

STATE OF VERMONT
WATER RESOURCES BOARD

Petition of Echo Lake Association
to amend rules regulating the use
of the public waters of Echo Lake
Towns of Sudbury and Hubbardton, Vermont

10 V.S.A. § 1424

Decision

On the basis of its record in this proceeding, the Board has decided not to amend the current rules pertaining to Echo Lake and therefore denies the petition. The basis for this decision is described below in the findings.

Background

In 1982 the Water Resources Board (Board) adopted rules regulating the use of the public waters of Echo Lake (Keeler Pond). In September of 1991 the Board was petitioned by the Echo Lake Association to amend those rules as indicated below:

Rule 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).

Rule 2. Vessels powered by internal combustion motors are prohibited.

Rule [2] 3. 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 require otherwise.

On August 26, 1992, the Board conducted a public hearing at the Colchester Town Offices to consider the petition. A deadline of September 14, 1992 was established for the filing of written comment.

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 here 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. Echo Lake (the Lake), previously known as Keeler Pond, is located in the Towns of Sudbury and Hubbardton. The Lake constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
2. The Lake has a surface area of approximately 53 acres. There is no public access to the Lake.
3. The following are established uses on the Lake; swimming, fishing, boating and as a domestic water supply by some of the adjacent residences.
4. The petitioners offer two arguments in support of their request to prohibit internal combustion motors; (1) the use of such motors is incompatible with the use of the Lake as a domestic water supply and (2) the use of such motors is not an established use of the Lake.
5. The petitioners have not presented any evidence that the use of internal combustion motors is inherently incompatible with the use of the Lake as a domestic water supply. Internal combustion motors are used on many lakes used as a domestic water supply without apparent conflict.
6. Internal combustion motors have been and continue to be used on Echo Lake with some degree of frequency as evidenced by the wording of the rules adopted by the Board in 1982, the 1991 petition itself, and the written comment received in response to the 1991 petition. The record is unclear as to whether the use of such motors occurs with sufficient frequency to be considered an "established use," meaning a use that occurs "on a regular, frequent and consistent basis" (Draft Use of Public Waters Policy, Section 5 Definitions). However since the record shows that the use of such motors does occur, the petitioners have the burden of showing that their requested action is consistent with paragraphs 3 (d) and (e) of the draft Use of Public Waters Policy.
7. The petitioners have the burden of either showing that the actions they have requested do not prohibit any established uses on Echo Lake or alternatively that public safety or environmental limitations require established uses to be prohibited. The draft Use of Public Waters Policy Section 3 states in relevant part:
 - d. The Board will attempt to manage use conflicts in a manner that preserves all established uses

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to the greatest extent possible consistent with the characteristics of the water body, public safety, and environmental limitations.

- e. When regulation is determined to be necessary, the Board will manage use conflicts using the least restrictive approach practicable.

The petitioners have not met either aspect of this burden.

8. In conclusion, the petitioners have failed to show that there is either an actual or prospective conflict on Echo Lake between its established uses and the use of internal combustion motors that warrants the amendment of the current rules pertaining to the Lake. Accordingly, the petition is denied.

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, Chair
Mark DesMeules
Stephen Reynes

Board Members Opposed:
None