

State of Vermont
WATER RESOURCES BOARD

In re: Petition to limit vessels powered by motor to a speed of five miles per hour on Lake Lamoille in the Town of Morristown, Vermont, Docket No. UPW-01-02

10 V.S.A. § 1424

Background

On May 2, 2001, the non-profit organization of Community, Recreation, Exercise, and Wellness, Inc. (CREW) filed a petition (Petition) under the provisions of 10 V.S.A. § 1424 with the Vermont Water Resources Board (Board) to adopt a rule limiting motorboats to a speed of five miles per hour on Lake Lamoille.

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

Vessels powered by motor shall not exceed a speed of five miles per hour.

Following public notice, the Board held a public hearing in Morrisville, Vermont on August 28, 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. Written comments considered included all those received as of that date, including two letters filed with the Board on September 10, 2001. On October 9, 2001, the Board voted unanimously to grant the Petition in part and to deny the Petition in part by establishing a five mile per hour speed limit everywhere on Lake Lamoille except for the northeastern arm of the lake as shown on the attached map, labeled C-4. Accordingly, for the reasons set forth herein, the Board will proceed with the adoption of the following rule for Lake Lamoille:

Vessels powered by motor shall not exceed a speed of five miles per hour outside the northeastern arm of the lake as shown on the map on page C-4.

Findings

1. Lake Lamoille is located in the Town of Morristown, Lamoille County, Vermont.
2. Lake Lamoille constitutes public waters of the State of Vermont within the meaning of 10 V.S.A. § 1422(6) (1998).
3. Lake Lamoille is a 148-acre impoundment on the Lamoille River. Lake Lamoille lies below the dam in downtown Morrisville and behind the dam at Cady's falls, about three quarters of a mile down river. Morrisville Water and Light operates both dams for the generation of hydroelectric power and regulates the amount of water in the impounded area between the two dams.
4. Lake Lamoille receives the discharge from the Morrisville Wastewater Treatment Facility.
5. Much of Lake Lamoille is shallow, and the lake continues to be filled by sediment-laden runoff.
6. CREW owns a 35.5-acre peninsula in the middle of Lake Lamoille and has recently protected 20 acres of shoreline with a permanent conservation easement held by the Vermont Housing and Conservation Trust Fund. CREW expects to develop a community ice rink and fitness area on its property. CREW may build a boathouse for canoes and kayaks.
7. Lake Lamoille is used for canoeing, kayaking, and birdwatching. An outfit known as Green River Canoe leads commercial nature tours on the lake. CREW and others are attempting to encourage greater use of the lake and environs by osprey and great blue heron. Morrisville Power and Light has installed an osprey platform on the CREW property to encourage nesting. Osprey frequent the area but have not yet nested on the platform. Beavers, otters, and egrets are also observed on Lake Lamoille.
8. Its small surface area, shallow water, and steep access area make Lake Lamoille unattractive for recreational waterskiing and power boating, and the lake is not used for these purposes.

9. The very undesirability of Lake Lamoille for recreational waterskiing and power boating makes it an ideal training site for local competitive water skiers. Calm water and lack of boat traffic are important for slalom-course skiing. The northeastern arm of the lake is protected from the wind. Competitive water skiers have been using a slalom course on the lake's northeastern arm, as shown on the map on page C-4, since 1992. Some of these skiers compete in national tournaments. Their slalom course is about 2000 feet in length. One anchor at each end of a submerged cable sets the course. Every year, buoys are attached to the cable around Memorial Day and removed around the first weekend of October.
10. The competitive water skiers who use Lake Lamoille drive their boats at slow speeds between their launch area and their slalom course on the northeastern arm of the lake, shown on the map on page C-4.. Other parts of the lake are too shallow for waterskiing. They drive one boat at a time on the lake and use their course for about two or three hours at a time, three or four days a week, from May through September. Competitive water skiers are unable to use the lake for periods of up to a month when Morrisville Power and Light lowers the lake's water level.
11. It would be difficult for the competitive water skiers who use Lake Lamoille to find alternative water bodies in the area that would be equally suitable for their sport.
12. 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).

13. 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).

14. 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. Rule 2.3 provides that in evaluating normal recreational and other uses, fishing, boating, waterskiing, fish and wildlife habitat, wildlife observation, the enjoyment of aesthetic values, and quiet solitude are among the uses to be considered.
15. 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." Rules 2.9 and 2.10 favor separating conflicting uses by time or place over outright prohibitions.
16. The normal uses of Lake Lamoille include canoeing, kayaking, fishing, wildlife observation, competitive water skiing, and the enjoyment of the aesthetic values and peace and tranquility of the water body.
17. Establishing a speed limit of five miles per hour for vessels powered by motor outside the northeastern arm of Lake Lamoille, as shown on the map on page C-4, 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

In reaching its decision in this matter, the Board considered and overruled the following arguments offered at the public hearing and in writing. See 3 V.S.A. § 841(b) (1995).

1. The activities of competitive water skiers on Lake Lamoille interfere with the scenic beauty of the lake.

Competitive water skiing occurs only during the summer months and even then only one boat at a time, for about two or three hours at a time, three or four days a week. In addition, slalom skiing occurs only on the northeastern arm of the lake, as shown on the map on page C-4, and that section of the lake is isolated from the road and protected

by hills. Limiting water skiing to the northeastern arm of the lake, as shown on the map on page C-4, represents a fair compromise between water skiers and other users of Lake Lamoille. Water skiers and other users are free to enter into informal arrangements with regard to days of the week or times of day for water skiing on the lake. Along with other groups, water skiers who use Lake Lamoille engage in cleanup activities, which improve and maintain the lake's aesthetic beauty.

2. Competitive waterskiing on Lake Lamoille is harmful to wildlife.

The Board has not received convincing oral or written testimony that use of the northeastern arm of the lake, as shown on the map on page C-4, for competitive waterskiing is harmful to wildlife.

3. Water skiers do not enjoy good relations with area residents.

Conflicts between water skiers and area residents have been limited to disagreement over whether Lake Lamoille should be used at all for waterskiing and have not involved allegations of irresponsible behavior. Establishing a speed limit of five miles per hour on all areas of the lake except the northeastern arm, as shown on the map on page C-4, fairly accommodates the interests of water skiers and other users of Lake Lamoille.

4. Waterskiing on the northeastern arm of Lake Lamoille would make canoeing there dangerous.

The rule that the Board intends to adopt for Lake Lamoille allows canoeing to occur on the northeastern arm, as shown on the map on page C-4, when water skiers are not present. The speed limit allows canoeing on other parts of the lake at all times without interference from motor boats. The competitive water skiers who use Lake Lamoille have expressed a willingness to work with other users of the lake to reduce or eliminate conflicts.

5. Waterskiing churns up sediment and degrades the lake shore.

The Board has not received credible testimony that waterskiing increases the turbidity of Lake Lamoille, that any increases in turbidity resulting from waterskiing damage the ecology of the lake, or that waterskiing causes bank erosion.

6. The slalom course on the northeastern arm of the lake, shown on the map on page C-4, is less than 200 feet from the shore.

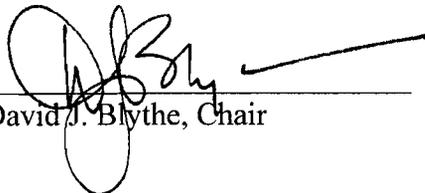
Vermont law prohibits creating a wake or operating a vessel over five miles per hour within 200 feet of the shore. See 23 V.S.A. § 3311(c)(1) (1999). The rule that the Board intends to adopt for Lake Lamoille does not supercede this law or the requirements of any other applicable statutes or rules.

7. Section 2.11 of the Use of Public Waters Rules provides that "Those water bodies which currently provide wilderness-like recreational experiences shall be managed to protect and enhance the continued availability of such experiences."

Assuming that Lake Lamoille offers a wilderness-like experience, that experience is preserved by the rule that the Board intends to adopt for Lake Lamoille. In addition, water skiers and other users may enter into informal arrangements with regard to days of the week or times of day for waterskiing on the lake.

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

WATER RESOURCES BOARD



David J. Blythe, Chair

Concurring:

Jane Potvin, Member
John D.E. Roberts, Vice Chair
Mardee Sánchez, Member

Rules regulating the
use of Lake Lamoille

Key

 Exempt from 5 mph
speed limit

