

STATE OF VERMONT  
Water Resources Board

In re: Petition for the adoption of  
rules regulating the use of  
Curtis Pond, Town of Calais

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 in part the petition filed in May of 1994 (the petition) by proceeding with the adoption of the following rule for Curtis Pond:

Vessels powered by motor shall not exceed a  
speed of five miles per hour north of the  
narrows, as shown on the attached map.

This rule, when adopted, will prohibit high speed motorboating on the northern portion of Curtis Pond (the Pond), including the entire section known as the "narrows." Such boating is already largely prohibited in this area by existing state law (23 V.S.A. § 3311 (c)(1)). This rule will allow high speed motorboating, including waterskiing, to continue in those portions of the southern end of the Pond that are sufficiently distant from the shoreline.

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

In reaching this decision, the Board considered and rejected the following arguments offered in public comment, either at the public hearing or in written comment or both:

1. The Board made the correct decision in 1980 and 1986 in declining at those times to adopt rules and should do so again in 1994.

The Board believes that its decision in this proceeding is fully consistent with its earlier decisions in 1980 and 1986. The Board has come to the conclusion that, having given the Pond community ample opportunity to find their own solution, it is now time for the Board to proceed with the adoption of a rule to address the long-standing underlying public safety and recreation use conflicts.

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While some aspects of the dispute between high speed motorboat uses and other uses of the Pond are essentially the same as in earlier proceedings, there are a number of important differences in 1994. One important difference is that in 1980 and again in 1986 the petitioners requested the adoption of rules establishing a ten horsepower limitation. While the apparent intent of those earlier petitions was to eliminate high speed motorboat use, the Board found the horsepower limit approach to be arbitrary and overly restrictive, since it would restrict many low speed motorboat uses, including fishing, based on motor size rather than speed.

The current petition seeks to extend the five miles per hour speed limit, which currently applies on most of the Pond, to the entire Pond. This regulatory approach, while clearly impacting some forms of motorboat use, is less arbitrary in terms of its impact on other normal uses such as fishing than a low horsepower limit would be.

Another important difference is the 1989 amendments to the Vermont Boating Safety Operating Laws and Regulations, which clarify application of the five mile per hour speed limit restriction within 200 feet of the shoreline. The lack of clarity regarding this requirement, particularly in the narrows, was an issue in the earlier proceedings.

In 1980 and again in 1986, this Board made it clear that there were significant conflicts on the Pond that needed to be addressed. In its 1980 decision the Board specifically noted:

In electing not to act in response to the petition requesting regulation of Curtis Pond, the Board does not intend to suggest that the concerns prompting that request and discussed at the public hearing are without merit. Indeed, the Board would note that it is free to reconsider its current position on this matter in the future if efforts to rely on mutual cooperation and the enforcement of existing requirements prove inadequate. However, at this time the Board feels that there are a number of alternatives to regulation which remain untried and which if attempted in a good faith effort by all concerned could resolve many of the concerns which prompted this hearing.

In its 1986 decision, two of the five Board members favored the adoption of rules in response to the petition. The remaining

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three Board members in their decision to deny the petition found that:

The potential for conflict between high speed boating and other recreational uses on any pond is to some degree inherent even under the most favorable circumstances. At Curtis Pond this inherent potential for conflict is heightened by a combination of several factors including: its size and configuration, the amount and variety of recreational activity which occurs and the lack of a lake association in which to discuss, and resolve problems of mutual interest.

In the 1986 decision, the Board clearly acknowledged the legitimacy of concerns that prompted that petition and urged local efforts at prompt resolution.

The Board acknowledges that circumstances at Curtis Pond result in bona fide conflicts between existing recreational uses as well as potential safety problems. These conflicts and problems need to be resolved in the immediate future.

In both 1980 and 1986, the Board made it clear that it felt the petitioners had identified a significant problem and put great emphasis on the need to find a local solution to the underlying conflicts and safety concerns as an alternative to Board regulation. It urged local action to address these issues, suggesting as one possibility the formation of a lake association to provide a forum in which these issues could be discussed and hopefully resolved.

Regrettably, over the past 14 years efforts to resolve these conflicts locally either have not occurred or have not been successful. No lake association was formed until the summer of 1994, after the third petition had already been filed. Regrettably, given the experience of the past 14 years, it seems clear that the issues that prompted the earlier petitions have been left unaddressed by local effort and must finally be resolved by this Board.

**2. There is no safety problem on the Pond which warrants regulation as requested by the petition.**

Several people opposed to the petition commented that there is no safety problem on the Pond. In support of this position it

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was noted that high speed motorboating has occurred continuously for many years with no reported boating accidents, and that those who engage in high speed motorboat use on the Pond have developed local conventions intended to reduce risks. For example, water-skiers at the south end of the Pond travel in a counterclockwise direction in order to get a better view of the narrows before entering.

The Board simply does not agree that the continued practice of high speed motorboat use, including waterskiing on the entire Pond, particularly through the "narrows," presents no safety problem. The apparent absence of any reported boating accidents, while commendable, is hardly dispositive on the issue of safety. As this Board has previously determined, this practice does raise serious safety concerns.

The Pond, with a surface area of less than 72 acres, is the smallest Vermont "lake" on which waterskiing and other forms of high speed motorboat use occur. The VUPW Rules (§ 3.2(a)) establish a general policy that 30 contiguous acres of surface area outside the shoreline safety zone (that area within 200 feet of the shoreline) are needed to safely accommodate a combination of high speed motorboat use and the normal mix of other recreational uses. The Pond has only a total of 18 acres outside the shoreline safety zone, and this is divided into two widely separated locations.

Vermont, like many other states, has adopted as one of its basic safety standards a statutory requirement that motorboats may not exceed five miles per hour within 200 feet of the shoreline. This same margin of safety requirement applies when motorboats are within 200 feet of other vessels or persons in the water (see 23 V.S.A. § 3311(c)(1)). As the attached map clearly illustrates, most of the Pond, including the entire narrows, is within two hundred feet of the shoreline. When the Pond is used at even low levels of intensity for swimming, fishing or nonmotorized boating, it is inherently unsafe to allow high speed motorboating to occur at the same time, particularly throughout the entire Pond.

The local convention of clockwise waterskiing, while commendable, does not adequately address the public safety issue. Since the convention is not written, and in any event has no formal standing, it is hard to understand how transient boaters using the public access area would be aware of this convention. Moreover, even if this convention was given the force of law and followed strictly, it would not reduce the public safety risks associated with highspeed boating through the narrows to an acceptable level.

In summary, while the lack of documented boating accidents and the existence of an unwritten local convention about how to

waterski on the Pond are noteworthy, they do not change the fundamental fact that the Pond's size, and more importantly its configuration, make the continuation of high speed motorboating over the entire surface of the Pond an unacceptable risk to public safety.

3. Curtis Pond as a body of public waters should be managed for multiple use, meaning no substantial regulation of waterskiing or other forms of high speed boating.

The Board agrees that the Pond, like Vermont's public waters as a whole, should be managed to provide for multiple use, meaning that to the extent possible all normal uses are 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. Clearly, at some level of intensity, some (perhaps all) recreational uses have the potential to seriously diminish or even preclude other uses.

The impact of the traditional practice of high speed motorboat use throughout the Pond, particularly through the narrows, has in fact substantially diminished or precluded other normal uses of the Pond, including fishing, swimming, and other forms of boating. This impact occurs simply by virtue of the prospect that high speed motorboats could be using the Pond at any time, whether or not this use actually occurs. The preemption of other normal uses by high speed motorboating is particularly acute in the narrows.

Vermont boating law, since at least 1989, has totally prohibited high speed uses in the narrows. However, in actual practice, this provision of the law has been routinely violated. The Board does not find creditable the claim that some boaters thought the Pond was somehow exempt from the 1989 amendments to the Vermont Boating Safety Operating Laws and Regulations.

Finally, in point of fact, the Board's final proposed rules do allow all traditional recreational uses of the Pond, including waterskiing, to continue. The Board's final proposed rules are a very modest change from existing law and therefore have a limited impact on the normal use of high speed motorboating.

4. If waterskiing and other forms of high speed motorboat use are regulated on Curtis Pond, they should be regulated in the manner proposed by the Curtis Pond Association, or alternatively in a manner that would allow waterskiing to continue at each end of the Pond.

While appreciating the effort by the Curtis Pond Association (CPA) to put forward an alternative proposal, the Board does not

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feel that the proposal offered adequately addresses the underlying safety concerns or the conflicts between normal uses. The CPA proposal is based on the premise that the continuation of high speed motorboat use through the narrows can be done safely and without substantially diminishing or precluding other normal uses. As discussed above, the Board simply does not agree with that premise.

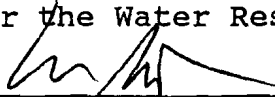
Others suggested limiting high speed motorboat use to both ends of the Pond. Again, while appreciating the suggestion of an alternative proposal, the Board has concluded that, particularly given the history of high speed motorboat use on the Pond, this approach would not adequately address the underlying safety issue or conflicts between normal uses. This suggestion is really a variation of the status quo. Existing law since at least 1989 has allowed high speed motorboat use only in two relatively small areas at each end of the Pond. However, in actual practice the apparently inevitable temptation to "connect" these two areas by waterskiing through the narrows has resulted in routine violations of the law over a period of many years. Based on the history of this conflict and the actual experience over the past five years, the Board has little confidence that continuing this approach would adequately address the problem.

However, in recognition of the fact that there is a long tradition of waterskiing on the Pond, the Board has modified the rules requested by the petition to allow waterskiing to continue at the south end of the Pond, in order to reduce the safety risks to what it hopes will prove to be acceptable limits, as an alternative to a total prohibition.

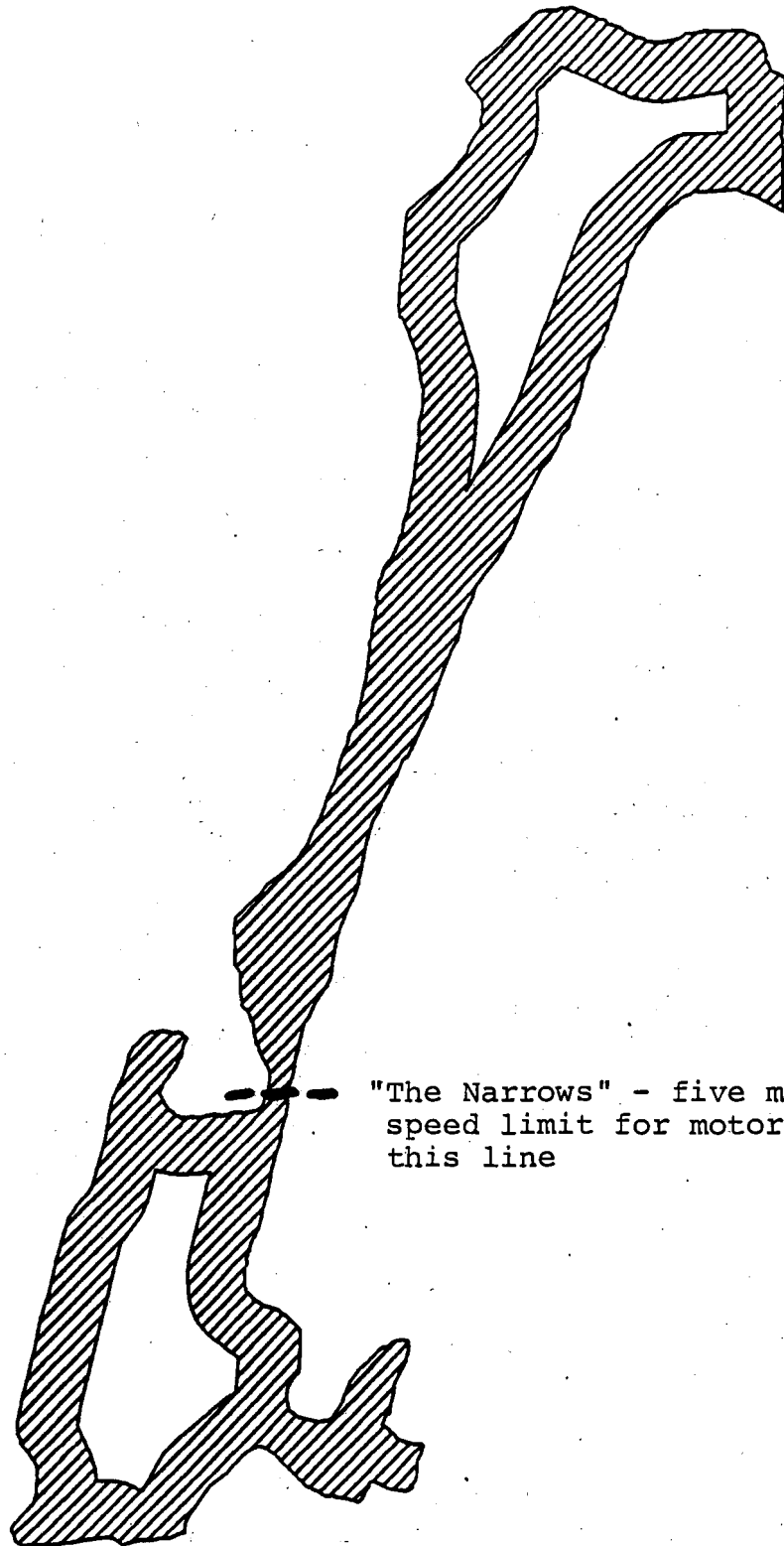
The Board adopts in their entirety the findings previously issued in this matter on September 15, 1994, by its hearing referees Ruth Einstein and William Bartlett.

Dated at City of Rutland, Vermont, this 26<sup>th</sup> day of October, 1994.

For the Water Resources Board

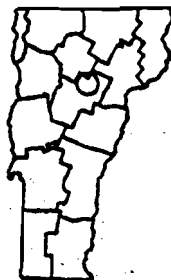
  
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William Boyd Davies, Chair

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



October 26, 1994

CURTIS POND  
CALAIS  
72 ACRES



DISCLAIMER:  
 THE ACREAGE LISTED IS  
 FROM 1:5000 OR 1:24000  
 SOURCE DATA. IT REPRESENTS  
 THE BEST AVAILABLE  
 DATA AT THIS TIME.

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