



500 Capitol Mall, Suite 1600  
Sacramento, California 95834  
main 916.447.0700  
fax 916.447.4781  
www.stoel.com

June 27, 2012

KIMBERLY J. HELLWIG  
Direct (916) 319-4742  
kjhellwig@stoel.com

**VIA EMAIL**

Hearing Officer Raoul Renaud  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Mr. Eric Solorio, Siting Project Manager  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814



**Re: Pio Pico Energy Center Project (11-AFC-01)  
Preliminary Jurisdiction Determination (USACOE File No. SPL-2011-00781-SAS)**

Dear Hearing Officer Renaud and Mr. Solorio:

On behalf of Applicant Pio Pico Energy Center, LLC, please find enclosed for docketing the United States Army Corps of Engineers' Preliminary Jurisdictional Determination, dated June 25, 2012, for the Pio Pico Energy Center project site.

Respectfully submitted,

  
Kimberly J. Hellwig  
Paralegal

KJH:jmw  
Enclosures  
cc: Proof of Service List



## DEPARTMENT OF THE ARMY

Los Angeles District, Corps of Engineers  
Regulatory Division, Carlsbad Field Office  
6010 Hidden Valley Road, Suite 105  
Carlsbad, California 92011

June 25, 2012

REPLY TO  
ATTENTION OF

Office of the Chief  
Regulatory Division

David Jenkins  
APEX Power Group, LLC  
1298 E. Jessup Way  
Mooresville, Indiana 46158

SUBJECT: Preliminary Jurisdictional Determination regarding presence/absence of geographic jurisdiction

Dear Mr. Jenkins:

Reference is made to your request (File No. SPL-2011-00781-SAS) dated March 23, 2012 for a preliminary Department of the Army (DA) jurisdictional determination (JD) from the United States (U.S.) Army Corps of Engineers (Corps) for the Pio Pico Energy Center project site located within City of Chula Vista, San Diego County, California.

As you may know, the Corps' evaluation process for determining whether or not a DA permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the U.S. (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act (CWA). As part of the evaluation process, pertaining to the first test only, we have made the jurisdictional determination below.

Based on available information, it appears waters of the U.S. may be present on the Pio Pico Energy Center project site in the approximate locations noted on the enclosed "Preliminary Jurisdictional Determination Form" and associated table and figure. The basis for the preliminary JD can also be found on the enclosed "Preliminary Jurisdictional Determination Form." Please note preliminary JDs are non-binding "... written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed." (33 C.F.R. 331.2). The permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and

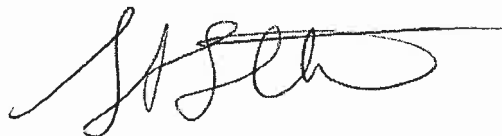
obtain an approved jurisdictional determination for this site. The option to obtain an approved JD in this instance and at this time has been declined. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

Please be reminded that preliminary JDs may not be appealed through the Corps' administrative appeal process set out at 33 CFR Part 331. Preliminary JDs are fully explained in the Regulatory Guidance Letter 08-02, dated June 26, 2008. Further, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 CFR Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 CFR 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This determination has been conducted to identify the extent of the Corps' CWA jurisdiction on the Pio Pico Energy Center project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

If you have any questions, please contact me at 760-602-4834 or via e-mail at [Shanti.A.Santulli@usace.army.mil](mailto:Shanti.A.Santulli@usace.army.mil). Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Shanti Abichandani Santulli  
Project Manager, South Coast Branch

Enclosure

**ATTACHMENT**

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 08/15/2011**

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

David Jenkins  
APEX Power Group  
1298 E. Jessup Way  
317-431-1004

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** San Diego

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:** The  
The project is located within Sections 25, 30, 31, and 36; Township 18 South;  
Range 1 East of the Otay Mesa USGS 7.5-Minute Topographic Quadrangle Map.

**(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: CA County/parish/borough: San Diego City: Chula Vista  
Center coordinates of site (lat/long in degree decimal format):  
Lat. 32.572287° N, Long. -116.917506W °

Name of nearest waterbody: unnamed ephemeral washes tributary to the  
Otay River, Tijuana River, and Pacific Ocean

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: width (ft) and/or **4.15** acres.

Cowardin Class: Riverine

Stream Flow: Ephemeral

Wetlands: 0.1 acres.

Cowardin Class: Palustrine

Name of any water bodies on the site that have been identified as Section 10  
waters:

Tidal: none

Non-Tidal: none

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date:

Field Determination. Date(s): October 21, 2011

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.
  
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply**  
- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: URS Preliminary Jurisdictional Determination, Figures 1-6.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study:

U.S. Geological Survey Hydrologic Atlas:

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Otay Mesa topographic quadrangle.

USDA Natural Resources Conservation Service Soil Survey. Citation: U.S. Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS). 1973. Soil Survey of the San Diego Area, California.

U.S. Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS). 2007. Soil Survey Geographic (SSURGO) Database. California 638 Soil survey.

National wetlands inventory map(s). Cite name: U.S. Department of the Interior, U.S. Fish and Wildlife Service (USFWS). 2011. National Wetlands Inventory- Wetlands and Deepwater Habitats of the Conterminous United States. Vector digital data: CONUS\_wet\_poly.

State/Local wetland inventory map(s):

FEMA/FIRM maps: Federal Emergency Management Agency (FEMA). 2000. Q3 Flood data 100-Year flood zone map.

100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)


Photographs:  Aerial (Name & Date): URS Preliminary Jurisdictional Determination, Figure 3 (Digital Globe. 2009. Digital Aerial Photography Software. 2009).

or  Other (Name & Date): URS Preliminary Jurisdictional Determination, Attachment B Photograph Log.

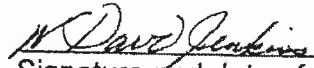
Previous determination(s). File no. and date of response letter:

Other information (please specify): See feature data table below.

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 6/25/12

Signature and date of  
Regulatory Project Manager  
(REQUIRED)

 3/23/2012

Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

Feature name	Latitude	Longitude	Cowardin Class	Section 404 Non-wetland (acres)	Section 404 Wetlands (acres)
Feature 1	32.559192	-116.919460	Riverine, ephemeral	0.58	0.00
Feature 2	32.563537	-116.919409	Riverine, ephemeral	0.35	0.00
Feature 3	32.567087	-116.916154	Riverine, ephemeral	0.40	0.00
Feature 4a	32.570482	-116.918971	Riverine, intermittent	0.04	0.00
Feature 4b	32.570799	-116.918871	Paulustrine, emergent	0.00	0.01
Feature 5a	32.570725	-116.914071	Riverine, ephemeral	0.98	0.00
Feature 5b	32.571848	-116.913113	Riparian	0.00	0.09
Feature 6	32.574926	-116.918784	Riverine, ephemeral	1.35	0.00
Feature 7	32.560441	-116.927375	Riverine, ephemeral	0.45	0.00
<b>Total</b>				<b>4.15</b>	<b>0.10</b>





**FIGURE 3**  
**CWA AND CDFG**  
**JURISDICTIONAL DETERMINATION**

PRO POCO  
 ENERGY CENTER

PROJECT NO: 291603  
 DATE: DECEMBER 2005

**URS**

**Legend**

Study Area  
 Project Site  
 Laydown Area  
 230 KV Transmission Line (Route A and Route B)  
 Natural Gas Line  
 Modified Route A Natural Gas Line  
 Previous Route A Natural Gas Line  
 Route A Natural Gas Line  
 66kV and other voltages  
 CDFG 1600 (401)  
 CDFG 1600 (404 and 401)  
 CDFG 1600 (404 and 401) Non-Regulated Jurisdictional Limits  
 CDFG 1600 (404 and 401) Regulated Jurisdictional Limits  
 CDFG 1600 (404 and 401) Wetland Jurisdictional Limits

Source: DigitalGlobe, 2006.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION  
FOR THE *PIO PICO ENERGY CENTER PROJECT*

Docket No. 11-AFC-01  
**PROOF OF SERVICE**  
(Revised 6/25/2012)

**PIO PICO ENERGY CENTER, LLC**  
Applicant's Submittal dated June 27, 2012 of U.S. Army Corps of Engineers'  
Preliminary Jurisdictional Determination dated June 25, 2012

**APPLICANT**

Gary Chandler, President  
Pio Pico Energy Center  
P.O. Box 95592  
South Jordan, UT 84095  
[grchandler@apexpowergroup.com](mailto:grchandler@apexpowergroup.com)

David Jenkins, Project Manager  
Pio Pico Energy Center, LLC  
1293 E. Jessup Way  
Mooresville, IN 46158  
[djenkins@apexpowergroup.com](mailto:djenkins@apexpowergroup.com)

**APPLICANT'S CONSULTANTS**

Maggie Fitzgerald  
Sierra Research  
1801 J Street  
Sacramento, CA 95811  
[MFitzgerald@sierraresearch.com](mailto:MFitzgerald@sierraresearch.com)

**COUNSEL FOR APPLICANT**

John A. McKinsey  
Melissa A. Foster  
Stoel Rives, LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
[jamckinsey@stoel.com](mailto:jamckinsey@stoel.com)  
[mafoster@stoel.com](mailto:mafoster@stoel.com)

**INTERESTED AGENCIES**

California ISO  
*e-mail service preferred*  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENOR**

April Rose Sommer  
Attorney for Rob Simpson  
P.O. Box 6937  
Moraga, CA 94570  
*e-mail service preferred*  
[aprilsummerlaw@yahoo.com](mailto:aprilsummerlaw@yahoo.com)

**ENERGY COMMISSION –  
DECISIONMAKERS**

CARLA PETERMAN  
Commissioner and Presiding  
Member  
*\*carla.peterman@energy.ca.gov*

KAREN DOUGLAS  
Commissioner and Associate  
Member  
*e-mail service preferred*  
*\*karen.douglas@energy.ca.gov*

Raoul Renaud  
Hearing Adviser  
*\*raoul.renaud@energy.ca.gov*

Jim Bartridge  
Presiding Member's Advisor  
*\*jim.bartridge@energy.ca.gov*

Galen Lemei  
Associate Member's Advisor  
*e-mail service preferred*  
*\*galen.lemei@energy.ca.gov*

**ENERGY COMMISSION STAFF**

Eric Solorio  
Siting Project Manager  
*\*eric.solorio@energy.ca.gov*

Kevin W. Bell  
Staff Counsel  
*\*kevin.w.bell@energy.ca.gov*

Eileen Allen  
Commissioners' Technical  
Advisor for Facility Siting  
*e-mail service preferred*  
*\*eileen.allen@energy.ca.gov*

**ENERGY COMMISSION – PUBLIC  
ADVISER**

Jennifer Jennings  
Public Adviser  
*e-mail service preferred*  
*\*publicadviser@energy.ca.gov*

DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on June 27, 2012:

I deposited copies of the aforementioned document and, if applicable, a disc containing the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

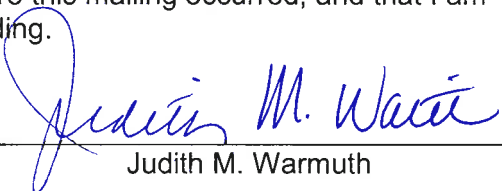
OR

I transmitted the document(s) herein via electronic mail only pursuant to California Energy Commission Standing Order re Proceedings and Confidentiality Applications dated November 30, 2011. All electronic copies were sent to all those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

On the date written above, I placed a copy of the attached document(s) in a sealed envelope, with delivery fees paid or provided for, and arranged for it/them to be delivered by messenger that same day to the office of the addressee, as identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

  
\_\_\_\_\_  
Judith M. Warmuth