

State of Vermont  
Water Resources Board

Re: Appeal of Balagur  
**Docket No. 86-06**

Decision

The Water Resources Board (Board) was petitioned by the State of Vermont, Agency of Natural Resources (ANR) to vacate the Water Quality Certificate (WQC), the Discussion, the Findings of Fact and Conclusions of Law and other opinions and orders issued by the Board in the Appeal of Richard Balagur, Docket No. 86-06. The ANR asserts that the Board was without jurisdiction to review and issue a WQC in the Balagur case and therefore the Board, should vacate all decisions, opinions, orders or discussions issued in that matter.

Prior to reaching the merits of the Motion to Vacate, the Board conducted a hearing on the preliminary issue of whether the case should be reopened. Although the Board recognizes that it has the inherent authority to reopen a case to correct errors, such a determination is within the sound discretion of the Board. When weighing the competing principles in this case, including principles of finality of decision and the general rule that considerations of jurisdiction can be raised at any time, the Board concludes that the Appeal of Richard Balagur should not be reopened.

Findings of Fact

1. On September 28, 1990, the ANR filed a Motion to Vacate the "WQC," the "Discussion," the "Findings of Fact and Conclusions of Law" and all other opinions and orders issued by the Board in the Appeal of Richard Balagur, Docket No. 86-06.
2. By decision dated September 21, 1986, the Department of Water, Resources and Environmental Engineering, Agency of Environmental Conservation, denied Richard Balagur a WQC (401 Certificate). Mr. Balagur appealed this decision to the Board, on September 26, 1986. After preliminary proceedings and rulings the Board issued a WQC upon stipulation of all parties, including Richard Balagur, the Agency of Environmental Conservation and the Friends of the Ompompanoosuc.
3. On June 12, 1991, the Friends of the Ompompanoosuc filed a motion to join the ANR's request to vacate.
4. The Board met on November 15, 1990, and directed its staff to conduct a prehearing conference (initial hearing) on the motion to vacate. The Board wanted to know what matters would be at issue if the Balagur Appeal were reopened.

5. A prehearing conference (initial hearing) was conducted on **May 29, 1991**. The following parties were represented at the prehearing conference: The **ANR**, Friends of the **Ompompanoosuc**, and Richard Balagur.
6. The **Board** conducted a hearing on June 19, 1991, on the preliminary issue of whether the Balagur Appeal should be reopened.
7. At the June 19, 1991, hearing the Board determined that the following people shall have party status in this matter: the ANR, represented by Assistant Attorney General Ron Shems, the Friends of the **Ompompanoosuc**, represented by **Darby, Laudon, Sterns**; and Thorndike, and Mr. Balagur, **pro se**.

#### Conclusions of Law

The ANR asserts that it would be an abuse of discretion if the **Board** did not reopen the Balagur Appeal. The ANR argues that the Board did **not have** subject matter jurisdiction to review the **ANR's** decision with respect to the WQC. The ANR relies on a Vermont Superior Court decision which states that the Board does **not have authority** to conduct appellate review of WQC (Section 401 Certificates). In re: Georaia Pacific, No: S-11-90EC(Vt., Ess. Sup. Ct. Aug. 21, 1990). The Friends of the Ompoinpanoosuc rely on In re: Georgia Pacific and also assert that because the Board is without authority to issue **WQCs**, it must reopen the Balagur Appeal, vacate the Certificate, and dismiss that appeal.

**Even** though the Board has the inherent authority to reopen a case to correct errors, whether or not a matter is reopened is within the sound discretion **of the** Board. Although the Board's Rules of Procedure do not specifically set out a standard for, determining whether a matter should be **reopened**, **Vermont** Rule of Civil Procedure 60(b) presents a useful **analogy** for such a determination.

V.R.C.P. 60(b) sets out a one year time frame within **which** to request relief **from** a judgment, order or proceeding for reasons of mistake, newly discovered evidence or fraud. With respect to any other reasons, the rule requires that motions for relief from judgment **be made within a "reasonable time."**

The **ANR** claims that as a matter of law there is no time frame within which a person can request relief from a **judgment** on the grounds that the Board lacked subject matter jurisdiction, that such a **request** is reasonable at anytime. The Board is not persuaded.

As a general rule, consideration of jurisdiction can be raised at anytime. Berry v. Arnoldware, 127 Vt. 188 (1968). Indeed, if the case were still active before the Board or other reviewing tribunal, arguments that the Board is without

jurisdiction would be timely. Id. However, once a determination has been made **and the matter** has not, been appealed, the interest in correcting errors must be weighed against the **need for** finality.

In this case, the Board took jurisdiction over the Appeal of **Richard Balagur**. The Board **issued** a WQC by stipulation of the **parties** on July, 2, 1987. That decision was not **appealed**. The **ANR's** attempt now to relitigate the 1987 **decision** is untimely and beyond the **"reasonable time"** within which such a motion should be made.

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Order

Accordingly, this Appeal of Richard Balagur, Docket No. 86-06 is D&reopened.

Dated this 6<sup>th</sup>, day of August, 1991.

Water Resources Board

  
Elaine B. Little, Acting Chair  
Dale A. Rocheleau  
William Boyd Davies

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