



# State of Vermont

## AGENCY OF ENVIRONMENTAL CONSERVATION

Montpelier, Vermont 05602

VERMONT WATER RESOURCES BOARD

Department of Fish and Game  
Department of Forests, Parks, and Recreation  
Department of Water Resources  
Environmental Board  
Division of Environmental Engineering  
Division of Environmental Protection  
Natural Resources Conservation Council  
Vermont Water Resources Board

September 3, 1982

To Whom It May Concern:

The Vermont Water Resources Board, after careful consideration of comments received at the public hearing held on July 19th at Sudbury Town Clerk's Office has proposed the following rules to regulate the use of Echo Lake (Keeler Pond) located in the Town of Sudbury and Hubbardton:

1. The operation of vessels powered by a motor at speeds exceeding five (5) miles per hour or in such a manner as to cause a disturbing wake is prohibited in Echo Lake (Keeler Pond).
2. Vessels owned or operated by agencies of the State of Vermont shall comply with these rules at all times except in cases where law enforcement, emergencies or the performance of official duties requires otherwise.

Since a public hearing regarding the regulations of Echo Lake has already been held, the Water Resources Board has not scheduled a second hearing on the proposed rules at this time. Such a hearing will be held only if there is sufficient interest. For your information, state law dealing with the adoption of rules would require the Board to hold a second public hearing if requested to do so on or before October 8, 1982 by 25 persons, a governmental subdivision or agency including a town board of selectmen or an association having not less than 25 members. The deadline for filing written comments regarding the proposed rules is October 15, 1982.

In proposing the rules outlined above, the Board felt that a speed limit was responsive to both the intent of the property owner's petition as well as the legislative mandate (10 V.S.A., §1424(c) that in adopting rules the Board manage public waters so that all normal uses may be enjoyed in a reasonable matter.

The Board decided not to adopt a rule prohibiting houseboats on Echo Lake or to limit each property owner to one swimming float at this

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time since the "problems" which these rules are apparently intended to address do not exist at the present time nor is there any particular reason to believe that they are likely to exist at some point in the near future. Should problems occur, the Board could address them retroactivity in response to a new petition.

Any comments regarding this matter should be directed to the Vermont Water Resources Board, State Office Building, Montpelier, Vermont 05602 (telephone 828-2871).

By authority of the Vermont  
Water Resources Board



William A. Bartlett  
Executive Secretary

WAB/kgf

JOHN J. EASTON, JR.  
ATTORNEY GENERAL

CHARLES A. BRISTOW  
DEPUTY ATTORNEY GENERAL



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL

109 STATE STREET

MONTPELIER

05602

TEL.: 802-828-3171

MEMORANDUM

TO: William A. Bartlett, Executive Secretary, Water Resources Board

FROM: William Griffin, Chief Assistant Attorney General *WG*

DATE: July 23, 1982.

RE: Petition of Echo Lake Association

This is in response to your June 22, 1982, memorandum seeking advice respecting the above petition which requests that the Board issue rules to regulate certain uses of the public waters of Echo Lake. Among other things the petition requests that the Board issue a rule restricting Echo Lake property owners to one float per property and restricting float size to 200 square feet. Your question is whether the Board has the authority to impose such a restriction given the statutory language pertaining to "duckblinds, floats, rafts and buoys". 29 V.S.A. §403(b)(5).

The Board's rulemaking authority is described at 10 V.S.A. §1424. This statute provides in part that the Board may establish rules to regulate the use of the public waters by defining areas on public waters wherein certain uses may be conducted and by defining the uses which may be conducted in the defined areas.

The statutory reference to duckblinds, floats, etc: appears in a law that establishes a general permit requirement as a condition to any encroachment on public waters. The exception to this requirement is that no permit is required for specified uses provided that navigation or boating is not unreasonably impeded. 29 V.S.A. §403(b). Duckblinds and floats are among the uses allowed without permits provided there is no unreasonable impediment to navigation or boating.

Reading 10 V.S.A. §1424 in conjunction with 29 V.S.A. §403, it is my opinion that the Board has the authority to define and explain the phrase "unreasonably impeded" by promulgating a rule that defines the areas where rafts may be used and that defines the particular uses that may be allowed. For example, the Board might promulgate a regulation prohibiting floats in certain narrow channels. It might prohibit the use of rafts larger than a given size, establishing a presumption that very large rafts necessarily impede navigation or boating. A potential

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user could still apply for a permit and offer to show that a specific use or encroachment would not adversely affect the public good. Compare 29 V.S.A. §403(b).

In summary, I agree with your suggestion that the Board could, by rule, place reasonable limits on the number and size of floats and rafts. Beyond that, it is my opinion that the Board could also prohibit the placement of any float that would unreasonably impede navigation.

/kac