

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

October 20, 2010

DOCKET 08-AFC-8
DATE <u>OCT 20 2010</u>
RECD. <u>OCT 26 2010</u>

Marc Campopiano
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa CA 92626

Re: **Application for Confidentiality,
Cultural Resources Associated with Linear Modifications
Hydrogen Energy International, LLC,
Docket No. 08-AFC-8**

Dear Mr. Campopiano:

On August 30, 2010, Hydrogen Energy International, LLC, filed an application for confidentiality on behalf of the Hydrogen Energy California Power Plant ("Applicant"), in the above-captioned docket. The application seeks confidentiality for the cultural, archaeological and paleontological resources associated with the proposed linear modifications to the proposed project. Applicant has submitted Appendix B (Archaeological Survey Report Addendum) and Appendix C (Paleontological Resources Supplemental Survey Report Addendum (collectively, the "Submitted Record").

The application states:

... The Submitted Record contains sensitive information related to cultural, paleontological, archaeological or historical objects, structures, landscapes, resources, sacred places or sites of concern. . . If the information in the Submitted Record is released to the public, there is a risk that the information could be used to loot, vandalize, or otherwise damage sensitive cultural, archaeological, or paleontological resources.

A properly filed application for confidentiality shall be granted under the California Code of Regulations; title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy] Commission to keep the record confidential."

The California Public Records Act provides for the nondisclosure of archaeological site information and reports. Gov. Code, sec. 6254.10. The Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code, sec. 6254(k).) The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological, paleontological, and cultural resource site locations must be kept confidential in order to preserve them. (16 U.S.C. sec. 470hh.) Non-disclosure of cultural resources, such as the information that you have submitted in the Response to Data Request 64(F), is expressly in the public interest.

Therefore, Applicant's August 30, 2010, confidentiality application for Appendix B and

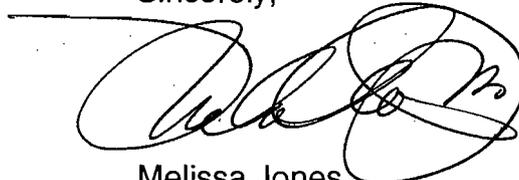
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Appendix C is granted in its entirety. The record will be kept confidential for an indefinite period.

Any subsequent submittals related to cultural resources can be deemed confidential as specified in this letter without the need for a new application under California Code of Regulations, title 20, sections 2505(a)(1)(G) and 2505(a)(4), if you file a certification under penalty of perjury that the new information is substantially similar to the information granted confidentiality by this determination.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Jones", with a large, stylized flourish extending to the right.

Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager