

## Hingtgen, Robert J

---

**From:** Fogg, Mindy  
**Sent:** Thursday, May 22, 2014 11:01 AM  
**To:** Donna Tisdale; Hingtgen, Robert J; Gungle, Ashley; Bennett, Jim; Wardlaw, Mark; Jacob, Dianne; Wilson, Adam  
**Cc:** Real, Sami; Jones, Megan; Witt, William  
**Subject:** RE: corrected Soitec Rugged Solar & Rough Acres Water Co  
**Attachments:** Soitec - PDS Staff Evaluation of Groundwater Ordinance Definitions\_05-22-14.doc

Hi Donna,

Thank you for your patience on this subject. Per our email chain below, I promised to do more research on how it is that projects such as Soitec's Rugged Solar, Tule, and Rough Acres Ranch can use water from the wells, tanks, and pipes (infrastructure) that has already been transferred, via a recorded grant deed, to Rough Acres Water Company, Inc., without buying it from Rough Acres Water Company, Inc.; and why the grant deed recognizes Rough Acres Water Company as a California Mutual Water Company. After some research and a few meetings with the experts, here is what I found out.

We verified that Rough Acres Water Company is a mutual water company, as defined under California Corporations Code sec. 14300 et seq. The Rugged Solar Farm will be constructed on land located within the service area of Rough Acres Water Company. Accordingly, the Rugged Solar Farm will receive water as either a shareholder in, or the lessee of a shareholder in, the Rough Acres Water Company. For the same reasons, the Tule Wind and Rough Acres Ranch projects would be entitled to receive water from Rough Acres Water Company.

As we noted earlier, Rough Acres Water Company is not a Water Service Agency, as defined under the Groundwater Ordinance sec. 67.703, because it was not in existence when the Rugged Solar Farm major use permit application was submitted. Accordingly, the Rugged Solar Farm is required to comply with the Groundwater Ordinance by preparing a groundwater investigation (a draft of that investigation was circulated for public review with the PEIR). Section 67.703 does not control whether a water source may be relied upon by a project. Rather, it determines whether a water source must comply with the County's Groundwater Ordinance.

To further clarify how the Groundwater Ordinance is interpreted and applied, Jim Bennett and I prepared the attached memo for the record.

I hope this information addresses your questions -- but if not, please don't hesitate to call or email me.

Sincerely,

**Mindy Fogg** | Planning Manager | Project Planning  
COUNTY OF SAN DIEGO | Planning & Development Services  
5510 Overland Avenue | Suite 310 | San Diego | CA | 92123  
T. 858.694.3831 | MS: O650  
PDS Website <http://www.sdcounty.ca.gov/pds>

---

**From:** Fogg, Mindy  
**Sent:** Tuesday, April 29, 2014 3:13 PM  
**To:** 'Donna Tisdale'; Hingtgen, Robert J; Gungle, Ashley; Bennett, Jim; Wardlaw, Mark; Jacob, Dianne; Wilson, Adam  
**Cc:** Real, Sami; Jones, Megan; Witt, William (William.Witt@sdcounty.ca.gov)  
**Subject:** RE: corrected Soitec Rugged Solar & Rough Acres Water Co

Hi Donna,

Thank you for discussing this further with me over the phone today. I would like to clearly state up front that we agree that Rough Acres Water Company, Inc. does not qualify as a Water Service Agency.

The definition of a Water Service Agency is used in the Groundwater Ordinance to determine whether or not the requirements of Section 67.722 of the Groundwater Ordinance are applicable to a project.

Section 67.722 states the following:

Any application listed at Section 67.711 for a project not subject to Section 67.720 or Section 67.721, which proposed the use of groundwater **not provided by a Water Service Agency**, for all or any portion of the project, shall comply with the following regulations:

- A. Residential Density Controls (*Not applicable to this project since it is a MUP*)
- B. Groundwater Investigations (*Applicable to this project*)
- C. Well Tests (*Not applicable to this project since it is a MUP*)

The project proposes to obtain its groundwater from on-site wells that are part of the Rough Acres Water Company. We determined that the Rough Acres Ranch Water Company is not a Water Service Agency as defined within the Groundwater Ordinance. Therefore, for the on-site wells, we required a groundwater investigation that must meet the requirements contained within Section 67.722.B. Groundwater Investigations. The groundwater investigation for the site was completed and a draft was circulated for public review. Please note that this is consistent with how we processed the Tule Wind MUP and how we are processing the Rough Acres Ranch Campground MUP.

In addition, the Rugged Solar project proposes to obtain additional water from the Pine Valley Mutual Water Company and possibly from the Jacumba Community Services District. Both of these sources are Water Service Agencies, and the requirements of the County Groundwater Ordinance do not apply to water obtained from these sources. However, groundwater investigations were completed to evaluate potential impacts to groundwater resources from obtaining water from both these sites pursuant to the California Environmental Quality Act. The groundwater investigations for these sites were completed and the draft documents circulated for public review.

Per our phone conversation today, I will do a little more research on why the grant deed that you cited below recognizes Rough Acres Water Company as a California Mutual Water Company, and what was intended by that. I will get back to you on the status of my research by Thursday of next week (May 8<sup>th</sup>).

Thanks again,

**Mindy Fogg** | Planning Manager | Project Planning  
COUNTY OF SAN DIEGO | Planning & Development Services  
5510 Overland Avenue | Suite 310 | San Diego | CA | 92123  
T. 858.694.3831 | MS: 0650  
PDS Website <http://www.sdcountry.ca.gov/pds>

**From:** Donna Tisdale [<mailto:tisdale.donna@gmail.com>]

**Sent:** Friday, April 18, 2014 11:09 PM

**To:** Hingtgen, Robert J; Fogg, Mindy; Gungle, Ashley; Bennett, Jim; Wardlaw, Mark; Jacob, Dianne; Wilson, Adam

**Subject:** corrected Soitec Rugged Solar & Rough Acres Water Co

I am resending my previous message with the correction highlighted in the first sentence

Hello Robert,

For the record, Soitec's Rugged Solar project **does not** appear to comply with the County's Groundwater Ordinance, as amended in 2013, particularly, the section from Page 2 that has been pasted below and highlighted:

- **Water Service Agency:** Any city, mutual or municipal water district, or any other private or public agency which provides water at retail from either: (1) groundwater resources, to two or more users; or (2) imported water resources. **Such water service agency must be in existence prior to the date of submittal of any project relying on service from that agency**

Non-compliance is based on the following:

1. Soitec's Rugged Solar MUP application was filed with the County on or before May 5, 2012, based on the Project Description document revised on May 10, 2012.
2. Rough Acres Water Company, Inc's Articles of Incorporation were not filed with the Office of the Secretary of the State of California until a month later on June 4, 2012
3. The Grant Deed (Doc# 2012-0526783) transferring the rights, titles, and interest of all water system improvements and facilities (...), from Rough Acres Foundation to Rough Acres Water Company, Inc, was not recorded until almost four months later on August 31, 2012

According to Peter Neubauer, DEH, whose department regulates Rough Acres Water Company, Inc, it is a privately owned public water system--not a mutual water company

However, the Grant Deed for the infrastructure transfer misrepresents it as a "California mutual water company" . This may explain the incorrect understanding repeatedly stated by the Pine Valley Mutual Water Company and others.

This is one of many questionable and controversial issues related to Rough Acres Ranch and Soitec's Rugged Solar.

Please confirm receipt of this information.

Regards,

Donna Tisdale  
[619-766-4170](tel:619-766-4170)

bcc: interested parties

Attachments:

1. Groundwater Ordinance Amended 2013
2. Certified copy of Rough Acres Water Company's Articles of Incorporation
3. Rough Acres Water Company's grant deed transferring water system infrastructure



**This discussion of the County Groundwater Ordinance was prepared by Mindy Fogg, Planning Manager, and Jim Bennett, Groundwater Geologist in the County Department of Planning and Development Services on May 15, 2014**

**This discussion was prepared in response to public comments and questions received related to water supply for Soitec Solar Development 3800 12-010 (GPA), LOG NO. 3910-120005 (ER); Tierra Del Sol, 3300 12-010 (MUP), 3600 12-005 (REZ), 3921 77-046-01 (AP); Rugged Solar, 3300 12-007 (MUP); LanWest 3300 12-002 (MUP)**

The County of San Diego Groundwater Ordinance (GWO) regulates certain discretionary permit applications in the County unincorporated area to ensure that adequate groundwater supplies are available to serve existing and proposed uses. The definition section of the ordinance (County of San Diego Code of Regulatory Ordinances Section 67.703) provides definitions that are pertinent to understanding and implementing the GWO. One of the definitions is for a Water Service Agency, which states:

Water Service Agency: Any city, mutual or municipal water district, or any other private or public agency which provides water at retail from either: (1) groundwater resources, to two or more users; or (2) imported water resources. Such water service agency must be in existence prior to the date of submittal of any project relying on service from that agency.

This definition is important within the context of the GWO because Section 67.722 of the ordinance sets forth the requirements for projects that propose the “use of groundwater not provided by a Water Service Agency.” For these types of projects, Section 67.722 requires a groundwater investigation along with findings that must be made by the approving authority.

The County interprets both sentences in the definition of Water Service Agency in Section 67.703 as being necessary for the complete definition of this term. In other words, the County applies this definition to water districts, agencies, or other entities that: (1) provide water at retail from either (a) groundwater resources to two or more users, or (b) from imported water resources, *and* (2) were in existence prior to the date of submittal of any project relying on service from that agency. This interpretation is consistent with the County’s past use of this definition to prevent projects from circumventing the regulatory requirements of the GWO by forming a Water Service Agency following project submittal.

It is important to note that the GWO does not regulate the operation of water agencies, water districts or water companies themselves. An entity does not need to meet the definition of a Water Service Agency under the GWO in order to operate. Rather, the definition of Water Service Agency in the GWO is simply used to determine whether a project must comply with the regulatory requirements contained in the GWO. As such,

use of the definition of Water Service Agency set forth in Section 67.703 is limited to the GWO. Accordingly, a discretionary project may propose to obtain water from a mutual water company that does not meet the GWO definition of a Water Service Agency; however, that project must also comply with the regulatory requirements provided in Section 67.722.

For reference, the GWO can be accessed at <http://www.sdcounty.ca.gov/pds/docs/GROUNDWATER-ORD.pdf>.