

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Ch. 151

Re: *Okemo Limited Liability Company, et al.* Land Use Permit #2S0351-24B-EB
Docket #843

Memorandum of Decision

This proceeding involves an appeal to the Environmental Board (Board) from a decision by the District 2 Environmental Commission (Commission) denying party status to Mt. Holly Mountain Watch (MHMW) as to several criteria listed in 10 V.S.A. §6086(a).

I. History

On January 8, 2004, the Commission issued Land Use Permit #2S0351-24B (Permit) and accompanying Findings of Fact, Conclusions of Law, and Order (Decision) to Okemo Limited Liability Company (Okemo) and Ludlow Housing Associates and Breed Properties II Limited Partnership. The Permit authorizes the expansion of an existing Okemo snowmaking pond and dam in Ludlow, Vermont (Project). In its Decision, the Commission denied MHMW party status under Environmental Board Rules (EBR) 14(B)(1) and 14(B)(2) as to several criteria

On January 27, 2004, MHMW filed an appeal with Board from the Permit and Decision, alleging that the Commission erred in denying it party status.

The Board deliberated on this matter on April 21, 2004, and on May 10, 2004, the Board denied MHMW's party status petition.

On May 19, 2004, MHMW filed a Motion to Alter the Board's decision to which Okemo replied on June 8, 2004.

The Board deliberated on June 23, 2004.

II. Discussion

MHMW's Motion to Alter notes that the volume of the snowmaking pond at issue in this appeal will increase from 73 million gallons to 254.5 million gallons. MHMW focuses on the Board's determination in its May 10 decision that

For example, MHMW contends that the expansion of the pond will negatively affect Criteria 1(A), (B), (C), (E), 2, 3, 7, and 8(A), even though the Project, as proposed, will not increase the amount of water drawn from the Black River, either in terms of pumping rates or minimum flow requirements.

Memorandum of Decision at 7.

MHMW contends that the Board overlooked “that there are total seasonal water volume limits that Okemo may remove from the Black River.” *MHMW Motion* at 2. Okemo states that no such limits exist, *Okemo Motion* at 2, and MHMW does not indicate how the increased size of the pond will necessarily result in Okemo’s exceeding such seasonal limits, if, indeed, they do exist.

In any event, such possible volume limitations notwithstanding, critical to the Board’s determination in its May 10 *Memorandum of Decision* was the Commission’s Finding of Fact 10 that “the Applicants are not seeking to alter permit conditions regarding pumping rates, minimum flow and reporting requirements” in existing Land Use Permits. Thus, while it is possible that the total volume of water that will be drawn from the Black River may increase over time as the new pond is filled, the decisive factor in the Board’s consideration of MHMW’s party status petition is that the river will be protected as the water is being withdrawn. Since pump rates and minimum flows will not change, the fact that a greater volume of water may be withdrawn over time has little environmental impact.

The Board therefore finds no grounds for reconsidering its May 10 decision.

III. Order

1. MHMW’s May 19, 2004 Motion to Alter is denied
2. Jurisdiction is returned to the District 2 Environmental Commission.

Dated at Montpelier, Vermont this 25th day of June 2004.

ENVIRONMENTAL BOARD

/s/Patricia Moulton Powden _____
Patricia Moulton Powden, Chair
George Holland
W. William Martinez
Patricia A. Nowak
Alice Olenick
Richard C. Pembroke, Sr.
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