

**CALIFORNIA ENERGY COMMISSION**1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

California Energy Commission

**DOCKETED**  
**08-AFC-8A**

TN # 68784

DEC. 05 2012



December 5, 2012

Michael J. Carroll  
Latham & Watkins LLP  
650 Town Center Drive, 20<sup>th</sup> Floor  
Costa Mesa CA 92626

RE: **Application for Confidentiality,  
Hydrogen Energy California, LLC,  
Cultural Resources Data Submittals Data Request Nos. A139 & A140  
Docket No. 08-AFC-8A**

Dear Mr. Carroll:

The California Energy Commission (Energy Commission) is in receipt of an Application for Confidentiality submitted on behalf of Hydrogen Energy California LLC ("Applicant"). The Application seeks confidential designation for the following documents related to Applicant's response to Cultural Resource Data Requests:

- 1) Response to Data Request No. A139.
- 2) Response to Data Request No. A140.

The application states:

. . . The submitted records contain sensitive information related to cultural, 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 the 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."

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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 location information that you have submitted in figures A148-1 and A151-1, are expressly in the public interest. Therefore, Applicant's confidentiality application seeking confidentiality of cultural resource site location information contained within the response to Data Request Nos. A139 and A140, is granted in its entirety. Resource site location data 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 Jared Babula, Senior Staff Counsel, at (916) 651-1462.

Sincerely,



Robert P. Oglesby  
Executive Director

cc: Docket Unit  
Bob Worl, Energy Commission Project Manager