

State of Vermont  
WATERRESOURCES BOARD

**RE: Barden Gale and Melanie Gale Amhowitz**  
**Docket No. CUD-99-08 (DEC #98-340.01)**  
**(Application of Gary and Paula Warner, Colehester, Vermont )**

**PREHEARING CONFERENCE REPORT AND ORDER**

On February 15, 2000, Water Resources Board ("Board") Chair Gerry Gossens convened a preheating conference at the Board's Conference Room in Montpelier, Vermont, in the matter, In re: Barden Gale and Melanie Gale Amhowitz, Docket No. CUD-99-08. The Chair was assisted in the conduct of the prehearing conference by the Board's Associate General Counsel, Kristina L. Bielenberg, Esq. The following persons entered timely appearances and participated:

Barden Gale and Melanie Gale Amhowitz ("Appellants"), by Philip M. van Aelstyn, Esq., Downs Rachlin & Martin, PLLC; and Summit Engineering (formerly Pinkham Engineering) ("Summit") by Christopher D. Ekman, Esq., Heilmann, Ekman & Associates, Inc., and Sheila McIntyre,

Not present were Gary and Paula Warner ("Applicants"), pro se or represented by counsel. Likewise, the Department of Environmental Conservation, Agency of Natural Resources ("ANR"), failed to appear despite prior representations by Jon Groveman, Esq., that either he or Andy Raubvogel, Esq., would attend the prehearing conference.

I. PROCEDURALBACKGROUND

On December 10, 1999, the Appellants filed a notice of appeal with the Board, pursuant to 10 V.S.A. § 1269, from an ANR decision granting a conditional use determination ("CUD") to the Applicants for construction of a septic system curtain drain in the buffer zone of a Class Two wetland on the Applicants' property in Colchester, Vermont ("Project").

This appeal was deemed complete and docketed as CUD-99-08 on December 14, 2000. A Notice of Appeal and Preheating Conference was issued on that same date and published in the Burlington Free Press on January 19, 2000, in accordance with Water Resources Board Procedural Rule ("Procedural Rule") 22.

On February 15, 2000, the Board's Chair convened a prehearing conference in this matter pursuant to Procedural Rule 28.

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## II. INTRODUCTIONS

The Chair introduced himself and staff to those present at the prehearing conference and asked for appearances.

The prehearing conference was to begin promptly at 3:00 p.m. The Chair, however, delayed the start of the prehearing conference by ten minutes to await the arrival of the Applicants and ANR.

Attorney Ekman reported that he had received a message from the office of William Alexander Fead, Esq., Paul, Frank & Collins, Inc., indicating that attorney Fead intended to appear at the prehearing conference as counsel for the Applicants, but that he was involved in a hearing in another matter which was running over schedule. Counsel for the Board reported that the Board had received no notice of appearance from attorney Fead nor notice that he would not be able to attend the prehearing conference due to a conflict in scheduling. Attorney Ekman was asked by Board counsel to call Mr. Fead's office and **confirm** whether the Applicants would be represented at the prehearing conference. When it was determined that neither Mr. Fead nor other counsel from his office would appear at the prehearing conference, the Chair proceeded with the prehearing conference, noting for the record that the Applicants were not present or represented.

## III. PURPOSE OF PREHEARING CONFERENCE

The Chair explained that the Water Resources Board is a five-member citizen Board appointed by the Governor. He noted that one of the Board's duties is to hear appeals from CUD decisions of the ANR, pursuant to 10 V.S.A. § 1269 and Section 9 of the Vermont Wetland Rules ("VWR"). The Board or its Chair is authorized to convene prehearing conferences to expedite its proceedings and hearings. Procedural Rule 28.

The Chair described the purpose of a prehearing conference. He specifically noted that the purpose of a **first** prehearing conference, such as this one, is to: (1) identify parties or persons seeking party status; (2) clarify the issues in controversy; (3) see if there is any interest amongst the participants in entering negotiations to narrow or eliminate any issues in controversy; and (4) attempt to establish a schedule and hearing day agenda to reflect both the participants' and Board members' schedules. See Procedural Rule 28.

The Chair noted that party status determinations and scope of appeal issues could usually be resolved or ruled on at a prehearing conference, thereby expediting the appellate proceeding.

However, due to the fact that neither the Applicants nor ANR were present at this prehearing conference, the Chair noted that these matters would need to be scheduled for briefing and subsequent determination, as provided for in the Prehearing Conference Report and Order (“Preheating Order”) to be issued following the preheating conference.

The Chair advised those present to obtain copies of the Procedural Rules, effective February 22, 1999, as well as the VWR, to prepare for the hearing in this matter. The Chair distributed copies of these rules to the preheating conference participants. These rules are also available by downloading text from the Board’s Web site: <http://www.state.vt.us/wtrboard>

#### IV. STANDARD OF REVIEW

The Chair explained that any hearing on the merits in this appeal shall be conducted as a de novo proceeding pursuant to 10 V.S.A. § 1269. The Board shall issue an order affirming, reversing or modifying the act or decision of the Secretary of ANR. The Applicants have the burden of proof, by a preponderance of the evidence, to show that a CUD should issue for the Project and, if so, with what conditions.

As a consequence of the de novo standard, the prehearing conference participants were forewarned that any evidence that might have been submitted to the ANR in support of or in opposition to the application for CUD #98-340, including the application itself, must be resubmitted to the Board in the form of prefiled exhibits.

#### V. DISCLOSURES

The Chair identified for the prehearing conference participants the current Board members: members Gossens, Blythe, Farr, Roberts, and Potvin. He distributed copies of biographical notes for each of these persons (see attachment) and asked the participants whether they were aware of any conflicts of interest or other disqualifying interests which might prevent one or more of the identified persons from serving as decision makers in this proceeding.

Those persons participating in the prehearing conference indicated that they were not aware of any apparent conflicts of interest or other circumstances requiring disqualification of one or more of the named Board members. However, due to the fact that not all persons likely to participate in this proceeding as parties were present, the Chair indicated that the Prehearing Order would establish a deadline for the filing of any objections or requests for further disclosure.

The prehearing conference participants were advised that if new appointments are made to the Board during the pendency of this appeal, or should the Chair need to appoint a former Board member to hear this cases pursuant to 10 V.S.A. §905(1)(F), additional disclosures will be made to the parties so that they may have an opportunity to file any requests for Board member disqualification.

Attorney van Aelstyn disclosed that he is a close personal friend of Matt Strassberg, Associate General Counsel with the consolidated staff of the Environmental and Water Resources Boards. The Board's counsel disclosed that Sheila McIntyre was a former staff member of the Water Resources Board, and Ms. McIntyre clarified that none of the persons presently serving on the Board was a member at the time of her employment with the Board.

#### VI. EX PARTE CONTACTS

The Board's counsel cautioned would-be parties to this proceeding against communicating directly with Board members concerning the appeal during its pendency. 3 V.S.A. §813. All persons having procedural questions are directed to bring them to the attention of the Board's counsel staffing this case, Kristina L. Bielenberg, Esq. (Phone: 828-5443).

#### VII. INFORMAL DISPUTE RESOLUTION

The Chair advised the preheating conference participants that the Board encouraged alternative dispute resolution. He noted that additional time could be built into the schedule of this proceeding to allow for such informal resolution if the parties believed that the issues in this matter could be resolved or narrowed through negotiations or mediation.

The Chair indicated that, if a request for continuance to allow negotiations were filed, the filing deadline for the first prefiled testimony would be delayed and a telephone status conference would be held in mid-March at which time the parties would be required to report to the Chair on the progress of the negotiations, including whether a settlement had been reached with respect to all or some of the issues before the Board.

#### VIII. PRELIMINARY ISSUES

##### A. PARTY STATUS AND REPRESENTATION

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The only persons who entered timely appearances in this matter were: the Appellants by attorney van Aelstyn; and Summit by attorney Ekman. No entries of appearance and party status petitions had been filed by representatives for the Applicants and the ANR by the time of the preheating conference. See Notice of Appeal and Preheating Conference.

The Board's counsel directed the parties to the requirements in the new Procedural Rules for entering appearances and making party status requests. Procedural Rules 25 and 27.

She advised counsel for the Appellants that since the Notice of Appeal was silent as to basis for his clients' "standing" under 10 V.S.A. § 1269, they would be required to supplement their notice with a filing identifying the basis for their grievance. She noted that this could be achieved by filing a petition addressing the requirements and standards in Procedural Rule 25(A) and (B)(7) or (8).

She inquired of counsel for Summit whether his client was going to represent the Applicant, as it did before the ANR, or seek party status in its own name. She advised counsel for Summit that if the firm was seeking party status in its own right, it would need to file a party status petition pursuant to Procedural Rule 25(A) and (B)(S), because it is not one of the enumerated persons automatically qualifying for intervention of right. See Procedural Rule 25(B)(1)-(5).

Rule 25(B)(5); follows: the ANR, pursuant to Procedural

confirmed for the Appellants

See

The Board's counsel noted that the Board had previously found that the Warners' house was located several feet outside the wetland buffer zone. See Re: Barden Gale and Melanie Gale Amhowitz, Docket No. CUD-99-01, Findings of Fact, Conclusions of Law, and Order at 6, Finding 8. (July 16, 1999). She noted that no party had appealed the Board's decision and so that finding presumably became final and binding upon the parties to that proceeding. Since the Appellants to CUD-99-01 are one and the same as the Appellants in the present proceeding, she asked the prehearing conference participants why they are not bound by the Board's previous finding, thereby limiting the scope of the appeal to just the question of whether a CUD should be issued for the Warners' septic system curtain drain.

Counsel for the Appellants and Summit each offered their positions with respect to the scope of appeal and whether Finding 8. in the Board's prior decision precludes relitigation of whether the Warners' house is within the subject wetland's buffer zone. Because the Applicants and ANR were not present, however, the Board's counsel noted that a briefing schedule would be established in the Prehearing Order to allow all interested persons an opportunity to state their positions concerning the scope of review. She noted that the Board is very concerned about piecemeal review of development within protected wetlands and their buffer zones and this may prompt the Board to require additional briefing, particularly on the issue whether this matter should be remanded to the ANR for further investigation and findings.

#### IX. ISSUES

The issues in this proceeding are the following:

- (1) Whether the septic system curtain drain in the buffer zone of a Class Two wetland will result in an undue adverse effect on protected functions? **Section 8.5(a)** of the VWR.
- (2) If the septic system curtain drain will result in an undue adverse effect on protected functions, are these impacts minimal? **Section 8.5(a)** of the VWR
- (3) If the undue adverse effect on protected functions is more than minimal, has this impact been sufficiently mitigated to the extent necessary to achieve no net undue adverse effect? The Appellants did not specify with respect to which mitigation standards the Board should focus its review. **Sections 8.5(b)** of the VWR.

The Chair noted that the Board presumes that a Class II wetland is significant for all ten **functions** listed in Section 5 of the VWR. The Chair noted, however, that in a de novo proceeding the applicant for a CUD is expected to present evidence on the impacts of its project

with respect to each of the wetland functions identified by the appellant in his or her notice of appeal.

Of the ten functions included in Section 5 of the VWR, the Appellants in this matter have asked the Board to determine whether the Project will have more than a minimal undue adverse impact on the following functions: 5.1 (water storage for flood and storm water); 5.2 (surface and ground water protection); 5.3 (fisheries habitat); 5.4 (wildlife and migratory bird habitat); and 5.10 (erosion control).<sup>1</sup>

Counsel for the Appellants clarified that the issues on appeal also included consideration of whether the Applicants had addressed all five mitigation standards under VWR, Section 8.5(b), but not compensation under VWR, Section 8.5(c).

#### X. WITNESSES, EXHIBITS, AND PREFILING SCHEDULE

The Board's counsel explained to the prehearing conference participants that prefiled testimony and exhibits would be required in this proceeding. She asked each participant to provide a preliminary list of witnesses to help get a sense how long a hearing will be required to address the matters on appeal. She noted, however, that given the absence of the Applicants and ANR, it will not be possible to make a final determination concerning the hearing schedule until all lists of witnesses are prefiled.

Counsel for the Appellants indicated that he would be calling: a wetlands expert; an engineer; Paul Gale, agent for the Appellants; Padraic Monks, Wetlands Ecologist, ANR; and Sheila McIntyre, former Pinkham employee involved in securing ANR approvals for the Project

Counsel for Summit indicated that he would be calling: Sheila McIntyre; Padraic Monks; and perhaps Gary Warner.

The Board's counsel expressed the hope that the hearing would take less than a full day. Toward that end, she encouraged the prehearing conference participants to work together to avoid duplication of witness testimony and exhibits and, if possible, to prepare stipulated facts, identify exhibits to which there are no objections, and develop a joint site visit itinerary.

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<sup>1</sup> The ANR, in issuing CUD 98-340.01 determined that the wetland was only minimally significant for functions 5.5 (hydrophytic vegetation), 5.6 (threatened and endangered species habitat), 5.7 (education and research in natural science), 5.8 (recreational value and economic benefits), and 5.9 (open space and aesthetics).

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The Board's counsel noted that the Preheating Order would contain specific instructions for the prefiling of testimony and exhibits. She emphasized that, with respect to all filings, including prefiled testimony and exhibits and various pleadings, the parties are required to file an original and seven copies with the Board as well as serve persons on the Board's certificate of service. "Filing with the Board" means that a parties' submissions must be received at the Board's office by the deadline stated in a Preheating Order or in subsequent orders of the Board or Chair. See Procedural Rules 8, 9, and 10.

#### XI. HEARING DAY SCHEDULE

The Board's counsel indicated that the hearing with respect to the pending appeal would likely be held on May 16 or June 6, 2000, depending on whether the Board is required to decide preliminary issues in this matter which would delay a hearing on the merits. Although counsel for the Appellants indicated that his clients would prefer June 6 or a later hearing date, the prehearing conference participants were asked to reserve both the May and June dates until further notice. See Section XI., Item 21. The Board's counsel also noted that the hearing would be scheduled at a public facility in close proximity to the subject wetland, most likely at the Town of Colchester.

The Board's counsel outlined for the prehearing conference participants the typical hearing day schedule (see attachment) and answered their procedural questions. The parties will be provided with a revised hearing day schedule once all direct witnesses have been identified by the parties. Again, the Board's counsel encouraged the prehearing conference participants to organize their prefiled testimony, exhibits, and argument so as to eliminate redundancy and achieve efficiency in the presentation of their respective cases.

#### XII: SERVICE LIST

The Board's counsel advised the prehearing conference participants that they should use the certificate of service accompanying the Preheating Order to determine who should receive copies of all filings. She noted that parties are not required to serve filings on persons listed under the "For Your Information" section of the certificate of service. She further noted that parties or their representatives are responsible for advising the Board of any changes in addresses, including changes related to the assignment of new 911 street numbers or seasonal changes in residence.

XIII. ORDER

1. The Applicants and ANR shall file their entry of appearances on or before **4:30 p.m., Monday, March 6, 2000** pursuant to Procedural Rule 27.
2. On or before **4:30 p.m., Monday, March 6, 2000**, the Appellants shall supplement their notice of appeal with a petition demonstrating their standing, by addressing the requirements and standards set forth in Procedural Rule 25(A) and (B)(7) or (8).
3. On or before **4:30 p.m., Monday, March 6, 2000**, Summit shah file a party status petition addressing the requirements and standards set forth in Procedural Rule 25(A) and (B)(8). Alternatively, if Summit intends to represent the Applicants in this appeal, it shah file an entry of appearance pursuant to Procedural Rule 27.
4. Any requests for disqualification of any of the current Board members identified in Section V. above, or any requests for further disclosure, shall be filed on or before **4:30 p.m., Monday, March 6, 2000**. Any such request for disqualification shall be supported with a statement of alleged facts and a memorandum of law in support of such disqualification. The failure to file a timely request for disqualification or request for further disclosure shall be deemed waiver of any objections to the participation of a current Board member in the above-captioned appeals.
5. The issues in this proceeding are those framed in Section IX. above. Any person objecting to the issues as framed, including but not limited to the scope of the Project subject to the Board's review, shah file a motion, supported by legal memorandum, on or before **4:30 p.m., Monday, March 6, 2000**. The legal memorandum should address, among other things, the applicability of the standard in Procedural Rule 19(C) and whether the scope of appeal should include consideration of whether the Warners' house is located in the subject wetland's buffer zone. If a movant asks the Board to adopt an expansive scope of review, the movant should also address why Fmding 8. in the Board's final decision in Docket No. CUD-99-01 has no preclusive effect. Additionally, the movant should address why this matter should or should not be remanded to the ANR for further investigation and findings concerning whether the house and any other development activities on the Warner lot are or were within the subject wetland's buffer zone.
6. On or before **4:30 p.m., Monday, March 13, 2000**, any party objecting to the Appellants' petition (Item 2. above) and/or Summit's party status petition (Item 3. above) shall file a written objection support by legal memorandum.

7. Should a motion to alter or expand the scope of the matters to be decided in this proceeding be timely filed in accordance with Item 5. above, responsive filings, supported by legal memoranda, may be filed with the Board on or before **4:30 p.m., Monday, March 13, 2000**. Those persons urging the Board to adopt the restrictive scope of review provided for in Section IX. above should address, among other things, the applicability of the standard in Procedural Rule 19(C) and the preclusive effect if any of Finding 8. in the Board's final decision in Docket No. CUD-99-01. Also, these persons should address whether, as an alternative to adopting an expansive scope of review, the Board should or should not remand this matter to ANR for further investigation and findings concerning whether the house and any other development activities on the Warner lot are or were within the subject wetland's buffer zone.

8. The Board shall deliberate on preliminary issues, including questions of party status and 'scope of review, at its regular meeting on March 14, 2000, and issue an order shortly thereafter.

9. On or before **4:30 p.m., Thursday, April 6, 2000**, the Applicants shall file final lists of direct witnesses and exhibits. They also shall file all direct prefiled 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.

10. On or before **4:30 p.m., Thursday, April 20, 2000**, the Appellants and ANR shall file final lists of direct witnesses and exhibits. They also shall file all direct prefiled 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.

11. On or before **4:30 p.m., Thursday, May 4, 2000**, 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 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.

12. 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 Prehearing 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.
13. On or before **4:30 p.m., Thursday, May 11, 2000**, any party may file in writing any evidentiary objections to prefiled testimony and exhibits previously filed. If objections are not timely filed, they shall be deemed waived. Any objections shall be supported by legal memoranda.
14. On or before **4:30 p.m., Thursday, May 18, 2000**, any party may file in writing any responses to evidentiary objections filed in accordance with Item 13 above. If responses **are** not timely filed, they may be excluded. Any objections shall be supported by legal memoranda.
15. On or before **4:30 p.m., Thursday, May 18, 2000**, all parties shall submit a single, combined list of all prefiled testimony and exhibits.
16. On or before **4:30 p.m., Thursday, May 18, 2000**, all parties shall file in writing any requests for time beyond the time allotments proposed by Board staff **after** April 20, 2000. The Chair may allow more time if good cause is shown.
17. On or before **4:30 p.m., Thursday, May 18, 2000**, parties shall file a joint proposed itinerary for the site visit to be held on April 25, 2000. To the extent that the parties cannot agree concerning the relevancy of any proposed site visit itinerary item, they should communicate their disagreement in writing in a submission to the Board so that the **Chair** may rule on the scope of the site visit.
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18. On or before **4:30 p.m., Thursday, May 18, 2000**, parties shall file any stipulations. These may be in the form of joint statements of fact or proposed joint decisions,
19. On or before **4:30 p.m., Thursday, May 18, 2000**, parties shall file any proposed findings of fact, conclusions of law, and orders.
20. The Chair or his designee will conduct a second preheating conference by telephone on **Thursday, May 25, 2000, at 1:00 p.m. at the Board's office in Montpelier, Vermont.** The purpose of this prehearing conference is to address any pending evidentiary objections, 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 **Tuesday, May 23, 2000.** The Board's staff will arrange the conference call.
21. On **Tuesday, June 6, 2000**, the Board will convene a hearing in this matter. The specific time and location of this hearing shall be announced later.
22. 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, May 4, 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)
23. On or before **Thursday, May 4:30 p.m., June 15, 2000**, any party may file any revised or supplemental proposed findings of fact, conclusions of law, and orders, including any proposed CUD conditions.
24. The Board may waive the filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.
25. 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.

26. Parties shall label their prefiled testimony and exhibits with their name. The labels on the exhibits must contain the words WATER RESOURCES BOARD, Re: Barden Gale and Melanie Gale Amhowitz, Docket No. CUD-99-08, 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.

With respect to labeling, each party is assigned a letter as follows: "A-Warner" for the Applicants; "Gale" for the Appellants; and "ANR" for the ANR. Exhibits shall be assigned consecutive numbers. For example, the Warners, as Applicants, would number their exhibits A-Warner-1, A-Warner-2, A-Warner-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-Warner-2A, A-Warner-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 Board's 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 APPLICANTS -WARNERS'  
LIST OF EXHIBITS  
RE: BARDEN GALE AND MELANIE GALE AMHOWITZ, CUD-99-08

| <u>Number</u> | <u>Descriptioq</u>  | <u>Status</u> |
|---------------|---|---------------|
| A-Warner-1    | Prefiled Direct Testimony of<br>Errol Briggs specific to Warner Application |               |
| A-Warner-2    | Resume of Errol Briggs  |               |
| A-Warner-3    | CUD Application filed by Warners with<br>ANR on _____                       |               |
| A-Warner-3A-D | Survey dated ____, sheets<br>3A through 3D                                  |               |

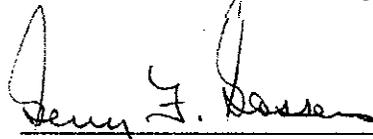
**The Board will use the status column to mark whether or not the exhibit has been admitted.**

Exhibits offered to the 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.

27. Pursuant to Procedural Rule 28(B), this Prehearing Order is binding on all parties who have received notice of the prehearing conference, unless a written objection to the order, in whole or in part, is filed on or before **4:30 p.m., Wednesday, March 1, 2000**, or a showing of cause for, or fairness requires, waiver of a requirement of this Prehearing 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 22nd day of February, 2000.

WATER RESOURCES BOARD

  
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Gerry F. Gossens  
Chair