

Diablo Canyon Steam Generator Replacement Project

From: Santa Lucia Chapter - Sierra Club [sierra8@charter.net]
Sent: Thursday, October 28, 2004 12:23 PM
To: diablocanyon@aspeneq.com
Cc: cmurley@gralegal.com
Subject: Sierra Club Santa Lucia Chapter comments on DCNPP EIR

Dear Mr. Procos,

Below is the full text of our comments at the San Luis Obispo scoping meeting of 10/27/04 on the Notice of Preparation of an EIR for the Diablo Canyon Power Plant Steam Generator Replacement Project. Please contact me if you have any questions.

Sincerely,

Andrew Christie
Chapter Coordinator
Sierra Club - Santa Lucia Chapter

RE: Application No. 04-01-009

The Santa Lucia Chapter of the Sierra Club is concerned that the scope of the EIR for the Project is overly narrow as presently conceived. It should include an evaluation of the ongoing violation of the Diablo Canyon plant's permits under the National Pollution Discharge Elimination System (NPDES) and the Consent Judgment proposed to mitigate these impacts.

The California Dept. of Fish and Game noted on February 29, 2000, that the impacts of Diablo Canyon's thermal discharge "include loss and degradation of habitat, decreases in several species' diversity and density, and loss of entire species," and that "the effects continue to expand beyond Diablo Cove and are greater than predicted."

PG&E's proposed mitigation via restoration efforts is not sufficient to mitigate adverse impacts on marine resources from plant operations. On August 7, 2000, the California Coastal Commission noted that "PG&E should be required to submit a plan for compliance with the terms of its NPDES permit, which does not exclude requirements for investment in technical or equipment modifications to the power plant," that in regard to PG&E's proposed \$4 million worth of mitigation via restoration efforts, "there appears to have been no scientific method or analysis used to determine the settlement amount of \$4 million," and "the amount of the proposed settlement is not sufficient to mitigate adequately the adverse impacts on marine biological resources from plant operations." PG&E has taken the position that the mitigation option of Best Technology Available that would be sufficient to avoid the entrainment impacts of the plant's operation -- closed-cycle dry cooling -- would be both too expensive and physically impossible to locate on the plant site.

The proposed consent judgment is also being challenged on its attempt to include present and future impacts as mitigation along with past impacts. The World Wildlife Fund, the Ocean Conservancy, Surfrider Foundation, ECOSLO, and the Sierra Club maintain that the consent judgment should attempt to address only past impacts on public marine and coastal resources, and that present and future impacts and their mitigation will have to be addressed separately. (See attached.)

The present and future impacts on the marine environment of DCNPP's thermal discharge and entrainment are as significant as they are insufficiently studied, and must be fully analyzed in the EIR for the steam generator replacement project, as this project would incur additional entrainment impacts by extending the operating life of DCNPP some 13 years. The alarming level of damage to marine life already recorded, and -- as of this writing -- its essentially unmitigatable nature, strongly argues for the No Project Alternative and replacement of DCNPP with a less destructive energy generator.

Andrew Christie
Chapter Coordinator
Sierra Club - Santa Lucia Chapter
POB 15755
San Luis Obispo, CA 93406
(805) 543-8717
sierra8@charter.net



July 30, 2004

Mr. Jeffrey Young, Chairman
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

RE: Comments on the Proposed Diablo Canyon Nuclear Power Plant Consent Judgment

Dear Mr. Young and Members of the Board:

The undersigned, representing the World Wildlife Fund, The Ocean Conservancy, the Surfrider Foundation, EcoSlo, and the Sierra Club present to you the following comments on the proposed Consent Judgment regarding the Diablo Canyon Nuclear Power Plant cooling water intake system (Consent Judgment). We appreciate your efforts in preserving our coastal and marine habitats, and hope to continue to work with you on this project in the future.

We urge the Central Coast Regional Water Quality Control Board (Regional Board) to reevaluate and ultimately reject the Diablo Canyon Consent Judgment (Consent Judgment). First, a consent judgment that purports to circumvent the consideration of cooling water intakes under the permit renewal process for the remaining operating life of the plant is neither legal nor within the public interest. Second, the Consent Judgment, in adopting a permanent site-specific determination of "best technology available" (BTA) without consideration of the legal requirements for such a determination, is inconsistent with the EPA's Phase II rules implementing Clean Water Act § 316(b). Third, an agreement binding the State Water Board in the face of the rapidly changing § 316(b) rules is unreasonable. Fourth, the Consent Judgment fails to equitably compensate the People of the State of California. Consequently this consent judgment is both illegal and contrary to good public policy.

1. The Consent Judgment is Neither Within the Public Interest nor Legally Enforceable.

The Diablo Canyon Consent Judgment purports to bind the Regional Board to renew Diablo Canyon's NPDES permit for the operating life of the plant without consideration of legal requirements specifically relating to cooling water intake regulations. Such an agreement is legally invalid and fails to adequately protect the public interest. The Regional Water Board cannot legally prescribe a right to pollute indefinitely, in the face of federal law and regulations that would constrain such pollution. Furthermore, this agreement is contrary to the public interest. It is unprecedented for the Regional Board to bind future water boards in an agreement that attempts to provide a future right to PG&E to violate any and all state and federal entrainment and impingement regulations. Finally, NPDES permit renewals are subject to federal approval and consequently the Regional Water Board lacks the authority to unilaterally grant future NPDES permit renewals in an agreement without such approval.

2. The Consent Judgment Fails to Consider the Federal Draft Phase II Regulation for BTA.

The Consent Judgment illegally purports to define BTA under Clean Water Act Section 316(b) as the technology currently in place at the plant in combination with the restoration efforts agreed to in the Consent Judgment. The Phase II rule implementing Section 316(b) for existing plants provides a flexible framework under which a discharger can choose among five alternatives for achieving BTA. Four out of the five are based on meeting performance standards that require reductions in entrainment of 60 to 90 percent; there has been no demonstration that PG&E's efforts are consistent with any of these alternatives or will result in 60 to 90 percent reduction in entrainment. Under the fifth alternative, a discharger may use an alternative definition of BTA if it conducts a number of studies, including numerous cost-benefit and cost-cost analyses to support such a decision; no such studies have been conducted. Consequently, the Consent Judgment is inconsistent with the requirements of the Phase II rule.

3. The Consent Judgment is Unreasonable in the Face of Changing 316(b) Regulations

The Consent Judgment attempts to provide an NPDES permit to PG&E for the life of the Diablo Canyon Nuclear Power Plant. In *Riverkeeper v. EPA*, the U.S. Second Circuit Court of Appeals made it clear that restoration efforts could not be substituted for BAT in new industrial cooling water intake systems. The Court held that restoration measures that attempt to restore fish and shellfish populations killed by a cooling water system were plainly inconsistent with the statute's text, and clear Congressional intent that the *design* of intake structures be regulated directly, based on the best technology available. Although the case concerned new power plants specifically, the Court noted that the statutory BTA requirements applied equally to new and existing facilities and suggested that its analysis might apply to existing facilities as well. *Riverkeeper*, *Surfrider*, and several northeastern States have recently launched challenges to the Phase II rules on similar grounds. A consent judgment that attempts to bind the Regional Board to a definition of BTA in the face of Phase II rules that are under legal scrutiny and are likely to be remanded is against good public policy, and inapposite to the goals of the Clean Water Act.

4. The Consent Judgment Fails to Equitably Compensate the People of California

This agreement would permit PG&E to defiantly continue to degrade the marine and coastal environment through outdated and outmoded technology for a paltry price that is wholly inadequate to compensate the people of California for the resources that would be lost as a consequence. The funding offered by PG&E for marine reserves establishment is of little added value in a state in the process of establishing these reserves already. Furthermore, the conservation easement that PG&E offers is inadequate both in terms of its breadth, and in terms of ameliorative benefits. Finally, the funding for research that PG&E offers cannot be used to evaluate any increase in habitat destruction, or reduction in marine life due to impingement or entrainment, and thus expressly excludes the type of research that is most pertinent to these issues. These overtures simply fail to provide adequate compensation for the People of California, and consequently the agreement should be rejected.

In sum, the DCNPP consent judgment should be firmly rejected as contrary to the Clean Water Act, in violation of EPA Phase II Rules governing the cooling water intakes of existing facilities, unreasonable in the face of changing law, and inequitable. Thank you for your consideration of these comments, and please feel free to call if you have any questions.