

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of
rules regulating the use of
Waterbury Reservoir, Towns
Waterbury and Stowe

10 V.S.A. § 1424

Decision

On November 19, 1993, the Vermont Water Resources Board (Board) was petitioned under the provisions of 10 V.S.A. § 1424 to adopt the following rules for Waterbury Reservoir:

Rule 1: The use of vessels powered by motors with a capacity of more than 7.5 horsepower are prohibited.

Rule 2: The use of seaplanes is prohibited.

On the basis of its record in this proceeding, the Water Resources Board (Board) decided by an unanimous vote of all five members to deny the petition filed by the Friends of Waterbury Reservoir (Friends) on November 30, 1993. Accordingly, the Board will not proceed with the rules proposed in June of 1994 in response to that petition. The result of this action is that the rules for Waterbury Reservoir previously adopted by this Board in 1989 remain in effect.

The decision is based on the Board's record in this proceeding, including the petition, the testimony at the August 24, 1994 public hearing, and written comment filed on or before October 3, 1994.

The Board has denied the Friend's petition because the requested 7.5 horsepower limit would eliminate several normal uses of the Reservoir without a sufficient showing by those supporting the petition that such a result is either necessary or warranted to adequately address the underlying recreational use conflicts on the Reservoir. Specifically, as discussed below (see Findings 17-19 below), the petitioners have failed to meet their burden of showing that rules within the scope of those requested in their petition are consistent with the requirements of several provisions of Section 2 of the Vermont Use of Public Waters Rules (see Attachment A).

The solution to every problem on a Vermont lake is not another rule adopted by this Board. However, although the Friend's petition is denied, the Board believes based on both the testimony at the public hearing and written comment, that there are conflicts between the current recreational uses of the Reservoir that may warrant some additional regulation. As noted in the Findings

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below, these conflicts have been documented over a period of several years. Any such additional regulation needs to be carefully tailored to adequately address the problem consistent with the general policy framework established in Section 2 of the VUPW Rules.

Efforts to offer a different regulatory approach than that taken by the petition at the August 24 hearing, while well intended and potentially helpful as a basis for further discussion, cannot properly be considered in the context of this rulemaking. It is simply not appropriate for the Board to give public notice regarding on one regulatory approach (i.e. horsepower limits) and then consider the adoption of a totally different regulatory scheme (i.e. speed limits).

The Board agrees that the Reservoir, like Vermont's public waters as a whole, should be managed to provide for multiple uses, and that to the extent possible all normal uses need to be accommodated in a fair and equitable manner. However, not all uses are alike in their impact on the public resource they use or on others seeking to use the same resource in a different way. Accordingly, multiple use does not always mean no regulation of any use and may in fact require regulation to insure that one use does not substantially diminish or preclude another use. Clearly, at some level of intensity, many recreational uses have the potential to seriously diminish or even preclude other uses.

This does not mean that all Vermont lakes that currently accommodate a wide diversity of uses, such as the Reservoir, need to be regulated to allocate their use exclusively to one recreational activity or another. However, it may mean that some lakes which, like the Reservoir, are under significant pressure to serve the regional needs of a variety of diverse and conflicting uses may need to be regulated to insure that all normal uses (i.e., multiple uses) are reasonably available.

In testimony at the hearing and in written comments, several thoughtful and constructive ideas were offered that could form a basis for dialogue. These include (but are not limited to): speed limits for certain portions of the Reservoir, separation of high speed motorboat use either by time or space or some combination of the two, restricting nonmotorized boating in certain portions of the Reservoir to coincide with related restrictions on motorized boating in other portions of the Reservoir.

It is this Board's hope that a dialogue at the local level, assisted perhaps by the Agency of Natural Resources (ANR), which has the overall planning responsibility for the use and conservation of Vermont's public waters (10 V.S.A. § 1423), will

produce a new approach to managing the Reservoir for consideration by this Board next summer.

Background

In November of 1993 the Vermont Water Resources Board (Board) was petitioned by the Friends of Waterbury Reservoir (Friends) to adopt rules regulating the use of Waterbury Reservoir (Reservoir).

The petition asked the Board to adopt rules prohibiting vessels powered by motors of greater than 7.5 horsepower and to prohibit seaplanes on the Reservoir.

The Board conducted a public hearing on the rules requested by the Friend's petition beginning at 7:00 p.m. on August 24, 1994, in Waterbury, Vermont. The deadline for filing written comments was October 3, 1994.

The Board considered the information submitted in the petition, as well as testimony received at the August 24 hearing and in writing, at its meetings on October 5 and October 26, 1994, prior to making its decision in this matter.

Findings

1. Waterbury Reservoir (the Reservoir) is located in the Towns of Waterbury and Stowe. The Reservoir was created by the impoundment of the Little River as a result of the construction of a flood control dam in the 1930's.
2. 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 (North Arm) and east (East Arm) of the dam.
3. The Reservoir constitutes public waters within the meaning of 10 V.S.A. § 1422 (6).
4. The Reservoir is located within the boundaries of the Mt. Mansfield State Forest. The vast majority of the Reservoir's shoreline is undeveloped and is owned by the Vermont Agency of Natural Resources (ANR).
5. Public access to the Reservoir is provided for at several locations, all of which are maintained and managed by ANR:

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- (1) the Little River State Park; (2) the boat access at the dam; (3) the Blush Hill access; (4) the Waterbury Center Day Use area; and (5) the Little River Canoe access.
6. The Reservoir has a number of natural resource values, including habitat for a variety of fish and wildlife species commonly found in north-central Vermont, as well as some species that are threatened or endangered, such as the Common Loon, the Osprey and the Peregrine Falcon.
 7. 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 nonmotorized and motorized vessels. Motorboat use on the Reservoir at both relatively high speeds (i.e. waterskiing, personal watercraft) and at relatively low speeds (i.e. fishing) is a normal use. The Reservoir is also used by a commercial boat tour operation oriented toward Vermont's tourism industry.
 8. The normal fluctuation of the intensity of recreation uses during the summer, with higher levels of use on weekends and holidays than on weekdays, than elsewhere in the state is more pronounced on the Reservoir. In part, this is because there are no shoreland camp owners and therefore no "resident" recreation users to moderate the influx of "transient" recreational uses on weekends or holidays.
 9. Relative to other areas of the state, central Vermont has a relatively limited number of lakes of any appreciable size. The Reservoir is by far the largest body of water available for recreational use in this region of Vermont. The Reservoir's undeveloped shoreline further enhances its attraction for most recreational uses. Accordingly, the Reservoir constitutes a premiere destination for a variety of water-based recreational uses.
 10. The Reservoir was included in a 1982 recreational management study conducted by the University of Vermont on behalf of the Agency of Environmental Conservation (ANR's predecessor) entitled "Allocation and Management of Vermont Lakes for Outdoor Recreation" (1982 Study). The Reservoir was included in the 1982 Study in response to the Agency of Environmental Conservation's concerns at that time about its "overuse and crowding."

11. The 1982 Study concluded in part that:

"Recreation activity interference by other boaters is greater on Waterbury Reservoir than on Lake Champlain (the 1982 Study's primary focus). This is because the Reservoir's two most popular uses, water skiing and canoeing, have a natural tendency to conflict."

The 1982 Study went on to note that the State is in a unique position to manage surface water use on the Reservoir because of its nearly complete ownership of surrounding land and of all access facilities.

12. Although some general aspects of the Reservoir's management are discussed in the Mt. Mansfield State Forest Management Plan, no specific management plan for the Reservoir per se has been prepared as contemplated by 10 V.S.A. § 1423.
13. In response to a 1988 petition filed by the Friends, the Board (in 1989) adopted rules establishing two different five mile per hour zones on the Reservoir, one in that portion of the North Arm north of Cotton Brook, and the other in the extreme eastern end of the East Arm adjacent to the Waterbury Center Day Use area. The rules adopted in 1989 also require that water ski slalom courses be sited only with the approval of ANR.
14. Seaplanes occasionally use the Reservoir. However, the record in this proceeding is inconclusive as to whether such use constitutes a "normal use" and whether in any event, rules totally prohibiting this use, as requested by the petitions, are warranted.
15. Many of the normal uses of the Reservoir by motorboats, at both high and low speeds, commonly involve the use of motors in well excess of 7.5 horsepower. These normal uses include: fishing, waterskiing, operation of personal watercraft, as well as the commercial boat tour operation. The adoption of 7.5 horsepower limit would prohibit or substantially diminish a number of normal recreational uses on the Reservoir.
16. Some of the normal uses of the Reservoir, including canoeing and the enjoyment of the Reservoir's wildlife, may be preempted or substantially diminished by other normal uses, including high speed motorized boating, if no further regulation of the Reservoir is considered.

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17. The petitioners have failed to show that rules within the scope of those requested by the petition are consistent with the policy that "to the greatest extent possible" use conflicts be managed in a manner that provides for all normal uses provided for in § 2.6 of the Vermont Use of Public Waters Rules (see Attachment A).
18. The petitioners have shown that further regulation of the Reservoir warrants consideration, but have failed to show that rules within the scope of those requested by the petition are consistent with the "least restrictive approach practicable" policy established in § 2.7 of the Vermont Use of Public Waters Rules.
19. The petitioners have failed to show that rules within the scope of those requested by the petition are consistent with the priorities for resolving conflicts between two or more normal uses established in § 2.10 of the Vermont Use of Public Waters Rules.
20. Several issues raised in public comment on the Friends petition, including expanding boating educational programs and requiring the registration of non-motorized vessels, may merit further consideration in more appropriate forums. However, they are beyond the Board's rulemaking authority under 10 V.S.A. § 1424.

Dated at City of Rutland Vermont, this 26th day of October, 1994.

Vermont Water Resources Board by



William Boyd Davies, Chair

Board members concurring:
William Boyd Davies
Mark DesMeules
Stephen Dycus
Ruth Einstein
Jane B. Potvin

SECTION 2. RULES FOR CONSIDERING PETITIONS FILED UNDER 10 V.S.A.
§ 1424

In addition to any applicable Rules of Procedure, the following procedures shall be followed when petitions filed under 10 V.S.A. § 1424 are considered:

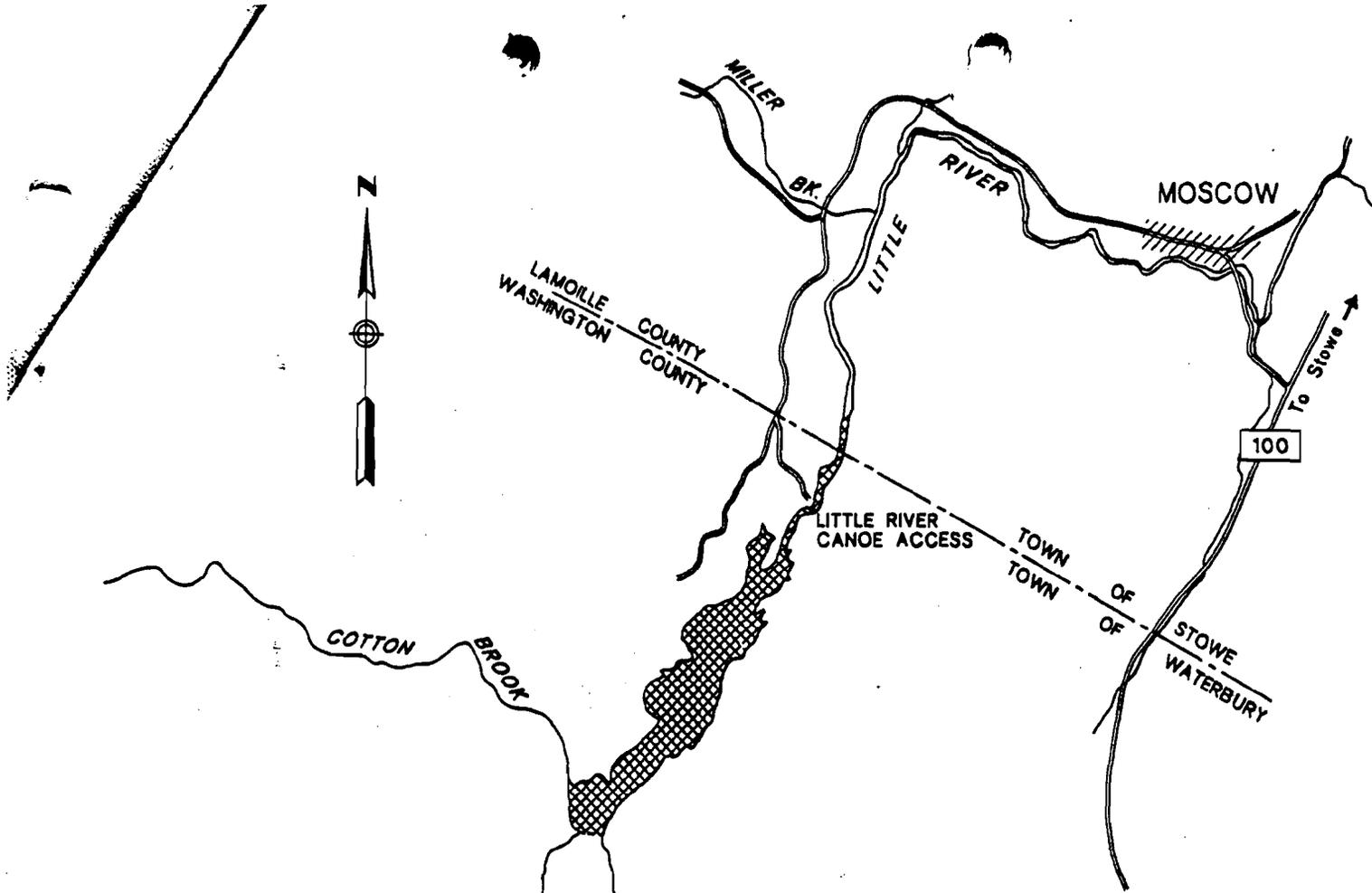
- 2.1 Except when public safety or emergency situations require otherwise, or for other good cause:
 - a. the initial public hearing regarding rules proposed in response to those petitions seeking to regulate summer recreational uses on a specific body of water will be held during the months of June through September;
 - b. all such petitions will be considered in a single consolidated rulemaking proceeding once a year. Consideration of petitions filed after June 1 may be deferred until the rulemaking initiated in the following calendar year; and
 - c. a public hearing will be held in a place convenient to the waters affected when requested by 25 or more persons, the legislative body of any municipality in which the affected waters are located, any governmental subdivision or agency, or an association having 25 or more members.
- 2.2 In evaluating petitions and associated public comments the following factors, at a minimum, will be considered: the size and flow of navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, and the scenic beauty and recreational uses of the area.

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 the need to provide an appropriate mix of water-based recreational opportunities on a regional and state-wide basis.

- 2.3 In evaluating normal recreational and other uses, the following uses will be among those considered: fishing, swimming, boating and related activities including waterskiing, fish and wildlife habitat, wildlife observation, the enjoyment of aesthetic values, quiet solitude of the water body, and other water-based activities.
- 2.4 When considering the establishment of either general or specific rules for the use of public waters under 10 V.S.A. § 1424 the following persons and entities, at a minimum, will be consulted: the Agency of Natural Resources, the Department of Public Safety,

affected municipalities, lake associations, regional planning commissions, affected recreational user groups, environmental and conservation organizations that have expressed an interest and the public.

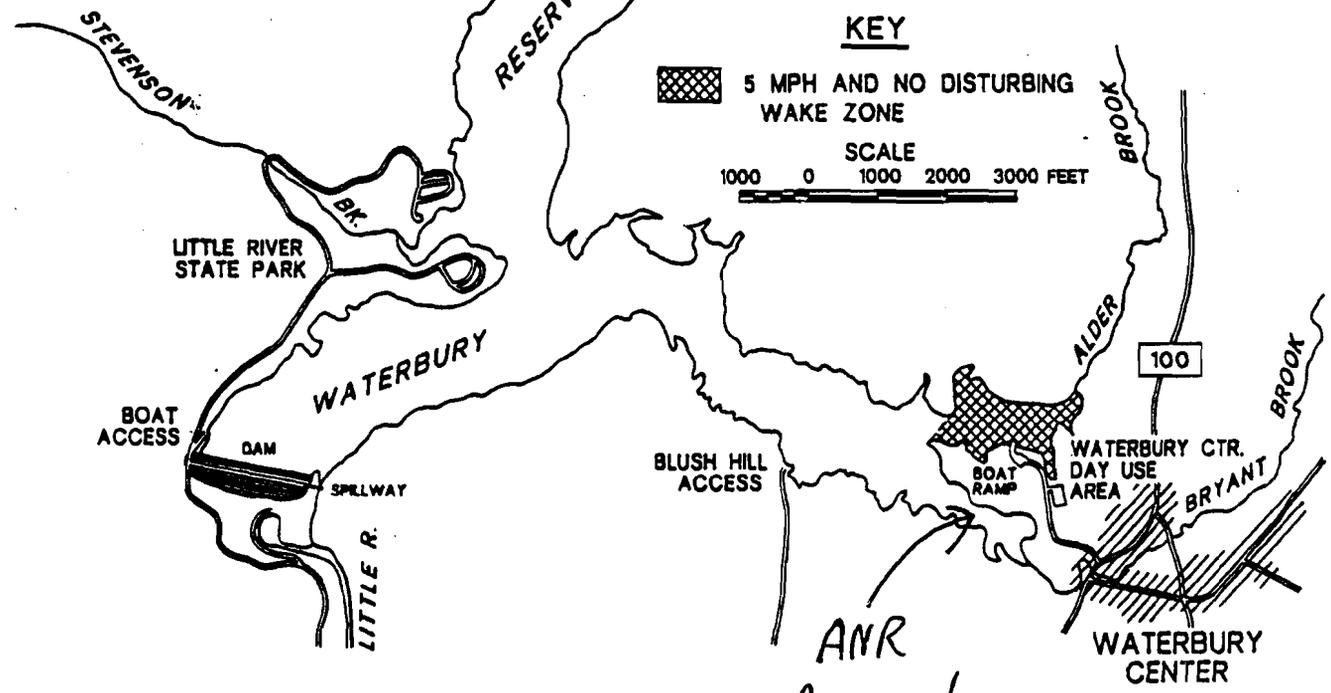
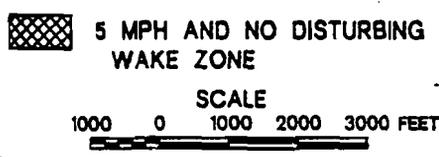
- 2.5 Any delegation of authority to manage the use of public waters to eligible municipalities (10 V.S.A. § 1424(f)) shall be made only when it is found that such action is consistent with:
- (a) the provisions of 10 V.S.A. § 1424 and any other applicable Vermont law,
 - (b) the provisions of this Use of Public Waters Policy, and
 - (c) any surface water use management plan adopted in accordance with 10 V.S.A. § 1423 by the Secretary of the Agency of Natural Resources.
- 2.6 Use conflicts shall be managed in a manner that provides for all normal uses to the greatest extent possible consistent with the provisions of Section 2.2 of these rules.
- 2.7 When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts.
- 2.8 When addressing issues common to more than one body of water, uniform and consistent rules shall be adopted when appropriate.
- 2.9 When regulation is determined to be necessary to resolve conflicts involving the operation of vessels, priority will be given to managing the manner in which vessels are used or operated, such as by imposing speed limits or separating conflicting uses by designating specific times or places where various uses are allowed.
- 2.10 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 by designating specific times or places where various uses are allowed.
- 2.11 Those water bodies which currently provide wilderness-like recreational experiences shall be managed to protect and enhance the continued availability of such experiences.



RULES REGULATING THE USE OF WATERBURY RESERVOIR 10 VSA §1424

VERMONT WATER RESOURCES BOARD
ADOPTED MAY 15, 1989

KEY



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