

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)

SECOND ORDER MODIFYING PREFILED SCHEDULE

I. BACKGROUND

On September 29, 1999, James and Catherine Gregory filed **prefiled** direct testimony in the above-captioned consolidated appeals. In their covering correspondence to the Chair of the Water Resources Board ("Board"), the Gregorlys indicated that they needed additional time to secure their own expert witness and they therefore asked for a limited extension of one (1) month to permit the late filing of pre'iled direct testimony for such a witness.

Board Chairman, Gerry Gossens, is unavailable until October 24, 1999. In his absence, Vice-Chair David Blythe is performing the duties of the Board Chairman pursuant to Board Rule of Procedure 3(A) and the directive of the with respect to all matters

Vice-Chair **Blythe** has reviewed the request of the Gregorlys and has agreed to amend the filing schedule set forth in the Prehearing Conference Report and Order, issued on August 4, 1999, such that all filing deadlines are extended to provide the Gregorlys with the limited extension and to establish a new hearing date of January 25, 1999. However, he advises the parties that this is the second extension request granted to the Gregorlys, and that any further requests for extensions will not be granted unless the movant clearly demonstrates good cause.

II. ORDER

A. It is **hereby** ordered that the hearing scheduled for Tuesday, November 16, 1999, in Jericho, Vermont, is rescheduled to Tuesday, January 25, 2000, at a time and place to be confirmed by subsequent notice. The Board, however, will convene a site visit in this matter on Tuesday, November **16, 1999**, at **2:30 p.m.**, starting at the Community Center, Jericho, Vermont.

The parties are expected to jointly plan for this site visit and prepare a joint itinerary in order to assure the **efficient** use of the Board's time. The parties are reminded that the purpose of the site visit is not to receive evidence, but rather to orient the Board to

the Project site and the subject wetland so that the Board may better understand the physical features described in testimony and exhibits at the time of hearing. The Board will prepare a report of the site visit for inclusion in the record.

Each party is expected to identify a spokesperson who will lead the site visit, with the Neighbors jointly represented by one spokesperson. If the parties cannot agree as to one or more aspects of the joint itinerary for the site visit, they shall file with the Board a written summary of the matters in dispute and file this on or before **4:30 p.m., Thursday, November 4, 1999**, as provided in Item 16 of Section XI, Preheating Conference Report and Order (Aug. 4, 1999) ("Prehearing Order") and a second **prehearing** conference shall be held by teleconference on **Tuesday, November 9, 1999**, at **10:00 a.m.**, as provided for in Item 19 of the Prehearing Order, before modification by this Order.

B. It is hereby ordered that the deadlines set forth in the Prehearing Order are modified and extended as follows:

8. On or before **4:30 p.m., Tuesday, November 9, 1999**, the Gregorys shall amend and file their final lists of direct witnesses and exhibits. They also shall file all direct prefiled testimony and exhibits they intend to present for their expert witness. 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 tiled as **prefiled** exhibits.
9. On or before **4:30 p.m., Thursday, December 2, 1999**, all parties supporting denial of a CUD for the Project, or any part thereof, shall file final lists of direct witnesses and exhibits and all direct pretiled 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 tiled as pretiled exhibits.
10. On or before **4:30 p.m., Thursday, December 23, 1999**, all parties shall file final lists of rebuttal witnesses and exhibits and pretiled 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 tiled as pretiled exhibits.

Prefiled direct exhibits which are larger than 8 1/2 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.

11. 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.
 12. On or before **4:30 p.m., Thursday, December 30, 1999**, 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 6, 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 6, 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 6, 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.
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 17. On or before **4:30 p.m., Thursday, January 6, 2000**, parties shall file any 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 6, 2000**, parties shall file any proposed findings of fact, conclusions of law, and orders, including any proposed CUD conditions.
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19. A prehearing conference by telephone is tentatively scheduled for **Tuesday, January 11, 2000, at 10:00 a.m. at the Board's office in Montpelier, Vermont.** The date, time and location of this preheating conference will be confirmed by a subsequent notice. The purpose of this preheating 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, December 30, 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 arrangement 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 tiling 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, legal memoranda, all prefiled testimony, all prefiled exhibits which are 8 1/2 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. The Certificate of Service will be revised once party status determinations have been made. 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.
25. Each party shall label their prefiled testimony and exhibits with their name. The labels on the exhibits must contain the words WATER RESOURCES BOARD, Re: Larry Westall, Docket No. CUD-99-02 and Re: James & Catherine Gregory

Docket No. CUD-99-03, the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. **The completed labels must be affixed to all prefiled testimony and exhibits prior to submission to the Board.** Label stickers are available from the Board on request. **An exhibit label should not be placed on an exhibit such that it will cover a portion of the exhibit text or image.**

With respect to labeling, each party is assigned a letter as follows: "A" for CUD Applicant, "G" for the Gregorlys, and other parties shall use their initials for the prefix (i.e. "ANR," "JCC," "JCPA). Exhibits shall be assigned consecutive numbers. For example, the CUD Applicant would number its exhibits A-1, A-2, A-3, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters will be used for each piece, i.e. A-2A, A-2B, etc. However, each page of a multi-page exhibit need not be labeled.

Concerning preparation of the combined list of all prefiled testimony and exhibits, the list must state the full name of the party at the top and the Boards case number. There must be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. The list must include exhibits and prefiled testimony. An example is as follows:

CUD APPLICANT'S
LIST OF EXHIBITS
RE: LARRY WESTALL, CUD-99-02 and JAMES AND
CATHERINE GREGORY, CUD-99-03

<u>Number</u>	<u>Description</u>	<u>Status</u>
A-1	Prefiled Direct Testimony of Larry Weston	
A-2	CUD Application tiled with ANR on _____	
A-3A-D	Survey dated ____, sheets 3A through 3D	

The Board will use the status column to mark whether or not the exhibit has been admitted.

Exhibits offered to the DEC, ANR, for its consideration in evaluating the CUD request, if they are to be considered by the Board de novo, must be introduced into the evidentiary record for this proceeding.

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, October 13, 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 6th day of October, 1999.

WATER RESOURCES BOARD

David Blythe *DLB*
David Blythe, Vice-Chair