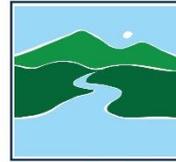


Lake Encroachment Individual Permit

Under 29 V.S.A. § 401 *et seq.*



VERMONT DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
WATERSHED
MANAGEMENT DIVISION
LAKES & PONDS PROGRAM

<p>Permittee(s): Stephen Whitney Blodgett</p> <p>Waterbody: Lake Champlain</p> <p>Permit Number: 2264-LEP</p>	<p>Project Description: Installation of 6-inch Intake Pipe</p> <p>Project SPAN: 591-186-00224</p> <p>Project Location: 832 Witherell Road, Shoreham</p>
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Based upon the findings contained in this permit, it is the decision of the Department of Environmental Conservation (the Department) that the project described herein, as set forth in the following findings and in the application on file with the Department, complies with the criteria of 29 V.S.A. § 405 and is consistent with the public trust doctrine, and is hereby approved under the following conditions and specifications.

a. Specific Conditions

1. The project shall be carried out in accordance with the final application received by the Department on January 20, 2017 (the Approved Application); and the conditions and specifications of this permit.
2. Installation of intake pipes greater than 2 inches inside diameter shall be completed in accordance with the Approved Application, the additional permit terms and conditions contained herein, and in accordance with the following special conditions:
 - A. No heavy machinery shall be used below mean water level for the installation of the intake pipe.
 - B. Pipe location below mean water level shall be marked at the surface of the water surface with buoys or similar markings and those markings shall not unreasonably impede navigation.
 - C. A mesh cover shall be placed at the end of the pipe to prevent suction of aquatic organisms.
 - D. Any equipment used above mean water level for the purpose of withdrawing water shall be in place only during the irrigation season. No new impervious surface or new cleared area shall be created in association with this project without prior approval by the Secretary.
 - E. Water withdrawal shall not exceed the *De Minimis* Withdrawals rate as defined in the Agency Procedure for Determining Acceptable Minimum Stream Flows, July 14, 1993.

b. Standard Conditions

1. Permit modification. All permit modifications, shall be treated as a new permit application.
2. Nuisance species spread prevention. Prior to placing any equipment (e.g., boat, trailer, vehicle, or gear) that has been in or on any other waterbody into public waters for project implementation/construction, the permittee shall decontaminate the equipment in compliance with the [Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013](#).
3. Erosion prevention and sediment control. Erosion prevention and sediment control best management practices shall be utilized and maintained to prevent erosion and control sediment to minimize and prevent adverse impacts to water quality during construction of the authorized project. In addition, the permittee shall comply with the following conditions:
 - A. Areas disturbed by the construction activities shall be protected from erosion through the application of seed and mulch upon completion of construction, and shall be temporarily mulched during construction in advance of precipitation events.
 - B. Work shall stop immediately if visible turbidity occurs in the lake as a result of construction activity and shall not recommence until the source of the turbidity is identified and corrected.

4. Heavy equipment operation. Heavy equipment shall work from shore, and shall not work lakeward of mean water level unless explicitly approved in writing by the Department, and/or specified in the Approved Application.
5. Spill prevention. Fuel and lubricants from equipment shall not be discharged into the water. Any spills shall be managed in accordance with all applicable local, state, and federal regulations.
6. Waste management. Any pieces of concrete, stone, construction debris, or other waste materials deposited into the lake during project implementation/construction shall be removed from the lake and disposed of properly, in accordance with all applicable local, state, and federal regulations.
7. Compliance with other regulations. This permit does not relieve the permittee from obtaining all other approvals and permits prior to commencement of activity or from the responsibility to comply with any other applicable federal, state, and local laws or regulations, including but not limited to the Vermont Solid Waste Management Rules, the Vermont Wetland Rules, and the Vermont Shoreland Protection Act.
8. Transfer of permit. Prior to transferring ownership over the encroachment authorized by this permit or the portion of property associated with the encroachment authorized by this permit, the permittee shall give the Department notice of the transfer. The notice shall include the name and contact information for the current permittee and prospective permittee, the proposed date of permit transfer, and a statement signed by the prospective permittee stating that he/she has read and is familiar with this permit and agrees to comply with and be bound by its terms and conditions.
9. Access to property. The permittee shall allow the Commissioner of the Department, or a duly authorized representative, at reasonable times and upon presentation of credentials, to enter upon permittee's property, or to otherwise access the authorized encroachment, if necessary, to inspect the project to determine compliance with this permit.
10. Legal responsibilities for damages. The Department, by issuing this individual permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whoever suffered arising out of the approved project.
11. Rights and Privileges. This permit does not authorize any damage to private property or invasion of private rights or the violation of federal, state, or local laws or regulations. In addition, this permit does not convey any title or interest to the lands lying under public waters or waters affected.
12. Duty to comply and enforcement. The permittee shall comply with all terms and conditions of this permit. Any permit noncompliance shall constitute a violation of 29 V.S.A. Chapter 11 and may be cause for an enforcement action and revocation, modification, or suspension of this permit. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.
13. Reopener. If, after granting this permit, the Department determines that there is evidence indicating that an authorized activity does not comply with the requirements of 29 V.S.A. Chapter 11, the Department may reopen and modify this permit to include different limitations and requirements.
14. Revocation. This permit is subject to the conditions and specifications herein and may be suspended or revoked at any time for cause including: failure by the permittee to disclose all relevant facts during the application process which were known at that time; misrepresentation of any relevant fact at any time; non-compliance with the conditions and specifications of the permit; or a change in the factors

associated with the encroachment's effect on the public trust or public good so that on balance the Department finds that the encroachment adversely affects the public trust or public good.

15. Severance. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

16. Appeals.

A. Renewable Energy Projects – Right to Appeal to Public Service Board. If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Service Board pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Service Board within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Service Board, available online at www.psb.vermont.gov. The address for the Public Service Board is: 112 State Street, Montpelier, Vermont, 05620-2701; Telephone #: 802-828-2358.

B. All Other Projects – Right to Appeal to Environmental Court. Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. The appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone #: 802-951-1740.

c. Findings

1. Jurisdiction - 29 V.S.A. § 403: Lake Champlain in Shoreham is a public water of the state of Vermont. The project encroaches beyond the shoreline as delineated by the mean water level, 95.5 feet National Geodetic Vertical Datum (NGVD) 1929. Therefore, the Department has jurisdiction under 29 V.S.A. Chapter 11.
2. Application Receipt and Review - 29 V.S.A. § 404: On January 20, 2017, the Department received an application from Stephen Whitney Blodgett (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to install a 6-inch inside diameter water intake pipe located within the public waters of Lake Champlain, Shoreham.

3. Public Notification - 29 V.S.A. § 405(a): The Department gave written notice of this application to the municipality in which the proposed encroachment is located, abutting property owners, and others having an interest in this matter and provided an opportunity for interested persons to file written comments or request a public information meeting. The notice period began on January 20, 2017 and closed at 4:30 PM on February 20, 2017. No comments were received.
4. Background; Lake Encroachment Permit History: None
5. Project Description: The project is to install a 6-inch inside diameter aluminum water intake pipe that extends 150 feet beyond mean water level for irrigation. The pipe is comprised of 30-foot sections. At each 30-foot juncture, the pipe is staked for stability and flagged to alert boaters. At the end of the pipe at the point of suction, wire mesh is placed to prevent suction of aquatic organisms. The suction is powered from a power take-off (PTO) tractor pump that seasonally operates from shore. The pipe and the PTO tractor pump are removed annually at the end of the irrigation season. This pipe system has been used intermittently since the 1960's; it has not been used since the year 2000.
6. Project Purpose: The purpose of the installation of the pipe is to irrigate over 200 acres of apple orchard using overhead irrigation.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: The design of the intake pipe is necessary to meet the project purpose and is not considered excessive.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: The project is considered to be a less intrusive feasible alternative.
9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: The pipe will be installed and removed by hand annually. The pipe will be laid directly on the lake bed without additional disturbance. All pump operations will occur on shore and pump equipment will be removed annually. Water withdrawal rates will not exceed the *De Minimis* Withdrawals rate as defined in the Agency Procedure for Determining Acceptable Minimum Stream Flows, July 14, 1993.
10. Placement of Fill: The project will not result in the removal or addition of new fill beyond the shoreline delineated by mean water level.
11. Effects on Water Quality - 29 V.S.A. § 405(b): All heavy equipment will work from shore. The pipe will be installed by hand on the lake bed and removed annually. This project will not have an adverse effect on water quality.
12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): A wire mesh cover over the suction end of the pipe will prevent suction of aquatic organisms. The project will not have an adverse effect on fish and wildlife habitat.
13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): No shoreline vegetation will be removed to complete this project. The project will not have an adverse effect on aquatic and shoreline vegetation.
14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): The section of intake pipe beyond mean water level is in a shallow area. The pipe will be marked with buoys or flagged above the water surface every 30 feet to alert boaters to any hazards. The pipe below the lake surface and will have minimal impact on navigation, recreation, and other public uses. The volume of water that will be drawn for irrigation will not result in a measurable change in the lake level. The project will not have adverse effects on navigation, recreation, or other public uses.

15. Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The intake pipe is located along an undeveloped gravel shore, adjacent to farmland. All irrigation equipment is removed seasonally. The project is consistent with the natural surroundings.
16. Consistency with Municipal Shoreland Zoning Ordinances and Applicable State Plans - 29 V.S.A. § 405(b): No adverse comments were received during the investigation from local and state officers and the project is therefore considered to be consistent with municipal shoreland zoning ordinances and applicable state plans.
17. Cumulative Impact - 29 V.S.A. § 405(b): Water withdrawal rates will be *de minimis* and will not result in a measurable decrease in lake water level. There will be no long term cumulative impact from the temporary and seasonal intake pipe.
18. Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon findings c. 11-17, the project will not adversely affect the public good.
19. Public Trust Analysis: The public trust doctrine requires the Department to determine what public trust uses are at issue, to determine if the proposal serves a public purpose, to determine the cumulative effects of the proposal on the public trust uses, and to balance the beneficial and detrimental effects of the proposal. The public trust uses relevant to this proposal are fishing, boating/kayaking, and swimming. The impacts of the project on public trust uses include temporary impacts on navigation and recreational uses such as fishing and swimming, which will be limited to the near shore project work area. The intake pipe provides a public good through irrigation of farmland. The public benefits associated with this project outweigh any potential or temporary negative effects on public trust uses. The Department has therefore determined that the project is consistent with the public trust doctrine.

d. Authorization

Based upon the foregoing findings, and in consideration of the Department's Interim Procedures for the Issuance or Denial of Encroachment Permits, dated October 4, 1989, excluding Section 3, which was invalidated by Lamoille County Superior Court, Docket No. S96-91, 9/04/92, it is the decision of the Department that the project described herein, as set forth in the above findings and in the plans on file with the Department, complies with the criteria of 29 V.S.A. § 405, and is consistent with the public trust doctrine.

In accordance with 29 V.S.A. § 401 *et seq.*, the Department hereby issues this decision and permit to Stephen Whitney Blodgett for the above-named project. The Department has approved the project subject to the conditions contained herein.

This permit shall not be effective until 10 days after the Department's notice of action and permit issuance in accordance with 29 V.S.A. § 405(c) and shall expire 15 years thereafter. **Prior to the expiration of this permit, the permittee shall reapply for a lake encroachment permit, if the permittee wishes to maintain the encroachment authorized by this permit.** If the permittee wishes to modify the encroachment or conduct other jurisdictional activities not authorized by this permit, the permittee must submit a new permit application.

Joanna Pallito, Commissioner
Department of Environmental Conservation

By: _____
Perry Thomas, Program Manager
Lakes & Ponds Management and Protection Program