

State of Vermont  
Water Resources Board

Appeal of Raymond Veillette  
Reconstruction of Rood Pond  
Dam  
Williamstown, Vermont

10 V.S.A., Chapter 43  
Findings of Fact  
Conclusions of Law and  
Order

Introduction

Following public hearings held on October 11, 1984 and January 17, 1985 to consider the above captioned appeal, the hearing referee on February 26, 1985 issued Preliminary Findings of Fact. In accordance with 10 V.S.A. 6905(a) (1) (C)(iv) all parties were given an opportunity to file exceptions or requests with respect to the referee's preliminary findings. The following filings were received in response to the preliminary findings:

- (1) Appellant's Objections to Rulings, Exceptions to Findings and-Memorandum dated March 14, 1985.
- (2) Department of Water Resources and Environmental Engineering and Department of Fish and Wildlife's request for Supplementary Findings of Fact dated March 21, 1985.
- (3) Joseph DePalJr.'s Request for Supplementary Findings dated March 25, 1985.

The Water Resources Board gave notice on April 25, 1985, that it would conduct a public hearing on May 16, 1985 pursuant to 10 V.S.A. §905(a) (1) (C) (v) to consider all objections to hearing referee rulings and all exceptions and requests for supplemental findings filed in response to the hearing referee's preliminary findings. The hearing was conducted in accordance with the board's notice with the following parties present:

- (1) Department of Water Resources and Environmental Engineering by Merideth Wright, Esquire
- (2) Department of Fish and Wildlife by Merideth Wright, Esquire
- (3) Raymond Veillette, by Richard Finn, Esquire
- (4) Joseph DePalo, Jr., by Richard Finn, Esquire

No additional evidence was presented at the May 16th hearing which **was recessed** pending a review of the record and deliberation. The hearing was adjourned on June 6, 1985.

Findings of Fact and Conclusions of Law

1. Preliminary Finding of Fact #2 is amended to add **the** following sentence: "The aerial photographs of Rood Pond taken in 1963 and 1968 are substantially the same as the aerial photographs taken in 1975."
2. Preliminary Finding of Fact #19(d) is amended to read as follows: "With Rood Pond's water level at elevation 1306, it would inundate approximately 0.14 acres more of Mr. Veillette's property than was inundated in 1982."
3. The Water Resources Board adopts in their entirety, except **as** amended by Findings 1 and 2 **above**, the Preliminary Findings of Fact issued by the hearing referee on February 26, 1985.
4. To the extent they are not incorporated in the foregoing, all exceptions and objections to the Preliminary Findings of Fact and all requests for supplementary Findings of Fact proposed by the parties are hereby denied.
5. After consideration of the provisions of 10 V.S.A. §1086(a) (1-13) the Water Resources Board concludes that the reconstruction of Rood Pond Dam as proposed by **the** Department of **Fish** and Wildlife will serve the public good.

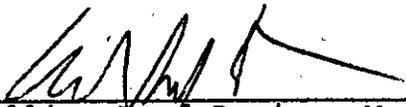
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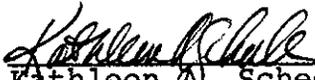
1. The appellant's objection to rulings made by the hearing referee and memoranda of law were considered and are hereby denied.
2. The Department of Fish and Wildlife is hereby authorized to reconstruct Rood Pond Dam in accordance with the plans and specifications previously approved by the Department Water Resources and Environmental Engineering subject to compliance with:
  - a. Special Conditions 1 and 2 **of** the Order of Department of Water Resources and Environmental Engineering dated July 25, 1984 which is the subject **of** this appeal.
  - b. General Conditions 2-16 of the Order of the Department of Water Resources and Environmental Engineering dated July 25, 1984 which is the subject of this appeal.

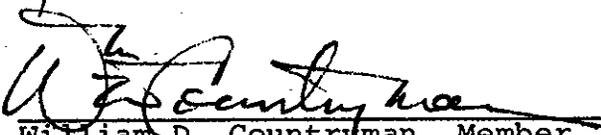
3. All construction shall be completed by November 15, 1985 unless an extension of time is granted by the Department.

Done this 6th day of June, 1985, at Berlin, Vermont.

By the Vermont Water Resources Board

  
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William Boyd Davies, Member

  
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Kathleen A. Scheele, Member

  
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William D. Countryman, Member

Board members in favor  
of this decision:

William Boyd Davies  
Kathleen A. Scheele  
William D. Countryman

Board members opposed to  
this decision:

None

State of Vermont  
Water Resources Board

Department of Fish & Wildlife  
**Reconstruction** of Rood Pond Dam  
Williamstown, Vermont

10 V.S.A., Chapter  
Preliminary Findings of  
Fact

Introduction

The following preliminary findings of fact are issued in accordance with 10 V.S.A. §905(1)(C) by the referee appointed by the Vermont Water Resources Board to conduct a public hearing regarding the appeal of Raymond Veillette from the issuance of a permit under the provisions of 10 V.S.A., Chapter 43 by the Department of Water Resources and Environmental Engineering authorizing the Department of Fish and Wildlife to reconstruct Rood Pond Dam.

The following parties entered their appearance in this proceeding:

1. Department of Fish and Wildlife
2. Raymond Veillette
3. Department of Water Resources and Environmental Engineering
4. Joseph DePalo
5. Gerard Perreault

Public hearings concerning this appeal were held on October 11, 1984 and on January 17, 1985 at the Barre Town Municipal Building. In the course of this proceeding the following documents were entered into the record:

Applicant's Exhibit #1: A drawing dated February 1984 entitled "Rood Pond Dam Repair, Cover Sheet and Plan" (Sheet 1 of 7) prepared by the Facilities Engineering and Cartographic Section of the Department of Water Resources and Environmental Engineering, Agency of Environmental Conservation.

Applicant's Exhibit #4: A document entitled "Trend Line Analysis of Water Surface Evaluations 1975-1984."

Applicant's Exhibit #5: A collection of five aerial photographs taken on various dates as indicated on the photos between 1939 and 1979, showing Rood Pond and environs.

Applicant's Exhibit #6: A series of 15 color photographs of various features of Rood Pond and environs.

Applicant's Exhibit #8: A document dated October 9, 1984 entitled "Inundation Map."

Applicant's Exhibit #9: A four page document dated October 10, 1984 entitled "Rood Pond Dam Reconstruction, Summary of Engineering Evaluation" prepared by John B. Dudley on behalf of the Department of Fish and Wildlife.

Applicant's Exhibit #10: A three page memorandum dated December 7, 1984 with an attached map of Rood Pond addressed to the Water Resources Board from Norman E. Wright, Commissioner, Department of Fish & Wildlife.

Applicant's Exhibit #11: A topographic map dated 1980 entitled "Brookfield Quadrangle" prepared by the U.S. Department of the Interior, Geological Survey.

Applicant's Exhibit #12: A letter dated November 1, 1984 addressed to John Chase, Office of the Attorney General from Susan Sinclair, Central Vermont Regional Planning Commission.

Applicant's Exhibit #13: A letter dated October 22, 1984 addressed to John Chase, Office of the Attorney General from J. Leo Donahue, Town of Williamstown.

Applicant's Exhibit #14: A letter dated October 31, 1984 addressed to John B. Dudley, Department of Water Resources and Environmental Engineering from Kent Stevenson, Two Rivers - Ottauquechee Regional Commission.

#### Objection to Hearing Referee Rulings

In the course of this proceeding the hearing referee made several rulings to which one or more parties noted their objection. Each party is directed to identify each specific ruling by the hearing-referee to which they have an objection. that they wish to preserve and to file those objections in writing with an accompanying legal brief by March 21, 1985 for consideration by the full Water Resources Board.

#### Preliminary Findings of Fact

.. Rood Pond is located in the Towns of Williamstown and Brookfield. It is a natural pond whose water level has been enhanced and controlled by a man-made dam which is located in the Town of Williamstown. The existing dam was constructed about 1930 (Applicant's Exhibit #9).

\$ 2 . The normal water level of Rood Pond has fluctuated between 1939 and the present as shown by Applicant's Exhibits #4, #5 and #11. These fluctuations have produced corresponding changes in the shoreline configuration and in the pond's surface area. In 1939 the pond had a rounded shape with a surface area of approximately 18 acres. In May of 1975 the pond had a more elongated shape and a surface area of approximately 23 acres.

3. Between 1975 and 1984 the condition of the Rood Pond Dam has deteriorated to the point that the normal water level has been lowered by 12 to 18 inches from an elevation in excess of 1386 in 1975 to an elevation of less than 1305 in 1984 as shown by Applicant's Exhibit #4.
4. Vegetative patterns adjacent to the shoreline of Rood Pond as photographed and observed in 1984 are consistent with the trend of a receding water level with a distinctive change in vegetation from predominately swampy grasses to predominately woody growth occurring at elevation 1306 as shown by Applicant's Exhibit #6.
5. The Rood Pond dam is owned by the Department Fish and Wildlife which proposes to reconstruct the dam and to raise the pond's normal water level to elevation 1306.0. This would be accomplished by the removal of the existing dam and the construction of a new earthen embankment dam with a box culvert and control structure as shown on Applicant's Exhibit #1. The Pond's water level would be controlled by stop logs at the spillway box on the upstream of the dam.
6. During a 100 year flood event the proposed dam would raise the water level of Rood Pond to an elevation of 1308.
7. The purposes of the proposed reconstruction are to: restore the pond's water level to its recent historical level in order to increase fisheries production, to improve public access to the pond via the boat launch ramp and to facilitate future fisheries management.
8. With regard to the effect of the proposed reconstruction on the quality, kind, and extent of cultivated agricultural land that may be rendered unfit for use by the project, including both the immediate and long range agricultural land use-impacts:
  - a. The vegetation on the land which will be inundated by raising the water level to elevation 1306 consists of swampy grass with little woody growth. These lands are not cultivated for agricultural purposes.
  - b. There are no cultivated agricultural lands within the 100 year flood elevation.
  - c. There are no adverse impacts on either immediate or long range agricultural land uses associated with the proposed reconstruction.
9. With regard to the effect of the proposed reconstruction on scenic and recreational values:
  - a. Raising the water level to elevation 1306 will enhance the use of the existing boat launch ramp at the public fishing access area.

- b. Rood Pond is **one** of a relatively small number of ponds in Vermont which provides good trout fishing from the shoreline.
  - c. Raising **the** water level to 1306 **will** improve conditions for shoreline angling by restoring the water level to a point where the adjacent shoreline provides firmer, footing than exists at the current water level.
10. With regard to the effect of the proposed reconstruction to fish and wildlife:
- a. Raising the water level to elevation 1306 would inundate the shallow **northern** section of the pond. Shallow water areas are most productive fish habitat areas of any lake or pond.
  - b. The installation ,of an operative control structure in the reconstructed dam would provide the Department of Fish and Wildlife with the capability of isolating the pond **from** the waters downstream in order to allow the periodic chemical reclamation of the Pond's fishery. Such reclamation is accomplished by eliminating undesirable "trash fish" **which compete** for habitat with the more desirable game fish.'
  - c. The **proposed** reconstruction would not have an adverse impact on wildlife.
11. With **regard to** the effect of the proposed reconstruction on forest and forest programs:
- a. The area which would be inundated by raising the water level to elevation 1306 does not contain any forested areas.
  - b. Forests and forest programs would not be adversely affected by the proposed reconstruction.
12. With regard to the **effect** of the proposed reconstruction on the need for a minimum water discharge flow schedule to protect the natural rate of flow and the water quality of the affected waters:
- a. An **adequate minimum** flow downstream of the dam will be maintained during construction.
  - b.. After **construction the** flow downstream of the dam will be equal to the **natural** flow into the pond.
13. With regard to the **effect of the** proposed reconstruction on the existing uses of **the waters** by the public for boating, fishing, swimming and other recreational uses:

- a. The primary use of Rood Pond by the public is for the purposes of fishing. Rood Pond has long been noted as an excellent trout fishery and has been heavily used for recreational fishing over a long period time.
  - b. Rood Pond is not used by the public to any sufficient extent for swimming, recreational boating or other recreational purposes.
14. With regard to the effect of the proposed reconstruction on the creation of any hazard to navigation, fishing, swimming or other public uses:
- a. The only public use of Rood Pond to any significant extent is for fishing.
  - b. The purpose of the proposed reconstruction is to benefit the public use of Rood Pond for fishing.
  - c. The proposed reconstruction will increase the existing water level by 12 to 18 inches.
  - d. The increased water level will alleviate an existing shallow water condition at the boat launch ramp at the public fishing access area.
15. With regard to the effect of the proposed reconstruction on the need for cutting clear and removal of all timber or tree growth from all or part of the flowage area:
- a. There is no timber or tree growth in the area to be inundated. The vegetation which will be inundated is characterized as swampy grasses with little or no woody growth.
16. With regard to the effect of the proposed reconstruction on the creation of any public benefits:
- a. The proposed reconstruction will enhance public safety by insuring that the dam and its spillway structure are designed to comply with contemporary engineering and design standards.
  - b. The proposed reconstruction would enhance the capability of the Department of Fish and Wildlife to periodically reclaim the fishery within the pond.
  - c. The proposed reconstruction would enhance the use of the existing public fishing access area.
  - d. The proposed reconstruction would enhance the use of the pond for fishing both from boats utilizing the public access or by shoreline fishing.

17. With regard to the effect of the proposed reconstruction on the classification of the affected waters under Chapter 47:
  - a. Rood Pond is a Class B body of water by virtue of the Water Resources Board's Classification Order for the White River Basin dated December 28, 1977.
  - b. Class B waters are to be maintained at a quality suitable for bathing and recreation, irrigation and agricultural uses; good fish habitat; good aesthetic value; acceptable for public water supply with filtration and disinfection. (10 V.S.A. §1252(a)).
  - c. The proposed reconstruction will not adversely impact water quality.
18. With regard to the effect, of the proposed reconstruction on any applicable, state, regional, or municipal plans:
  - a. The proposed reconstruction is compatible with the Williamstown Plan as shown by Applicant's Exhibit #13.
  - b. The proposed project is consistent with applicable regional plans as shown by Applicant's Exhibits #12 and #14.
19. With regard to the effect of the proposed reconstruction on municipal grand lists and revenues.
  - a. The value of buildings or other improvements on state lands held by the Agency of Environmental Conservation are not considered in determining the State of Vermont's assessment on the local grand list;
  - b. The proposed reconstruction will inundate privately owned property adjacent to Rood Pond which as of September 29, 1984 was not under water, including a portion of a 2.4 acre parcel owned by Mr. Raymond Veillette.
  - c. On September 29, 1984, the water level at Rood Pond was 1304.8 (Applicant's Exhibit #9).
  - d. With Rood Pond's water level at elevation 1306, approximately 0.14 acres Mr. Veillette's property would be inundated.
  - e. The proposed reconstruction will restore the surface elevation of Rood Pond to approximately the water level which existed in 1975-76. (Applicant's Exhibit #4).
20. With regard to the effect of the proposed reconstruction on public safety:

Preliminary Findings of Fact

March 1, 1985

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- a. The potential impact downstream of the structural failure of the dam has been evaluated under three scenarios: failure on a **July day**, failure **during a** 100 year flood event, failure during a maximum possible flood event. In each case the downstream impact of the 'proposed dam's structural failure would be negligible,
- b. The proposed reconstruction has been designed by a professional engineer with thirteen years experience.

Any party in interest to this proceeding may file objections to these preliminary findings of fact or request additional findings of **fact by filing** such a request with the Vermont Water Resources Board, State Office Building, Montpelier, Vermont 05602 (telephone **828-2871**) by March 21, 1985.

Done this 26th **day of** February, 1985, at Montpelier, Vermont.

For the Vermont Water Resources Board



William A. Bartlett  
Hearing Referee

WAB/kgr