

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION

RE: QUIDNICK RESERVOIR COMPANY  
AAD NO. 93-017/WRE

ORDER DENYING INTERVENTION/TIOGUE LAKE ASSOCIATION

This matter is before the Hearing Officer on the Motion to Intervene filed by the Tiogue Lake Association (hereinafter "Tiogue"). On November 5, 1993 a status conference was held on the above-captioned matter. On November 4, 1993 Tiogue filed a Motion to Intervene in the proceedings. On November 12, 1993 the Division of Freshwater Wetlands (hereinafter "Wetlands") the Division of Water Resources (hereinafter "Water Resources") and Quidnick Reservoir Company (hereinafter "Respondent") filed objections to the Association's Motion.

Oral argument was not requested nor does this hearing officer believe that oral argument would advance my understanding of the issues or arguments of counsel. Pursuant to AAD Rule 8.00(a)(3), no argument was scheduled.

By way of background, this enforcement proceeding was initiated on September 14, 1993 through the issuance of a Notice of Violation and Order to Quidnick Reservoir Company alleging violations of the Rhode Island Water Pollution Control Act (R.I.G.L. 46-12, et seq.), the Water Quality Regulations for Water Pollution Control and the Rhode Island Freshwater Wetlands Act (R.I.G.L. 2-1-18 et seq.).

Respondent made a timely request for hearing bringing this matter within AAD's jurisdiction pursuant to R.I.G.L.

§42-17.6, and §42-17.7. As mentioned previously, a status conference was held on November 5, 1993 wherein Wetlands, Water Resources and Respondent agreed to meet on December 1, 1993 to discuss resolution of this matter. On December 1, 1993 the Town of Coventry's Motion to Intervene was granted making the Town a full party to the proceeding.

The Administrative Rules of Practice and Procedure of the Administrative Adjudication Division for Environmental Matters (hereinafter "AAD Rules"), Rule 13.00 provides for permissive intervention in agency proceedings. It requires that a putative intervenor demonstrate both an alleged injury-in-fact and that the interests of the petitioner differ from and are not adequately represented by existing parties to the proceeding.

In its Motion, Tiogue asserts that its member families, which number approximately seventy-two (72), abut Tiogue Lake or are adjacent to it. Tiogue asserts that Tiogue Lake and the Flat River Reservoir are part of the same system. Tiogue avers that due to low water levels in the Flat River Reservoir during the summer of 1993, the volume of boat traffic increased on Tiogue Lake and caused, inter alia, degradation of water quality. Tiogue further avers that the issues in dispute are those stated in the Notice of Violation and Order, as they relate to both the Flat River Reservoir and Tiogue Lake and similarly that the applicable Regulations are those

cited in the Notice of Violation. As to adequate representation, Tiogue claims that the existing parties to this proceeding have different interests than petitioners and that the sole interest of the petitioners is the protection of Tiogue Lake in order that its members retain the use and enjoyment of the Lake and not suffer a reduction in property values. Tiogue argues that its interests are not adequately represented by existing parties since a settlement between existing parties or decision on the merits could affect the Tiogue Lake.

The Divisions and Respondent each filed objections to the Motion to Intervene. The Divisions assert that the Petitioner has alleged no injury-in-fact or demonstrated that they have a stake in the controversy. Moreover, the Divisions argue that they adequately represent the interests asserted by Petitioners. The Respondent, in this instance, is in agreement with the Division and likewise asserts that petitioners interests are adequately represented by the existing parties to the proceeding. Respondent argues further that intervention is not appropriate in administrative enforcement actions.

AAD Rule 13.00 entitled "Intervenors" provides in pertinent part:

a)...

b) Form and Content. The petition shall state the name and address of the person submitting the

petition. It shall specifically describe the injury-in-fact alleged by the petitioner and set forth how the petitioner(s) interests differ from, and are not adequately represented by, existing parties. The petition must identify the areas in dispute, specifically citing each regulation where applicable.

c)...

d) Rights of Intervenors. Intervenors shall be persons who have demonstrated an injury-in-fact which will result from a challenged action or application and whose interests are not adequately represented by other parties to the hearing. Any person permitted to intervene shall be a full party to the hearing. Every petition to intervene shall be treated in the alternative as a petition to participate.

The Rule is written in the conjunctive requiring that the putative intervenor demonstrate both an alleged injury-in-fact and that petitioners interests are not adequately represented by existing parties.

In the instant matter the issues of adequate representation and jurisdiction are dispositive. The Notice of Violation and Order issued by the Divisions addresses the alleged lowering of water levels in the Flat River Reservoir which serves as the basis for Tiogue's allegations of injury-in-fact. Tiogue concedes in its Motion that the areas in dispute and applicable regulations are those set forth in the Notice of Violation and Order. The Divisions have the authority to initiate enforcement proceedings to enforce statutes and regulations over which the Director has jurisdiction. The Divisions have, as the Respondent argues,

a compelling interest in pursuing enforcement of the statutes and regulations cited in Notice of Violation and Order which they issued.

That compelling interest is present whether resolution is by way of a decision after an evidentiary hearing on the merits or by way of a Consent Agreement entered into by the parties. Tiogue has not demonstrated that their interests as they relate to enforcement of the Notice of Violation and Order differ from or are not adequately represented by the existing parties to the proceedings.

Tiogue in its amended Motion does assert differing interests of its members including loss of property value and loss of use and enjoyment of their property. Accepting all of Tiogue's assertions as fact for purposes of deciding this Motion, Tiogue's differing interests are analogous to the claims made by adjacent landowners in Town of Smithfield v. Fanning 602 A.2d 939 (R.I. 1992) and for which intervention was denied by the Rhode Island Superior Court. While I find Town of Smithfield v. Fanning applicable to this matter, there are separate grounds for denial of intervention with regard to the differing issues raised by Tiogue. Pursuant to R.I.G.L. §42-17.7-2, AAD is vested with jurisdiction over, inter alia, all contested enforcement matters. As a creature of statute, AAD's jurisdiction is circumscribed by its enabling legislation. The issues raised by Tiogue with respect to loss

of property value and loss of use and enjoyment of property are not only rights of action that may be available to Tiogue in an independent suit, but are also the types of claims over which AAD lacks jurisdiction.

The differing claims raised by petitioner are beyond the scope of the pending adjudicatory proceeding and may be more suitably addressed by way of an independent civil suit analogous to the circumstances described in Town of Smithfield v. Fanning, supra.

AAD Rule 13.00(d) provides that every petition to intervene shall be treated in the alternative as a petition to participate. Pursuant to AAD Rule 13.00(e), Tiogue is permitted to file briefs in this matter on issues pending before the hearing officer.

After a review of the Motion to Intervene as amended, objections and memoranda submitted and the pertinent rules, regulations, statutes and case law, it is hereby

ORDERED

1. The Motion to Intervene filed by the Tiogue Lake Association is DENIED.
2. That Tiogue is permitted to participate in the proceedings pursuant to and in accordance with AAD Rule 13.00(e).

Entered as an Administrative Order this 1<sup>st</sup> day of  
February, 1994.

Kathleen M. Lanphear  
Kathleen M. Lanphear  
Chief Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within  
order to be forwarded, via regular mail, postage prepaid to  
Steven Rosenbaum, Esq., 128 Dorrance Street, Providence, RI  
02903; Dennis Esposito, Esq., Adler Pollock & Sheehan, Inc.,  
2300 Hospital Trust Tower, Providence, RI 02903; Paul Sprague,  
Esq., 70 Jefferson Boulevard, Warwick, RI 02889; Arnold  
Blasbalg, Esq., 128 Dorrance Street, Providence, RI 02903;  
John Tworog, Esq., 45 Providence Street, West Warwick, RI  
02893 and via interoffice mail to Gary Powers, Esq. and  
Genevieve Martin, Esq., Office Legal Services, 9 Hayes Street,  
Providence, RI 02908 on this 1<sup>st</sup> day of February, 1994.

Dennis R. Stewart