

STATE OF VERMONT  
WATER RESOURCES BOARD

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In re: Proposal to amend the  
Current rules regulating  
Recreational uses of Little  
Lake, Town of Wells and  
Lily Pond, Town of Poultney

10 V.S.A. § 1424

BACKGROUND

Lily Pond has a surface area of 21 acres. Little Lake has a surface area of 177 acres. Lake St. Catherine has a surface area of 883 acres. Both Little Lake (Little Pond) in the Town of Wells and Lily Pond in the Town of Poultney are connected to Lake St. Catherine by navigable channels that allow vessels to travel between these bodies of water. Since 1980 the Vermont Water Resources Board (Board) has adopted rules under 10 V.S.A. § 1424, managing these three bodies of water in an integrated fashion.

The Board first adopted the Vermont Use of Public Water Rules (VUPW Rules) in October of 1994 under the provisions of 10 V.S.A. § 1424. Section 3.3(a)(1) of the VUPW Rules provided that, unless modified on a lake-specific basis in response to a petition, prior to May 1, 1997, the operation of personal watercraft (PWC) were prohibited on lakes, ponds and reservoirs with a surface area of less than 300 acres. Appendix A of the VUPW Rules indicates how the VUPW Rules apply to specific lakes and includes related lake-specific information including surface area. The VUPW Rules as proposed and subsequently adopted in 1994 identify Little Lake and Lily Pond as being bodies of water with surface areas of less than 300 acres and therefore the use of PWC is prohibited on those bodies of water. PWC are allowed to operate on Lake St. Catherine.

In May of 1997 it was brought to the Board's attention that a number of shore land property owners on Little Lake and on Lily Pond have historically operated PWC on Lake St. Catherine using the navigable channels to obtain access from Little Lake and Lily Pond. Furthermore the prohibition on PWC usage on Little Lake and Lily Pond would require these users to trailer their PWC to access areas on Lake St. Catherine at considerable inconvenience and was contrary to the Board's established practice of managing the three bodies of water in an integrated manner.

In response to this matter being brought to its attention, the Board on its own motion proposed, for purposes of receiving public comment, to amend the VUPW Rules to allow PWC to operate on Little Lake and Lily Pond at speeds not exceeding five (5)

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miles per hour for purposes of obtaining access to, and returning from, Lake St. Catherine. The Board held a public hearing on this proposed amendment on August 6, 1997, in Poultney, Vermont. The Board established September 5, 1997, as the deadline for filing written comment.

**DECISION**

On the basis of its record in this proceeding, the Board decided on September 16, 1997, to proceed with the adoption of the amendments it initially proposed concerning the restricted use of PWC on Little Lake and Lily Pond. Accordingly, the Board will proceed with the adoption of the following amendment to its current rules in Appendix B of the VUPW Rules regulating the recreational uses of Lake St. Catherine, Little Lake and Lily Pond: The amendments now being proposed by the Board are underlined.

a. Waterskiing is prohibited in the following waters:

- (1) All portions of Lily Pond and the channel connecting Lily Pond and Lake St. Catherine.
- (2) All portions of the channel connecting Little Lake (also known as Little Pond) and Lake St. Catherine.

b. The operation of vessels powered by motor at speeds exceeding five miles per hour or in such a manner as to cause a disturbing wake is prohibited in the following waters:

- (1) All portions of Lily Pond and the channel connecting Lily Pond and Lake St. Catherine.
- (2) All portions of the channel connecting Little Lake (also known as Little Pond) and Lake St. Catherine.
- (3) Forest House Bay - defined for purposes of this rule as those waters south and southwest of a straight line between the southerly corner of Camp 102 and the northeasterly corner of Camp 110A.
- (4) Hall's Bay - defined for purposes of this rule as those waters north and northeast of a straight line between the southerly corner of Camp 224 and the northerly

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corner of Camp 207.

- (5) Horseshoe Bay - defined for purposes of this rule as those waters west of a straight line between the easterly corner of Camp 38 and northerly corner of Camp 46A.
  - (6) Oxbow Bay - defined for purposes of this rule as those waters west of a straight line between the northerly corner of Camp 21 and the northerly corner of Camp 36.
  - (7) With regard to Forest House Bay, Hall's Bay, Horseshoe Bay and Oxbow Bay, it is permissible for a boat to start and return to its own dock at speeds in excess of five miles per hour for purposes of water skiing. In starting, the boat must head directly out of the safety zone. In returning, the boat must go directly to its dock, at the lowest speed necessary to sustain the skier.
- c. For purposes of this regulation only, the term "channel" as used in rules a and b above, shall mean those waters within and contiguous to Lake St. Catherine which are less than 400 feet in width and which serve to connect that Lake with Lily Pond or Little Lake (also known as Little Pond).
- d. The provisions of Section 3.3 (a)(1) of these rules not with-standing, the use of personal watercraft at speeds not exceeding five (5) miles per hour is allowed on Little Pond and Lily Pond for purposes of obtaining access to, and returning from, Lake St. Catherine.

**FINDINGS**

1. Little Lake (Little Pond) is located in the Town of Wells, has a surface area of 177 acres and is connected to Lake St. Catherine by a navigable channel.
2. Lily Pond is located in the Town of Poultney, has a surface area of 21 acres and is connected to Lake St. Catherine by a navigable channel.
3. Lake St. Catherine is located in the Towns of Wells and Poultney, has a surface area of 883 acres.

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4. Little Lake, Lily Pond, Lake St. Catherine and the navigable channels each constitutes public waters within the meaning of 10 V.S.A. § 1422(6).
5. Persons owning or using shore land property on both Little Lake and Lily Pond operate vessels, including but not limited to PWC, between each of these bodies of water and Lake St. Catherine on a regular, frequent and consistent basis.
6. In recognition of the ability to navigate between of these three bodies of water, the Board since 1980 has managed recreational uses on Little Lake, Lily Pond and Lake St. Catherine in an integrated manner through a common set of rules.

**RESPONSIVENESS SUMMARY**

In reaching its decision in this matter, the Board considered and overruled the following arguments offered at the public hearing and in timely written comments for the reasons indicated below (3 V.S.A. § 841(b)).

1. The proposed amendments do not go far enough and should be expanded to repeal the current provision in the VUPW Rules generally prohibiting the use of PWC on lakes with a surface area of less than 300 acres.

This argument goes far beyond the scope of the initial proposed rule and is essentially one of the major issues discussed in great detail during the adoption of the VUPW Rules in 1994. The Board does not feel it could consider such a sweeping policy change in this proceeding which is limited in scope to making a limited exception to general policy in light of circumstance that appear to be unique to the bodies of water in question. The ability to petition the Board to reconsider current provisions of the VUPW Rules is provided for in 10 V.S.A. § 1424 and related provisions of the Board's Rules of Procedure.

2. Allowing PWC to operate even at five (5) miles per hour on Lily Pond and Little Lake will result in de facto unrestricted PWC usage on these bodies of water, especially Little Lake.

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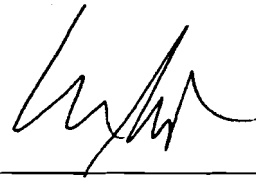
The Board does not agree that allowing PWC to use Lily Pond or Little Lake at 5 low speeds for the limited purpose of accessing Lake St. Catherine will inevitably lead to wholesale violations of the five (5) m.p.h. speed limit. The final proposed rule simply seeks to balance two general policies this Board has established by rule: (1) PWC usage is generally prohibited on bodies of water with a surface area of less than 300 acres; and (2) because of the unique circumstance of their being interconnected by navigable channels, Lily Pond, Little Lake and Lake St. Catherine should be managed in an integrated fashion.

Judging from public comment on the initially proposed rule the Board's approach appears to have generally widespread acceptance. If subsequent events clearly show that the concerns that the Board has overruled at this time, do in fact occur and cannot be adequately addressed in some other manner, the ability to petition the Board to reconsider its current decision remains available under 10 V.S.A. § 1424.

However, the Board sees no reason at this time to assume that its final proposed rule will not prove to be successful.

Dated at Montpelier, Vermont this 14th day of October 1997.

Vermont Water Resources Board



William Boyd Davies, Chair

Board members concurring:

Gerry Gossens  
Gail Osherenko  
Jane Potvin  
Ruth Einstein