

STATE OF VERMONT

Water Resources Board

Albert Turner  
Gravel Removal, **Mad River**  
Town of Waitsfield, **Vermont**

10 V.S.A., §1024  
Findings of Fact, Conclusions  
of Law and an Order

Introduction

On July 1, 1982 the Department of Water Resources **issued** a permit under the provisions of **10 V.S.A.**, Chapter 41, Subchapter 2 "**Alteration of Streams**" to Albert **J. Turner** for the removal of approximately 10,000 cubic yards of gravel **from the** Mad River in **the** Town of Waitsfield, Vermont. On July 7, 1982 **this permit** was appealed under **the provisions** of **10 V.S.A., §1024(a)** by George **Carpenter** a riparian property owner. On July 19, 1982 William Bartlett, Executive Secretary of the Vermont Water Resources Board conducted a **public** hearing on this appeal as a **referee on behalf** of the Water Resources Board. On July 28, 1982 Preliminary Findings of Fact **were** issued by the hearing referee and an opportunity was provided for the receipt of additional comment by all parties. The following additional documents were received during the comment period:

- (1) ,A memorandum dated August 9, 1982 submitted by Barry Cahoon on behalf of the Department of Water **Resources**.
- (2) A letter dated August 9, 1982 submitted by George M. Carpenter,

Findings of Fact

1. The Water Resources Board **adopts** in their entirety, the Preliminary Findings of **Fact** issued pursuant to this case by the hearing **referee** on July 28, 1982.

Conclusions of Law

1. The proposed **excavation will** not adversely affect the public safety by **increasing** flood hazards,
2. The proposed excavation will not **significantly damage fish life** or wild-life.
3. The proposed excavation will not significantly damage the rights of riparian **owners**.

Order

On the basis of the above findings of fact and conclusions of law, the Vermont Water **Resources** Board hereby orders that the Stream **Alteration Permit**

dated July 1, 1982 issued to Albert J. Turn& by the Protection Division of the Department of Water Resources be affirmed in all respects including all conditions, except that condition number 7 is amended to read as follows:

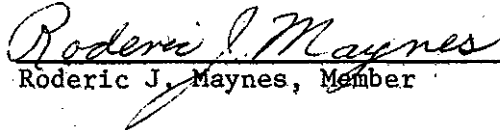
7. This permit expires on October 1, 1983, and can be revoked at any time by the Department of Water Resources if inspection reveals that compliance is not being made with the conditions of this permit.

Done this 24th day of August 1982 at Woodstock, Vermont.

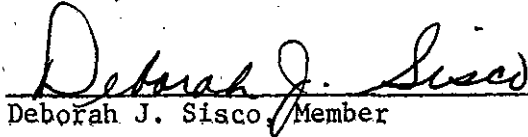
The Vermont Water Resources Board



Duncan F. Brown, Chairman

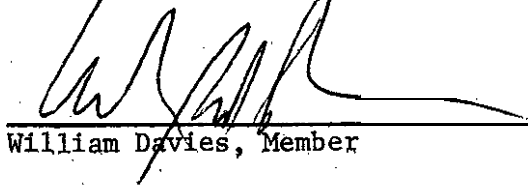


Roderic J. Maynes, Member



Deborah J. Sisco, Member

Cathy pachlin, Member



William Davies, Member

STATE OF VERMONT

Water Resources Board

Albert Turner  
Gravel Removal, Mad River  
Town of Waitafield, Vermont

10 V.S.A., §1024  
Preliminary Findings of  
Fact

Introduction

On July 1, 1982 the Department of Water Resources issued a permit under the provisions of 10 V.S.A., Chapter 41, Subchapter 2 "Alteration of Streams" to Albert J. Turner for the removal of approximately 10,000 cubic yards of gravel from the Mad River in the Town of Waitafield, Vermont. On July 7, 1982 this permit was appealed under the provision of 10 V.S.A., §1024(a) by George Carpenter a riparian property owner. On July 19, 1982 William Bartlett Executive Secretary of the Vermont Water Resources Board conducted a public hearing on this appeal as a referee on behalf of the Water Resources Board.

Appearances were entered by:

- a. Albert J. Turner
- b. George Carpenter
- c. Department of Water Resources

During the course of this proceeding the following documents were entered into the record:

- a. Exhibit 1: An application form entitled "Application for Permission to Alter a Natural Stream" signed by Albert J. Turner dated June 21, 1982.
- b. Exhibit 2: A drawing showing the location of the proposed gravel removal, dated June, 1982 with the notation "Richard Keller - Survey Map."
- c. Exhibit 3: A one page document entitled "State of Vermont? Agency of Environmental Conservation, Stream Alteration Investigation Report."
- d. Exhibit 4: A series of 4 black and white photographs showing the site of the proposed gravel removal taken on July 12, 1982 by Barry Cahoon on behalf of the Department of Water Resources.
- e. Exhibit 5: A drawing prepared by the Protection Division of the Department of Water Resources showing the excavation site in cross section.
- f. Exhibit 6: A drawing prepared by the Protection of the Department of Water Resources showing the proposed excavation from a plan view.
- g. Exhibit 7: A drawing entitled "Turner-Carpenter Property Line Agreement" dated June 1982 prepared by R. C. Keller.

Preliminary Findings of Fact

1. **Albert** Turner (hereinafter "the applicant") proposes to excavate approximately 10,000 cubic yards of gravel material from the easterly side of the Mad River stream bed on the "inside" of a bend in the river at a point commencing several hundred feet downstream of **Carpenter's** Rock, so called, and continuing downstream to the **Moretown/Waitsfield** town line a distance of approximately 900 feet.
2. The excavation site is on lands owned by the applicant which are adjacent to lands owned by **George Carpenter** who shares a common boundary line with the applicant for the distance of more than 1500 feet as shown by exhibit 7. Mr. Carpenter's property is adjacent to the Mad River upstream and downstream of the proposed excavation site.
3. The exact location of the property boundary line between the property owned by Mr. Turner and Mr. Carpenter is in dispute subject to further interpretation of a decision by the Washington Superior Court (see Docket #S-44-78 Wnc dated August 4, 1981).
4. In the vicinity of the proposed excavation, the flow of the Mad River changes direction making an approximately 90 degree bend. Gravel deposits tend to accumulate on the (inside of this bend, on the easterly side of the stream bed at the site of the proposed excavation. Gravel has been excavated from this site on at least one previous occasion.
5. As gravel deposits accumulate on the easterly side of the stream bed, the current of the Mad River is forced against the westerly stream bank.
6. The land on the westerly side of the Mad River opposite the excavation site is used as cropland by the applicant as part of a farming operation. This field is located in the floodway of the Mad River.
7. In past years the applicant has taken steps, to protect the field from erosion by rip rapping the westerly stream bank,
8. The applicant proposes to remove the gravel in order to prevent the stream channel from migrating further to the west into the field and to temporarily reduce the likelihood of the field being flooded,
9. The gravel to be removed will be sold by the applicant,
10. The applicant intends to comply with all seven conditions of the stream alteration permit issued by the Protection Division, Department of Water Resources on July 1, 1982.
11. All work associated with the gravel removal will occur above the water level of the Mad River at the time of excavation and will be done completely in the dry except for crossing the stream with trucks removing the gravel.
12. The area to be excavated will be limited to an area defined by existing stream bank vegetation.
13. The district fisheries biologist of the Vermont Fish and Game Department has reviewed this application and determined that it would not have an adverse effect on fish life.

14. Mr. Carpenter testified that in his opinion gravel removal at this site and in the Mad River drainage basin generally was causing increased erosion on his land and the lands of others by altering the natural gradient of the river bed,
15. The level of the Mad River immediately upstream of the proposed gravel excavation is controlled by an existing rapids which will not be altered by the proposed excavation,
16. Mr. Carpenter presented no evidence other than his own testimony regarding the relationship between the proposed gravel excavation and the rate of erosion occurring on this own property,

The above preliminary findings of fact are issued in accordance with 10 U.S.A., §905(c)(3) by the referee appointed by the Water Resources Board. All parties in interest to this proceeding have the opportunity to file exceptions to these findings or to request additional findings. Any such exceptions or questions or comments, must be received to this office on or before August 17, 1982. All correspondence regarding this matter should be addressed to the Vermont Water Resources Board, State Office Building, Montpelier, Vermont 05602 (telephone 828-2871).

Done this ~28th day of July at Montpelier, Vermont.

By authority of the Vermont  
Water Resources Board



William A. Bartlett  
Hearing Referee

AB/kgr