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State of Vermont  
**Water Resources Board**

Tel: (802) 828-3309

January 5, 2005

Rep. Maureen Dakin, Chair  
Sen. Mark MacDonald, Vice-Chair  
Legislative Committee on Administrative Rules  
115 State Street  
Montpelier  
Vermont 05633-5301

**Re: 2004 Final Proposed Amendments to the Vermont Use of Public Waters  
Rules (VT Proposed Rule 04P027)**

Dear Rep. Dakin and Sen. MacDonald,

At its meeting on December 16, 2004, the Legislative Committee on Administrative Rules (LCAR or Committee) postponed action on the above-referenced rule amendments to allow me to convene the Water Resources Board (Board) for the purposes of: (1) granting an extension of time to the Committee to allow it to complete review of the Board's final proposed rule package; and (2) exploring how the Board might address the Committee's specific concern that the final proposed rule with respect to Lake Willoughby is overly broad in its reach.

I and my staff attempted to convene a meeting of the Board just before and after the Christmas holiday and was not able to do so. Nevertheless, I am pleased to report that the Board was able to meet by teleconference yesterday and it took the following actions.

First, pursuant to 3 V.S.A. § 842(a), the Board unanimously voted to approve an extension of the statutory 45-day review period in order to allow LCAR to complete review and action on the Board's 2004 final proposed amendments to the Vermont Use of Public Rules.

Second, the Board considered various options for how to address the Committee's concern that the final proposed rule for Lake Willoughby, as filed with LCAR, is overly broad in its reach. As you may recall, the text of that final proposed rule states: "*The use of personal watercraft (jet skis) and any other Class A vessel that uses an inboard engine powering a water jet pump as its primary source of motive power is prohibited.*" The Committee specifically expressed concern about the second clause of that rule which, if adopted, would prohibit the use of motorboats less than sixteen feet in length that are powered by water jet pumps.

Vermont law presently defines "personal watercraft" as a subset of Class A vessels and imposes different regulations regarding their operations, recognizing their inherent dangers. Under 23 V.S.A. § 3302(8), "personal watercraft" is defined as "a Class A vessel which uses an inboard engine powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel." The second clause of the final proposed rule was intended to prohibit the use of other jet-pump powered Class A vessels, with performance characteristics like personal watercraft, but so designed as to allow a person or persons to sit or stand inside the vessel.

As evidenced by the letter from Ms. Julie Mountain, filed with the Board on December 6, 2004, and subsequently transmitted to the Committee, there is at least one lakeshore property owner on Lake Willoughby who owns and operates on the lake a 15.5 foot Boston Whaler RageJet, which looks like a conventional motorboat in that the operator and passenger ride *within* the hull of the boat rather than by sitting or standing on the vessel. Under the express language of the final proposed rule, Ms. Mountain's vessel would be prohibited should that rule be finally adopted without amendment.<sup>1</sup>

Since the record of the Board's rulemaking proceeding does not contain information by which the Board could craft an alternative rule that would prohibit on Lake Willoughby those Class A vessels that are not personal watercraft but which pose some or all of the same actual or potential use conflicts as do personal watercraft, the Board has decided that it can best address the Committee's concerns by amending its final proposed rule so as to prohibit only the use of personal watercraft, as statutorily defined, on Lake Willoughby. Accordingly, a majority of the Board, with member Michael Hebert dissenting, has voted to propose to LCAR an amended final proposed rule, as follows:

~~The use of personal watercraft (jet skis) and any other Class A vessel that uses an inboard engine powering a water jet pump as its primary source of motive power is prohibited.~~

The Board believes that this is a reasonable course of action in that the amended final proposed rule will address most, if not all, of the current use conflicts on Lake Willoughby which are attributable to jet-pump powered Class A vessels. Moreover, narrowing the scope of the

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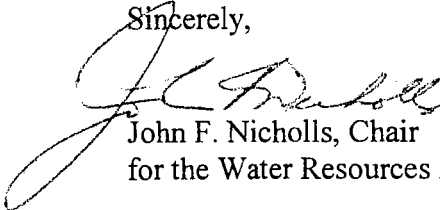
<sup>1</sup> The Committee also heard testimony from Town of Westmore Selectman John Alexander to the effect that the Town or Westmore Association might acquire a jet-pump powered boat to assist with the removal of Eurasian milfoil from Lake Willoughby. It is not apparent from Mr. Alexander's testimony whether such a vessel would be a Class A vessel or not and therefore whether it would or would not be prohibited should the final proposed rule be adopted without amendment.

prohibition to personal watercraft, which are statutorily defined, shall aid in the rule's enforcement.

The Board thanks the members of LCAR for their thorough review of the Board's final proposed rulemaking package, which includes amendments with respect to Mirror Lake (No. 10 Pond) in the Town of Calais, as well as the rule for Lake Willoughby. The Board believes, in light of its experience with the Lake Willoughby proposed rule, that it is perhaps time for the Legislature to explore: (1) whether the definition of personal watercraft needs to be amended to reflect changes in jet-pump technology; and (2) whether there ought to be more statutory guidance on how and where the use of personal watercraft should be regulated or prohibited on Vermont's public waters.

If the members of LCAR have any further questions about this rulemaking, I will be present at the Committee's meeting on Thursday morning, January 13, or you may contact the Board's attorney staffing this matter, Kristina Bielenberg, at 828-5443 or by e-mail at [kristina.bielenberg@state.vt.us](mailto:kristina.bielenberg@state.vt.us)

Sincerely,



John F. Nicholls, Chair  
for the Water Resources Board

cc: Louise Corliss, APA Clerk, Secretary of State's Office

