

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of rules regulating the use of Woodward Reservoir, Town of Plymouth 10 V.S.A. § 1424

Decision

On the basis of its record in this proceeding, the Water Resources Board (Board) has decided by a unanimous vote of all five members to grant the petition filed on May 2, 1994. Accordingly, the Board will proceed with the repeal of its current rules for Woodward Reservoir and the adoption in lieu thereof the following rule:

Vessels powered by motor shall not exceed five miles per hour on Woodward Reservoir.

This decision is based on the Board's record in this proceeding, including the petition, testimony at the July 27, 1994 public hearing, the Findings summarizing that hearing dated September 16, 1994, and written comment filed on or before October 3, 1994.

In reaching this decision, the Board overruled the following arguments offered in public comment, either at the public hearing or in written comment:

1. High speed motorboat use is an established or "normal" use of the Reservoir and therefore should not be prohibited by new regulation.

The Board agrees that high speed motorboat use in the form of waterskiing is a normal use of a portion of the Reservoir, albeit at a very low level of use. However, the Board has determined that the repeal of its current rules adopted in 1972 and the adoption of the proposed rules as requested by the petition are consistent with the statutory guidance in 10 V.S.A. § 1424 and applicable provisions of its own Vermont Use of Public Waters Rules (VUPW Rules) for the reasons outlined below.

First, the Board's 1972 rules establish inconsistent restrictions for high speed motorboat use based on whether access to the Reservoir is obtained at the public fishing access or from privately owned shoreland. The Board's 1972 rules (see rule 5) totally prohibit persons using the public fishing access from engaging in high speed motorboat use, including waterskiing, and yet allow such uses at certain times and places (see rules 1 and

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4) if access is obtained over privately owned shoreland. The Board believes that the approach taken in its 1972 rules is inconsistent with statutory guidance.

The Board is required under 10 V.S.A. § 1424(c) to manage the public waters "in the best interests of all citizens of the state" (emphasis added). Having rules that allow some citizens to use the public waters of the Reservoir (by virtue of their access across private shoreland property) in ways that other citizens are prohibited from (i.e., high speed motorboat use) clearly does not meet this requirement.

Therefore, the Board is left with a choice of either allowing, with some restrictions, high speed motorboat use for all, or prohibiting that use for all.

The statute (10 V.S.A. § 1424(c)) directs the Board to:

... to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all citizens of the state. To the extent possible, the Board shall provide for all normal uses.

The Board is required to manage Vermont's public waters to both insure that all uses can be enjoyed in "a reasonable manner" and at the same time to try to accommodate all normal uses "to the extent possible." Thus, the statute directs the Board to try to accommodate the normal use of waterskiing, but only to the extent possible. The legislature has recognized that accommodating such uses may not always be consistent with the greater imperative to manage the public waters "so that various uses can be enjoyed in a reasonable manner."

As part of insuring that all uses can be enjoyed in a reasonable manner, the Board needs to look at the waters in question and at the issues presented in a regional, and in some cases a statewide, perspective (§ 2.2 VUPW Rules).

Having considered statutory guidance, the applicable provisions of the VUPW Rules, and its record in this matter, the Board has determined that proceeding with the rule requested by this petition is appropriate. It is not, in the Board's view, possible to insure that all other uses, can be enjoyed in "a reasonable manner" without the adoption of a rule prohibiting high speed motorboat use including waterskiing. The Board's decision in this regard is influenced by several factors, including the size and configuration of the Reservoir, its predominate use for purposes other than high speed motorboating, and by the fact that

when this issue is looked at in a regional context, the Reservoir is the most appropriate body of water in the south, central Vermont region to manage as a "low impact use" lake.

2. The proposed rule would reduce the value of shoreland property.

The Board does not believe that there is any creditable evidence in its record to suggest that the proposed rule would reduce the value of shoreland property. In fact, if the proposed rule has any affect in this regard, the Board believes that it would probably enhance property values somewhat over the long term.

While it is possible that some individuals might be less inclined to purchase property on lakes where high speed motorboat use is prohibited, by the same token such a requirement might attract other buyers. On balance, there is no reason to believe that this rule would ultimately lower the market value of shoreland property.

3. The Reservoir contains fragile natural features and plant life that would be better protected by prohibiting high speed boating.

Although the Board has, as explained above, decided to proceed with the adoption of the rule requested by this petition, it has not done so on the basis of this argument. While sympathetic to the concerns and values inherent in this argument, the Board has not been convinced on the basis of the testimony in this proceeding that regulation is warranted on this basis.

It may be that if these arguments were more fully developed, the Board would have a different view. It is true that the Reservoir contains fragile natural features that have apparently suffered damage by erosion, as well as a unique floating sphagnum bog. However, high speed boating does not occur in or near the floating bog, so it is hard to see how the rules requested by the petition would affect the bogs protection.

While the erosion of Bear Pit Point and Ant Island may have been affected by the wakes from high speed motorboat use, the Board has no clear evidence of that such wakes are the principal or even

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an important cause of this erosion. There is no information on which to judge the impact of boat wakes on erosion, compared to wind and wave action, or even the effects of the annual winter drawdown.

The simple allegation of a cause and effect relationship between high speed motorboat use and the erosion of glacial formations or impacts on the floating bog, without substantiation, is not enough to justify action by this Board. In order to be considered in a proceeding of this nature, such allegations must be substantiated by creditable expert testimony.

The Board adopts in their entirety the findings previously issued in this matter on September 16, 1994, by its hearing referees Mark DesMeules and William Bartlett.

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

For the Water Resources Board



William Boyd Davies, Chair

Board members concurring:

William Boyd Davies
Mark DesMeules
Steve Dycus
Ruth Einstein
Jane Potvin