

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of
rules regulating the use of
Arrowhead Mountain Lake,
Towns of Milton and Georgia

10 V.S.A. § 1424

Decision

On May 16, 1994, a petition was filed with the Vermont Water Resources Board (Board) under the provisions of 10 V.S.A. § 1424 seeking the adoption of the following rule for Arrowhead Mountain Lake:

The use of vessels powered by motor with a capacity of more than 10 horsepower are prohibited.

On the basis of its record in this proceeding, the Water Resources Board (Board) has decided by an unanimous vote of all five members to deny the petition filed on May 16, 1994. Accordingly, the Board will not proceed with the rules proposed for Arrowhead Mountain Lake (Lake) in June of 1994 in response to that petition.

This decision is based on the Board's record in this proceeding, including the petition, testimony at the August 3, 1994 public hearing, the Findings summarizing that hearing dated September 15, 1994, and written comment filed on or before October 3, 1994.

However, as discussed below, the Board believes, that some regulation of certain portions of the Lake appears to warrant further consideration.

The Board has denied the petition because the requested ten horsepower limit would eliminate several normal uses of the Lake without a sufficient showing by those supporting the petition that such a result is either necessary or warranted to adequately address the need to protect the Lake's natural resource values or to resolve any public safety or recreational use conflicts. Specifically (see Findings 3-7, below), 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 Water Rules (see Attachment A).

For example, while a number of factors, including submerged stumps, floating debris, and the fluctuation in water level on the Lake due to its use as reservoir for hydroelectric power generation, may increase the safety risks associated with high speed

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boating on some portions of the Lake, the petitioners have failed to show that: (1) this issue is sufficiently significant to warrant regulation, given the requirement in existing law to not exceed five miles per hour within 200 feet of the shoreline; (2) even if regulation were needed to address boating hazards, all portions of the lake should be regulated in the same manner, or, (3) a limit of ten horsepower is the most appropriate regulatory approach.

Similarly, while the Board is well aware of the problem of milfoil infestation, the petitioners have not shown that a lake-wide horsepower limit would have any meaningful affect on the level of milfoil infestation on the Lake.

The issues raised here are important and may, after thoughtful consideration, warrant some future action by this Board. Although not every problem can be solved by additional rules, it appears that at least some rules may be appropriate on this Lake, they need to be carefully tailored to adequately address the problem, consistent with the framework provided by Section 2 of the VUPW Rules.

Horsepower limitations are not the appropriate approach, even where a need for some regulation is apparent, for example in the east arm of the north pond. Accordingly, this rulemaking is not the appropriate vehicle for addressing what may be legitimate issues. The Board feels that it is not procedurally correct for it to give public notice and invite public comment in response to one regulatory approach and then, in the same rulemaking, consider adoption of a totally different regulatory scheme. Moreover, the Board feels that the issues raised in this proceeding should be discussed at the local level by all persons with an interest in this matter prior to any further rulemaking.

In conclusion, although the petition is denied, it has served to identify some issues that may warrant regulation. The Board hopes that the participants will take the steps to engage in a constructive dialogue on this subject at the local level prior to the filing of a new petition.

Findings

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

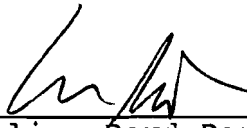
2. Many of the normal uses of the Lake by motorboats, at both high speed and low speeds, commonly involve the use of motors well in excess of 10 horsepower. Such normal uses include fishing, waterskiing and the operation of personal watercraft. The adoption of a 10 horsepower limit would prohibit or substantially diminish a number of normal recreational uses on the Lake, including those listed above.
3. The petitioners have failed to show that rules within the scope of those requested by the petition are consistent with the policy set forth in § 2.6 of the Vermont Use of Public Water Rules (VUPW Rules) (see Attachment A), which requires that "to the greatest extent possible" use conflicts be managed in a manner that provides for all normal uses.
4. Some of the Lake's natural resource values, specifically the wildlife habitat provided in the shallow and wetland portions of the eastern arm of the northern pond may be substantially diminished by other normal uses of the Lake, including high speed boating, if no further regulation of this portion of the Lake is considered.
5. Public safety and some normal uses of the Lake in the area referred to as the "narrows" may be substantially diminished by other normal uses, including high speed boating in this area, if no further regulation of this portion of the Lake is considered.
6. The petitioners have shown that further regulation of one or two portions of the Lake 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 VUPW Rules.

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7. 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 VUPW Rules.

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

ARROWHEAD MTN. LAKE

Towns of Georgia & Milton
Chittenden & Franklin Co.
Scale: 1" = 2000'
Area: 826 Acres



-  = Personal Watercraft = Corridor (200 Feet from shoreline)
-  = 5 miles per hour speed limit