

State of Vermont  
WATER RESOURCES BOARD

In re: Kevin Rose and the Champlain Kayak Club  
(Appeal of DEC Permit No.: 95-23, Blodgett  
Corporation, Lake Champlain, Burlington)  
Docket No. MLP-96-01

PRELIMINARY MEMORANDUM OF DECISION AND ORDER  
ON PARTY STATUS

As explained below, the Water Resources Board ("Board") determines that the Conservation Law Foundation ("CLF") is entitled to party status as a matter of right in this proceeding.

I. PARTY STATUS

Background

On March 13, 1996, CLF filed a motion to intervene or participate as amicus curiae ("CLF Motion"). On March 27, 1996, the G.S. Blodgett Corporation ("Blodgett") filed a response to the CLF Motion.

On April 4, 1996, Board Chairman William Boyd Davies granted CLF party status as a matter of right and by permission pursuant to 29 V.S.A. §406(c) and/or Rule 22(A) of the Board's Rules of Procedure ("Rules").

On April 10, 1996, Blodgett filed a timely objection to Chair Davies' grant of party status to CLF ("Blodgett Objection"). Blodgett asserts, in part, that CLF should be denied party status because it failed to demonstrate a particular and substantial interest in the facts and/or issues in this proceeding.

On April 18, 1996, the Board deliberated in open session on the Blodgett Objection.

Discussion

The Board does not require a petitioner for party status to present affidavits and/or evidence to support factual allegations set forth in a petition for party status. The Board assumes that the signer of a petition has read the document and that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, the document is well grounded in fact. Cf. Vermont Rules of Civil Procedure 11. Based upon this assumption, the Board presumes the veracity of the factual allegations contained in a petition. Of course, affidavits, and/or other documentary evidence in support of a petition may be filed.

Those who oppose factual allegations contained in a petition for party status which satisfies, prima facie, the requirements of Rule 22 of the Rules should come forward with affidavits or other documentary evidence sufficient to call into question the factual basis for the petition. However, they are not compelled to do so. If no such supporting materials are presented, the Board, after affording the presumption noted above, will evaluate the competing allegations on their face to determine whether the petition satisfies the applicable requirements.

In accordance with the **foregoing and** contrary to **Blodgett's** assertion, CLF has demonstrated that it has a substantial interest which may be affected by the outcome of this matter. Its members use and enjoy the waters of Lake Champlain for boating, fishing and other activities. These are substantial interests. If constructed as authorized by Management of Lakes and Ponds Permit No. 95-23, **Blodgett's** dock will intrude into the waters of **Lake Champlain**. As a result, the dock may adversely affect **CLF's** members' use and enjoyment of the waters of Lake Champlain for boating, fishing and other **activities**.<sup>1</sup>

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<sup>1</sup> The Board takes cognizance of **CLF's** longstanding statewide interest in the application of the Public Trust Doctrine and that the Board's decision in this proceeding may adversely affect such interest. See In re: Dean Lear-v, MLP-94-08. Preliminary Order. Standing and Party Status Issues, December 28, 1994 (holding that CLF entitled to party status as a matter of right in MLP appeal involving application of Public Trust Doctrine).

II. ORDER

1. The Blodgett Objection is OVERRULED.
2. CLF is entitled to party status as a matter of right pursuant to 29 V.S.A. § 406 (c) and Rule 22 (A)(7).

Dated at Montpelier this 7th day of May, 1996.

WATER RESOURCES BOARD

*William Boyd Davies,*

William Boyd Davies,  
Chairman

Concurring: William Boyd Davies  
Steve Dycus  
Gail Osherenko  
Jane Potvin

Absent: Ruth Einstein

a:WRBCKC\*Pre.Iss.Ord(G4)