

**State of Vermont
WATER RESOURCES BOARD**

**In re: Deerfield River Hydroelectric Project
§ 401 Certification
Docket Nos. WQ-95-01 and WQ-95-02 (consolidated)**

ORDER

I. BACKGROUND

On March 31, 1995, the Water Resources Board (Board) received a motion seeking intervention in the above-captioned proceeding jointly filed by the Conservation Law Foundation (CLF), Appalachian Mountain Club (AMC), American Rivers, Inc. (AR), New England Friends for the Liberation of Whitewater (NE/FLOW), The Deerfield River Compact (DRC), American Whitewater Affiliation (AWA), and Deerfield River Watershed Association (DRWA) (hereinafter referred collectively as the Conservation Coalition). The movants requested that they each be granted party status pursuant to "Rule 22(A) and (B)" of the Board's Rules of Procedure or be permitted to participate as amicus curiae.

On April 1, 1996, appellants Vermont Natural Resources Council (VNRC) and Vermont Federation of Sportsmen's Clubs (VFSC) jointly and timely filed written objections to the Conservation Coalition's intervention motion. VNRC indicated that it did not oppose the party status request of CLF. However, it opposed the requests of the other Conservation Coalition movants on the basis that it was not clear how and by whom the members would be represented. No other party to this consolidated appeal filed objections to the Conservation Coalition's intervention motion. On April 1 and 17, 1996, CLF filed written responses to VNRC/VFSC's filing.

The Board held oral argument with respect to the intervention requests and representation issues¹ on April 18, 1996. Counsel for CLF and VNRC/VFSC presented the Board with a proposal for resolution of their party status dispute in the form of a condition set forth in CLF's filing of April 17, 1996. All parties present for oral argument indicated that they had no

¹ On March 21, 1996, the Board's Chair directed that the representatives of the Commonwealth of Massachusetts file affidavits with the Board indicating that they may lawfully practice in Vermont or, alternatively, file notices of substitution of counsel. On April 1, 1996, Massachusetts timely filed a motion for substitution of counsel and admission pro hac vice, supported by a letter from Vermont Assistant Attorney General Ron Shems, Esq. The Chair determined that these filings satisfy the requirements of his order; therefore, oral argument with respect to the issue of Massachusetts' representation was dispensed with by agreement of the parties on April 18, 1996.

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objection to the grant of party status, as a matter of right, to each of the Conservation Coalition members, provided that the members agreed to abide by the terms of representation and participation set forth in the proposed condition.²

On April 18, 1996, the Board deliberated in open meeting and voted to grant the Conservation Coalition members party status as of right pursuant to Rule 22(A)(7) of the Board's Rules of Procedure and in accordance with the terms of the stipulated condition.

II. ORDER

A. It is hereby ordered that the following members of the Conservation Coalition are parties as of right, pursuant to Rule 22(A)(7) of the Board's Rules of Procedure: Conservation Law Foundation (CLF), Appalachian Mountain Club (AMC), American Rivers, Inc. (AR), New England Friends for the Liberation of Whitewater (NE/FLOW), The Deerfield River Compact (DRC), American Whitewater Affiliation (AWA), and Deerfield River Watershed Association (DRWA).

B. It is further ordered that AMC, AR, NE/FLOW, DRC, AWA, and DRWA shall comply with the following stipulated condition: each member of the Conservation Coalition shall independently comply with all orders and rulings of the Board or, as appropriate, the Board's Chair, either through CLF's participation or through direct participation in some or all of the Board's proceedings. Where CLF participates on behalf of the Conservation Coalition in this proceeding by taking a position, filing a pleading, making a statement, or taking any other action for the Coalition, and other individual members do not independently participate in that position, statement, filing, or other action, these members of the Coalition agree that CLF's participation on their behalf represents the position of the members of the Coalition and that the members

² Represented at oral argument on April 18, 1996, were the Conservation Coalition through CLF counsel, Mark Sinclair, Esq.; VNRC/VFSC by Christopher M. Kilian, Esq.; appellant New England Power Company (NEPCo) by Robert E. Woolmington, Esq.; the Agency of Natural Resources (ANR) by John Kassel, Esq., and Andrew Raubvogel, Esq.; the Windham Regional Commission (WRC) by Melissa M. Reichert; and the Commonwealth of Massachusetts by Massachusetts Assistant Attorney General Edward G. Bohlen, Esq. Scheduled to participate by teleconference, but not present for oral argument, was Selectman Edward Mangold for the Town of Whitingham, Vermont.

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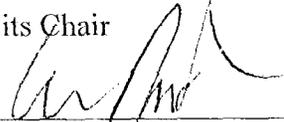
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will not make any claims to the contrary at any later time in this proceeding. If a member of the Coalition does not participate through either CLF's coordination or through direct participation, the member recognizes that it may be deemed to have waived its legal rights in this proceeding by such failure to participate.

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

Vermont Water Resources Board
by its Chair



William Boyd Davies

Concurring:
William Boyd Davies
Stephen Dycus
Gail Osherenko
Jane Potvin