

State of Vermont  
WATER RESOURCES BOARD

RE: Champlain Marble Company  
61 Main Street  
Proctor, VT 05765

Docket No. CUD-97-06  
(Appeal of DEC File CUD #95-466)  
Fisk Quarry Wetlands, Isle La Motte

**ORDER**

**Motion to Allow Cross-Examination of Out-of-State Witness by Teleconference**

On September 11, 1997, the Chair of the Water Resources Board ("Chair") held a prehearing conference in the above-captioned matter at which time he preliminarily ruled that an out-of-state witness could not participate in the hearing by teleconference. The basis of the Chair's ruling was that such a procedure was not provided for in the Board's Rules of Procedure and that jurisdictional challenges could arise from such arrangement. This ruling was memorialized at page 6 of the Prehearing Conference Report and Order issued on September 17, 1997.

On October 16, 1997, Linda Fitch, MaryJane Teidgen, and South Shore Associates ("SSA") (collectively "Movants") jointly filed a timely appeal of the Chair's ruling by filing a document, "Motion to Allow Cross-Examination of Out of State Witness by Teleconference" ("Motion"). Water Resources Board Rule of Procedure 21. On October 23, 1997, Champlain Marble Company ("Appellant") filed a "Memorandum in Opposition to Motion to Allow Cross Examination of Out of State Expert Witness by Teleconference" ("Reply Memorandum").

The Board heard oral argument on the Motion as part of its regular meeting on November 4, 1997, at the All Purpose Room, St. Anne Shrine, in Isle La Motte, Vermont. Those parties present and providing argument with respect to the Motion were the Movants, the Appellant, and the Agency of Natural Resources ("ANR").

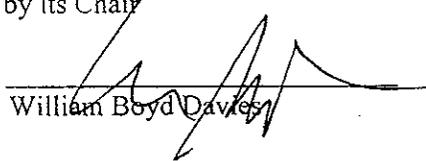
Immediately following oral argument, the Board deliberated with respect to the Motion. The Board affirmed the Chair's preliminary ruling, concluding that the Motion should be denied for each of the following reasons: (1) the Movants had not demonstrated that it was impossible for the witness they wished to call to attend the hearing in question; (2) the Board lacks jurisdiction to swear in and enforce an oath made by a witness located out-of-state; (3) not all parties to the appeal were willing to consent to the examination of the out-of-state witness by teleconference; and (4) the Movants failed to direct the Board to any legal authority or administrative precedent supporting the practice of examination of an out-of-state witness by teleconference where, as here, not all of the parties consent to the use of such a procedure.

Therefore, it is hereby ordered that the Motion be denied.

Dated at Montpelier, Vermont, this 17<sup>th</sup> day of November, 1997.

Concurring:  
Ruth Einstein  
Gerry Gossens  
Gail Osherenko  
Jane Potvin

Vermont Water Resources Board  
by its Chair

  
William Boyd Davies