

COMPLETED



October 7, 2009

VIA HAND DELIVERY

Melissa Jones, Executive Director  
California Energy Commission  
1516 Ninth Street, MS-39  
Sacramento, CA 95814

Re: **Bottle Rock Power Plant (79-AFC-4C)**  
**Application for Designation of Confidential Records (Cultural Resources)**

Dear Ms. Jones:

Bottle Rock Power, LLC ("BRP") submits this Application for Designation of Confidential Records ("Application") with respect to the attached information pertaining to cultural resources (Attachment A).<sup>1</sup> BRP is submitting this Application as part of its Petition to Amend ("Petition") the Bottle Rock Power Plant ("BRPP") (79-AFC-4C) Final Decision issued by the California Energy Commission ("Commission").

Through this letter, BRP requests confidential designation of the submitted records under California Code of Regulations, title 20, section 2505. BRP understands that, pursuant to California Code of Regulations, title 20, sections 2505(a)(2) and (a)(3)(B), the attached information will not be publicly disclosed while this Application, or any appeal of the Commission's determination regarding this Application, remains pending. BRP also understands that the Commission has executed, or intends to execute, a memorandum of understanding incorporating similar terms, with the cultural resources information centers associated with BRPP.

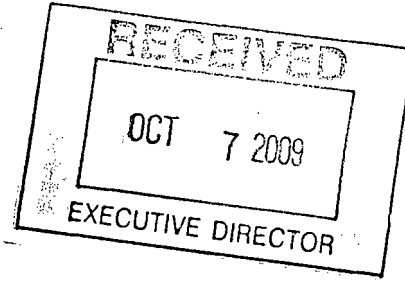
BRP provides the following in support of its Application:

(a) *Description/Separation of the Confidential Records.*

The information separately submitted with this Application, designated as Attachment A, marked "Confidential" (hereinafter "Submitted Information"), is the subject of this Application.

The Submitted Information contains information regarding cultural resources in the BRPP area, which may be impacted by the proposed project changes identified in the Petition. This cultural

<sup>1</sup> Attachment A is submitted herewith under seal.



JOHN A. MCKINSEY  
Direct (916) 319-4746  
jamckinsey@stoel.com

980 Ninth Street, Suite 1900  
Sacramento, California 95814  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

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resource information includes confidential maps of cultural resource sites and confidential results of field surveys, a literature search, and archival research on potential cultural resources.

*(b) Specific Indication of Those Parts of the Record to be Kept Confidential.*

BRP requests the Commission designate the records as confidential in their entirety. A summary of the cultural resources in the BRPP area and an analysis of potential impacts to those resources are presented in Section 4.5 of the Petition.

*(c) The Length of Time the Record Should be Kept Confidential.*

The Submitted Information should be kept confidential permanently. The information assists in identifying potential locations of cultural resources in the BRPP area. Accordingly, disclosure of such information could heighten the risk of unauthorized excavation of such resources, and/or unauthorized removal of the same from locations of potential resources referenced in the report. This concern would still exist with respect to the general vicinity around BRPP even after the conclusion of this Petition proceeding and construction of any approved changes to BRPP pursuant to a Commission decision on the Petition.

*(d) Provisions of Law Allowing the Commission to Keep the Documentation Confidential: Disclosure of the Information is Against Public Interest.*

The Submitted Information contains information that assists with identifying any cultural resources that might be present in and around the area of the BRPP site. Evidence Code section 1040 sets forth a privilege entitling public entities to refuse to disclose official information acquired in confidence by a public employee in the course of his or her duties, when disclosure of the information is against public interest because there is a necessity to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice. Evidence Code section 1040 applies here to protect this information from disclosure in order to guard against potential unauthorized excavation and/or removal of cultural or paleontological resources. In addition, the California Public Records Act protects the confidentiality of any records exempted from disclosure under provisions of the Evidence Code relating to privilege, such as Evidence Code section 1040(b)(2). (Gov. Code § 6254(k).)

*(e) Aggregation and Masking of the Confidential Information.*

Masking is not necessary because, as discussed above, the cultural resources potential, the review undertaken, and the mitigation measures identified are contained within Section 4.5 of the Petition.



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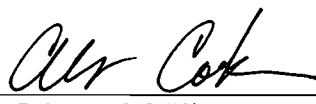
(f) *The Submitted Information is Presently Confidential.*

BRP has not disclosed the Submitted Information to anyone other than its employees, affiliate employees, consultants, and attorneys assisting BRP with its efforts related to the Petition filed separately from this Application. Furthermore, BRP has not released any of the Submitted Information to any member of the general public and has prohibited its employees, affiliate employees, consultants, and attorneys from releasing to the public any portion of the Submitted Information at any time.

I certify under penalty of perjury that the information contained in this Application is true, correct, and complete to the best of my knowledge. As an attorney for BRP, I am authorized on its behalf to make the above certification and to submit this Application.

Dated: October 7, 2009

Stoel Rives LLP

By:  for John A.  
John A. McKinsey McKinsey