

State of Vermont
WATER RESOURCES BOARD

In re: Dean Leary
(Appeal of DEC Permit No. 93-29, Lake Champlain),
Point Bay Marina, Charlotte, Vermont
Docket No. **MLP-94-08**

CHAIR'S PRELIMINARY ORDER

CLF's Motion for Preliminary Ruling on Scope of Review

On September 27, 1995, the Conservation Law Foundation (CLF) filed a motion requesting a preliminary ruling on the scope of review in the above-captioned matter. CLF sought a determination by the Water Resources Board (Board) that compliance of moorings at Point Bay Marina with the public trust doctrine and the statutory requirements of 29 V.S.A. chapter 11 is relevant and within the scope of the Board's review in the above-captioned proceeding.

On October 1, 1995, the permittee, Point Bay Marina filed written objections to CLF's motion.

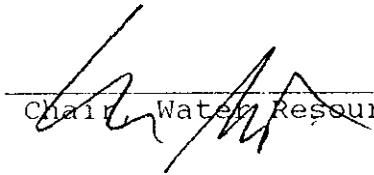
This matter was referred to the Chair of the Board for a preliminary ruling on the timeliness of CLF's filing in light of various orders previously issued in this proceeding.

The Chair has determined that CLF's motion is untimely and beyond the jurisdiction of the Board to consider in this proceeding. The issues were framed by the appellant and memorialized in the Prehearing Conference Report and Order of September 30, 1995, as supplemented by the Board's Memorandum of Decision of April 13, 1995. Although CLF sought and was granted intervention after the issuance of this Prehearing Conference Report and Order, as a party it nonetheless is bound by the terms of this document and all subsequent Preliminary and Supplemental Prehearing Orders. It may not expand the scope of the present proceeding (or seek a declaration that the mooring issue is implicitly within its scope) when the issue was neither raised before the Agency of Natural Resources (ANR) in the first instance nor included in a notice of appeal. If CLF wishes to test the ANR's interpretation of the encroachment permitting statute, it should seek a declaratory ruling from that agency.

ORDER:

For the reasons so stated, the Chair denies CLF's motion as untimely filed and beyond the jurisdiction of the Board to consider in this appeal.

Dated at Montpelier, Vermont, this 17th day of October, 1995.

William Boyd Davies,  Chair, Water Resources Board