

SAN DIEGO COUNTY MAJOR USE PERMIT APPLICATION

BACKGROUND

Energia Sierra Juarez U.S. Transmission, LLC (ESJ U.S.), on behalf of Jacumba Community Service District (JCSD), has prepared this San Diego County Major Use Water Extraction Permit (MUP) Application to allow for the acquisition of water from the existing JCSD warm water well and its use at the ESJ U.S. project site to control fugitive dust during an approximately 6 month construction schedule. It is estimated that approximately 800,000 gallons of water will be purchased for this purpose. The County of San Diego is currently reviewing a separate ESJ U.S. MUP for the construction, operation, and maintenance of a less than one mile segment of an "electric generator-tieline" (Gen-Tie) in Eastern San Diego County (KIVA Project:09-0107420). The proposed ESJ Gen-Tie Project consists of a single circuit 500 kV line or double-circuit 230 kV line supported on three to five 150-foot steel lattice towers or 170-foot steel monopoles. It is at this site where the water will be used for dust control.

PROPOSED PROJECT

The proposed project for this San Diego County Major Use Permit (MUP) application is the acquisition of water from an existing JCSD warm water well #6 and use of the water at the ESJ Gen-Tie construction site to control fugitive dust emissions (JCSD Water Purchase Project). It is estimated that approximately 800,000 gallons will be purchased and used over a six month period for this purpose. It should be noted that this water well has been in operation since 2003, serving the JCSD since that time.

The water well is located at the west end of downtown Jacumba in the southeast corner of San Diego County (see attached figure). Adjacent land uses are vacant land and there are a few rural residential homes, as well as an elementary school nearby (but not adjacent to the well property). There are several nearby businesses along Old Highway 80 east of the project site. The well is located on APN 660-040-32.

The water well #6 was drilled in 2003 to a depth of 465 feet below ground surface (bgs) and cased to 113 feet bgs. The well was initially intended for use as a potable water well; however, during drilling a hot springs aquifer was encountered. Due to its elevated temperature, use of the water is limited. The quality of the water is appropriate for fugitive dust control (Water quality data is shown in Appendix A).

The County of San Diego Department of Planning and Land Use (DPLU) has reviewed the water well quality and hydrology information and made an initial determination that water quality and quantity are adequate for the use of the water for the purpose sought in this application.

Access to the water well will be from Old Highway 80 using an implied relocated easement. This easement is a dirt road approximately 350 feet long by 15 feet wide (see attached figure). Water will be extracted from the well using an existing pump and flexible hose configuration. Water trucks will drive along the easement, connect to the flexible hose, and upon filling will exit the site. It is estimated that two 2,500 gallon water trucks per day will be filled during a six day work week over a six month construction schedule. The speed limit in the immediate area where the easement is located on Old Highway 80 is 25 miles an hour, which will allow safe ingress and egress of the trucks. Additionally, there is an elementary school within 100 yards of the easement entrance. Visual sight lines from the exit meet County standards. The water will be transported approximately 3.75 miles west on Old Highway 80 to the ESJ Gen-Tie project site.

The JCSD holds the fee interest in the well site. Access to the well site was originally provided through an express appurtenant easement granted by the servient estate holder. This easement has since been relocated due to the servient estate holder's acquiescence to JCSD's consistent use over a ten-year period of a different access road over the servient property to reach the well. (Security Title Insurance Co Trust No 1696, Parcel Numbers 660-040-21 and 660-040-31). California courts have repeatedly held that where an easement holder consistently uses a right-of-way in a different location than delineated in the granting document, and there is acquiescence to such use in such different location, the involved parties have impliedly consented to the relocation of the right-of-way. *See* 12 *Witkin Summ. Cal. Law Real Prop.* § 409 (10th ed. 2006); *see also Johnston v. Bettencourt* 195 Cal. App. 2d 538, 542 (1961), *Red Mountain LLC v. Fallbrook Pub. Util. Dist.*, 143 Cal. App. 4th 333, 352 (2006). Under California law, this easement should be considered relocated through implied acceptance by both parties of the new location. Use of this easement will not require ground disturbing activities.

Alternatively, the recorded easement could be used to access the well. However, this would require the removal of existing trees and brush, as well as cut and fill in order to construct an access road. Use of the actual recorded easement is not preferable as it would result in ground disturbing impacts which would be permanent and are avoidable through the use of the implied relocated easement.

The DPLU has requested the preparation of a Minor Stormwater Management Plan (minor SWMP). The minor SWMP includes options for standard sediment control devices such as silt fences, straw wattles, straw bales and soil stabilizers, as necessary to minimize soil erosion. There will be no fueling or hazardous materials at the site associated with the JCSD Water Extraction Project. A minor SWMP is being submitted as part of this MUP application.