

STATE OF VERMONT
WATER RESOURCES BOARD

In re: Petition by the Deerfield Valley Sportsmens Club for the amendment of existing 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, including the findings issued by its hearing referees dated August 21, 1995, the Water Resources Board (Board) has decided (add language about the vote when taken) to grant, with modifications, the amendment to the existing rules for Somerset Reservoir requested by the petition. The language of the existing rules for Somerset Reservoir are shown below, annotated to indicate the Board's final proposed amendments. The language the Board proposes to add is underlined, and the language the Board proposes to delete is enclosed by brackets. As indicated, only rule "c" is being amended.

- a. The use of personnel watercraft (jetskis) is prohibited.
- b. Waterskiing is prohibited.
- c. The use of vessels powered by internal combustion motors [north of "the narrows" near the middle of the reservoir] at speeds in excess of 10 miles per hour is prohibited except as provided for in rule d below.
- d. The prohibition established by rule c 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 making this decision, the Board has decided to proceed with the adoption of what was termed a "compromise" proposal offered at the August 8, 1995 public hearing. The Board's final proposal would amend its current rules in two ways: (1) to allow low speed motorized boating on the north end of the Reservoir; and (2) to allow only low speed motorboat use on the southern end of the Reservoir, where at present some forms of high speed motorboat use are allowed. As with any compromise, this decision will not satisfy everyone. However the Board believes that this result is consistent with the normal or established uses of the Reservoir and with the policies the Board has adopted for

addressing conflicts between recreational uses as set forth in Section 2 of the Vermont Use of Public Water Rules (VUPW Rules).

It would be the Board's hope that with a good faith effort by all users of the Reservoir, these amended rules will provide the basis for cooperative coexistence, avoiding what might otherwise develop into an artificial conflict between the Reservoir's predominant existing "quiet" or "low impact" users, anglers and paddlers. At the same time, the amended rules better protect both of these recreational uses from the potential impact of high speed motorboat use in the southern portion of the Reservoir.

In making this decision, the Board has overruled the following substantial arguments and considerations:

1. **The Board should not amend its existing rule prohibiting internal combustion motors north of the narrows because this area is 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 has overruled this argument for several reasons. First, and most importantly, on the basis of credible testimony by supporters of the current petition, the Board agrees that given historic and current recreational use patterns, a total prohibition of internal combustion motors on the northern portion of the Reservoir is inconsistent with the Board's own policies (Section 2 of the VUPW Rules) and potentially counterproductive to the goal of managing the Reservoir as a "quiet lake." Specifically the Board agrees with the argument that its current rules need to be amended to be consistent with §§ 2.6 and 2.7 of the VUPW Rules, which provide:

§ 2.6 Use of 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.

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

As a result of public comment in response to the current petition, the Board has a better perspective on number of important factors regarding the established pattern of recreational uses of the Reservoir.

First of all, anglers and paddlers alike have historically used the northern portion of the Reservoir to a much greater extent than the southern portion of the Reservoir. Therefore, the northern portion of the Reservoir, which is roughly two-thirds of its surface area, represents an even greater proportion of the recreational value of the Reservoir. This means that the impact of the current rule "c" on anglers, most of whom use vessels powered by internal combustion motors, is more significant than previously understood. While the Board agrees that some anglers have overstated that impact, it seems clear that the current rules would be a significant impediment to anglers seeking to fish in the north end of the Reservoir in their customary manner.

Secondly, it is not clear that there is an existing or inherent level of conflict between the use of low speed motorized vessels for fishing and the use of nonmotorized boating that warrants the total prohibition of all uses of internal combustion motors north of the narrows. The intensity of recreational use of the Reservoir due to its remote location is still very limited (referee finding 7). Thus, much of the time the potential for "conflict" between anglers and paddlers on Somerset Reservoir is very low, if indeed a true conflict actually exists between these two uses. Even if such a conflict does exist, it is unclear that it occurs to an extent that warrants the level of regulation provided for under existing rule c.

In fact, it is the Board's sense that retention of the total prohibition of motors in the northern portion of the Reservoir could create more conflict between anglers and paddlers than it resolves. It might serve to polarize two potentially compatible recreational uses, both of which appear to share a common goal of having the Reservoir managed to accommodate what have been termed "quiet" or "low impact" uses.

If a good faith effort to achieve that common goal under the auspices of the proposed amendments proves unsuccessful, both user groups have shown they are familiar with the petitioning process. However, the Board believes that the emphasis at this point should be on trying to insure that these two quiet uses can coexist as a positive example of a multiple use quiet lake.

- 2. The Board should not amend its existing rule prohibiting internal combustion motors north of the narrows in order to protect wildlife, especially bald eagles, osprey or loons.**

The Board agrees that the Reservoir should be managed for wildlife as well as human uses, and with the importance of protecting such values (see §§ 2.2 and 2.3 of the VUPW Rules).

However, in this proceeding no real evidence was presented by any credible source with expertise in the area of wildlife habitat to show that these concerns warrant the retention of the total prohibition of internal combustion motors in the northern end of the Reservoir. Protection of wildlife habitat was not part of the basis on which the Board adopted this rule in the first place.

- 3. If the Board allows the use of internal combustion motors north of the narrows, it should adopt 5 m.p.h. speed limit rather than a 10 m.p.h. speed limit.**

This comment was unique to the written comments of ANR, whose views in these matters the Board respects. However, after careful consideration the Board has overruled this comment for the following reasons. First, the real issue in this proceeding was whether or not to allow the use of internal combustion motors north of the narrows, not whether the speed limit should be 10 or 5 m.p.h. While some people opposed the use of internal combustion motors north of the narrows, no body other than ANR opposed the 10 m.p.h. speed limit proposed by the petitions. Since the Board has no public comment, other than from ANR, on this question, it believes that the 10 m.p.h. speed limit is reasonable. Moreover, given the size of the Reservoir a 10 m.p.h. speed limit allows anglers to reach or return from the north end in approximately 30 minutes, whereas at 5 m.p.h. the same trip would take twice that long. While the Board understands ANR's point that 5 m.p.h. is consistent with other low speed lakes, the issue here is what is appropriate for Somerset Reservoir. Given the Reservoir's size and its historical use pattern, the Board sees the 10 m.p.h. speed limit as reasonable.

- 4. The Board should allow the use of internal combustion motors north of the narrows at speeds of 10 m.p.h. but should not impose such a speed limit south of the narrows.**

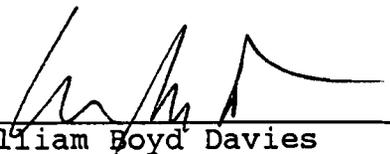
The Board decided in 1994, when it adopted the current rules for Somerset Reservoir, that regulation of this unique and important recreational resource was warranted to insure that high speed motorboat uses not conflict with the established or normal uses of the Reservoir, including angling and paddling. However, at that time the Board rejected a horsepower limitation as too arbitrary, and it suggested that a speed limit might be a more appropriate means of managing motorboat uses.

Considering the testimony presented in response to both the 1994 petition and the 1995 petitions, the Board believes that a

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10 m.p.h. speed limit on the southern end of the Reservoir is essential to insure its future management as a "quiet" or "low impact use" lake. Such a speed limit does not conflict with any normal use of the Reservoir and in fact insures the protection of those uses. It will also make the regulation applicable to this Reservoir much easier for the users to understand, that better understanding will help insure better compliance and, if needed, enforcement.

Dated at Montpelier, Vermont this _____ day of November, 1995.



William Boyd Davies
Chair

Board member concurring
William Boyd Davies
Stephen Dycus
Ruth Einstein
Gail Osherenko
Jane Potvin