

**STATE OF VERMONT
WATER RESOURCES BOARD**

In re: Petitions to amend the
current rules regulating
the use of Waterbury
Reservoir, Towns of
Waterbury & Stowe

10 V.S.A. § 1424

BACKGROUND

The Vermont Water Resources Board (Board) has previously been petitioned under 10 V.S.A. § 1424 to adopt rules for Waterbury Reservoir (the Reservoir) in 1988 and 1993. The current rules regulating the use of the Reservoir were adopted by the Board in 1989.

In May of 1996 the Board received two separate petitions filed by the Coalition on Waterbury Reservoir (Coalition) and by the Friends of Waterbury Reservoir (Friends). Both petitions sought to amend the current rules and in aggregate offered four alternative proposals (the so-called four options) for the expansion of the existing 5 miles per hour, no wake zones in the northern and eastern arms of the Reservoir, and changes in the current method of regulating water ski slalom courses.

In response to the two petitions filed in May of 1996, the Board proposed the four alternative proposals requested and, following public notice, held a public hearing on September 4, 1996, at 7:00 p.m. at the Vermont National Guard Armory in Waterbury, Vermont. The Board established September 13, 1996, as the deadline for filing written comment.

DECISION

On the basis of its record in this proceeding, the Board decided on January 8, 1997, to proceed with the adoption of rules reflecting the approach generally outlined by "option two" of the Coalition petition with some modifications.

Accordingly the Board will proceed with the adoption of the following amendment to its current rules regulating the use of Waterbury Reservoir in Appendix B of the Vermont Use of Public Waters Rules (VUPW Rules):

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe**
Page 2 of 11

- [a.] Vessels powered by motor shall not exceed five (5) miles per hour or create a disturbing wake in that portion of the north arm of Waterbury Reservoir northeast of the confluence of Cotton Brook.
- b. Except when authorized by the Department of Public Safety under 23 V.S.A. Section 3316(a), vessels powered by motor shall not exceed five miles per hour or create a disturbing wake in the bay on the east arm of Waterbury Reservoir on which the Waterbury Center Day Use area is located.
- c. The siting of all water ski slalom courses in Waterbury Reservoir must be approved by the Agency of Natural Resources.]
 - a. Except as provided for in parts c or d of this rule, vessels powered by motor shall not exceed five (5) miles per hour or create a disturbing wake in the following portions of Waterbury Reservoir:
 - (1) that portion of the eastern arm of the Waterbury Reservoir easterly of a line two hundred (200) feet west of the end of the peninsula separating the two bays, as shown on the map on page B-14 of this Appendix, and
 - (2) that portion of the northern arm of the Waterbury Reservoir northerly of the point of land on the western shoreline located approximately 5500 feet southerly of the mouth of Cotton Brook, as shown on the map on page B-14 of this Appendix.
 - b. The two 5 m.p.h. no disturbing wake zones provided for in part a of this rule shall each be clearly marked by buoys.
 - c. The provisions of part a of this rule shall not apply to either:
 - (1) participants in events authorized under 23 V.S.A. Section 3316(a), for a maximum of five events per calendar year for a maximum of two days for each such event, or
 - (2) a single vessel using waterski slalom course number #1. (as identified in part d(1) below)
 - d. Unless otherwise regulated by law, only two water-ski

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 3 of 11**

slalom courses may be located in the Reservoir, as follows:

- (1) one slalom course indicated as course #1, located southerly of the mouth of Cotton Brook within that portion of the northern arm of the Reservoir described in part a (2) of this rule and as shown on the map on page B-14 of this Appendix, and
- (2) one slalom course located at either of the following locations by the person(s) or organization designated by the Board as provided for in part e of this rule:
 - (a) south of the Little River State Park in the southern arm of Waterbury Reservoir, indicated as Course #2, or
 - (b) west of the Blush Hill boat access in the eastern arm of the Waterbury Reservoir, indicated as Alternate Course #2, both as shown on the map on page B-14 of this Appendix.

e. The waterski slalom courses allowed by part d of this rule shall be installed, maintained, and utilized in accordance with the following requirements:

- (1) Each course shall be installed following recognized National Design Standards, shall consist of not more than 26 buoys and include underwater alignment and anchoring devices and shall be configured to occupy not more than 2.0 acres of the Reservoir's surface area, and
- (2) be available for use by any member of the general public, and
- (3) be installed and maintained by a person(s) or organization designated by the Board who shall file with the Commissioner of the Department of Forests, Parks and Recreation (Commissioner) by April 1 each year a certificate of insurance, including proof of liability insurance protecting the State of Vermont to a degree equal to or greater than that provided to the Commissioner by the American Waterski Association and Green Mountain Water skiers in May, 1996.
- (4) except as may be provided for under part c (1) of this rule, waterski slalom course #1 shall be

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 4 of 11**

subject to the following requirements:

- (a) only one vessel at a time shall be allowed to use the course, and
- (b) the course shall be lowered to the bottom of the Reservoir each time that the course is not in active use. While on the water surface, the course shall not be left unattended.
- (5) The granting of approval under this rule by the Board does not relieve the designee from responsibility to comply with any other applicable requirements of federal, state or local law.
- (6) The Board may revoke any designation under this rule for any reason including failure to comply with the above requirements.

FINDINGS

In reaching this decision the Board makes the following findings:

1. The Reservoir is located in the Towns of Waterbury and Stowe. The Reservoir was created by the impoundment of the Little River as a result of the construction of a flood control dam in the 1930's.
2. The Reservoir at its customary summer water level has a surface area of approximately 840 acres. The Reservoir has an irregular, somewhat linear, configuration extending to the north (Northern Arm) and east (Eastern Arm) of the dam.
3. The Reservoir constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
4. The Reservoir is located within the boundaries of the Mt. Mansfield State Forest. The vast majority of the Reservoir's shoreline is undeveloped and is owned by the Vermont Agency of Natural Resources (ANR).
5. Public access to the Reservoir is provided for at several locations, all of which are maintained and managed by ANR: (1) the Little River State Park; (2) the boat access at the dam; (3) the Blush Hill access; (4) the Waterbury

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 5 of 11**

Center Day Use area; and (5) the Little River Canoe access.

6. The Reservoir has a number of natural resources values, including habitat for a variety of fish and wildlife species commonly found in north-central Vermont, as well as some species that are threatened or endangered, such as the Common Loon, the Osprey and the Peregrine Falcon.
7. The Reservoir and its environs are also currently used for a wide variety of recreational purposes including: swimming, fishing, primitive and recreational camping, wildlife observation, enjoyment of quiet solitude, hunting, and boating by both nonmotorized and motorized vessels. Motorboat use on the Reservoir at both relatively high speeds (i.e. waterskiing, personal watercraft) and at relatively low speeds (i.e. fishing) is a normal use. The Reservoir is used by a commercial boat tour operation oriented toward Vermont's tourism industry.
8. The normal fluctuation of the intensity of recreation uses during the summer, with higher levels of use on weekends and holidays than on weekdays, then elsewhere in the state is more pronounced on the Reservoir. In part, this is because there are no shoreland camp owners and therefore no "resident" recreation users to moderate the influx of "transient" recreational uses on weekends or holidays.
9. Relative to most other areas of the state, central Vermont has a relatively limited number of lakes of any appreciable size. The Reservoir is by far the largest body of water available for recreational use in this region of Vermont. The Reservoir's undeveloped shoreline further enhances its attraction for most recreational uses. Accordingly, the Reservoir constitutes a premier destination for a variety of water-based recreational uses.
10. The Reservoir was included in a 1982 recreational management study conducted by the University of Vermont on behalf of the Agency of Environmental Conservation (ANR's predecessor) entitled "Allocation and Management of Vermont Lakes for Outdoor Recreation" (1982 Study). The Reservoir was included in the 1982 Study in response to the Agency of Environmental Conservation's concerns at that time about its "overuse and crowding."

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 6 of 11**

11. The 1982 Study concluded in part that:

"Recreation activity interference by other boaters is greater on Waterbury Reservoir than on Lake Champlain (the 1982 Study's primary focus). This is because the Reservoir's two most popular uses, water skiing and canoeing, have a natural tendency to conflict."

The 1982 Study went on to note that the State is in a unique position to manage surface water use on the Reservoir because of its nearly complete ownership of surrounding land and of all access facilities.

12. Currently ANR estimates that the Reservoir is "exposed to" approximately 60,000 visitors per year.
13. Although some general aspects of the Reservoir's management are discussed in the Mt. Mansfield State Forest Management Plan, no specific management plan for the Reservoir per se has been prepared as contemplated by 10 V.S.A. § 1423.
14. In response to a 1988 petition filed by the Friends, the Board (in 1989) adopted rules establishing two five mile per hour zones on the Reservoir, one in that portion of the northern arm north of Cotton Brook, and the other in the extreme eastern end of the eastern arm adjacent to the Waterbury Center Day Use area. The rules adopted in 1989 also require that water ski slalom courses be sited only with the approval of ANR.
15. Seaplanes occasionally use the Reservoir. However, the record in this proceeding, as in the 1988/89 proceeding, is inconclusive as to whether this use constitutes a "normal use" and whether in any event a rule totally prohibiting seaplanes, as requested by the Friend's 1996 petition, is warranted.
16. Some of the normal uses of the Reservoir, including canoeing and the enjoyment of the Reservoir's wildlife, may be displaced or substantially diminished by other normal uses, including high speed motorized boating, if no further regulation of the Reservoir is considered.
17. The Reservoir needs to be viewed as a "commons" and managed so that no one use is conducted in such a manner that it displaces or substantively diminishes other

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe**
Page 7 of 11

normal uses. The northern portion of the northern arm is the most pristine-like portion of the Reservoir and therefore the most highly valued and suitable area within which to protect more passive forms of recreational use.

18. The regulation of water ski slalom courses on the Reservoir under the current rules has, despite a good faith effort by ANR and others involved in the siting process, proven difficult to administer.
19. Water skiing through slalom courses is a normal use of the Reservoir. For optimum conditions, such courses need to be located where interference from wind generated waves and motorboat wakes is minimized. The location of the so-called Cove Course is ideal from this perspective but has a number of drawbacks, including interference with shore land property owners and other users, shallow water conditions, and its close proximity to the Waterbury Center Day Use Area.
20. The Coalition, which consists of representatives of canoeists, kayakers, and other nonmotorized recreational user groups, has proposed a detailed plan for the location and management of one of two water ski slalom courses on the Reservoir within an area otherwise proposed to be generally restricted to nonmotorized uses and low speed motorboat uses. This plan includes mutually agreed upon restrictions as to the use of a slalom course including the sinking of the course buoys when not in use and an educational effort to promote understanding and acceptance of the Coalition's proposed approach to the management of the Reservoir.

RESPONSIVENESS SUMMARY

In reaching its decision in this matter, the Board considered and overruled the following arguments offered at the public hearing and in writing by the September 13, 1996 deadline for the reasons indicated below (3 V.S.A. § 841(b)).

1. The current rules regulating the use of Waterbury Reservoir adopted by the Board in 1989 are adequate there should be no further regulation, both petitions should be denied.

The Board finds this argument unconvincing. The propo-

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 8 of 11**

nents of this argument have offered little testimony to support their assertion that the current rules are the most appropriate for managing the conflicts between existing recreational uses of the Reservoir. Moreover these assertions ignore recent experience on the Reservoir including significant and on-going disputes regarding the siting of water ski slalom courses.

As noted in the Board's findings, relative to many other areas of the state, central Vermont has a relatively limited number of lakes of any appreciable size. The Reservoir's accessibility via Interstate 89 and Route 100, its several developed boat access areas and its essentially undeveloped shoreline combine to make it highly attractive for most water-based recreational uses, most notably water skiing and canoeing/kayaking.

Recreational use conflicts on the Reservoir have been a concern since at least the early 1980's. A 1982 Study concluded in part that:

Recreational activity interference by other boaters is greater on Waterbury Reservoir than on Lake Champlain (the 1982 Study's primary focus). This is because the Reservoir's two most popular uses, water skiing and canoeing, have a natural tendency to conflict.

In its consideration of the 1993 petition, the Board while declining to adopt the rules then requested, did find that:

Some of the normal uses of the Reservoir, including canoeing and the enjoyment of the Reservoir's wildlife, may be preempted or substantially diminished by other normal uses, including high speed motorized boating, if no further regulation of the Reservoir is considered.

In its 1993 decision the Board encouraged a "dialogue at the local level" with the hope that such an effort would produce a new approach to managing the Reservoir for further consideration. Waterbury Reservoir currently receives approximately 60,000 visitors per year.

The petition filed by the Coalition in 1996 from which the final proposed rules are adapted, represents the results of exactly such a local effort. Significantly, this proposal is the product of a substantial effort by a wide range of user

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 9 of 11**

groups to reach a general consensus on how this public resource can be managed in the public interest. Accordingly the Board has overruled those advocating a status quo approach in favor of the middle option from a comprehensive approach developed through dialogue by the Coalition.

- 2. The current rules regulating the use of Waterbury Reservoir should be amended in the manner proposed by option 1 thereby leaving more of the Reservoir available for unrestricted high speed motorboat use.**

Understandably option 1, which of the three options proposed by the Coalition would leave the largest portion of Waterbury Reservoir still available for high speed motorboat use, was the preferred option for many of those whose primary form of water-based recreation involves such uses. The Board has rejected option 1 because it believes that the current 5 m.p.h. area in the northern arm is much too small to insure that the more passive recreational uses as wildlife observation and canoeing can be enjoyed in a manner substantially undiminished by regular high speed motorboat use. The expansion of this area contemplated under option 1, while a clear improvement, would not create a larger enough area for these highly popular and relatively nonconsumptive recreational uses, particularly in light of the exceptions provided for occasional high speed motorboat use even in these areas.

In rejecting option 1, the Board also rejected the argument that by restricting motorboat use to the remaining portion of the Reservoir that it would be "crowding" high speed motorboat use into such a limited area that it would be unsafe. The fact is that even with the expansion of the 5 m.p.h., no wake zone to the extent contemplated by the Board's final proposed rule, the majority of the Reservoir that is suitable for high speed motorboat use will remain available for such uses. Moreover, there was no creditable testimony presented to suggest that the Reservoir experiences levels of motorboat use on any regular basis that would result in such severe crowding that an unsafe condition would result.

- 3. The current rules regulating the use of Waterbury Reservoir should be amended in the manner proposed by options 3 or 4 thereby restricting high speed motorboat use to a more limited area of Waterbury Reservoir.**

Understandably options 3 or 4, which generally restrict the largest portion of Waterbury Reservoir to use by motorboats at speeds of 5 miles per hour or less, was the preferred

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 10 of 11**

option for many of those whose primary form of water-based recreation does not involve the use of motorboats at all, or uses them at low speeds. Given the established use patterns on the Reservoir and the limited number of alternative bodies of water in the central Vermont area large enough and otherwise suitable for high speed motorboat use, the Board has concluded that the exclusion of such uses in the entire northern arm of the Reservoir is not appropriate.

The limited expansion of the low speed, no wake areas in both the northern and eastern arms of the Reservoir as proposed by the Coalition's middle option (Option 2) as modified in the Board's final proposed rule, represents a reasonable accommodation of the need for this one Reservoir, this "commons" as one speaker at the public hearing put it, to meet the needs of many types of recreational uses, some of which, as noted in the 1982 Study "have a natural tenancy to conflict."

4. The proposal to allow a waterski slalom course in an area where motorboat use is otherwise restricted to 5 miles per hour is impractical and unworkable.

The Board recognizes the apparent dichotomy in allowing a water ski slalom course, and perhaps to a lesser extent other high speed uses on a limited number of occasions, in an area otherwise designated for low speed and so-called "quiet uses." However, the Board has chosen this approach in recognition of several important factors.

First of all this approach was developed over a long period of time by a after extensive and difficult discussions, Coalition of Waterbury Reservoir many different user groups; water skiers, canoeists, kayakers, personal watercraft users, anglers and others. While recognizing that not all the participants in each of the various "user groups" represented in this Coalition may agree with the petition presented, the Board has been convinced that the proposal put forth an option 2 as modified in the final proposed rule is a workable approach and should be given a fair opportunity to succeed.

5. The use of the Reservoir by seaplanes should be prohibited.

It may well be that the use of portions and perhaps all of Waterbury Reservoir by seaplanes should be restricted and perhaps even prohibited as requested in option 4. However, the Board does not feel that it has been presented with

**Petitions to amend the current rules regulating the use of
Waterbury Reservoir, Towns of Waterbury and Stowe
Page 11 of 11**

sufficient information in this proceeding to make this judgment. Clearly the major focus of this proceeding was with regard to the other issues discussed above and accordingly, the Board declines to further consider as part of this rulemaking the prohibition of the use of seaplanes on Waterbury Reservoir.

Dated at Montpelier, Vermont this 8th day of January, 1997.

Vermont Water Resources Board by



William Boyd Davies, Chair

Board members concurring

William Boyd Davies
Stephen J. Dycus
Ruth Einstein
Gail Osherenko
Jane B. Potvin

