

STATE OF VERMONT
Water Resources Board

In re: Petition seeking the
amendment of rules
regulating the use of
Somerset Reservoir
Towns of Stratton and Somerset

10 V.S.A. §1424

BACKGROUND

In 1994 the Vermont Water Resources Board (Board) was petitioned to adopt rules regulating the use of Somerset Reservoir under the provisions of 10 V.S.A. §1424. Following a public hearing, the opportunity for written comment and review by the Legislative Committee on Administrative Rules, the Board adopted rules in response to the 1994 petition.

In the spring of 1995 the Board was petitioned by the Deerfield Valley Sportsmans Club (1995 petition) to amend the rules adopted in response to the 1994 petition to allow the use of internal combustion motors north of the narrows at speeds not exceeding 10 miles per hour. The amendment requested by the 1995 petition is shown by the underlined language in rule c below:

- a. The use of personal watercraft (jetskis) are 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 requires otherwise.

In response to the 1995 petition, the Board proposed the amendment requested by the petition and scheduled a public hearing for August 8, 1995 at the Stratton Town Clerk's Office to receive public comment. The Board also established September 8, 1995 as the deadline for the filing of written comment.

Representing the Board at the August 8 hearing were Board Chair William Boyd Davies 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 August 8, 1995, 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 September 8, 1995, to file written comments as to the thoroughness and accuracy of the findings. In addition, all persons whether or not they were at the August 8, 1995, hearing have until September 8, 1995, 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 September 8, 1995. All persons attending the public hearing and/or filing written comments will be notified of any final action in this matter.

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 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 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.

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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, 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. Its remote location and lack of virtually any development in the immediate vicinity of the Reservoir gives it a wilderness-like character.

7. The Reservoir's normal uses are for fishing, swimming, boating by both motorized and nonmotorized vessels, wildlife observation, and the enjoyment of its aesthetic value and quiet solitude. While the entire Reservoir has traditionally been used for all of these purposes, the area north of the narrows is the most highly valued and therefore has been the most highly utilized by each of these normal uses.

8. The portion of the Reservoir north of the narrows is more attractive to all users due to a number of factors including: it is more remote from the access area, it is more aesthetically interesting because its shoreline is more convoluted, it contains more diverse habitats including several wetland areas.

9. Due to the relative remoteness of the Reservoir, the intensity of its use for recreational purposes is relatively low compared to other bodies of water of similar size. It is not uncommon for there to be only one or two vessels on the entire Reservoir at any given time during a summer's weekday. On weekends the use is higher but on one recent weekend day only 3-5 vessels were observed in the northern portion of the Reservoir.

10. Motorboat use on the Reservoir has traditionally been associated with fishing and other recreational uses not normally requiring the operation of vessels at high speeds such as sightseeing, access for hunting, and picnicking.

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

12. At the August 8, 1995 public hearing, thirty six people signed the attendance list of whom twenty seven testified.

13. The proponents of the amendment to the current Somerset Reservoir rules as requested by the petition offered the following arguments in favor of their position:

a. The prohibition against the use of internal combustion motors north of the narrows is overly restrictive. There is no conflict between nonmotorized users and low speed motorized users of the Reservoir, that warrants a total prohibition of internal combustion motors north of the narrows.

b. The proposed amendment is needed to make the Somerset Reservoir rules consistent with §2.2 of the Vermont Use of Public Waters Rules (VUPW Rules) in that the use of internal combustion motors north of the narrows was a normal use of the Reservoir prior to regulation.

c. The proposed amendment is needed to make the current Somerset Reservoir Rules consistent with §2.6 of the VUPW Rules which provides that "use conflicts shall be managed in a manner that provide for all normal uses to the greatest extent possible ..."

d. The proposed amendment is needed to make the current Somerset Reservoir Rules consistent with §2.7 of the VUPW Rules which provides that:

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

e. The current Somerset Reservoir rules may violate the Americans With Disabilities Act.

f. The current Somerset Reservoir rules increase potential boating safety problems because under certain weather conditions, most notably high winds, the operation of vessels north of the narrows without internal combustion motors can be dangerous.

g. Electric motors are often not capable of powering even the relatively small vessels commonly used for fishing on the Reservoir in even light winds. The purchase of such motors and associated equipment may cost several hundreds of dollars to purchase per boat owner.

h. Two-thirds of the surface area of the Reservoir is located north of the narrows.

i. The use of vessels powered by internal combustion motors at low speeds are "low impact users" who, like those who enjoy non-motorized boating, seek to avoid the noise, large wakes, and risk of collisions often associated with high speed boating.

j. The amendments requested by the 1995 petition are 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."

14. The opponents of the amendments sought by the petition offered the following arguments in support of their position:

a. Canoeists and other nonmotorized boaters have no other bodies of water of any appreciable size in southern Vermont on which to recreate away from all forms of motorized boat use. The north end of Somerset Reservoir should be reserved for such a recreational experience in southern Vermont.

b. The safety issue under high wind conditions raised by proponents of the amendment is overstated. Canoeists and other nonpower boaters always need to take responsibility for themselves in terms of weather conditions often on bodies of water much larger than Somerset Reservoir. The current rules would not prevent the use of internal combustion motors in the north end of the Reservoir during severe weather conditions.

c. Human uses of the Reservoir should not be the only consideration. Regulation is needed to protect some wildlife uses, especially by eagles who may be even less tolerate of human interference than loons or osprey. These wildlife uses are impacted more by the number of people using the north end of the Reservoir rather than whether the use is by motorized or nonmotorized vessels, however access by motorized vessel encourages access by more people.

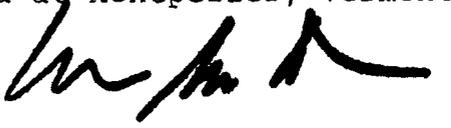
d. The Board made to right decision in response to the 1994 petition and should not change its mind. The existing rules do not unduly restrict fishing and other normal uses.

15. Speaking only for himself, Alex Wilson, the spokesperson for the 1994 petition, testified that while he personally prefers the current rules, as a practical matter recreational uses on the Reservoir will need to be managed through cooperative, self-policing by all recreational users and therefore offered the following proposal as a "compromise":

That the current Somerset Reservoir rules be amended to allow the use of internal combustion motors on the entire Reservoir in return for a Reservoir-wide 10 miles per hour, no disturbing wake, speed limit.

16. In a "straw poll", those in attendance at the August 8 hearing indicated a relatively high level of support for the suggested compromise outlined in finding 15 alone. However some of those present indicated their opposition to the compromise and some indicated no position on the compromise.

Dated at Montpelier, Vermont this 21st day of August, 1995.



WILLIAM BOYD DAVIES
Hearing Referee



WILLIAM BARTLETT
Hearing Referee