

STATE OF VERMONT  
Water Resources Board

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

10 V.S.A. § 1424

BACKGROUND

On May 31, 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 rules for Somerset Reservoir:

- Rule #1: The use of personal watercraft (jetskis) are prohibited.
- Rule #2: Waterskiing is prohibited.
- Rule #3: The use of vessels powered by motors with a capacity exceeding 15 horsepower are prohibited except as provided for in rule 6 below.
- Rule #4: The use of radio-control model boats are prohibited.
- Rule #5: The use of vessels powered by internal combustion motors north of "the narrows" near the middle of the reservoir are prohibited except as provided for in rule 6 below.
- Rule #6: The prohibitions established by rules 3 and 5 above shall not apply to vessels operated on behalf of 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.

In response to this filing, the Board proposed the rules requested by the petition and scheduled a public hearing for July 27, 1994, at the Stratton Town Clerk's Office to receive public comment. The Board also established October 3, 1994, as the deadline for the filing of written comment.

Representing the Board at the July 27 hearing were Board member Mark DesMeules and the Board's Executive Officer William Bartlett.

OPPORTUNITY FOR FURTHER COMMENT

These findings are intended as a report to the full Board summarizing the testimony received at the July 27, 1994, public hearing without offering judgements as to the validity of any particular argument or fact presented.

Copies of these "findings" have been sent to all persons who signed the attendance sheet circulated at the hearing. Those persons have until October 3, 1994, to file written comments as to the thoroughness and accuracy of the findings. In addition, all persons whether or not they were at the July 27, 1994, hearing have until October 3, 1994, to file written comments on the rule requested by the petition. All written comments should be addressed to: Vermont Water Resources Board, 58 East State Street, Drawer 20, Montpelier, Vermont 05620-3201.

In deciding what, if any, action to take in response to the petition, the Board will consider this report as well as all written comments filed by October 3, 1994. All persons attending the public hearing and/or filing written comments on this matter will be notified of any final action in this matter. The Board will make every effort to make its decision as quickly as possible.

Any questions regarding this matter should be directed to the Water Resources Board office at the address indicated above or at 828-2871.

FINDINGS

1. Somerset Reservoir (the Reservoir) is located in the Towns of Stratton and Somerset and has a surface area of nearly 1600 acres.
2. The Reservoir has an irregular configuration oriented on a north/south axis. The Reservoir is more than five and one-half miles long and more than one mile wide at its widest point. Near the mid-point on the its north/south axis, the Reservoir narrows to a width of between 1000 and 1500 feet (the "narrows").
3. The Reservoir was created by a dam constructed in 1913 at what is now its southern end. The dam and the entire shoreline of the Reservoir are owned by the New England Power Company (NEPCo). NEPCo uses the Reservoir for storage using

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its waters for hydroelectric power generation at facilities further downstream in the Deerfield River basin. No power is generated at the Reservoir.

4. The Reservoir is the northernmost of ten impoundments located in the Deerfield River basin in Vermont and Massachusetts that are owned and managed by NEPCo in conjunction with their generation of hydroelectric power. The NEPCo impoundment immediately downstream is Harriman Reservoir which has a surface area of more than 2000 acres. Collectively Somerset Reservoir, Harriman Reservoir and eight other reservoirs further downstream are known as the Deerfield River Project.
5. The Reservoir's shoreline is totally undeveloped except for the dam and limited recreational facilities all of which are at the south end. The recreational facilities consist of some picnic tables and grills, four toilet facilities, parking for 155 vehicles and 30 boat trailers and a gravel boat ramp which serves as the only boat access to the Reservoir.
6. The land surrounding the Reservoir beyond the shoreline is also essentially undeveloped except for the access road to the south end. The surrounding lands not owned by NEPCo are within the exterior boundaries of the Green Mountain National Forest. The lack of virtually any development in the immediate vicinity of the Reservoir gives it a wilderness-like character.
7. The Reservoir has traditionally been used for fishing, swimming, boating by both motorized and nonmotorized vessels, wildlife observation, the enjoyment of its aesthetic value, quiet solitude and primitive camping.
8. Motorboat use traditionally has been associated with fishing and other recreational uses not normally requiring the operation of vessels at high speeds. The traditional use of such motorboats has commonly involved the use of motors in excess of 15 horsepower.
9. In recent years the use of the Reservoir for high speed boating uses including water skiing and personal watercraft has increased. These high speed uses are currently occur on a low frequency limited in part by Reservoir's remote location, the availability of Harriman Reservoir only ten miles away and the boat ramp which makes use by larger trailered vessels difficult.
10. The Reservoir and the land surrounding it provide wildlife habitat for black bear, moose, whitetail deer, river otter, fisher, mink, beaver and possibly pine martin. The Reservoir

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is the southernmost nesting site in Vermont for the common loon which is listed as a threaten species in Vermont. Bald eagles and osprey have also been observed on the Reservoir.

11. At the July 27, 1994 public hearing, twenty-nine people signed the attendance list of whom twenty-one testified. Diane Lischer on behalf of the Windham Regional Planning Commission noted that the July 27 Board hearing conflicted with another important local meeting and requested that the Board schedule a second public hearing on this petition.
12. The proponents of the rules requested by the petition offered the following arguments in favor of their position:
  - a. The Reservoir is one of very few large bodies of water in southern Vermont. The opportunity for traditional "low-impact" (all traditional low speed, low power uses) users to continue to enjoy its pristine beauty and quiet could be lost if high-power motorboats including personal watercraft are allowed to continue to expand their currently limited use of the Reservoir.
  - b. The action sought by the petition is consistent with the Somerset Town Plan which lists as its first Priority for Action: "Restrict recreational activities which may negatively affect the scenic, peaceful nature of the Reservoir including but not restricted to: jet skis, large motor boats (over 25 HP), high speed boating and waterskiing."
  - c. Every lake can't be all things to all people. The petition seeks to balance the use of the Reservoir for what the petitioners term "low-impact" users (fishing, low power motorboats, nonmotorized boats, swimming, wildlife observation and enjoyment of its pristine beauty and quiet) with the use of nearby Harriman Reservoir which is more suited to, and already heavily used for, high speed motorboat uses including waterskiing and personal watercraft.
  - d. There should be a few larger bodies of water designated for low-impact uses where "low-impact" uses do not have to compete with the noise, large wakes and risk of collisions often associated with high speed boating. There are few bodies of water in Vermont where one can engage in low-impact recreation without the threat of disruption by high-impact users. The Reservoir should be one such body of water, managed as a place to enjoy a quiet day of fishing or paddling.


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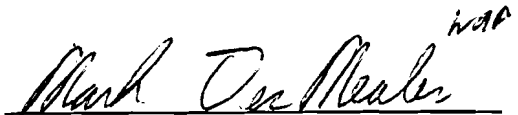
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generally objected to the 15 horsepower limit or the prohibition of all motors north of the narrows.

15. Several speakers mentioned the rough water conditions that can develop quickly on the Reservoir as a safety consideration with respect to proposed rules 3 and 5.
16. The Windham Regional Planning Commission noted that since the Town of Somerset is an unorganized Town, the Regional Commission serves as its Town Planning Commission.
17. A representative of NEPCo (John Ragonese) noted that the Deerfield River Project of which the Reservoir is only one part (see finding 4, above) is currently going through the relicensing process by the Federal Energy Commission (FERC). As part of that process NEPCo is currently seeking a Water Quality Certification ("401 Certification") from the Vermont Agency of Natural Resources.
18. As part of the FERC relicensing process NEPCo has developed a recreational management plan for all ten reservoirs that constitute the Deerfield River Project. The petition borrows heavily from that portion of the Deerfield River Project recreational management plan pertaining to Somerset Reservoir but differs in some respects including using a lower horsepower limitation and the prohibition of radio-controlled boats.
19. While taking no position on the petition at this time, NEPCo is concerned about the prospect of having the recreational management of one of the ten reservoirs in the Deerfield River Project "decided" by the Board before the overall recreational plan for the entire project is decided upon by FERC. Accordingly the NEPCo representative urged the Board to delay its decision pending a final ruling on its recreational management plan for the Deerfield River Project.

Dated at Montpelier, Vermont this 16th day of September, 1994.

  
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William A. Bartlett  
Hearing Referee

  
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Mark DesMeules  
Hearing Referee