

STATE OF VERMONT
WATER RESOURCES BOARD

Petition of the Winooski Valley Park District and the Town of Colchester to adopt rules regulating the use of the public waters of Colchester Pond, Town of Colchester, Vermont

10 V.S.A. § 1424

Decision

On the basis of its record in this proceeding, the Board has decided to proceed with the adoption of the rules requested by the petition as amended. Accordingly, the Board shall proceed with the filing of its final proposal with the Legislative Committee on Administrative Rules.

The basis for this decision is described below in the Findings.

Background

In August of 1991 the Water Resources Board (Board) was petitioned under 10 V.S.A. § 1424 by the Winooski Valley Park District (Park District) and the Town of Colchester, one of its member municipalities, to adopt rules regulating the use of Colchester Pond. In June of 1992 the petitioners amended their petition. The petition, as amended asked the Board to adopt the following rules:

Rule 1. The operation of vessels powered by motor is prohibited.

Rule 2. Except in an emergency situation or as authorized by the Vermont Transportation Board in accordance with 5 V.S.A. Chapter 9, aircraft are prohibited from landing or taking off.

Rule 3. Vessels and aircraft 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 require otherwise.

On August 26, 1992, the Board conducted a public hearing at the Colchester Town Offices to consider the petition. At the request of the Park District the deadline for filing written comments was extended from September 14, 1992, until September 28, 1992.

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In considering this petition the Board was guided by the provisions of 10 V.S.A. § 1424 and the Board's interpretations of this statute that have evolved during the more than 20 years it has been considering the policy issues raised by this petition. These Board practices are now expressed in Section 3 of the draft Use of Public Waters Policy. The petitioners and other prospective participants in this proceeding were provided copies of Section 3 of the draft Use of Public Waters Policy and advised to present their testimony on this petition with this guidance document in mind (WRB Memo 7/22/92).

Findings

1. Colchester Pond (Pond) is located in the Town of Colchester. The Pond is a natural body of water, the surface level of which has been raised by a man-made dam. The Pond presently has a surface area of approximately 168 acres and a maximum depth of 45 feet. The immediate shoreline is undeveloped farmland and forest.
2. In the late 1950's and early 1960's the Colchester Fire District #3 (Fire District) acquired the land surrounding the Pond. The Fire District constructed a dam at the Pond's natural outlet that increased the Pond's size from a surface area of approximately 90 acres to 168 acres. The Fire District used the Pond as a public water supply until the 1970's and still retains the right to make such use of the Pond.
3. The Fire District owns a twenty five foot strip of riparian land around the Pond (as well as the submerged land and the dam site). The Fire District has continually maintained "no trespassing" signs around the Pond. At its 1990 annual meeting the Fire District voted to donate these lands to the Park District.
4. The Pond constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
5. The Pond has the potential to provide a variety of unique recreational opportunities. It is located in Chittenden County, Vermont's most populous region and only a twenty minute drive from downtown Burlington. There is no development along its shoreline. There has never been a public access and indeed for approximately the past 30 years such access has been prohibited. Boating has not occurred on the Pond on a regular, frequent and consistent basis and there is no established aircraft usage.

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6. The Park District, a union municipal district created for the purpose of acquiring and managing land for recreational and conservation purposes within its member towns, has or is in the process of acquiring hundreds of acres of land within the Pond's watershed including a portion of the Pond's shoreline. The Park District plans to develop a public park facility on this land including a controlled parking and access area limited to use by canoes and other "car top" vessels that can be carried from the parking area to the Pond.
7. A unique, totally motor-free recreational experience would be created by the Park District if the proposed rules were adopted in conjunction with the development of a public park with limited access for "car top" boats only. Both the Town of Colchester and the Chittenden Regional Planning Commission support this concept of a motor-free recreational opportunity.
8. Section 3 (b) of the draft Use of Public Waters Policy provides:

In their consideration of established recreational and other uses, the Board will consider uses including boating activities, water based activities, and passive uses such as wildlife observation or the enjoyment of the aesthetic values and quiet solitude of the water body.

9. The proposed rules would not prohibit any established uses of the Pond and therefore are consistent with Section 3 (d) of the draft Use of Public Waters Policy:

The Board will attempt to manage use conflicts in a manner that preserves all established uses to the greatest extent possible consistent with the characteristics of the water body, public safety, and environmental limitations.

10. The only aspect of the proposed rules on which the Board received conflicting testimony was with regard to the prohibition of electric motors. All participants agreed that internal combustion motors should be prohibited.
11. The petitioners made two arguments in favor of retaining the proposed prohibition of all motors including electric motors: (1) that providing a totally motor-free recreational experience was an integral part of the unique recreational experience they were attempting to provide; and (2) that prohibiting electric motors would make a substantial contribution to protecting the Pond from possible infestation by Eurasian milfoil (milfoil).

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12. The Agency of Natural Resources made two arguments in opposition to such a prohibition: (1) that it was unduly restrictive particularly as it might effect the use of the Pond for fishing; and (2) that it would not contribute significantly to protection against possible infestation by milfoil.
13. The Board has determined that, on balance, the opportunity to provide a unique motor-free recreational experience in Chittenden County as a part of the mix of water based recreational opportunities available in the region outweighs any limited adverse impact the prohibition of electric motors may have on the use of the Pond for certain methods of fishing. Moreover such a result is consistent with the provisions of the Chittenden Regional Plan. Section 3 (a) of the draft Use of Public Waters Policy provides:

The Board will follow the guidance of 10 V.S.A. § 1424 and shall at a minimum consider the characteristics of the water body and the surrounding land, the established recreational and other use(s) of the waters, and the need to provide an appropriate mix of water based recreational opportunities on a regional and statewide basis.

14. With regard to the impact of the prohibition of electric motors on certain methods of fishing, the Board notes that other methods of fishing are not affected and the use of such motors for fishing or other purposes on the Pond has not been an established use. Moreover, while the prohibition of electric motors on public waters is not unique to this case (see WRB Rules for Lake Paran adopted 4/20/89), such action by this Board has been extremely rare. Given the emphasis in the draft Use of Public Waters Policy on preserving established uses and taking the least restrictive approach practicable when regulation is necessary (see Section 3 (d) and (e)) the Board would expect that rules prohibiting electric motors would continue to be limited to very rare circumstances such as in this case.
15. The Board has determined that protection against infestation by milfoil does not justify the prohibition of electric motors on the Pond. It was the unrefuted expert testimony of the ANR that there are many potential sources of milfoil infestation that pose an equal or greater threat such as SCUBA equipment, fishing tackle, anchors, etc. The prohibition of all risks of equal or greater magnitude to that posed by electric motor props would severely limit the very recreational opportunities the Park District seeks to provide. While the Board and indeed all participants in

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this proceeding share the petitioner's concern about milfoil infestation, the record is clear that prohibiting electric motors on this basis would be arbitrary and would do little to enhance the Pond's protection in this regard.

Dated at Montpelier, Vermont this 22nd day of December, 1992.

Vermont Water Resources Board

By Dale A. Rocheleau
Dale A. Rocheleau, Chair

Board Members Concurring:

Dale A. Rocheleau
Stephen Reynes
Mark DesMeules

Board members Opposed:

NONE