VERMONT SUPERIOR COURT
ORLEANS UNIT
CIVIL DIVISION

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| Seymour Lake Association,<br>Plaintiff,<br><br>v.<br><br>State of Vermont, Agency of Natural Resources, Department of Environmental Conservation,<br>Defendants. | Docket No. 108-4-14 Oscv |



Opinion and Order on Defendant's Motion to Dismiss

In this action, Plaintiff Seymour Lake Association ("SLA") claims that the Vermont Agency of Natural Resources ("the State") has not acted appropriately to maintain the water levels of Lake Seymour. It asserts that the State's action, or inaction, violates Vermont statutory law and constitutes a common-law nuisance. It seeks injunctive relief to require that State to take certain actions to maintain the water levels. In response, the State filed a motion for dismissal under Vt. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim (the "Motion"). The Court held a hearing concerning the Motion on December 11, 2014. David F. Kelley, Esq., represented SLA; and Assistant Attorneys General Jon T. Alexander and Justin E. Kolber represented the State. At the end of the hearing, the Court requested supplemental legal briefing from the parties. After consideration of the legal memoranda submitted by the parties and the arguments of counsel, the Court makes the following determinations.

Overview of the Case

This matter arises from a federally-licensed hydroelectric power system known as the Clyde River Hydroelectric Project ("the Project"). Plaintiff alleges that the Project regulates Lake Seymour's water level. SLA, a nonprofit corporation representing lakefront property owners,[1] asserts that the State has failed to maintain maximum and minimum water levels in Lake Seymour ("the Lake") consistent with a 1951 Public Service Commission determination that was later affirmed by the Vermont Supreme Court. *See In re Lake Seymour*, 117 Vt. 367 (1952). That decision set the maximum and minimum water levels of the Lake at six inches above and eight inches below the crest of the then-existing dam, constructed in 1928. SLA claims that the State's failure to maintain those water levels has resulted in increased shoreline flooding since the dam was replaced in 2004. It seeks a writ of mandamus directing the State to comply with, among other things, the Supreme Court's 1952 decision, and an injunction to require the State to take action to prohibit future flooding.

[1] Besides representing property owners, SLA "facilitate[s], coordinate[s], and protect[s] the beauty and quality of Lake Seymour." Compl. ¶ 1.

History[2]

The Project began in 1963 when the Federal Energy Regulatory Commission ("FERC") issued a license to Citizens Utilities Company ("Citizens"), the private owner of the Seymour Lake Dam ("the Dam"). As originally licensed, the Project consisted of three hydroelectric dams on the Clyde River and two storage impoundments, one of which was the Dam. The Dam featured a large sluice gate to maintain water levels in the Lake, pursuant to the Supreme Court's 1951 ruling. Originally licensed for 30 years, Citizens reapplied for a new license from FERC in 1991. Citizens also sought approval to reconstruct the Dam, which had not been used in the production of electricity since 1987. *See* Agency of Natural Resources, Water Quality Certification, Clyde River Hydroelectric Project ¶ 250 (2002). Under Section 401 of the Clean Water Act,[3] FERC could not grant Citizens a new license until the State issued a "Water Quality Certification" confirming that the Dam complied with Vermont law regarding water quality standards.

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[2] In reciting the Project's relevant regulatory background, the Court has considered several exhibits submitted by the parties. Specifically, it has examined Defendant's Exhibits A-F and Plaintiff's Exhibits A-C (documents related to the Project's FERC license and SLA's correspondence with the State). Those materials are either referenced in in SLA's complaint, matters of public record subject to judicial notice, or factual material relevant to the determination of subject matter jurisdiction. *See Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 n.4, 186 Vt. 605 (mem.); *Conley v. Crisafulli*, 2010 VT 38, ¶ 3, 188 Vt. 11 (both noting ability of courts to examine materials outside of the complaint in assessing motions to dismiss based on purported jurisdictional defects). Plaintiff's affidavits, Exhibits C, D, F, and G were not considered. The affidavits are not subject to judicial notice or within the limited range of extrinsic evidence the Court may consider on a motion to dismiss.

[3] Codified at 33 U.S.C. § 1341.

The State eventually issued the requested certification in 2002, which was immediately appealed by the SLA, the Vermont Natural Resources Council, and Vermont Trout Unlimited. After a *de novo* hearing, the Vermont Water Resources Board issued an amended Water Quality Certification on July 11, 2003. The amended certification issued by the Board contained several conditions applicable to the current dispute, notably conditions B and H. Condition B mandated, subject to conditions C and H, that the Dam shall be operated in a "true run-of-river" mode, with a provision for the new dam to have a minimum flow rate of 4 cubic feet per second. Condition H required the new dam to include: "a gate bay to enable future operation of the gate if the [State] determines that the modified dam has significantly increased the magnitude, frequency, or duration of shoreline flooding, and this impact cannot be reasonably abated." *In re Clyde River Hydroelectric Project*, Nos. WQ-02-08(A) & (B) at 36 (Vt. Water Resources Bd. July 11, 2003).

On November 21, 2003, FERC issued a license to Citizens, which subsequently constructed a new dam with a gate bay, as stipulated in the Water Quality Certification and FERC license. The Dam is currently owned by Great Bay Hydro, which is not a party to this litigation.

Since the construction of the new dam in 2004, SLA has engaged with the State on a number of issues relating to the Dam. Compl. ¶ 19. In 2007, SLA requested the State to approve the installation of a board to raise the effective crest elevation of the Lake by 1.5 inches in response to concerns that water levels in the

Lake were too low for recreation. The State agreed to the request. Defendant's Ex. D (Letter from Jeffrey Cueto, Dep't of Envt'l Conservation, to Ronald Kolar, SLA, Dec. 8, 2009). Since then, however, SLA claims that water levels in the Lake have been above the maximum level set by the Public Service Commission, causing significant shore land flooding. That flooding has allegedly damaged the Lake's water quality and shore lands.

Despite repeated requests, the State has not exercised its authority under condition H to order Great Bay Hydro to install the gate and lower water levels of the Lake. *See* Defendant's Exs. D, F (Letter from Peter LaFlamme, Dep't of Envt'l Conservation, to Timothy Buzzell, SLA, May 24, 2013). In a meeting with SLA on August 20, 2012, the State explained its rationale, stating that the best way to protect water quality, aquatic habitat, and recreational opportunities would be to treat the Lake as a "natural system" with naturally varying water levels. *See* Def.'s Ex. E (Agency of Natural Resources, Observations and Conclusions, Seymour Lake Water Level Management Meeting (Aug. 20, 2012)).

Standard of Review

The Vermont Supreme Court disfavors Rule 12(b)(6) motions to dismiss. "Dismissal under Rule 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle Plaintiff to relief." *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575 (mem.) (quoting *Union Mut. Fire Ins. Co. v. Joerg*, 2003 VT 27, ¶ 4, 175 Vt. 196). To analyze such a motion, the Court "assume[s] that all factual allegations pleaded in the complaint are true,

accept[s] as true all reasonable inferences that may be derived from plaintiff's pleadings, and assume[s] that all contravening assertions in defendant's pleadings are false." *Mahoney v. Tara, LLC*, 2011 VT 3, ¶ 7, 189 Vt. 557 (mem.) (internal quotation, brackets, and ellipses omitted).

Nonetheless, a complaint must still meet a minimum standard of pleading. Vt. R. Civ. P. 8 requires that a complaint's allegations show "the pleader is entitled to relief." Further, a complaint must contain factual allegations supporting each element of the claims asserted. *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 10, 184 Vt. 1.

Similarly, the Court reviews a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction "with all uncontroverted factual allegations of the complaint accepted as true and construed in the light most favorable to the nonmoving party." *Jordan v. State Agency of Transp.*, 166 Vt. 509, 511 (1997). Unlike a Rule 12(b)(6) motion, however, the Court may consider evidence outside the confines of the Complaint in evaluating its jurisdiction. *Conley*, 2010 VT 38, ¶ 3, 188 Vt. at 14. Further, a "plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (cited with approval in *Conley*).

Discussion

The State moves to dismiss SLA's claims on three grounds. First, it argues that the only forum in which SLA can modify standards under the FERC license is a FERC administrative proceeding, not this Court, thus preempting any claim under state law. Next, the State contends that its decision(s) to not exercise its authority

under Condition H is actually a final decision of ANR that is reviewable only in the Superior Court's Environmental Division. Finally, the State claims sovereign immunity concerning SLA's nuisance claims. The Court concludes that it need only examine the second and third points in order to resolve the pending motion.

I. Jurisdiction of the Environmental Division

The State's primary contention is that SLA's dispute is with a decision made by the Agency of Natural Resources (ANR). 10 V.S.A. § 8503 establishes the jurisdiction of the Superior Court's Environmental Division. It provides that the Environmental Division has jurisdiction to review decisions of the Secretary of ANR concerning the regulation of stream flow, dams, and water pollution control. The State argues that this complaint is truly a challenge to the State's interpretation of the Lake's conditions in deciding not to invoke Condition H in the FERC license. Such determinations, the State contends, are decisions of ANR that are only reviewable by the Environmental Division. SLA makes a number of arguments against that conclusion. The Court addresses each of those contentions below.

SLA first asserts that the State has not engaged in "meaningful consultation" with it and has made no "decisions" concerning the Dam's flow regime. The Court finds otherwise. On at least two occasions the State engaged with SLA about water levels in the Lake, both times finding that under Condition H, gate operation was unnecessary. *See* Def.'s Exs. D–F. If SLA wants to present evidence that the

State's determination was incorrect,[4] the Environmental Division is the proper forum under 10 V.S.A. § 8503.

SLA's contention that the decisions set forth in the agency letters were not reviewable "decisions" is meritless. The 2009 determination by the State's Chief Hydrologist states: "By this letter, the Department determines, under Condition H, that gate operations are unnecessary. The gate operator shall not be installed." Defendant's Ex. D. The May 2013 decision from the Director of the Watershed Management Division provides:

> As you know, Condition H of the Water Quality Certification for the Clyde River Hydroelectric Project (2003) states that a gate could be installed and operated "if the Department [of Environmental Conservation] determines that the modified dam has significantly increased the magnitude, frequency, or duration of shoreline flooding, and this impact cannot be reasonably abated." *We have concluded that a significant increase has not occurred and installation and operation of a gate is not warranted.* (Emphasis added).

Both the statutory framework and decisions from other courts support the conclusion that the above decisions were reviewable under Section 8503. In particular, 10 V.S.A. § 1082(a) prohibits alteration of any dam or impoundment of water without authorization by ANR, and Section 1252 authorizes ANR to adopt and enforce water quality standards applicable to state waters. Furthermore, the agency letters fit with in the judicially accepted definition of a "decision' by indicating a "consummation of the decision making process regarding the corrective

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[4] For example, SLA asserts that the "overwhelming evidence that the modified dam has significantly increased the magnitude, frequency, or duration of shoreline flooding." *See* SLA Opposition at 12.

action [ANR] determined was required at the property," as judged by its technical expertise. *State v. Bradford Oil Co., Inc.*, No. 139-10-13 Vtec, 2014 WL 1301856, at *2 (Vt. Super. Mar. 6, 2014); *Ne. Res. Recovery Ass'n v. State*, 2013 WL 7346946, at *4 (Vt. Super. Ct. Oct. 10, 2013) (ANR decision to award a recycling contract was final agency decision reviewable in the Environmental Division).

Along a similar tack, SLA next argues that it could not have brought a case in the Environmental Division because ANR's decisions not to exercise its discretion under Condition H did not arise out of a "contested case," as required under the Vermont Administrative Procedure Act, 3 V.S.A. § 809. In the Court's view, however, the contours of the Environmental Division's jurisdiction are not defined so narrowly. Any "act or decision" of ANR is subject to Environmental Division jurisdiction. 10 V.S.A. §§ 8503–04. The act or decision does not even need to be written or formal, as it was here. *See Ne. Res. Recovery Ass'n*, 2013 WL 7346946, at *4; *see also Bradford Oil*, 2014 WL 1301856, at *2. ANR's determinations, described above, were reviewable in the Environmental Division.

The final arrow in SLAs quiver is the contention that its Complaint is in the nature of a mandamus action that is appropriately brought in the Civil Division. SLA is correct that the Civil Division is the proper forum for a mandamus claim. But the writ is only available pursuant Vt. R. Civ. P. 75 and is subject to the limitations set out in that provision. For a number of reasons, the Court concludes that mandamus relief is not available in this instance.

First, Rule 75 allows a party to seek a writ of mandamus only where there is no other relief available by law. *See Bd. of Trustees of Kellogg-Hubbard Library, Inc. v. Labor Relations Bd.*, 162 Vt. 771 (1994). In this instance, the Court has already determined that SLA could have, but did not, bring an appeal of the DEC's previous decisions not to operate a gate on the Lake. Since the law provided an avenue for SLAs claims, mandamus is not available. *Id.* (mandamus unavailable "when the legislature has established a direct route of appeal).

SLA's contention that it may no longer be able to appeal those previous decisions does not change that result. Mandamus does not lie where a party was provided an avenue of appeal but failed to avail itself of it. *See Cole v. United States Dist. Court*, 366 F.3d 813, 818 n.7 & 822-23 (9th Cir. 2004); *United States v. Ecker*, 923 F.2d 7, 9 (1st Cir. 1991) (both noting that mandamus is inappropriate where party failed to take direct appeal); *see also Kerr v. United States Dist. Court*, 426 U.S. 394, 403 (1976) (party seeking writ of mandamus must "have no other adequate means to attain the relief he desires).

The Vermont Supreme Court came to a similar conclusion in *Phillips Contr. Servs., Inc. v. Town of Ferrisburg*, 154 Vt. 483, 484-85 (1990). There, the Court concluded that mandamus was not available where the plaintiff had not engaged in the appeal process that was provided by law. *Id.* The Court determined that "extraordinary relief," such as a writ of mandamus may not issue where a party had

failed to avail itself of an appeal that was provided by statute. *Id.*; *see In re LaFreniere*, 126 Vt. 204, 206 (1967). Just so in this case.[5]

Second, even ignoring the alternative appeal route provided by Section 8503, Rule 75 imposes a thirty-day limit to file a petition seeking mandamus as a result of a governmental decision. In this instance, as outlined above, the DEC denied SLA's requests to order the installation and use of a gate in the Dam in 2009 and 2013. This action was not filed until 2014. As a result, the Complaint is untimely under Rule 75. While the filing deadline is not jurisdictional, Vt. R. Civ. P. 75 Reporter's Notes, SLA has made no motion seeking to extend the filing period on the bases specified in Vt. R. Civ. P. 6.

Such a result makes sense. The issues raised by SLA concern decisions made by the DEC that focus on complex water and land resource questions both of which impact one of Vermont's important lakes. SLA's complaint also addresses the intersection of state and federal environmental laws and issues of preemption. Any examination of such issues would plainly benefit from the acknowledged expertise of the Environmental Division. *See Agency of Natural Resources v. Weston*, 175 Vt. 573, 577 (2003) (discussing expertise of the Environmental Division). Accordingly, the Court concludes that it lacks jurisdiction to entertain SLA's complaint regarding the failure of ANR to exercise its discretion under Condition H.

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[5] Nor is it certain that SLA would be precluded from, again, seeking Department review of its claim. With additional data and information as to impacts of flooding, it may be possible for SLA to seek a new review by the Department. If the new decision were adverse to the SLA, it could then seek review by Environmental Division.

II. SLA's Nuisance Claims

SLA also asserts claims for nuisance *per se* and public nuisance arising from the State's "acts and omissions" that have allegedly damaged the Lake's shore lands and impaired the use and enjoyment of the Lake. While "[t]he concept of public nuisance is vague and amorphous," it centers on activities that "disrupt the comfort and convenience of the general public by affecting some general interest." *Napro Dev. Corp. v. Town of Berlin*, 135 Vt. 353, 359 (1977). Interfering with the water levels of a lake is among the activities that, at least potentially, could be deemed to be a public nuisance. *Hazen v. Perkins*, 92 Vt. 414, 421 (1918).[6] A nuisance *per se*, on the other hand, is a nuisance at all times and under any circumstances, regardless of location or surroundings, that cannot lawfully be permitted to exist. *Roy v. Woodstock Cmty. Trust, Inc.*, 2013 VT 100, ¶ 80 (citations omitted). To abate the nuisance, SLA seeks an affirmative injunction requiring the State to order the installation and maintenance of a gate on the Dam to maintain "natural and normal" water levels on the Lake.

Against this, the State has asserted that SLA's claims are barred by the various strains of the doctrine of sovereign immunity. In the absence of a valid

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[6] The State urges dismissal on the basis that public nuisances and nuisances *per se* are typically characterized by their general lack of legal justification or government authorization, which is not the case here. *See New England Legal Found. v. Costle*, 666 F.2d 30, 33 (2d Cir. 1981) ("Courts traditionally have been reluctant to enjoin as a public nuisance activities which have been considered and specifically authorized by the government."). The Vermont Supreme Court, however, has recognized that "even a lawfully permitted project may be a nuisance based on its 'conditions or manner of operation.'" *Roy*, 2013 VT 100, ¶ 80 (quotations omitted).

waiver of sovereign immunity, the Court lacks subject-matter jurisdiction over this dispute. *See United States v. Bond*, 762 F.3d 255, 263-64 (2d Cir. 2014); *cf. South Burlington v. Dep't of Corrections*, 171 Vt. 587, 590 (2000) (acknowledging jurisdictional nature of sovereign immunity but holding that municipality had failed to preserve the issue below). SLA argues that none of those exceptions matter because it is seeking only prospective injunctive relief and sovereign immunity does not apply to such claims. Its complaint does not seek damages and its briefing and oral argument made clear that it seeks only injunctive relief as to its tort claims. The Court concludes that SLA's tort claims are barred by sovereign immunity.

It is a fundamental principle that the State cannot be sued unless it has waived its sovereign immunity. *See Kane v. Lamothe*, 2007 VT 91, ¶ 6, 182 Vt. 241, 244 (suits against State are "barred unless immunity is expressly waived by statute" (internal quotation omitted); *Earle v. State*, 2006 VT 92, ¶ 9, 180 Vt. 284, 289 (same). With regard to torts, the Vermont legislature has waived immunity for certain claims through the Vermont Tort Claims Act (VTCA). 12 V.S.A. §§ 5601-06. That statute allows plaintiffs to seek monetary damages for alleged tortuous conduct of State employees if those claims are not excepted by the terms of the law. Contrary to the contentions of SLA, the VTCA does not provide a waiver for claims seeking injunctive relief.

The VTCA is modeled after the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680. *See, e.g., Jacobs v. State Teachers' Retirement Sys.*, 174 Vt. 404, 407

(2002) (VTCA "is based on" FTCA). Indeed, the essential language waiving each sovereign's immunity concerning tort claims is quite similar.[7] The Vermont Supreme Court has noted: "Given the similarity in the federal and Vermont tort claims provisions, we consider it the appropriate analytical approach for determining the scope of the Vermont act and the resulting waiver of sovereign immunity." *Denis Bail Bonds, Inc. v. State*, 159 Vt. 481, 486 (1993). Likewise, the Court has relied on decisions interpreting that federal law in interpreting the VTCA. *See, e.g., LaShay v. Dep't of Social and Rehab. Servs,* 160 Vt. 60, 67-68 (1993) ("We therefore look to the case law interpreting the federal provision to guide us in determining the extent of the waiver in § 5601.").

Numerous federal decisions have concluded that the waiver of sovereign immunity contained in the FTCA does not include permission to sue the United States for prospective injunctive relief. *See, e.g., Westbay Steel, Inc. v. United States,* 970 F.2d 648, 651 (9th Cir. 1992) ("no jurisdiction under the FTCA to award injunctive relief); *Sheptin v. United States*, No. 99 C 8459, 2000 WL 1269360, at *2 (N.D. Ill. Sep. 1, 2000) (collecting cases noting same). In *Smith v. Potter*, for

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[7] *Compare* 12 V.S.A. § 5601 ("The State of Vermont shall be liable for injury to persons or property or loss of life caused by the negligent or wrongful act or omission of an employee of the State while acting within the scope of employment, under the same circumstances, in the same manner and to the same extent as a private person would be liable to the claimant except that the claimant shall not have the right to levy execution on any property of the state to satisfy any judgment.") *with* 28 U.S.C. § 2674 ("The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.").

example, the Southern District of New York rejected just the type of injunction sought by the SLA. It held:

> Money damages are the only form of relief permitted under the FTCA. *See Birnbaum v. United States,* 588 F.2d 319, 335 (2d Cir. 1978); *Rufu v. United States,* 876 F. Supp. 400, 406 (E.D.N.Y.1994). Accordingly, Congress has not waived the government's sovereign immunity for tort claims, like the plaintiffs; public nuisance claim, that seek injunctive relief against the USPS. As such, the circumstances here mean that injunctive relief is not appropriate based on a public nuisance theory.

187 F. Supp. 2d 93, 98 (S.D.N.Y. 2001). That same is result and rationale is applicable in this case.

SLA contends that *Am. Trucking Ass'ns, Inc. v. Conway,* 152 Vt. 363, 376 (1989), stands for the proposition that sovereign immunity does not apply to claims for prospective injunctive relief. SLA reads too much into that decision. *Conway* builds on a long line of decisions that allow federal lawsuits for injunctive relief against state officials in their official capacities concerning conduct that violates federal law. *See, e.g, Green v. Mansour,* 474 U.S. 64, 68 (1985); *Kentucky v. Graham,* 473 U.S. 159, 167 & n.14 (1985); *Antrican v. Odom,* 290 F.3d 178, 184 (4th Cir. 2002); *see also Ex Parte Young*, 209 U.S. 123 (1908).

Those decisions have allowed federal actions against state officials – as opposed to the State itself – in order to ensure that no state actor violates federal statutory or constitutional law. In those circumstances, the official capacity action is not viewed as being against the State. 17A Charles Allen Wright, Arthur Miller, & Mary Kay Kane, *Federal Practice and Procedure: Jurisdiction 3d* § 4231 (describing need for and fiction of *Ex Parte Young* to ensure state compliance with

federal laws); *see Conway,* 152 Vt. at 376 (describing similar rationale in that official-capacity action). Those precedents do not stand for the general proposition that sovereign immunity never applies when prospective injunctive relief is sought – regardless of the basis of the claim[8] and of the named defendant.

This action is not an official-capacity case against a state official. Nor does SLA contend that a State official is violating federal law. The action asserts tort claims. As tort claims, if they do not fit within the scope of the waiver of sovereign immunity established by the Legislature in the VTCA, sovereign immunity has not been waived. As with the federal cases noted above, this claim does not fall within the limited waiver for monetary damages set forth in the VTCA.[9] As a result, the State retains its immunity, and the action must be dismissed for lack of jurisdiction.

Defendant's Motion to Dismiss is *granted.*

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[8] The tortious nature of SLA's nuisance claims distinguishes this matter from the cause of action in *Lyndonville Sav. Bank v. Sec'y of Vt. Agency of Natural Res.,* No. 141-3-99 Wncv, 1999 WL 34841342 (Vt. Super. June 4, 1999), which is also cited by Plaintiff. There, plaintiffs claimed that an agency order violated the federal and state constitutions. Accordingly, that suit, unlike this one, was not subject to the limitations of the VTCA. In addition, the principal defendant in that case was the John Kassel, Secretary of the Agency of Natural Resources and, to that extent, the decision is fully in keeping with the *Ex Parte Young* exception to sovereign immunity.

[9] Given that conclusion, the Court need not consider the State's other sovereign immunity arguments, including whether there is a private analog for the allegedly tortuous conduct, *see Lafond v. Dep't of Soc. & Rehab Servs.*, 167 Vt. 407, 409 (1998); and whether the discretionary function exception protects DEC's decision concerning the Lake, *see* 12 V.S.A. §5601(e)(1); *Lane v. State*, 174 Vt. 219, 223-24 (2002).

Dated at Newport, Vermont, this 27th day of March, 2015.

Timothy B. Tomasi
Superior Court Judge