

STATE OF VERMONT
Water Resources Board

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

10 V.S.A. § 1424

Decision

On the basis of its record in this proceeding, the Water Resources Board (Board) has decided by a vote of three members to grant the petition filed on May 31, 1994. Accordingly, the Board will proceed with the adoption of the following rule for Holland Pond:

The use of personal watercraft is prohibited.

This decision is based on the Board's record in this proceeding, including the petition, testimony at the August 1, 1994 public hearing, the Findings summarizing that hearing dated September 15, 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 comments, either at the public hearing or in written comments:

1. The use of personal watercraft is a normal use on Holland Pond that does not conflict with other normal uses to the extent that its prohibition is warranted.

The Board does not agree that the historical level of usage of Holland Pond by personal watercraft (PWC) meets the definition of "normal use" in § 4.2 of the Vermont Use of Public Water Rules:

Any lawful use of any specific body of public water that has occurred on a regular, frequent and consistent basis prior to January 1, 1993.
(emphasis added)

While PWC have apparently been used on Holland Pond of years, their use has not been sufficiently "regular, frequent and consistent" prior to January 1, 1993 to warrant considering them a "normal use" of Holland Pond.

The Board is aware that one PWC has been used on the Pond by the owners of a shoreland property. However, the Board does not consider that level of usage, supplemented by an occasional PWC or

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two trailered to the Pond, to elevate PWC usage on this Pond to the same level as other established or normal uses, such as fishing, swimming, and other forms of boating, which have occurred at a much higher level of frequency and consistency over a much longer period of time.

The Board, while acknowledging the responsibility shown by the "resident" PWC users on Holland Pond, feels that it needs to look at the issues raised in this proceeding in a broader context. Holland Pond is relatively isolated, and large portions of its shoreline and surrounding environs are essentially undeveloped and are part of Vermont's largest wildlife management area. The Pond is not heavily used for high speed motorboat use. In short, it affords wilderness-like recreational experience at a level available at relatively few Vermont lakes.

Although some high speed motor boat use occurs on the Pond, and a portion of its shoreline is developed, it is a body of water where most of the time the increasingly unique experience on Vermont lakes of the enjoyment of natural surroundings in a setting of relative quiet solitude is still possible. Therefore, the Board has concluded that if PWC usage is not regulated before it becomes more firmly established, the opportunity to preserve the very characteristics that make Holland Pond unique and important as a public asset could be lost (§ 2.11 VUPW Rules).

2. The PWC users resident on Holland Pond have used their vessels responsibly and set their own "rules" limiting usage to between 10 a.m. and 4 p.m., avoiding loon nesting sites. To prohibit the continued use of PWC under such circumstances would send the message that being responsible does not matter.

The Board respects the efforts at self-regulation by the PWC users "resident" on Holland Pond. Indeed, the impact of the proposed rule on those individuals is unfortunate and perhaps in some sense "unfair." However, PWC usage on the Pond is not and cannot be limited to shoreland residents. It is unrealistic to think that with the inevitable increase in transient PWC users, these self-imposed "rules" would continue to define the norm for PWC usage on Holland Pond. The Board's obligation is to make its decision taking a long term view and considering Holland Pond in context with Vermont's water resource as a whole, as provided for in § 2.2 of the Vermont Use of Public Waters Rules:

The public waters will be managed so that the various uses may be enjoyed in a reasonable manner, considering safety and the best

interests of both current and future generations of citizens of the state and the need to provide an appropriate mix of water-based recreational opportunities on a regional and state-wide basis.

As explained in #1 above, the Board is convinced that this rule is needed to insure the preservation of some vestige of the increasingly rare values and experiences that Holland Pond still provides in ways that many other Vermont lakes no longer are capable of providing.

3. The regulation of PWC on Holland Pond would reduce tax revenues to the Town of Holland.

The Board understands the Town of Holland's concern about protecting its tax base. However, the Board does not believe that its proposed rule would adversely affect the Town's tax base. In fact, if the rule has any affect in this regard, the Board believes that it would probably, over the long run, enhance the property values on privately owned land around the Pond.

The Pond currently is not heavily used by PWC, and therefore it is difficult to see how this rule would have any appreciable adverse impact on the value of shoreland property. While it is possible that some individuals might be less inclined to purchase property on lakes with a prohibition on PWC, by the same token such a prohibition might attract others. Preserving the Pond's current character, which is an increasingly scare "resource," probably adds to the uniqueness and therefore value of privately owned shoreland property, especially over the long term. On balance, there is no reason to believe that this rule would ultimately lower the property's market value and therefore the Town's tax revenues.

4. PWC should not be restricted on Holland Pond, because newer models of PWC are becoming quieter, and in any event louder sources of noise from the Pond's shoreland are common, including chainsaws and some social events.

The Board does not disagree that newer models of PWC may be quieter and that they are not the only source of noise on or near Holland Pond. However, the Board does not agree that these are reasons not to proceed with the proposed rule for the reasons outlined in #1 above.

The intent of this rule is not to create a totally quiet environment for Holland Pond, but rather to prohibit a recreational use of public waters that, as it commonly is practiced today, is simply incompatible with preserving the existing character of Holland Pond.

Issues of regulating noise associated with land use, when and where needed, are largely matters for local government to address and in any event are well beyond this Board's preview.

5. PWC should be prohibited on Holland Pond because of their potential to impact successful loon nesting and/or loon chick survival rates.

The Board is concerned with the protection of loon breeding populations, as evidenced by § 3.6 of the VUPW Rules, which applies to Holland Pond and all other Vermont lakes with breeding loon populations. However, the Board has not been convinced by the testimony in this proceeding that the enhancement of loon nesting and/or chick rearing success is a basis for a general prohibition of PWC on this Pond. While under some circumstances PWC usage could be detrimental to loons, the same can be said about virtually all other forms of recreation.

In this proceeding the petitioners have failed to demonstrate a logical nexus between the regulation of PWC on the Pond to the exclusion of all other recreational uses, and the protection of loons. Accordingly, although it has decided for other reasons to prohibit PWC, the Board's decision is not based on this argument.

6. There are too many regulations already. Any problems that may arise in the future can and should be resolved locally - "if it ain't broke don't fix it."

The issue here is whether this regulation on this lake is appropriate. For the reasons outlined above, the Board feels this rule is needed at this time to preserve the character of one of an increasingly small number of Vermont lakes, particularly of this size, that retain certain wilderness-like characteristics that are inherently incompatible with PWC usage.

When the issue of preserving some vestige of what was until fairly recently a common part of Vermont's heritage is viewed from the perspective of Vermont's water resources as a whole, and with

consideration for future generations as well as the present generation, the Board believes that, rule is warranted.

Findings

1. The Board adopts in their entirety the findings previously issued in this matter on September 16, 1994 by its hearing referees William Boyd Davies and William Bartlett.
2. The Vermont Agency of Natural Resources (ANR), which has primary responsibility to plan for the management and protection of the Vermont water resources (10 V.S.A. § 1423), supports the rule requested by the petition. ANR manages the 9,500 acre Bill Sladyk Wildlife Management Area, which extends to the Pond's shoreline on the north end and surrounds the Pond's privately owned shoreland.
3. The Pond adjoins the largest wildlife management area in Vermont. Its size, remote location and the limited development within its boundaries provide an opportunity to manage the area including the Pond for low intensity uses. This area, including the Pond, provides the outdoor recreationist with a "wilderness-like" experience not easily matched in most other wildlife management areas. ANR concludes that the prohibition of personal watercraft on Holland Pond would be consistent with its own management objectives for the adjacent wildlife management area.

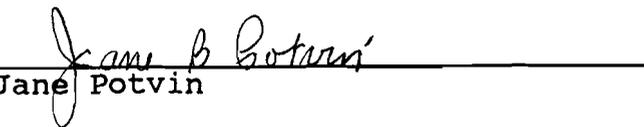
4. There are numerous other lakes in this region of Vermont where the use of personal watercraft would still be allowed. Since the volume of personal watercraft use at Holland Pond is very low, any displacement of this use to other lakes in the region would have minimal impact.

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

Water Resources Board


Mark DesMeules


Steve Dycus


Jane Potvin

Board member opposed:

William Boyd Davies

Board member not participating:

Ruth Einstein

