

**State Of Vermont
Vermont Natural Resources Board
Water Resources Panel**

In re Lake St. Catherine
No. UPW-11-04

VT Proposed Rule 11P021

MEMORANDUM OF DECISION

This proceeding involves a petition, filed pursuant to 3 V.S.A. §806 which requests that the Water Resources Panel (Panel) of the Vermont Natural Resources Board issue a rule, pursuant to its authority under 10 V.S.A. §§1424 and 6025(d)(4), to restrict the speed limit of motorboats in North Bay of Lake St. Catherine in the Towns of Wells and Poultney, Vermont to 5 mph.

For the reasons stated below the Panel dismisses the petition.

I. History

The instant Petition was filed, pursuant to 10 V.S.A. §1424, on April 29, 2011 by Andrew Donaghy on behalf of the Stonehenge Terrace Association. It asks that the Panel restrict the speed of motorboats to 5 mph in the North Bay of Lake St. Catherine (the area of the lake north of the Lake St. Catherine State Park):

Present UPW rules regarding speed limits on Lake St. Catherine read:

- b. The operation of vessels powered by motor at speeds exceeding five miles per hour or in such a manner as to cause a disturbing wake is prohibited in the following waters:
- (1) All portions of Lily Pond and the channel connecting Lily Pond and Lake St. Catherine.
 - (2) All portions of the channel connecting Little Lake (also known as Little Pond) and Lake St. Catherine.
 - (3) Forest House Bay - defined for purposes of this rule as those waters south and southwest of a straight line between the southerly corner of Camp 102 and the northeasterly corner of Camp 110A.
 - (4) Hall's Bay - defined for purposes of this rule as those waters north and northeast of a straight line between the southerly corner of Camp 224 and the northerly corner of Camp 207.

- (5) Horseshoe Bay - defined for purposes of this rule as those waters west of a straight line between the easterly corner of Camp 38 and northerly corner of Camp 46A.
- (6) Oxbow Bay - defined for purposes of this rule as those waters west of a straight line between the northerly corner of Camp 21 and the northerly corner of Camp 36.
- (7) With regard to Forset House Bay, Hall's Bay, Horseshoe Bay and Oxbow Bay, it is permissible for a boat to start and return to its own dock at speeds in excess of five miles per hour for purposes of water skiing. In starting, the boat must head directly out of the safety zone. In returning, the boat must go directly to its dock, at the lowest speed necessary to sustain the skier.

The petition would add to this list:

- (8) North Bay - defined for purposes of this rule as those waters north of a straight line running between the northwestern corner of Lake St. Catherine State Park to a point directly west on the western shore of the lake.

On May 10, 2011, the Panel voted to propose amendments to the Use of Public Waters Rules to restrict the speed limit of motorboats in the North Bay of Lake St. Catherine to 5 mph. The Panel filed the proposed amendments with the Interagency Committee on Administrative Rules (ICAR) and, on June 13, 2011, the Panel appeared before ICAR. On June 14, 2011, the Panel received ICAR's approval of the rule proposal, and on June 16, 2011, the Panel filed the rule proposal with the Secretary of State's Office.

On July 7, 2011, the Panel sent notice of the proposed rule to various persons or organizations with an interest in public waters in Vermont, including local and regional officials, lake users and state agencies. In addition, the Panel posted the proposed rule on its web site. The proposed rule was published by the Secretary of State in newspapers of record on June 30, 2011, advising the public of a public hearing and the opportunity to comment on the rule.

A public hearing on the proposed rule was convened on August 2, 2011 at approximately 7:00 p.m. in Poultney, Vermont. Seventeen people signed the attendance sheet for the public hearing, and fifteen provided oral comments.

Because there were concerns that the Lake St. Catherine Lake Association had not been provided adequate written notice of the hearing, the deadline for filing written comments on the rule proposal, which could be mailed, delivered, or emailed to the Panel, was extended from August 31, 2011 to September 30, 2011. Ten written comments were filed.

On August 24, 2011, the petitioner filed a letter with the Panel withdrawing the petition.

The Panel deliberated at its meeting on October 11, 2011.

II. Discussion

As to the comments received: comments, both oral and written, supported and opposed the rule. Those who support the rule cite safety concerns, especially as to children and people in non-motorized boats. Those who oppose the rule see no need for the rule and cite a lack of enforcement as the real problem. They also address safety concerns but from an opposite perspective, noting that it is better to teach children how to water ski within the confines of the North Bay than out on the broad lake.

As to the request to withdraw the petition: while a petition to adopt a rule sets the process in motion, see 3 V.S.A. §806, once the Panel proposes a rule, the proposed rule becomes the *Panel's* proposal, and, because the Panel has the authority to propose and promulgate rules on its own motion, see 10 V.S.A. §§1424(a) and 6025(d)(4), the Panel can proceed with rulemaking even if the petitioner withdraws his petition.

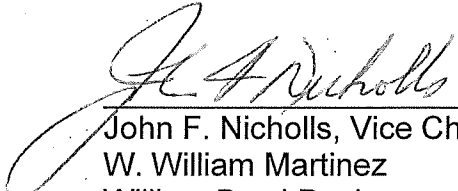
In this case, there is substantial opposition to the proposed rule for both substantive and procedural reasons, and the Panel can find no benefit in proceeding further with rulemaking in this matter.

III. Conclusion

The Panel dismisses the petition.

Dated at Montpelier, Vermont this 25th day of October 2011.

Natural Resources Board
Water Resources Panel



John F. Nicholls, Vice Chair
W. William Martinez
William Boyd Davies
Jeffrey R. Cueto
Peter F. Young, Jr.

