

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512**DOCKET****08-AFC-8A**DATE     MAY 16 2012    RECD.     MAY 16 2012    

May 16, 2012

Michael J. Carroll  
Latham & Watkins LLP  
650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925

**RE: Application for Confidential Designation, Cultural and Archeological Resources Appendices. Hydrogen Energy California Power Plant Docket No. 08-AFC-8A**

Dear Mr. Carroll:

On May 3, 2012, you submitted an Application for Confidentiality on behalf of Hydrogen Energy California, LLC ("Applicant"). The Application seeks confidential designation for both the hardcopies and digital copies of following technical appendix related to cultural and archaeological resources:

- Appendix G, Cultural Resources, including:
  - Appendix G-1, Cultural Resources Record Search (1 hard copy/5 CDs)- (800 pages of DPR Forms—separate box);
  - Appendix G-2, Native American Consultation (2 hard copies/3 CDs);
  - Appendix G-3, Archaeological Technical Report (2 hard copies/3 CDs);
  - Appendix G-4, Historic Architecture Technical Report (2 hard copies/3 CDs).

Applicant states that the report and data contain sensitive information related to archaeological or historical objects, structures, landscapes, resources, sacred places, or sites of concern to local Native Americans or other ethnic groups, or resources or objects described in California Public Resources Code §§ 5097.9 or 5097.993, that:

"If the information submitted... is released to the public there is a risk that the information could be used to loot, vandalize, or otherwise damage sensitive cultural, archeological, or paleontological resources."

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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 California Energy Commission (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 above-referenced reports, is expressly in the public interest.

Therefore, the Applicant's Confidentiality Application is granted in its entirety. The documents 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, Commission Project Manager