

DOCKETED

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THE STATE OF CALIFORNIA

**State Energy Resources Conservation
and Development Commission**

In the Matter of:)
Application for Certification for the)
Morton Bay Geothermal Project)
)
)
_____)

Docket No. 23-AFC-01

**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CURE’S DATA REQUESTS SET 2**

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**STATE OF CALIFORNIA
Energy Resources Conservation
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**APPLICANT’S NOTICE PURSUANT TO 20 C.C.R. § 1716(f)
FOR CURE’S DATA REQUESTS SET 2**

Pursuant to Section 1716(f) of the California Energy Commission’s (“CEC”) regulations, Morton Bay Geothermal LLC (the “Applicant”) hereby provides this notice that additional time is required to respond to the California Unions for Reliable Energy’s (“CURE”) *CURE Data Requests Set 2 – Morton Bay Geothermal Project*, which was filed on November 27, 2023 (“*Data Requests Set 2*”).¹ Additionally, the Applicant hereby provides notice of objection to certain data requests set forth in *Data Request Sets 2*. Without waiving any of the objections herein, the Applicant reserves the right to provide responses, in whole or in part, to some or all of the data requests identified below.

I. NEED FOR ADDITIONAL TIME TO RESPOND

A brief period of additional time is required to respond to *Data Requests Set 2* because of the winter holidays and associated work schedules and travel of personnel. The Applicant will provide responses to *Data Requests Set 2* on or before January 19, 2023.

II. NOTICE OF OBJECTION

Section 1716(b) of the CEC’s regulations provides that any party may request from an applicant information that is both (1) reasonably available to the applicant and (2) relevant or reasonably necessary to make any decision on the application for certification.² Section 1716 does not require that an applicant “perform research or analysis on behalf of the requesting party.”³ In evaluating whether a data request involves “discoverable information” or “undiscoverable analysis or

¹ TN#: 253340.

² 20 C.C.R. § 1716(b).

³ See Committee Ruling on Intervenor Center for Biological Diversity’s Petition to Compel Data Requests, Docket No. 07-AFC-6 (Dec. 26, 2008).

research,” the CEC typically considers four factors: (1) the relevance of the information; (2) whether the information is available to the applicant, or from some other source, or whether the information has been provided in some other form; (3) whether the request is for data, analysis, or research; and (4) the burden on the applicant to provide the data.⁴ The Applicant objects to those data requests that request information that is not reasonably available to the Applicant, or which ask the Applicant to prepare analyses or conduct research on behalf of CURE. The Applicant also objects to those data requests that are neither relevant to the proceeding nor reasonably necessary to make any decision on the application for certification (“AFC”).

A. Objection to Requests for “All Documentation.”

The Applicant objects to the data requests below as not meeting the requirement of Section 1716(b). In particular, the Applicant objects to all data requests broadly phrased to request “all” documentation or “all” actions as overbroad, vague, and overly burdensome, including, but not limited to, Data Requests 122, 124, 125, 126, 131, 132, 133, 134, 154, 156, 158, 160, 162, 166, 169, 173, 175, 180, 184, 185, 191, 200, 226, 232, 233, 234, and 243. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to some or all of these data requests.

B. Data Request 122: Identify the chemical composition of the scale wastes.

The Applicant does not possess the information requested in Data Request 122 and will not have such information until the Project is operational. Therefore, the Applicant objects to Data Request 122 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 122 as vague, overbroad, and burdensome. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, regarding the expected chemical composition of the scale wastes.

C. Data Request 124: Describe the chemical composition data for the filter cake and provide all supporting documentation, including laboratory sheets.

The Applicant does not possess the information requested in Data Request 124 and will not have such information until the Project is operational. Therefore, the Applicant objects to Data Request 124 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 124 as vague, overbroad, and burdensome. Without waiving

⁴ *Id.*

this objection, the Applicant reserves the right to provide responses, in whole or in part, regarding the chemical composition of the filter cake.

D. Data Request 125: Explain the basis of the assumed 95% nonhazardous and 5% hazardous split for filter cake. Provide all engineering calculations, historic data, and chemical composition data and identify all assumptions.

The Applicant objects to Data Request 125 as vague, overbroad, and burdensome. Specifically, Data Request 125 requests “all engineering calculations, historic data, and chemical calculations,” in addition to requesting that the Applicant “identify all assumptions.” The Applicant also objects to Data Request 125 as potentially requesting information that is confidential, privileged, and that is neither relevant nor reasonably necessary to make any decision on the AFC. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

E. Data Request 126: Describe the procedures that will be used at the Desert Valley Company’s monofill to dispose of filter cake.

The Applicant objects to Data Request 126 as requesting information that is neither relevant to nor reasonably necessary to make any decision in this proceeding. Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

F. Data Request 131: Provide general cross-sections of the subsurface across the Salton Trough and MBGP area to illustrate groundwater resources.

The Applicant objects to Data Request 131 as requesting information that is not reasonably available to the Applicant. The Applicant also objects to Data Request 131 as potentially requesting information that is confidential, privileged, and that is neither relevant nor reasonably necessary to make any decision on the AFC.

G. Data Request 132: Provide a map showing groundwater TDS or chloride concentration contours in the perched zone, shallow groundwater aquifer, and the deeper main aquifer.

The Applicant objects to Data Request 132 as requesting information that is not reasonably available to the Applicant. Further, this request requires the Applicant to perform additional research on CURE’s behalf that is not relevant or reasonably necessary to make any decision on the AFC.

H. Data Request 133: Provide information regarding historic pipeline releases over the past ten (10) years at the ten (10) facilities owned and operated by BHE Renewables, operating as CalEnergy.

The Applicant objects to Data Request 133 as vague, overbroad, and burdensome. The Applicant also objects to Data Request 133 as requesting information that is neither relevant nor reasonably necessary to make any decision on the AFC.

I. Data Request 134: For each historic pipeline release, please identify the date of the release, the amount of fluid released, the cause of the release, the environmental consequences of the release, the steps taken to cleanup the release, and any changes in design that were implemented to prevent similar future releases.

The Applicant objects to Data Request 134 as vague, overbroad, and burdensome. The Applicant also objects to Data Request 134 as requesting information that is neither relevant nor reasonably necessary to make any decision on the AFC.

J. Data Request 154: Provide all documentation supporting the Applicant's analysis of direct, indirect, and cumulative impacts to the American avocet and its habitat.

The Applicant objects to Data Request 154 as vague, overbroad, and burdensome, particularly because it requests "all documentation." Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

K. Data Request 156: Provide all documentation supporting the Applicant's analysis of direct, indirect, and cumulative impacts to the Costa's hummingbird and its habitat.

The Applicant objects to Data Request 156 as vague, overbroad, and burdensome, particularly because it requests "all documentation." Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

L. Data Request 158: Provide all documentation supporting the Applicant's analysis of direct, indirect, and cumulative impacts to the northern harrier and its habitat.

The Applicant objects to Data Request 158 as vague, overbroad, and burdensome, particularly because it requests "all documentation." Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

M. Data Request 160: Provide all documentation supporting the Applicant's analysis of direct, indirect, and cumulative impacts to the sandhill crane and its habitat.

The Applicant objects to Data Request 160 as vague, overbroad, and burdensome, particularly because it requests "all documentation." Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

N. Data Request 162: Provide all documentation supporting the Applicant's analysis of direct, indirect, and cumulative impacts to the snowy plover and its habitat.

The Applicant objects to Data Request 162 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

O. Data Request 166: Provide all documentation supporting the Applicant’s analysis of direct, indirect, and cumulative impacts to the mountain plover and its habitat.

The Applicant objects to Data Request 166 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

P. Data Request 169: Provide all documentation (e.g., studies, reports, literature) for the AFC’s determination that there is no suitable nesting habitat for the white-faced ibis in the BSA.

The Applicant objects to Data Request 169 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

Q. Data Request 173: Provide all documentation supporting the Applicant’s analysis of MBGP’s direct and indirect impacts to the SBSSNWR.

The Applicant objects to Data Request 173 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

R. Data Request 175: Provide all documentation supporting the MBGP’s direct and indirect impacts to the Hazard Tract of the Imperial Wildlife Area.

The Applicant objects to Data Request 175 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

S. Data Request 180: Provide all documentation supporting the Applicant’s analysis of the Project’s direct and indirect impacts on canals and drains during construction and operations.

The Applicant objects to Data Request 180 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

T. Data Request 184: State whether the Applicant analyzed how reduced agricultural return flows associated with the Project would indirectly impact: (a) habitat for the desert pupfish, and (b) vegetation communities that are dependent on the agricultural return flows. If so, please provide all supporting documentation.

The Applicant objects to Data Request 184 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

U. Data Request 185: Describe whether the Applicant quantified flow reductions associated with the MBGP in relation to baseline conditions and provide all supporting documentation.

The Applicant objects to Data Request 185 vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

V. Data Request 191: Provide all documentation (e.g., citations, webpage links, studies, reports) supporting the AFC’s statement that agricultural land is not considered regionally important as habitat for wildlife in the Imperial Valley.

The Applicant objects to Data Request 191 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

W. Data Request 200: Provide all documentation supporting the Applicant’s analysis regarding how application of rodenticides and herbicides would impact birds and other biological resources in the BSA.

The Applicant objects to Data Request 200 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

X. Data Request 226: Provide all documentation supporting the Applicant’s analysis of the impacts that drilling mud and mud pits may have on wildlife.

The Applicant objects to Data Request 226 as vague, overbroad, and burdensome, particularly because it requests “all documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

Y. Data Request 232: Provide all supporting documentation for the 80 dBA noise threshold other than the Dr. Dooling’s testimony in the Huntington Beach Energy Project.

The Applicant objects to Data Request 232 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

Z. Data Request 233: Explain whether the Applicant analyzed the MBGP’s noise impacts during construction and operations on burrowing owls based on the

audiogram of the species or the composite average for owls if the specific audiogram of burrowing owls is unknown. If so, provide all supporting documentation.

The Applicant objects to Data Request 233 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

AA. Data Request 234: Explain whether the Applicant analyzed the MBGP’s masking impacts on Yuma Ridgway’s rail and other special-status wildlife. If so, provide all supporting documentation.

The Applicant objects to Data Request 234 as vague, overbroad, and burdensome, particularly because it requests “all supporting documentation.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

BB. Data Request 243: Describe all actions that will be taken to avoid or minimize impacts to occupied animal burrows located in disturbed areas during MBGP construction.

The Applicant objects to Data Request 243 as vague, overbroad, and burdensome, particularly because it requests that the Applicant describe “all actions.” Without waiving this objection, the Applicant reserves the right to provide responses, in whole or in part, to this data request.

Dated: December 18, 2023

Respectfully submitted,

ELLISON SCHNEIDER HARRIS & DONLAN L.L.P.

By



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