

DOCKETED

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M e m o r a n d u m

To: Commissioner Noemi Gallardo, Presiding Member
Commissioner Andrew McAllister, Associate Member

Date: December 21, 2023

From: California Energy Commission
715 P Street
Sacramento, CA 95814-5512

Eric Veerkamp
Project Manager
(916) 661-8458

Subject: STATUS REPORT #3 FOR MORTON BAY GEOTHERMAL PROJECT (23-AFC-01)

The Presiding Member’s Scheduling Order for the Morton Bay Geothermal Project (MBGP) Proceeding (Scheduling Order) filed on September 15, 2023, orders the parties to file a status report on “October 31st, and by the last business day of every month thereafter.” Staff is ordered to “include summaries of the progress of discovery in each monthly report, including descriptions of significant communications with other federal, state, local agencies, and tribal governments, and identify any factors that may impact the schedule of the proceeding. Status reports shall also include a description of the outcome of any public workshop or other meeting held during that month.”

Summary of Progress of Discovery

Status of Data Requests:

On November 28, 2023, CURE filed Data Request Set 2 (DR Set 2) (TN 253340).

On November 30, 2023, the applicant filed Responses to CURE’s DR Set 1 (TN 253374). Staff continues to track CURE’s data requests and applicant’s responses for any information with a potential bearing on staff’s discovery process.

On December 4, 2023, the applicant made four separate Biological Resources filings (TNs 253492, 253493, 253494, and 253495) supporting staff’s data discovery related to the presence of burrowing owl.

On December 14, 2023, the applicant filed Data Response Set 2 (Revised Responses to Data requests 5 and 6) (TN 253618) related to Land Use.

Staff’s evaluation of information contained in the revised General Arrangement Refinement (TN 253188), and the draft Water Supply Assessment (WSA) (TN 253193) continues. Staff anticipates the technical areas of Air Quality, Alternatives, Biological Resources, Solid Waste, and Water Resources will be the subject of a pending DR Set 4.

Significant Communications with Other Government, Tribal Government, or Interested Entities

None.

Factors That May Impact the Schedule

The Preliminary Determination of Compliance, originally estimated to be submitted on November 22, 2023, by the Imperial County Air Pollution Control District (ICAPCD), remains outstanding as of the date of this status report. Staff has been unable to obtain updated information or a new estimated date for submittal from the ICAPCD.

Potential impacts to the California Independent System Operator-controlled grid will be determined through the previously requested Affected System Study. Impacts identified through the study have the potential to trigger additional review under the California Environmental Quality Act (CEQA) and therefore affect the project schedule.

As reported in Status Report #1 and 2, the applicant indicated that select areas were resurveyed for the presence of cultural and tribal cultural resources on September 12–14, 2023, and that it expects to provide the requested information within 30 days of the completion of any additional surveys (DRs 33 and 34). The lack of firm due dates for this survey data could impact the schedule of the proceeding.

The Scheduling Order also directs staff to provide a 30-day comment period for the review of the preliminary environmental assessment (PSA) pursuant to California Code of Regulations, title 20, section 1742(c). Staff notes that, under CEQA, draft environmental impact reports (EIRs) submitted to the State Clearinghouse for review by state agencies require a 45-day comment period. (Cal. Code Regs., title 14, § 15105(a).) This regulation is consistent with Public Resources Code, section 21091(a) (amended, Ch.97, Statutes 2021), which requires a 45-day comment period for such EIRs. Since state agencies such as the California Geologic Energy Management Division (CalGEM) have an interest in reviewing the PSA, which is an EIR substitute under the CEC's Certified Regulatory Program, the committee may wish to further consider ordering a 45-day comment period for the MBGP PSA. Staff notes that Public Resources section 21091 is outside of Chapters 3 and 4 of CEQA, which are the only portions of CEQA from which the CEC's Certified Regulatory Program is exempt.

At this time, staff does not anticipate the need for committee intervention regarding discovery, but delays, as noted above, are possible.