

covered 7/14/98

**STATE OF VERMONT  
WATER RESOURCES BOARD**

**In re: petition seeking the  
prohibition of the use of  
personal watercraft on  
Lake Morey, Town of Fairlee**

**10 V.S.A. § 1424**

**Background**

In April of 1998 the Vermont Water Resources Board (Board) was petitioned (the petition) by the Lake Morey Protective Association under the provisions of 10 V.S.A. § 1424 to amend the current rules regulating the use of Lake Morey (the Lake) by adopting a rule prohibiting the use of personal watercraft frequently referred by the brand name "jet skis". Currently the use of personal watercraft is allowed on the Lake by virtue of the fact that other high speed motorboat uses are allowed and the fact that it has a surface area of greater than 300 acres.

In response to this petition, the Board proposed to amend the current rules for Lake Morey as requested by the petition for purposes of receiving public comment. Following public notice, the Board held a public hearing at Fairlee, Vermont on July 21, 1998, and established August 14, 1998, as the deadline for the filing of written comment regarding the proposed amendment.

**Decision**

At its meetings on September 15, 1998, October 6, 1998, and October 27 the Board reviewed and discussed the public comment received both at the public hearing and in writing. At its meeting on October 27, 1998, those Board members present voted on a motion by Gail Osherenko, seconded by Jane Potvin to grant the petition and proceed with the adoption of a rule to prohibit the use of personal watercraft on Lake Morey. This motion failed on a vote of two in favor (Gail Osherenko and Jane Potvin) and two opposed (William Boyd Davies and Ruth Einstein). Accordingly, absent a successful motion to reconsider the action taken on October 27, 1998, the Board will not proceed with the adoption of a rule to prohibit the use of personal watercraft on Lake Morey.

## Findings

1. Lake Morey is located in the Town of Fairlee and has a surface area of approximately 547 acres.
2. Lake Morey constitutes public waters of the state of Vermont within the meaning of 10 V.S.A. § 1422 (6).
3. The Water Resources Board (Board) adopted the current rules regulating the use of the public waters of Lake Morey in 1994 when it adopted the Vermont Use Of Public Waters Rules (VUPW Rules) under 10 V.S.A. § 1424.
4. The current VUPW Rules do not prohibit the use of PWC on Lake Morey. However the current VUPW Rules do prohibit on all lakes including Lake Morey so-called "wake jumping". Specifically §3.2 (b) which requires that PWC and other motorboats shall:

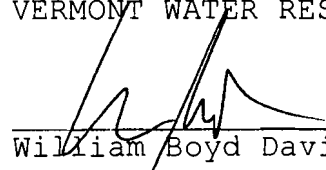
not be operated in such a manner that either the hull of the vessel or its underwater exhaust outlet completely leaves the water as a result of crossing or jumping the wake of any vessel, including its own wake, or for any other reason.
5. The Lake is situated between Echo Mountain on the west and Morey Mountain on the east. Accordingly sound generated upon the Lake's waters is amplified by reverberation between those two mountains.
6. The Lake is used for a variety of recreational uses including but not limited to: boating by both motorized and nonmotorized vessels, fishing and swimming.
7. There are several children's summer camps on the Lake all of which have active water programs involving swimming and nonmotorized boating uses of the Lake.
8. When the VUPW Rules were first being developed in the early 1990's the Lake Morey Association filed written comments in a letter dated August 20, 1993 asserting that the use of personal watercraft on the Lake was a rare occurance was not then a "normal use", as that term was defined in the VUPW Rules on the Lake.
9. A "normal use" is defined in the VUPW Rules (see §5.2) as follows:

Any lawful use of any specific body of public water that has occurred on a regular, frequent and consistent basis prior to January 1, 1993.

10. Testimony at the July 21, 1998 public hearing and written comment show that while PWC have been used on Lake Morey, their use prior to 1993 was not on a regular, frequent or consistent basis and therefore they are not a "normal use" within the meaning of the VUPW Rules.
11. There was extensive testimony by users of Lake Morey that allowing the use of PWC to become an established use is likely to create an unacceptable level of conflict with other normal or established uses of the Lake.
12. With regard to the issue of the emission of unburned gasoline into the Lake due to the operation of PWC, the Board finds that it simply does not have sufficient information regarding the extent to which this may occur, upon which to base its actions in this proceeding.

Dated at Montpelier, Vermont on this 29th day of October 1998.

VERMONT WATER RESOURCES BOARD

  
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William Boyd Davies, Chair

Board members participating:  
Gail Osherenko  
Ruth Einstein  
Jane Potvin