective development and deployment of offshore wind across the State. To capture the innovative ideas into actionable next steps, an additional layer of specificity that clearly defines the responsibilities of respective agencies, along with established timelines for the execution of tasks, is crucial. Moreover, the Strategic Plan can also serve as a guide for interagency coordination in establishing the offshore wind industry. The additional specificities can provide the clarity and accountability necessary for successful collaboration.

B. Tribal Sovereignty should be a central tenet of the Strategic Plan.

Offshore wind development must respect and meaningfully center Tribal sovereignty, leadership, expertise, responsibilities, interests, and experiences to



ensure that Tribal science, traditional knowledge, and cultural practices lead to development in which our unique ecosystems are protected and root causes of climate change are addressed. Throughout its analysis and recommendations, the AB 525 Strategic Plan for offshore wind development must respect and honor Tribes' fundamental rights as sovereign nations, ensure the federal government fulfills its trust responsibility, have early and frequent government-to-government consultation, include enabling contracts and agreements, and require other legally binding mechanisms for co-management and co-ownership.

Tribes have held stewardship and deep relationships with the ocean, marine species, coastal shores, and lands since time immemorial. These relationships have withstood state-sanctioned genocide and land theft through unratified treaties and federal legislation¹ that have left Tribal members landless and without access to traditional ceremony, harvesting, and gathering areas.² On the North Coast alone, the area that will be impacted by offshore wind development includes the Tribal lands and waters of the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Blue Lake Rancheria, Cher-Ae Heights Indian Community of the Trinidad Rancheria, Elk Valley Rancheria, Hoopa Valley Tribe, Karuk Tribe, Nor Rel Muk Wintu Nation, Resighini Rancheria, Tolowa Dee-ni' Nation, Tsnungwe Tribe, Wiyot Tribe, and Yurok Tribe; and Public Domain Allotments not associated to a particular Tribal government.

Even with the lack of treaties and the presumed extinguishment of aboriginal title,³ California has acknowledged North Coast California Tribes' reserved off-reservation rights in its intergovernmental relations with the implementation of the Marine Life Protection Act (MLPA). Since then, Assembly Bill 52 (AB 52) amended the California Environmental Quality Act (CEQA) in 2014 to mandate early tribal consultation during the CEQA review process to position California Native American tribes as the experts on cultural resources within their own geographical areas, including off-reservation aboriginal territories.

Simultaneously, the past decade has seen an expanded understanding on an international level of the need to address the historic legacy of long-standing malpractice in resource extraction and its effects on Indigenous communities.⁴ Nevertheless, the growing practice of obtaining Free, Prior, and Informed Consent

³ See Bruce S. Flushman & Joe Barbieri, Aboriginal Title: The Special Case of California, 17 Pac. L. J. 391 (1986).

⁴ See e.g., Tara Ward, The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law, 10 Nw. J. Int'l Hum. Rts. 54 (2011).



¹ https://nahc.ca.gov/native-americans/california-indian-history/ (visited March 18, 2024)

² Curtis G. Berkey & Scot W. Williams, California Indian Tribes and the Marine Life Protection Act: The Seeds of a Partnership to Preserve Natural Resources, 43 Am. Indian L. Rev. 307, at 312 (2019) (citing Les. W. Field, Complicities and Collaborations: Anthropologists and the "Unacknowledged Tribes" of California, 40 Current Anthropology 193, note 17, at 313) (Congress passed the California Private Lands Act in 1851, See Act of Mar. 3, 1851, ch. 41, 9 Stat. 631.)



(FPIC) before approving large infrastructure projects on indigenous lands (on or off-reservation lands) has yet to be established in the United States.

We are now in a new era and presented with major development impacts related to offshore wind energy. This extends an opportunity for the state of California to lead the way in improving its relationship with Indigenous peoples by recognizing their rights to off-reservation aboriginal territories impacted by renewable energy development and working towards more robust government-to-government relations that incorporate values of FPIC. We see this as not only critical to respecting tribal sovereignty, but necessary to address climate change in a timely fashion.

We underscore the need to go beyond offering Tribes a 'seat at the table' and enact true co-leadership and decision-making structures with full and fair disclosure free of coercion and limitations of sovereignty.

The AB 525 Strategic Plan for Offshore Wind Development should provide guidance to codify Tribal Nations' decision making and shared regulatory authority throughout offshore wind project components:

- Review and propose pathways to achieve regulatory authority, comanagement and co-ownership for Tribal Nations.
- Propose intergovernmental agreements between regulating California agencies, Tribes, and/or a consortium Tribal body supported by Tribal governments, to defer or share regulatory and management responsibilities.
- Propose flexible and ongoing capacity funding for Tribal Nations for involvement in offshore wind planning, assessment, and potential implementation processes.

C. The Strategic Plan must commit to greater transparency and procedural justice.

The Strategic Plan's recommendations should provide greater clarity on process and commit to ensuring procedural justice for Tribal Nations and communities facing energy injustice, access barriers and direct project impacts. Each recommendation should include responsible state agencies, and opportunities for further collaboration, coordination, leadership, decision making, and engagement with relevant state agencies, local governments, Tribal Nations, constituencies of interest, and federal partners. The Strategic Plan should also lay out practices for data collection collaboration and transparency, including regular and consistent reporting and public data sharing, that enables communities and Tribes to stay informed throughout offshore wind development, operations and decommissioning processes.





D. The Strategic Plan should champion investment in energy infrastructure with a strong focus on impacted communities.

The Strategic Plan must adopt the framing that offshore wind development must deliver local community protections, investments, and benefits. Offshore wind development in the North Coast is planned to provide 5-16 GW of renewable power, playing a critical role in meeting the state's 25 GW offshore wind goals. Because this massive development will disproportionately impact local ecosystems and communities, significant investments in our renewable energy future must prioritize the interests and concerns of impacted communities through legally binding and enforceable agreements.

E. The Strategic Plan should uplift Tribal Agreements as one effective set of tools in securing co-management authority, protections, investments and benefits for Tribal Nations.

Tribal agreements can be developed with one or many Tribal Nations. Agreements must recognize Tribal sovereignty and interests affected by related projects; be directly negotiated with Tribal Nations; provide capacity for participating Tribal Nation(s), their communities or members; describe protections and benefits; codify commitment to free, prior and informed consent; and include strong mechanisms for enforcement and accountability. Tribal agreements provide mechanisms for development and operational commitments, investment, coordination, revenue sharing, joint ventures, other forms of socioeconomic participation, co-management, and more. We recommend that the Strategic Plan include a clear guideline and pathways for Tribal agreements.

F. The Strategic Plan should uplift Community Agreements as one effective tool in securing tangible and equitable benefits and protections for local communities.

We appreciate the Strategic Plan's discussion of Community Benefits Agreements (CBAs) as vehicles to advance workforce and economic benefits. Yet, we emphasize that the scope of community benefits extends beyond economic growth and workforce. As the California Coastal Commission (CCC) states in Condition #5 of the agency's conditional concurrence with the Bureau of Ocean Energy Management (BOEM)'s consistency determination in April 2022, the developers are strongly encouraged to work with the community to "co-develop community benefits package to ensure that communities of concern receive benefits from offshore wind."⁵ Condition #5 further encourages collaboration with communities to create community benefits that are effective and supportive, ensuring equitable support for low-income families and individuals in a way that aligns with the community's needs. Moreover, BOEM, in the 2022 Pacific Wind Lease Sale 1

⁵ California Coastal Commission. March 17, 2022. Conditional Concurrence: Adopted Findings. Accessed April 2024 from https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/Th8a-4-2022%20adopted%20findings.pdf.





Final Sales Notice, also required CBAs to reflect "the diverse interests and inclusive needs of more than one impacted community."⁶

Offshore wind and supporting infrastructure present multiple opportunities for community agreements across different stages of development. Such agreements can be incorporated in any mechanism that advances or approves the project in some way, such as a power purchase agreement, central procurement, a permit, a lease, or even a Request for Proposals through the bidding and evaluation process. Establishing a clear guideline for community agreements creates the critical path forward for impacted communities to secure protections, investments and benefits responsive to their unique needs and interests. Building on the existing definition in the Strategic Plan⁷ as well as federal and state agencies' recommendations regarding CBAs, we urge the Strategic Plan to incorporate the following elements:

- An effective CBA begins with inclusive community engagement practices. The Strategic Plan should recommend developers to adopt best practices in ensuring full inclusiveness and accessibility. Such practices include utilizing minimum technical terms in communication materials, ensuring materials available in multiple most spoken languages within our communities, and incorporating visuals and being culturally sensitive to the diverse backgrounds of North Coast communities are also crucial strategies. Moreover, creating multiple avenues for feedback, beyond traditional methods, will encourage broader community involvement.
- Communities must lead the design of the community agreements package. A successful community agreement is driven by communities and is responsive to their specific needs and interests. This involves forming a coalition that includes both local subject matter experts from various sectors and community members who bring their personal experiences, reflecting the real needs of the community. By embedding the terms of the community agreement into legally enforceable frameworks, such as leases or formal community benefits agreements, these coalitions are able to establish a set of binding terms. This approach ensures the delivery of concrete protections and benefits for the community, including investments in community services and infrastructure needs.
- Lasting funding and resources are essential to growing community capacity. To ensure the longevity of an effective community agreement, it is imperative that the agreement specifies dedicated funds or mechanisms for financing the costs associated with participation, including sharing of

⁶ Bureau of Ocean Energy Management. October 21, 2022. Pacific Wind Lease Sale 1 (PACW–1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California—Final Sale Notice. <u>https://www.govinfo.gov/content/pkg/FR-2022-10-21/pdf/2022-22871.pdf</u>

⁷ California Energy Commission. January 19, 2024. Assembly Bill 525 Offshore Wind Strategic Plan Volume II: Main Report. Pg. 175



expertise, time, transportation, childcare, and translation services, throughout its duration. A viable strategy could involve establishing a community benefits fund, where a portion of the funds is allocated at the community agreement's inception and additional funds are contributed as the project progresses, or through rents and other payments received. The allocation and use of these funds would be overseen by a community-led body, operating within a framework of topics or guidelines laid out by the coalition and vetted by the communities during the design of the agreement terms.

- **Community governance is key to upholding commitments over time.** Embedding a community governance element in a community agreement, such as a Community Steering Committee comprised of subject matter experts, residents with lived experience, Tribal representatives, and local agency representatives, is key to the long-term success of a community agreement. Such community enforcement elements provide a mechanism for community and coalition participants to directly enforce the terms of the agreement and grow their ownership in the life and success of the project.
- Community agreements must not supplant environmental review or other mechanisms to ensure protections and investments.

The environmental review and permitting process are an important component of an effective community agreement, as it is through these processes that communities learn about the potential benefits and impacts that can inform the development of a strong community agreement that is responsive to the needs of the community. Moreover, all avoidance, minimization, and mitigation measures must be required to be addressed, as a community agreement is in addition to, not in lieu of, these measures. A strong and successful community agreement centers community leadership and decision-making, and the framework is based on the unique needs of the community, and therefore is not restricted to addressing potential impacts.

Additionally, community agreement must not be the only mechanisms used to ensure community protections and investments. It is critical to design a multipronged approach where community interests and concerns are woven into public policy, funding, permitting, leases, and various legally binding and enforceable agreements.

G. The Strategic Plan must address decommissioning of offshore wind infrastructure in greater detail.⁸ We are in agreement with the Natural

⁸ Colleagues at the Natural Resources Defense Council (NRDC) and their environmental organization partners have prepared and submitted to the CEC an excellent comment letter on the draft Strategic Plan. Here, item F includes content from their letter, with permission.





Resources Defense Council and their environmental organization partners that "safe, reliable and environmentally sensitive decommissioning plans are an essential part of the planning process and cannot be left for a future time. With a design life of 25 years at best,⁹ there is a need to plan ahead and be prepared for unexpected circumstances, including natural disasters and unexpected closures." A 2020 study of offshore wind decommissioning practices found that plans need greater levels of specificity as they are generally comprised of "…vague promises to do whatever others are doing"; that decommissioning has been significantly under costed; and that plans need to include greater commitments to and practices of recycling and reuse of materials.¹⁰ We recommend the Strategic Plan articulate a process for developing decommissioning plans, with an associated timeline and requirements to be addressed, including gaps in end of life management infrastructure and technology and how the industry would address those limitations, as well as more accurate future cost accounting and related financing frameworks.

H. The Strategic Plan should provide greater analysis on how offshore wind will mitigate climate change and advance environmental justice. While offshore wind is a potential solution for meeting some of the state's renewable energy and climate goals, it comes with significant risks. It would be prudent for the Strategic Plan to describe anticipated climate benefits of offshore wind, especially on issues such as sea-level rise, ocean warming and acidification, shifts in migration patterns of marine mammals and seabirds, and other impacts to marine life. Additionally, the plan should describe anticipated environmental and energy justice benefits of offshore wind.

The Strategic Plan's existing recommendations for AMMM measures and adaptive management are crucial to update strategies as impacts, procedures, and approaches change over time. However, in addition, the Strategic Plan should include recommendations and best practices to ensure procedural equity in implementation of AMMM measures and adaptive management.

To assess the priorities and risks associated with the AMMM measures, it is imperative that offshore wind projects undergo full California Environmental Quality Act (CEQA) and the National Environmental Quality Act (NEPA) environmental review processes, ensuring leadership and co-management by Tribal Nations. In its recommendations, the Strategic Plan should include a process for co-management, consultation, capacity support, and convenings with Tribal Nations, to incorporate traditional ecological knowledge, direction, and expertise from Tribal Nations and Indigenous cultural leaders, together with other rigorous science and local scientific leaders.

¹⁰ Jensen, Paul D.; Purnell, Phil; Velenturf, Anne P.M. "Highlighting the need to embed circular economy in low carbon infrastructure decommissioning: The case of offshore wind." Sustainable Production and Consumption, 24, 2020, pp. 266-280.



⁹ Page 163, Volume II



The CEC should consider the joint document published by the Council of Environmental Quality and the Office of Science and Technology outlining guidance on how to engage policy, research, and decision-making with Indigenous Traditional Ecological Knowledge (TEK).¹¹ Likewise, to leverage local expertise, the Strategic Plan should recommend best practices for conducting stakeholder engagement with underserved communities, fisheries and aquaculture.

The AB 525 Strategic Plan should include a broad assessment of AMMM measures. It should consider cumulative impacts from currently proposed offshore wind areas in Northern California and Southern Oregon. We need the plan to further elaborate on impacts and resourcing in the repowering and decommissioning phases, and other long-term impacts to occur over the decades-long processes of offshore wind development. In particular, we support the recommendation that the CEC develop a comprehensive mitigation framework that prioritizes avoidance, and that adaptive management strategies should be identified to aid in rapidly responding to unanticipated impacts. We also agree and appreciate the Strategic Plan's acknowledgement that the impacts of the development likely go beyond specific sites, and the inclusion of measures to address this.

Tribal Subchapter

We appreciate and commend the CEC for its engagement with Tribes and the summary provided in the AB 525 plan which highlight the history, cultural heritage, and relationship to natural resources that will inform how tribes engage with the state and companies on offshore wind proposals as well as their specific concerns and desires related to offshore wind. Offshore wind developers are in the early stages of relationship building and learning with Tribes that may be affected by offshore wind in their regions.

Meaningful Tribal engagement is not only a requirement of offshore wind leases and project permitting but also imperative to developing successful, mutually beneficial project partnerships. Significant time and effort is required for individual Tribes and Tribal leaders to effectively participate in offshore wind development discussions, including broad conversations with state agencies, as well as more specific discussions on project design planning, permitting, and community benefit agreements.

Many tribes lack the resources to compensate participants for their time, or to hire additional staff or technical resources to engage in offshore wind development. As such, capacity building for Tribes is a priority issue for implementation of AB 525 and we request that the CEC include a recommendation in the final strategic plan on the State's plan to address this need. This framework should be developed in close consultation with Tribes in order to reflect the type of resources and capacity we need, how we can or want to receive resources or financial support, and to avoid competition and promote equity. In addition, the interagency MOU and coordination needed for the Ocean REAT/REPG should facilitate, with Tribes, the development of a consistent and efficient framework for Tribal engagement and participation, including standards for communication and engagement, as well as capacity building.

¹¹Office of Science and Technology & Council or Environmental Quality, Guidance for Federal Departments and Agencies on Indigenous Knowledge, (November 2022), https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf.





Further, the final plan should include provision for Tribal training and Community Benefits Agreements. Lessees and the State should address issues such as use of Tribal monitors for surveying submerged areas. Likewise, Lessees, BOEM, and the State need to address the impact of offshore wind development on Tribal communities by requiring meaningful and substantial CBAs be concluded with Tribal communities immediately. Said CBAs should not be delayed until after environmental and construction operation studies are concluded.

Notably, however, the Strategic Plan fails to account for service to affected communities. Elk Valley sits between two areas that will presumably be WEAs – Humboldt County, California, and Brookings, Oregon. In both instances, Elk Valley will most likely not be served by the wind energy generated at those sites. The Strategic Plan should address methods to ensure Tribal energy sovereignty, including methods to ensure reliable, sustainable, and independent sources of energy to serve Tribal communities, e.g., microgrids. Further, the developers should be required to work closely with Tribal communities to address those issues that are of State-wide interest and concern as many of our communities are negatively affected by inconsistent power and interruptions due to wildfire and weather.

Conclusion

Elk Valley appreciates the opportunity to comment on the Strategic Plan and reiterate our gratitude to the CEC for preparing this extensive report. We look forward to continuing to engage with the CEC and its sister permitting and energy agencies to translate key findings in the plan into additional clear, actionable, prioritized implementation steps.

The CEC has led an extensive process for engaging responsible agencies in the state and collecting input from a range of stakeholders. The final plan should acknowledge the need to develop strategies to identify, minimize, mitigate, monitor those impacts and implement appropriate mitigation, which will allow the State and the industry to move forward in a sustainable, responsible manner.

Sincerely,

P. Muller

Dale A. Miller Chairman

cc: Elk Valley Tribal Council

