

**STATE OF VERMONT
WATER RESOURCES BOARD**

**In re: petition seeking the prohibition
of water ski slalom courses in the
northeastern arm of Lake Fairlee**

10 V.S.A. § 1424

Background

In August of 1999 two petitions (the petitions) were filed with the Vermont Water Resources Board (Board) under the provisions of 10 V.S.A. § 1424 each signed by more than ten freemen. One petition was signed by users of Treasure Island a public beach and recreational area located in a portion of the northeastern arm of Lake Fairlee. The other petition was signed by persons owning shore land property adjacent to portions of the northeastern arm of Lake Fairlee.

Both petitions requesting that the Board amend the current rules regulating the use of Lake Fairlee (the Lake) by adoption of a rule prohibiting water ski slalom courses in the "narrow end" (i.e. northeastern arm) of Lake Fairlee. Currently the location and use of water ski slalom courses are not restricted anywhere on Lake Fairlee.

In response to these petitions, the Board proposed to amend the current rules for Lake Fairlee as requested by the petitions for purposes of receiving public comment. Following public notice, the Board held a public hearing at Fairlee, Vermont on August 8, 2000 and established August 15, 2000, as the deadline for the filing of written comment regarding the proposed amendment.

The Board reviewed and discussed the public comment received both at the public hearing and in writing at its meetings on August 31, 2000, September 19, 2000 and October 10, 2000.

In considering all petitions filed under 10 V.S.A. § 1424 the Board is guided by the provisions of Section Two of the Vermont Use of Public Waters Rules (VUPW Rules). See Attachment A.

Decision

After careful review of the testimony presented at the public hearing and in writing, the Board voted unanimously on October 10, 2000 to deny both petitions and to issue the following decision. Accordingly, the Board will not proceed with the adoption of a rule to prohibit the water ski slalom courses in "narrow end" (i.e. northeastern arm) of Lake Fairlee at this time.

The Board has denied the petitions because the petitioners have failed to show that the requested rule is either necessary or warranted to address the recreational use

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conflicts that occur in the northeastern arm of the Lake. Specifically as discussing below (see Finding x thru y) the petitioners have not shown that the requested prohibition of water ski slalom courses from a significant portion of Lake Fairlee are consistent with the provisions of §2.6, 2.7 and 2.10 of the VUPW Rules in that:

1. The petitions seek more regulation than is needed to address the actual recreational use conflicts which may rise to the level of warranting some form of regulation. Specifically the petitions request a total prohibition of any water ski slalom courses in all of the northeastern arm of Lake Fairlee when the apparent recreational use conflicts which the petitioners point to in support of their efforts, are in fact confined to only portion of this part of the Lake and even then for only a portion of the boating season.
2. The remedy sought by the petitionis, does not appear to be based on a holistic, lake-wide consideration of competing and perhaps conflicting recreational uses.

While the petitions are denied, the Board acknowledges that there are recreational conflicts in the northeastern arm of Lake Fairlee that merit further discussion and may merit further regulation. However it is also clear that resolution of these conflicts could have lake-wide implications and thus need to be considered in that broader context if the underlying recreational use conflicts are to be resolved rather than simply being moved around.

The Board is aware that there have been past efforts by the Lake Fairlee Association and others in the past to reach a consensus on the locations and rotation of a water ski slalom course. It would be our hope that, guided by the results of this proceeding and any additional assistance this Board might be able to provide if requested, that local officials could convene an inclusive group of persons who use and enjoy Lake Fairlee to make further efforts to find consensus as to how the various uses of the Lake, including slalom water skiing, can be reasonably accommodated.

Whether such an initiative should come from the Lake Fairlee Association, one or more of the three affected Towns, an ad hoc group formed for this purpose or perhaps even the Regional Planning Commission is a matter that should be determined locally. However it is done, the Board would strongly encourage such an effort, hopefully over this winter. Finding a solution that has widespread, if not unanimous support, may well mean that everyone will have to accept something less than what they might consider the ideal. However with a good faith effort, guided by the local leadership that was evident at the public hearing, we believe that such a solution is available.

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In any such further local effort, the Board would encourage consideration of the principles set forth in Section 2 of the Vermont Use of Public Waters Rules (Attachment A).

Findings

1. Lake Fairlee is located in the Towns of Fairlee, West Fairlee and Thetford and has a surface area of approximately 457 acres.
2. Lake Fairlee constitutes public waters of the state of Vermont within the meaning of 10 V.S.A. § 1422 (6).
3. The Water Resources Board (Board) adopted the current rules regulating the use of the public waters of Lake Fairlee in 1994 when it adopted the Vermont Use Of Public Waters Rules (VUPW Rules) under 10 V.S.A. § 1424. The Board further amended those rules with respect to Lake Fairlee in 1998 by prohibiting the use of personal watercraft on Lake Fairlee.
4. The current Vermont Use of Public Waters Rules do not restrict the location or use of water ski slalom courses anywhere on Lake Fairlee.
5. Vermont boating law, 23 V.S.A. §3311 (c), requires that motorized vessels, including vessels engaged in waterskiing, not be operated at speeds exceeding five miles per hour "within 200 feet of the shoreline, a person in the water,"
6. Lake Fairlee has a relatively long, narrow, kidney bean-like shape. The lake is over 11,000 feet (2.1 miles) long and less than 800 feet wide at its narrowest point.
7. The "narrow end" or northeastern arm of the Lake begins at or near the Town of Thetford boundary and is over one mile in length and is generally 1000 to 1200 feet in width. As defined by the petitions, the northeastern arm is located in the Towns of West Fairlee and Fairlee.
8. Normal or established recreational uses of the Lake, including its northeastern arm, include but are not limited to: boating by both motorized and nonmotorized vessels, fishing and swimming.

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9. There are several children's summer camps on the Lake all of which are located south of the northeastern arm. These camps all have active water programs involving swimming and boating uses of the Lake.
10. Treasure Island, is a public beach and recreational area owned and operated by the Town of Thetford located in the northern most half of the Lake's northeastern arm. There are swimming programs for children at Treasure Island for a ten week period including all of July and August.
11. Treasure Island is open, in season, from 6 AM until 8 PM daily and provides the only public access to the Lake for swimming and aesthetic enjoyment.
12. There has been a water ski slalom course (the course) at the northern most half of the northeastern arm of the Lake during summer months for the past 13 years.
13. The course is installed and maintained by a group of local water skiing enthusiasts who use it to train for competitive tournaments as well as for general recreation.
14. The course is also available for the general public to use so that many persons using the course are not affiliated with the Lake Fairlee Water skiers.
15. The recreational use conflicts that prompted the petitions only occurs in the northern most half of the northeastern arm where a public beach area and an established water ski slalom course are located in relatively close proximity and are in peak use during the months of July and August.
16. The course is located in the same area of the Lake as Treasure Island generally during July and August, in part because this area of the Lake is more sheltered from wind and motorboat wakes. The course is laid out so as to allow its use in full compliance with applicable Vermont boating laws including the "200 foot rule" described in finding 5 above.
17. Under the current seasonal rotation of the course's location that has evolved in recent years, the course is located in the Lake's northeastern arm generally in July and August and is located outside the Lake's northeastern arm, generally in May, June, September and October.
18. A "normal use" is defined in the Vermont Use of Public Waters Rules (see §5.2) as follows:

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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.

19. Based on the testimony at the August 8, 2000 public hearing and written comment, the Board finds that water skiing and water ski slalom course use are normal users of Lake Fairlee.
20. When located in the northeastern arm, the slalom course attracts water skiers from other portion of the Lake including from at least one of the summer camps. Whether or not in use, the course tends to deflect other motorboat traffic toward Treasure Island in order to avoid the buoys which define the course.
21. Even when the "200 foot rule" described in finding 5 above is observed, water skiing at the slalom course can negatively impact swimming programs at Treasure Island due to the associated noise and boat wakes.
22. The members of the local water ski group have made efforts to mitigate "their" slalom course's impact on Treasure Island and adjacent shore land property owners and to accommodate other uses of the Lake including fishing. The consensus at the public hearing on August 8 was that they are the "best behaved" water skiers using the course.
23. There was widely divergent testimony regarding the extent to which the course is used on a typical summer evening however a typical "run" through the course takes less than a minute and 4 to 10 runs per evening, depending on the skier, is a "full evening" of training. While no one skier may use the course for an extended period of time, multiple users can make use of the course on a more or less sustained basis for as much as several hours.
24. While the occurrence of shore land erosion in some parts of the northeastern arm appear to be uncontroverted, no convincing evidence was presented to show that use of the water ski slalom course contributes to such erosion in any important way.
25. The issue of the location of the water ski slalom course both in the northeastern arm and elsewhere on the Lake has been a topic of public discussion among the users of Lake Fairlee for some period of time.
26. A few years ago the Lake Fairlee Association held a special meeting to discuss this issue. As part of those discussions consideration was been given to trying to

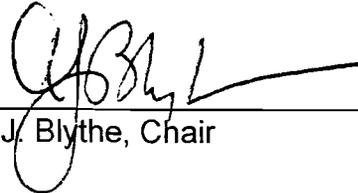
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address this issue on a holistic, lake-wide manner. Among the factors that have been considered in these discussions has been the idea of rotating the location of the slalom course two or three times per boating season and seeking to avoid or minimize conflicts between the course's location and the use of the Lake by the water programs at various summer camps during July and August.

Dated at Montpelier, Vermont on this 10th day of October 2000.

VERMONT WATER RESOURCES BOARD



David J. Blythe, Chair

Board members concurring:

John Roberts

Jane Potvin

Barbara Farr