

## **Latest Update 4/6/2017**

In the Vermont Environmental Court litigation of Morrisville Water & Light's (MWL) Water Quality Certification, which applies to the Green River Reservoir as well as other MWL facilities, three parties have filed motions that seek to eliminate certain issues from the case and/or obtain a final ruling on issues from the Court without the need for trial. These motions would yield a ruling from the Court that would then open the way for an appeal to the Vermont Supreme Court. To summarize the motions, let's start with the Agency of Natural Resources (ANR).

ANR argues that the Court has limited jurisdiction relating to water quality standards and that certain questions are beyond the scope of ANR's review. If this motion is successful, it would eliminate a Court-ordered decommissioning of the Green River Reservoir Dam.

On another issue, another party, American Whitewater (AW) has raised the question of whether ANR's response to MWL's application was unlawfully delayed, thus triggering a Clean Water Act provision that waives ANR's right to require any changes to the Green River Reservoir Dam. ANR argues that the Federal Energy Regulatory Commission (FERC), not the Environmental Division, has the authority to rule on this. ANR also points to correspondence between MWL and ANR staff to support the position that ANR did in fact meet the deadline to act on MWL's application.

Both ANR and Vermont Natural Resources Council (VNRC) / Trout Unlimited (TU) have moved to dismiss MWL's argument that ANR should consider economic and social factors in their considerations.

AW, in their questions to the Court, sought to protect whitewater boating downstream of the dam as an existing use. VNRC/TU claims that the water quality standards do not protect a particular type of boating use. ANR filed a brief supporting VNRC/TU's motion, adding weight to the argument because the Court typically defers to ANR's interpretations of its own regulations.

A ruling from the Court on these issues is not expected until later this spring at the earliest.