

State of Vermont
WATER RESOURCES BOARD

RE: Larry Westall
Docket No. CUD-99-02 (DEC #95-241)
RE: James & Catherine Gregory
Docket No. CUD-99-03 (DEC #95-241)
(Consolidated)

THIRD ORDER MODIFYING PREFILED SCHEDULE

I. BACKGROUND

On December 2, 1999, prefiled direct testimony and exhibits was filed by the parties supporting denial of a CUD for the Project under review by the Water Resources Board ("Board"). On December 6, 1999, Hobart Heath notified the Board that he had failed to receive pages 2, 4, 6, 8, 10, 12, 14 and possibly 15 of the Agency of Natural Resources' ("ANR") prefiled testimony for witness John Austin. In light of the incomplete filing, Mr. Heath asked the Chair to extend the deadline for prefiled rebuttal testimony and exhibits from December 23, 1999, to January 13, 2000. See Second Order Modifying Prefiled Schedule at 2, Item B.10 (Oct. 6, 1999).

On December 6, 1999, the ANR sent complete copies of John Austin's prefiled direct testimony to all parties in this proceeding. The Board received ANR's filing on December 7, 1999.

Board Chairman, Gerry Gossens has reviewed the request of Hobart Heath and has agreed to amend the filing schedule set forth in the Second Order Modifying Prefiled Schedule (Oct. 6, 1999), such that the prefiled rebuttal deadline is extended by one week, until December 30, 1999, and all subsequent filing deadlines are amended accordingly. The Chair believes that this is a reasonable extension, in light of the fact that all other prefiled direct testimony was timely and completely filed by the December 2, 1999 deadline and less than one week has elapsed since the discovery of the deficiencies in Mr. Austin's prefiled direct testimony and corrective action by the ANR. Furthermore, any further extension would result in delay of the scheduled January 25, 2000, hearing.

II. ORDER

Accordingly, it is hereby ordered that the deadlines set forth in the Prehearing Conference Report and Order (Aug. 4, 1999) are modified and extended as follows. In all other respects, the terms and requirements of that order regarding the prefilings of evidence are in full force and effect.

10. On or before **4:30 p.m., Thursday, December 30, 1999**, all parties shall file final lists of rebuttal witnesses and exhibits and prefiled rebuttal testimony and exhibits they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion concerning the impacts of the Project shall be filed as prefiled exhibits.

Prefiled direct exhibits which are larger than 8% by 11 inches must only be identified to the parties, **but one copy of all such exhibits must be filed with the Board** and be made available for inspection and copying at the Board's office by any party prior to the hearing.

- II. No individual may be called as a witness in this matter if he or she has not filed prefiled testimony or exhibits in compliance with this Order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled testimony has not been submitted by the date specified, the witness may not be permitted to testify.
- 1 2 . On or before **4:30 p.m., Thursday, January 6, 2000**, any party may file in writing any **evidentiary** objections to prefiled testimony and exhibits previously filed. If objections are not timely filed in accordance with the filing requirements in Item 23 below, they shall be deemed waived. Any objections shall be supported by legal memoranda.
13. On or before **4:30 p.m., Thursday, January 13, 2000**, any party may file in writing any responses to evidentiary objections filed in accordance with Item 12 above. If responses are not timely filed in accordance with the filing requirements in Item 23 below, they may be excluded. Any objections shall be supported by legal memoranda.
14. On or before **4:30 p.m., Thursday, January 13, 2000**, all parties shall submit a single, combined list of all prefiled testimony and exhibits.
15. On or before **4:30 p.m., Thursday, January 13, 2000**, all parties shall file in writing any requests for time beyond the time allotments given in Section IX. above. The Chair may allow more time if good cause is shown,
17. On or before **4:30 p.m., Thursday, January 13, 2000**, parties shall file any
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stipulations. These may be in the form of joint statements of fact or proposed joint decisions.

18. On or before **4:30 p.m., Thursday, January 13, 2000**, parties shall file any proposed findings of fact, conclusions of law, and orders, including any proposed CUD conditions.
 19. A preheating conference by telephone will be held on **Tuesday, January 18, 2000, at 10:00 a.m. at the Board's office in Montpelier, Vermont.** [Note: This prehearing conference has been rescheduled from a tentative date of Tuesday, January 11, 2000.] The purpose of this prehearing conference is to address any pending evidentiary objections, outstanding site visit issues, or other matters requiring rulings preliminary to the hearing in' this matter. Any party wishing to participate in this conference by telephone should so advise the Board's Secretary, Karen Dupont (802-828-2870) on or before 12:00 noon **on Thursday, January 13, 1999.** The Board's staff will arrange the conference call.
 20. On **Tuesday, January 25, 2000**, the Board will convene a hearing in this matter, The specific time and location of this hearing shall be announced in a subsequent notice.
 21. The hearing will be recorded electronically by the Board or, upon request, by a stenographic reporter, provided such request is made on or before **4:30 p.m., Thursday, January 6, 2000.** Any party wishing to have a stenographic reporter present or a transcript of the proceedings must make his or her own arrangements with a reporter. One copy of any transcript made **of the** proceedings must be filed with the Board at no cost to the Board. See Procedural Rule 32(B).
 22. On or before **4:30 p.m., Thursday, February 3, 2000**, any party may file any revised or supplemental proposed findings of fact, conclusions of law, and orders, including any proposed CUD conditions.
 23. The Board may waive the filing requirements upon a showing of good cause, unless such waiver would **unfairly prejudice** the rights of other parties.
 24. Parties shall file an original and **seven collated copies** of prefiled testimony,
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Second Order Modifying Prefiled Schedule

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legal memoranda, all prefiled testimony, all prefiled exhibits which are 8% by 11 inches or smaller, and any other documents filed with the Board, and mail one copy to each of the **persons** listed on the Board's Certificate of Service. Legal memoranda shall be no more than twenty-five pages and proposed findings of fact and conclusions of law shall be no more than fifty pages. See Procedural Rule 10.

26. Pursuant to Procedural Rule 28(B), this Order is binding on all parties, unless a written objection to the Order, in whole or in part, is filed on or before **4:30 p.m., Wednesday, December 15, 1999**, or a showing of cause for, or fairness requires, waiver of a requirement of this Order. The filing of an objection shall not automatically toll that portion of the order to which an objection is made.

Dated at Montpelier, Vermont this 7th day of December, 1999,

WATER RESOURCES BOARD



Gerry Go&ens, Chair