

**State of Vermont
WATER RESOURCES BOARD**

**In re: Petition to prohibit the use of personal
watercraft and similar vessels on Caspian Lake
in the Town of Greensboro, Vermont,
Docket No. UPW-01-01**

10 V.S.A. § 1424

Background

On April 4, 2001, the Greensboro Association filed a petition (Petition) under the provisions of 10 V.S.A. § 1424 with the Vermont Water Resources Board (Board) to amend the current rules regulating the use of Caspian Lake by prohibiting the use of personal watercraft (PWC) and similar vessels, commonly referred to as jet skis.

Currently, the Vermont Use of Public Waters Rules include the following lake-specific rule relating to the use of PWC on Caspian Lake:

Personal watercraft shall not be operated in a manner or at a speed that causes the exhaust jet to come out of the water in order to avoid an increase in the noise level or pitch above that experienced in normal operation on smooth water.

The Board proposed to amend the current rules for Caspian Lake as requested by the Petition for the purpose of receiving public comment. In accordance with the Petition, the Board proposed replacing the above-quoted current rule with the following:

Use of personal watercraft or any other Class A vessel which uses an inboard engine powering a water jet pump as its primary source of motive power is prohibited.

Following public notice, the Board held a public hearing in Greensboro, Vermont on August 7, 2001, and established September 7, 2001, as the deadline for the filing of written comments regarding the proposed amendment. The Board is governed in its consideration of petitions for the adoption of rules regulating the use of public waters by the applicable provisions of 10 V.S.A. §§ 1421-1426 (1998) (Protection of Navigable Waters and Shorelands), the Vermont Use of Public Waters Rules (2000), and the applicable provisions of the Vermont Administrative Procedure Act, 3 V.S.A. §§ 801-849 (1995 & Supp. 2000).

Decision

At its meeting on September 18, 2001, the Board reviewed and discussed the Petition and

the public comments received both at the public hearing and in writing. On October 9, 2001, the Board voted unanimously to grant the Petition. Accordingly, the Board will proceed with the adoption of a rule to prohibit the use of PWC and similar vessels on Caspian Lake for the reasons set forth herein.

Findings

1. Caspian Lake is located in the Town of Greensboro, Orleans County, Vermont.
2. Caspian Lake constitutes public waters of the State of Vermont within the meaning of 10 V.S.A. § 1422(6) (1998).
3. Caspian Lake has a surface area of approximately 789 acres and an average depth of about 71 feet. The greatest length of the lake is 1.7 miles, and its greatest width is 1.3 miles. The surface elevation of Caspian Lake is approximately 1400 feet.
4. Hills rise on all sides of Caspian Lake, with those on the northeastern side being over 700 feet above the lake's surface elevation.
5. Approximately 200 homes, mostly summer residences, are located either adjacent to Caspian Lake or within one-eighth of a mile from its shores. The Highland Lodge owns a beach at the lake's northeastern end.
6. Four year-round inlets feed Caspian Lake: Cemetery Brook in the northwest, Tate Brook and Porter Brook in the north, and Birch Brook in the east. The outlet flows into Greensboro Brook and then into the Lamoille River. The lake is oligotrophic, and its retention time is about 7.5 years. Caspian Lake turns over in both the spring and fall. The waters of Caspian Lake are clean and clear, and the lake is mostly free from aquatic vegetation. Caspian Lake remains free from Eurasian milfoil and zebra mussels.
7. Caspian Lake supports an outstanding lake trout fishery.
8. Caspian Lake functions as habitat for ducks, mergansers, loons, and other waterfowl.
9. Caspian Lake serves as the drinking water supply for a number of lakeshore homes, and water from the lake is pumped to the town reservoir to augment drinking water supplies in most summers.
10. 10 V.S.A. § 1424(b) (1998) provides as follows:

The board in establishing rules shall consider the size and flow of the

navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating and bathing facilities, the scenic beauty and recreational uses of the area.

See also Vermont Use of Public Waters Rule § 2.2 (providing for consideration of these factors in evaluation of petitions and public comments).

11. Under 10 V.S.A. § 1424(c) (1998), "The board shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the board shall provide for all normal uses." See also Vermont Use of Public Waters Rule § 2.2 (providing for management of public waters so that various uses may be enjoyed in a reasonable manner considering safety, the interests of current and future generations, and the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis).
12. A normal use is defined in the Vermont Use of Public Waters Rules as follows: "Any lawful use of any specific body of public water that has occurred on a regular, frequent and consistent basis prior to January 1, 1993." § 5.2.
13. Vermont Use of Public Waters Rule § 2.6 provides that "Use conflicts shall be managed in a manner that provides for all normal uses to the greatest extent possible consistent with the provisions of Section 2.2 of these rules." Under § 2.7, "When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts."
14. The normal uses of Caspian Lake include swimming (including long-distance swimming), canoeing, kayaking, fishing, sailing, wind surfing, motor boating, waterskiing, wildlife observation, and the enjoyment of the aesthetic values and peace and tranquility of the water body. Motor boating and waterskiing occur on Caspian Lake at a relatively low level of intensity. The use of ski slalom courses on Caspian Lake is regulated by the Vermont Use of Public Waters Rules. See app. B.
15. Based on the testimony at the August 7, 2001, public hearing and the written comments received, the Board finds that while PWC have occasionally been used on Caspian Lake, their use prior to 1993 was not on a regular, frequent, or consistent basis. The use of PWC or similar vessels has never been normal on Caspian Lake.
16. On those occasions when PWC have been used on Caspian Lake, their use has created an

irreconcilable conflict with the lake's normal uses, especially the enjoyment of peace and quiet. PWC have been operated outside established boating routes, at high speeds close to the shore, at erratic speeds and in erratic patterns, and in a manner causing the exhaust jet to come out of the water in violation of the current rule regulating the use of PWC on Caspian Lake and in violation of Vermont Use of Public Waters Rule § 3.2.b. When the exhaust jets of PWC come out of the water, the muffling effect of the water is lost, and a thump is heard when the PWC returns to the water's surface. The variable nature of the noise increases its annoyance. The hills surrounding Caspian Lake amplify and reverberate the whining and rasping of PWC on the lake.

17. The Board adopted the current rule regulating the use of the public waters of Caspian Lake in 1992. Efforts on the part of area residents to have the current rule regulating the use of PWC on Caspian Lake enforced have proved unavailing, either because the unlawful behavior has ceased or the offenders have already left the lake when law enforcement officers have arrived. State Police boats routinely visit Caspian Lake no more than a few times each summer.
18. Even if it were enforced, the current rule regulating the use of PWC on Caspian Lake would not adequately address the conflict between the use of PWC and the normal use of Caspian Lake for quiet solitude.
19. Regulating the time, place, or manner of the use of PWC and similar vessels on Caspian Lake would not be practical and would not adequately address the conflict between the use of such vessels and the beauty and tranquility of that water resource.
20. The statutory and regulatory definition of PWC in Vermont applies only to vessels operated by sitting, standing, or kneeling on them or being towed behind them. See 23 V.S.A. § 3302 (1999); Use of Public Waters Rule § 5.5. The broader definition of water jet pump vessels in the proposed rule is necessary to regulate similar jet-ski like vessels in which the operator sits or stands inside them.
21. The Board finds that allowing the use of PWC or similar vessels to become an established use will create an unacceptable level of conflict with the normal uses of Caspian Lake.
22. The proposed rule is consistent with the provisions of 10 V.S.A. § 1424 (1998) and section 2 of the Vermont Use of Public Waters Rules.

Response Summary

The comments received at the public hearing in this matter and in writing

overwhelmingly support the petition. In reaching its decision in this matter, the Board considered and overruled the following arguments for the reasons indicated below. See 3 V.S.A. § 841(b) (1995).

1. One commentator opposed the proposed rule based on a general dislike of rules and regulations of any kind.

The Board has found that the proposed rule is the least restrictive approach possible to avoid an unacceptable level of conflict with the established use of the lake for peace and beauty.

2. One commentator argued that if the Board keeps banning PWC lake by lake, then plans might as well be made for banning them in the entire state. The commentator argued that education and enforcement should be used to deal with the problem of riding style and that the PWC industry is working to reduce noise on newer models.

Prohibiting the use of PWC and similar vessels on Caspian Lake is necessary to preserve the normal uses of that lake. Any petitions to prohibit the use of personal watercraft on other lakes in Vermont will be considered on a case-by-case basis. Vermont offers opportunities to use PWC on many other lakes and reservoirs, including a number of water bodies in the vicinity of Caspian Lake. The Board is not confident that enforcement efforts or efforts on the part of manufacturers to reduce the noise made by PWC will adequately address the interference with the serenity of Caspian Lake that results from the erratic movement and sound of PWC as they circle, accelerate, and leave and re-enter the water.

3. Written and oral comments in support of the petition cited numerous reasons other than preservation of the peace and tranquility of Caspian Lake as grounds for adoption of the proposed rule. These include injuries and deaths associated with PWC, water pollution caused by the discharge of gasoline from PWC, water pollution caused by PWC stirring up sediment in the lake, air pollution caused by the exhaust of PWC, disturbance of waterfowl, degradation and erosion of the lake shore, the potential of PWC to introduce invasive weeds including Eurasian milfoil and zebra mussels to Caspian Lake, and attitude pollution caused by the reckless behavior of many PWC operators.

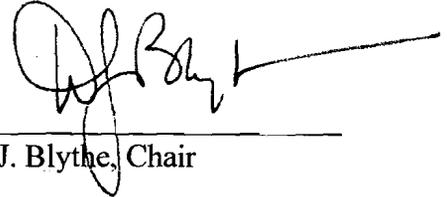
The Board has not been presented with credible scientific information that either supports or refutes these reasons offered in support of the petition. Because the Board has decided to grant the petition for other reasons, the Board does not address these additional reasons or the extent to which national trends and statistics can properly be generalized to Caspian Lake.

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Dated at Montpelier, Vermont this 10th day of October, 2001.

WATER RESOURCES BOARD



David J. Blythe, Chair

Concurring:

Lawrence H. Bruce, Member

Jane Potvin, Member

Mardee Sánchez, Member

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