



November 14, 2023

Tribal Council

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Chairman

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Submitted via FedEx and email to: [jbrown@sitesproject.org](mailto:jbrown@sitesproject.org)

Jerry Brown  
Executive Director  
Sites Project Authority  
122 W Old Highway 99  
Maxwell, CA 95955

**RE: Comments of the Yocha Dehe Wintun Nation on the Final Environmental Impact Report/Environmental Impact Statement for the Sites Reservoir Project**

Dear Mr. Brown:

I write on behalf of the Yocha Dehe Wintun Nation (“Yocha Dehe” or “Tribe”), a federally recognized tribal government whose ancestral territory includes lands now within the Counties of Yolo, Solano, Colusa, Napa, and Lake, to provide the Tribe’s comments on the November 2023 Final Environmental Impact Report/Environmental Impact Statement (“EIR”) for the Sites Reservoir Project (the “Project”).

For thousands of years, our Patwin people have tended the land, protected plant and animal species, and preserved ecological balance – including the lands and watersheds in which the Project is proposed to be built. Today, sustainability and responsible stewardship remain fundamental to our culture and identity, as well as our own agricultural operations. And while we can certainly understand the need for new approaches to managing California’s scarce water resources, it is also necessary to ensure the impacts of those water solutions (and reasonable alternatives thereto) are fully evaluated and addressed – particularly where, as here, effects on irreplaceable tribal cultural resources will be significant. Unfortunately, the Project EIR falls well short of that mark.

To be sure, portions of the EIR contain important acknowledgments of “the violent relationship of the State of California with California Native Americans and the State’s role in the exploitation, dispossession, and attempted destruction of tribal communities.”<sup>1</sup> You and your staff should be commended for expressly recognizing that historical context – something many other public agencies have yet to do, notwithstanding California Executive Order N-15-19 – and we think it would be appropriate for the Authority’s formal findings on the Project to include a similar statement.

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<sup>1</sup> See EIR at 23-1.

**Yocha Dehe Wintun Nation**

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Unfortunately, the EIR as a whole remains woefully inadequate in key areas: It does not provide a complete and accurate description of the Project; it fails to meaningfully address the full extent of the Project's potential impacts on Tribal Cultural Resources; it lacks required analysis of alternatives that could avoid such impacts; it relies on legally inadequate mitigation measures; it is riddled with critical inaccuracies; and, more generally, it fails as an informational document.

Our specific comments are as follows:

1. An EIR must set forth a project description that is sufficient to allow adequate evaluation and review of environmental impacts.<sup>2</sup> To satisfy that fundamental requirement, the project description must be complete, accurate, stable, and finite. An EIR is inadequate when it fails to fully and clearly articulate the lead agency's proposed course of action.<sup>3</sup> Here, the EIR fails to provide sufficient detail to permit reviewers to understand or evaluate what is to be built, where it will be built, how it will be operated, and how different performance standards would apply. Rather than identifying a specific, concrete proposal, the document identifies a range of conceptual scenarios. Further muddying the waters, it then suggests the final Project approval could mix elements from various alternatives – albeit without explaining just what might be included in that mix. This ambiguity has left Yocha Dehe and other interested stakeholders unclear about what, exactly, is proposed and how that proposal might impact the environment. To comply with CEQA, the EIR must be revised, clarified, and recirculated.<sup>4</sup>

2. An EIR must fully and properly analyze all potential environmental consequences of a proposed project.<sup>5</sup> To meet that obligation, the lead agency must “do the necessary work” to investigate potentially significant impacts and the means of evaluating and resolving those impacts.<sup>6</sup> It is not enough to simply declare impacts “significant and unmitigable” without specific analysis, as the Project EIR has done with respect to Tribal Cultural Resources. Yocha Dehe's Cultural Resources Department has repeatedly expressed concern about the Sites Authority's failure to investigate or meaningfully address substantial evidence regarding Tribal Cultural Resources – including, but by no means limited to, entire village sites ignored by the

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<sup>2</sup> *San Joaquin Raptor Rescue v. County of Merced* (2007) 149 Cal.App.4th 645, 654. See also 14 C.C.R. § 15124; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533; *stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17-19; *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288.

<sup>3</sup> *stopthemillenniumhollywood.com*, 39 Cal.App.5th at 17-19; *Washoe Meadows*, 17 Cal.App.5th at 288.

<sup>4</sup> *Washoe Meadows*, 17 Cal.App.5th at 283, 288; *stopthemillenniumhollywood.com*, 39 Cal.App.5th at 18, 20. Notably, in *stopthemillenniumhollywood.com*, the Court of Appeal held that failure to provide the public with specific information about a concrete proposal is prejudicial error even if additional detail would not have changed the option ultimately selected and approved by the lead agency.

<sup>5</sup> See, e.g., *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516-22; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners (“Berkeley Jets”)* (2001) 91 Cal.App.4th 1344, 1371.

<sup>6</sup> *Berkeley Jets*, 91 Cal.App.4th at 1370.

EIR's preparers – within the Project footprint. The Cultural Resources Department has also noted the Authority's failure to evaluate all Project components for potential Tribal Cultural Resource impacts – for example, the Dunnigan Pipeline route and other potential conveyances to the Sacramento River do not appear to have been subject to any meaningful cultural resource analysis (or much other analysis, for that matter). Without full and meaningful impact analysis, the EIR fails as an informational document and the Authority cannot meet its obligation to address alternatives and mitigation.

3. Although the EIR fails to fully and properly evaluate the Project's potential impacts, the document contains more than enough evidence to confirm that such impacts will be significant. CEQA requires lead agencies to consider and adopt feasible alternatives capable of avoiding or reducing significant environmental impacts.<sup>7</sup> But the EIR's identification and consideration of alternatives does not appear to account for – much less fully address – the Project's significant impacts on Tribal Cultural Resources. For example, even though several of the Project's proposed "recreation areas" and boat ramps would be located in areas of high cultural sensitivity, no alternative locations appear to have been considered. Similarly, the various options for roads, bridges, and pipelines – proposed routes, construction techniques, standards, etc. – were not selected with Tribal Cultural Resources in mind, and (perhaps not surprisingly) there is no evidence any of them would, in fact, reduce or avoid potentially significant Tribal Cultural Resource impacts.

4. CEQA also requires lead agencies to consider and adopt feasible mitigation measures capable of avoiding or reducing the significance of environmental impacts.<sup>8</sup> To the extent the EIR proposes mitigation measures intended to address Tribal Cultural Resources, they are vague assurances of (largely unspecified) future actions, without specific enforceable performance criteria or implementation guarantees – precisely the kind of deferred mitigation CEQA prohibits.<sup>9</sup> Moreover, the measures proposed in the EIR fail to address several important substantive issues and impacts, including treatment and reburial of known resources; ongoing operational impacts arising from changes in reservoir levels; and assurances that appropriate mitigation resources (monetary and otherwise) will be available throughout the life of the Project.

5. The Authority has also failed to comply with its obligations under AB 52. The failures are multiple. *First*, although the EIR contains a lengthy recitation of purported "tribal outreach," many of the identified activities – where Yocha Dehe was concerned, anyway – were not the meaningful, *government-to-government consultations* mandated by the statute. *Second*, even when

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<sup>7</sup> Pub. Resources Code § 21002; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, 403; *Cleveland National Forest Foundation v. San Diego County Association of Governments* (2017) 17 Cal.App.5th 413, 436.

<sup>8</sup> Pub. Resources Code §§ 21002.1(a), 21061, 21081(a)(1), 21100(b)(3); 14 C.C.R. § 15126.4.

<sup>9</sup> 14 C.C.R. § 15126.4; *League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63, 122; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95.

the Authority properly consulted, it did not properly incorporate or address the information provided by Yocha Dehe (*see* point 3, above). *Third*, the Authority's justification for "concluding" the AB 52 process centers on a letter purportedly sent to the Tribe in July 2023;<sup>10</sup> we have no record of any such letter and, to be blunt, we do not believe it was ever sent. Perhaps recognizing these errors, the Authority seems to imply *Yocha Dehe* is to blame for any AB 52 inadequacy, suggesting the Tribe failed to supply "specific written comments."<sup>11</sup> This is both inaccurate and misleading. Yocha Dehe submitted information to the Authority in a variety of formats and contexts, *including written comments noting the Authority's failure to identify all relevant Tribal Cultural Resources*. And, more fundamentally, AB 52 does not allow the Authority to terminate its consultation obligations based on an alleged failure of "specificity" or "writing." Consultation may only be concluded if the parties reach agreement on mitigation measures or a party concludes in good faith, after exhausting reasonable efforts, that such an agreement cannot be reached.<sup>12</sup> Neither occurred here. And the EIR cannot be certified – nor the Project approved – without proper conclusion of the AB 52 process.

6. Yocha Dehe appreciates the Sites Authority's offer to convene a "Tribal Working Group" or enter a(n as-yet undefined) "Memorandum of Agreement" to address Project issues. Certainly, we are open to working collaboratively with other governments – tribal, local, state, and federal. But establishing a working group (or discussing a Memorandum) does not substitute for full compliance with environmental review requirements. Many of the projects we propose and/or support are required to comply with such requirements, and we must respectfully insist that projects proposed by other governments do the same.<sup>13</sup>

7. To correct the errors identified above, the EIR must be significantly revised. And significant revisions, in turn, mandate recirculation for further review and comment.<sup>14</sup> Given the size and

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<sup>10</sup> *See, e.g.*, EIR at MR7-5.

<sup>11</sup> *Id.*

<sup>12</sup> Cal. Pub. Res. Code § 21080.3.2.

<sup>13</sup> Indeed, the EIR's inadequacy is particularly disappointing in light of recent developments relating to the proposed expansion of the Berryessa-Snow Mountain National Monument – a proposal Yocha Dehe strongly supports. Certain proponents of the Sites Project have vehemently opposed the monument expansion, suggesting it would impermissibly increase government property without sufficient review or scrutiny. In truth, the expansion project would simply redesignate certain lands *already owned by* the federal Bureau of Land Management. Unlike the Sites Project, it would protect Tribal Cultural Resources, would have no adverse environmental impacts, and would not involve any property acquisition by any government agency. We have been unable to identify any principled reason why the monument expansion should be subject to heightened scrutiny while the Sites Project – whose impacts are infinitely greater – proceeds without full review and compliance.

<sup>14</sup> Pub. Resources Code § 21092.1; 14 C.C.R. § 15088.5(a); *see also Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 106 (significant revisions to environmental analysis required recirculation EIR); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120 (changes to mitigation measures required recirculation).

impact of the Project, it is essential to provide a meaningful opportunity for review and discussion of the further revised document.

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Yocha Dehe is well aware that the Project has received substantial state and federal funding and is a matter of significant political interest. But if the EIR is not revised and recirculated to address the issues set forth above, the Sites Authority will not have a legally defensible basis for Project approval – a worst-case scenario for everyone involved. We respectfully submit that all stakeholders would be best served by considering options – including additional studies, alternatives, and mitigation measures – that would meaningfully address the Project’s significant impacts.

Please contact Eric Hernandez, Site Protection Manager (ehernandez@yochadehe.gov), or Sarah Choi, Director of Legal (schoi@yochadehe.gov), if you have any questions.

Wile bo,



Anthony Roberts  
Tribal Chairman



Yvonne Perkins  
Tribal Historic Preservation Officer  
Tribal Council Member  
Cultural Resources Committee Chair

cc: Ernest Conant, United States Bureau of Reclamation