

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

CHAIR'S EVIDENTIARY RULINGS

I. BACKGROUND

On March 12, 1998, the Chair of the Water Resources Board ("Board") convened a Second Prehearing Conference at which time he heard oral argument concerning the parties' evidentiary objections. Those participating in the oral argument were: Champlain Marble Company ("Appellant"), by its attorney Paul S. Kulig; the Agency of Natural Resources ("ANR"), by attorneys Jon Groveman and Andrew Raubvogel; South Shore Associates ("SSA"), by attorney Stephanie J. Kaplan; and Linda Fitch, pro se. See also Second Prehearing Conference Report and Order (March 17, 1998).

The Chair issued the following evidentiary rulings with respect to the parties' objections. The parties are advised that they must file any objections to the Chair's evidentiary rulings no later than **4:30 p.m., March 23, 1998**, if such objections are to be reviewed by the full Board.

II. OBJECTIONS OF SSA  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF THE APPELLANT

1. Exhibit A-2: **Overruled; admit exhibit.** Accuracy of map can be tested through cross-examination and Board will give what weight is due.
  2. Exhibit A-4: **Sustained; exhibit excluded.** Entire 'Economic Impact' study by Phyllis W. Isley is not relevant evidence as it addresses economic impact of Fisk Quarry and not impacts to economic benefit of wetlands related to Function 5.8. **Indeed, report** was prepared for use in Act 250 proceeding to address criterion 9(A) (impact of growth), not to address project impacts to the wetland under the Vermont Wetland Rules. V.R.E. 402; 3 V.S.A. § 810.
  3. Exhibit A-18: **Sustained; exhibit excluded.** Entire prefiled direct testimony of Phyllis W. Isley is not relevant evidence as it addresses economic and recreational impacts of Fisk Quarry, not economic benefit or loss of benefit of the wetlands related to Function 5.8, Vermont Wetland Rules. V.R.E. 402; 3 V.S.A. §810.
  4. Exhibit A-19. Pages 11-12 Lines 245-281; Exhibit A-32. Pages 2-3 Lines 46-65:  
**Prefiled Direct and Rebuttal Testimony of Jeffrey Nelson; Operational Plan - Defer**
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**ruling until Board decision on Motion to Dismiss.** See Second Prehearing Conference Report and Order at 1-2 and 4 (March 17, 1998).

III. OBJECTIONS OF ANR  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF THE APPELLANT

- 1(a). Exhibit A-4: **Sustained; exhibit excluded** Entire exhibit is irrelevant for same reason given in ruling on SSA Objection #2, above.
- 1(b). Exhibit A-18: **Sustained; exhibit excluded** Entire prefiled direct testimony of Phyllis W. Isley is irrelevant for same reason given in ruling on SSA Objection #3, above.
2. Exhibit A-1 6, Page 2 Lines 24-39: **Prefiled Direct Testimony of Sam Ruggiano; Operational Plan -Defer ruling until Board decision on Motion to Dismiss.** See Second Preheating Conference Report and Order at 1-2 and 4 (March 17, 1998).
3. Exhibit A-19, Page 6, Lines 126-137. and Pages 11-12, Lines 246-281; Exhibit A-32. Pages 2-3 Lines 46-65, Page 4 Lines 76-79, and Page 10, Lines 234-241: **Prefiled Direct and Rebuttal Testimony of Jeffrey Nelson; Operational Plan - Defer ruling until Board decision on Motion to Dismiss.** See Second Prehearing Conference Report and Order at 1-2 and 4 (March 17, 1998).
- 4(a). Exhibit A-20. Page 7 Lines 157-162, Pages [8-]12 Lines 179-293; Exhibit A-31, Page 36 Lines 746-758: **Prefiled Direct and Rebuttal Testimony of Jeffrey Nelson; Operational Plan -Defer ruling until Board decision on Motion to Dismiss.** See Second Prehearing Conference Report and Order at I-2 and 4 (March 17, 1998).
- 4(b). Exhibit A-20, Page 5 Lines 107-112: **Overruled; admit testimony.** Fact that wetland is "man-made" is irrelevant evidence with respect to the issue of whether the wetland is significant or not. However, statement in Direct Testimony of Peter Spear concerning soil types in wetland may be relevant to analysis under Function 5.2, Vermont Wetland Rules.
- 4(c). Exhibit A-20, Page 4 Lines 593-605: **Sustained: exclude objected to lines.** Peter Spear testifies as to statements allegedly made by Cathy O'Brien, an ANR witness. To the extent that this statement is offered for the truth of the matter asserted, it is excluded as it does not fall within any hearsay exception. V.R.E. 802. It also is not an admission by a party opponent given the way it is framed. V.R.E. 801.
- 4(d). Exhibit A-3 1, Pages 47 Lines 1004-1006: **Sustained; exclude selected text,** "given unlimited time and money." This is misleading and prejudicial. VRE 403.

IV. OBJECTIONS OF APPELLANT  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF LINDA FITCH

1. Exhibit LF-1, Pages 4-5 Lines 142-147: **Overruled; admit testimony.** Testimony by Linda Fitch re: fossil reefs may be relevant to assessment of impacts to Function 5.7; and whether reefs are within the subject wetland and buffer zone, and therefore within the Board's jurisdiction to consider, is a question of fact yet to be decided based on the evidence at hearing. V.R.E. 401; 3 V.S.A. § 810.
  2. Exhibit LF-1, Page 5 Lines 152-162 and 166-167: **Sustained; exclude testimony.** Statements concerning so-called illegal quarrying at the Fisk Quarry are irrelevant and highly prejudicial. This is not an enforcement proceeding, but rather an appeal of a conditional use determination. V.R.E. 402 and 403; 3 V.S.A. § 810.
  3. Exhibit LF-1, Page 323-327: **Overruled; admit testimony.** Testimony re: fossil reefs may be relevant to assessment of impacts to Function 5.7; see other reason for admission in ruling re: Appellant's Objection #1. V.R.E. 401; 3 V.S.A. § 810.
  4. Exhibit LF-1, Page 11 Lines 38 1-39.1: **Sustained; exclude testimony.** Quotes from "1996 Bicycle Tours of Vermont" is inadmissible hearsay. V.R.E. 802; 3 V.S.A. § 810.
  5. Exhibit LF-2, Page 2 Lines 48-52: **Sustained; exclude testimony.** Merrill Hemond's testimony re: H.266 is irrelevant evidence. V.R.E. 402; 3 V.S.A. § 402.
  6. Exhibit LF-2, Pages 2-3 Lines 224-240: **Overruled; admit testimony.** Statements are purportedly admissions by a party opponent and appear to be relevant to understanding project operations and impacts. V.R.E. 402; 3 V.S.A. § 810.
  7. Exhibit LF-2, Page 10 Lines 356-363 and Page 22-23, Lines 859-860. **Overruled; admit testimony.** To the extent that the Appellant has placed operations of the Goodsell Quarry at issue by comparing it with the proposed Fisk Quarry operations, testimony by witness Hemond concerning Goodsell Quarry operations has some relevancy and may be admitted, particularly when it is necessary to ascertain facts not otherwise reasonably susceptible of proof. Board is free to give such evidence what weight it believes is due. V.R.E. 402; 3 V.S.A. § 810.
  8. Exhibit LF-2, Page 10 Lines 377-379 and Page 11 Lines 392-393. **Sustained; exclude testimony.** Statements about possible civilsuits are irrelevant, speculative, and prejudicial. V.R.E. 402 and 403; 3 V.S.A. § 810.
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9. Exhibit LF-2, Page 10 Lines 365-440 and Page 14 Lines 505-553. **Overruled; admit testimony.** Witness has sufficient skill, experience and training to offer opinion concerning surface water movement and filtration related to project operations. Furthermore, to the extent that he speaks from his own observations, he may testify as a lay witness. What weight is to be given to his opinion, is up to the Board to determine. V.R.E. 701 and 702; 3 V.S.A. § 810.
10. Exhibit LF-2, Page 22 Lines 834-853: **Overruled; admit testimony.** Witness is qualified and testimony will be given what weight is due. See ruling re: objection #9, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
11. Exhibit LF-2A: **Admit testimony.** Appellant withdrew this objection when it was pointed out to him that Cross Consulting letter was an admission of party opponent and therefore not hearsay.
12. Exhibit LF-5, Page 9 Lines 302-360, Page 10 Lines 357-360, Page 11 Lines 390-394: **Overruled; admit testimony.** Mary Capkanis qualifies as an expert witness with expertise as a wetland scientist and wildlife biologist. She is entitled base her opinions upon her own observations and based on facts and data. if of a type reasonably relied upon by **experts, even if such data and facts in and of themselves may not be admissible (for example, the Froehlich documents).** V.R.E. 703 and 705.
13. Exhibit LF-5a, Table 1, Wildlife and Fish List: **Sustained; exclude document.** Content of this document is highly relevant, but because author is unavailable for cross-examination it must be excluded.
14. Exhibit LF-5b, Attachment 1: **Sustained; exclude document.** This is a biological report prepared by Dan Froehlich and it is highly relevant. However, the author is **unavailable** for cross-examination. See reasoning in **ruling** re: objection #13, above.
15. Exhibit LF-8: **Overruled; admit entire testimony, except as noted below re: objections # 16-18 below.** Scott Newman has been **sufficiently** qualified by reason of **sufficient knowledge**, skill, expertise, training, and education to testify concerning the economic benefits of the Fisk Quarry wetlands. Therefore his Prefiled Direct Testimony shall be admitted and given what weight is due. See ruling re: Objection #9, above. V.R.E. 701 and 702: 3 V.S.A. § 810.
16. Exhibit LF-8. Page 2, Lines 61-65. **Sustained; exclude testimony.** Hearsay. V.R.E. 802.
17. Exhibit LF-8, Page 3. Lines 81-84. **Sustained; exclude testimony.** Hearsay. V.R.E. 802.

18. Exhibit LF-8, Page 3, Lines 93-96. **Sustained; exclude testimony.** Hearsay. V.R.E. 802.
  19. Exhibit LF-8, Page 5, Lines 157-159. **Sustained; exclude testimony.** Hearsay and double hearsay. V.R.E. 802 and 805; 3 V.S.A. § 810.
  20. Exhibit LF-9, Photographs of Fisk Farm, Pages 3-8. No need to rule on hearsay objection, given ruling on objection #21.
  21. Exhibit LF-9, Photographs of Fisk Farm. **Sustained; exclude entire set of photographs.** Irrelevant, overly repetitious, and lack of foundation. V.R.E. 402,403 and 901; 3 V.S.A. § 810.
  22. Exhibit LF-IO, Photographs of Site Visit Stations. **Sustained; exclude entire set of photographs.** Lack of foundation and unduly repetitious. Board conducted its own site visit and made its own observations. Photographs of purported site visit stations are inadmissible, both because an inadequate foundation has been provided and, in any event, such evidence is overly repetitious. V.R.E. 403 and 901; 3 V.S.A. § 810.
  23. Exhibit LF-11: **Sustained; exclude testimony.** Letter and photographs concerning alleged illegal quarrying at the Fisk Quarry are irrelevant and highly prejudicial. This is not an enforcement proceeding, but rather an appeal of a conditional use determination. See ruling re: objection #2, above. V.R.E. 402 and 403; 3 V.S.A. § 810.
  24. Exhibit LF-16: **Sustained; exclude document.** This is inadmissible hearsay and unduly repetitious. V.R.E. 403 and 802; 3 V.S.A. § 810.
  25. Exhibit LF-18: **Sustained; exclude document.** This is inadmissible hearsay and unduly repetitious. V.R.E. 403 and 802; 3 V.S.A. § 810.
  26. Exhibit LF-24, Page 1, Lines 22-27: **Overruled; admit testimony.** Although repetitious, this testimony is not unduly so.
  27. Exhibit LF-24, Page 1, Lines 27-29: **Overruled; admit testimony.** Admit for same reason as in ruling re: objection #24, above.
  28. Exhibit LF-24, Page 1 and 2, Lines 30-34: **Sustained: exclude testimony and accompanying exhibits LF-24B-1, LF-24B-2, and 24C.** The exhibits are inadmissible hearsay and unduly repetitious. V.R.E. 403 and 802; 3 V.S.A. § 810.
  29. Exhibit LF-24. Page 2. Line 51: **Sustained, exclude testimony.** Inadmissible double hearsay. V.R.E. 805; 3 V.S.A. § 810.
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30. Exhibit LF-24, Page 3, Lines 73-76: **Sustained, exclude testimony and Exhibit LF-24-E.** Testimony and exhibit relating to impact of quarry on property value is irrelevant and inadmissible hearsay. V.R.E. 402,802 and 805; 3 V.S.A. § 810.
31. Exhibit LF-24, Page 3, Lines 83-89: **Overruled; admit testimony.** This testimony is not unduly repetitious.
32. Exhibit LF-24, Page 3, Lines 96-100: **Sustained; exclude testimony and Exhibit LF-31A.** Although direct testimony regarding operations at the Goodsell Quarry has been allowed (see ruling re: objection #7), this hearsay evidence is inadmissible. V.R.E. 802; 3 V.S.A. § 810.
33. Exhibit LF-24, Page 3, Lines 102-103: **Sustained; exclude testimony and Exhibit LF-25A.** Lack of foundation. See ruling re: objection #91, below. V.R.E. 901; 3 V.S.A. § 810
34. Exhibit LF-24, Page 3, Lines 104-107: **Sustained; exclude testimony and Exhibit LF-34.** While the testimony and exhibit are of some relevancy, they are inadmissible hearsay and double hearsay. V.R.E. 802 and 805; 3 V.S.A. § 810.
35. Exhibit LF-24, Page 4, Lines 116-121: **Overruled; testimony admitted.** Testimony is not unduly repetitious.
36. Exhibit LF-24, Page 5, Lines 172-177: **Overruled; testimony admitted.** This is repetitious testimony only because it supports following rebuttal testimony; therefore it is admissible.
37. Exhibit LF-24, Pages 5-6, Lines 189-200: **Overruled; testimony admitted.** For same reason as in ruling re: objection #36, above.
38. Exhibit LF-24, Page 6, Line 200. **Sustained; exclude testimony and LF-31A.** See prior ruling re: objection #32, excluding LF-31A.
39. Exhibit LF-24, Page 7, Lines 240-242: **Sustained; exclude testimony.** This is hearsay. V.R.E. 802; 3 V.S.A. § 810.
40. Exhibit LF-24, Page 7, Lines 244-247: **Sustained; exclude testimony and Exhibit LF-34.** While the testimony and exhibit are of some relevancy, they are inadmissible hearsay. V.R.E. 802; 3 V.S.A. § 810.
41. Exhibit LF-24. Page 7, Lines 262-264: **Sustained; exclude testimony and Exhibit LF-**

**24B-2.** While the testimony and exhibit are of some relevancy, they are inadmissible hearsay and unduly repetitious. See ruling re: objection #28, above. V.R.E. 802; 3 V.S.A. § 810.

42. Exhibit LF-24, Page 9, Lines 3 12-3 14: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  43. Exhibit LF-24, Page 9, Lines 3 14-3 17: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  44. Exhibit LF-24, Pages 9-10, Line 344-349: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  45. Exhibit LF-24, Page 10, Lines 404-406: **Sustained; exclude testimony.** Inadmissible hearsay. V.R.E. 802; 3 V.S.A. § 810.
  46. Exhibit LF-24, Page 11, Lines 412-414: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  47. Exhibit LF-24; Pages 11-12, Lines 421-431: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  48. Exhibit LF-24. Page 12. Lines 446-448: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  49. Exhibit LF-24, Pages 12-13, Lines 462-463: **Overruled; admit testimony.** Testimony is not unduly repetitious.
  50. Exhibit LF-24, Pages 13-14, Lines 477-479, 485-486, 494-495, 498-499, 515-517: **Overruled; admit testimony.** Testimony is not unduly repetitious. See ruling re: objection #36, above.
  51. Exhibit LF-24A, Additional Wetland Photos: **Sustained; exclude entire set of photographs.** Photographs are unduly repetitious and inadequate foundation has been laid. See ruling re: objection #22, above. V.R.E. 403 and 901.
  52. Exhibit LF-24A, Additional Wetland Photos: Ruling not necessary in light of ruling re: objection #5 1 above.
  53. Exhibit LF-24B-1: **Sustained; exclude entire set of letters.** Basis of ruling is not that evidence of existence of fossils is irrelevant or outside the Board's jurisdiction. but rather
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- that these letters are inadmissible hearsay and unduly repetitious. See ruling re: objection #28, above. V.R.E. 403 and 802; 3 V.S.A. § 810.
54. Exhibit LF-24B-2: **Sustained; exclude entire set of quotes from guest book. These** quotes are inadmissible hearsay and unduly repetitious. See ruling re: objection #28, above. V.R.E. 403 and 802; 3 V.S.A. § 810.
55. Exhibit LF-24C: **Sustained; exclude entire set of petitions. These are** misleading. They are also inadmissible hearsay and unduly repetitious. See ruling re: objection #28, above. V.R.E. 403 and 802; 3 V.S.A. § 810.
56. Exhibit LF-24D: **Sustained; exclude exhibit.** Inadmissible hearsay and also redundant. V.R.E. 403 and 802 and 805; 3 V.S.A. § 810.
57. Exhibit LF-24E: **Sustained; exclude exhibit.** Appraisal of Fisk Farm is irrelevant economic evidence as it addresses issue of alleged negative impacts of quarry operations and not economic benefit of wetlands. See ruling re: objection #30, above. V.R.E. 402 and 802; 3 V.S.A. § 810.
58. Exhibit LF-24F: **Sustained; exclude exhibit.** This letter to Air and Waste Management Division is irrelevant to wetland proceeding. V.R.E. 802; 3 V.S.A. § 810.
59. Exhibit LF-24F: Ruling not necessary given ruling re: objection #58, above. V.R.E. 802; 3 V.S.A. § 810.
60. Exhibit LF-25, Page 1, Lines 5-12: **Overruled; admit testimony. See ruling** re: objection #7, above. V.R.E. 402; 3 V.S.A. § 810.
61. Exhibit LF-25, Page 2, Lines 44-51: **Sustained; exclude testimony.** Inadmissible hearsay. See also #38 and #40 excluding Exhibits LF-31A and 34. V.R.E. 802; 3 V.S.A. § 810.
62. Exhibit LF-25, Page 2, Lines 62-64: **Overruled; admit testimony.** Testimony is not unduly repetitious.
63. Exhibit LF-25, Page 3, Lines 70-98: **Overruled; admit testimony to Line 94 and see** ruling re: objection #64 addressing Lines 94-98. See ruling re: objection #7, above. V.R.E. 402; 3 V.S.A. § 810.
64. Exhibit LF-25, Page 3, Lines 94-98: **Sustained; exclude testimony.** Impermissible hearsay. V.R.E. 802; 3 V.S.A. § 810.

65. Exhibit LF-25, Pages 3-4 and 7, Lines 104-120, 127-139, 250-258: **Overruled; admit testimony.** See ruling re: objection #7, above. V.R.E. 402; 3 V.S.A. § 810.
  66. Exhibit LF-25, Page 10, Lines 352-362: **Sustained; exclude testimony.** Inadmissible hearsay. See also #38 and #40 excluding Exhibits LF-31A and 34. V.R.E. 802; 3 V.S.A. § 810.
  67. Exhibit LF-25, Page 11, Lines 395-398. **Overruled; admit testimony.** Testimony is not unduly repetitious. Also, Board shall give evidence what weight is due.
  68. Exhibit LF-25, Page 11, Lines 408-412. **Overruled; admit testimony.** Testimony is not unduly repetitious.
  69. Exhibit LF-25, Page 13, Lines 478-490. **Overruled; admit testimony.** Even if witness Hemond does not qualify as a wetlands expert, he can testify as a lay witness to his own observations and opinions and Board will give what weight is due such testimony. V.R.E. 701; 3 V.S.A. § 810.
  70. Exhibit LF-25, Page 14, Lines 504-509. **Overruled; admit testimony.** Testimony is not unduly repetitious.
  71. Exhibit LF-25, Page 15, Lines 543-555: **Overruled; admit testimony.** See ruling re: objection #69, above. See, however, rulings re: objections #22 and 23 excluding LF-10 and LF-11. V.R.E. 701; 3 V.S.A. § 810.
  72. Exhibit LF-25, Page 15-16, Lines 563-576: **Overruled; admit testimony.** See ruling re: objection #69, above. V.R.E. 701; 3 V.S.A. § 810.
  73. Exhibit LF-25, Page 16, Lines 583-591: **Overruled; admit testimony.** See ruling re: objection #69, above. V.R.E. 701; 3 V.S.A. § 810.
  74. Exhibit LF-25, Page 16, Lines 605-613: **Overruled; admit testimony.** See ruling re: objection #69, above. V.R.E. 701; 3 V.S.A. § 810.
  75. Exhibit LF-25, Page 17, Lines 618-620: **Overruled; admit testimony.** See ruling re: objection #69, above. See, however, rulings re: objections #23 and 51, excluding exhibits LF-11 and LF-24A. V.R.E. 701; 3 V.S.A. § 810.
  76. Exhibit LF-25, Page 17, Lines 631-634: **Overruled; admit testimony.** See ruling re: objection #69, above. V.R.E. 701; 3 V.S.A. § 810.
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77. Exhibit LF-25, Page 17-18, Lines 653-655: **Overruled; admit testimony.** See ruling re: objection #7, above. See also ruling re: objection #91, below, excluding exhibit 25A. V.R.E. 402; 3 V.S.A. § 810.
78. Exhibit LF-25, Page 19, Lines 698-699, 703-717, and 723-724: **Overruled; admit testimony.** See ruling re: objection #69, above. V.R.E. 701; 3 V.S.A. § 810.
79. Exhibit LF-25, Page 19, Lines 705-708: **Sustained, in part; exclude the word "illegally" only.** This is irrelevant and prejudicial adjective. V.R.E. 402 and 403; 3 V.S.A. § 810.
80. Exhibit LF-25, Page 20, Lines 743-753: **Overruled; admit testimony.** See ruling re: objection #69, above. See, however, ruling re: objection # 22, above, excluding exhibit LF-10 below, and ruling re: objection #101, below, excluding exhibit LF-36. V.R.E. 701; 3 V.S.A. § 810.
81. Exhibit LF-25, Page 22, Lines 826-847: **Overruled; admit testimony.** See ruling re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
82. Exhibit LF-25, Page 23, Lines 854-867: **Overruled; admit testimony.** See ruling re: objections #9 and 69, above.. Also, testimony, is not unduly repetitious. V.R.E. 403, 701 and 702; 3 V.S.A. § 810.
83. Exhibit LF-25, Pages 23-24. Lines 885-891: **Overruled; admit testimony.** See ruling re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
84. Exhibit LF-25, Page 24, Lines 912-917: **Overruled, admit testimony.** See ruling re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
85. Exhibit LF-25, Page 25, Lines 946-959: **Overruled, admit testimony.** See rulings re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
86. Exhibit LF-25, Page 25, Lines 964-965: **Overruled, admit testimony.** Witness can offer opinion evidence and so this testimony will be allowed. V.R.E. 701 and 702; 3 V.S.A. § 810.
87. Exhibit LF-25, Page 25, Lines 973-985: **Overruled, admit testimony.** See rulings re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
88. Exhibit LF-25, Page 36, Lines 922 [sic][972]-999: **Overruled, admit testimony:** Testimony is relevant. See rulings re: objections #7, 9 and 69, above. V.R.E. 402.701 and 702; 3 V.S.A. § 810.

89. Exhibit LF-25, Page 26, Lines 1007-1017: **Overruled, admit testimony.** See rulings re: objections #9 and 69, above. V.R.E. 701 and 702; 3 V.S.A. § 810.
  90. Exhibit LF-25, Page 27, Lines 1019-1032: **Overruled, admit testimony.** Although witness Hemond's statements border on legal argument, they will be allowed as opinion testimony addressing a relevant issue in this proceeding. V.R.E. 402, 701 and 702; 3 V.S.A. § 810.
  91. Exhibit LF-25A, Photographs of Goodsell Quarry: **Sustained, exclude photographs.** Photographs are relevant to the extent that they clarify points made in Hemond testimony, however, an inadequate foundation has been laid for their admission. V.R.E. 402 and 901; 3 V.S.A. § 810.
  92. Exhibit LF-27, Page 12, Line 453-455: **Overruled, admit testimony.** Testimony is not unduly repetitious.
  93. Exhibit LF-29, Page 1-2, Lines 26-38: **Overruled, admit testimony.** Although repetitious, this testimony is not unduly so. But see ruling re: objection #94 below.
  94. Exhibit LF-29: **Sustained; exclude entire exhibit.** Witness is qualified to provide testimony on this subject; however, since Isley direct testimony and report have been excluded (see rulings re: objections to A-4 and A-1 8, SSA objections #2 and 3 and ANR objections #1(a) and 1(b)), this rebuttal testimony is no longer relevant. See V.R.E. 402; 3 V.S.A. § 810.
  95. Exhibit LF-30, Page 7, Lines 234-236: **Sustained; exclude testimony.** Misleading and insufficient foundation for support of this opinion. V.R.E. 403 and 702.
  96. Exhibit LF-3 1A: **Sustained; exclude letter.** This evidence is inadmissible hearsay. See rulings re: objections # 32 and 38. V.R.E. 802; 3 V.S.A. § 810.
  97. Exhibit LF-3 1B: **Sustained; exclude letter.** This is inadmissible hearsay and should be excluded like LF-31A. See ruling re: objection #96, above. V.R.E. 802; 3 V.S.A. § 810.
  98. Exhibit LF-32: **Sustained; exclude fetter.** This is hearsay and witness who wrote letter is unavailable for cross-examination. V.R.E. 802 and 805; 3 V.S.A. § 810.
  99. Exhibit LF-33: **Overruled; admit fetter.** Letter falls within public record exception of the hearsay rule but may be of limited relevancy. Board shall give what weight evidence is due. V.R.E. 402 and 803; 3 V.S.A. § 810.
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100. Exhibit LF-34: **Sustained; exclude minutes.** Hearsay; since minutes do not appear to be complete and adopted, it is not possible to determine whether they would fall within public records exception of hearsay rule. Also, **direct** testimony on this subject has been admitted. V.R.E. 802,803; 3 V.S.A. § 810.

(For how late objection by Appellant to Exhibit LF-3.5 will be addressed, see Second Preheating Conference Report and Order (March 17, 1998).

101. Exhibit LF-36: **Sustained; exclude map.** Although witness Hemond testified about this map, insufficient foundation has been laid to support its admission. See ruling re: objection #80, above. V.R.E. 901; 3 V.S.A. § 810.

V. OBJECTIONS OF APPELLANT  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF MARY JANE  
TIEDGEN

102. Exhibit MT-I, Pages 2-3, Lines 69-73: **Sustained; exclude testimony.** Evidence is inadmissible hearsay and prejudicial. See ruling re: objection #2 re: Linda Fitch exhibits. V.R.E. 403 and 802; 3 V.S.A. § 810.
103. Exhibit MT- 1, Page 7, Lines 232-25 1: **Sustained; exclude testimony.** No foundation has been laid to demonstrate that witness is qualified to offer opinion testimony, lay or expert, re: wildlife habitat. V.R.E. 701 and 702; 3 V.S.A. § 810.
104. Exhibit MT-I, Page 8, Line 289-294. **Overruled; admit testimony.** Evidence is **relevant** and witness appears to testify from own experience. Board will determine what weight evidence is due. V.R.E. 402,701; 3 V.S.A. § 810.

V. OBJECTIONS OF APPELLANT  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF ANR  
(Note: objections were not tiled in order.)

107. Exhibit ANR-CLO-1, Page 18, Lines 10-13: **Sustained in part; exclude testimony, Lines 12-13.** Sentence referring to alleged violation and current enforcement action is irrelevant and prejudicial. V.R.E. 403; 3 V.S.A. § 810.
108. Exhibit ANR-CLO-I, Page 18, Lines 16-19: **Overruled; admit testimony.** Testimony is not unduly repetitious.

109. Exhibit ANR-CLO-6, Page 3, Lines 9-11: **Overruled, admit testimony.** See Appellant has put operations at Goodsell Quarry at issue, this testimony will be allowed. However, the Board will determine what weight is due.
110. Exhibit ANR-CLO-6, Page 10 Lines IO-26 and Page 1 1, Lines 1-3: **Overruled; admit testimony.** Testimony is not unduly repetitious.
111. Exhibit ANR-CLO-4: **Overruled; admit memo.** Although technically hearsay, both witnesses O'Brien and Austin will be available for cross-examination regarding this document. V.R.E. 402; 3 V.S.A. § 810.
112. Exhibit ANR-JMA-2, Page 2 Lines 6-9 and Page 3, Line 14-19: **Overruled; admit testimony.** Testimony is not unduly repetitious.
113. Exhibit ANR-JMA-2, Page 2, Lines 14-18 and Page 3, Line 1: **Overruled; admit testimony.** Although technically hearsay, witnesses Austin and Spear will be available for cross-examination regarding this statement. 3 V.S.A. § 810.
114. Exhibit ANR-JMA-2, Page 3, Lines 14-16: **Overruled; admit testimony.** This is not hearsay. Witness may repeat his own prior testimony and he will be available for cross-examination concerning the basis of his conclusion. 3 V.S.A. § 810.

VI. OBJECTIONS OF APPELLANT  
RELATED TO PREFILED TESTIMONY AND EXHIBITS OF SSA  
(Note: objections were not tiled in order.)

105. Exhibit SSA-10, Pages 1-2, Lines 30-37: **Overruled; admit testimony.** Appellant has put operation of Goodsell Quarry at issue and witness may testify to his own experiences. However, Board will determine what weight is due such evidence. See ruling re: objection #7, re: Linda Fitch exhibits. V.R.E. 402,701; 3 V.S.A. § 810.
  106. Exhibit SSA-10, Pages 2-4 Lines 74-77, 81-87, 91-96, 101-104, 110-1 17, 122-123: **Overruled; admit testimony.** Relevant, but Board will give what weight is due testimony. V.R.E. 402; 3 V.S.A. § 810.
  115. SSA-1, Page 2, Line 71. **Overruled; admit testimony.** Although choice of word "they" is objectionable, the witness is obviously testifying to subject matter for which he has personal experience. V.R.E. 701; 3 V.S.A. §810.
  116. Exhibit SSA-3, Page 2. Lines 42-48: **Sustained; exclude testimony.** Alleged reduction in
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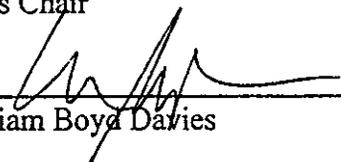
and 57 (~~is in ruling~~ Linda Fitch exhibits LF-24 and LF-24E) related to same subject. V.R.E. 402; 3 V.S.A. § 810.

117. Exhibit SSA-4, Page 2, Lines 51-55: **Sustained; exclude testimony.** Testimony excluded for same reason as ~~in ruling~~ re: objection #105. V.R.E. 402,701; 3 V.S.A. § 810.
- 118: Exhibit SSA-7: **Overruled; admit entire testimony.** *Testimony* by witness Merhtens re: fossil reefs may be relevant to assessment of impact under Function 5.7. See also ruling re: objection #1 (Linda Fitch exhibit LF-1). V.R.E. 401; 3 V.S.A. § 810

This order reflects the Chair's understanding of the objections raised by the parties in their filings and at oral ~~argumnt~~. Due to time restraints, there may be some errors in the identification of exhibits and lined text in specific rulings. The parties are urged to bring any such errors to the attention of the Board by the March **23, 1998**, deadline so that they may be timely corrected in any subsequent order.

Dated at Montpelier, Vermont, this 17th day of March, 1998.

Water Resources Board,  
by its Chair

  
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William Boyd Davies