

**Howatt, Kathy**

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**From:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Sent:** Tuesday, November 06, 2018 1:33 PM  
**To:** Howatt, Kathy  
**Cc:** AquaFortis Associates LLC  
**Subject:** [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

AquaFortis Associates LLC ("AQF") is the owner of the historic Clary Mill site in Whitfield, listed on the National Register of Historic Places.

The company recently received a notice form from the Clary Lake Association ("CLA") regarding its intent to file for transfer of a Maine DEP Water Level Order (using a form for a Waterway Development and Conservation Act Permit and/or Water Quality Certification for Hydropower Projects - neither of which appears to apply in this instance.)

The "intent to file" date is listed as October 22, 2018, and states that parties have 20 days after the DEP accepts the application is accepted as complete for processing in which to comment, request a hearing, or request BEP jurisdiction.

There appear to be numerous issues with the application as filed, and AQF may wish to comment, request a hearing, or BEP jurisdiction. Can you please tell AQF the date the application was accepted for processing by DEP and when the 20 day deadline tolls? Are requests by email to you considered sufficient, or is a separate letter necessary? Thank you.

Sincerely,  
Richard Smith, Member  
AquaFortis Associates LLC

**Sroka, Eric**

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**From:** Howatt, Kathy  
**Sent:** Tuesday, November 06, 2018 3:21 PM  
**To:** AquaFortis Associates LLC  
**Cc:** Boak, Scott; Sroka, Eric  
**Subject:** RE: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Good afternoon Mr. Smith,

Thank you for your questions. The Department accepted an application for transfer of the Clary Lake Water Level Order on October 26, 2018. According to 06-096 Ch.2, Rule Concerning the Processing of Applications and Other Administrative Matters, the deadline for requests for Board of Environmental Protection (BEP) jurisdiction or requests for public hearing must be made within 20 days of application acceptance, in this case by end of business on November 16, 2018. Requests for public hearing or for BEP jurisdiction can be made via email.

Kathy

Kathy Davis Howatt  
 Hydropower Coordinator, Bureau of Land Resources  
 Maine Department of Environmental Protection  
 Phone: 207-446-2642  
[www.maine.gov/dep](http://www.maine.gov/dep)

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**Cc:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Subject:** [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

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The company recently received a notice form from the Clary Lake Association ("CLA") regarding its intent to file for transfer of a Maine DEP Water Level Order (using a form for a Waterway Development and Conservation Act Permit and/or Water Quality Certification for Hydropower Projects - neither of which appears to apply in this instance.)

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Sincerely,

Richard Smith, Member

Aquafortis Associates LLC

**Howatt, Kathy**

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**From:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Sent:** Monday, November 12, 2018 1:45 PM  
**To:** Howatt, Kathy  
**Cc:** AquaFortis Associates LLC  
**Subject:** Re: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

Thank you for last week's response. I would like to proceed as efficiently as possible, and was wondering if you could answer these questions?

- 1) If Aquafortis asks for BEP jurisdiction, would there be a board hearing with the chance for evidence and testimony?
- 2) If, instead, Aquafortis asks for a DEP hearing, will it result in an order or findings that could be appealed to the BEP if there are questions or concerns?
- 3) For any hearing, would exhibits be submitted beforehand by all parties, and witnesses identified?
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- 5) Does the Waterways transfer application have specific rules for any hearing and evidence or testimony?

Aquafortis would like to develop a record on certain things, because the Clary Lake Association has already trespassed and done damage to AQF property, and they may be seeking a transfer to embolden further trespass, so AQF needs to examine people and the issues in the WLO and what they think it means or allows. If a DEP hearing is best for doing that, then AQF would proceed that way, as long as the record would then be available for the Board. If the BEP would hold a hearing, maybe the DEP step should be skipped, as long as a record can be developed.

Thank you in advance for your answers to these questions. Aquafortis' default position is to ask for a DEP hearing on the Waterways transfer application, and AQF does so request one here (before the deadline), but reserves the right to instead ask for BEP jurisdiction based on your answers to the above. If in your answers, you could also acknowledge receipt of the timely request for hearing, AQF would appreciate it. Thank you.

Sincerely,  
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 Aquafortis Associates LLC

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**From:** Howatt, Kathy <Kathy.Howatt@maine.gov>  
**Sent:** Tuesday, November 6, 2018 3:21 PM  
**To:** AquaFortis Associates LLC

Cc: Boak, Scott; Sroka, Eric

Subject: RE: [EXTERNAL SENDER] Clary Lake - Transfer application questions

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Kathy

Kathy Davis Howatt  
Hydropower Coordinator, Bureau of Land Resources  
Maine Department of Environmental Protection  
Phone: 207-446-2642  
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Aquafortis Associates LLC

**Howatt, Kathy**

076

**From:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Sent:** Monday, November 12, 2018 1:50 PM  
**To:** Howatt, Kathy  
**Cc:** AquaFortis Associates LLC  
**Subject:** Follow up Re: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

I forgot to ask -- when DEP holds a hearing (or BEP, if jurisdiction is sought), who would be the presiding officer? Would it be you, or someone else from the department? Does BEP run their own hearing, or use a DEP employee as a hearing presiding officer? Thanks

Richard Smith, Member  
AquaFortis Associates LLC

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Kathy

Kathy Davis Howatt  
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Aquafortis Associates LLC



**Sroka, Eric**

---

**From:** Howatt, Kathy  
**Sent:** Tuesday, November 13, 2018 2:43 PM  
**To:** AquaFortis Associates LLC  
**Cc:** Sroka, Eric  
**Subject:** RE: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Good afternoon Mr. Smith,

By this email the Department acknowledges AquaFortis' (AQF) timely request for public hearing, and will get back to you with a decision regarding that AQF request.

In the meantime, for purposes of your questions below, you may want to review the Department's Rule Chapter 2 (Rules Concerning the Processing of Applications and Other Administrative Matters) (<http://www.maine.gov/sos/cec/rules/06/096/096c002.docx>) and Chapter 3 (Rules Governing the Conduct of Licensing Hearings) (<http://www.maine.gov/sos/cec/rules/06/096/096c003.doc>). You may also want to pay particular attention to the following rule subsections, which appear to bear on and may answer aspects of your questions below: Rule 2(17), which addresses Board of Environmental Protection (BEP) assumption of jurisdiction over applications; Rule 2(19)(C), which addresses BEP decisions; Rule 2(7), which addresses hearings; Rule 3(4), which addresses presiding officers; Rule 3(13), which addresses subpoenas; Rule 3(16), which addresses pre-hearing submissions; Rule 3(19), which addresses general conduct of a hearing; and Rule 3(20), which addresses evidence. However, how these rules are ultimately applied by the Department will likely turn on the particular facts and circumstances of a pending matter. I hope you find these rule provisions helpful. Thanks,

Kathy

Kathy Davis Howatt  
 Hydropower Coordinator, Bureau of Land Resources  
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**Cc:** AquaFortis Associates LLC <[aquafortisllc@hotmail.com](mailto:aquafortisllc@hotmail.com)>  
**Subject:** Re: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

**Howatt, Kathy**

---

**From:** Frederick Duncan <nadubududuncan@gmail.com>  
**Sent:** Friday, November 16, 2018 2:03 PM  
**To:** Howatt, Kathy  
**Cc:** nadubudu@localnet.com  
**Subject:** [EXTERNAL SENDER] Email difficulty, Request for Hearing #L-22585-36-B-N

I wrote earlier today, but have been having email problems, so I am writing again from a different email account.

My name is Frederick Duncan and I am a resident of Jefferson Maine in Lincoln County and owner of a 200 acre farm in Whitfield and Jefferson that has 3000 foot stretch of frontage on Pleasant Pond (Clary Lake shore).

I am requesting a public hearing on the Clary Lake Association application for transfer and I want to provide evidence and testimony and comment at the hearing, and ask for the same.

Can you please write back to let me know you have received this, at [nadubudu@localnet.com](mailto:nadubudu@localnet.com). I seem to be able to get email but am having trouble sending it. thank you.

**Sroka, Eric**

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**From:** Howatt, Kathy  
**Sent:** Monday, November 19, 2018 8:09 AM  
**To:** Sroka, Eric  
**Cc:** Bergeron, Mark; Boak, Scott  
**Subject:** FW: [EXTERNAL SENDER] Email difficulty, Request for Hearing #L-22585-36-B-N

Please see a second request for public hearing on the Clary Lake transfer application.  
 Kathy

Kathy Davis Howatt  
 Hydropower Coordinator, Bureau of Land Resources  
 Maine Department of Environmental Protection  
 Phone: 207-446-2642  
[www.maine.gov/dep](http://www.maine.gov/dep)

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Can you please write back to let me know you have received this, at [nadubudu@localnet.com](mailto:nadubudu@localnet.com). I seem to be able to get email but am having trouble sending it. thank you.

**Department of  
Environmental  
Protection**

# Memo

**To:** Acting Commissioner Melanie Loyzim  
**From:** Eric Sroka, Project Manager, Bureau of Land Resources  
**CC:** Kathy Howatt, Hydropower Program Supervisor and Mark Bergeron, Bureau Director, Land Resources  
**Date:** November 19, 2018  
**Re:** DEP File #L-22585-36-F-T, Clary Lake Association, Transfer Application, Whitefield

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The Department received an email which requests that the Department hold a public hearing in regard to the Clary Lake Association's pending application for a Transfer permit. Although the email specifically requests a public hearing, no concerns and no credible conflicting technical evidence have been presented to the Department.

The Clary Lake Association is applying for the transfer of the existing Water Level Order (Department Order #L-22585-36-B-N), issued by the Department on January 27, 2014.

The Clary Lake Association submitted their application on October 24, 2018, and it was accepted for processing on October 26, 2018.

Based on my review of the application thus far and given that no concerns or conflicting technical evidence were presented in the email, I do not recommend that the Department hold a public hearing regarding this matter. I have attached a letter of response for your signature. Please feel to contact me at (207) 446-1619 or by email at [Eric.Sroka@maine.gov](mailto:Eric.Sroka@maine.gov) if you have any questions.

Thank you,



Eric Sroka

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR



MELANIE LOYZIM  
ACTING COMMISSIONER

November 26, 2018

AquaFortis Associates, LLC  
c/o Richard Smith  
PO Box 23  
Whitefield, ME 04353

**RE: DEP File #L-22585-36-F-T, Clary Lake Association, Transfer Application, Whitefield**

Dear Mr. Smith:

Thank you for your email, received by the Department on Friday, November 12, 2018, regarding the Clary Lake Association's application to transfer the Clary Lake Water Level Order from Pleasant Pond Mill, LLC to the Clary Lake Association.

I have carefully considered your request for the Department to hold a public hearing on this transfer. According to the Department's Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, Section 7(B), "the Department will hold public hearings in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a public hearing will assist the Department in understanding the evidence." Although your email contains a request for a public hearing, your email does not contain credible conflicting technical information regarding a licensing criterion and therefore, a public hearing is not warranted. Further, a request for a Department hearing must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted (06-096 Ch. 2 (7)(A)). Your hearing request did not contain this key information. For these reasons, I have decided that the Department will not hold a public hearing on this application.

The Department continues to welcome comments throughout the processing of this application and will take your comments into consideration. Please submit any additional information/comments regarding this application as soon as possible to allow the Department adequate time to take those comments into consideration.

If you have further questions or would like to submit written comments concerning this project, please contact the project manager, Eric Sroka, at (207) 446-1619 or by email at [Eric.Sroka@maine.gov](mailto:Eric.Sroka@maine.gov).

Sincerely,

Melanie Loyzim

Acting Commissioner

Cc: Eric Sroka, Project Manager

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR



MELANIE LOYZIM  
ACTING COMMISSIONER

November 26, 2018

Frederick Duncan  
10 Vaters Hideaway  
Jefferson, ME 04348

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Sincerely,

  
Melanie Loyzim

Acting Commissioner

Cc: Eric Sroka, Project Manager

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

**Howatt, Kathy**

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**From:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Sent:** Tuesday, December 04, 2018 11:27 AM  
**To:** Howatt, Kathy  
**Cc:** AquaFortis Associates LLC  
**Subject:** Re: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Hello Ms. Howatt,

Twenty days having passed, Aquafortis Associates LLC is following up on your email below acknowledging its timely request for a hearing accepted by you on November 13th.

Can I please have an update on the status of this request and the anticipated date of the hearing? Thank you.

Sincerely,  
 Richard Smith  
 Aquafortis Associates LLC  
 (207)205-1680

---

**From:** Howatt, Kathy <Kathy.Howatt@maine.gov>  
**Sent:** Tuesday, November 13, 2018 2:43 PM  
**To:** AquaFortis Associates LLC  
**Cc:** Sroka, Eric  
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- 5) Does the Waterways transfer application have specific rules for any hearing and evidence or testimony?

Aquafortis would like to develop a record on certain things, because the Clary Lake Association has already trespassed and done damage to AQF property, and they may be seeking a transfer to embolden further trespass, so AQF needs to examine people and the issues in the WLO and what they think it means or allows. If a DEP hearing is best for doing that, then AQF would proceed that way, as long as the record would then be available for the Board. If the BEP would hold a hearing, maybe the DEP step should be skipped, as long as a record can be developed.

Thank you in advance for your answers to these questions. Aquafortis' default position is to ask for a DEP hearing on the Waterways transfer application, and AQF does so request one here (before the deadline), but reserves the right to instead ask for BEP jurisdiction based on your answers to the above. If in your answers, you could also acknowledge receipt of the timely request for hearing, AQF would appreciate it. Thank you.

Sincerely,  
Richard Smith, Member  
Aquafortis Associates LLC



**From:** Howatt, Kathy <Kathy.Howatt@maine.gov>  
**Sent:** Tuesday, November 6, 2018 3:21 PM  
**To:** AquaFortis Associates LLC  
**Cc:** Boak, Scott; Sroka, Eric  
**Subject:** RE: [EXTERNAL SENDER] Clary Lake - Transfer application questions

Good afternoon Mr. Smith,

Thank you for your questions. The Department accepted an application for transfer of the Clary Lake Water Level Order on October 26, 2018. According to 06-096 Ch.2, Rule Concerning the Processing of Applications and Other Administrative Matters, the deadline for requests for Board of Environmental Protection (BEP) jurisdiction or requests for public hearing must be made within 20 days of application acceptance, in this case by end of business on November 16, 2018. Requests for public hearing or for BEP jurisdiction can be made via email.

Kathy

Kathy Davis Howatt  
 Hydropower Coordinator, Bureau of Land Resources  
 Maine Department of Environmental Protection  
 Phone: 207-446-2642  
[www.maine.gov/dep](http://www.maine.gov/dep)

*Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.*

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**From:** AquaFortis Associates LLC [<mailto:aquafortisllc@hotmail.com>]  
**Sent:** Tuesday, November 06, 2018 1:33 PM  
**To:** Howatt, Kathy <Kathy.Howatt@maine.gov>  
**Cc:** AquaFortis Associates LLC <[aquafortisllc@hotmail.com](mailto:aquafortisllc@hotmail.com)>  
**Subject:** [EXTERNAL SENDER] Clary Lake - Transfer application questions

Dear Ms. Howatt,

Aquafortis Associates LLC ("AQF") is the owner of the historic Clary Mill site in Whitfield, listed on the National Register of Historic Places.

The company recently received a notice form from the Clary Lake Association ("CLA") regarding its intent to file for transfer of a Maine DEP Water Level Order (using a form for a Waterway Development and Conservation Act Permit and/or Water Quality Certification for Hydropower Projects - neither of which appears to apply in this instance.)

The "intent to file" date is listed as October 22, 2018, and states that parties have 20 days after the DEP accepts the application is accepted as complete for processing in which to comment, request a hearing, or request BEP jurisdiction.

There appear to be numerous issues with the application as filed, and AQF may wish to comment, request a hearing, or BEP jurisdiction. Can you please tell AQF the date the application was accepted for processing by DEP and when the 20 day deadline tolls? Are requests by email to you considered sufficient, or is a separate letter necessary? Thank you.

Sincerely,  
Richard Smith, Member  
Aquafortis Associates LLC



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
ACTING COMMISSIONER

December 10, 2018

AquaFortis Associates, LLC  
Attn: Richard Smith  
P.O. Box 1024  
Camden, Maine 04843

Dear Mr. Smith;

On November 26, 2018, the Department's Office of the Commissioner issued a response to your request for a public hearing on an application to transfer a water level order to the Clary Lake Association. The letter was also sent via email on December 4, 2018. I was informed this morning that the original letter was returned, which I am sending out again today. The Department apologizes for its error in using a closed post office box. We assume you got the emailed copy, as it was sent to the address from which your request was made.

Sincerely,

Kathy Davis Howatt  
Hydropower Coordinator  
Bureau of Land Resources

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

website: [www.maine.gov/dep](http://www.maine.gov/dep)



PAUL R. LEPAGE  
GOVERNOR

090  
STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
ACTING COMMISSIONER

November 26, 2018

AquaFortis Associates, LLC  
c/o Richard Smith  
PO Box 23  
Whitefield, ME 04353

**RE: DEP File #L-22585-36-F-T, Clary Lake Association, Transfer Application, Whitefield**

Dear Mr. Smith:

Thank you for your email, received by the Department on Friday, November 12, 2018, regarding the Clary Lake Association's application to transfer the Clary Lake Water Level Order from Pleasant Pond Mill, LLC to the Clary Lake Association.

I have carefully considered your request for the Department to hold a public hearing on this transfer. According to the Department's Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, Section 7(B), "the Department will hold public hearings in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a public hearing will assist the Department in understanding the evidence." Although your email contains a request for a public hearing, your email does not contain credible conflicting technical information regarding a licensing criterion and therefore, a public hearing is not warranted. Further, a request for a Department hearing must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted (06-096 Ch. 2 (7)(A)). Your hearing request did not contain this key information. For these reasons, I have decided that the Department will not hold a public hearing on this application.

The Department continues to welcome comments throughout the processing of this application and will take your comments into consideration. Please submit any additional information/comments regarding this application as soon as possible to allow the Department adequate time to take those comments into consideration.

If you have further questions or would like to submit written comments concerning this project, please contact the project manager, Eric Sroka, at (207) 446-1619 or by email at [Eric.Sroka@maine.gov](mailto:Eric.Sroka@maine.gov).

Sincerely,



Melanie Loyzim

Acting Commissioner

Cc: Eric Sroka, Project Manager

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
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(207) 941-4570 FAX: (207) 941-4584

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PORTLAND, MAINE 04103  
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PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017

20

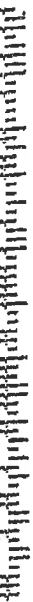
AquaFortis Associates, LLC  
c/o Richard Smith  
PO Box 23  
Whitefield, ME 04353  
NIXIE

015 FE 1260 0012/04/18

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

UTF BC: 04333

\*1369-02365-04-38



024 JTAMTAB 0435

**Howatt, Kathy**

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**From:** AquaFortis Associates LLC <aquafortisllc@hotmail.com>  
**Sent:** Tuesday, December 11, 2018 4:08 PM  
**To:** Sroka, Eric  
**Cc:** Howatt, Kathy; AquaFortis Associates LLC  
**Subject:** [EXTERNAL SENDER] Re: Public Hearing request - Clary Lake WLO

Dear Mr. Sroka,

Thank you for your email of last week attaching a letter regarding the decision in the license transfer request from the Clary Lake Association. Aquafortis has still not received a hard copy of the letter, which your email indicated would follow in the mail.

Therefore, Aquafortis takes your notification date to be the date of the email, and hereby request that the Acting Commissioner reconsider the decision not to hold a public hearing. Aquafortis is the largest landholder associated with Clary Lake, and has become aware that the other largest landowner, Mr. Frederick Duncan, also requested a public hearing, by writing to Ms. Howatt. Aquafortis also exchanged emails with Ms. Howatt, and was not apprised of the apparent detail necessary in any request for a hearing, only of the request deadline. Upon belief, Mr. Duncan was not apprised either, nor did Ms. Howatt indicate any deficiency when the requests were submitted.

Your email notes, and suggests is missing, an assertion of conflicting technical information by those requesting a hearing:

*'the Department will hold public hearings in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a public hearing will assist the Department in understanding the evidence.'*

There is indeed a host of conflicting or absent technical information and/or any of the apparent "criterion" regarding the request for transfer. The current Water Level Order (WLO) is issued against Pleasant Pond Mill LLC (PPM) which is a bankrupt and administratively dissolved LLC. As Ms. Howatt has previously stated (in a pre-application permitting meeting with Dawn Hallowell and Paul Kelley of PPPM), the DEP WLO is neither a permit nor a license, but rather a "strange beast" which is the result of DEP's first-ever adjudicatory hearing under the Water Level statute. This fact is borne out by the application form itself used for the request, which does not apparently apply to WLO transfers (if transfers are even contemplated or allowed under the statute). If this is a criterion of license transfer (and the lack of a form, or apparent use of a non-applicable form) is neither addressed (nor are WLO's mentioned) in the Rule Chapter the letter mentions.

In addition, the WLO is the subject of a contested September, 2015 Notice of Violation, issued earlier in draft form against PPM only, then mysteriously altered to include Aquafortis Associates and certain private individuals. There is a technical question as to the validity of the NOV, the failure of DEP to withdraw it upon PPM's bankruptcy, and the question of whether a purportedly violated WLO may be transferred while an NOV apparently remains pending. What criterion are applicable in this situation are unknown or unshared, and the criterion for any transfer in this setting is apparently absent, or indeed raises an apparent conflict regarding any current or future enforcement of any WLO.

Addressing the WLO itself, there is a recent technical question related to the WLO discussion of purported "flowage rights" ownership around Clary Lake, which a federal court recently addressed to Aquafortis' benefit in an Order upholding certain Corrective Deeds, one applying to Aquafortis' properties, and the other applying to the Clary Lake Dam (the subject of the WLO). In addition to this apparently conflicting federal court adjustment of the WLO (where both DEP and the Attorney General's Office appeared in court), there is the technical failure of the WLO to establish a so-called "normal high water line" during the hearing and WLO itself, which is a statutory criterion, and which now requires further analysis by the department and opportunity to question and comment. Please indicate where the list of criterion (and related technical information) exists for transferring a WLO where such determination is now in question or conflict, leaving a situation of insufficient information for public awareness or apparent examination of potential conflict with important property rights. This open technical question, and the now apparent conflict over the WLO "flowage rights" issue, requires a hearing to address lake abutters questions and concerns, including those not limited to Aquafortis and Mr. Duncan.

Additional technical conflicts arise when considering any transfer criterion that affects Aquafortis' property, which not only abuts, but actually sits atop the dam subject of the WLO. Prior dam owners had agreed to a boundary expansion of the National Register of Historic Places listing of the Clary Mill site, which lists the dam, and Aquafortis' house atop it, as historically "contributing structures". The Clary Lake Association has already trespassed on Aquafortis' land and done damage to the listed-property, and the technical issue of whether DEP adequately considered the historic nature of the dam and anticipated repairs under the WLO and a Permit by Rule warrant public examination. The issue would have been addressed, along with comment from the Maine Historic Preservation Commission, in any proper permit application.

Additionally, the WLO is silent on the technical question of what is an adequate repair and future configuration of the breached dam to allow it to follow any WLO conditions, without increasing upstream and downstream risk. Upon belief, the Clary Lake Association did not submit any engineered drawings of its anticipated repair and change of dam configuration which would allow the technically necessary consideration of outward flow (particularly during precipitation events). This seems a necessary predicate to any "license transfer", if such applies, and the future dam configuration (i.e. change) from that which existed at the time the WLO was issued may create a conflict which bears examination in a public forum.

In addition, the WLO requires a water level management plan, and Aquafortis has seen no draft or discussions of this important technical requirement, and believes that any plan should be submitted and reviewed (and commented upon in a public setting) before any purported license transfer. Again, Aquafortis was not apprised of whether there is an applicable criterion for such an issue. Without this important of any potential change to the dam, any potential licensing conflict cannot even be adequately determined.

In short, there are a host of technical questions and conflicts, all related to WLO related topics, all of which seem to be criterion for a transfer, and which should require the DEP to hold a hearing in this first-ever-DEP-issued WLO. Aquafortis requests a full list of the criterion DEP will use to consider this application, and whether they have ever been utilized for transfer of a WLO. At the very least, the DEP should have produced a proper form for purported WLO transfers, and likely undertaken examination of its Rules to address the actually criterion related to this "strange beast".

Aquafortis therefore respectfully requests that the Acting Commissioner re-visit the decision, and grant Aquafortis and other's request for a public hearing, to address these issues in an open and transparent fashion. If this request for reconsideration is not the appropriate mechanism to seek a change in decision, then alternatively, Aquafortis hereby requests and initiates an appeal to the Board of Environmental Protection to

review the Acting Commissioner's licensing decision (including the above conflicts and questions, and perhaps the apparent failure to apprise members of the public seeking a hearing of the technical elements of such a request, which you cite as reason for denial).

Thank you for your consideration of this matter, and Aquafortis will continue to look for hard copies of future communications (which we also welcome by email attachment, but with the date of communication and response bearing on hard copy receipts).

Sincerely,

*s/Richard Smith*, Member  
Aquafortis Associates LLC

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**From:** Sroka, Eric <Eric.Sroka@maine.gov>  
**Sent:** Tuesday, December 4, 2018 3:39 PM  
**To:** aquafortisllc@hotmail.com  
**Cc:** Howatt, Kathy  
**Subject:** Public Hearing request

Mr. Smith,

The response to your request is attached. You should be receiving a hard copy of the letter in the mail shortly.

Eric



## LICENSE REVIEW ROUTING SHEET

PROJECT MANAGER: Eric Sroka  
ORDER TYPE:

					DRAFT
	ORIGINAL ORDER (N)		CONDITION COMPLIANCE (C)		3PI
	MINOR REVISION (M)	x	TRANSFER (T)	X	SEND TO REGISTRY
	AMENDMENT (A)		AFTER-THE-FACT		CORRECTED ORDER
All Site Orders must be sent to Registry					
APPLICANT NAME:		Clary Lake Association			
APPLICANT ADDRESS:		103 Mills Road Whitefield, ME 04353	FAX#:		
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)					
PROJECT LOCATION:	Whitefield	PROJECT #	L-22585-36-F-T		
APPLICATION TYPE:(Use Site/NRPA or NRPA/SW)	Dams	ATS#:	83699		
ISSUES/COMMENTS:					
ACCEPTANCE DATE:	October 26, 2018				
AGENT NAME:	George Fergusson				
AGENT ADDRESS:	PO Box 127 Whitefield, ME 04353	FAX#			
E-MAIL ADDRESS: (License will be e-mailed to this address when decision is made)		<a href="mailto:secretary@clarylake.org">secretary@clarylake.org</a>			
Final copies of Site orders go automatically to the Registry, Town & IFW. List others to receive a copy here:					

## ABSTRACT (follow sample format below, then delete sample)

- Clary Lake Association (Whitefield) (approval): In Department Order #L-22585-36-F-T, the Department approved the transfer of Department Order #L-22585-36-B-N to the Clary Lake Association. The project is located on Mills Road in the Town of Whitefield. (Sroka)

REVIEWED BY:	SIGNATURE	OK DATE
ENFORCEMENT STAFF (if enforcement involved):		
REGIONAL SUPER:	<i>Kelly Horvath</i>	11/5/2018
Ret'd to PROJ. MGR:	<i>Kelly Horvath</i>	10/31/2018
Div. Director:		



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

CLARY LAKE ASSOCIATION	)	REGULATION OF WATER LEVELS
Jefferson and Whitefield, Lincoln County	)	AND MINIMUM FLOWS
CLARY LAKE DAM	)	
WATER LEVEL ORDER	)	TRANSFER
L-22585-36-F-T (approval)	)	FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 817-840 and Chapter 2 of Department Rules Concerning the Processing of Applications (06-096 C.M.R. ch. 2, last amended June 9, 2018), the Department of Environmental Protection has considered the application of CLARY LAKE ASSOCIATION (applicant) with the supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. The Department has processed several applications related to establishing a water level order for Clary Lake, located in the towns of Jefferson and Whitefield. In 2006, the Department accepted a petition to set water levels and/or minimum flows (#L-22585-36-A-N); this application was subsequently withdrawn as the petitioners tried to resolve their issues privately. When that attempt failed, the petitioners renewed their request that the Department set a water levels and/or minimum flows for Clary Lake, resulting in Department Order #L-22585-36-B-N (Clary Lake Water Order). In 2013 the owner of the Clary Lake dam submitted a petition for release from dam ownership (#L-22585-36-C-N); this petition was rejected by the Department due to the applicant's failure to provide sufficient public notice of its intent to file the petition, in accordance with Department rules concerning the processing of applications. 06-096 Ch. 2. A second petition for release from dam ownership (#L-22585-36-D-N) submitted in September of that year was returned to the petitioner pursuant to a finding that he lacked title, right or interest in the Clary Lake dam. In July 2018, the Clary Lake Association filed an application (#L-22585-36-E-T) to transfer the Clary Lake Water Level Order pending the conclusion of a bankruptcy hearing; the application was ultimately returned, pursuant to a finding that the association lacked title, right or interest in the dam property as a result of delays in the bankruptcy proceeding.
2. The applicant is applying to transfer Department Order #L-22585-36-B-N, currently held by Pleasant Pond Mill, LLC.
3. The applicant submitted the following information in support of this transfer request:
  - A. A transfer application dated October 22, 2018 and signed by George Fergusson on behalf of the Clary Lake Association was submitted to the Department.

Pursuant to section 21 (C)(4) of the Department's Chapter 2 Rules: " If the proposed transferee demonstrates that the original licensee no longer has sufficient title, right, or interest in the property subject to the license, the Department may allow the transfer application to be processed without the signature of the original licensee".

Pleasant Pond Mill LLC, the current licensee, is in bankruptcy. The applicant submitted a signed deed indicating the Clary Lake Association is now the owner of the Clary Lake dam.

The applicant submitted a Certificate of Good Standing, issued by the Secretary of State.

**B. Financial Capacity:** The Department finds that the applicant submitted a statement indicating that yearly operations costs for the Clary Lake Dam are approximately \$500. The applicant further stated that the Clary Lake Association collects yearly membership dues in excess of \$500.00.

**C. Technical Ability:** The Department finds that the applicant submitted a letter detailing routine operations of the Clary Lake Dam, specifically adding or removing stoplogs to manage the water level. The applicant has also retained the services of True North Surveying Services of Newcastle to calibrate a lake level gauge, to be installed pursuant to Special Condition #6, of Department Order #L-22585-36-B-N, which will be necessary to adhere to the existing Water Level Order.

To satisfy the requirements of Special Condition #11, of Department Order #L-22585-36-B-N, the applicant submitted evidence of Public Notice, including certified mailing receipts to abutters and property owners around Clary Lake and confirmation of posting from the Lincoln County News. The applicant also submitted a letter indicating the Clary Lake Association's intent to comply with the terms and conditions set in Department Order #L-22585-36-B-N.

**BASED on the above findings of fact, the Department CONCLUDES that the Clary Lake Association has provided adequate evidence of financial capacity and technical ability to comply with all conditions of Department Order #L-22585-36-B-N and to satisfy all applicable statutory and regulatory criteria.**

**THEREFORE, the Department APPROVES the above noted application of CLARY LAKE ASSOCIATION, to transfer Department Order #L-22585-36-B-N, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:**

1. The Standard Conditions of Approval, a copy attached.
2. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

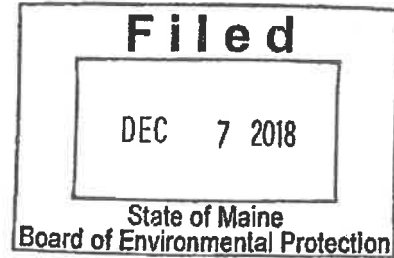
3. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-22585-36-B-N, and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 6<sup>TH</sup> DAY OF DECEMBER, 2018.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Melanie Loyzim  
For: Melanie Loyzim, Acting Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

ES/L22585FT/ATS#83699