

**STATE OF VERMONT  
Water Resources Board**

**In re: Petition for the adoption of  
Rules regulating the use of  
Lake Bomoseen, Towns of  
Castleton and Hubbardton**

**10 V.S.A. § 1424**

**Decision**

In May of 1995 a petition was filed by the Lake Bomoseen Association (LBA) under the provisions of 10 V.S.A. §1424, seeking the adoption of the following rules for Lake Bomoseen:

1. The use of any vessel for residential purposes is prohibited on Lake Bomoseen. For purposes of this rule, "residential purposes" includes, but is not limited to sleeping overnight on a vessel.
2. The maximum speed limit for vessels on Lake Bomoseen shall be 45 miles per hour from 6:00 a.m. until 9:00 p.m. and 25 miles per hour from 9:00 p.m. until 6:00 a.m.
3. Anchoring or rafting of vessels within 300 feet of the shoreline is prohibited in the following areas of Lake Bomoseen:
  - (a) Eagle Bay - west of Rabbit Island and north of the south end of Rabbit Island.
  - (b) Indian Point - from the green entry buoy marking the entrance of the Bomoseen Channel, in an easterly direction until said line intersects the east shore of the lake.
4. The use of personal watercraft (i.e. jet skis) is prohibited on Lake Bomoseen.

The Vermont Water Resources Board (Board) conducted a public hearing on this petition on August 3, 1995, beginning at 7:00 p.m. at the Florence Black Science Auditorium, Castleton State College, Castleton, Vermont and established October 2, 1995 as the deadline for filing written comment. On the basis of the information filed in the petition, comment received at the public hearing and in writing, the Board has decided to deny this petition for the reasons indicated below.

Discussing the most contentious issue first, the petitioners have failed to show that proposed rule 3, restricting anchoring and rafting at two specific locations on the Lake, is in the public interest, for a variety of reasons. We agree with the

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public interest, for a variety of reasons. We agree with the Castleton Selectboard's characterization of this proposed rule as an effort to privatize a public resource. While there may well be a problem at Indian Point and Eagle Bay that warrants some level of management, regulations excluding all public use is not a solution that is "in the public interest." With regard to the Board's own rules for considering petitions of this nature, the Board concludes that the LBA has failed to show that proposed rule 3 is consistent with a number of key provisions of the Vermont Use of Public Waters Rules (VUPW Rules).

The petitioners have failed to show that proposed rule 3 meets the provisions of § 2.2 of the VUPW Rules which provides, in part, that a petitioner must demonstrate that a proposed rule meets the following standard:

The public water 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 statewide basis.

While the potential benefits to adjacent shoreland property owners (which this Board agrees are a legitimate consideration in such matters) are clear, the petitioners have not shown how the specific rule requested in this petition meets the above standard.

The petitioners have also failed to show that proposed rule 3 meets the provisions of §§ 2.6 or 2.7 of the VUPW Rules:

Use conflicts shall be managed in a manner that provides for all normal uses to the greatest extent possible consistent with the provisions of Section 2.2 of these rules.

When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts.

The Board is not persuaded that proposed rule 3 either provides for all normal uses "to the greatest extent possible" or that it represents "the least restrictive approach practicable that adequately addresses the conflicts." Even if the Board were to agree that the problem that this rule seeks to address

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warrants regulation (a conclusion this Board has not yet reached), it is not clear that a total prohibition of all boats within 300 feet of the shoreline on every day of the boating season is warranted. There is no indication that the LBA has analyzed the problem it seeks to address to find either a practicable nonregulatory solution (i.e. education) or, failing that, a regulatory solution that is carefully tailored to be "the least restrictive approach practicable."

The Board has denied proposed rule 1, pertaining to the residential use of vessels, because it sees no reason to adopt such a rule at this time. The residential use of vessels is currently prohibited on Lake Bomoseen under existing state law (23 V.S.A. § 3311(g)). It is true that this statutory prohibition might be overcome at some point in the future by the construction of a boat sanitary waste pumpout facility on Lake Bomoseen, and that if this occurred it might lead to people actually using vessels for residential purposes on the Lake. The same speculation might be made about any large lake in Vermont. The Board feels that these concerns are, at this point at least, too speculative to warrant the adoption of regulations. If in fact these concerns do materialize to an extent that LBA believes regulation is warranted, the Board would consider a request for a rule of this nature.

The Board has decided not to proceed with the adoption of proposed rule 2, establishing a day time and night time speed limit, on the grounds that the petitioners have not shown that there is a safety problem or a recreational use conflict on Lake Bomoseen sufficient to warrant addressing this issue as a lake-specific rule. It is simply not clear, based on the record in this proceeding, that there is a real problem on Lake Bomoseen that is sufficient to warrant this regulation. While the petition asserts that there have been four boating accidents on the Lake in the past three years, there is no evidence that these accidents were the result of speeding in excess of the proposed rules.

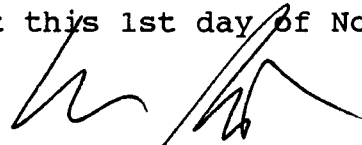
Finally, the Board has decided to deny proposed rule 4, seeking the total prohibition of personal watercraft (PWC) on Lake Bomoseen. Again, the petitioners have not demonstrated that there is a public safety or recreational use conflict of sufficient magnitude on this Lake to warrant additional regulation of personal watercraft, let alone a total prohibition. Specifically, the petitioners have provided no information to support their stated concern that large numbers of personal watercraft will be displaced from nearby lakes to Lake Bomoseen by the provision in the VUPW Rules potentially limiting PWC to lakes with a surface area of greater than 300 acres.

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First of all, the extent to which this potential prohibition will apply to Vermont lakes, including those in the vicinity of Lake Bomoseen, has not yet been determined. The potential prohibition does not take effect until 1997, and only then if the Board is not successfully petitioned to allow PWC use to continue. Accordingly, it is not certain at this time that any significant number of PWC will be "displaced" and if so that they are likely to begin coming to Lake Bomoseen.

Secondly, there are only a very limited number of lakes on which PWC use might be prohibited within easy commuting distance of Lake Bomoseen. The Board finds it hard to believe, in the absence of any direct evidence that any such displacement will have a significant impact on Lake Bomoseen, the largest lake totally within the state of Vermont.

Dated at Montpelier, Vermont this 1st day of November, 1995.



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William Boyd Davies  
Chair

Board members concurring:

William Boyd Davies  
Stephen Dycus  
Ruth Einstein  
Gail Osherenko  
Jane Potvin