



509 Capitol Mall, Suite 1500
Sacramento, California 95814
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)
Determination Regarding USACOE Permit (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' (USACOE) Determination, dated June 26, 2012, regarding Applicant's request for clarification on whether an USACOE permit is required 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 26, 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: Determination regarding requirement for Department of the Army Permit

Dear Mr. Jenkins:

I am responding to your request (File No. SPL-2011-00781-SAS) dated August 15, 2011 for clarification on whether a Department of the Army (DA) Permit from the United States (U.S.) Army Corps of Engineers (Corps) is required for the Pio Pico Energy Center project located within City of Chula Vista, San Diego County, California.

The Corps' evaluation process for determining whether or not a DA permit is needed involves two tests. The first test determines whether or not the proposed project is located within or contains 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 includes an activity potentially regulated under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act (CWA). If both tests are met, and the activities in question are located within the Corps' geographic jurisdiction, then a permit would be required. As part of our evaluation process, we have made the determination below.

Geographic jurisdiction:

Based on the previously-mailed preliminary jurisdictional determination dated June 25, 2012, we have determined the Pio Pico Energy Center project site contains potential waters of the U.S. pursuant to 33 CFR Part 325.9.

Activity:

Based on the information you have provided, we have determined the proposed work, were it to occur in potential waters of the U.S. (see "*Geographic jurisdiction*"), would involve a discharge of dredged or fill material and therefore would be regulated under Section 404 of the CWA.

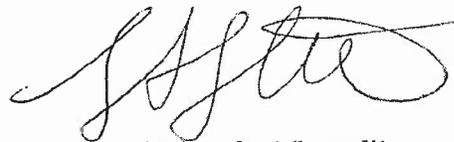
Requirement for a Department of the Army Permit:

Based on the discussion above, we have determined your proposed project is not subject to our jurisdiction under Section 404 of the CWA and a DA Permit would not be required from our office if the activity is performed as shown in the enclosed figure (Enclosure 1). Based on the proposed project's current design, onsite potential waters of the U.S. determined in the previously-mailed preliminary jurisdictional determination dated June 25, 2012 will not be permanently or temporarily impacted with project implementation. Notwithstanding our determination above, your proposed project may be regulated under other federal, state, and local laws.

If you have any questions, please contact me at 760-602-4834 or via e-mail at 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

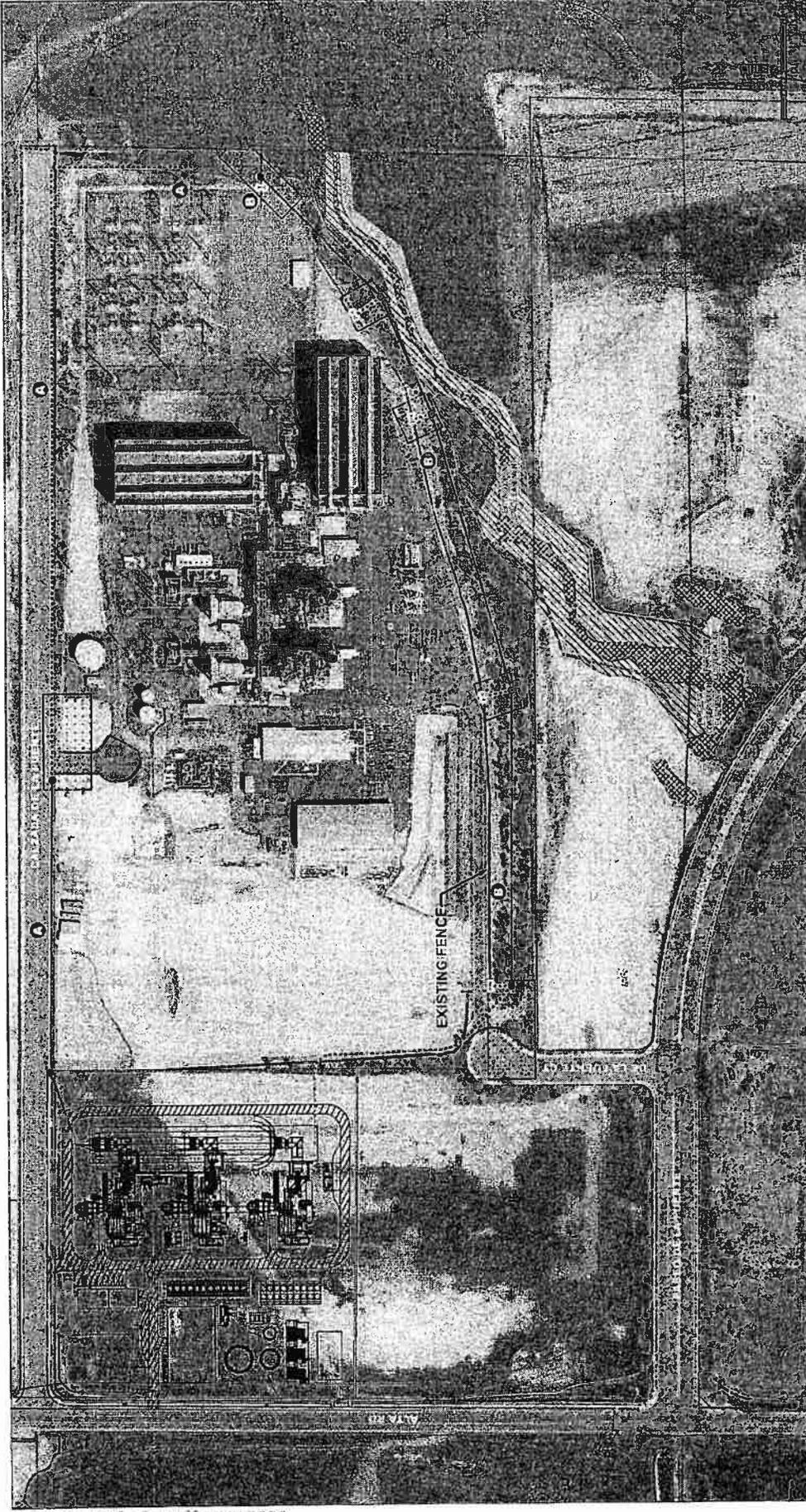


EXHIBIT A
TRANSMISSION ROUTES

PROJECT NO. 2574827
DATE: NOVEMBER 2011

Legend

- 230kV Transmission Line Pole
- 230kV Overhead Conductor
- 230kV Underground Conductor
- Parcels
- Working Area
- CDFG Jurisdiction
- ▨ CWA and CDFG Jurisdiction
- ▧ Easement in favor of the County of San Diego for Open Space
- ▩ Easement in favor of the County of San Diego for Conservation Parcel A
- Easement in favor of the County of San Diego for Conservation Parcel B
- Gate Location
- Access Path (Gravel)
- ▨ Existing Road
- ▩ Existing Gravel

PICO PICO ENERGY CENTER





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'
Determination dated June 26, 2012 re Applicant's Request for Clarification

APPLICANT

Gary Chandler, President
Pio Pico Energy Center
P.O. Box 95592
South Jordan, UT 84095
grchandler@apexpowergroup.com

David Jenkins, Project Manager
Pio Pico Energy Center, LLC
1293 E. Jessup Way
Mooresville, IN 46158
djenkins@apexpowergroup.com

APPLICANT'S CONSULTANTS

Maggie Fitzgerald
Sierra Research
1801 J Street
Sacramento, CA 95811
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
mafoster@stoel.com

INTERESTED AGENCIES

California ISO
e-mail service preferred
e-recipient@caiso.com

INTERVENOR

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
e-mail service preferred
aprilsommerlaw@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.

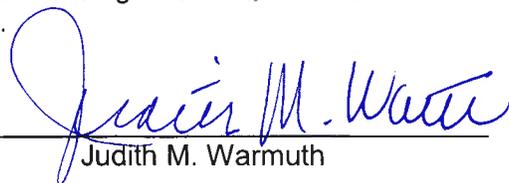
OR

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