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September 27, 2023

Jon Trujillo
GM, Geothermal Development
BHE Renewables
74-710, CA-111, # 102
Suite 124
Palm Desert, California, 92260

Data Requests Set 2 for Elmore North Geothermal Project (23-AFC-02)

Dear Jon Trujillo:

Pursuant to Title 20, California Code of Regulations, section 1716, California Energy Commission (CEC) staff is asking for the information specified in the enclosed Data Requests Set 2, which is necessary for a complete staff analysis of the Elmore North Geothermal Project under the Warren-Alquist Act and California Environmental Quality Act (CEQA).

Responses to the data requests are due to staff within 30 days. If you are unable to provide the information requested, need additional time, or object to providing the requested information, please send written notice to me and the Committee within 20 days of receipt of this letter. Such written notification must contain the reasons for not providing the information, the need for additional time, or the grounds for any objections (see Title 20, California Code of Regulations, section 1716 (f)).

If you have any questions, please email me at eric.veerkamp@energy.ca.gov.

/S/

Eric Veerkamp
Project Manager

Enclosure: Data Requests Set 2

ENGP DATA REQUESTS SET 2

CULTURAL AND TRIBAL CULTURAL RESOURCES

Author: Patrick Riordan

BACKGROUND: FEDERAL NEXUS FOR THE PROJECT

The Black Rock Geothermal Project (BRGP) AFC, which shares several project elements with the Elmore North Geothermal Project (ENGP), states that “the Black Rock Geothermal Project may receive federal funding, the federal agency issuing the funds may need to conduct a NEPA [National Environmental Policy Act] analysis.” (Jacobs 2023a, page 5.8-10.) However, the ENGP does not include this same language and it is unclear if the BRGP may receive federal funding for project elements shared with the ENGP.

DATA REQUESTS

1. Is the proposed ENGP funded in whole or in part by one or more federal agencies?
 - a. If the proposed ENGP has federal funding, please identify the funding agencies, contact information for federal personnel, and the status of federal environmental impact assessment.
2. Does the proposed ENGP require any federal entitlements, leases, or permits, or is it on federal lands? If so, please describe the federal obligation(s) on the proposed ENGP.
3. Would the BRGP or the Morton Bay Geothermal Projects receive any federal funds for any project elements shared with the ENGP? If so, please identify the funding agencies, contact information for federal personnel, and the status of federal environmental impact assessment.

BACKGROUND: CITATION CORRECTION

In section 6.2.2 of Appendix 5.3A of the AFC the following statement includes a citation error: “The archaeological study area is composed of agricultural fields, human-made ponds, a riparian landscape adjacent to the Alamo River, and mud flats (Error! Reference source not found. to Error! Reference source not found.).” (Jacobs 2023b, page 41.)

DATA REQUEST

4. Please provide a correction for this citation.

REFERENCES CITED

Jacobs 2023a – Jacobs (TN 249752). Black Rock Geothermal Project Application for Certification, Volume 1, dated April 18, 2023. Available online at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-AFC-03>

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Jacobs 2023c – Jacobs (TN 249741). Elmore North Geothermal Project AFC Appendix 5-3 Cultural Resources, dated April 18, 2023. Available online at:
<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=23-AFC-02>

LAND USE

Author: Andrea Koch

BACKGROUND: AGRICULTURAL LAND USES

The application states in Section 5.11.1.4.1 that the project site is an active agricultural site currently planted with Bermuda Grass crop. Section 5.11.1.4.1 also states that the ENGP power plant, adjacent production and injection well pads, associated pipelines, the IID switching station, gen-tie line, borrow pits, laydown areas, and construction camps are in, or traverse through, areas designated as Prime Farmland, Farmland of Statewide Importance, and Farmland of Local Importance. Disturbance at the laydown yards, construction camps, and borrow sites would be temporary, as these sites would be restored back to pre-construction conditions or conditions specified by the landowner after construction. However, permanent disturbance would occur at the power plant site and the IID switching station, with a permanent loss of 50.63 acres of Prime Farmland and 91.57 acres of Farmland of Statewide Importance, according to Table 5.11-2 in Section 5.11.1.1 of the application. Although some of this farmland conversion would be specific to the ENGP, part of this conversion would result from facilities shared by the three geothermal facilities, including the IID switching station.

DATA REQUESTS

5. Please describe current land uses at the sites that would be permanently converted from Prime Farmland and Farmland of Statewide Importance. If currently or recently used for agriculture, please discuss the crops currently and/or recently farmed.
6. Please describe current land uses at the sites where Prime Farmland, Farmland of Statewide Importance, and Farmland of Local Importance would be temporarily disturbed. If currently or recently used for agriculture, please discuss the crops currently and/or recently farmed.

BACKGROUND: AGRICULTURAL MITIGATION

The application states in Section 5.11.2.3.1 that there would be less-than-significant impacts to agriculture with the mitigation discussed in Section 5.11.4.2, which is part of the Imperial County Mitigation Monitoring and Reporting Program. The application states that the proposed project would comply with one of three mitigation options for approval by Imperial County. These options include procuring Agricultural Conservation Easements, paying an Agricultural In-Lieu Mitigation Fee, or paying an Agricultural Benefit Fee to Imperial County. CEC staff notes that Imperial County's full list of mitigation measures for renewable energy project agricultural impacts can be found in the Final Programmatic Environmental Impact Report for the Imperial County Renewable Energy and Transmission Element Update, at the link below:

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<https://www.icpds.com/assets/planning/cec-alternative-energy-update/reports-and-documents/21-feir-cec-renewable-energy-mmrp.pdf>

CEC staff also found that the Imperial County General Plan includes a program on page 65 of the Land Use Element which applies to the proposed project. It states that when a project is proposed on land designated as "Agricultural" by the General Plan and would result in the loss of more than 40 acres of Prime Farmland, the developer must provide at least the same amount of replacement land for mitigation. It also states that the replacement land must be placed under a Williamson Act contract, must have water availability, must be cultivated, and must be located outside the path of development.

Staff notes that although these mitigation measures used by Imperial County can help to partially reduce impacts to agriculture, recent CEQA case law has established that the only way to completely mitigate the loss of agricultural land to less-than-significant is to add new farmland in at least the same quantity as the farmland converted. Simply preserving farmland that already exists offsite, while helpful for partial mitigation, is inadequate to support a finding that the impacts of the loss to farmland proposed by this project are less than significant. (See *King & Gardiner Farms, LLC v. County of Kern*, (2020) 45 Cal.App.5th 814, 875). Adding new farmland may consist of taking farmland previously developed and converting it back to farmland uses. If new farmland in a 1:1 ratio is not added, this project would likely result in significant impacts to agriculture, which would require the CEC to adopt a statement of overriding considerations, if approved.

DATA REQUESTS

7. Please identify the specific Imperial County agricultural mitigation option(s) that the project applicant will pursue, if known.
8. Please describe how the project will comply with the Imperial County General Plan's mitigation program for the conversion of Prime Farmland.
9. Please demonstrate how, if possible, the project's mitigation measures for loss of agricultural land would create *new* farmland equal to or greater than the amount of farmland converted as part of the project. If it is not possible to create new farmland, please explain why.

WATER RESOURCES

Authors: James Ackerman and Adam White

BACKGROUND: GEOTHERMAL UIC PERMIT REQUIREMENTS

Per regulation (CCR Title 20, Div. 2, Ch. 5, Appendix B, [g] [14] [A] [iv]) all information required to apply for Underground Injection Control (UIC) permits are to be included in the application. Twelve Class V injection wells are proposed to inject geothermal fluids. The UIC program for these wells would be administered by the California Geologic

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Energy Management Division (CalGEM). The application appears to lack some items required to permit a UIC project.

DATA REQUEST

10. Please provide the following items to comply with CalGEM UIC regulation (CCR Title 14, Section 1961):

- Injection reservoir conditions.
- Method of injection.
- Map showing contours on the geologic marker at or near the intended injection zone.
- One or more cross-sections showing the wells involved.