

STATE OF VERMONT
WATER RESOURCES BOARD

Appeal of Sherburne Fire District #1
10 V.S.A., § 1629
Motion to Dismiss

Findings of Fact
Conclusions of Law
and Order

BACKGROUND

On November 19, 1980, the Sherburne Fire District #1 filed an appeal with the Vermont Water Resources Board under the provisions of 10 V.S.A., § 1629. On December 17, 1980, the Water Resources Board gave notice of a hearing scheduled for January 26, 1981, to consider this matter. On January 19, 1981, the Agency of Environmental Conservation filed a motion to have the appeal dismissed. The Water Resources Board gave notice on January 14, 1981, that the hearing previously scheduled for January 26, would be limited in scope to the administration of party standing and oral argument on the motion to dismiss.

Appearances in this proceeding were entered by the January 12, 1981 deadline specified in the Board's notice dated December 17, 1980 by the following prospective parties in interest:

1. Agency of Environmental Conservation, by Ben Stoch, Esq.
2. Town of Wilmington, by Sonia DeLurg
3. Town of Whitingham, By Kenneth Fisher, Esq.
4. Town of Brattleboro, by Robert Pu, Esq.
5. Town of Pawlet, by Ellen Maloney, Esq.

Appearances in this proceeding were entered by the following prospective parties in interest at the public hearing on January 26, 1981.

1. Rutland Regional Planning Commission, By Mark Blucher
2. Town of Rutland, Jesse Billings, II

FINDINGS OF FACT

1. Sherburne Fire District #1 initiated a proceeding under the provisions of 10 V.S.A., § 1629 as an administrative remedy for the purposes stated in its petition filed on November 19, 1980.
2. Prior to filing its petition under 10 V.S.A., § 1629, the petitioner brought an action in the Rutland Superior Court seeking a judgement declaring the Fiscal Year 1981 Project List and all prior such priority system by the Agency of Environmental Conservation to be invalid. The Rutland Superior Court has passed this matter to the U. S. District, for the District of Vermont.

CONCLUSIONS OF LAW AND FACT

1. Prior to filing its petition under 10 V.S.A., § 1629, the

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'petitioner brought an action regarding the same subject matter and seeking substantially the same relief before the **Rutland** Superior Court.

2. The **Rutland** Superior Court, and the **Water Resources** Board have **concurrent** jurisdiction in this matter.
3. The **Rutland** Superior Court has **exercised** its jurisdiction in this case by **passing** the **matter** to the U.S. District Court for **the** District of **Vermont**.
4. The usual **rule that** administrative remedies **must** be **exhausted** before seeking relief from a court does not, apply to this case since in seeking declaratory relief in **Rutland Superior Court**, the petitioners invoked that Court's jurisdiction under the ' Declaratory **Judgements** Act as set out in 12 V.S.A., § 4711 et seq.
5. Where **two tribunals** with concurrent jurisdiction over the same subject matter, the one which first acquires jurisdiction **should** exercise it and the other should defer. South Burlington v Velco, 133 VT 438, 433, (1975).

ORDER

1. **The Board's** consideration of the **appeal** of the Sherburne Fire District #1 filed on November 19, 19'80 shall be continued pending final **action** on the proceeding filed in **Rutland** Superior Court.

Done this **20th**, day of February 1981, Montpelier, Vermont.

FOR THE WATER RESOURCES BOARD, .

William Bartlett
 William A. Bartlett
 Executive Secretary

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