

STATE OF VERMONT
Water Resources Board

In re: Petition for the adoption of
rules regulating the use of
Somerset Reservoir, Towns of
Somerset and Stratton

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 on May 31, 1994 (the petition) by proceeding with the adoption of the following rules regulating the use of the public waters of Somerset Reservoir:

1. The use of personal watercraft is prohibited.
2. Waterskiing is prohibited.
3. The use of vessels powered by internal combustion motor (the use of internal combustion motors to power vessels?) north of "the narrows" (see attached map) is prohibited except as provided for in rule 4 below.
4. The prohibition established by rule 3, above, shall not apply to vessels operated on behalf of the New England Power Company in conjunction with their operation of the Reservoir, or where law enforcement, emergencies or the performance of official duties by a governmental agency require otherwise.

The Board has also decided, for the reasons discussed below, not to proceed with the adoption of those rules requested by the petition seeking the establishment of a horsepower limitation for motorboats using the southern portion of the Reservoir, and not to prohibit radio controlled model boats.

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 comments 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 should adopt a horsepower limitation for motorboats using that portion of the Reservoir south of the "narrows."

The Board in its final proposal has overruled arguments in favor of establishing a horsepower limitation for motorboats using that portion of the Reservoir south of the "narrows." The Board agrees that some additional regulation of high speed motorboat use south of the narrows, beyond the rules included in its final proposal, may be needed. However, the Board is concerned that horsepower limits appear to be an arbitrary and overly restrictive method of addressing this need.

No matter which of the numerical horsepower limitations discussed in this proceeding were selected (the petitioners requested 15 hp, the Somerset Town Plan refers to 25 hp and the NEPCo recreational management plan calls for 35 hp), none would fully accomplish the apparent intent of preventing high speed motorboating use. Yet each of these horsepower limits would prevent some "low impact" users, principally anglers, hunters, and sight seers, from using the Reservoir based solely on the size of the motors on their boats, rather than the manner in which the vessels would be operated. The Board is convinced that with further discussion, a less arbitrary approach could be found. In addition, the Board is concerned that some of the horsepower limitations suggested in this proceeding could result in underpowered motorboats attempting to use the Reservoir.

Accordingly, the Board urges those with an interest in this matter, assisted perhaps by the Agency of Natural Resources, which has the overall planning responsibility for the management and protection of Vermont's public waters (10 V.S.A. § 1423), to discuss whether a different approach, such as a speed limit, would be a more appropriate method of managing motorboat use on the southern portion of the Reservoir. Such a dialogue might produce a new approach to managing high speed motorboat use on the southern portion of the Reservoir for consideration by this Board next summer.

2. The Board should adopt rules prohibiting all motorized boating on the entire Reservoir.

As a matter of proper procedure, as well as fairness, to those affected, the Board cannot expand the scope of the rulemaking beyond that contemplated in the initial public notice. This rulemaking was initiated by a petition requesting the prohibition of internal combustion motors on only that portion of the Reservoir north of the narrows. The public notice for this rulemaking reflects the intent of that petition. Accordingly, the Board does not feel that it could, in this rulemaking, proceed with the

Petition for the adoption of rules regulating the use of Somerset Reservoir, Towns of Somerset and Stratton
Page 3

adoption of a rule prohibiting all motorized boating on the entire Reservoir.

3. There is no reason to regulate recreational uses on the Reservoir to the extent sought by the petition. The proposed rules discriminate against waterskiers and personal watercraft users.

The Board feels that those supporting the petition have offered compelling arguments in favor of the prohibition of internal combustion motors north of the narrows and prohibiting waterskiing and personal watercraft usage south of the narrows. The uses prohibited by such rules are not currently major uses of the Reservoir and are not compatible with the preservation of its traditional uses and character.

The Board is convinced that the rules it proposes to adopt are needed to protect the Reservoir's important natural resource values and the increasingly rare opportunity it affords for enjoying certain recreational uses in a wilderness-like setting, both for this generation, and future generations.

The close proximity of Harriman Reservoir provides ample opportunity for high speed motorboating uses, such as waterskiing and personal watercraft, on a body of water far more appropriate for such uses.

4. The Board should not adopt rules prohibiting the use of internal combustion motors north of the narrows.

The prohibition of internal combustion motors north of the narrows will make access to this area for some users more difficult, but not unreasonably so. Not every body of water can be all things to all people. With the adoption of the proposed rules, the northern portion of the Reservoir would be one of a very small number of bodies of water of any appreciable size in Vermont, and the only one in southern Vermont, on which internal combustion motors are prohibited. The Board finds it hard to imagine a more appropriate body of water to serve this role in the management of Vermont's lakes for multiple use.

5. The Board should adopt a rule prohibiting the use of radio controlled model boat use on the Reservoir.

This is a new issue raised for the first time in this petition. On the basis of the testimony in this proceeding the Board is not prepared to proceed with the adoption of such a rule. The Board has concluded that the petitioners have not met their burden of showing that this is an issue of sufficient magnitude to require regulation in the first place, or that the rule requested is "the least restrictive approach practicable that adequately addresses the conflicts" (§ 2.7 VUPW Rules).

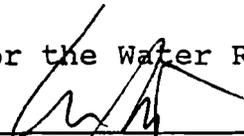
This may be an issue best addressed through a constructive dialogue and perhaps some local conventions reached at the local level.

6. The Board should defer proceeding with the adoption of any rules until after completion of the pending completion of the FERC relicensing of the Deerfield River Project of which Somerset Reservoir is a part.

The Board, after considering this concern, has decided to proceed with its consideration of this petition under applicable state law. The rules the Board has decided to adopt are consistent with Vermont law, including the applicable provisions of the Vermont Use of Public Waters Rules, as well as with the recreational management plan submitted to FERC by NEPCo. Should any FERC license eventually issued to NEPCo require management of the Reservoir in a manner that conflicts with any rules the Board may adopt in this proceeding, the Board would be willing to consider the adoption of conforming amendments at that time.

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

Map of Somerset Reservoir

Attachment A

