

State of Vermont
WATER RESOURCES BOARD

RE: Links at Lang Farm, Essex, Vermont
Docket No. WET-99-02DR
(Petition filed by the Department of Environmental Conservation)

ORDER:
ANR's Evidentiary Objections and Motion *In Limine*

April 6, 2000, was the deadline for the parties to file evidentiary objections to prefiled evidence in the above-captioned declaratory ruling proceeding. The Petitioner, Agency of Natural Resources ("ANR"), filed Evidentiary Objections and a Motion *In Limine* ("Motion"). Links at Lang Farm ("CUD Applicant") filed no evidentiary objections. The ANR and CUD Applicant are the only parties to this proceeding.

The ANR's filing generally objects to all of the CUD Applicant's prefiled direct and rebuttal testimony regarding the so-called "direct influence" portion of the definition, "contiguous," based on lack of relevancy. See Section 2.07, VWR. The Motion is for a Board determination, prior to distribution of prefiled evidence to the Board and prior to a hearing on the merits, concerning the relevancy to this proceeding of the "direct influence" portion of the "contiguous" definition.

The course of this proceeding was discussed at the prehearing conference on February 1, 2000, and memorialized in a Prehearing Conference Report and Order (Feb. 2, 2000) ("Prehearing Order"). The ANR was a prehearing conference participant and was provided an opportunity to review and object to the course of proceeding in this matter. At no time during or following the prehearing conference did ANR ask the Board to address the "direct influence" question as a preliminary matter -- that is, prior to the pre-filing of evidence -- even though the ANR was on notice that this portion of the "contiguous" definition was at issue in the advisory opinion proceeding. See WET-99-02A0 at 8-9 (Nov. 30, 1999). In fact, even though the parties were provided with an opportunity to object to the Prehearing Order and therefore seek revision of the issues, preliminary issues, schedule, and other matters addressed in that Order prior to the pre-filing of evidence, the ANR did not do so. Therefore, the Prehearing Order became final by its own terms, after February 8, 2000. See Prehearing Order at 11, Section XIV, Item 24.

It would be patently unfair, at this late date, to redirect the course of this proceeding when the ANR's legal arguments can be considered in an orderly fashion under the terms and condition of the Prehearing Order. As provided for in that order, the CUD Applicant has an opportunity to respond to the ANR's objections in a filing due April 13, 2000, and the evidentiary objections and any responses will be addressed at the second prehearing conference on April 20, 2000. Prehearing Order at 8-9, Section XIV, Items 11 and 17. Additionally, each party has an opportunity to provide legal argument concerning the interpretation of the "contiguous" definition, its application to the specific facts of this case, and the practical and policy ramifications of

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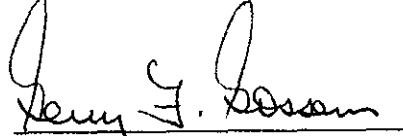
adopting its own or the other party's interpretation both in opening and closing statements at hearing and in any proposed findings of fact, conclusions of law, and orders. Prehearing Order at 9-10, Section XIV, Items 16 and 20; Proposed Hearing Day Schedule for April 25, 2000.

ORDER

For the foregoing reasons, I deny the ANR's Motion

Dated at Montpelier, Vermont, this 7th day of April, 2000.

WATER RESOURCES BOARD



Gerry F. Gossens
Chair