

DOCKETED

Docket Number:	23-AFC-03
Project Title:	Black Rock Geothermal Project (BRGP)
TN #:	250014
Document Title:	CEC Response Letter to Black Rock's April 18 & 26 Application for Confidentiality
Description:	N/A
Filer:	Ngoc Tran
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	5/5/2023 9:01:37 AM
Docketed Date:	5/5/2023



May 5, 2023

Via Email

Samantha Neumyer
Ellison Schneider Harris & Donlan, LLP
2600 Capitol Ave, Suite 400
Sacramento, California
sgn@eslawfirm.com

**Application for Confidential Designation
Black Rock Geothermal Project
Docket No. 23-AFC-03**

Dear Samantha Neumyer:

The California Energy Commission (CEC) has received seven Black Rock Geothermal Project (applicant) Applications for Confidentiality, dated April 18 and 26, 2023 (TNs 249799, 2497800, 249801, 249802, 249803, 249804, 249880) covering the following records:

Filed April 18, 2023 (TNs 249799, 249802, 249800, 249803, 249801, 249804)

- 1) Appendix 1A, Property Owners List
- 2) Appendix 2C, Heat and Mass Balance Diagram
- 3) Appendix 3A, BHE Cluster System Impact Study
- 4) Appendix 5.2B, California Natural Diversity Database Figures/Special-Status Species
- 5) Appendix 5.8A, Paleontological Locality Records
- 6) Cultural Resources Appendices

Filed April 26, 2023 (TN 249880)

- 7) Biological Resources GIS files

A properly filed application for confidentiality shall be granted under 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 authorize the Commission to keep the record confidential."

1) Appendix 1A, Property Owners List

The property owners list consists of the assessor parcel numbers, and names and addresses of the listed owners. Some properties are owned by public agencies, trusts or corporations and do not include an individual's name. The applicant acknowledges in its application that while property owner information may be publicly available, the

applicant is concerned with the disclosure of such information in a consolidated, easy-to-obtain fashion.

Therefore, the applicant is submitting the information pursuant to an application for confidential designation out of an abundance of caution to protect property owner information for the parcels surrounding the project site.

Imperial County contracts with ParcelQuest, a private company, to host a webpage with information about properties including the assessor parcel number, property tax information, a satellite image of the site, the address of the property owner and for a fee, additional information such as the name of the property owner.

Under California Civil Code section 1798.24 an agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains.

California Civil Code section 1798.3 defines the term “personal information” to mean any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual’s name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.

Executive Director’s Determination

The applicant has made a reasonable claim that individual names associated with the addresses should be maintained as confidential. As such, and consistent with the information that is accessible through the Imperial County Assessor’s Office, the applicant’s request for confidential designation for the individual names is granted. All other information contained in the record including the assessor parcel numbers, identification of company or public agency property owners, and addresses, which are publicly posted through the Imperial County Assessor’s Office, will remain public.

2) Appendix 2C, Heat and Mass Balance Diagram.

The application states the Public Records Act exempts “trade secrets” from public disclosure, including “any formula, plan,...production data, or compilation of information..., which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service...and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” (Gov. Code, § 7924.510(f).)

The application also states that Appendix 2C is a non-public document that includes commercially sensitive project design information for the facility, including the necessary geothermal resource flow requirements for the project to achieve its proposed net generating capacity. Further, the application states that this detailed engineering information has independent economic value from not being generally known to the public or to the applicant’s competitors. Competitors can obtain economic value from disclosure of specific process flow information which is directly related to costs and generation from the facility.

Finally, the application states the flow information provides information on the resource capabilities of the underlying geothermal resource. Disclosure may cause a loss of competitive advantage to the applicant as competitors could utilize the information in a manner that affect bids in competitive solicitations or otherwise use the specific details for their economic benefit to the detriment of the applicant.

The applicant notes that a public version of heat mass data was filed into the proceeding's docket.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) by stating:

- 1) *The specific nature of the advantage* – Commercially sensitive project design information for the facility, including the necessary geothermal resource flow requirements for the project to achieve its proposed net generating capacity.
- 2) *How the advantage would be lost* – Disclosure may cause a loss of competitive advantage to the applicant as competitors could utilize the information in a manner that affect bids in competitive solicitations or otherwise use the specific details for their economic benefit to the detriment of the applicant.
- 3) *The value of the information to the applicant* – Engineering information has independent economic value from not being generally known to the public or to the applicant's competitors who can obtain economic value from its disclosure or use as the specific process flow information to not only determine generation from the facility, but costs as well.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The Information is accessible only to employees or consultants providing essential services to the applicant and has been disclosed

to certain entities such as the CEC that have responsibilities relating to the facility.

Executive Director's Determination

The applicant has made a reasonable claim that the heat and mass balance data can be maintained as confidential for the life of the facility. As such, the applicant's request for confidential designation of heat and mass balance data is granted.

3) Appendix 3A, BHE Cluster System Impact Study

The BHE Cluster System Impact Study is generated by a public agency, the Imperial Irrigation District, and is marked confidential. California Code of Regulations, title 20, section 2505(b) provides in part that if a public agency designates a record as confidential, the CEC will grant confidentiality without the need for an application.

Executive Director's Determination

For the reasons stated, the BHE Cluster System Impact Study will be held as confidential for the life of the project.

4) Appendix 5.2B, California Natural Diversity Database Figures/Special-Status Species

The California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) contains detailed maps reflecting the location of biological resources based on surveys and sightings. The CNDDDB contains language within the database that restricts public disclosure of maps of certain resolution and CDFW has met with CEC staff to confirm the need to protect these maps. Consistent with this direction from CDFW, CEC staff directed the applicant to submit maps of certain resolution under confidential cover. The application notes the confidential information includes details regarding special status and common species occurrences and locations in the areas surveyed around the project site and obtained from the CNDDDB, in addition to information obtained from surveys conducted on behalf of the applicant.

The application notes that California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure. The public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources. The application also notes that a public version of the biological resource's maps was filed into the proceeding's docket.

Executive Director's Determination

The applicant has made a reasonable claim that the CNDDDB biological maps showing location information should be maintained as confidential indefinitely which is consistent with the directions from CDFW. As such, the applicant's request for confidential designation of the detailed biological maps is granted.

5) Appendix 5.8A, Paleontological Locality Records

The applicant states California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure. The public interest in nondisclosure outweighs that of disclosure, as disclosure may reveal the location of sensitive paleontological resources to entities conducting unauthorized collection or disturbance of such resources. The applicant notes that a public version of the paleontological records was filed into the proceeding's docket.

In addition to the public interest basis set forth in the application, the Paleontological Resources Preservation Act of 2009 provides for the protection of paleontological resources and states that information concerning the nature and specific location of a paleontological resource shall be exempt from disclosure under 5 U.S.C. section 552 and any other law. (16 U.S.C. § 470aaa-8.)

Executive Director's Determination

The applicant has made a reasonable claim that the paleontological records showing location information should be maintained as confidential indefinitely. As such, the applicant's request for confidential designation for the paleontological records is granted.

6) Cultural Resources Appendices.

The applicant states that the cultural resources documents which include maps, Department of Parks and Recreation cultural resource forms, and studies, documents, and materials obtained from the California Historical Resources Information System should be kept confidential indefinitely to protect potential cultural resources and sites. According to the application, the public interest served in nondisclosure and protection of cultural resources, outweighs that of disclosure. Disclosing the information may enable location of sensitive cultural resources by thieves, vandals, or persons conducting unauthorized collection of materials. The application notes that a public version of the cultural report was filed in the proceeding's docket.

The California Public Records Act provides for the nondisclosure of archaeological site information and records of Native American places, features, and objects and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency. (Gov. Code, §§ 7927.000, 7927.005.) The California Public Records Act also recognizes the confidentiality principles of federal law. (Gov. Code § 7927.705.)

The Archaeological Resources Protection Act establishes a clear, national legal policy that all types of archaeological and cultural resource site locations on public lands must be protected to preserve them. (54 U.S.C. § 306131.)

Executive Director's Determination

The applicant has made a reasonable claim that the location information contained in the various reports, studies, maps and Department of Parks and Recreation forms can

be maintained as confidential indefinitely. As such, the applicant's request for confidential designation is granted.

7) Biological Resources GIS Files

The California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB) contains detailed GIS shape files reflecting the location of biological resources based on surveys and sightings. The CNDDDB contains language within the database that restricts public disclosure of maps of certain resolution and CDFW has met with CEC staff to confirm the need to protect these maps. Consistent with this direction from CDFW, CEC staff directed the applicant to submit maps of certain resolution under confidential cover.

The application notes the confidential information includes details regarding special status and common species occurrences and locations in the areas surveyed around the project site and obtained from the CNDDDB, in addition to information obtained from surveys conducted on behalf of the applicant. The application notes that California Government Code section 7922.000 provides that an agency may withhold information from disclosure where the public interest served by nondisclosure clearly outweighs the public interest of disclosure. The public interest in nondisclosure outweighs that of disclosure, as disclosure may enable the location of sensitive biological resources sites by entities conducting unauthorized collection or disturbance of such resources.

Executive Director's Determination

The applicant has made a reasonable claim that the CNDDDB biological maps and GIS shape files showing location information should be maintained as confidential indefinitely which is consistent with the directions from CDFW. As such, the applicant's request for confidential designation of the detailed biological maps is granted.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,



Drew Bohan
Executive Director