

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

NOV 28 2023

**SHASTA COUNTY SUPERIOR COURT
BY: K. McABEL, DEPUTY CLERK**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
CALIFORNIA ENERGY COMMISSION; DOES 1 through 100, inclusive,
Defendant, and FOUNTAIN WIND LLC, Real-Party-In-Interest

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
COUNTY OF SHASTA, PIT RIVER TRIBE, Plaintiffs/Petitioners

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of the State of California, County of Shasta
1500 Court St, Redding, CA 96001
Tel: (530) 245-6789

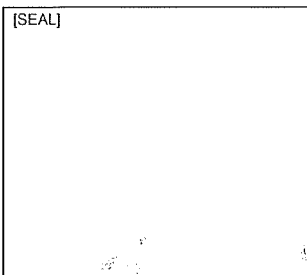
CASE NUMBER: **203737**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

PIERO C. DALLARDA, Bar No. 181497 MILES KRIEGER, Bar No. 309797
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California 92502, Tel: (951) 686-1450

DATE: **NOV 28 2023** Clerk, by K. McABEL, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
PIERO C. DALLARDA, Bar No. 181497 / MILES KRIEGER, Bar No. 309797
BEST BEST & KRIEGER LLP
 3390 University Avenue, 5th Floor, P.O. Box 1028
 Riverside, California 92502
 TELEPHONE NO.: (951) 686-1450 FAX NO. (Optional):
 E-MAIL ADDRESS: piero.dallarda@bbkllaw.com
 ATTORNEY FOR (Name): Plaintiff COUNTY OF SHASTA

FOR COURT USE ONLY

FILED

NOV 28 2023

SHASTA COUNTY SUPERIOR COURT
 BY: K. McABEL, DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SHASTA
 STREET ADDRESS: 1500 Court Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Redding, 96001
 BRANCH NAME: Shasta Courthouse

CASE NAME: County fo Shasta v. California Energy Commission, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **203737**

JUDGE:
 DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input checked="" type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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By Fax

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Writ of Mandate, Declaratory Relief, Injunctive Relief
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 27, 2023

 Piero C. Dallarda
 (TYPE OR PRINT NAME)

▶ 

 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

Case Number: 23CV-0203737

NOTICE OF: ALL PURPOSE ASSIGNMENT, MANDATORY SETTLEMENT
CONFERENCE, AND TRIAL

INSTRUCTIONS – READ IMMEDIATELY!

ORDER OF ASSIGNMENT

This action is assigned to the Honorable Stephen H Baker for all purposes pursuant to Local Rule 3.02 of the Shasta County Superior Court.

MANDATORY SETTLEMENT CONFERENCE DATE

A Mandatory Settlement Conference will be conducted in this action on Monday, August 26, 2024, at 1:30 pm in Department 3, located at 1500 Court Street, Redding, California 96001. All parties to this action are required to appear at the Settlement Conference.

The parties are ordered to comply with California Rules of Court, Rule 3.1380 relating to settlement conferences. Pursuant to Rule 3.1380(b), this court finds good cause is deemed to have been shown to excuse from attendance at settlement conference claims persons whose offices are more than 100 miles from the courthouse.

TRIAL DATE


This matter is set for Trial on Tuesday, October 29, 2024, at 8:45 am in Department 3, located at 1500 Court Street, Redding, CA 96001.

REQUIREMENT FOR SERVING THIS NOTICE

Plaintiff shall serve this notice on each defendant at the time of service of the complaint and on all intervenors and interpleaders within 10 days of service on plaintiff of complaints in intervention or interpleader. All cross-complainants shall serve this notice on each cross-defendant at the time of service of the cross-complaint.

IF YOU ARE A DEFENDANT OR CROSS-DEFENDANT, YOU HAVE BEEN SERVED WITH OTHER DOCUMENTS ALONG WITH THIS NOTICE. UNDER THE LAW, THOSE OTHER DOCUMENTS REQUIRE YOU TO TAKE ACTION PROMPTLY TO PRESERVE YOUR RIGHTS. PLEASE REVIEW THOSE MATERIALS IMMEDIATELY. THE REQUIREMENTS SET FORTH IN THIS NOTICE AND THE SETTLEMENT CONFERENCE AND TRIAL DATE SCHEDULED IN THIS NOTICE ARE SEPARATE AND ARE IN ADDITION TO THOSE CONTAINED IN THE OTHER DOCUMENTS WHICH YOU HAVE RECEIVED.

Dated: January 1, 2023


ADAM B. RYAN, Presiding Judge

I CERTIFY THAT A COPY OF THIS DOCUMENT WAS PROVIDED TO THE PLAINTIFF ON NOVEMBER 28, 2023.

BY: K. Mc, DEPUTY CLERK

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SHASTA
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. Private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. You can read more information about these ADR processes and watch videos that demonstrate them at <http://www.courts.ca.gov/programs-adr.htm> . If the parties agree to an ADR program, the parties may file the agreement with the court for the purpose of assisting the court in determining how to proceed at the case management conference.

Potential Advantages and Disadvantages

ADR may have a variety of advantages and disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships.

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable.

Most Common Types of ADR

Mediation – A neutral person called a “mediator” helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners.

Settlement Conferences – A judge helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Neutral Evaluation – The parties briefly and informally present their facts and arguments to a neutral person called an “evaluator”, who is often an expert in the subject matter of the dispute. The evaluator does not decide the outcome of the dispute, but helps the parties to do so by giving them a non-binding opinion about the strengths, weaknesses, and likely outcome of their case. Depending on the neutral evaluation program and the parties’ wishes, the evaluator may then help the parties try to negotiate a settlement. Neutral evaluation may be appropriate if the parties want a neutral person’s opinion about how the case might be resolved, if the primary dispute is the amount of damages, or if there are technical issues that the parties would like a neutral expert to help resolve.

Arbitration – The parties present evidence and arguments to a neutral person called an “arbitrator” who then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to *binding arbitration*, they waive their right to a trial and agree to accept the arbitrator’s decision as final. With *nonbinding arbitration*, any party may reject the arbitrator’s decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial, or want an expert in the subject matter of the dispute to make the decision.

Selecting an ADR Program and Neutral

Selecting an ADR program and neutral are important decisions. Be sure to learn about the rules of any program and the qualifications of any neutral you are considering, and about their fees.

Shasta County Superior Court ADR Programs

When a civil case is set for trial the judge also will set a settlement conference date approximately six weeks before the trial date. The judge assigned to the case will assist the parties in attempting to arrive at a negotiated resolution.

Shasta County Superior Court does not offer mediation, neutral evaluations, or arbitrations.

Private ADR Providers – To find a private ADR program or neutral evaluator, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or the Shasta-Trinity Counties Bar Association may assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California Courts website at <http://courts.ca.gov/selfhelp.htm> .

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
3390 UNIVERSITY AVENUE, 5TH FLOOR
RIVERSIDE, CALIFORNIA, 92502

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7 Attorneys for Plaintiff/Petitioner
COUNTY OF SHASTA

8 MICHELLE C. LEE, Bar No. 201018
michelle@thecirclelaw.com
9 THE CIRCLE LAW GROUP, P.C.
10 930 F Street
Sacramento, CA 95814
11 Telephone: (916) 809-8900
Facsimile: (916) 809-8901

12 Attorneys for Plaintiff/Petitioner
13 PIT RIVER TRIBE

FILED

NOV 28 2023

SHASTA COUNTY SUPERIOR COURT
BY: K. McABEL, DEPUTY CLERK

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SHASTA

17 COUNTY OF SHASTA,
18

19 PIT RIVER TRIBE,

20 Plaintiffs/Petitioners,

21 v.

22 CALIFORNIA ENERGY COMMISSION;
DOES 1 through 100, inclusive,

23 Defendant/Respondent, and

24 FOUNTAIN WIND LLC,

25 Real-Party-In-Interest
26
27
28

Case No. 203737

VERIFIED PETITION AND
COMPLAINT FOR

(1) WRIT OF MANDATE (CODE CIV.
PROC., § 1085)

(2) DECLARATORY RELIEF (CODE
CIV. PROC., § 1060)

(3) INJUNCTIVE RELIEF

By Fax

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I. INTRODUCTION

1. The County of Shasta (the “County”) has been forced to bring this action to stop an illegal overreach by the California Energy Commission (the “Commission”) which has asserted de facto jurisdiction over an application to certify a large wind energy project named Fountain Wind in a mountain ridge and high fire risk area located within the unincorporated area of the County (the “Project”). The Project area is also within the ancestral territory of land for the Pit River Tribe, who is related to other local tribes. The Commission has decided to review the resubmitted application for the Project under recently enacted legislation, AB 205, even though virtually the same application was previously presented to the County, the County spent nearly five years reviewing it, and the County eventually denied it for many valid reasons at both the Planning Commission and Board of Supervisors levels. These reasons included, among others, health and safety issues raised by previous devastating fires in the area and the threat of future wildfires at the Project site, ancestral and anthropological concerns raised by local Native American Tribes, as well as many other issues publicly presented by environmental and aerial firefighting experts, local groups and residents during the County’s extensive review process.

2. The applicant never sought judicial review of the County’s denial and the time to do so has long passed. Instead, almost a year and one half after the denial of the application, it chose to resubmit the application to the Commission and the Commission has begun to review it. In effect, the application over which the Commission is now asserting jurisdiction is nothing more than an attempt to get a second bite at the apple to illegally overturn the County’s action without judicial review and in violation of the plain language of AB 205 and California constitutional separation of powers principles. Nevertheless, the Commission has decided that it has jurisdiction, apparently invoking authority that was not granted by the Legislature, and never responding to the objections to Commission jurisdiction timely raised by the County, the Tribe and other parties. Without a judicial determination of jurisdiction in this case, the Commission will continue review of the Project, needlessly spend public time and resources on a matter over which it has no jurisdiction, and usurp local and judicial authority on a matter that has already

1 undergone a thorough and complicated review process which, it is important to note, the applicant
2 itself initially chose to pursue.

3 **II. THE PARTIES**

4 3. The County of Shasta is known for its natural beauty, including beautiful vistas of
5 mountains, ridges, canyons, lakes and valleys. The County has a population of approximately
6 180,000 and is home to three incorporated cities: Anderson, Redding and City of Shasta Lake.
7 With lakes, mountains, rivers, parks, and hundreds of miles of trails, and a variety of outdoor
8 attractions, Shasta County is home to endless recreation activities including hiking, biking,
9 camping, fishing and cross-country skiing, among many others. The County is located in a
10 biologically and culturally rich—and densely forested—area of Northern California. The County
11 now includes the ancestral homelands of the Pit River Tribe as well as other related tribes.
12 Lassen National Forest lies to the southeast of the Project site, and the Shasta-Trinity National
13 Forest is to the north. The County’s natural and cultural resources will be directly impacted by
14 the Project if it is approved, and the County’s own land use authority will be impaired if the
15 Commission proceeds to process the Project application.

16 4. Respondent and defendant California Energy Commission, formally the California
17 State Energy Resources Conservation and Development Commission, is, and at all times
18 discussed herein was, a public agency of the State of California organized pursuant to the
19 Warren-Alquist State Energy Resources Conservation and Development Act (the “Warren-
20 Alquist Act”), Cal. Pub. Res. Code § 25000 *et seq.* Its principal offices are located in
21 Sacramento, California. The Commission is a branch of the executive power of the state. Real
22 Party In Interest Fountain Wind LLC is a Delaware limited liability company (“Fountain Wind”).
23 Fountain Wind is the Project applicant.

24 **III. THE PROJECT**

25 5. On November 4, 2016, the Shasta County Department of Resource Management
26 Planning Division received a permit application for a use permit (Use Permit 16-007) to
27 construct, operate, maintain, and decommission a wind energy generation project (wind turbines
28 and related infrastructure) in an unincorporated area of Shasta County. The applicant was Pacific

1 Wind Development, LLC (“Pacific Wind”), a predecessor in interest in the Project to Fountain
2 Wind, the current applicant with the Commission and entity related to Connect Gen LLC
3 (“ConnectGen”). ConnectGen has represented that it is a multi-technology renewable energy
4 platform based in Houston, Texas and focused on advancing projects from greenfield
5 development and origination through construction and operations with over 20,000 megawatts of
6 wind, solar and energy storage projects in development across the United States.

7 6. The site for the Project is on land located in an unincorporated area of the County
8 and adjacent to Tribal trust land in the town of Montgomery Creek. As originally proposed to the
9 County in 2016, the Project included up to 72 wind turbines with a maximum height of up to 679
10 feet. Each wind turbine would have a generating capacity of 3 to 6.2 megawatts (MW), with a
11 total nameplate generating capacity of up to 216 MW and associated transformers together with
12 associated infrastructure and ancillary facilities. In the original application, the project was
13 planned to be developed within a leasehold area of approximately 4,464 (four thousand, four
14 hundred sixty-four) acres.

15 7. As described in more detail below, upon receipt of the application, the County
16 conducted a robust environmental review and analysis of the Project over a two-and-one-half-
17 year period, culminating in a 2,000-plus page environmental impact report (“EIR”) under the
18 California Environmental Quality Act (Public Resources Code section 21000 *et seq.* [“CEQA”].
19 The County issued the Final EIR (collectively the Draft EIR, Responses to Comments on the
20 Draft EIR, and an Errata) in May 2021. As also set forth in more detail below, the County found
21 in its Final EIR that the Project would cause unavoidable adverse impacts to biological resources,
22 cultural and tribal cultural resources, aesthetics, and air quality.

23 **IV. REVIEW OF THE APPLICATION BY THE COUNTY**

24 8. Pursuant to Shasta County Code § 17.92.020, any use permit application submitted
25 to the County must be reviewed by County planning staff for compliance with CEQA. The
26 County Planning Commission “may approve, conditionally approve or deny approval of the
27 application by resolution,” and cannot approve the permit unless it finds that the use would not
28 “be detrimental to the health, safety, peace, morals, comfort and general welfare of persons

1 residing or working in the neighborhood of the proposed use or be detrimental or injurious to
2 property and improvements in the neighborhood or to the general welfare of the county[.]”

3 9. The approximately 4,464-acre Project site consisted exclusively of private
4 property operated as managed forest timberlands. It would also be located within a geographic
5 area that is traditionally and culturally affiliated with the Pit River Tribe and other related local
6 tribes. The Project site would be located approximately one (1) mile west of the existing Hatchet
7 Ridge Wind Project, a wind turbine project previously approved by the County. The Project Site
8 was also six (6) miles west of Burney, thirty-five (35) miles northeast of Redding, immediately
9 north and south of State Route (“SR”) 299, and near the private recreational facility of Moose
10 Camp and other private inholdings. Other nearby communities include Montgomery Creek,
11 Round Mountain, Wengler, and Big Bend.

12 10. Access to the Project site was to be provided regionally and locally by Interstate 5,
13 approximately thirty-five (35) miles to the west of the Project site; SR 139, approximately sixty
14 (60) miles to the east of the Project Site; SR 299; and via three existing, gated logging roads that
15 would be used to enter and leave the Project site.

16 11. The Project, as originally proposed, included up to seventy-two (72) wind turbines,
17 but was later reduced to forty-eight (48). The Project resubmitted to the Commission is for 48
18 turbines as it was revised and submitted to the County Board of Supervisors. Infrastructure and
19 facilities associated with the Project would include the following:

- 20 • A 34.5-kilovolt overhead and underground electrical collector system to connect
21 turbines together and to an onsite collector substation;
- 22 • Overhead and underground fiber-optic communication lines;
- 23 • An onsite switching station to connect the Project to the regional grid operated by
24 Pacific Gas and Electric Company (PG&E);
- 25 • A temporary construction and equipment laydown area;
- 26 • 14 temporary laydown areas distributed throughout the Project site to store and
27 stage building materials and equipment;
- 28 • A 7,000 square-foot operation and maintenance facility;

- 1 • Up to four permanent meteorological towers;
- 2 • Temporary, episodic deployment of mobile Sonic Detection and Ranging or Light
- 3 Detection and Ranging systems within identified disturbance areas (e.g., at
- 4 meteorological evaluation tower locations); and
- 5 • Two storage sheds and three temporary batch plants.

6 12. New access roads would be constructed within the Project site, and existing roads

7 would be improved. The Project would operate year-round.

8 13. The initial application for the Project submitted to the County first in 2016 began a

9 five-year process of public meetings and hearings, environmental review, submittal of amended

10 applications, and significant opposition from local tribes and community members.

11 14. Members of the Pit River Tribe (“Tribe”), whose tribal ancestral lands encompass

12 the Project site, opposed the Project. Tribal members commented that they would be immediately

13 adversely impacted by the construction of the Project in many ways, including:

- 14 • Mental and physical health;
- 15 • Land health;
- 16 • Watershed health;
- 17 • Ground instability that could trigger landslides;
- 18 • Limited access to sacred waters and springs;
- 19 • Impacts to cultural resources; and
- 20 • Permanent damage and destruction to traditional historical areas integral to the
- 21 identity of the Pit River People that could not be mitigated.

22 15. These impacts would continue long after decommissioning the Project on the land.

23 16. The Tribe also commented that the Project would irrevocably alter mountain

24 ridges that are sacred to the Tribe and where the Tribe would traditionally hold ceremonies and

25 gather food. Tribal members also expressed concerns about wildfire risks.

26 17. Other members of the public expressed concerns involving:

- 27 • Increased wildfire risk;
- 28 • Increased construction traffic;

- 1 • Rock blasting impacts on wildlife;
- 2 • Bird and bat mortality;
- 3 • Light, air, and noise pollution;
- 4 • The diminishment of the aesthetic value of the mountain ridges;
- 5 • Negative impacts on tourism and recreation; and
- 6 • Negative impacts on property values.

7 18. Attached hereto and incorporated herein by this reference as Exhibit “A” are true
8 and accurate copies of the written comments and concerns raised by the Pit River Tribe and
9 accurate transcripts of oral comments by members of the Tribe as they were submitted to the
10 County. Attached hereto and incorporated herein by this reference as Exhibit “B” are true and
11 accurate copies of the written comments and concerns raised by members of the public other than
12 the Tribe and individual tribal members and accurate transcripts of oral comments submitted by
13 members of the public other than the Tribe and individual tribal members as they were submitted
14 to the County.

15 19. The County’s 2,000-plus page Final EIR under CEQA responded to each public
16 comment that fell within the scope of CEQA, analyzed each CEQA-related impact, and included
17 extensive consultations with and review by several state agencies with jurisdiction over the
18 subject matter of the Project. Preparation of the EIR began with the publication of the Notice of
19 Preparation of a Draft EIR for the Project (“NOP”). The NOP was issued on January 15, 2019.

20 20. In the EIR, the County determined that the Project would cause a multitude of
21 significant and unavoidable impacts, including the following:

- 22 • Adverse effects on the visual character and visual quality of views from publicly
23 accessible vantage points;
- 24 • Generation of particulate matter (“PM10”) air emissions during construction,
25 decommissioning, and site reclamation that would result in a cumulatively
26 considerable net increase of PM10 in the region which is in non-attainment of
27 State ambient air quality standards for PM10;

28

- 1 • Significant adverse impacts to or direct mortality of bald and golden eagles during
- 2 Project operations;
- 3 • Mortality and injury to raptors as a result of collisions with wind turbines and
- 4 electrical transmission lines during Project operations;
- 5 • Direct mortality and injury to bats as a result of Project operations and
- 6 maintenance;
- 7 • A cumulatively considerable contribution to significant cumulative impacts to
- 8 avian and bat species from collision with Project infrastructure; and
- 9 • A substantial adverse change in the significance of a tribal cultural resource.

10 21. In addition, the Project would be located in a high-risk fire area. The vast majority

11 of unincorporated Shasta County is designated as being in the High and Very High Fire Hazard

12 Severity Zones as recommended by the California Department of Forestry and Fire Protection.

13 Any ignition of a fire could potentially result in a very high severity incident based on fuel

14 loading, slope, fire weather and other factors. Indeed, in 1992, the Project area was part of the

15 area destroyed by the Fountain Fire. The Fountain Fire was a large and destructive wildfire in the

16 County. After igniting on August 20, 1992, the fire was driven by strong winds, outpacing

17 firefighters for two days while exhibiting extreme fire behavior such as long-range spotting,

18 crown fire runs, and pyrocumulonimbus clouds that generated dry lightning. The fire consumed

19 63,960 acres and destroyed more than 600 hundred homes, primarily in the communities of

20 Round Mountain and Montgomery Creek along the SR 299 corridor. In 1992, the Fountain Fire

21 was the third most destructive wildfire in recorded California history. At a suppression cost of

22 more than \$22 million, it was then also the most expensive fire to contain in recorded California

23 history. At the time, the Fountain Fire was recognized not just as a major disaster, but also as a

24 “fire of the future.” The devastation the fire left as it moved through rural communities

25 intermingled with private timberlands, in a difficult and high-stakes environment for firefighters,

26 made it emblematic of the challenges faced by residents and responders alike in the wildland-

27 urban interface.

28

1 22. While the Fountain Fire was surpassed by later California wildfires in metrics for
2 losses, it still remains notable for its speed, widespread destruction in multiple communities, and
3 the long-term alteration of the landscape within its footprint. Subsequently, more destructive fires
4 have occurred in Shasta County, including the 2018 Carr Fire. Many current residents in the
5 vicinity of the Project site are Fountain Fire survivors and continue to live not only with the
6 specter of the Fountain Fire, but survivors, and newcomers to the area, also live with the ever-
7 present concern of the potential for a severe wildfire to affect their communities in the future.
8 The increasing severity of fire behavior and devastation of recent California wildfires keeps the
9 risk of wildfire at the forefront of community concerns. The County accordingly prohibited large
10 wind energy systems in July of 2022, and was already in the process of doing so prior to the
11 introduction and enactment of AB 205.

12 23. On June 22, 2021, after a duly noticed public hearing on the Final EIR and Project,
13 the County Planning Commission unanimously denied the application for the permit. Testimony
14 during that process was provided regarding detrimental impacts of the Project, including: impacts
15 to aesthetics; potential increased fire danger; impediments to firefighting efforts; damage to
16 wildlife; damage to natural resources; and damage to cultural and tribal cultural resources. In
17 denying the permit, the County further found that these impacts would be detrimental and
18 injurious to the general welfare of people in the County and to County property.

19 24. Pursuant to Shasta County Code § 17.92.030, Fountain Wind appealed the
20 Planning Commission’s decision to the Shasta County Board of Supervisors, and amended its
21 project application by, among other things, proposing to shrink the Project from 72 turbines to 48.
22 In accordance with Shasta County Code § 17.92.030, the Board of Supervisors could “reverse or
23 affirm, wholly or partly, or . . . modify the order, requirement, decision, determination or
24 condition appealed,” and the “action of the board shall be final.”

25 25. On October 26, 2021, after considering written public comments, reviewing the
26 record of the Planning Commission’s action denying the use permit and all draft, final and
27 supporting documents of the EIR prepared for the Project, and receiving testimony during the
28

1 public hearing, the County Board of Supervisors voted to uphold the Planning Commission’s
2 decision and deny the permit. The County’s denial of the Project was final as of that date.

3 26. The denial by the Board of Supervisors was not challenged through any judicial
4 proceeding and the time to bring such proceeding now has long lapsed.

5 **IV. AB 205**

6 27. AB 205 was signed into law by the Governor on June 30, 2022, more than nine
7 months after the County’s denial of the application for the Project. AB 205 added Chapter 6.2 to
8 Division 15 of the Public Resources Code, which governs the Commission and its certification of
9 nonfossil-fueled powerplants, energy storage, and related facilities. AB 205 provided the
10 Commission extended siting authority over certain renewable energy facilities, including any
11 “solar photovoltaic or terrestrial wind electrical generating power plant with a generating capacity
12 of 50 megawatts or more and any facilities appurtenant thereto.”

13 28. AB 205 permits an applicant proposing to build a qualifying energy facility to file
14 an application with the Commission on or before June 30, 2029, and that, “[u]pon receipt of the
15 application, the Commission shall have the exclusive power to certify the site and related facility,
16 whether the application proposes a new site and related facility or a change or addition to an
17 existing facility[.]” AB 205 further provides that:

18 “the issuance of a certificate by the Commission for a site and related facility
19 . . . shall be **in lieu of** any permit, certificate, or similar document required by
20 any state, local, or regional agency, or federal agency to the extent permitted
21 by federal law, for the use of the site and related facilities, and shall supersede
22 any applicable statute, ordinance, or regulation of any state, local, or regional
23 agency, or federal agency to the extent permitted by federal law.”

24 29. Pursuant to AB 205, after the filing of an application with the Commission, the
25 Commission must review the application as the lead agency pursuant to CEQA and make a final
26 determination on the application within 270 days of the Commission’s notice of completion.

27 30. In making a final determination, the Commission is required, among other
28 determinations, to take into account the traditional ecological knowledge of tribes, hold extensive

1 public outreach, and refrain from certifying an application unless the applicant has “entered into
2 one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or
3 more community-based organizations.” Also, among many other findings, the Commission must
4 find that the project has a net positive economic benefit. AB 205 was not intended to, and does
5 not, confer jurisdictional authority over a project that was reviewed in its entirety under a local
6 agency’s discretionary review authority and CEQA and was subsequently denied by the local
7 agency.

8 **V. THE PROJECT IS RESUBMITTED TO THE COMMISSION**
9 **MORE THAN A YEAR AFTER IT WAS DENIED BY THE COUNTY**

10 31. Despite the County’s denial of the Project, the Project applicant—real party in
11 interest Fountain Wind—submitted an “opt-in” application to the Commission in January 2023
12 under recently enacted AB 205 to certify the Project. The application is for virtually the same
13 project, with 48 wind turbines and similar generating capacity and associated improvements and
14 infrastructure. The Project description is virtually identical to the revised permit submitted to the
15 County.

16 32. The opt-in application to the Commission consisted of the same documents and
17 information (or in some cases, snippets of those documents) as it did to the County at the time the
18 Project went through the County’s discretionary review and full CEQA process.

19 33. Most of the Project documentation submitted as part of the opt-in application to
20 the Commission contained dates that were at the time of the County’s review and were not
21 otherwise updated. The Applicant also made no other changes to the so-called “application” and
22 did not conform it to or meet the AB 205 or Commission Exhibit B application requirements for
23 opt-in applications.

24 34. These and many other deficiencies in the application led Commission staff to
25 initially issue a 243-page deficiency notice along with a lengthy addendum and data request. A
26 true and accurate copy of the Commission letter is attached hereto as Exhibit C.

27 35. Application incompleteness was raised in several comments filed in the docket,
28 and an additional deficiency notice, dated August 31, 2023, and data request, dated September 20,

1 2023, have been issued by Commission staff regarding the lack of a community benefits
2 agreement plan and incomplete information on the mitigation of wildfire risk.

3 36. Members of the Pit River Tribe and the Tribe as a sovereign nation again
4 expressed frustration that this new attempt at the Project ignored a local decision that was based
5 on years of legally required environmental studies, public meetings, and consultations with the Pit
6 River Tribe, and opined that the Commission should not consider the Project given the fact that it
7 had been denied after an incredibly extensive review and subsequent appeal. True and accurate
8 copies of the Tribe’s concerns raised with the Commission are attached hereto as Exhibit D and
9 are incorporated herein by this reference.

10 37. To date, there has been no public analysis or determination of the Commission’s
11 jurisdiction over the Project, nor any analysis that considers that the Project was previously
12 denied by the County and what the impact of that denial is on the Commission’s jurisdiction over
13 the opt-in application. Attached hereto as Exhibit E are some of the comments submitted by the
14 County, the Pit River Tribe, individual members of the Tribe, and others regarding jurisdiction,
15 incompleteness and other issues with the opt-in application. Some of these comments submitted
16 by parties other than the County reveal that statements made by the applicant to the Commission
17 did not reflect the truth regarding certain events. (See, e.g., Exhibit D at p. 7.) Indeed, Fountain
18 Wind made a number of statements that were misleading or inaccurate. For the sake of brevity,
19 only some of those misleading or inaccurate statements are described in the following paragraphs.

20 38. In an effort to show that the Project would benefit one or more community-based
21 organizations under Public Resources Code section 25545.10, Fountain Wind misrepresented that
22 the Pit River Tribe had consented to receive financial benefits from an arrangement Fountain
23 Wind was seeking to execute with the Shasta Regional Community Foundation, Inc., d/b/a
24 Community Foundation of the North State. The Tribe unequivocally rejected this
25 characterization in a subsequent comment letter, making clear that it “vehemently opposes any
26 association with this financial arrangement,” has “no intention whatsoever of accepting any
27 financial support” from Fountain Wind, and expressed “serious ethical and transparency
28 concerns” with Fountain Wind’s misrepresentations that suggest otherwise.

1 39. Compounding its misrepresentations, the County is informed and believes that the
2 Community Foundation of the North State has declined to enter into a legally binding agreement
3 with Fountain Wind. Accordingly, there is no executed agreement that would support Fountain
4 Wind satisfying the requirements of Public Resources Code section 25545.10 or the Commission
5 finding the opt-in application to be complete.

6 40. Fountain Wind’s misrepresentation of the benefits to accrue to the Tribe under the
7 Community Foundation of the North State agreement are especially problematic because it comes
8 on the heels of Fountain Wind filing a deficient “Community Benefits Program” that was simply
9 recycled from the County-level Project application submitted years before. The Commission’s
10 own manager of Siting & Environmental, Eric Knight, observed that Fountain Wind’s opt-in
11 application strategy appeared to include simply repackaging the final EIR prepared by the County
12 as an opt-in application, despite the County denying the use permit application years
13 prior. Moreover, the Community Benefits Program contained outdated information that Fountain
14 Wind failed to update for months, despite assuring the Commission that it would do so on several
15 occasions. Fountain Wind’s repeated failure to provide updated or otherwise sufficient
16 information requested by the Commission and required by law resulted in the Commission
17 declining to find the opt-in application to be complete as recently as August 31, 2023.

18 41. Despite Fountain Wind’s multiple failures to comply with the requirements of AB
19 205 and, more egregiously, its misrepresentations about the benefits to local communities and the
20 Tribe, the Commission found the application to be complete. The Commission has expressed on
21 multiple occasions its continued willingness to move the Project forward despite real and
22 potentially catastrophic impacts posed by the Project. For instance, Mr. Knight indicated that,
23 because the opt-in application was the first in the state to be filed for a major project, the
24 Commission had to “give it a go.” Similarly, Commissioner Noemi Otilia Osuna Gallardo at the
25 Commission (“Commissioner Gallardo”) proposed renaming the permitting process to disguise
26 the Commission’s belief that it has jurisdiction over projects that have been denied on the local
27 level. In particular, Commissioner Gallardo stated that “if the permit is denied locally, they can
28 then – the developer can go through us.” The Commission seems to be fast-tracking the Project

1 despite egregious failures and misrepresentations on the part of Fountain Wind and the clear
2 language of AB 205 that withholds jurisdiction from the Commission in this instance.

3 42. As set forth above, AB 205 provides certain renewable project applicants the
4 choice between submitting a proposed project for traditional local government discretionary
5 approval processes or an “opt-in” pathway with the Commission to certify a proposed project
6 within a 270-day review period. The Project is the first major project in the state to go through
7 the 270-day review process under opt-in certification authorized by AB 205. Under this process,
8 the Commission will prepare an EIR and decide by July 26, 2024, whether to approve or deny the
9 Project (objections by the County and other parties have pointed out that the date should be July
10 29, 2024). Results of this evaluation will likely set a precedent for future projects of its kind in
11 rural areas of California. Because this Project was previously denied by the County after 5 (five)
12 years of review and an extensive EIR process, this renewed review by the Commission is nothing
13 more than a second bite at the apple by the Applicant.

14 **VI. THE COMMISSION EXERCISES JURISDICTION WITHOUT**
15 **PROVIDING A BASIS THEREOF OR SUBSTANTIVELY**
16 **ADDRESSING ANY OF THE OBJECTIONS TO JURISDICTION**

17 43. Since Fountain Wind submitted the opt-in application, the County has repeatedly
18 objected to the Commission’s jurisdiction over the Project under AB 205. The County has
19 submitted comments to the Commission. Other persons and entities, including the Pit River Tribe
20 and the County of San Bernardino, have also submitted comments to the Commission objecting
21 to the Commission’s jurisdiction over the Project, among many other objections. The
22 Commission has continuously disregarded the objections to jurisdiction, refuses to even assess
23 whether it has jurisdiction over the Project, and instead has proceeded to process Applicant’s opt-
24 in application under AB 205. The Commission’s de facto assertion of jurisdiction under AB 205
25 is contrary to law, and the Commission lacks jurisdiction to further process Applicant’s opt-in
26 application.

27 44. On October 30, 2023, the Executive Director for the Commission, Drew Bohan,
28 filed a determination that the application submitted for opt-in certification of the Project is

1 complete. This determination by the Commission confirms that the applicant has provided all
2 necessary information to start the project review phase of the process. It does not approve the
3 project or indicate whether it will be approved or disapproved. As part of that determination, the
4 Executive Director has also given notice of preparation of a Draft EIR for the Project (“NOP”) by
5 the Commission and, in the NOP, the Commission has stated that it has jurisdiction to proceed
6 with review of the now deemed complete application, but gives no explanation of the basis of
7 such jurisdiction in light of the objections previously submitted by the County and others.

8 45. The County has exhausted any potentially applicable administrative mechanism to
9 compel the Commission to determine whether it has jurisdiction over the Project, and the
10 Commission’s continued processing of the application through the actions of its Executive
11 Director and staff, including their recent determination that the application is complete, make
12 clear that the Commission believes it has jurisdiction to process and potentially approve the
13 application.

14 46. The Commission’s assertion of jurisdiction over the denied Project is both without
15 basis in law and is deeply problematic for the County. The County is located in a biologically
16 and culturally rich—and densely forested—area of Northern California. The County is home to
17 approximately 180,000 residents and encompasses the ancestral homelands of the Pit River Tribe.
18 The County is also a premier destination for hiking, biking, and other types of outdoor
19 recreational activity. Lassen National Forest lies to the southeast of the Project site, and the
20 Shasta-Trinity National Forest is to the north. The County’s natural and cultural resources will be
21 directly impacted by the Project if it is approved, and the County’s own land use authority will be
22 impaired if the Commission proceeds to process the Project application. Projects of this nature
23 are usually developed in un-forested plains areas with no forests, not on heavily forested
24 mountain ridges and for good reason.

25 47. As originally proposed in 2016, the Project included up to 72 wind turbines with a
26 maximum height of up to 679 feet. Each wind turbine would have a generating capacity of 3 to
27 6.2 megawatts (MW), with a total nameplate generating capacity of up to 216 MW and associated
28 transformers together with associated infrastructure and ancillary facilities.

1 48. The County conducted a robust environmental review and analysis of the Project
2 over a two-and-one-half year period, culminating in a 2,000-plus page EIR under CEQA that the
3 County made public in April of 2021. As part of the CEQA process, the public, including the Pit
4 River Tribe, voiced significant concerns about the environmental, cultural, aesthetic, and human
5 impacts posed by the Project.

6 49. In its EIR, the County found that the Project would cause unavoidable adverse
7 impacts to biological resources, cultural and tribal cultural resources, aesthetics, and air quality.
8 The Project was denied by the County Planning Commission on June 22, 2021, and was again
9 denied by the County Board of Supervisors on October 26, 2021, after Fountain Wind
10 administratively appealed the County Planning Commission’s decision.

11 50. Now, Fountain Wind seeks another bite at the apple under the auspices of AB 205.
12 AB 205 was adopted more than a year **after** the County denied the Project. It provides for an opt-
13 in approach to certifying wind-energy and other renewable energy projects “in lieu of,” i.e.
14 instead of, traditional local government discretionary approval processes. Under AB 205, a
15 renewable energy project applicant can choose between opting-in to the Commission’s
16 certification process or pursuing traditional local government discretionary approval processes.

17 51. AB 205 does not provide that a project applicant can opt-in to the Commission
18 certification process when a local government has already exercised its discretion to deny a
19 project application. AB 205 also does not allow the Commission to retroactively invalidate local
20 government land use decisions made prior to the enactment of AB 205, effectively modify final
21 adjudicatory actions or extend the applicable statute of limitations for the judicial challenge of a
22 project.

23 52. Nonetheless, the Commission has found the opt-in application to be complete,
24 triggering the 270-day review period for the Project. The Commission is in the process of
25 preparing environmental documentation as the lead agency under CEQA to examine the
26 environmental impacts posed by the Project—something the County already did in its 2,000-plus
27 page EIR and after two-and-one-half years of review.

1 53. Not only is the Commission’s assertion of jurisdiction over the Project duplicative
2 of the County’s review and analysis, it would allow the Commission to retroactively override the
3 County’s denial of the Project that the County made prior to AB 205’s enactment usurping both
4 the County’s authority and the process of judicial review contemplated in those instances. The
5 Commission is part of the executive branch of the state. As such, it lacks any power to
6 retroactively adjudicate the County’s denial of the Project. AB 205 therefore does not—and
7 could not, under the separation of powers doctrine—confer jurisdiction over the Project to the
8 Commission to override denial of the Project by the County.

9 54. Nothing in AB 205 justifies the Commission’s assertion of jurisdiction and does
10 not permit the Commission to unilaterally and retroactively overturn a local government’s
11 discretionary decision-making processes pursued by project applicants. The Commission,
12 therefore, does not have jurisdiction over the Project and must be ordered to deny or reject
13 Fountain Wind’s opt-in application for the Project.

14 **VII. JURISDICTION AND VENUE**

15 55. This Court has subject matter jurisdiction over this matter pursuant to the general
16 jurisdiction granted by the California Constitution and Civ. Proc. Code §§ 410.10, 526, 1060, and
17 1085, and Pub. Res. Code §§ 25218, subdivisions (c), (e), 25545.1, subdivision (b)(1).

18 56. This Court has personal jurisdiction over Respondent and defendant Commission
19 because the Commission is a state agency domiciled in the State of California.

20 57. Venue is proper in Shasta County. (See Code Civ. Proc., § 393, subd. (b).) The
21 Project, and the Commission’s asserted jurisdiction to potentially approve the Project, directly
22 impact the County, its residents, and its natural and cultural and tribal cultural resources,
23 including those of the Pit River Tribe.

24 **VIII. NO FURTHER ADMINISTRATIVE REMEDIES**
25 **ARE AVAILABLE TO THE COUNTY**

26 58. Other than the objections to jurisdiction already raised by the County and others,
27 there are no existing administrative procedures or remedies available to the County to challenge
28 the Commission’s assertion of jurisdiction over the Project. The Executive Director and staff

1 continue to process the opt-in application, which is a de facto assertion of jurisdiction despite no
2 formal determination of jurisdiction having been made by the Commission. Nonetheless, the
3 County has consistently participated via public comment and objection in the Commission's
4 review of the Project application, and has explicitly requested that the Commission formally
5 review its jurisdiction under AB 205. The County explicitly reserved all rights in its public
6 comments and objections. Other parties such as the Pit River Tribe have done the same.

7 59. For example, the County submitted the following comments and responses directly
8 related to the Commission's jurisdiction under AB 205:

- 9 • Shasta County Opposition to AB 205 Jurisdiction and Objection to Notice of
10 Completion Request (August 14, 2023);
- 11 • County of Shasta Standing Reservation of Rights (September 28, 2023);
- 12 • County of Shasta Response to AB 205 Jurisdictional Comments (September 29,
13 2023); and
- 14 • Letter to Commission Chair from County Supervisor Rickert (November 3,
15 2023).

16 60. Specifically, the County requested that the Commission hold a duly-noticed
17 Business Meeting to discuss its jurisdiction over the Application prior to allowing the Applicant
18 or Commission staff to proceed further in the proceeding.

19 61. Further, the County requested the Commission decide this issue at the Business
20 Meeting and ultimately find that the Commission does not have jurisdiction and deny or reject the
21 Application.

22 62. Finally, the County requested that the Commission direct the Executive Director to
23 delay issuing a notice of completion until jurisdiction is finally decided. The Commission has not
24 acted on any of the County's requests, and has not conducted any jurisdictional analysis and, if it
25 has, it has not made its findings and basis thereof available to the public. The Commission,
26 through the Executive Director and staff, continues to assert jurisdiction over the Project by
27 continuing to process the opt-in application.

1 63. At this stage, there are no other procedural steps for exhaustion in Article 4.1 or
2 other Commission regulations, such as sections 1221 and 1234.

3 64. The Commission has also not been transparent with the public about its efforts to
4 move the Project forward. Publication of notices have taken longer than is customary. Various
5 Public Records Act (“PRA”) Requests have been made to the Commission requesting, among
6 others, materials related to AB 205 and this Project by many parties, but the Commission has
7 indicated that it would withhold numerous documents and communications with the Office of
8 Legislative Affairs for the Governor on the grounds of privilege. Additionally, the Commission
9 has vaguely alluded to PRA exemptions without confirming whether it will produce documents or
10 stand on those exemptions.

11 65. The Commission has obstructed the public’s ability to meaningfully engage with
12 the Commission about its asserted jurisdiction over the Project. The Commission released a long-
13 awaited, frequently-asked-questions (“FAQ”) brochure on AB 205 two days before
14 Thanksgiving, on November 22, 2023, that makes clear the Commission is asserting jurisdiction
15 over the Project, yet also set a joint environmental scoping and information meeting on the
16 Project for November 28, 2023—only a week after publishing the FAQ during which there was a
17 major holiday and weekend. Exhibit F contains true and accurate copies of the FAQ and notice
18 of joint meeting. As set forth in Exhibit F, the Commission states:

19 *Can the CEC approve a project that was denied by a local*
20 *government, or does not conform to local ordinances?*

21 Yes. If a project is approved, CEC’s certificate is in lieu of any local
22 permit or local law or ordinance. However, to grant a certificate to
23 a project, the CEC must make findings that the project will comply
24 with all applicable laws, ordinances, regulations, and standards,
25 or make findings that despite the non-conformance, the project is
26 required for public convenience and necessity, and that there are
27 not more prudent and feasible means of achieving public convenience
28 and necessity. The CEC is required to invite the local government to

1 attend a mandatory pre-filing meeting with an applicant.
2 Therefore, the Commission appears to assert jurisdiction over the Project based on the “in lieu”
3 language of AB 205 cited above.

4 **FIRST CAUSE OF ACTION**

5 **(Traditional Writ of Mandate, Code of Civil Procedure, § 1085)**

6 66. The County incorporates paragraphs 1 through 65 herein.
7 67. A writ of mandate may be issued by any court to any inferior tribunal, corporation,
8 board, or person, to compel the performance of an act which the law specially enjoins, as a duty
9 resulting from an office, trust, or station, or to compel the admission of a party to the use and
10 enjoyment of a right or office to which the party is entitled, and from which the party is
11 unlawfully precluded by that inferior tribunal, corporation, board, or person.

12 68. A writ of mandate is available if there is not a plain, speedy, and adequate remedy
13 in the ordinary course of law. (Code Civ. Proc., § 1086.)

14 69. The County has a beneficial interest in whether the Commission has jurisdiction
15 over the Project under AB 205 because the County’s denial of the Project will be superseded if
16 the Commission does have jurisdiction and the Commission certifies the Project. The County, its
17 residents, and its resources will be directly impacted by approval of the Project, for all the reasons
18 identified by the County in its review and ultimate denial of the Project.

19 70. The County has exhausted any administrative mechanism that could be available
20 to it, and thus has no plain, speedy, or adequate remedy other than to bring this lawsuit.

21 **Count 1. Ministerial Duty to Determine Jurisdiction**

22 71. The Executive Director of the Commission has a ministerial duty to determine
23 Commission jurisdiction over an activity if so requested by a potentially regulated party. (Cal.
24 Code Regs., tit. 20, § 1234.) The Commission is a state agency and its jurisdiction and authority
25 arise from statutory law.

26 72. The Commission regularly assesses its jurisdiction, including with letters from the
27 Chief Office of Counsel, when requested to do so or when jurisdiction has been questioned.
28

1 73. The County specifically requested, on multiple occasions, that the Executive
2 Director and staff assess the Commission’s jurisdiction over the Project and provide the basis
3 thereof. The Executive Director has failed to do so, as has the Commission. The County is left in
4 the position that the Project is undergoing review by the Commission without an expressed
5 statement of the reasons why the Commission believes it has jurisdiction in this particular
6 instance.

7 74. The County is therefore entitled to a writ of mandate to compel the Executive
8 Director to determine whether the Commission has jurisdiction over the Project and set forth the
9 basis for that determination.

10 75. The County is also entitled to a writ of mandate to compel the Commission to
11 assess, independently of the Executive Director, whether it has jurisdiction over the Project and
12 state the basis thereof.

13 **Count 2. Lack of Jurisdiction**

14 76. The County is further entitled to a writ of mandate compelling the Commission,
15 acting through the Executive Director, to reject Fountain Wind’s opt-in application or cease any
16 review of the application because the Commission does not have jurisdiction over the Project
17 under AB 205.

18 77. The Commission has a duty to follow and obey existing law. AB 205 does not
19 confer jurisdiction over the Project to the Commission, including the ability and authority to re-
20 adjudicate the County’s previous denial of the Project. No other statute conferring jurisdiction
21 over the renewed application has been cited by the Commission or the applicant to establish
22 Commission jurisdiction, and neither the Commission nor the applicant have stated any other
23 basis for jurisdiction.

24 78. A writ may therefore issue compelling the Commission to reject, cease review of,
25 or otherwise abandon consideration of Fountain Wind’s opt-in application for lack of jurisdiction.

26 **Count 3. Violation of the Separation of Powers**

27 79. Article III, section 3, of the California Constitution provides: “The powers of State
28 government are legislative, executive, and judicial. Persons charged with the exercise of one

1 power may not exercise either of the others except as permitted by this Constitution.” (Cal.
2 Const., art. III, § 3.)

3 80. The Commission is part of the executive branch of the state. It lacks judicial
4 powers. The Commission therefore lacks any power to retroactively adjudicate the County’s
5 denial of the Project. AB 205 therefore does not—and could not, under the separation of powers
6 doctrine—confer jurisdiction over the Project to the Commission to override denial of the Project
7 by the County as a Court could, and the Commission is violating the separation of powers
8 provision of the California Constitution by asserting jurisdiction over the Project after the County
9 denied the application.

10 81. A writ may therefore issue compelling the Commission to comply with the
11 separation of powers doctrine and reject, cease review of, or otherwise abandon consideration of
12 Fountain Wind’s opt-in application.

13 **SECOND CAUSE OF ACTION**

14 **(Declaratory Relief, Code of Civil Procedure, § 1060)**

15 82. The County incorporates paragraphs 1-81 herein.

16 83. The County has been, and will continue to be, injured by the Commission’s
17 continued assertion of jurisdiction over the Project. Commission’s assertion of jurisdiction under
18 the opt in provisions of AB 205 over a past decision by the County related to the Project threatens
19 any and all pre-existing decisions the County has made for wind or renewable energy projects that
20 could be subject to the Commission’s jurisdiction. Further, if the Commission has jurisdiction
21 over the Project, the County’s decision to deny the Project could be superseded, and the County
22 and its residents and resources will be impacted for all the reasons identified in the County’s Final
23 EIR.

24 84. The County is entitled to a declaration of its rights under Code of Civil Procedure
25 section 1060 that (1) its denial of the Project is not subject to re-adjudication, rescission, or other
26 modification by the Commission under AB 205; and, (2) that AB 205 does not confer jurisdiction
27 on the Commission to certify or otherwise approve the Project following the County’s denial.
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Dated: November 27, 2023

THE CIRCLE LAW GROUP

By: Michelle C. Lee
MICHELLE C. LEE
Attorneys for Plaintiff and Petitioner
PIT RIVER TRIBE

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VERIFICATION

I, Paul Hellman, declare:

I am the Director of Resource Management of the County of Shasta, a party to the above-entitled action, and am authorized to make this verification on its behalf.

I have read the foregoing **VERIFIED PETITION AND COMPLAINT FOR (1) WRIT OF MANDATE (CODE CIV. PROC., § 1085), (2) DECLARATORY RELIEF (CODE CIV. PROC., § 1060), (3) INJUNCTIVE RELIEF** and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true and correct.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 27th day of November, 2023, at Redding, California.



Paul Hellman