

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of rules regulating the use of East Long Pond, Town of Woodbury 10 V.S.A. § 1424

DECISION

In May of 1994, the Water Resources Board (Board) was petitioned in accordance with 10 V.S.A. § 1424. The petition sought the adoption of the following rules for East Long Pond located in the Town of Woodbury:

Rule 1: The use of vessels powered by motors with a capacity exceeding 7.5 horsepower is prohibited.

Rule 2: The use of seaplanes and the use of personal watercraft (i.e. "jetskis") are prohibited.

On the basis of its record in this proceeding, the Board has decided by a unanimous vote of all five members to deny the petition filed in May of 1994. Accordingly, the Board will not proceed with further consideration of the rules proposed for East Long Pond (the Pond) in June of 1994 in response to that petition.

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

The Board has denied this petition because the rules requested by the petition would eliminate several normal uses of the Pond without a sufficient showing by those supporting the petition that such a result is either necessary or warranted to adequately address issues of public safety protection of natural resource values or recreational use conflicts. The petitioners have failed to meet their burden of showing that rules within the scope of those requested in the petition are consistent with the requirements of Section 2 of the Vermont Use of Public Waters Rules (VUPW Rules).

Almost every person testifying at the public hearing on submitting written comments, including several signatures of the petition, opposed the rules requested by this petition. As a result of its experience in this and other proceedings of this matter, the Board has adopted new procedures for its consideration of future petitions filed under 10 V.S.A. § 1424. These procedures are intended to encourage local discussion of such issues prior to the filing of petitions and to allow the Board to hold preliminary hearings prior to initiating a rulemaking where it believes that adequate discussion of any rules requested by petition may not have taken place.

FINDINGS

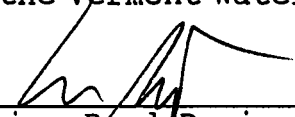
1. East Long Pond (the Pond) is located in the Town of Woodbury and has a surface area of 188 acres making it the fifty largest lake entirely within the boundaries of Vermont.
2. The Pond constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
3. A significant portion of the Pond's shoreland is presently undeveloped. There is no public access to the Pond.
4. The Pond is currently used for a variety of recreational purposes including: swimming, fishing, wildlife observation, enjoyment of quiet solitude and boating by both nonmotorized and motorized vessels. Motorboat use on the Pond at both relatively high speeds (i.e. waterskiing) and at relatively low speeds (i.e. fishing) are normal uses. Use of the Pond by personal watercraft (jetskis) is uncommon and is not a normal use.
5. The Pond is not heavily used by any one or combination of recreational uses.
6. The record in this proceeding is inconclusive as to whether the extent of seaplane usage of the Pond constitutes a "normal use" and whether in any event rules totally prohibiting this use, as requested by the petitioners, are warranted.
7. Many of the normal uses of the Pond by motorboats at both high and low speeds commonly involve the use of motors well in excess of 7.5 horsepower. These normal uses, including fishing and waterskiing, would be prohibited or substantially diminished by adoption of the horsepower limit proposed in the petition.
8. The Pond is one of a small number of nesting sites for the Common Loon, an endangered species in Vermont.
9. The petitioners have failed to show that rules within the scope of those requested by the petition are consistent with several policies set forth in the Vermont Use of Public Waters Rules including: (1) a showing that additional regulation of

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motorboat use is necessary (§ 2.7); and (2) that "to the
greatest extent possible" use conflicts be managed in a manner
that provides for all normal uses (§ 2.6).

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

For the Vermont Water Resources Board



William Boyd Davies, Chair

Board members concurring

William Boyd Davies
Mark DesMeules
Stephen Dycus
Ruth Einstein
Jane Potvin