

**STATE OF VERMONT  
WATER RESOURCES BOARD**

**In Re: Petition to amend the  
rules regulating the use of Waterbury  
Reservoir**

**10 V.S.A. § 1424**

**BACKGROUND**

On April 7, 2003, a group of ten or more individuals qualified to file a petition (Petition) under the provisions of 10 V.S.A. § 1424 with the Vermont Water Resources Board (Board) requested that the Board amend the portion of the Vermont Use of Public Waters Rules (VUPWR) that address the placement of two water ski slalom courses on Waterbury Reservoir.

After review and approval by the Interagency Committee on Administrative Rules, the Board proposed the rule requested by the petition for the purpose of receiving public comment on July 11, 2003.

In accordance with public notice of the petition, the Board held a public hearing on August 5, 2003 in Waterbury, Vermont and established September 2, 2003 as the deadline for submitting written comments regarding the proposed rule. 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), the Vermont Use of Public Waters Rules (VUPWR) and the applicable provisions of the Vermont Administrative Procedure Act, 3 V.S.A §§ 801-849 (1995 & Supp. 2000).

Because the petition before the Board concerns the adoption of rules regulating the use of public waters, this decision is governed by the applicable provisions of the Vermont Administrative Procedure Act, 3 V.S.A. §§ 801-849 (1995 & Supp. 2000), the VUPWR (2002), and the applicable provisions of 10 V.S.A. §§ 1421-1426 (1998).

**DECISION**

At its meeting on September 24, 2003 the Board reviewed and discussed the petition and public comments received both at the public hearing and in writing. At that meeting the Board determined that the petitioners had established that under the standards set forth in VUPWR the options for the use of water ski slalom courses on the Waterbury Reservoir should be amended in accordance with the petition. The Board requested that staff draft a formal written decision on the petition for Board review and approval consistent with its instructions. At its October 7, 2003 meeting, the Board voted unanimously to grant the petition and authorized the Board Chair to sign the decision on their behalf. Accordingly, the Board will proceed with the adoption of rules governing the placement of water ski slalom courses on Waterbury Reservoir.

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**FINDINGS**

1. The Vermont Water Resources Board has previously been petitioned under 10 V.S.A. § 1424 to adopt rules for Waterbury Reservoir in 1996, 1993, and 1988. The petition before the Board seeks to amend rules that were adopted by the Board on the eighth of January, 1997.
2. In 1997, the Water Resources Board evaluated different proposals regarding the various recreational uses of Waterbury Reservoir. The 1997 Decision (Docket #:UPW-96-06) was founded on the administrative authority provided under Sections 2.2, 2.3, 2.6, 2.7, 2.9, and 2.10 of the VUPWR. In addition to the placement of the slalom courses, rules regulating the maintenance and use of the slalom courses were enacted. The Board's 1997 decision was based on a spirit of compromise between quiet users, fishermen, water skiers, and motor boaters.
3. The Reservoir at its customary summer water level has a surface area of approximately 840 acres. The Reservoir has an irregular, somewhat linear, configuration extending to the north (Northern Arm) and east (Eastern Arm) of the dam.
4. The Reservoir constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
5. The Reservoir and its environs are also currently used for a wide variety of recreational purposes including: swimming, fishing, primitive and recreational camping, wildlife observation, enjoyment of quiet solitude, hunting, and boating by both non-motorized and motorized vessels. Motorboat use on the Reservoir at both relatively high speeds (i.e. waterskiing) and at relatively low speeds (i.e. fishing) is a normal use having occurred on the reservoir prior to 1993. See VUPWR § 5.2. The Reservoir is used by a commercial boat tour operation oriented toward Vermont's tourism industry.
6. Course #1 located in the northern arm is well protected from boat wakes, but is subject to backwash and offers less wind protection than the other sites. Course #1 currently is the permanent established slalom course on the Reservoir based on the VUPWR.
7. Course #1 Alternate A is the new proposed site. It offers less exposure to boat traffic than Course #1 Alternate B and Course #2, and moderate protection from the wind coming from the north/west and south.
8. Course #1 Alternate B was used from 1987 to 1997 offers excellent north/west wind protection but it is subject to evening glare and boat traffic near the Dam.
9. It is necessary to add the option of Course #1 Alternate A and remove Course #1 as the *permanent* slalom course (although Course #1 will remain as an option) due to the limitations associated with these areas for slalom skiing.
10. Course #2 provides excellent south/west wind protection, but is subject to boat traffic from the Blush Hill boat access. It is considered to be an excellent site in for skiing in the morning.

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11. Course #2 will become the permanent site with one of the other three options being used on a year to year basis depending on the needs of skiers. The second course allowed on the Reservoir will be chosen from the options allowed under these amended VUPWR and must be determined at the beginning of the boating season. This same procedure for designating slalom courses on the Reservoir has been in effect since the 1997 rules were adopted by the Board.
12. Under 10 V.S.A. §1424(c), "The board shall attempt to manage 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."
13. The Vermont Use of Public Waters Rules (Adopted October 29, 2002) provide the applicable sections which follow: Section 2.2 provides in pertinent part: "The public waters will be managed so that the various uses may be enjoyed in a reasonable manner, considering safety and the best interests of both current and future generations of citizens of the state and need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis. Section 2.3 provides: In evaluating normal recreational and other uses, the following uses will be among those considered: fishing, swimming, boating, waterskiing, fish and wildlife habitat, wildlife observation, the enjoyment of aesthetic values, quiet solitude of the water body, and other water based activities. Section 2.7 provides: When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts. Section 2.10 provides: When regulation is determined to be necessary to resolve conflicts between two or more normal uses, priority will be given to resolving the conflict by separating the conflicting uses, such as designating specific times or places where various uses are allowed.
14. Based on petition and the written and oral comments on the petition the Board believes that is consistent with the VUPWR and the management of the variety of normal uses on Waterbury Reservoir to grant the petition.

**RESPONSIVENESS 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 the following written comment made by an individual opposed to the petition. See 3 V.S.A. § 841 (b) (1995).

**COMMENT I.**

**The proposal to allow a water ski slalom course in an area where motorboat use is otherwise restricted to 5 miles per hour is impractical and favors water skiers at the expense of other recreational users.**

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**RESPONSE**

The Board recognizes that it is allowing the slalom course to be established in the northern no-wake zone where non-motorized uses of the Reservoir are likely to occur. However, the Board has chosen this approach in recognition of several important factors.

In 1997, this very issue was addressed by the Board and various recreational users of the Reservoir. According to the 1997 Decision, there were "extensive and difficult discussions" that resulted in the shared use of the northern no-wake zone. *In re: Petitions to amend the current rules regulating the use of Waterbury Reservoir, Towns of Waterbury & Stowe*; Docket #: UPW-96-06, p.10. The Board believes that the proposed amendment is consistent with efforts to manage shared uses in the northern no-wake zone.

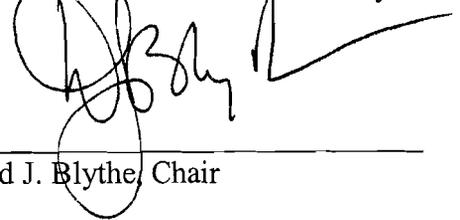
In addition, because slalom skiing requires smooth water, the no wake zone in the northern arm offers the best option in terms of "wake-free" skiing. Therefore, it makes good sense to use this area of the reservoir for slalom skiing as a shared use in this zone.

Finally, under the Petition's revised slalom course set-up, there is actually a reduced probability that Course #1 will be chosen. As it stands now, the second slalom course will be chosen from Course #1, Course #1 Alternate A, and Course #1 Alternate B. Under the previous rules (1997), Course #1 was the permanent course; it was certain that it would be used each year. Now, Course #1 is one of three to be selected each year.

For all of the reasons stated above, the petition is granted by the Board because it promotes various recreational uses of a shared resource in an even-handed and sensible manner consistent with the VUPWR.

Dated at Montpelier, Vermont this 20th day of October, 2003.

Vermont Water Resources Board by



David J. Blythe, Chair

Board members concurring  
David J. Blythe  
John D.E. Roberts, Vice Chair  
Lawrence H. Bruce, Jr.  
Michael J. Hebert  
Jane B. Potvin