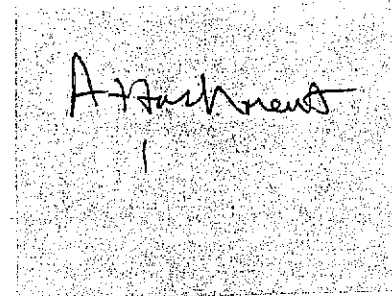


Peter von Langen - Re: Duke's Expired NPDES Permit & Desal Discharge

From: Madeleine Clark <madeleine@got.net>
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Date: 3/26/2006 10:14 AM
Subject: Re: Duke's Expired NPDES Permit & Desal Discharge
CC: <chewitt@waterboards.ca.gov>



Peter:

Easily corrected. Please notify me of future "misunderstandings" in a timely manner, not a month after the fact. Has Pajaro-Sunny Mesa (or Poseidon Resources) been issued a NPDES permit for their pilot desalination project? I'm curious why you didn't notified us about their application or issuance of their permit. Have I been unclear about our desire to be informed about such developments? Please suggest who we should contact in order to obtain information relating to NPDES permits in Moss Landing. I assumed that person was you.

For the record, I also mailed a hard copy of our letter and newspaper articles relating to Duke's expired NPDES permit and desal discharge directly to the water board. Do you think a misunderstanding and corrupt files also prevented them from responding?

Thank you again for your assistance.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 3/24/06 5:13 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,
Because of corrupt files and a misunderstanding we have not replied to your February 23rd letter. I had not seen the attached February 23rd letter until now and can't read them. It appears that the attachments you sent are corrupted as others are also having difficulty opening them. From your attached email (Re: Desal and Expired NPDES...) it appeared that the only answers that you were waiting for a reply was in regards to your 2/22 email questions. Can you please send us a hard copy of the February 23rd attachments?
Thanks,
Peter

>>> Madeleine Clark <madeleine@got.net> 3/24/2006 9:41 AM >>>
Dear Carol:

The enclosed attachments are my letter to the water board and one of the articles sent with my letter (electronic version of original newspaper copy). The following newspaper article was also enclosed with my correspondence. The letter and both articles were sent on February 23, 2006.

**EO REPORT ATTACHMENT B
SEPTEMBER 7-8, 2006 MEETING
EMAIL CORRESPONDENCE BETWEEN
MS. CLARK AND CCWB STAFF**

Thank you for your attention to my inquiry. Please forward to Harvey Packard so he will have some background when I contact him regarding our concerns.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

Power Grab

Environmentalists hope Duke Energy sale and permit expiration will make for a more Slough-friendly plant.

Jan 19, 2006

By Ryan Masters

Full of Energy: Despite potential hold-ups due to the sale of their plant, Duke spokespeople insist it's full steam ahead. Jane Morba

It's too soon to tell how Duke Energy's plans to sell its Moss Landing power plant may affect the proposed desalination project. But local environmentalists hope that the sale coupled with the impending renewal of the plant's pollution discharge permit will give the public a bargaining chip in the ongoing effort to clean up the power plant's operation, with or without a desal project onsite.

Last week, Duke Energy announced the sale of eight power plants four of them in California to a subsidiary of LS Power Equity Partners, an investment firm that specializes in the energy industry, for about \$1.5 billion. The other California plants to be sold are a 165-watt peaker plant in Oakland; a 1,002-megawatt plant at Morro Bay, and a 10-year lease on a 700-megawatt plant in Chula Vista.

Coincidentally, Duke Energy's National Pollutant Discharge Elimination System (NPDES) permit for the 538-megawatt Moss Landing power plant expired at the end of 2005. The Clean Water Act prohibits the discharge of pollutants without a NPDES permit. The Central Coast Regional Water Quality Control Board will review that permit in June. In the meantime, the permit has been automatically renewed.

Environmentalists like Madeline Clark of the Elkhorn Slough Coalition say the timing for the renewal of the permit, which expires every five years, is perfect.²

³With that permit coming up for renewal,² she says, ³it gives us a great opportunity for full disclosure and what the intentions or options are regarding the desal plant. These permits are only good for five years so it gives the public an opportunity to weigh in on mitigation measures and lessen effects that the power plant may have on the environment.²

Clark has reason to be optimistic. The permit's renewal in 2000 resulted in significant changes to power plant operations, which proved beneficial to

the Slough.

³We were delighted with the last go around,² Clark says. ³When Duke bought the power plant [from PG&E in 1998] and had to get their first permit in 2000, a lot of things were brought to the public's attention. The old part of the plant used 90 percent of the facility's water. Consequently, because of strong objections, Duke no longer uses the old part of the plant. The impact was too great.²

In this go round, when the permit review process begins in five months, Clark says she hopes that the old part of the plant, which is still used as a ³peaker plant² to meet high demands for energy during cold snaps and heat waves, will be permanently mothballed.

David Hicks, a Duke spokesperson, says that there is no correlation between the plant's sale and the expiration of the NPDES permit. ³Moss is one of eight plants being sold,² Hicks says. ³There are much larger stakes here.²

As for the desalination plant, Hicks is optimistic that the sale will not hinder the project. ³Duke and the new owners will live up to whatever agreements were made,² he says. ³It's safe to say that the pilot plant will go forward as planned.²

Clark is quick to point out that her organization is not ³against² the power plant.

³We just want to make sure the Elkhorn Slough is protected and whatever is done is done right,² she says. ³That means little or no impact to the Slough. We just want to save the Elkhorn Slough.²

Darpan Kapadia, managing director of the LS Power Group, told the Weekly that ³there's very little or nothing² he could say about the transaction or its repercussions other than the fact that the firm is ³committed to making the transition of assets from Duke to LS Power a smooth one for the employees and the local communities.²

From: Madeleine Clark <madeleine@got.net>
Date: Tue, 21 Mar 2006 11:51:47 -0800
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Subject: Re: Desal and Expired NPDES Permit

Dear Peter:

I've been away and will be leaving again shortly for a trip out of the country. I wish to pursue your (following) response to my concerns and reiterate my request for information

not provided. At your earliest convenience will you review this communication and respond to the several questions left unanswered? I realize how busy you are; **we have to use our limited staff resources efficiently**. A good way to do that is to avoid needless repetition.

An expired permit on administrative extension may be legal, but it is still expired. Therefore, my questions are not moot. Duke is responsible for what comes out of *their* discharge. Throwing Duke's permit into litigation limbo does not exempt them from mandates of the Clean Water Act. The water board staff may have a lot on their plate, but avoiding critical and controversial issues won't make them go away.

Thank you again for your help, Peter. I'll look forward to discussing this with you when I get back on April 3rd. If you don't know the answer, please so state (in bold) after the question and if possible provide me with the person's name who does have the information.

I'm sorry about your grandmother. My prayers are with you.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 3/2/06 2:50 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Madeleine,
Got your phone messages, sorry for not being able to respond sooner. I was sick last week and my grandmother passed away last Wednesday so have been out of town until yesterday.
See responses to your email below in **bold**.
Best Regards,
Peter

>>> Madeleine Clark <madeleine@got.net> 2/22/2006 12:08 PM >>>
Peter:

What happens if they fail to contact you? If they do contact you, does the request go before the board or does staff handle it internally? At what point does the public weigh in? If the existing permit is expired, how do you modify it? How is enforcement implemented?

I've contacted several stakeholders and policymakers about our concerns and without exception, people are perplexed that Duke could add brine to their discharge with an expired NPDES permit.

The Duke permit is officially on administrative extension, and as such, is in full legal force. I was incorrect in my earlier response regarding needing information from the existing permit holder as we plan on issuing desal plants separate permits. Duke will not be responsible for evaluating the effects of the desal discharge, the desal operator will. The discharges will share an outfall, but we will consider them separate discharges. We regulate Santa Cruz and Scotts Valley waste water treatment plants similarly. The brine discharge may or may not be an issue-- it depends on the details, and at this time we don't have the details, to evaluate or

respond to. We will review desal discharge proposals and respond accordingly.

They are baffled as to why the permit isn't being reviewed until the end of the year. In light of the pending proposals for desalination projects tied to Duke's intake and discharge, "automatic administrative extension" is inappropriate. We consider this much too controversial to process without full public disclosure.

On the subject of the Duke MLPP permit. As we have discussed over the phone, there is no point in renewing the permit now when the 316b regulations are being litigated. We could renew the permit sooner, and leave the 316b regulation issues to the future, but we have to use our limited staff resources efficiently. Renewing the permit sooner, and then renewing again when the 316b issues are resolved is not very efficient.

Speculation about a separately permitted brine discharge is not a reason to renew the permit now.

Help me out here, Peter. We would never want to disseminate misleading or erroneous information about Duke's NPDES permit or your responsibility to make sure Duke (or new owner LS Power) comply with state and federal EPA requirements. Can you bring us up to speed on the protocol, status and timeline regarding this particular permit? "Pending litigation" is a separate issue and doesn't exempt the Regional Water Quality Control Board from due diligence in compelling Duke to review, modify and renew their NPDES permit.

Because there are other power plants in California that have failed to meet 5 year permit renewal guidelines, it doesn't justify such nonperformance for facilities in Monterey County. The Elkhorn Slough National Marine Reserve Estuary is a primary nursery for the Monterey Bay Marine Sanctuary and is integral to the health and well-being of the entire ecosystem.

Once again, thank you for your assistance. It's helpful to have someone we know and trust to provide timely information to stakeholders of impending developments that may impact the Elkhorn Slough. We're grateful that you are that person.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/17/06 11:47 AM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,

The holder of the NPDES permit will need to send us information in order for us to review their request. We will evaluate each proposal upon receiving the required information and reviewing the existing permits. Thanks for the Herald article, I appreciate the

local info.
Cheers,
Peter

>>> Madeleine Clark <madeleine@got.net> 2/14/2006 1:51 PM
>>>

Dear Peter:

If desalination projects are permitted separately, has Cal Am (or Poseidon) applied for an NPDES permit for their pilot projects in Moss Landing? Are you suggesting they don't need to because they will be able to use Duke's NPDES permit? ("The pilot project flow is extremely small volume compared to the flow covered by the existing MLPP permit on administrative extension.")

It is important to remember that for many years Duke hasn't operated the old part of the power plant that used 90% of the cooling water. What's permitted and what's actually discharged are two different things.

The discharge is 600 feet outside the mouth of the harbor and undoubtedly is a veritable wasteland, even if it is localized. Generally, all power plant discharge sites suffer from the same ill effects, only most don't have the distinction of being the front door to an estuary that serves as a major nursery to the Monterey Bay Marine Sanctuary. If Duke is allowed to add toxic brine to the mix (keeping in mind that discharged dilution water is miniscule compared to permitted amounts) desalination will add a lot more than insult to injury.

I don't understand. First, both you and Roger Briggs tell me the Duke NPDES permit will be addressed in June. Now you've clarified that it won't be looked at until the end of the year. How do you modify the existing permit without benefit of reviewing the old one, especially the amount of discharge actually available to dilute the brine?

Thank you for your immediate attention to my concerns. I'm attaching an article that appeared in today's Monterey County Herald regarding county permitting for the pilot desal projects in Moss Landing. You might have an interest in what is happening on a local level.

Best regards and Happy Valentine's Day.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/10/06 1:45 PM, Peter von Langen at
Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,

Sorry that I haven't been able to reply sooner, I have been swamped dealing with many work issues and am not caught up with email. Desalination projects will be permitted separately and the pending litigation should not effect the pilot desalination project. The pilot project flow is extremely small volume compared to the flow covered by the existing MLPP permit on administrative extension. The existing MLPP permit and conditions will transfer to the new owner. Not sure yet how/if the existing permit will be modified by the pilot project? However, the brine will be significantly diluted by the relatively large flow of the MLPP and should not be detectable at the outfall. Sorry, haven't seen anything on the internet but the preliminary thermal effect results showed that effects were localized to within ~50-100 meters of the outfall. Dierdre Hall is the contact at the Monterey Bay NMS. I don't know if the MBNMS has electronic files or a link ready yet?

All the best,
Peter

Peter von Langen, Ph.D.
Environmental Scientist
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark <madeleine@got.net> 2/2/2006
4:22 PM >>>

Dear Peter:

Thank you for the clarification. Since Cal Am is planning to partner a pilot desal facility with the MLPP very soon, how will the pending litigation and Duke's lack of a current NPDES permit effect their project?

Cal Am is planning on using the same outfall as the MLPP. The existing NPDES permit doesn't include brine discharge from a desal plant.

We are interested in the preliminary thermal effects findings that were shared at the MBNMS meeting in October. I was out of town and unable to attend. Can you email me the preliminary studies or the link, if they're available on the internet?

Thanks for your assistance.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/2/06 2:15 PM, Peter von Langen at
Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,

Thank you very much for your email and the article regarding the Moss Landing Power Plant (MLPP). In October I attended a preliminary thermal effects results meeting put on by MBNMS.

Yesterday I ran into Holly Price (MBNMS) in Morro Bay at the MLPA BRTF meeting. We briefly discussed the thermal effects studies and I look forward to seeing the final results before we take up the permit.

I wanted to clarify in your email (and in the Monterey Weekly article) that the MLPP permit wont be taken up until at least late in the year. We need to have the MLPP lawsuit resolved before taking up the MLPP permit. We are aiming at taking up the Morro Bay PP permit midyear (preliminary July).

Best Regards,
Peter

Peter von Langen, Ph.D.
Environmental Scientist
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark
<madeleine@got.net> 1/25/2006 1:56 PM
>>>

Dear Peter:

The study examining the ecological

effects of the thermal plume from Moss Landing Power Plant is scheduled for completion at the end of February 2006. NOAA investigators have recently collected the last of the data and are in the process of analyzing it. Hopefully, they are still on track to complete the project as scheduled. This monitoring project was financed by Duke as a result of mitigation measures secured during the last permit renewal process.

With the pending sale of Duke Energy and the NPDES permit up for review and renewal in June, this information should be vital in determining additional mitigation measures to protect the Elkhorn Slough from further impacts of the Moss Landing power plant.

We can't thank you enough for your desire to make sure that new ownership means a clean slate and greater influence over mandates that protect the slough. We depend on key players like you to assure the public that LS Power Group won't be allowed to pull a fast one, like Duke did with once-through cooling in 2000 during the "energy crisis."

The following is an article that appeared in the Monterey County Weekly last Thursday. For the many who are concerned about the power plant and the use of cooling water from the Elkhorn Slough, it makes interesting reading. We also forwarded it to the Coalition on Responsible Desal (CORD).

CORD is a dedicated group of individuals and environmental organizations from all over California that includes- among others- Save Our Shores, Friends of the Sea Otter, the Ocean Conservancy and Surfrider Foundation (20,000 members statewide) who have a great interest in what happens at Moss Landing.

We look forward to working closely with the CCRWQCB regarding the renewal of the Moss Landing Power Plant NPDES permit.

Sincerely,

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

Peter von Langen - Re: Proposed Schedule for Information-MLPP

From: Madeleine Clark <madeleine@got.net>
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Date: 6/19/2006 6:01 PM
Subject: Re: Proposed Schedule for Information-MLPP

Dear Peter:

I've heard from several sources that both Pajaro/Sunny Mesa and Cal Am have received permits for their pilot desal plants to discharge brine at the MLPP outfall. Doesn't Pajaro/Sunny Mesa have its own outfall? It is our understanding that Monterey County (environmental health) has not granted P/SM a permit to discharge brine from a pilot project for a number of reasons.

What's the truth? We were told by RWQCB staff that both Cal Am and P/SM had submitted applications, but neither had actually received a permit.

We don't know what to believe. Can you clear this up for us?

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 6/19/06 11:32 AM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,
I checked on the status of the mailing, it should go out tomorrow.
Regards,
Peter

>>> Madeleine Clark <madeleine@got.net> 6/16/2006 9:52 AM >>>
Thanks, Peter. I suspect that we will have this by Monday?
Have a great weekend.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 6/13/06 1:21 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine Clark,
Wanted to give you a quick update that later this week we will mail you a response to your email below.
Peter

Peter von Langen, Ph.D.
Environmental Scientist
Central Coast Water Board

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark <madeleine@got.net> 6/8/2006 1:51 PM >>>

Dear Roger Briggs and Peter von Lagen:

Please consider this a formal request for information regarding the MLPP Proposed Schedule for Information Collection (PIC), as required under the USEPA's Phase II 316(b) regulations. Specifically, please forward us a copy of the schedule set forth under which Duke (or LS Power Group) must undertake and complete studies, including the Comprehensive Demonstration Study (CDS) required by Phase II rules.

If the studies have been completed, please send us a copy via e-mail. If an electronic file is unavailable, we'd like to have a hard copy.

We'd also like to have copies of both Poseidon and Cal Am's desalination pilot plant permit applications to add brine to the MLPP discharge. We'd like to know the status and staff recommendations regarding these applications. Both Poseidon and Cal Am project managers have notified members of the public that applications have been approved and permits were granted by the RWQCB.

Harvey Packard informs us this is not the case. At any rate, please provide us with a status report regarding these applications and any other developments pertaining to the MLPP and desalination in Moss Landing.

Thank you for your assistance.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130