

**STATE OF VERMONT
WATER RESOURCES BOARD**

**In re: Salem Lake
Town of Derby**

10 V.S.A. § 1424

Background

In July of 1998 the Vermont Water Resources Board (Board) was made aware that the Vermont Use of Public Waters (VUPW) Rules, adopted by the Board under the authority of 10 V.S.A. § 1424, lists the use of personal watercraft (often referred to by the brand name "jet skis") as being prohibited on Salem Lake located in the Town of Derby. This prohibition is due to a clerical error at the Board's office that was inadvertently incorporated into the VUPW Rules when they were amended in the fall of 1996.

The Board gave notice August 12, 1998 that it proposed to correct this error in the current round of amendments to the VUPW Rules thereby allowing the use of personal watercraft to continue on Salem Lake as was originally intended. The Board held a public hearing at Derby, Vermont on September 15, 1998, and established September 22, 1998, as the deadline for the filing of written comment regarding its proposed action.

Decision

At its meetings on 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 proceed with the amendment of the VUPW Rules to correct the error described above. This action will allow the use of personal watercraft to continue on Salem Lake.

FINDINGS

1. Salem Lake, consists of two connected segments sometimes referred to as "Little Salem Lake" and "Big Salem Lake" (collectively Salem Lake). Salem Lake is located entirely in the Town of Derby and has a combined surface area of approximately 764 acres.
2. Salem Lake constitutes public waters of the state of Vermont within the meaning of 10 V.S.A. § 1422 (6).
3. When the Water Resources Board (Board) first adopted the Vermont Use of Public Waters Rules (VUPW Rules) in 1994 those rules provided that the use of personal watercraft would be allowed to continue on those lakes on which high speed motorboat uses were normal (i.e., established) uses and which had a surface area greater than 300 acres.
4. In 1994 and presently Salem Lake is a lake on which high speed motorboat uses are a normal use.

Water Resources Board Decision

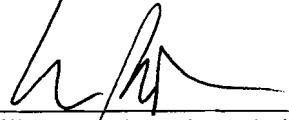
Salem Lake, Town of Derby

Page 2 of 2

5. The Board has never proposed a rule on its own initiative or been petitioned to propose a rule that would restrict or prohibit the use of personal watercraft on Salem Lake.
6. When the Board was amending the VUPW Rules in 1996 in response to petitions involving lakes other than Salem Lake, the use of personal watercraft on Salem Lake was unintentionally prohibited due to a "typographical error" in the amendments adopted that year.
7. The inadvertent prohibition of the use of personal watercraft was first brought to the Board's attention in July of 1998 and eventually led to a proceeding on the Board's own initiative to correct this error.
8. After discussions with the Secretary of State's Office, the Legislative Council and review by the Board's own legal staff, the Board determined that it should give public notice of the error and its intent to take corrective action and to hold a public hearing to allow comment.
9. At the public hearing and in written comment, the Board heard from those who both support and oppose the use of personal watercraft on Salem Lake.
10. At the public hearing and in written comment, the Board heard no compelling reason not to correct its error thereby allowing personal watercraft to continue to use Salem Lake.
11. The Board's action in this matter is without prejudice to its consideration of any future petition regarding Lake Salem concerning personal watercraft or any other matter within the Board's jurisdiction.

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

VERMONT WATER RESOURCES BOARD



William Boyd Davies, Chair

Board members concurring:
Gail Osherenko
Ruth Einstein
Jane Potvin