

**STATE OF VERMONT  
WATER RESOURCES BOARD**

**In re: petition seeking the regulation of  
canoeing, tubing and motorized boating on the  
Batten Kill, Town of Arlington**

**10 V.S.A. § 1424**

**Background**

In April of 1998, the Friends of the Batten Kill petitioned the Vermont Water Resources Board (Board) under the provisions of 10 V.S.A. § 1424 to adopt rules regulating canoeing, tubing and motorized boating on a portion of the Batten Kill located in the Town of Arlington.

The petition requested the adoption of rules restricting the use of that portion of the Batten Kill beginning at the Water Street Bridge on Vermont Route 313 and continuing downstream approximately seven miles to the Vermont/New York boundary. The requested restrictions included: (1) time-of-day and day-of-the-week limitations on the use of vessels including inner tubes; (2) limiting access to the river to four specific locations; (3) annual fees for commercially rented vessels including inner tubes; (4) limitations on the use of vessels including inner tubes during low water conditions; and (5) the prohibition of all motorized vessels on the river.

In response to the filing of this petition, the Board in a letter dated May 21, 1998 reported its determination that some of the rules requested in the petition were beyond the Board's authority under 10 V.S.A. §1424, which authority is limited to the adoption of rules regulating the use of public waters. Accordingly, for the reasons discussed in its May 21, 1998 letter, the Board concluded that it did not have the authority to adopt rules that: (1) limit access to the river; (2) require the collection and disbursement of fees; or (3) mandate the installation of flow gauging facilities.

The Board concluded however that it did have the authority to consider some of the rules requested in the petition and accordingly proposed the following rules for purposes of receiving public comment:

The following rules pertain to that section of the Batten Kill in the Town of Arlington between the Water Street Bridge on Vermont Route 313 and continuing downstream to the Vermont/New York border. For purposes of these rules this section of the river shall be known as the "regulated section."

- A. All vessels, including inner tubes, shall be prohibited on the regulated section at the following times and days of the week:
  - (1) Before 10:00 a.m. or after 4:00 p.m. on Fridays, Saturdays, Sundays or Mondays, and
  - (2) At any time on Tuesdays, Wednesdays and Thursdays.
- B. The use of all motors, including electric motors, to power vessels in the regulated section is prohibited.

Following public notice, the Board held a public hearing at Arlington, Vermont on August 4, 1998, and established August 14, 1998, as the deadline for the filing of written comment regarding the proposed rules.

### Decision

At its meetings on September 15, 1998, October 6, 1998, and October 27, 1998, 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 unanimously to deny in part and grant in part the rules proposed in response to the petition. The Board decided it would not proceed with the adoption of part A of the proposed rule but that it will proceed with the adoption of part B of the proposed rule.

The Board has denied that portion of the petition seeking time-of-day and day-of-the-week restrictions on the use of vessels including inner tubes because it is not convinced, based on the testimony at the public hearing and in written comment, that such restrictions on what are normal uses of the Batten Kill are warranted.

The Board has granted that portion of the petition seeking the prohibition of the use of all motors to power vessels on the regulated section of the Batten Kill because such activities are not currently normal uses on this portion of the river and, based on the testimony at the public hearing and in written comments, would not be compatible with established uses on that portion of the river.

Based on the testimony and written comments presented in this proceeding and the history of past efforts to respond to concerns about conflicts between two of the Batten Kill's most popular recreational uses, angling and canoeing/tubing, cooperation and mutual respect between the various uses is required in order for all users to enjoy their chosen activities. Additional regulation however is not the answer to all conflicts. Continued and perhaps enhanced efforts at local cooperation should resolve these conflicts.

The informal agreement among local outfitters to not rent canoes and tubes early in the morning or late in the afternoon is a good start. The community should search for ways to encourage compliance with this agreement. Private owners of publicly used access and recreational locations could especially assist in resolving conflicts by helping to control land uses adjacent to the river.

While there were differing opinions expressed on the petition among the 100 or so people in attendance at the August 4 public hearing, the Board was particularly impressed that everyone participating in the discussion was in fact a friend of the Batten Kill. Accordingly the Board hopes that one outcome of this proceeding will be a renewed effort, perhaps led by a local umbrella organization, through which all the users of the Batten Kill could work collaboratively on the inevitable challenges of managing its many, and sometimes competing, recreational uses.

### Findings

1. The portion of the Batten Kill for which regulation is sought is located between the Water Street Bridge (Vermont Route 313) in Arlington downstream to the Vermont/New York border. This portion of the Batten Kill is located entirely in the Town of Arlington and is approximately seven miles in length.
2. The Batten Kill constitutes public waters of the state of Vermont within the meaning of 10 V.S.A. § 1422 (6).

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3. The Batten Kill is used for a variety of recreational uses including but not limited to: fishing, boating by nonmotorized vessels including inner tubes, swimming and aesthetic enjoyment.
4. Fishing, particularly fly fishing for trout, is a long established use of the Batten Kill which has a local and national reputation for this use. Several Arlington area residents are employed as fishing guides serving those who travel to Vermont to fish the Batten Kill.
5. The quality of fishing in the Batten Kill, both in the area for which regulation is sought as well as further upstream, has declined noticeably in recent years. The Vermont Department of Fish and Wildlife is currently in the final year of a five-year study to evaluate its special fishing regulations for the Batten Kill in light of that decline in order to determine what management responses may be appropriate.
6. The best available scientific information strongly suggests that the biological decline in the Batten Kill fishery is not related to any significant degree to the level of canoeing and tubing in the portion of the Batten Kill for which regulation is sought.
7. The competition for use of the limited resource of the Batten Kill between fishing and canoeing/tubing has had some adverse impact on the quality of the recreational experience for both anglers and canoeists/tubers.
8. Although some overlap clearly does occur, in general, the recreational activities of fishing and canoeing/tubing tend to occur at different times of the day. Fishing is most common early in the morning and late in the afternoon. Canoeing/tubing is most common between mid-morning and mid-afternoon.
9. Canoeing/tubing is a popular summer recreational activity on the Batten Kill. In the Arlington area there are several outfitters who rent canoes and inner tubes to local residents and tourists. Such rental practices sometimes result in relatively large groups of canoeists/tubers traveling downstream in relatively close proximity.
10. There are few, if any, toilet facilities available en route while traveling downstream to those canoeing, tubing or fishing on the Batten Kill.
11. Complaints sometimes associated with those canoeing or tubing, particularly in large groups include: unwelcome use of riparian lands, consumption of alcoholic beverages and lack of proper etiquette. Such conflicts appear to be recurring but sporadic, generally occurring at peak use times.
12. As a result of local discussions held in the early 1990's of the potential for conflicts between canoeing/tubing and fishing, local outfitters have voluntarily agreed to limit the times their clients are "on-river."
13. Sometimes conflicts occur when water levels in the Batten Kill are too low to allow canoeists/tubers to travel easily through shallower stretches of the river. This problem might be better managed if a gauge were installed that would predict when water levels were too low for successful canoeing and tubing.

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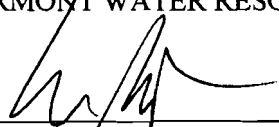
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14. Currently there is no prohibition of the use of motors to propel vessels on the Batten Kill. Such use may have occurred on very rare occasions but is not a normal or established use of the regulated portion of the Batten Kill.
15. Given the shallowness of the regulated portion of the Batten Kill coupled with the nature and intensity of established recreational activities, the use of motors to power vessels is not appropriate and is not compatible with established uses.

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 concurring:

Gail Osherenko

Ruth Einstein

Jane Potvin

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