

# **Use of Public Waters**

**10 V.S.A. §§1421 – 1424  
Natural Resources Board  
Water Resources Panel**

## **Annotated Index of Decisions**

**John H. Hasen  
Melanie M. Kehne**

**Updated through December 2006**

## ANNOTATED UPW DECISIONS

(updated through December 2006)

*As with any annotation index, users of these annotations should read the cited document and not rely merely on the annotation. While the Panel and its counsel have made every effort to insure the accuracy of the annotations in this index, interpretations of cases can vary with the reader. The Panel therefore disclaims any responsibility as to the accuracy of the annotations.*

*You are advised to review the actual Rules and Decisions themselves. These will be found at the Natural Resources Board Water Resources Panel's website when they are electronically scanned. To review the petitions or other documents in the file, please visit or contact the Water Resources Panel's Offices in Montpelier.*

1. When used in these notes, "Board" or "WRB" refers to the former Water Resources Board; "Panel" or "WRP" refers to the Water Resources Panel of the Natural Resources Board, established on January 31, 2005. Act No. 115, §34 (2004).
2. These notes are directed at lake-specific rules that the Board or Panel has adopted, or has declined to adopt, in response to petitions filed under 10 V.S.A. Ch. 49, *Protection of Navigable Waters and Shorelands*, and in particular 10 V.S.A. §1424, *Use of Public Waters*.
3. These notes are not intended to address the general Vermont Use of Public Waters (VUPW) Rules, except as noted herein and except as they relate to procedure or particular waterbodies. The general Rules impose further (and, for some waterbodies, identical) restrictions on waterbody uses.
4. Where a Rule is noted in these annotations but no Decision is noted, there is no Decision in the files to explain the rationale behind the adoption of the rule. This most often occurs in the early (1970s) Board cases.

In some instances, the Board or Panel did not issue a Rule or Rules as a separate document. Rather, the Rules are included within the Decision that the Board or Panel issued for the particular waterbody. Thus, even though an annotation may mention that a Rule was adopted, one may have to look for the wording of the Rule within the Decision which was issued.

5. Unless otherwise stated, a “Decision” refers to a document issued by the Board or the Panel. Unless otherwise stated, a “Memorandum” or a “Preliminary Memorandum” refers to a document issued by the staff of the Board or the Panel or by hearing officers appointed to prepare a preliminary decision on a particular petition.

6. Material in parentheses *following* a reference to a “Rule” or “Decision” or “Memorandum,” etc. is a summary by counsel to the Panel of the content of the document. Where a document is noted, but there is no text in parentheses following the document, the document has not been annotated.

7. Some Rules and Decisions are not signed by the Board but only by the Board’s Executive Officer or Executive Secretary, sometimes with the notation “by Authority of the Water Resources Board,” sometimes without this notation. The Vermont Supreme Court in *In re Buttolph*, 141 Vt. 601 (1982), has held invalid the delegation of authority by the Water Resources Board to its Executive Officer or Executive Secretary to act in its capacity as quasi-judicial decision-maker. There is no indication that the decision is intended to apply retroactively to actions taken or documents signed before its issuance.

Rule 4 of the Water Resources Board’s *Rules of Procedure* allows the Board to assign referees to hear rulemaking petitions and issue proposed decisions. Where the Board specifically adopts and ratifies such Preliminary Memoranda, they may be deemed a decision of the Board itself (although this question has not been ultimately determined by the courts).

A Memorandum or Preliminary Memorandum which is not adopted and ratified by the Board may therefore be of limited or no legal import.

8. Note that when the Water Resources Board adopted the first set of general VUPW Rules in 1995 (1995 VUPW Rules), UPW No. 95-00, effective January 1, 1995, the Board deemed many earlier rules for specific waterbodies to be obsolete or inconsistent with present uses. For example, early rules for many waterbodies included provisions referenced in the UPW Notes 5.13 - 5.16, which the Board subsequently found to serve “no useful purpose.” *In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision (Sep. 26, 1985). When the 1995 UPW Rules were adopted, therefore, many of these earlier rules were repealed. Appendix B, therefore, contains no reference to these earlier, obsolete, inconsistent (and now repealed) rules.

9. Appendix B notes the amendments to the earlier rules with a reference to the 1995 VUPW Rules (UPW No. 95-00); these notes do not include all notations concerning the 1995 amendments.

**10. Note also that several general provisions of the 1995 VUPW Rules cover many of the same provisions that appear in rules for specific water bodies. For example, some rules adopted before 1995 prohibit internal combustion motors on certain water bodies. The 1995 VUPW Rules impose a similar prohibition on such motors on water bodies where such motors were not a normal use before 1993. See Rule 3.5. Appendix B notes that many pre-1995 rules were “Amended” by the 1995 Rules, although the “amendments” in some cases act to reinforce or repeat the prohibition against internal combustion motors on the noted waterbody.**

**As another example, Rule 3.1(c) of the present VUPW Rules allows the prohibitions or restrictions in the general or waterbody-specific rules to be ignored in cases of emergency. Many pre-1995 rules for specific water bodies included a similar exemption (e.g. a prohibition against internal combustion motors on a particular waterbody would not be in force in cases of emergency). The 1995 VUPW Rules amended those pre-1995 waterbody-specific rules to remove those specific exemptions, as Rule 3.1(c) now applies in all situations, whether a waterbody-specific rule exists or does not exist.**

**11. “Adopted” refers to the date on which the Board or Panel voted to adopt the rule. “Filed” refers to the date that the rule was filed with the Secretary of State. “Effective” refers to the effective date of the rule, which is always later than the date the rule was adopted or filed.**

**12. When a rule noted in these notes does not appear in the waterbody-specific rules which appear in Appendix B of the VUPW Rules, or if there is a conflict between a rule noted in these notes and the rules in Appendix B, Appendix B controls.**

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## **I. Policy**

### *10 V.S.A. §1421 Policy*

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, and authorize municipal shoreland zoning bylaws for the efficient use, conservation, development and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions, prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses, preserve shore cover and natural beauty, and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state. (Added 1969, No. 281 (Adj. Sess.), § 13.)

## **II. Authority of Natural Resources Board**

### *10 V.S.A. §1424. Use of public waters*

(a) The board may establish rules to regulate the use of the public waters by:

- (1) Defining areas on public waters wherein certain uses may be conducted;
- (2) Defining the uses which may be conducted in the defined areas;
- (3) Regulating the conduct in these areas, including but not limited to the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;
- (4) Regulating the time various uses may be conducted.

(b) The board in establishing rules shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating and bathing facilities, the scenic beauty and recreational uses of the area.

(c) The board shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the board shall provide for all normal uses.

(d) If another agency has jurisdiction over the waters otherwise

controlled by this section, that other agency's rules shall apply, if inconsistent with the rules promulgated under this section. The board may not remove the restrictions set forth in sections 320 and 321 of Title 25.

(e) On receipt of a written request that the board adopt, amend, or repeal a rule with respect to the use of public waters signed by not less than one person, the board shall consider the adoption of rules authorized under this section and take appropriate action as required under 3 V.S.A. § 806.

(f) By rule, the board may delegate authority under this section for the regulation of public waters where:

(1) the delegation is to a municipality which is adjacent to or which contains the water; and

(2) the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality under the bylaw or ordinance shall be taken to the environmental court. The board may terminate a delegation for cause or without cause upon six months' notice to the municipality.

(Added 1969, No. 281 (Adj. Sess.), § 13; amended 1973, No. 147 (Adj. Sess.), § 3; 1979, No. 113 (Adj. Sess.), § 1; 1981, No. 222 (Adj. Sess.), §§ 27, 28; 2003, No. 115 (Adj. Sess.), § 36, eff. Jan. 31, 2005; 2003, No. 115 (Adj. Sess.), § 37.)

*In re General Amendments*, No. UPW 05-05, Decision at 3 (Oct. 14, 2005) (Act 115, (2003 Adj. Sess.) abolished the Water Resources Board and transferred the former Board's rulemaking authority under 10 V.S.A. §1424 to the Water Resources Panel of the Natural Resources Board)

## **2.1. Extent of Board's/Panel's regulatory authority**

*In re Batten Kill (Arlington)*, No. UPW 98-04, Decision at 1 (Oct. 29, 1998) (10 V.S.A. §1424 does not give Board the authority to adopt rules that limit access to the river, require the collection and disbursement of fees, or mandate the installation of flow gauging facilities)

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 18 (Oct. 25, 2005) (legislature has given to the WRP the authority to promulgate "rules regulating the surface use of public waters." 10 V.S.A. §6025(d)(4); and see 10 V.S.A. §1424)

*In re Fern Lake (Leicester)*, No. UPW 97-02, Decision at 2 (Oct. 14, 1997) (Board has authority to adopt rules regulating the use of "public waters;" regulating activity at a town access area is beyond the Board's authority)

*In re: South Pond (Eden)*, No. UPW 88-03, Memorandum from Attorney

General's Office (Mar. 24, 1989) (discussing whether South Pond is a "public water")

*In re Shelburne Bay Mooring Management Zone (Lake Champlain, Shelburne)*, No. UPW 85-03, Decision at 2 (Sep. 20, 1985) (Board denies portion of petition which pertains to parking area capacity as beyond scope of Board's jurisdiction under 10 V.S.A. §1424)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Opinion of the Attorney General (Jul. 23, 1982) (Board has the authority to regulate the placement of floats in order to address impediments to navigation or boating)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board does not speak to the limits of its jurisdiction, but it nonetheless declines to prohibit use of the lake in conjunction with any commercial enterprise PM lands contiguous to the lake, as this is more properly addressed by the Town in its shoreland zoning regulations)

*In re North Springfield Reservoir (Weathersfield, Springfield)* and *In re Stoughton Pond (Weathersfield)*, No. UPW 71-01, Opinion of the Attorney General (Jul. 30, 1971) (Board has authority to regulate uses on "public waters")

### **III. Procedure**

#### **3.1 Petitions**

*In re Lake Raponda (Wilmington)* No. UPW 72-07, Memorandum (Apr. 7, 1976) (Board cannot initiate rulemaking in the absence of a petition)

##### **3.1.1 When filed**

UPW Rule 2.1(b): "Consideration of petitions filed after May 1 may be deferred until the following calendar year."

##### **3.1.1.1 Requirement that discussions occur prior to filing**

*In re: East Long Pond (Woodbury)*, No. UPW 94-02, Decision at 1 (Oct. 26, 1994) (Board establishes procedure requiring local discussion of issues before petition is filed and to allow Board to hold preliminary hearings before initiating rulemaking)

*In re "Quite Lakes Petition"*, No. UPW 93-03, Letter from staff (Jan. 17, 1995) (failure to perfect petition by deadline results in dismissal by Board)

##### **3.1.2 By whom filed**

10 V.S.A. § 1424(e): “On receipt of a written request that the board adopt, amend, or repeal a rule with respect to the use of public waters signed by not less than one person, the board shall consider the adoption of rules authorized under this section and take appropriate action as required under 3 V.S.A.”

*In re General Amendments*, No. UPW 05-05, Decision at 3 (Oct. 14, 2005) (Act 115, (2003 Adj. Sess.) eliminates the prior requirement that petitions must be filed by at least ten freemen; now a petition maybe filed by a single person)

### **3.1.3 Required information**

*UPW Rule 3.7:*

In addition to the requirements in the Board’s Rules of Procedure, such petitions shall: (1) include the signature, printed name and town in which they are registered to vote for each person signing the petition; (2) identify all normal uses affected by the petition and include a statement as to why the petition complies with the applicable provisions of Section 2 of these rules; (3) describe those actions that the petitioners have taken to review the concerns prompting the petition with local officials and users of the body of water in question.

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 91-02, Memorandum (May 13, 1991) (Board cannot act based on limited information in petition; memorandum states requirements)

*In re St. Albans Bay Mooring Management Zone (St. Albans; Lake Champlain)*, Unnumbered, Letter (May 17, 1988) (Board cannot act based on limited information in petition)

*In re Cole Pond (Jamaica)*, No. UPW 87-05, Letter (Oct. 7, 1987) (Board cannot respond to “generalized concerns” expressed in petition; statute contemplates that petitioners will identify a specific regulation that it seeks Board to adopt)

*In re Lake Raponda (Wilmington)* No. UPW 72-07, Memorandum (Apr. 7, 1976) (Board cannot initiate rulemaking in the absence of a petition)

### **3.1.4 Renewal of petitions if present restrictions are inadequate**

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Decision at 3 (Aug. 7, 1984) (although Board did not adopt requested rule, if need arises and present restrictions prove to be inadequate, persons can re-petition Board)

*In re Greenwood Lake (Woodbury)*, No. UPW 83-02, Decision at 1 (Nov. 8, 1983); Preliminary Memorandum (Sep. 26, 1983)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Memorandum at 2 (Sep. 3, 1982)

### **3.1.5 Scope of allowable changes between petition as noticed and adopted rule (3 V.S.A. §846(b)(2))**

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 05-04, Decision at 17 - 18 (Nov. 10, 2005) (a “no wake” rule adopted by the WRP is within the scope of Petition’s request for a horsepower limitation in as it will accomplish the same goals (quiet waters) as a horsepower limitation in a less restrictive manner)

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 19 (Oct. 25, 2005); “It is simply not appropriate for the Board to give public notice regarding one regulatory approach (i.e. horsepower limits) and then consider the adoption of a totally different regulatory scheme (i.e. speed limits).”

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 19 (Oct. 25, 2005): “As a matter of proper procedure, as well as fairness to those affected, the Board cannot expand the scope of the rulemaking beyond that contemplated in the initial public notice.” Quoting *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision at 2 (Oct. 26, 1994)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 04-02, Decision at 6 (Oct. 7, 2004): “When the Board does not adopt a petition’s proposed rule but recognizes that regulation is necessary to address conflicting uses, the Board generally suggests in its decision what form of regulation may be appropriate. The Board rarely adopts rules on its own motion in place of those that were proposed and publicly noticed. [Citation omitted] However, in this case, the Board determines that further regulation of Mirror Lake is desirable and that adoption of the proposed regulations is appropriate because these regulations fall within the ambit of the rule that was originally proposed and published.”

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 04-02, Decision at 6 n.6 (Oct. 7, 2004): (Board adopts a rule that differs from the one petitioned; “Three factors should guide an agency’s determination of whether it is appropriate to adopt rules that are not the same as the rule originally proposed. These factors are: (1) The extent to which all persons affected by the adopted rule should have understood that the published proposed rule would affect their interests; (2) The extent to which the subject matter of the adopted rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule; and (3) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule had it been adopted instead. Bonfield, Arthur Earl, *State Administrative Rule Making*, §6.7.2 (1986).”)

*In re: Great Averill and Little Averill Ponds (Norton, Averill)*, No. UPW 03-01, Decision at 3 (Oct. 20, 2003) (Board cannot accept a petition to prohibit PWC and issue a rule to prohibit other motorized uses; “The Board is simply limited by law to considering the petition at hand ... as part of this rulemaking.”)

*In re Little Lake (Wells) and Little Pond (Poultney)*, No. UPW 97-03, Decision at 4 (Oct. 14, 1997) (Board cannot propose a rule to allow PWC to operate on Little Lake and Lily Pond (both of which are smaller than 300 acres) for purposes of obtaining access to and returning from Lake St. Catherine and then repeal the provision in the VUPW Rules that prohibits PWC on all lakes smaller than 300 acres)

*In re Gale Meadows Pond (Winhall, Londonderry)*, No. UPW 90-03, Rule 1 (effective Feb. 1, 1992); Decision at 2 (Nov. 20, 1991) (Board imposes 5 mph speed limit on all vessels powered by motor, not just on those powered by internal combustion motors as originally petitioned, in order to conform with similar restrictions established on other lakes and ponds)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Rule (effective Nov. 29, 1982); Memorandum (Sep. 3, 1982) (Board adopts rule limiting speed even though petition requested rules prohibiting houseboats and limiting each property owner to one float under 200 square feet because it would address intent of petition and would be in line with statutory requirement [10 V.S.A. § 1424(c)] that Board manage public waters so that all normal uses can be reasonably enjoyed)

### **3.1.6 Comments**

*In re Petition to Limit Comments from Non-Residents*, No. UPW 95-06, Decision (Jun. 15, 1995) (Board denies petition which seeks to limit those who can file partisan comments to only Vermont residents; Board concludes that the Vermont Administrative Procedures Act allows all persons the opportunity to comment, 3 V.S.A. §§840(c), and “person” is not limited to only Vermont residents; 3 V.S.A. §§801(6); Board further finds that such a limitation would be contrary to public policy)

## **3.2 Decisions**

### **3.2.1 Votes**

*In re Lake Morey (Fairlee)*, No. UPW 98-03, Decision (Jan. 12, 1999) (in accordance with VUPW §10, in the event of a tie vote, the Board recesses until at least one additional Board Member can review the record and participate in the Board’s decision), *reversing In re Lake Morey (Fairlee)*, No. UPW 98-03, Decision (Oct. 29, 1998) (Board holds that a tie vote means the petition fails and

the proposed rules are not adopted)

## **IV. Principles of Regulation**

### **4.1 Factors**

#### **4.1.1 Statute**

*10 V.S.A. §1424(b)*

The board in establishing rules shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating and bathing facilities, the scenic beauty and recreational uses of the area.

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Decision at 2 (Nov. 20, 1991) (Board guided by 10 V.S.A. §1424(b))

#### **4.1.2 Balancing uses**

*UPW Rule 2.2:*

In evaluating petitions and associated public comments the following factors, at a minimum, will be considered: the size and flow of navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, and the scenic beauty and recreational uses of the area.

The public waters will be managed so that the various uses may be enjoyed in a reasonable manner, considering safety and the best interests of both current and future generations of citizens of the state and the need to provide an appropriate mix of water-based recreational opportunities on a regional and statewide basis.

*In re: Lake Raponda (Wilmington)*, No. UPW 84-02, Decision at 1 (Aug. 1, 1985) (citing 10 V.S.A. §1424(c), Board declines to restrict motors to 10 or 15 horsepower as petitioned, as effect of such restriction would be to eliminate use of lake for waterskiing and other established and normal recreational uses; reasons for petition [safety, wakes, pollution] can be achieved through education and enforcement, without restricting existing uses); Preliminary Memorandum (Jun. 25, 1985)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Rule (effective Nov. 29, 1982); Memorandum (Sep. 3, 1982) (Board adopts rule limiting speed even though petition requested rules prohibiting houseboats and limiting each property owner to one float under 200 square feet because it would address intent of petition and would be in line with statutory intent that Board manage public waters so that all normal uses can be reasonably enjoyed)

#### **4.1.3 Uses considered**

##### *UPW Rule 2.3*

In evaluating normal recreational and other uses, the following uses will be among those considered: fishing, swimming, boating, waterskiing, fish and wildlife habitat, wildlife observation, the enjoyment of aesthetic values, quiet solitude of the water body, and other water-based activities.

##### **4.1.3.1 Use conflicts**

##### **4.1.3.1.1 To allow all normal uses to the extent possible**

##### *10 V.S.A. §1424(c)*

The board shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the board shall provide for all normal uses.

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Decision at 2 (Nov. 20, 1991) (Board guided by 10 V.S.A. §1424(c))

##### *UPW Rule 2.6*

Use conflicts shall be managed in a manner that provides for all normal uses to the greatest extent possible consistent with the provisions of Section 2.2 of these rules.

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Decision at 1 (May 15, 1989) (Board declines to ban all motorboats north of Cotton Brook because Reservoir is only large body in central Vermont, ban would be contrary to 10 V.S.A. §1424(c), low speed boating (by fishermen and others) is currently a normal use in this area, and higher speed boating in this area is uncommon); but note speed limit restrictions established in *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 3 (May 31, 1989) (Board adopts "interim policy of not adopting further regulations on lakes and ponds which address issues and problems which respond to problems or conflicts which are speculative in nature." )

*In re: Curtis Pond (Calais)*, No. UPW 86-06, Decision at 3 (Sep. 9, 1986) (Board declines to restrict motors to 10 horsepower, finding that waterskiing is a normal use, that a restriction would be "inconsistent with the legislative intent of 10 V.S.A. Section 1424(c)," that the rule would "arbitrarily prohibit motors larger than ten horsepower regardless of their manner of use," and conflicts and potential safety concerns "can be resolved in a manner which does not prohibit any existing recreational uses."); but note *In re: Curtis Pond (Calais)*, No. UPW 94-04, Rule (adopted Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit north of the "narrows")

*In re: Lake Raponda (Wilmington)*, No. UPW 84-02, Decision (Aug. 1, 1985) (citing 10 V.S.A. §1424(c), Board declines to restrict motors to 10 or 15 horsepower as petitioned, as effect of such restriction would be to eliminate use of lake for waterskiing and other established and normal recreational uses; reasons for petition [safety, wakes, pollution] can be achieved through education and enforcement, without restricting existing uses); Preliminary Memorandum (Jun. 25, 1985)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Rule (effective Jan. 1, 1985) ("The operation of vessels powered by a motor at speeds exceeding two miles per hour or in such a manner as to cause a disturbing wake is prohibited northerly of the narrows which is immediately to the north of the 'Roadside Park Boat Launch Ramp'."); Decision at 2 (Aug. 7, 1984) (Board does not adopt rule banning all motorboats, sought based on swimmer safety; Board finds that a 2 mph limit, no wake restrictions, and other means, such as marking swimming areas with ropes and floats are adequate to protect swimmers; Board is also guided by 10 V.S.A. §1424(c); further, use of motorboats for fishing and duck hunting is a present, common use)

#### **4.1.4 To regulate in the least restrictive manner**

##### *UPW Rule 2.7*

When regulation is determined to be necessary, use conflicts shall be managed using the least restrictive approach practicable that adequately addresses the conflicts.

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02, Decision (Nov. 1995) (Board adopts rule to limit motorboats to 5 mph in northeastern arm of lake, but does not, as petitioned, ban agree with petitioners that all watercraft from the northeastern arm, because while protection of wildlife habitat from

excessive human interference can be a proper basis for regulation, a speed limit (along with education) is the appropriate measure at this time, as a less restrictive should be given a chance to work); Preliminary Memorandum (Aug. 21, 1995)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Decision at 2 (Aug. 7, 1984) (Board does not adopt rule banning all motorboats, sought based on swimmer safety; Board finds that a 2 mph limit, no wake restrictions, and other means, such as marking swimming areas with ropes and floats are adequate to protect swimmers; Board is also guided by 10 V.S.A. §1424(c); further, use of motorboats for fishing and duck hunting is a present, common use)

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975) (Board declines to adopt rules to resolve conflicts in uses; enforcement of laws and rules regarding motorboats is most appropriate measure); Preliminary Memorandum (Jul. 22, 1975) (motorboats appear to be a normal use)

#### **4.1.5 To resolve conflicts involving the operation of vessels by managing vessel operation or use**

##### *UPW Rule 2.9*

When regulation is determined to be necessary to resolve conflicts involving the operation of vessels, priority will be given to managing the manner in which vessels are used or operated, such as by imposing speed limits or separating conflicting uses by designating specific times or places where various uses are allowed.

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Rule (effective Feb. 1, 1992); Decision at 4 (Nov. 20, 1991) (waterskiing permitted only between 9:00 AM and 7:00 PM; restrictions on waterskiing to specific times will benefit other established uses and reduce potential conflicts, especially during tranquil morning and evening hours); no actual Rule in file

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 3 (May 31, 1989) (Board adopts "interim policy of not adopting further regulations on lakes and ponds which address issues and problems which respond to problems or conflicts which are speculative in nature.")

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975) (Board declines to adopt rules to resolve conflicts in uses; enforcement of laws and rules regarding motorboats is most appropriate measure); Preliminary Memorandum (Jul. 22, 1975)

#### **4.1.6 To resolve conflicts between two or more normal uses**

See definition of “normal use.” *UPW Rule 5.2*

##### *UPW Rule 2.10*

When regulation is determined to be necessary to resolve conflicts between two or more normal uses, priority will be given to resolving the conflict by separating the conflicting uses, such as by designating specific times or places where various uses are allowed.

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 3 (May 31, 1989) (Board adopts “interim policy of not adopting further regulations on lakes and ponds which address issues and problems which respond to problems or conflicts which are speculative in nature.” )

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975) (Board declines to adopt rules to resolve conflicts in uses; enforcement of laws and rules regarding motorboats is most appropriate measure); Preliminary Memorandum (Jul. 22, 1975)

#### **4.1.7 To regulate waterbodies in a consistent manner**

##### *UPW Rule 2.8*

When addressing issues common to more than one body of water, uniform and consistent rules shall be adopted when appropriate.

#### **4.1.8 To enhance availability of wilderness-like recreational experiences**

##### *UPW Rule 2.11*

Those water bodies which currently provide wilderness-like recreational experiences shall be managed to protect and enhance the continued availability of such experiences.

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Decision at 7 - 8 (Aug. 30, 2002): “Several factors may combine to provide a wilderness-like recreational experience.... [T]he Board has a duty to manage the few public water bodies that remain capable of providing wilderness-like recreational opportunities in a manner consistent with protection of those characteristics that make those water bodies capable of supporting such water-based recreational uses. ... [V]ery few public waters of the state over 500 acres in surface area are managed for wilderness-like recreational experiences. ... [C]reating or protecting an

environment in central Vermont that is conducive to wilderness-like recreational opportunities is justified and required.” *Affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (Vt. Sup. Ct.)

## 4.2 Philosophy of Rules

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Decision at 6 – 7 (Jan. 8, 1997): “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 normal uses.”

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02, Decision at 1 (Nov. 1995) (protection of wildlife habitat from excessive human interference can be a proper basis for regulation); Preliminary Memorandum (Aug. 21, 1995)

*In re Holland Pond (Holland)*, No. UPW 94-06 and 95-05, Decision at 4 -5 (Oct. 26, 1994) (Board prohibits PWCs): “When the issue of preserving some vestige of what was until fairly recently a common part of Vermont’s heritage is viewed from the perspective of Vermont’s water resources as a whole, and with consideration of future generations as well as the present generation, the Board believes that a rule is warranted.” *Note that this Decision was later revised to limit, not prohibit, PWCs; see Decision (Jan. 6, 1995)*

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Decision at 3 (Oct. 26, 1994): “Not every water body can be all things to all people.”

*In re: Curtis Pond (Calais)*, No. UPW 94-04, Decision at 5 (Oct. 26, 1994) (Board finds that high-speed motorboating throughout the Pond has preempted other uses; Board uses same language as *In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision at 2 (Oct. 26, 1994), immediately below); Preliminary Memorandum (Sep. 14, 1994)

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 94-03, Decision at 2 (Oct. 26, 1994): “[Not] every problem can be solved by additional rules...”

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 94-03, Decision at 2 (Oct. 26, 1994): “[Rules] need to be carefully tailored to adequately address the problem consistent with the framework provided by Section 2 of the VUPW Rules.”

*In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision at 1 (Oct. 26, 1994): “The solution to every problem on a Vermont lake is not another rule adopted by this Board.”

*In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision at 2

(Oct. 26, 1994): “Any ... regulation needs to be carefully tailored to adequately address the problem consistent with the general policy framework established in Section 2 of the VUPW Rules.”

*In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision at 2 (Oct. 26, 1994): “The Board agrees that the Reservoir, like Vermont’s public waters as a whole, should be managed to provide for multiple uses, and that to the extent possible all normal uses need to be accommodated in a fair and equitable manner. However, not all uses are alike in their impact on the public resource they use or on others seeking to use the same resource in a different way. Accordingly, multiple use does not always mean no regulation of any use and may in fact require regulation to insure that one use does not substantially diminish or preclude another use. Clearly at some level of intensity, may recreational uses have the potential to seriously diminish or even preclude other uses.”

This does not mean that all Vermont lakes that currently accommodate a wide diversity of uses, such as the Reservoir, need to be regulated to allocate their use exclusively one recreational activity or another. However, it may mean that some lakes which, like the Reservoir, are under significant pressure to serve the regional needs of a variety of diverse and conflicting uses may need to be regulated to insure that all normal uses (i.e. multiple uses) are reasonably available.”

#### **4.2.1 Milfoil**

*In re Control of Aquatic Nuisances*, No. UPW 98-01, Decision (Apr. 16, 1998) (Decision to LCAR regarding Board’s final proposed rule pertaining to the control of aquatic nuisances)

*In re Fern Lake (Leicester)*, No. UPW 97-02, Decision at 1 (Oct. 14, 1997): “[T]he Board ... has expressed its views on the need for all involved state agencies, including itself, to be more proactive in responding to the issue of containing the spread of exotic, aquatic nuisances including but not limited to Eurasian water milfoil.”

## V. Waterbody-Specific Rules

### 5.1 Motors

#### 5.1.1 All motors (including electric motors)

##### 5.1.1.1 Rule adopted

*In re Batten Kill (Arlington)*, No. UPW 98-04, Rules (effective Feb. 22, 1999); Decision (Oct. 29, 1998) (Board prohibits boats with motors on seven miles of the Batten Kill River from the Water Street Bridge (Vermont Rte 313) in Arlington to the Vermont/New York border; while use of motors on boats may have occurred on very rare occasions, it is not a normal or established use on this portion of the Batten Kill; further, “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.” )

*In re Colchester Pond (Colchester)*, No. UPW 91-03, Rule 1 (adopted Feb. 16, 1993; effective Mar. 8, 1993) (vessels powered by motors prohibited); Rule 3 (adopted Feb. 16, 1993; effective Mar. 8, 1993) (Rule 1 applies to state agencies except in cases of law enforcement, emergency, or official duties); Decision (Dec. 22, 1992) (Board bans *all motors* on Colchester Pond, finding that there was no development on its shoreline, there has never been public access and public access had been prohibited for 30 years, boating has not occurred on the Pond on a regular, frequent or consistent basis, the Winooski Valley Park District intended to acquire hundreds of acres of land within the Pond’s watershed and to create a totally motor-free recreational experience on the Pond, an effort supported both by the town of Colchester and the Chittenden Regional Planning Commission; since motors are were not established uses, the proposed rule will not adversely affect an established use and was thus consistent with the UPW Rules; prohibition of electric motors is rare [and Board will not ban electric motors except in very rare circumstances] but justified here to allow for a motor-free pond; ban on motors does not affect other methods of fishing; however, prohibition is not justified based on protection against milfoil infestation, because “there are many potential sources of milfoil infestation that pose an equal or greater threat such as SCUBA equipment, fishing tackle, anchors, etc.” and thus prohibiting electric motors on this basis would be “arbitrary and would do little to enhance the Pond’s protection in this regard.” )

*In re Lake Paran (Bennington)*, No. UPW 80-01, Rule 1 (adopted Jul. 14, 1980) (rule prohibits *all* “motor-propelled boats”); note *In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01 (adopted Oct. 5, 1994) (rephrased rule to read “The operation of vessels powered by motor is prohibited.”)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 1 (effective Oct. 7, 1974) (all motors prohibited)

#### **5.1.1.2 Rule not adopted**

*In re Indian Brook Reservoir (Essex)*, No. UPW 99-02, Decision (Sep. 19, 2000) (Board declines to prohibit the use of electric motors on the Indian Brook Reservoir; use of electric motors at low speeds and recreational fishing are normal and established uses; sole basis for petition is milfoil control; while the Reservoir has been infested with milfoil since at least 1999 and fragmentation causes the spread of milfoil, motorboats are not the only cause of fragmentations; no evidence was presented to show that persons operating vessels powered by electric trolling motors are more likely to promote the spread of milfoil due to fragmentation than are swimmers or those paddling nonmotorized vessels)

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Decision at 1 (May 15, 1989) (Board declines to ban all motorboats north of Cotton Brook because Reservoir is only large body in central Vermont, ban would be contrary to 10 V.S.A. §1424(c), low speed boating (by fishermen and others) is currently a normal use in this area, and higher speed boating in this area is uncommon); but note speed limit restrictions established in *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

*In re Lake Ninevah (Mt. Holly)*, No. UPW 88-01, Rules (adopted Mar. 31, 1989; effective Apr. 20, 1989) (petition sought to ban all vessels powered by motors; adopted rules do not include this prohibition, but no analysis is provided; note that Board adopts rules restricting speed, residential vessels and aircraft)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Decision at 2 (Aug. 7, 1984) (Board does not adopt rule banning all motorboats, sought based on swimmer safety; Board finds that a 2 mph limit, no wake restrictions, and other means, such as marking swimming areas with ropes and floats are adequate to protect swimmers; Board is also guided by 10 V.S.A. §1424(c); further, use of motorboats for fishing and duck hunting is a present, common use)

## **5.1.2 Internal combustion motors (ICM)**

See definition of “internal combustion motors” *UPW Rule*

5.3

### **5.1.2.1 General Rule**

*UPW Rule 3.5: Use of Internal Combustion Motors (effective Jan. 1, 1995)*

Use of internal combustion motors to power vessels on lakes, ponds and reservoirs is prohibited where the use of such motors was not a normal use prior to January 1, 1993 (see Appendix A).

*Note that Appendix A to the UPW Rules (effective Jan. 1, 1995) indicates that certain waterbody-specific rules prohibiting internal combustion motors were “amended” by the 1995 Rules. The 1995 Rules, however, did not alter or otherwise amend such waterbody-specific rules; the reference to such “amendments” merely reflects that the prohibition against ICM which was imposed on a particular waterbody by an individual rule adopted before 1995 is also imposed by the general prohibition in UPW Rule 3.5.*

### **5.1.2.2 Rule adopted (prohibiting ICM)**

*In re Somerset Reservoir, (Somerset and Stratton), No. UPW 95-04, Rule c (effective Jan. 3, 1996) (prohibition on internal combustion motors in northern part of Reservoir is lifted but a 10 mph speed limit is imposed for the entire Reservoir); Decision (Nov. 1995) (consistent with UPW Rules 2.6 and 2.7, Board concludes that a total prohibition of internal combustion motors is not warranted; Board finds that fishermen have historically used the northern part of the Reservoir (which is roughly two-thirds of its surface area), and that the existing rule is a significant impediment to this use; Board cannot find that there is an inherent conflict between motorboats and non-motorized uses of the Reservoir; at best, the potential for conflict is very low; Board finds that a total ban might increase such conflicts by polarizing two potentially compatible recreational uses; Board finds that wildlife protection is not a basis for keeping the ban in force); Preliminary Memorandum (Aug. 21, 1995)*

*In re Somerset Reservoir (Somerset and Stratton), No. UPW 94-05, Rule 3 (Oct. 26, 1994; effective Feb. 4, 1995) (Board prohibits internal combustion motors in northern part of Reservoir); Decision (Oct. 26, 1994) (prohibited use is not a major use, and internal combustion motors are not compatible with the preservation of the Reservoir’s traditional uses and character; the rule is “needed to protect the Reservoir’s important natural resource values and the increasingly rare opportunity it affords for enjoying certain recreational uses in a wilderness-like setting, both for this generation, and future generations;” Board notes the proximity of Harriman Reservoir, a waterbody that is “more appropriate” for high speed motorboating; the Reservoir would be one of a very small number of*

bodies of water of any appreciable size in Vermont, and the only one in southern Vermont, on which internal combustion motors are prohibited; it is “hard to imagine a more appropriate body of water to serve this role in the management of Vermont’s lakes for multiple uses.”); Preliminary Memorandum (Sep. 16, 1994); *note that the prohibition is repealed in In re: Somerset Reservoir, (Somerset and Stratton)*, No. UPW 95-04, Rule c (effective Jan. 3, 1996); Decision (Nov. 1995)

*In re Colchester Pond (Colchester)*, No. UPW 91-03, Rule 1 (adopted Feb. 16, 1993; effective Mar. 8, 1993) (vessels powered by motors prohibited); Rule 3 (adopted Feb. 16, 1993; effective Mar. 8, 1993) (Rule 1 applies to state agencies except in cases of law enforcement, emergency, or official duties); Decision (Dec. 22, 1992) (Board bans *all motors* on Colchester Pond, finding that there was no development on its shoreline, there has never been public access and public access had been prohibited for 30 years, boating has not occurred on the Pond on a regular, frequent or consistent basis, the Winooski Valley Park District intended to acquire hundreds of acres of land within the Pond’s watershed and to create a totally motor-free recreational experience on the Pond, an effort supported both by the town of Colchester and the Chittenden Regional Planning Commission; since motors were not established uses, the proposed rule will not adversely affect an established use and was thus consistent with the UPW Rules.

*In re Cole Pond (Jamaica)*, No. UPW 90-02, Decision at 3 – 4 (Nov. 20, 1991); Rule 1 (effective Jan. 1, 1993) (Board prohibits use of internal combustion motors on Cole Pond because such prohibition will not affect any established use and will prevent conflicts with uses that are established; but Rule 2 allows electric motors at speeds up to 5 mph)

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Rule 1 (effective Jan. 1, 1993); Decision at 2 (Nov. 20, 1991) (although Board finds established uses on Lewis Pond to include “low speed boating,” Rule 1 bans internal combustion motors effective January 1, 1993, because such a prohibition will not prevent the continued enjoyment of established uses, the Pond is in a wilderness setting which provided habitat for wildlife, the agitation of motors will be harmful to trout, the noise of motors disturbs wildlife, and other lakes in the area are available for motorboats); but note: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board lifts the ban on internal combustion motors imposed by Rule 1 in No. UPW 89-03)

*In re Indian Brook Reservoir (Essex)*, No. UPW 88-06, Rule 1 (adopted Mar. 31, 1989; effective Apr. 20, 1989)

*In re Mill Pond (Kennedy’s Pond) (Windsor)*, No. UPW 88-02, Rule 1 (adopted Feb. 16, 1989; effective Mar. 9, 1989) (vessels with internal combustion motors are prohibited, except that snowmobiles on designated trails are allowed)

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Rule 1 (adopted Mar. 15, 1988; effective Apr. 13, 1988)

*In re Elfin Lake (Wallingford)*, No. UPW 87-03, Rule 1 (adopted Oct. 30, 1987; effective Jan. 1, 1988) (Oct. 30, 1987 EIS to Secretary of State indicates that internal combustion motors are not used extensively on Lake because of its small size)

*In re May Pond (Barton)*, No. UPW 87-02, Rule 1 (adopted Nov. 24, 1987; effective Jan. 1, 1988)

*In re Adams Reservoir (Woodford)*, No. UPW 86-05, Rule 1 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Lake Shaftsbury (Shaftsbury)*, No. UPW 86-04, Rule 1 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Black Pond (Hubbardton)*, No. UPW 85-02, Rule 1 (adopted Nov. 21, 1985; effective Jan. 1, 1986)

*In re Huff Pond (Hough Pond) (Sudbury)*, No. UPW 83-01, Rule 1 (adopted Aug. 7, 1984)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 2 (adopted May 31, 1974; filed Jun. 6, 1974) (only electric motors permitted for motorboats)

*In re Half Moon Pond (Hubbardton)*, No. UPW 86-03, Rule 1 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Emerald Lake (Dorset)*, No. UPW 86-02, Rule 1 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Lake Paran (Bennington)*, No. UPW 80-01, Rule 1 (adopted Jul. 14, 1980) (rule prohibits all "motor-propelled boats"); note *In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01 (adopted Oct. 5, 1994) (rephrased rule to read "The operation of vessels powered by motor is prohibited.")

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 1 (adopted Sep. 16, 1975; filed Sep. 22, 1975) (electric motors only)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 1 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (but electric motors allowed)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 1 (adopted Aug. 15, 1974; filed Aug. 28, 1974)] (but electric motors allowed)

**5.1.2.2.1 Internal combustion motors are not an established or normal use**

*In re Mill Pond (Kennedy Pond) (Windsor)*, No. UPW 88-02, Preliminary Memorandum at 1 (Aug. 25, 1988) (motorized boating is not an existing use)

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 2 (Oct. 19, 1987)

*In re Black Pond (Hubbardton)*, No. UPW 85-02, Decision at 1 (Aug. 1, 1985); Preliminary Memorandum (Jun. 25, 1985)

**5.1.2.2.2 Established uses would not be affected**

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Decision at 2 (Nov. 20, 1991); but note: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board lifts the ban on internal combustion motors imposed in No. UPW 89-03)

*In re May Pond (Barton)*, No. UPW 87-02, Decision (Oct. 27, 1987) (Decision to LCAR indicates that Board found that present use of the Pond by motorboats was low and that restriction would neither unreasonably affect fishing or recreational boating, nor prohibit the use of electric motors)

**5.1.2.2.3 Internal combustion motors would interfere with normal uses**

*In re Black Pond (Hubbardton)*, No. UPW 85-02, Decision at 1 (Aug. 1, 1985); Preliminary Memorandum (Jun. 25, 1985)

**5.1.2.2.4 Concerns regarding pollution or fuel contamination**

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 3 (Oct. 19, 1987)

*In re May Pond (Barton)*, No. UPW 87-02, Decision (Oct. 27, 1987) (Decision to LCAR indicates that Board has health concerns over fuel contamination of the Pond, Barton's sole source of drinking water)

*In re Black Pond (Hubbardton)*, No. UPW 85-02, Preliminary Memorandum at 2 (Jun. 25, 1985)

**5.1.2.2.5 Shoreline is relatively little developed**

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 2 (Oct. 19, 1987)

**5.1.2.2.6 Proximity of other lakes on which internal combustion motors are permitted**

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Decision at 2 (Nov. 20, 1991); but note: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board lifts the ban on internal combustion motors imposed in No. UPW 89-03)

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 3 (Oct. 19, 1987)

**5.1.2.2.7 Small size/ shallow depth of waterbody**

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 2 (Oct. 19, 1987) (102 acres; maximum depth: 24 feet)

*In re May Pond (Barton)*, No. UPW 87-02, Decision (Oct. 27, 1987) (Decision to LCAR states that Pond is shallow and 116 acres)

*In re Huff Pond (Hough Pond) (Sudbury)*, No. UPW 83-01, Preliminary Memorandum at 2 (Jul. 25, 1983)

**5.1.2.2.8 Turbidity concerns**

*In re Huff Pond (Hough Pond) (Sudbury)*, No. UPW 83-01, Preliminary Memorandum at 2 (Jul. 25, 1983)

**5.1.2.2.9 Pristine, wilderness nature of lake**

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Decision at 2 (Nov. 20, 1991); but note: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board lifts the ban on internal combustion motors imposed in No. UPW 89-03)

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Preliminary Memorandum at 3 (Oct. 19, 1987)

**5.1.2.2.10 Disturbance of wildlife, fish**

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Decision at 2 (Nov. 20, 1991); but note: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board

lifts the ban on internal combustion motors imposed in No. UPW 89-03)

**5.1.2.2.11 Prohibition applies to state agencies but does not apply to law enforcement, emergencies, or performance of official duties**

*In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Rule 4 (Oct. 26, 1994; effective Feb. 4, 1995) (prohibition of internal combustion motors north of the “narrows” in Somerset Reservoir does not apply to power corporation in conjunction with its operation of the Reservoir); Preliminary Memorandum (Sep. 16, 1994); *note: prohibition repealed, In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 95-04, Rule c (effective Jan. 3, 1996); Decision (Nov. 1995)

*In re Indian Brook Reservoir (Essex)*, No. UPW 88-06, Rule 3 (adopted Mar. 31, 1989; effective Apr. 20, 1989)

*In re Mill Pond (Kennedy’s Pond) (Windsor)*, No. UPW 88-02, Rule 2 (adopted Feb. 16, 1989; effective Mar. 9, 1989)

*In re Lowell Lake (Londonderry)*, No. UPW 87-04, Rule 2 (adopted Mar. 15, 1988; effective Apr. 13, 1988)

*In re Elfin Lake (Wallingford)*, No. UPW 87-03, Rule 2 (adopted Oct. 30, 1987; effective Jan. 1, 1988)

*In re May Pond (Barton)*, No. UPW 87-02, Rule 2 (adopted Nov. 24, 1987; effective Jan. 1, 1988)

*In re Adams Reservoir (Woodford)*, No. UPW 86-05, Rule 2 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Lake Shaftsbury (Shaftsbury)*, No. UPW 86-04, Rule 2 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Half Moon Pond (Hubbardton)*, No. UPW 86-03, Rule 2 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Emerald Lake (Dorset)*, No. UPW 86-02, Rule 2 (adopted Sep. 9, 1986; effective Jan. 1, 1987)

*In re Black Pond (Hubbardton)*, No. UPW 85-02, Rule 2 (adopted Nov. 21, 1985; effective Jan. 1, 1986)

*In re Huff Pond (Hough Pond) (Sudbury)*, No. UPW 83-01, Rule 2 (adopted Aug. 7, 1984)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 3 (adopted Sep. 16, 1975; Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 7 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 4 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 4 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 4 (effective Oct. 7, 1974)

### **5.1.2.3 Rule not adopted**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision (Oct. 25, 2005) (Board declines to prohibit internal combustion motors - a normal use – on the lake; Board rejects arguments that restricting motor boats will decrease the likelihood of threats from invasive aquatic species such as Eurasian milfoil, or that a ban on motorboats is necessary to resolve recreational use conflicts, as the evidence does not indicate that such conflicts exist or have risen to the level that restrictions on certain uses should be implemented; the Panel takes seriously the principle, as expressed in WRB precedent and in UPW Rules 2.6 and 2.7, that favors the preservation of normal uses unless a prohibition against such uses is necessary *and* there are no lesser restrictive means by which conflicts can be resolved; present rules on Silver Lake appear to provide reasonable means to separate uses that may have the potential for conflict)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 04-02, Decision (Oct. 7, 2004) (Board declines to prohibit internal combustion motors on pond, because ICMs operated at low speeds are a normal use (higher speed motorboating is not a normal or predominant use of Mirror Lake, but has grown in intensity in recent years); but Board imposes speed and no wake restrictions in order to address conflicts between motorboats and other non-motorized normal uses, as these rules – which restrict the manner in which vessels are operated - are the least restrictive means available to address the conflicts; Board rejects arguments that (a) speed limit regulations are often ignored and not enforceable; (b) that internal combustion engines should be banned because electric motors would allow low-speed boating and trawling; (c) ICMs endanger swimmers; (d) “quiet waters” are difficult to find in the region; (e) ICMs pollute; (f) wakes and noise from ICMs prevent common loons from nesting; (g) ICMs increase the likelihood of milfoil introduction; and (h) a horsepower restriction is easier to enforce)

*In re Star Lake (Mt. Holly)*, No. UPW 98-05, Decision (Oct. 29, 1998) (Board

declines to prohibit the use of internal combustion motors on Star Lake; the use of internal combustion motors to propel vessels at speeds of up to five miles per hour is normal, long-established use of the lake; petitioners have not shown that conflicts rise to the level to warrant regulation; speed limit provisions of general rules, if violated, are best addressed through education and enforcement, which have not been shown to be inadequate; further, rule would not reduce the risk of milfoil invasion; lake has been infested with milfoil since 1997; milfoil spreads from fragments of established plants breaking off and drifting to new locations where the fragments develop into rooted plants, and milfoil fragmentation can occur at any time from human disturbance of established plants due to motorized and nonmotorized boating, or swimming).

*In re Fern Lake (Leicester)*, No. UPW 97-02, Decision at 1- 2 (Oct. 14, 1997) (Board declines to prohibit the use of internal combustion motors on Fern Lake; internal combustion motors are a normal, long-established use on the lake, and a prohibition is not warranted on the grounds presented: to reduce or eliminate recreational conflicts at the town access area (Board has no authority to regulate land) and the lake itself (Board cannot find sufficient recreational use conflicts that rise to the level to warrant a motorboat ban; speed limit rule seems to be working, and education and enforcement should first be explored - and found to be inadequate - before a ban on motors should be imposed), or to control the spread of milfoil (other vessels carry invasive species too); further, Board notes that a ban motorboats to prevent the spread of milfoil would be quickly followed by other such petitions)

*In re Notch Pond (Ferdinand)*, No. UPW 97-01, Decision at 1 (Oct. 14, 1997) (when the UPW Rules were initially adopted in 1994, Board was advised that internal combustion motors were not a normal use on Notch Pond, and it therefore adopted a rule prohibiting their use on the Pond; in 1996, the Board was informed that the use of such motors for low speed fishing was a normal use on the Pond, and it therefore adopted a rule, *sua sponte*, to repeal the prohibition)

*In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Feb. 16, 1993) (Board amends former Rule 1 and lifts the ban on internal combustion motors imposed in *In re Lewis Pond (Lewis)*, No. UPW 89-03, Decision (Nov. 20, 1991)); Decision at 2 - 3 (Dec. 22, 1992) (Board finds that motorboats are an established use and existing rule limiting speeds to 5 mph does not impact established use and meets concerns of petitioners who filed the 1989 petition regarding agitation of the lake bottom, noise, and wildlife harassment, and any public safety concerns)

*In re Echo Lake (Keeler Pond) (Hubbardton, Sudbury)*, No. UPW 91-05, Decision (Dec. 22, 1992) (Board declines to prohibit the use of internal combustion motors on Echo Lake because motorboats are an established use on the lake, and petitioners did not establish that internal combustion motors are incompatible with the use of the lake as a domestic water supply. Board notes that it must

preserve established uses unless public safety or environmental limitations demanded otherwise and must manage use conflicts using the least restrictive approach possible)

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Decision at 3 (Nov. 20, 1991) (Board declines to prohibit internal combustion motors, because motorboats are an established use)

*In re Sunrise Lake, (Benson and Orwell)*, No. UPW 89-05, Decision (Nov. 20, 1991) (Board declines to prohibit internal combustion motors on Sunrise Lake because such a prohibition would disallow an established use, and the alternative establishment of a 5 mph speed limit would substantially achieve the results sought by the petition – aesthetics, erosion concerns; further, erosion may be caused by motorboat wakes, but not necessarily attributable to internal combustion motors)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board declines to limit motors to electric motors only as this would be overly restrictive)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rules (adopted Oct. 2, 1973; filed Oct. 4, 1973) (Board does not adopt a rule prohibiting internal combustion motors sought in petition, but does limit waterskiing, speed, horsepower, and houseboats)

#### **5.1.2.3.1 Enforcement of existing rules is more appropriate to resolve issues raised**

*In re Halls Lake (Newbury)*, No. UPW 74-01, Memorandum (Aug. 28, 1975) (Board declines to adopt rule seeking to prohibit internal combustion motors on Halls Lake believing that “adequate enforcement of existing laws and regulations governing use of motorboats by both State and local officials would appear to resolve most of the issues and many divergences of opinion which were raised by the petition and at the Hearing.”)

#### **5.1.2.3.2 Exception from prohibition not in rules**

*In re Lake Paran (Bennington)*, No. UPW 80-01, Rule (adopted Jul. 14, 1980) (rule prohibits all “motor-propelled boats”); note *In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01 (adopted Oct. 5, 1994) (rephrased rule to read “The operation of vessels powered by motor is prohibited.”)

## **5.2 Speed**

### 5.2.1 Statute

23 V.S.A. §3311:

- c) Distance requirements.
  - (1) A person shall not operate any vessel, except a sailboard or a police or emergency vessel, within 200 feet of the shoreline, a person in the water, a canoe, rowboat or other vessel, an anchored or moored vessel containing any person, or anchorages or docks, except at a speed of less than five miles per hour which does not create a wake.
  - (2) Divers. A person shall not operate any vessel, except a nonmotorized canoe, a nonmotorized rowboat or a police or emergency vessel, within 200 feet of a divers-down flag.
  - (3) Nothing herein shall prohibit rendering assistance to another person, picking up a person in the water, necessary mooring or landing, or leaving shore, or operating in any other place where obstruction, other than the shoreline, would prevent abiding by this statute.
  - (4) A person shall not operate a vessel, except at speeds of less than five miles per hour, within 200 feet of a designated swimming area.

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02, Decision at 3 (Nov. 1995) (Board adopts rule to limit motorboats to 5 mph in northeastern arm of the lake, even though 23 V.S.A. §3311(c) exists because it is difficult for boaters to judge 200 feet from the shore and to know that the shoreline requirement would apply to the “numerous and ill-defined low lying islands” in the northeastern arm); Preliminary Memorandum (Aug. 21, 1995)

### 5.2.2 General rule

*UPW Rule 3.2: Maximum Speed Limits*

Vessels powered by motor shall, in addition to the requirements of 23 V.S.A. § 3311(a) pertaining to careless and negligent operation, comply with the following maximum speed limits and other requirements:

- a. not exceed five m.p.h. on lakes, ponds and reservoirs upon which the operation of vessels powered by motor at substantially higher speeds is not a normal use, or that have a surface area of 75 acres or less, or that have less than 30 contiguous acres outside the shoreline safety zone, or upon which the use of internal combustion motors is prohibited; and

b. 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.

### 5.2.3 Rule adopted

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 05-04, Rule d (effective Feb. 6, 2006) (“A ‘no-wake’ zone shall apply to the entire Somerset Reservoir.”) Rule e (effective Feb. 6, 2006) (“The prohibitions established by rules c. and d. above shall not apply to vessels operated by or on behalf of Trans Canada in conjunction with its operations of the reservoir, by law enforcement officials or governmental agencies in the performance of official duties, or in cases of emergency”); Decision (Nov. 10, 2005) (Panel declines to impose a 15 hp limit on motors; 15+ horsepower motors are normal uses on the Reservoir and past Board decisions conclude that speed limits are less restrictive means to reduce conflicts than are horsepower limitations; petitioners seeks quiet waters, but a limitation on the size of the motors does not necessarily accomplish this result, because even a small horsepower motor, if mounted on a light boat, can travel fast, causing noise and wakes which may disturb the quiet experience of Somerset Reservoir; and a larger horsepower motor can be driven quietly at speeds which do not; a better approach is one which limits the impacts caused by motorboats on the Reservoir - primarily the noise and the wakes that they create; thus a “no wake” rule, in conjunction with the existing 10 mph speed limit on the Reservoir will meet petition’s goals while not affecting those who seek to use motors for fishing and other quiet recreational activities)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 04-02, Rule a (effective Feb. 14, 2005) (vessels powered by motor shall not exceed 5 mph); Rule b (effective Feb. 14, 2005) (a “no wake” zone applies to the entire pond); Decision (Oct. 7, 2004) (although Board declines to prohibit internal combustion motors on pond, because ICMs are a normal use, Board imposes speed and no wake restrictions in order to address conflicts between motorboats and other non-motorized normal uses, as these rules – which restrict the manner in which vessels are operated - are the least restrictive means available to address the conflicts; designating areas of the pond or particular times/days for specific uses is impractical)

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Decision at 10 - 11 (Aug. 30, 2002) (Board finds that a proposed rule that would require “no disturbing wake” is redundant, considering 23 V.S.A. §3311(c)(1), has been inconsistently applied, and is “too vague to be readily enforceable” and consistent with the command in 3 V.S.A. §833 that all rules “shall be written in a clear and coherent manner.”); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dkted* (Vt. Sup. Ct.)

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Rule 1 (adopted Aug. 27, 2002; effective Nov. 30, 2002) (vessels powered shall not exceed 5 mph); Decision at 5 – 6 (Aug. 30, 2002) (operation of motorboat at slow speeds is a normal use on the Reservoir; regulating time, place or manner of high-speed boating is not practical; allowing high-speed boating to become an established use is likely to will create an unacceptable level of conflict with the normal uses of the Reservoir; Reservoir is the only wilderness-like waterbody in central Vermont (like Green River Reservoir in the north and Somerset Reservoir in the south; other nearby lakes allow high-speed motorboating); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (V. Sup. Ct.)

*In re Lake Lamoille (Morristown)*, No. UPW 01-02, Rule (adopted Oct. 11, 2001; effective Dec. 10, 2001) (motorboats limited to 5 mph speed limit outside of northeastern arm, as shown on Vermont UPW Rules, Appendix C-4); Decision (Oct. 10, 2001) (canoeing, kayaking, wildlife observation, competitive waterskiing, and the enjoyment of the aesthetic values and peace and tranquility of the lake are normal uses; because of its size, shallowness in places and steep access, the lake is not used for recreational waterskiing or power boating, but it is used for competitive waterskiers who have been using a slalom course in the northeastern arm since 1992 (one boat at a tie, 3 -4 days/week for 2 -3 hours/day); these waterskiers drive their boats slowly between the launch area and the slalom course; Board establishes rule to allow all normal uses consistent with the VUPW Rules; Board rejects arguments that competitive waterskiing interferes with lakes scenic beauty, is harmful to wildlife, conflicts with area residents, would make canoeing dangerous, churns up sediment and degrades the lakeshore, and will fail to preserve the lake's wilderness-like recreational experience (Rule 2.11))

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997) (Board establishes 5 mph speed limit or a speed which cause a disturbing wake in eastern and northern arms of Reservoir; but limits and no wake requirements do not apply to a single boat using the waterskiing slalom course described in Rule d(1)); Decision (Jan. 8, 1997) (Board sets speed limits and “disturbing wake” zones for Reservoir – a premier destination for 60,000/year water-based recreational users – to address conflict between high speed motorboats and canoes; some normal uses (canoes, wildlife enjoyment) may be displaced by other normal uses (motorboats, waterskiing) is no regulation is considered; northern portion of Reservoir is most pristine-like, highly values and suitable area to protect for more passive forms of recreation; Board declines to impose speed restrictions on a smaller or greater area of the Reservoir, as requested by divergent groups)

*In re Somerset Reservoir, (Somerset and Stratton)*, No. UPW 95-04, Rule c (effective Jan. 3, 1996) (a 10 mph speed limit is imposed for the entire Reservoir, as Board lifts prohibition on internal combustion motors in northern part of

Reservoir); Decision (Nov. 1995) (consistent with UPW Rules 2.6 and 2.7, Board concludes that a total prohibition of internal combustion motors is not warranted; Board finds that fishermen have historically used the northern part of the Reservoir (which is roughly two-thirds of its surface area), and that the existing rule is a significant impediment to this use; Board cannot find that there is an inherent conflict between motorboats and non-motorized uses of the Reservoir; at best, the potential for conflict is very low; Board finds that a total ban might increase such conflicts by polarizing two potentially compatible recreational uses; Board finds that wildlife protection is not a basis for keeping the ban in force; Board does not adopt ANR suggestion to lower speed limit to 5 mph); Preliminary Memorandum (Aug. 21, 1995)

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02, Rule a (effective Jan. 3, 1996) (motorboats limited to 5 mph in northeastern arm of lake); Decision (Nov. 1995) (Board adopts speed limit but does not, as petitioned, ban all watercraft from the northeastern arm; while protection of wildlife habitat from excessive human interference can be a proper basis for regulation, a speed limit (along with education) is the appropriate measure at this time, as a less restrictive should be given a chance to work; Board distinguishes present petition from nature and geographic scope of petition in *In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 94-03, Decision (Oct. 26, 1994); thus denial of 1994 petition has no bearing on present petition); Preliminary Memorandum (Aug. 21, 1995)

*In re: Curtis Pond (Calais)*, No. UPW 94-04, Rule (adopted Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit north of the "narrows;" Board declines to be bound by its earlier decisions of *In re: Curtis Pond (Calais)*, No. UPW 86-06, Decision (Sep. 9, 1986) and *In re: Curtis Pond (Calais)*, No. UPW 80-03, Memorandum (Jul. 3, 1980), because, having given the Pond community time to find its own solution, Board must address long-standing public safety and recreational use conflicts; earlier petitions sought limit horsepower and present petition focuses on speed limits, which is less arbitrary than a horsepower restriction; further, recent statute, 23 V.S.A. §3311(c)(1), restricts speed within 200 feet of shoreline; Board had stated earlier that it would revisit problems if local solutions did not succeed; Board finds safety issues with speeds and waterskiing in the narrows and declines to adopt modified proposal for waterskiing); Preliminary Memorandum (Sep. 14, 1994)

*In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995) (5 mph speed limit at all times on entire Reservoir; Decision (Oct. 26, 1994), *repealing all rules adopted in In re Woodward Reservoir (Plymouth)*, No. UPW 71-02 (effective Sep. 28, 1972) (it is not equitable to establish one rule for lakeshore owners and another for others; while high-speed motorboating is an established use, decision to limit speed is driven by a balance of competing uses and by the size and configuration of the Reservoir, the predominance of other (non high-speed motorboating) uses, and when looked at on regional basis, the

fact that the Reservoir is best waterbody in south central Vermont for “low impact use;” Board consider protection of fragile shoreline as a basis for the rule; Board does not find that rule will reduce value of shoreline property); Preliminary Memorandum (Sep. 16, 1994)

*In re Gale Meadows Pond (Winhall, Londonderry)*, No. UPW 90-03, Rule 1 (effective Feb. 1, 1992) (vessels powered by motor shall not exceed 5 mph); Decision (Nov. 20, 1991) (established uses include low-speed motorboating, sailing, paddling, fishing, wildlife observation, speed limit would decrease disturbances of herons and would not prevent continued use of pond for established uses; Board does not rule on whether seaplanes are an established use)

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rule 1 (effective Feb. 1, 1992) (speed of motorboats restricted to 40 mph between ½ hour before sunrise and ½ after sunset); Rule 2 (speed of motorboats restricted to 10 mph between ½ hour before sunset and ½ before sunrise [*but note revision in Jan. 8, 1992 Decision below*]); Decision at 4 (Nov. 20, 1991) (conflicts between uses best addressed through speed limits instead of restrictions on boat or horsepower size); Memorandum (Jan. 8, 1991 [misdated, should be 1992]) (Rule 2 revised to address the inconsistency between Rules 1 and 2 concerning the speed that a boat may travel in the period of ½ before and ½ after sunset; Rule 2 revised to restrict speed of motorboats to 10 mph between ½ hour *after* sunset and ½ hour before sunrise)

*In re Cole Pond (Jamaica)*, No. UPW 90-02, Rule 2 (adopted Feb. 1, 1992); Decision at 3 – 4 (Nov. 20, 1991) (Board allows electric motors, but limits speed to 5 mph, because such restriction will not affect any established use and will prevent conflicts with uses that are established)

*In re Sunrise Lake, (Benson and Orwell)*, No. UPW 89-05, Rule (effective Feb. 1, 1992); Decision at 2 (Nov. 20, 1991) (Rule imposes 5 mph speed limit to address aesthetics and erosion concerns; Board declines to prohibit internal combustion motors)

*In re Lewis Pond (Lewis)*, No. UPW 89-03, Rule 2; Decision at 2 (Nov. 20, 1991) (although Board finds established uses on Lewis Pond to include “low speed boating,” Rule 2 limits speed to 5 mph for *all* motorboats, because such a prohibition will not prevent the continued enjoyment of established uses, the Pond is in a wilderness setting which provided habitat for wildlife, the agitation of motors will be harmful to trout, the noise of motors disturbs wildlife, and other lakes in the area are available for motorboats); note later case: *In re Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992)

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Rule (effective Feb. 1, 1992); Decision at 4 (Nov. 20, 1991) (Rule 2: motorboats limited to 10 mph between one

half hour after sunset and one half hour before sunrise; limits on speed will aid in safe boating practices and will not prevent established uses from occurring in reasonable manner; time restriction is similar to those on other waterbodies)

*In re Lake Morey (Fairlee)*, No. UPW 88-05, Rule 2 (effective Feb. 1, 1992) Decision at 2 -3 (Nov. 20, 1991) (Board adopts rule limiting speed of all vessels to 40 mph because of heavy recreational use of the lake, because all established and normal uses on Lake Morey can occur at speed of less than 40 mph, speed limits of 40 – 45 mph have been established in similar circumstances in New Hampshire and Connecticut ; and operation of boats at speeds above 40 mph is not a normal use on the lake)

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Rule 2 (adopted May 15, 1989; effective Jun. 2, 1989) (except where authorized by Department of Public Safety under 23 V.S.A. §3316(a), operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited in bay on the east arm of Reservoir on which the Waterbury Center Day Use Area is located); amended, *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

*In re Lake Ninevah (Mt. Holly)*, No. UPW 88-01, Rule 2 (adopted Mar. 31, 1989; effective Apr. 20, 1989) (operation of motorboats at speeds over 5 mph prohibited)

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Rule 1 (adopted Dec. 17, 1985; effective Jan. 7, 1986) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited in the bay/channel between the dam and main lake); Decision (Sep. 26, 1985); Preliminary Memorandum (Jul. 10, 1985)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Rule 1 (adopted Dec. 13, 1984; effective Jan. 1, 1985) (operation of motorboats at speeds over 2 mph or which cause a disturbing wake northerly of the narrows to the north of the launch ramp prohibited); Decision (Aug. 7, 1984); note *In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 95-03, Rule b (effective Jan. 3, 1996) (speed limit established by 1984 rule does not apply to PWC southerly of the narrows; see note above)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Rule 1 (effective Nov. 29, 1982) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Rule 1 (adopted Nov. 17, 1980) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited); note *In re Fern Lake (Leicester)*, No. UPW 97-02, Decision at 2 (Oct. 14, 1997) (Board finds that the speed limit seems to be working with no history of

conflicts)

*In re Lake St. Catherine (Wells, Poultney)*, No. UPW 79-02, Rule 2(a) (adopted Nov. 17, 1980) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited on all portions of Lily Pond and in channel connecting Lake St. Catherine and Lily Pond; Rule 3 defines the term “channel”); note that *In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01, added Rules b(3) – (7) (adopted Oct. 5, 1994) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited on Lake St. Catherine in Forest House Bay, Hall’s Bay, Horseshoe Bay and Oxbow Bay; speed can be exceeded for boats starting from and returning to docks for waterskiing purposes)

*In re Lake St. Catherine (Wells, Poultney)*, No. UPW 79-02, Rule 2(b) (adopted Nov. 17, 1980) (operation of motorboats at speeds over 5 mph or which cause a disturbing wake prohibited in channel connecting Lake St. Catherine and Little Lake [a/k/a Little Pond]; Rule 3 defines the term “channel”)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 78-02, Rule 1 (adopted Dec.12, 1978) (motorboat speeds over 5 mph prohibited within two bay areas south of Hall Point) and Rule 2 (10 mph limit for rest of lake) (adopted Dec.12, 1978)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 1 (issued Aug. 31, 1977; effective Apr. 1, 1978) (motorboat speeds over 5 mph prohibited on the entire lake)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 3 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (motorboat speeds over 5 mph prohibited within 200 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 4 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (motorboat speeds over 5 mph prohibited within 200 feet of shore except for starting or stopping a waterskier)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 3 (adopted May 31, 1974; filed Jun. 6, 1974) (5 mph for motorboats)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 3 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (5 mph for motorboats)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 1 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (motorboat speeds over 10 mph prohibited within 100 feet of shore)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 3 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (5 mph for motorboats)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 1 (adopted Sep. 28, 1972; filed Sep. 29, 1972) (5 mph between 6:00PM and 10:00AM)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 1 (amended Aug. 15, 1974; filed Aug. 27, 1974) (speeds over 5 mph prohibited within 100 feet of shore in south portion of lake)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 1(a) (adopted May 19, 1972) (5mph within 200 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts); Decision at 4 (Dec. 23, 1971) (waters are public waters and must be managed so that various uses may be enjoyed in a reasonable manner)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 1(b) (adopted May 19, 1972) (5mph within 200 feet of shoreline); Decision at 4 (Dec. 23, 1971) (waters are public waters and must be managed so that various uses may be enjoyed in a reasonable manner)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 1 (effective Sep. 28, 1972) (5 mph between 6:00PM and 10:00AM); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 2 (effective Sep. 28, 1972) (5 mph at all times in specific portion of Reservoir); Rule 3 (effective Sep. 28, 1972) (for remainder of lake, 5 mph within 200 feet of any shore or island); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

*In re North Springfield Reservoir (Weathersfield, Springfield) and Stoughton Pond (Weathersfield)*, No. UPW 71-01, Rule 2 (effective May 25, 1972) (5 mph speed limit for motorboats on both waterbodies; preliminary draft Decision indicates that reasons for the prohibition may have included the size and shape of the waterbody (it is narrow and long); its shallow depth (turbidity from high-speed motors); motorboats may not have been a normal use); note *In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01 (adopted Oct. 5, 1994) (amended speed limit rule to apply to all “vessels” not only “boats”)

*In re North Springfield Reservoir (Weathersfield, Springfield) and In re Stoughton Pond (Weathersfield)* No. UPW 71-01, Rule (effective May 25, 1972) (vessels powered by motor limited to 5 mph on both waterbodies)

**5.2.3.1 Restriction does not apply to law enforcement, emergencies, or performance**

## of official duties

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Decision at 1 (May 15, 1989) (Decision states that exception to restriction was adopted by Board on May 15, 1989; final rule, however, does not include the exception)

*In re Lake Ninevah (Mt. Holly)*, No. UPW 88-01, Rule 4 (adopted Mar. 31, 1989; effective Apr. 20, 1989)

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Rule 2 (adopted Dec. 17, 1985; effective Jan. 7, 1986); Decision (Sep. 26, 1985); Preliminary Memorandum (Jul. 10, 1985)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Rule 2 (adopted Dec. 13, 1984; effective Jan. 1, 1985); Decision (Aug. 7, 1984)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Rule 1 (effective Nov. 29, 1982)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 4 (issued Aug. 31, 1977; effective Apr. 1, 1978)

### 5.2.4 Rule not adopted

*In re "Narrows" between Providence island and Phelps Point on Grand Isle (Lake Champlain, South Hero)*, No. UPW 98-02, Decision (Oct. 29, 1998) (Board declines to adopt a 10 mph speed limit for the "Narrows," because a formal limit is not presently warranted for safety purposes; because the "Narrows" is 650 feet wide at its narrowest point, speed is not regulated by 23 V.S.A. §3311(c) (5 mph within 200 feet of shore, swimmers, other boats), but speed is generally regulated by 23 V.S.A. §3311(a) (careless and negligent operation prohibited); but the "Narrows" is wider than many lakes on which high speed boating occurs; no evidence that high speed through the "Narrows" is inherently unsafe; education as to §3311(c) is needed)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 3 (Nov. 1, 1995) (Board declines to adopt rule limiting daytime and nighttime speeds; petitioners have not demonstrated that there is a safety problem which warrants speed limits)

*In re Lake Willoughby (Westmore)*, No. UPW 90-04, Decision at 2 - 3 (Nov. 20, 1991) (Board declines to limit speeds 35 mph could prevent waterskiing (which appears to be an established use); accidents do not appear to be a chronic problem; enforcement, education and buoys are better solutions)

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Rules (adopted Jan. 8, 1992; effective Feb. 1, 1992) (note that, as stated in the Memorandum (dated Jan. 8, 1991 [misdated, should be 1992]) that discusses the adoption of the Rules, the Rules delete references to speed limits as unnecessary and contrary to 23 V.S.A. §3315(d); the Rules as adopted thus supersede the Decision at 1, 4 - 5 (Nov. 20, 1991) (Board declines to limit boats with internal combustion motors to 5 mph, but does adopt speed limit rules: Rule 1: motorboats operating faster than 10 mph must travel in a counterclockwise direction; Rule 2: motorboats operating faster than 10 mph are limited to Monday, Wednesday and Friday from 2:00 PM to 7:00 PM and Saturday and Sunday to noon to 7:00 PM; Board cites 10 V.S.A. §§1424(b) and (c); there is no record of high-speed boating accidents, but high-speed boating raises serious safety concerns and conflicts with other established uses, and limiting waterskiing hours will reduce the potential for conflicts with other established uses, especially during tranquil morning and evening hours; Board also notes the speed limit restrictions in 23 V.S.A. §3311(c)(1)); note *In re Greenwood Lake (Woodbury)*, No. UPW 96-03, Rule b (effective Feb. 28, 1997); Decision (Jan. 8, 1997) (modifying day and time limitations on waterskiing)

*In re: Otter Creek*, No. UPW 89-02, Decision at 1 - 2 (Aug. 24, 1989) (Board declines to adopt a rule limiting speed to 5 mph/no wake in area near shore of lake, because 23 V.S.A. §3311(c) already restricts speeds in such instances)

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 2 (May 31, 1989) (Board declines to adopt a rule limiting speed to 5 mph within 200 of swimmers, canoes rowboats, or extra light craft, because 23 V.S.A. §3311(c) already restricts speeds in such instances)

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 1 (Sep. 26, 1985) (citing 10 V.S.A. §1424, Board declines to adopt rule to adopt rule to prohibit boating at speeds over 15 mph between sunset and 8:30 AM based on noise concerns, as this would arbitrarily regulate some established uses which may or may not cause a nuisance in terms of noise while leaving unregulated other uses which may cause noise; note that Board does adopt Rule 1 to limit speed in channel [see above]); Preliminary Memorandum (Jul. 10, 1985)

*In re Greenwood Lake (Woodbury)*, No. UPW 83-02, Decision (Nov. 8, 1983) (Board declines to adopt rule to, *inter alia*, limit speed of motorboats to 10 mph within 100 feet of shoreline; Board prefers to allow lake association and users to resolve conflicting uses in an informal manner; Board views additional regulations as a last resort); Preliminary Memorandum (Sep. 26, 1983)

*In re Burr Pond (Sudbury)*, No. UPW 78-01, Memorandum (Jul. 26, 1978) (Board declines to adopt a blanket 5 mph speed limit, noting that *In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 1 [1972], already limits motorboats to 5 mph between 6:00PM and 10:00AM, and further restrictions would interfere with

waterskiing and other established uses; Board also notes that many commenters stated satisfaction with existing Board rule)

*In re Lake Iroquois (Williston, Hinesburg)*, No. UPW 77-01, Decision (Aug. 7, 1978) (Board declines to adopt speed limits, as this would interfere with waterskiing and other established uses)

#### **5.2.4.1 Enforcement of existing rules (and other alternatives) are more appropriate to resolve issues raised**

*In re Burr Pond (Sudbury)*, No. UPW 78-01, Memorandum (Jul. 26, 1978) (Board endorses enforcement, education)

*In re Lake Iroquois (Williston, Hinesburg)*, No. UPW 77-01, Decision (Aug. 7, 1978) (Board endorses enforcement, education, and the placement of safety zone buoys by local officials)

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975); Preliminary Memorandum (Jul. 22, 1975)

### **5.3 Horsepower**

10 V.S.A. §1424(a)(3) (Board may regulate horsepower of motors)

#### **5.3.1 Rule adopted**

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 2 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (motors greater than 10 horsepower prohibited)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 2 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (motors greater than 55 horsepower prohibited); but note that the *1995 General Amendments*, No. UPW 95-00 (effective Jan. 1, 1995), appear to have repealed this provision

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 2 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (motors greater than 10 horsepower prohibited)

#### **5.3.2 Rule not adopted**

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 05-04, Decision (Nov. 10, 2005) (Panel declines to impose a 15 hp limit on motors; 15+ horsepower motors are normal uses on the Reservoir and past Board decisions conclude that speed limits are less restrictive means to reduce conflicts than are horsepower limitations; petitioners seeks quiet waters, but a limitation on the size

of the motors does not necessarily accomplish this result, because even a small horsepower motor, if mounted on a light boat, can travel fast, causing noise and wakes which may disturb the quiet experience of Somerset Reservoir; and a larger horsepower motor can be driven quietly at speeds which do not; as an alternative, Panel adopts a “no wake” rule, in conjunction with the existing 10 mph speed limit on the Reservoir, because it meets petition’s goals while not affecting those who seek to use motors for fishing and other quiet recreational activities)

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Decision at 6 (Aug. 30, 2002) (horsepower limitations results in arbitrary administration of regulations and difficulties in enforcement ); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (Vt. Sup. Ct.)

*In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Decision at 2 (Oct. 26, 1994) (while limiting the use of motors north of the “narrows” in Somerset Reservoir, [later repealed by *In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 95-04, Rule c (effective Jan. 3, 1996); Decision (Nov. 1995)], Board declined to place horsepower limitations on motors because they “appear to be an arbitrary and overly restrictive method of addressing” the need to regulate high speed motorboat use south of the narrows; “numerical horsepower limitations” will not “fully accomplish the apparent intent of preventing high speed motorboating use. Yet each of these horsepower limits would prevent some “low impact” users, principally anglers, hunters, and sight seers, from using the Reservoir based solely on the size of the motors on their boats, rather the manner in which the vessels would be operated. The Board is convinced that with further discussion, a less arbitrary approach could be found. In addition, the Board is concerned that some of the horsepower limitations suggested in this proceeding could result in underpowered motorboats attempting to use the Reservoir”); Preliminary Memorandum (Sep. 16, 1994)

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 94-03, Decision at 1 (Oct. 26, 1994) (Board declines to adopt a rule restricting motors to 10 horsepower (“Horsepower limitations are not the appropriate approach...” Decision at 2), as restriction would eliminate several normal uses of the Pond (fishing, waterskiing, PWC) without a showing that such a result is either necessary or warranted to protect the lakes natural resource values (against milfoil) or to resolve public safety or recreational use conflicts; nor do petitioners show that such a rule would be consistent with UPW Rules, §2 provision that the Board manage use conflicts “to the greatest extent possible’ and with the “least restrictive approach possible,” in a manner that allows all normal uses; Board acknowledges that additional regulation in some portions of lake warrants consideration, but does not regulate here); Preliminary Memorandum (Sept. 14, 1994)

*In re: East Long Pond (Woodbury)*, No. UPW 94-02, Decision (Oct. 26, 1994) (Board declines to adopt a rule, *inter alia*, restricting motors to 7.5 horsepower, as restriction would eliminate several normal uses of the Pond (fishing and waterskiing) without a showing that such a result is either necessary or warranted to address the issues of safety, public resource protection or recreational use conflicts; nor did petitioners show that such a rule would be consistent with UPW Rules, including provisions that the Board manage use conflicts “to the greatest extent possible’ in a manner that allows all normal uses)

*In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision (Oct. 26, 1994) (Board declines to adopt a rule, *inter alia*, restricting motors to 7.5 horsepower, as restriction would eliminate several normal uses and is neither necessary nor warranted to address underlying use conflicts; nor do petitioners show that restriction is consistent with provisions that the Board allow normal uses (which include high speed motorboating) to the greatest extent possible and that any regulation be the least restrictive approach possible); but note speed limit restrictions established in *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

*In re: Lewis Pond (Lewis)*, No. UPW 92-01, Decision (Dec. 22, 1992) (Board declines to adopt a rule restricting motors to six horsepower, stating “the Board has decided not impose what might be an artificial limit on motor size in light of the existing rule limiting speed;” Board favors speed limits over horsepower limitations)

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rules (effective Feb. 1, 1992); Decision at 3 – 4 (Nov. 20, 1991) (Board adopts rules limiting, *inter alia*, speeds at certain times [see Rules 1 and 2], but does not adopt horsepower limitations, because large horsepower motors are regularly used on the lake, a horsepower limit would be arbitrary, and speed limits will resolve conflicts while allowing the continuation of established uses)

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 2 (May 31, 1989) (Board declines to adopt a rule restricting motors to 25 horsepower, because of long-standing policy (since 1973) that horsepower limits “tend to be arbitrary,” “public safety concerns or conflicts in recreational uses are generally the result of the manner in which vessels are operated, rather than the horsepower of their motor;” and “many boaters might have only one motor which might, for example, be used both for low speed boating uses such as fishing and high speed uses such as waterskiing.” Board further finds that petitioners had not presented information to suggest that the use of higher horsepower motors has been, or was likely to become, a problem on the pond, nor had they presented convincing arguments as to why the Board should abandon its policy in favor of speed limits and against horsepower limitations); Preliminary Memorandum (Dec. 6, 1988)

*In re: Curtis Pond (Calais)*, No. UPW 86-06, Decision at 3 (Sep. 9, 1986) (Board declines to restrict motors to 10 horsepower, finding that waterskiing is a normal use, that a restriction would be “inconsistent with the legislative intent of 10 V.S.A. Section 1424(c),” that the rule would “arbitrarily prohibit motors larger than ten horsepower regardless of their manner of use,” and conflicts and potential safety concerns “can be resolved in a manner which does not prohibit any existing recreational uses”); but note *In re: Curtis Pond (Calais)*, No. UPW 94-04, Rule (adopted Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit north of the “narrows”); Preliminary Memorandum (Sep. 14, 1994)

*In re: Lake Raponda (Wilmington)*, No. UPW 84-02, Decision (Aug. 1, 1985), Preliminary Memorandum (Jun. 25, 1985) (citing 10 V.S.A. §1424(c), Board declines to restrict motors to 10 or 15 horsepower as petitioned, as effect of such restriction would be to eliminate use of lake for waterskiing and other established and normal recreational uses; reasons for petition [safety, wakes, pollution] can be achieved through education and enforcement, without restricting existing uses)

*In re Greenwood Lake (Woodbury)*, No. UPW 83-02, Decision (Nov. 8, 1983), (Board declines to adopt rule to, *inter alia*, limit horsepower of motors to 55 hp; Board prefers to allow lake association and users to resolve conflicting uses in an informal manner; Board views additional regulations as a last resort); Preliminary Memorandum (Sep. 26, 1983)

*In re: Curtis Pond (Calais)*, No. UPW 80-03, Memorandum at 1 - 2 (Jul. 3, 1980) (Board declines to adopt a rule restricting motors to 10 horsepower because such a rule would eliminate the use of Curtis Pond for waterskiing and other established recreational uses, such a restriction would be arbitrary in that many of the concerns raised in support of the petition, such as noise and safety, are not directly related to the size of the motors, many of the problems identified could be better addressed by education, greater enforcement, and individual efforts to avoid confrontational behavior, and the placement of buoys to mark swimming areas which can occur without prior state approval provided they comply with 29 V.S.A. Ch. 11); but note *In re: Curtis Pond (Calais)*, No. UPW 94-04, Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit north of the “narrows”)

*In re Burr Pond (Sudbury)*, No. UPW 78-01, Memorandum (Jul. 26, 1978) (Board declines to adopt horsepower limits, as this would interfere with waterskiing and other established uses)

*In re Lake Iroquois (St. George)*, No. UPW 77-01, Decision (Aug. 7, 1978) (Board declines to adopt horsepower limits, as this would interfere with waterskiing and other established uses)

*In re: Shadow Lake (Glover)*, No. UPW 72-02, Letter (Sep. 13, 1972) (Board declined to adopt a rule restricting motors to 40 horsepower and other restrictions;

no discussion as to why the rule was not adopted)

**5.3.2.1 Because enforcement of existing rules is more appropriate to resolve issues raised**

*In re Lake Iroquois (Williston, Hinesburg)*, No. UPW 77-01, Decision (Aug. 7, 1978)

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975); Preliminary Memorandum (Jul. 22, 1975)

**5.4 Size of vessels**

**5.4.1 Rule adopted**

**5.4.2 Rule not adopted**

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rules (effective Feb. 1, 1992); Decision at 3 – 4 (Nov. 20, 1991) (Board adopts rules limiting, *inter alia*, speeds at certain times [see Rules 1 and 2], but does not limit boat size, because size limits would be arbitrary, and speed limits will resolve conflicts while allowing the continuation of established uses)

**5.4.2.1 Enforcement of existing rules is more appropriate to resolve issues raised**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975); Preliminary Memorandum (Jul. 22, 1975)

**5.5 Type of vessels**

**5.5.1 Motorboats**

See Rules relating to motors

**5.5.2 Houseboats (boats with living facilities)**

*Note that 23 V.S.A. §3311(g) prohibits the use of vessels for residential purposes [defined as including, but not limited to, sleeping overnight on a vessel] on lakes and ponds on which there are no boat sanitary waste pumpout facilities approved by the Department of Environmental Conservation; note that decisions following the enactment of §3311(g) generally decline to adopt restrictions, as statute makes rule redundant*

**5.5.2.1 Rule adopted**

*In re Lake Ninevah (Mt. Holly)*, No. UPW 88-01, Rule 1 (adopted Mar. 31, 1989; effective Apr. 20, 1989) (use of vessels “for residential purposes” prohibited; “residential purposes” includes, but is not limited to, sleeping overnight on a vessel); Rule 4 (Rule 1 applies to state agencies except in cases of law enforcement, emergency, or official duties)

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 87-01, Rule 1 (adopted Apr. 26, 1988; effective May 25, 1988) (use of vessels “for residential purposes” prohibited; “residential purposes” includes, but is not limited to, sleeping overnight on a vessel); Rule 2 (applies to state agencies except in cases of law enforcement, emergency, or official duties); Preliminary Memorandum at 2 (Aug. 5, 1987) (use of vessels for residential purposes did not occur before 1986; lake association is concerned about sanitation)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 78-02, Rule 3 (adopted Dec.12, 1978)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 2 (issued Aug. 31, 1977; effective Apr. 1, 1978)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 5 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 2 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 6 (adopted May 31, 1974; filed Jun. 6, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 2 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 2 (effective Oct. 7, 1974)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 5 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 3 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 5 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 1 (adopted Oct. 2, 1973; filed Oct. 4, 1973); and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 1 (amended Nov. 17 1980) (filed under No.

UPW 72-04); but see *In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (prohibition against houseboats repealed as to Fern Lake)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 3 (adopted Sep. 28, 1972; filed Sep. 29, 1972)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 2 (amended Aug. 15, 1974; filed Aug. 27, 1974); implicitly repealed by *In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 3 (Nov. 1, 1995)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 6 (effective Sep. 28, 1972); repealed, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.5.2.2 Rule not adopted**

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 3 (Nov. 1, 1995) (Board declines to prohibit use of vessels for residential purposes in light of existence of 23 V.S.A. §3311(g); Board does accept need for rule as a contingency in the event that a pumpout facility is proposed in the future; Board will not adopt rule to address speculation that “might be made about any large lake in Vermont”); implicitly repealing *In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 2 (amended Aug. 15, 1974; filed Aug. 27, 1974)

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Decision at 3 – 4 (Nov. 20, 1991) (Board declines to prohibit use of vessels for residential purposes in light of enactment of 23 V.S.A. §3311(g); Board does accept need for rule as a contingency in the event that a pumpout facility is proposed in the future, but Board will not adopt rule to address speculative conflicts as this would not be consistent with 24 V.S.A. §1424)

*In re Cole Pond (Jamaica)*, No. UPW 90-02, Decision at 2 – 3 (Nov. 20, 1991) (Board declines to prohibit use of vessels for residential purposes in light of enactment of 23 V.S.A. §3311(g); Board does accept need for rule as a contingency in the event that a pumpout facility is proposed in the future; Board will not adopt rule to address speculative conflicts as this would not be consistent with 24 V.S.A. §1424)

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Decision at 3 (Nov. 20, 1991) (Board declines to prohibit use of vessels for residential purposes in light of enactment of 23 V.S.A. §3311(g))

*In re Sunrise Lake, (Benson and Orwell)*, No. UPW 89-05, Decision at 2 (Nov. 20, 1991) (Board [and petitioners] find no need to prohibit use of vessels for residential purposes in light of enactment of 23 V.S.A. §3311(g))

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Decision at 2 (Nov. 20, 1991) (petition to prohibit use of vessels for residential purposes withdrawn in light of enactment of 23 V.S.A. §3311(g))

*In re Lake Morey (Fairlee)*, No. UPW 88-05, Decision at 2 (Nov. 20, 1991) (petition to prohibit use of vessels for residential purposes withdrawn in light of enactment of 23 V.S.A. §3311(g))

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 2 (May 31, 1989) (Board declines to adopt a rule prohibiting houseboats or boats with living facilities because 23 V.S.A. §3311(g) prohibits the use of vessels for residential purposes [defined as including, but not limited to, sleeping overnight on a vessel] on lakes and ponds on which there are no boat sanitary waste pumpout facilities approved by the Department of Environmental Conservation)

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 2 (Sep. 26, 1985) (Board declines to adopt rule prohibiting houseboats because such use does not presently exist and which is not likely to exist in the future; would be better to prohibit residential use of boats not boats which are capable of residential use); Preliminary Memorandum (Jul. 10, 1985)

*In re Greenwood Lake (Woodbury)*, No. UPW 83-02, Decision at 1 (Nov. 8, 1983), (Board declines to adopt rule to, *inter alia*, prohibit houseboats; Board prefers to allow lake association and users to resolve conflicting uses in an informal manner; Board views additional regulations as a last resort); Preliminary Memorandum (Sep. 26, 1983)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Memorandum at 1-2 (Sep. 3, 1982) (Board declines to adopt rule prohibiting houseboats because “problems” which restriction would address do not exist and there is no reason to believe that they will exist in the future)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board repeals prohibition against houseboats on the lake, as it sees little likelihood that such use would be made of the lake)

### **5.5.3 Personal watercraft**

See definition of “personal watercraft” *UPW Rule 5.5*

#### **5.5.3.1 General rule**

*UPW Rule 3.3: Use of Personal Watercraft*

a. The use of personal watercraft is prohibited effective May 1, 1997 on lakes, ponds and reservoirs:

(1) that have a surface area less than 300 acres, or

(2) that as of May 1, 1995, had a maximum speed limit of 5 m.p.h. or less, or

(3) on which the use of internal combustion motors to power vessels is prohibited.

b. The above prohibition on personal watercraft may be modified on a case-by-case basis in response to petitions filed pursuant to 10 V.S.A. § 1424 (See Appendix A) [of UPW Rules].

### **5.5.3.2 Rule adopted**

*In re: Lake Willoughby (Westmore)*, No. UPW 04-01, Rule (effective Feb. 14, 2005) (“The use of personal watercraft (jet skis) is prohibited.”) (Note that the Board’s *final proposed* rule, which read, “Use of personal watercraft (jet skis) and any other Class A vessel that uses an inboard engine powering a water jet pump as its primary source of motive power is prohibited” was amended after LCAR review; see Letter, Jan. 5, 2005); Decision (Nov. 19, 2004) (Board prohibits PWC and other jet pump-powered Class A vessels because: (1) normal uses of Lake Willoughby include swimming, sailing, sailboarding, rowing, paddling, fishing, waterskiing, scuba diving, wildlife observation, and the peaceful enjoyment of the Lake’s aesthetic values; that PWC are not a normal use of Lake Willoughby; (2) PWC operations has increased since 1991, when the Board decided not to regulate them; (3) the operation of these vessels has created and increased conflicts (safety, noise (because of the lake’s and surrounding mountains’ topography) and behavior) with other normal uses of the lake; (4) enforcement and voluntary measures identified by the Board in 1991 to address public safety hazards posed by personal watercraft have proven inadequate or unworkable; (5) there is “no least restrictive approach practicable” that would allow the continued operation of PWC on Lake Willoughby; further, PWC are allowed on a number of lakes in the vicinity of Lake Willoughby; Board rejects arguments that PWC contribute to the spread of Eurasian milfoil, that disturbance impacts from PWC affect wildlife, and that PWC contribute more to water pollution than other conventional motorboats); see *In re Lake Willoughby (Westmore)*, No. UPW 90-04, Decision (Nov. 20, 1991)

*In re: Great Averill and Little Averill Ponds (Norton, Averill)*, No. UPW 03-01, Rule (adopted Oct. 3, 2003; effective Feb. 15, 2004) (PWC prohibited from Great Averill and Little Averill Ponds); Decision (Oct. 20, 2003) (normal and predominant uses on the ponds are paddling, swimming, aesthetic enjoyment,

wildlife observation and low-speed motorboating; higher-speed motorboating (including waterskiing) occurs at a relatively low level of intensity; PWC have never been a normal use within the meaning of the Vermont UPW Rules on either pond; PWC operation, when it has occurred, has conflicts with the ponds' normal uses (solitude, aesthetics); other nearby lakes allow PWC)

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Rule 2 (adopted Aug. 27, 2002; effective Nov. 30, 2002) (PWC prohibited from Reservoir); Decision at 4, 6 (Aug. 30, 2002) (PWC are not a normal use on the Reservoir; PWC operation conflicts with the Reservoir's normal uses; allowing PWC to become an established use will create an unacceptable level of conflict with the normal uses of the Reservoir; Reservoir is the only wilderness-like waterbody in central Vermont (like Green River Reservoir in the north and Somerset Reservoir in the south; other nearby lakes allow PWC); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (Vt. Sup. Ct.)

*In re: Norton Pond (Norton, Warren Gore)*, No. UPW 02-01, Rule (adopted Aug. 9, 2002; effective Nov. 30, 2002) (PWC prohibited from Pond); Decision (Aug. 9, 2002) (wilderness-like, long, narrow, and shallow pond is almost entirely surrounded by a state conservation easement; 60 mostly summer residences, some accessible only by water, are on the pond; non-motor uses (paddling, swimming, aesthetic enjoyment, wildlife observation) and low-speed motorboating are the normal uses; higher-speed motorboating (including waterskiing) occurs at a relatively low level of intensity; PWC are not a normal use on the pond; when used on the pond, PWC have caused conflicts with other normal uses; neither enforcement nor regulation of time, place and manner of PWC use is adequate to address conflicts; PWC are allowed on other nearby lakes)

*In re: Caspian Lake (Greensboro)*, No. UPW 01-01, Rule (effective Dec. 10, 2001) ("Use of personal watercraft or any other Class A vessel which uses an inboard engine powering a water jet pump as its primary source of motive power is prohibited"); Decision (Oct. 10, 2001) (PWC have never been a normal use on the lake; when used on the lake, PWC have created an irreconcilable conflict with the lake's normal uses, especially the enjoyment of peace and quiet; efforts to enforce the current rule (which prohibits operation of PWC in a manner or speed that causes the exhaust jet to leave the water, see *In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rule 3 (effective Feb. 1, 1992)) have proved unavailing; even if enforced, the current rule does not adequately address conflict between PWC and normal use of lake for quiet solitude, nor would regulating time, place or manner of PWC operation; allowing PWC or similar vessels to become an established use will create an unacceptable level of conflict with the normal uses of Caspian Lake; Board rejects or does not address arguments that there should be no rules of any kind, that PWC might as well be banned everywhere; and that other grounds – safety, water and air pollution, waterfowl

disturbance, shoreline erosion, milfoil prevention, and attitude pollution – support the petition)

*In re Lake Morey (Fairlee)*, No. UPW 98-03, Rule (effective Feb. 22, 1999); Decision (Jan. 12, 1999) (Board prohibits PWC on lake; PWC are not a normal use on the lake, as their use on the lake before 1993 was not regular, frequent or consistent; allowing PWC to become an established use is likely to create conflicts with other established and normal uses; where PWC are not normal uses on lakes larger than 300 acres, the VUPW Rules do not require the Board to leave lakes open to PWC, thus inviting the development of conflicts with other established and normal uses; preventing PWC from becoming an established use is the least restrictive approach practicable to address potential conflicts) note *Dissent* in Decision at 4 – 6 (potential conflict is not sufficient to impose ban on PWC; if conflict does exist, Board must take least restrictive approach and allow all normal uses to the extent possible; here enforcement should be attempted before a ban is imposed; evidence is not sufficient to find that PWC are not a normal use); *note that this Decision also reversed the Board earlier Decision (Oct. 29, 1998) in which it held that a tie vote meant that the petition failed and the rules were not adopted; the Jan. 12, 1999 Decision applied VUPW §10 to resolve the tie)*

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 97-04, Decision at 2 – 3 (Oct. 29, 1998) (Board prohibits PWC on lake; PWC are not a normal use on the lake, as their use on the lake before 1993 was not regular, frequent or consistent; because of lake's narrow configuration and the high number of children using the lake to learn to swim and operate canoes, kayaks, and sailboats, Board finds 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)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 95-03, Rule b (effective Jan. 3, 1996) (PWC allowed southerly of the narrows referred to in *In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01) (using Rule 3.3(b), Board specifically allows PWC in the southern portion of the Reservoir even though the Reservoir is smaller than 300 acres, because there is no residential development along the shoreline, PWC are a normal use in the southern part of the Reservoir, and Board is not aware of any conflicts between the continued use of PWC and other normal uses in southern part of the Reservoir)

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02, Rule b (effective Jan. 3, 1996) (Board prohibits PWC in northeastern arm of the lake); Decision (Nov. 1995) (Board does not explain why its rationale for adopting a speed limit for other motorboats and not banning all watercraft from the northeastern arm does not apply to PWC; see discussion of case under speed limit topic section); Preliminary Memorandum (Aug. 21, 1995)

*In re Holland Pond (Holland)*, No. UPW 94-06 and 95-05, Rule (Oct. 26, 1994) (Board prohibits PWC on the Pond); Decision (Oct. 26, 1994) (PWC are not a normal use; pond is isolated and undeveloped and part of states largest WMA; PWC must be prohibited before the unique characteristics of the pond are lost; restriction will not affect town's tax base; fact that PWC are now quieter than in the past or that there are loud shore noises is not relevant to reasons for prohibition; prohibition is not based on concern for loons or nesting sites); Preliminary Memorandum (Sep. 15, 1994); *note* Decision (Jan. 6, 1995) (on Dec. 19, 1994, LCAR objects to rule as arbitrary; Board revises rule to limit use of pond to two PWC between 10:00 AM and 4:00 PM and rule to expire in two years)

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Rule 1 (Oct. 26, 1994; effective Feb. 4, 1995) (Board prohibits PWC on the Reservoir); Decision at 3 (Oct. 26, 1994) (PWC are not a major use and are not compatible with the preservation of the Reservoir's traditional uses and character; prohibition is necessary to protect Reservoir's important natural resource values and increasingly rare opportunity the Reservoir affords for enjoying recreational uses in a wilderness-like setting; also, the more appropriate Harriman Reservoir provides ample opportunity for such use); Preliminary Memorandum (Sep. 16, 1994)

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rule 3 (effective Feb. 1, 1992) (PWC prohibited from operation in a manner or speed that causes the exhaust jet to leave the water); Decision at 3 – 4 (Nov. 20, 1991) (Rule is adopted in order to avoid increase in noise or pitch above that experienced in normal operation in smooth water; PWC were first observed on lake in 1990; PWC are subject to 23 V.S.A. §§3302 and 3312a; decibel levels are regulated but objections are usually to the pitch of the noise created by PWC; pitch increases significantly when jet exhaust is above the water level; while rule may not be readily enforceable, review with DPS convinces Board that rule is sufficient); see *In re: Caspian Lake (Greensboro)*, No. UPW 01-01, Rule (effective Dec. 10, 2001) (banning PWC and certain Class A vessels)

#### **5.5.3.2.1. Rule modifying general rule prohibiting PWC on lakes smaller than 300 acres**

*In re Salem Lake (Derby)*, No. UPW 98-06, Decision (Oct. 29, 1998) (Board lifts rule prohibiting PWC on lake because 1994 general amendments that added Rule 3.3(a)(1) incorrectly identified Salem Lake as a lake on which PWC are prohibited; high speed motorboating is and was a normal use; Board has never adopted a specific rule to prohibit PWC on lake; there is no compelling reason why the Board should not correct its error and continue to prohibit PWC on lake)

*In re Little Lake (Wells) and Little Pond (Poultney)*, No. UPW 97-03, Rule d (adopted Oct. 14, 1997) (PWC may be operated at 5 mph on Little Lake and Lily Pond for purposes of obtaining access to and returning from Lake St. Catherine); Decision (Oct. 14, 1997) (even though both Little Lake and Lily Pond are smaller than 300 acres, and PWC would therefore be prohibited under Rule 3.3(a)(1), because a number of shoreline owners have historically operated PWC on Lake St. Catherine, it makes little sense to require them to trailer their PWC to Lake St. Catherine instead of using the channels that connect Little Lake and Lily Pond with Lake St. Catherine; this recognizes the unique circumstances of these connected waterbodies and is consistent with the Board's practice of managing these three bodies in an integrated manner; Board does not agree that its rule will result in wholesale violations of the 5 mph speed limit)

*In re Lake Elmore (Elmore)*, No. UPW 96-02, Rule (adopted Jan. 8, 1997; effective Feb. 28, 1997) (PWC allowed on lake between 10:00 AM and 7:00 PM); Decision (Jan. 8, 1997) (using Rule 3.3(b), Board specifically allows PWC on lake in restricted times; "300 acre" provision was, when adopted, acknowledged to be a "rule of thumb," subject to modification between the adoption date (October 1994) and the effective date (May 1997); even though Elmore is only 200 acres, its shape and shoreline make it suited to accommodating high speed motorboating; Board's decision is consistent with VUPW Rules 2.6, 2.7 and 2.9; Board's decision is subject to future review; while Board is concerned that PWC (and other motorboats) have violated 23 V.S.A. §§3311 and 3312a, Board cannot find inherent conflicts between PWC and other normal uses, particularly is PWC are limited to certain times; Board cannot find it likely that its rules which limit PWC to lakes of 300+ acres will displace many PWC from other lakes on to Elmore; time of day limitations are needed to reduce conflicts between PWC and other quiet uses; Board rejects restricting PWC use only to shoreline owners, as Elmore is a public water; Board finds no need to restrict the number of PWC on the lake at any given time; restrictions on PWC will not inevitable lead to restrictions on other uses; PWC should not be prohibited in order to reduce milfoil and other exotic species introduction, as other vessels can carry milfoil); Preliminary Memorandum (Sep. 16, 1996)

#### **5.5.3.2.2. Policy concerns: domino effect of prohibiting PWC on certain waterbodies**

*In re: Lake Willoughby (Westmore)*, No. UPW 04-01, Rule (effective Feb. 14, 2005) Decision at 18 – 19 (Nov. 19, 2004): "This is a legitimate concern. There is no statute that establishes either a uniform jurisdictional threshold for prohibiting the use of PWC or statutory criteria, specific to PWC, to help the Board make determinations when such prohibitions are appropriate. Given the lack of Legislative leadership in this area, the Board in 1994 adopted comprehensive revisions to the VUPWR that, among other things, prohibited personal watercraft effective May 1, 1997, on lakes, ponds and reservoirs that

have a surface area less than 300 acres or which had other restrictions that effectively made the use of PWC impossible. VUPWR 3.3(a). Since 1994, the Board has received an increasing number of petitions seeking bans on the operation of personal watercraft on lakes with surface areas greater than 300 acres. The Board acknowledges that a petition-by-petition approach to regulating PWC on Vermont lakes has its limitations; however, in the absence of a legislative directive as to how best to manage state waters so as to maintain their “normal uses,” the Board has little other recourse.”

### **5.5.3.3 Rule not adopted**

*In re Echo Lake (Charleston)*, No. UPW 05-02, Decision (Oct. 14, 2005) (Panel declines to adopt rule prohibiting PWC because it cannot find a present, demonstrable use conflict warranting regulation; PWC are not prevalent on Echo Lake at the present time; while petition cites the threats that PWC pose to loons and the need to preserve a safe and quiet environment, it anticipates a problem that presently does not warrant additional regulation over and above the existing rules governing the operation of PWC in section 3.2.b of the Use of Public Waters Rules and education by lake users and the PWC industry with regard to the appropriate use of PWC; WRP cannot conclude that prohibiting PWC on Echo Lake is currently necessary to protect loons or resolve use conflicts between PWC and nonmotorized vessels)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 3 - 4 (Nov. 1, 1995) (Board declines to adopt rule prohibiting PWC; petitioners have not demonstrated that there is a safety problem or recreational use conflict of sufficient magnitude to warrant regulation, let alone prohibition, of PWC; it is only speculation that many PWC will be displaced to Bomoseen as a result of provision in rule which may limit PWC to lakes of 300+ acres, especially since Bomoseen is the largest lake in the state); *note Rule 3.3*

*In re: East Long Pond (Woodbury)*, No. UPW 94-02, Decision (Oct. 26, 1994) (Board declines to adopt a rule, *inter alia*, prohibiting PWC (jetskis); Board notes that PWC are *not* a normal use, but only basis for rejection of petition is general language (addressed more to a request to limit horsepower) that restriction would eliminate several normal uses of the Pond without a showing that such a result is either necessary or warranted to address the issues of safety, public resource protection or recreational use conflicts and that petitioners did not show that such a rule would be consistent with UPW Rules, including provisions that the Board manage use conflicts “to the greatest extent possible’ in a manner that allows all normal uses)

*In re Lake Willoughby (Westmore)*, No. UPW 90-04, Decision at 2 - 3 (Nov. 20, 1991) (Board declines to prohibit use of PWC because: PWC have been on the lake but in limited numbers; PWC are subject to 23 V.S.A. §§3302 and 3312a; decibel levels are regulated but objections are usually to the pitch of the noise

created by PWC; complaints regarding operation of PWC are tied to dangerous speeds near others and the shore, which is addressed by 23 V.S.A. §3311(c)(1); no credible, scientific evidence that PWC impact crayfish; conflicts seem to be limited to the swimming area at north end of lake, so there is no basis for a lake-wide prohibition); see *In re: Lake Willoughby (Westmore)*, No. UPW 04-01, Rule (effective Feb. 14, 2005); Decision (Nov. 19, 2004)

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Decision at 3 - 4 (Nov. 20, 1991) (Board declines to prohibit use of PWC; objections are usually to the pitch of noise created by and the method of operations of PWC, issues which are addressed by 23 V.S.A. §§3302 and 3309)

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Decision at 3 -4 (Nov. 20, 1991) (Board declines to prohibit PWC on lake, because use of PWC is uncommon, PWC are governed by 23 V.S.A. §3302; 23 V.S.A. §3309 requires internal combustion engines to operate at less than 82 decibels, but most PWC operate at levels below this level, and 23 V.S.A. §3311(c)(1) restricts speed within swimmers, other vessels, etc.; complaints arise when §§3309 and 3311 are violated; enforcement of existing laws, education, and use of buoys will result in fewer recreational use conflicts; conflicts have not occurred to the level that requires Board action, pending legislative review)

#### **5.5.4 Radio-controlled model boats**

*In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Decision at 4 (Oct. 26, 1994) (Board declines to prohibit radio-controlled model boats on Reservoir; issue is not of sufficient magnitude to require regulation and is not the least restrictive approach to address the conflict, if any); Preliminary Memorandum (Sep. 16, 1994)

#### **5.5.5 Canoes/tubes**

*In re Batten Kill (Arlington)*, No. UPW 98-04, Decision (Oct. 29, 1998) (Board does not adopt rule regulating days or time of day use of canoes or tubes on portion of the Batten Kill River; conflicts between canoers/tubers and fishermen have been diminished through local agreements and the fact that canoeing/tubing is a daytime activity and fishing is usually an early morning and late afternoon activity; best information indicates that the biological decline of river is not due to canoeing/tubing)

#### **5.5.6 Snowmobiles**

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board declines to prohibit snowmobiles from surface of lake in the winter months as this is not in the public interest)

## **5.6 General operation and use of boats**

### **5.6.1 Rule adopted**

#### **5.6.1.1 General**

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 78-02, Rule 5 (adopted Dec.12, 1978) (vessels to operate in conformance with 25 V.S.A. Ch. 7 [which does not presently exist])

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 3 (issued Aug. 31, 1977; effective Apr. 1, 1978) (motorboats to operate in conformance with 25 V.S.A. Ch. 25 [which does not presently exist])

#### **5.6.1.2 Protection of swimmers, canoers, etc.**

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 3 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (motorboat speeds over 5 mph prohibited within 200 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 1(a) (adopted May 19, 1972) (5mph within 200 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts); Decision at 4 (Dec. 23, 1971) (waters are public waters and must be managed so that various uses may be enjoyed in a reasonable manner)

#### **5.6.1.3 Use of public fishing access**

*In re Lake Iroquois (Williston, Hinesburg)*, No. UPW 77-01, Decision (Aug. 7, 1978) Board declines to adopt speed limits and notes that use of public fishing access for purposes other than fishing is prohibited by F&W regulations)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 2 (adopted Sep. 28, 1972; filed Sep. 29, 1972) (5 mph limit for any motorboat launched at public fishing access, and any such boat may be used only for fishing)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 5 (effective Sep. 28, 1972) (5 mph limit for any motorboat launched at public fishing access, and any such boat may be used only for fishing); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit for all boats at all time on entire Reservoir; it is not equitable to establish one rule for lakeshore owners and another for others); Preliminary Memorandum (Sep. 16, 1994)

#### **5.6.1.4 Turbidity**

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes turbidity)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 5 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes turbidity)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes turbidity)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 2 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes turbidity); and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 1 (amended Nov. 17 1980) (filed under No. UPW 72-04; removing references to Fern Lake from the 1973 rules in light of the amendment to the rules relating to Fern Lake which limits speed to 5 mph and “no wake,” see *In re Fern Lake (Leicester)*, No. UPW 80-02, Rule 1 (adopted Nov. 17, 1980))

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 4 (adopted Sep. 28, 1972; filed Sep. 29, 1972) (no operation of any motorboat which causes turbidity)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 3 (amended Aug. 15, 1974; filed Aug. 27, 1974) (no operation of any motorboat which causes turbidity)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 3 (adopted May 19, 1972) (no operation of any motorboat which causes turbidity); Decision at 4 (Dec. 23, 1971) (waters are public waters and must be managed so that various uses may be enjoyed in a reasonable manner)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 8 (effective Sep. 28, 1972) (no operation of any motorboat which causes turbidity); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.6.1.5 Small size of waterbody**

*In re Silver Lake (Barnard)*, No. UPW 71-03, Decision at 3 (Dec. 23, 1971)

#### **5.6.1.6 Depth of waterbody**

*In re Silver Lake (Barnard)*, No. UPW 71-03, Decision at 3 (Dec. 23, 1971)

#### **5.6.1.7 Shoreline (erosion or use)**

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 4 (adopted Oct. 18, 1974;

filed Oct. 25, 1974) (motorboat speeds over 5 mph prohibited within 200 feet of shore except for starting or stopping a waterskier)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes shoreline erosion)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 1 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (motorboat speeds over 10 mph prohibited within 100 feet of shore)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 2 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes shoreline erosion); and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 2 (amended Nov. 17 1980) (filed under No. UPW 72-04) (removing references to Fern Lake from the 1973 rules in light of the amendment to the rules relating to Fern Lake which limits speed to 5 mph and “no wake,” see *In re Fern Lake (Leicester)*, No. UPW 80-02, Rule 1 (adopted Nov. 17, 1980))

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 1 (amended Aug. 15, 1974; filed Aug. 27, 1974) (speeds over 5 mph prohibited within 100 feet of shore in south portion of lake)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 1(b) (adopted May 19, 1972) (5mph speed limit within 200 feet of shoreline); Decision at 3 (Dec. 23, 1971);

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 2 (effective Sep. 28, 1972) (5 mph speed limit at all times in specific portion of Reservoir); Rule 3 (filed Sept. 29, 1972) (for remainder of lake, 5 mph speed limit within 200 feet of any shore or island); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.6.1.8 Damage to fisheries or aquatic environment**

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes damage to fisheries or the aquatic environment)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 5 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (no operation of any motorboat which causes damage to fisheries or the aquatic environment)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 4 (adopted Oct. 2, 1973;



1997 effective Feb. 28, 1997) (waterskiing is limited to Monday, Wednesday, Friday, Saturday and Sunday noon to 7:00 PM); Decision (Jan. 8, 1997) (Board modifies – for sake of simplicity - day and time limitations on waterskiing previously imposed in *In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Rule 2 (effective Feb. 1, 1992); Decision (Nov. 20, 1991); retains 1992 provisions which provide for two days for more passive recreational use of the lake; Board chooses not to allow waterskiing every day of the week from noon until sunset because of lakes small size and configuration; new rule is a reasonable allocation of time for waterskiing); Preliminary Memorandum (Sep. 16, 1996)

*In re Lake Elmore (Elmore)*, No. UPW 96-02, Rule (adopted Jan. 8, 1997; effective Feb. 28, 1997) (PWC allowed on lake between 10:00 AM and 7:00 PM); Decision (Jan. 8, 1997) (using Rule 3.3(b), Board specifically allows PWC on lake in restricted times; while Board is concerned that PWC (and other motorboats) have violated 23 V.S.A. §§3311 and 3312a, Board cannot find inherent conflicts between PWC and other normal uses, particularly is PWC are limited to certain times); Preliminary Memorandum (Sep. 16, 1996)

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Rule (effective Feb. 1, 1992); Decision at 4 (Nov. 20, 1991) (Rule 1 permits waterskiing only between 9:00 AM and 7:00 PM; restrictions on waterskiing to specific times will benefit other established uses and reduce potential conflicts, especially during tranquil morning and evening hours); no actual Rule in file

*In re Halls Lake (West Newbury)*, No. UPW, Decision at 4 (Nov. 20, 1991) (Rule 2 limits motorboats to 10 mph between one half hour after sunset and one half hour before sunrise; limits on speed will aid in safe boating practices and will not prevent established uses from occurring in reasonable manner; time restriction is similar to those on other waterbodies); no actual Rule in file

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 1 (adopted Sep. 28, 1972; filed Sep. 29, 1972) (5 mph between 6:00PM and 10:00AM)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 1 (effective Sep. 28, 1972) (5 mph between 6:00 PM and 10:00 AM); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.7.1.2 Time of week**

*In re Greenwood Lake (Woodbury)*, No. UPW 96-03, Rule b (adopted Jan. 8, 1997 effective Feb. 28, 1997) (waterskiing is limited to Monday, Wednesday, Friday, Saturday and Sunday noon to 7:00 PM); Decision (Jan. 8, 1997) (Board modifies – for sake of simplicity - day and time limitations on waterskiing previously imposed in *In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Rule

2 (effective Feb. 1, 1992); Decision (Nov. 20, 1991); retains 1992 provisions which provide for two days for more passive recreational use of the lake; Board chooses not to allow waterskiing every day of the week from noon until sunset because of lakes small size and configuration; new rule is a reasonable allocation of time for waterskiing); Preliminary Memorandum (Sep. 16, 1996)

### **5.7.1.3 Season**

## **5.7.2 Rule not adopted**

### **5.7.2.1 Enforcement of existing rules is more appropriate to resolve issues raised**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975); Preliminary Memorandum (Jul. 22, 1975)

## **5.8 Location**

### **5.8.1 Rule adopted**

#### **5.8.1.1 Mooring Management Zones**

*In re Shelburne Bay, Lake Champlain (Shelburne)*, No. UPW 81-01, Rule 1 (adopted Apr. 5, 1983) (Board establishes area of Shelburne Bay as a MMZ)

*In re Shelburne Bay, Lake Champlain (Shelburne)*, No. UPW 81-01, Rule 2 (adopted Apr. 5, 1983) (Board prohibits moorings in certain area of the Shelburne Bay MMZ)

#### **5.8.1.2 Speed limits**

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Rule 1 (adopted Dec. 13, 1984; effective Jan. 1, 1985) (operation of motorboats at speeds over 2 mph or which cause a disturbing wake northerly of the narrows to the north of the launch ramp prohibited); Decision (Aug. 7, 1984)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 78-02, Rule 1 (adopted Dec. 12, 1978) (motorboat speeds over 5 mph prohibited within two bay areas south of Hall Point)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 2 (effective Sep. 28, 1972) (5 mph at all times in specific portion of Reservoir); Rule 3 (adopted Sept. 28, 1972; filed Sept. 29, 1972) (for remainder of Reservoir, 5 mph within 200 feet of any shore or island); *repealed, In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit for entire Reservoir); Preliminary Memorandum

(Sep. 16, 1994)

### **5.8.1.3 Other**

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 7 (effective Sep. 28, 1972) (nude swimming and operation of watercraft permitted only in certain established swimming areas); *repealed, In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir; the Board's Decision does not, however, address any issues relating to nude swimming....); Preliminary Memorandum (Sep. 16, 1994)

## **5.8.2 Rule not adopted**

### **5.8.2.1 Internal combustion motors**

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Decision at 1 (May 15, 1989) (Board declines to ban all motorboats north of Cotton Brook and to limit speed to 5 mph in entire north arm of Reservoir or area south of Cotton Brook because Reservoir is only large body in central Vermont, ban would be contrary to 10 V.S.A. §1424(c), low speed boating (by fishermen and others) is currently a normal use in this area, and higher speed boating in this area is uncommon); but note speed limit restrictions established in *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules a – c (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

### **5.8.2.2 Mooring Management Zones**

*In re Pelot's Bay, Lake Champlain (North Hero)*, No. UPW 83-03, Decision (Dec. 6, 1983) (Board declines to adopt rules relating to regulation of moorings, as some requests in petition are beyond scope of Board's authority, and the need or effectiveness of other proposed regulations are unclear)

*In re Shelburne Bay Mooring Management Zone (Lake Champlain, Shelburne)*, No. UPW 85-03, Decision at 2 (Sep. 20, 1985) (Board denies petition to require Town to expand number of moorings in MMZ)

### **5.8.2.3 Anchoring or rafting**

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 1 - 3 (Nov. 1, 1995) (Board declines to adopt rule prohibiting anchoring or rafting of vessels within 300 feet of shoreline in two specific areas of the lake; Board finds that rule is an "effort to privatize a public resource;" proposed rule is also inconsistent with VUPW §§2.2, 2.6 and 2.7)

#### **5.8.2.3.1 Enforcement of existing rules is more**

## appropriate to resolve issues raised

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03, Memorandum (Aug. 20, 1975); Preliminary Memorandum (Jul. 22, 1975)

### 5.9 Waterskiing

#### 5.9.1 Rule adopted

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Rule 3 (adopted Aug. 27, 2002; effective Nov. 30, 2002) (waterskiing prohibited from Reservoir); Decision at 4 – 5, 6 (Aug. 30, 2002) (waterskiing may or may not be a normal use on the Rees; even it is a normal use, it occurred at a low frequency and was not a regular or consistent use, and did not occur at all between 1989 and 1997; submerged hazards occur as Reservoir level fluctuates for power needs, and thus waterskiing would present an unacceptable risk to public safety which regulating time, place or manner of waterskiing would not address; allowing waterskiing to become an established use is likely to will create unsafe conditions and an unacceptable level of conflict with the normal uses of the Reservoir; Reservoir is the only wilderness-like waterbody in central Vermont (like Green River Reservoir in the north and Somerset Reservoir in the south; other nearby lakes allow waterskiing); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (Vt. Sup. Ct.)

*In re Greenwood Lake (Woodbury)*, No. UPW 96-03, Rule b (adopted Jan. 8, 1997 effective Feb. 28, 1997) (waterskiing is limited to Monday, Wednesday, Friday, Saturday and Sunday noon to 7:00 PM); Decision (Jan. 8, 1997) (Board modifies – for sake of simplicity - day and time limitations on waterskiing previously imposed in *In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Rule 2 (effective Feb. 1, 1992); Decision (Nov. 20, 1991); retains 1992 provisions which provide for two days for more passive recreational use of the lake; Board chooses not to allow waterskiing every day of the week from noon until sunset because of lakes small size and configuration; new rule is a reasonable allocation of time for waterskiing); Preliminary Memorandum (Sep. 16, 1996)

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Rule 2 (Oct. 26, 1994; effective Feb. 4, 1995)(Board prohibits waterskiing on the Reservoir); Decision at 3 (Oct. 26, 1994) (waterskiing is not a major use and is not compatible with the preservation of the Reservoir's traditional uses and character; prohibition is necessary to protect Reservoir's important natural resource values and increasingly rare opportunity the Reservoir affords for enjoying recreational uses in a wilderness-like setting; also, the more appropriate Harriman Reservoir provides ample opportunity for such use); Preliminary Memorandum (Sep. 16, 1994)

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Rule 1 (motorboats towing waterskiers must travel in a counterclockwise direction); Rule 2 (waterskiing is limited to Monday, Wednesday and Friday from 2:00 PM to 7:00 PM and Saturday and Sunday to noon to 7:00 PM) (effective Feb. 1, 1992); Decision at 1, 4 - 5 (Nov. 20, 1991) (Board cites 10 V.S.A. §§1424(b) and (c); there is no record of high-speed boating accidents, but high-speed boating raises serious safety concerns and conflicts with other established uses, and limiting waterskiing hours will reduce the potential for conflicts with other established uses, especially during tranquil morning and evening hours)

*In re Halls Lake (West Newbury)*, No. UPW 89-01, Rule (effective Feb. 1, 1992); Decision at 4 (Nov. 20, 1991) (waterskiing permitted only between 9:00 AM and 7:00 PM; restrictions on waterskiing to specific times will benefit other established uses and reduce potential conflicts, especially during tranquil morning and evening hours); no actual Rule in file

*In re Lake St. Catherine (Wells, Poultney)*, No. UPW 79-02, Rule 1(a) (adopted Nov. 17, 1980) (waterskiing prohibited on all portions of Lily Pond and in channel connecting Lake St. Catherine and Lily Pond; Rule 3 defines the term "channel" )

*In re Lake St. Catherine (Wells, Poultney)*, No. UPW 79-02, Rule 1(b) (adopted Nov. 17, 1980) (waterskiing prohibited in channel connecting Lake St. Catherine and Little Lake [a/k/a Little Pond]; Rule 3 defines the term "channel")

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 1 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (waterskiing permitted only between 10:00 AM and 6:00 PM)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 2 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (boat may pull only one waterskier at a time)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 1 (adopted May 31, 1974; filed Jun. 6, 1974) (all waterskiing prohibited)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 1 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (all waterskiing prohibited)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (Board does not adopt rule prohibiting all waterskiing as petitioned, but waterskiing permitted only between 10:00 AM and 6:30 PM; waterskiing prohibited within 100 feet of shore)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 1 (adopted Oct. 2, 1973; filed Oct. 4, 1973) (all waterskiing prohibited)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 1 (amended Aug. 15, 1974; filed Aug. 27, 1974) (waterskiing over 5mph prohibited)

within 100 feet of shore in south portion of lake)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 2 (adopted May 19, 1972) (between 10:00 AM and 6:00 PM, maximum of four waterskiing boats; waterskiing may not be conducted to the exclusion of other normal uses; may proceed only in counterclockwise direction; 5 mph boat speed within 200 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts and of shoreline; waterskiers may not approach within 100 feet of swimmers, canoes, rowboats, sailboats, rafts or other light crafts); Decision at 4 (Dec. 23, 1971) (waters are public waters and must be managed so that various uses may be enjoyed in a reasonable manner)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 4 (effective Sep. 28, 1972) (where speeds above 5 mph are allowed, only one boat with water skier at any time and waterskiing may not interfere with other water skiers, boats or persons); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (while prior rule had allowed high-speed motorboating (and therefore waterskiing) by shoreline owners, but not those who launched at public access, Board establishes 5 mph speed limit at all times on entire Reservoir, it is not equitable to establish one rule for lakeshore owners and another for others); Preliminary Memorandum (Sep. 16, 1994)

*In re North Springfield Reservoir (Weathersfield, Springfield) and Stoughton Pond (Weathersfield)*, No. UPW 71-01, Rule 1 (effective May 25, 1972) (waterskiing prohibited on North Springfield Reservoir; preliminary draft Decision indicates that reasons for the prohibition may have included the size and shape of the waterbody (it is narrow and long); its shallow depth (turbidity from high-speed motors); motorboats may not have been a normal use)

#### **5.9.1.1 Historical practice**

*In re Silver Lake (Barnard)*, No. UPW 71-03, Decision at 3 (Dec. 23, 1971)

#### **5.9.2 Rule not adopted**

*In re Cole Pond (Jamaica)*, No. UPW 90-02, Decision at 3 (Nov. 20, 1991) (Board finds petition to prohibit waterskiing to be redundant because Board has prohibited internal combustion motors and limited electric motors to 5 mph; petitioners agree))

*In re Greenwood Lake (Woodbury)*, No. UPW 90-01, Decision (Nov. 20, 1991) (Board declines to adopt rule to prohibit waterskiing, but does place time and operation limits on the activity)

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 2 - 3 (May 31, 1989)

(Board declines to adopt a rule limiting number of waterskiers pulled by a single boat, as petitioners have not presented information that this is, or may become, a problem on the pond)

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 1 (Sep. 26, 1985) (citing 10 V.S.A. §1424, Board declines to adopt rule to prohibit waterskiing between sunset and 8:30 AM based on noise concerns, as this would arbitrarily regulate some established uses which may or may not cause a nuisance in terms of noise while leaving unregulated other uses which also cause noise); Preliminary Memorandum (Jul. 10, 1985)

*In re: Lake Raponda (Wilmington)*, No. UPW 84-02, Decision (Aug. 1, 1985); Preliminary Memorandum (Jun. 25, 1985) (citing 10 V.S.A. §1424(c), Board declines to restrict motors to 10 or 15 horsepower as petitioned, as effect of such restriction would be to eliminate use of lake for waterskiing and other established and normal recreational uses; reasons for petition [safety, wakes, pollution] can be achieved through education and enforcement, without restricting existing uses)

*In re Greenwood Lake (Woodbury)*, No. UPW 83-02, Decision (Nov. 8, 1983), (Board declines to adopt rule to, *inter alia*, prohibit waterskiing between 6:30 PM and 10:00 AM; Board prefers to allow lake association and users to resolve conflicting uses in an informal manner; Board views additional regulations as a last resort); Preliminary Memorandum (Sep. 26, 1983)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board sees no need to prohibit waterskiing, as 5 mph speed limit makes waterskiing impractical)

*In re: Shadow Lake (Glover)*, No. UPW 72-02, Letter (Sep. 13, 1972) (Board declined to adopt a rule restricting the hours in which was might occur; no discussion as to why the rule was not adopted)

## **5.10 Waterskiing slalom courses**

### **5.10.1 Rule adopted**

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 03-02, Rule (adopted Oct. 20, 2003, effective Feb. 15, 2004); Decision (Oct. 20, 2003) (Board amends rules governing location of waterskiing slalom courses on the Reservoir; Board again rejects argument that waterskiing slalom course should not be allowed in the northern no-wake zone; Board needs to manage uses in this zone, and no-wake zone allows the best waterskiing); *amending, in part, In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rule d (effective Feb. 28, 1997)

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules

d – e (effective Feb. 28, 1997) (Board restricts waterskiing slalom courses to only two on Reservoir, in certain areas; requirements for installation, maintenance and use); Decision (Jan. 8, 1997) (voluntary efforts to regulate waterskiing slalom course have not been successful; waterskiing slalom course are a normal use on Reservoir; Board recognizes dichotomy in siting a slalom course in a 5 mph area in the northern part of the Reservoir, but this decision results from the work of a Coalition, which includes canoeist, kayakers, etc., which proposed a detailed plan for siting and use of courses); *amended by, In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 03-02 Decision (Oct. 20, 2003)

*In re: Caspian Lake (Greensboro)*, No. UPW 91-01, Rule 4 (effective Feb. 1, 1992) (waterskiing slalom courses regulated as follows: (a) construction [limited to 600 feet; no more than ten [*but see revision in Memorandum dated Jan. 8, 1991 [misdated, should be 1992] below*] buoys providing no more than four turns; buoys must be attached to framework at least five feet below surface], (b) location [only one course allowed at any time; course must be moved every year at least 1000 feet from prior location; course must run parallel to shore; buoys must be 800 feet from shore] and (c) use [no sanctioned competitions allowed; no PWC; only motorboats may tow waterskiers; boats must turn away from shore when entering or existing course]); Decision at 1 -2, 5 (Nov. 20, 1991) (rule adopted so as to allow continued waterskiing in a manner which minimizes conflicts with other established uses); Decision (Jan. 8, 1991 [*misdated, should be 1992*]) (Rule 4(a) revised to amend 10 buoys to 16 buoys)

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 88-04, Rule 3 (adopted May 15, 1989; effective Jun. 2, 1989) (ANR must approve siting of all waterskiing slalom courses on Reservoir); Decision at 2 - 3 (May 15, 1989) (Board declines to leave waterskiing slalom courses unregulated because of their impact on several of the more common recreation use of the Reservoir); amended, *In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Rules d – e (effective Feb. 28, 1997); Decision (Jan. 8, 1997)

### **5.10.2 Rule not adopted**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 99-01, Decision (Oct. 10, 2000) (Board declines to prohibit waterskiing slalom course in northeastern arm of lake; waterskiing and slalom courses are normal uses; petitioners have failed to show that the rule is necessary or warranted to address the recreational use conflicts that occur intervention he northeastern arm, especially because petitioners seek total ban on slalom course in northeastern arm of lake, even though courses use only a part of the northeastern arm and then only for part of the boating season)

## **5.11 Regulation of aircraft**

### **5.11.1 General rule**

### *UPW Rule 3.4: Use of Aircraft on Public Waters*

The use of aircraft is prohibited from May 1 through November 30 on all lakes, ponds and reservoirs with a surface area of less than 75 acres, where the maximum speed limit for vessels powered by motors is 5 m.p.h. or less, and where the use of internal combustion motors is prohibited except where the use by aircraft is specifically authorized in accordance with 5 V.S.A. Chapter 9 (see Appendix A).

#### **5.11.2 Rule adopted**

*In re Colchester Pond (Colchester)*, No. UPW 91-03, Rule 2 (adopted Feb. 16, 1993; effective Mar. 8, 1993) (no use of lake for aircraft, except in emergencies or as authorized by the Vermont Transportation in accordance with 5 V.S.A. Ch. 9); Rule 3 (adopted Feb. 16, 1993) (Rule 2 applies to state agencies except in cases of law enforcement, emergency, or official duties); Decision (Dec. 22, 1992) (aircraft are not an established use)

*In re Indian Brook Reservoir (Essex)*, No. UPW 88-06, Rule 2 (adopted Mar. 31, 1989; effective Apr. 20, 1989) (no use of lake for aircraft, except in emergencies or as authorized by the Vermont Transportation in accordance with 5 V.S.A. Ch. 9); Rule 3 (Rule 2 applies to state agencies except in cases of law enforcement, emergency, or official duties)

*In re Lake Ninevah (Mt. Holly)*, No. UPW 88-01, Rule 3 (adopted Mar. 31, 1989; effective Apr. 20, 1989) (no use of lake for aircraft, except in emergencies or as authorized by the Vermont Transportation in accordance with 5 V.S.A. Ch. 9); Rule 4 (Rule 3 applies to state agencies except in cases of law enforcement, emergency, or official duties)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Rule 2 (adopted Nov. 17, 1980) (no use of lake for aircraft, except in emergencies or as authorized by the Vermont Aeronautics Board [which does exist anymore])

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 4 (adopted May 31, 1974; filed Jun. 6, 1974) (no use of lake for aircraft, except in emergencies or as authorized by the Vermont Aeronautics Board [which does exist anymore])

#### **5.11.3 Rule not adopted**

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 96-05 and 96-06, Decision at 6 – 7 (Jan. 8, 1997) (Board declines to adopt a rule prohibiting seaplanes; seaplanes may need to be restricted or prohibited, but Board was not presented with sufficient information to make this judgment)

*In re: East Long Pond (Woodbury)*, No. UPW 94-02, Decision (Oct. 26, 1994) (Board declines to adopt a rule, *inter alia*, prohibiting seaplanes; Board notes that it is not clear that they are a normal use; but only basis for rejection of petition is general language (addressed more to a request to limit horsepower) that restriction would eliminate several normal uses of the Pond without a showing that such a result is either necessary or warranted to address the issues of safety, public resource protection or recreational use conflicts and that petitioners did not show that such a rule would be consistent with UPW Rules, including provisions that the Board manage use conflicts “to the greatest extent possible” in a manner that allows all normal uses)

*In re: Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02, Decision (Oct. 26, 1994) (Board declines to adopt a rule, *inter alia*, prohibiting seaplanes; while seaplanes occasionally use the Reservoir, it is not clear that they are a normal use; Note that general language - that restriction would eliminate several normal uses and is neither necessary nor warranted to address underlying use conflicts; nor do petitioners show that restriction is consistent with provisions that the Board allow normal uses to the greatest extent possible and that any regulation be the least restrictive approach possible – is more clearly directed to addressing a horsepower limitation, not the seaplane question)

*In re Cole Pond (Jamaica)*, No. UPW 90-02, Decision at 3 (Nov. 20, 1991) (Board declines to adopt rule to prohibit aircraft landings; while aircraft usage is not an established use and a rule might be adopted to prevent conflicts with other established uses, aircraft landings are not common, and Board prefers that issue be addressed within context of whether there should be a general statewide policy)

## **5.12 Docks and floats**

See 10 V.S.A. Ch. 47

### **5.12.1 Rule adopted**

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Memorandum at 1-2 (Sep. 3, 1982) (Board declines to adopt rule limiting each property owner to one float under 200 square feet because “problems” which restriction would address do not exist and there is no reason to believe that they will exist in the future)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 2 (adopted Sep. 16, 1975; filed Sep. 22, 1975) (permitted only as provided for in 29 V.S.A. Ch. 11)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 6 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (all docks/floats to be built of non-polluting materials)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 3 (adopted Oct. 18, 1974; filed Oct. 25, 1974) (all docks/floats to be built of non-polluting materials)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 5 (adopted May 31, 1974; filed Jun. 6, 1974) (all docks/floats to be built of non-polluting materials)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 3 (adopted Aug. 15, 1974; filed Aug. 28, 1974) (all docks/floats to be built of non-polluting materials)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 3 (effective Oct. 7, 1974) (no docks or floats, whether permanent or temporary, are permitted on the pond)

### **5.12.2 Rule not adopted**

*In re Sunrise Lake, (Benson and Orwell)*, No. UPW 89-05, Decision at 3 (Nov. 20, 1991) (Board [and petitioners] find no need to require docks to be built of non-polluting materials in light of water quality standards which prohibit discharge of pollutants into waters)

*In re: South Pond (Eden)*, No. UPW 88-03, Decision at 2 (May 31, 1989) (Board declines to adopt a rule requiring docks/floats to be built of non-polluting materials because 10 V.S.A. Ch. 47, which protects water quality, already ensures that docks/floats would be built of such materials)

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton)*, No. UPW 82-01, Memorandum at 1-2 (Sep. 3, 1982) (Board declines to adopt rule limiting each property owner to one float under 200 square feet because “problems” which restriction would address do not exist and there is no reason to believe that they will exist in the future)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Memorandum (Oct. 14, 1980) (Board declines to require all docks to be attached to the shoreline, as it can see no basis for this requirement)

### **5.13 Agency of Natural Resources to post WRB Rules**

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 2 (Sep. 26, 1985) (Board finds that a rule requiring Agency to post signs [though “modeled after rules adopted by the Board in the early 1970s,” serves no useful purpose; Board posts signs itself; all of the cases cited below in this section are therefore likely of limited value); Preliminary Memorandum (Jul. 10, 1985)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 3 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 8 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 5 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 5 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 5 (effective Oct. 7, 1974)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 5 (amended Aug. 15, 1974; filed Aug. 27, 1974)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 2 (adopted Sep. 28, 1972; filed Sep. 29, 1972) (ANR to post Rule 2, which limits speed and use of any motorboat launched at public fishing access)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 5 (effective Sep. 28, 1972) (ANR to post Rule 5, which limits speed and use of any motorboat launched at public fishing access); *repealed, In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 4 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

#### **5.14 Rules supplement but do not modify other applicable laws and regulations**

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 2 (Sep. 26, 1985) (Board finds that a rule with the statement, "These rules supplement and do not modify other laws and regulation other than provided herein," although "modeled after rules adopted by the Board in the early 1970s," serves "no useful purpose;" all of the cases cited below in this section are therefore likely of limited value); Preliminary Memorandum (Jul. 10, 1985)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 5 (issued Aug. 31, 1977; effective Apr. 1, 1978)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 5 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 9 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 6 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 8 (adopted May 31, 1974; filed Jun. 6, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 6 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 6 (effective Oct. 7, 1974)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 6 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 6 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 6 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 3 (adopted Oct. 2, 1973; filed Oct. 4, 1973) and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 3 (amended Nov. 17 1980) (filed under No. UPW 72-04; removing references to Fern Lake from the 1973 rules; and see *In re Fern Lake (Leicester)*, No. UPW 80-02)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 5 (adopted Sep. 28, 1972; filed Sep. 29, 1972)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 4 (amended Aug. 15, 1974; filed Aug. 27, 1974)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Decision (Dec. 23, 1971); Rule 4 (May 19, 1972)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 9 (effective Sep. 28, 1972); *repealed*, *In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.15 Selectboard may issue ordinances to amplify or enforcement WRB rules**

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 2 (Sep.

26, 1985) (Board finds that a rule allowing municipalities to enforcement the Board's rules, although "modeled after rules adopted by the Board in the early 1970s," serves "no useful purpose;" all of the cases cited below in this section are therefore likely of limited value); Preliminary Memorandum (Jul. 10, 1985)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 6 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 10 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 7 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 9 (adopted May 31, 1974; filed Jun. 6, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 7 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 7 (effective Oct. 7, 1974)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 7 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 7 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 7 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 4 (adopted Oct. 2, 1973; filed Oct. 4, 1973) and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 4 (amended Nov. 17 1980) (filed under No. UPW 72-04; removing references to Fern Lake from the 1973 rules; and see *In re Fern Lake (Leicester)*, No. UPW 80-02)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 6 (adopted Sep. 28, 1972; filed Sep. 29, 1972)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 6 (amended Aug. 15, 1974; filed Aug.27, 1974)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 5 (adopted May 19, 1972); Decision (Dec. 23, 1971)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 10 (effective Sep. 28, 1972); *repealed, In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

#### **5.16 WRB retains jurisdiction and may modify rules**

*In re Lake Hortonia (Hubbardton, Sudbury)*, No. UPW 85-01, Decision at 2 (Sep. 26, 1985) (Board finds that a rule stating that the Board retains jurisdiction and may modify its rules, although “modeled after rules adopted by the Board in the early 1970s,” serves “no useful purpose;” all of the cases cited below in this section are therefore likely of limited value); Preliminary Memorandum (Jul. 10, 1985)

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 84-01, Decision at 3 (Aug. 7, 1984) (if need arises and present restrictions prove to be inadequate, persons can re-petition Board)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 6 (issued Aug. 31, 1977; effective Apr. 1, 1978)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 7 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 11 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Perch Pond (Benson)*, No. UPW 73-04, Rule 8 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 10 (adopted May 31, 1974; filed Jun. 6, 1974)

*In re Grout Pond (Stratton)*, No. UPW 73-02, Rule 8 (adopted Aug. 15, 1974; filed Aug. 28, 1974)

*In re Stratton Pond (Stratton)*, No. UPW 73-02, Rule 8 (effective Oct. 7, 1974)

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01, Rule 8 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Valley Lake (Woodbury)*, No. UPW 72-06, Rule 8 (adopted Oct. 2, 1973; filed Oct. 4, 1973)

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05, Rule 8 (adopted Oct. 2, 1973;

filed Oct. 4, 1973)

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04, Rule 5 (adopted Oct. 2, 1973; filed Oct. 4, 1973) and see *In re Lake Dunmore (Salisbury, Leicester)*, Rule 5 (amended Nov. 17 1980) (filed under No. UPW 72-04; removing references to Fern Lake from the 1973 rules; see *In re Fern Lake (Leicester)*, No. UPW 80-02)

*In re Burr Pond (Sudbury)*, No. UPW 72-03, Rule 7 (adopted Sep. 28, 1972; filed Sep. 29, 1972)

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01, Rule 7 (amended Aug. 15, 1974; filed Aug. 27, 1974)

*In re Silver Lake (Barnard)*, No. UPW 71-03, Rule 6 (adopted May 19, 1972); Decision (Dec. 23, 1971)

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, Rule 11 (effective Sep. 28, 1972); *repealed, In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision (Oct. 26, 1994) (Board establishes 5 mph speed limit at all times on entire Reservoir); Preliminary Memorandum (Sep. 16, 1994)

**5.17 Rules specific to waterbodies apply to state agencies but do not apply to law enforcement, emergencies, or performance of official duties**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 87-01, Rule 2 (adopted Apr. 26, 1988; effective May 25, 1988)

*In re Fern Lake (Leicester)*, No. UPW 80-02, Rule 3 (adopted Nov. 17, 1980)

*In re Lake St. Catherine (Wells, Poultney)*, No. UPW 79-02, Rule 4 (adopted Nov. 17, 1980)

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 78-02, Rule 4 (adopted Dec.12, 1978)

*In re Glen Lake (Castleton, Fair Haven, Benson)*, No. UPW 75-01, Rule 4 (issued Aug. 31, 1977; effective Apr. 1, 1978)

*In re Long Pond (Greensboro)*, No. UPW 74-02, Rule 3 (adopted Sep. 16, 1975; filed Sep. 22, 1975)

*In re Sunset Lake (Benson)*, No. UPW 73-04, Rule 7 (adopted Oct. 18, 1974; filed Oct. 25, 1974)

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03, Rule 7 (adopted May 31, 1974; filed Jun. 6, 1974)

## **VI. Delegation of Authority to Regulate Public Waters**

### **6.1 Statute**

*10 V.S.A. §1424(f)*

By rule, the board may delegate authority under this section for the regulation of public waters where:

(1) the delegation is to a municipality which is adjacent to or which contains the water; and

(2) the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality under the bylaw or ordinance shall be taken to the environmental court. The board may terminate a delegation for cause or without cause upon six months' notice to the municipality.

### **6.2 Rule**

*UPW Rule 2.5*

Any delegation of authority to manage the use of public waters to eligible municipalities (10 V.S.A. § 1424(f)) shall be made only when it is found that such action is consistent with:

(a) the provisions of 10 V.S.A. § 1424 and any other applicable Vermont law,

(b) the provisions of this Use of Public Waters Policy, and

(c) any surface water use management plan adopted in accordance with 10 V.S.A. § 1423 by the Secretary of the Agency of Natural Resources.

*In re Burton Island Mooring Management Zone*, No. UPW 86-01, Decision at 2 (Aug. 14, 1986) (Board denies petition filed by Department of Forests, Parks and Recreation to establish a MMZ in an area adjacent to Burton Island and to require boats to moor within that area; Board finds that such delegation of authority is beyond Board's jurisdiction, which is limited to delegations to municipalities)

## **6.2.1 Mooring Management Zones**

*In re General Amendments*, No. UPW 05-05, Decision at 3 (Oct. 14, 2005) (appeals from decisions made by the City of Newport pursuant to the Panel's delegation granted to the City of Newport to regulate moorings, in *In re City of Newport, (Lake Memphremagog)*, No. UPW 05-01, are filed with the Environmental Court not the Water Resources Board; such appeals must be filed within 30 days)

*In re City of Newport, (Lake Memphremagog)*, No. UPW 05-01 VUPW Rules Appendix D (effective Feb. 6, 2006); Decision (Oct. 14, 2005) (with slight revisions to reflect changes made by Act No. 115 (2004 Adj. Sess), Panel extends to January 11, 2011 the delegation granted to the City of Newport to regulate moorings, first granted in *In re City of Newport, (Lake Memphremagog)*, No. UPW 00-01)

*In re Kingsland Bay (Lake Champlain, Ferrisburgh)*, UPW 96-04, Decision (Jan. 8, 1997) (Board denies petition to delegate to Town of Ferrisburgh the authority to regulate the placement of moorings in Kingsland Bay, as it is not presently warranted, as number of boat moorings in the bay is not increasing; but Board notes potential future problems, including abandoned moorings, large number of boats anchoring on weekends, and question of whether an anchored vessel is entitled to a particular location); Preliminary Memorandum (Sep. 16, 1996)

*In re Mallet's Bay (Lake Champlain, Colchester)*, UPW 91-04, Rules (adopted May 10, 1993) (Board delegates to Town of Colchester the authority to regulate for five years the placement of moorings in certain area of the Mallets Bay MMZ); Decision (Mar. 31, 1993); Letter (Oct. 5, 1994) (Board expresses concern that town ordinance that gives preference to shoreline owners in mooring decisions violates the public trust doctrine )

*In re Burton Island Mooring Management Zone*, No. UPW 86-07, Rules (filed May 13, 1987, effective Jun. 1, 1987) (Board does not delegate but, instead, establishes MMZ near Burton Island State Park, limited to 21 anchorages northeast of island)

*In re Shelburne Bay, Lake Champlain (Shelburne)*, No. UPW 81-01, Rule 3 (adopted Apr. 5, 1983) (Board delegates to Town of Shelburne the authority to regulate the placement of moorings in certain area of the Shelburne Bay MMZ)

## **VII. Ownership Rights**

### **7.1 State ownership**

### **7.1.1 Public trust doctrine**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 14 -15 (Oct. 25, 2005): “In a long line of cases beginning with *Hazen v. Perkins*, and most recently in *Community National Bank v. State*. 172 Vt. 616 (2001), the Vermont Supreme Court has consistently “invoked the public trust doctrine in rejecting claims of private rights with respect to public waters.” *State v. Central Vermont Railway, Inc.*, 153 Vt. 337, 344 (1989), citing, *In re Lake Seymour*, 117 Vt. 367 (1952); *State v. Malmquist*, 114 Vt. 96 (1944); *State v. Quattropani*, 99 Vt. 360 (1926).”

*In re City of Newport (Lake Memphremagog)*, No. UPW 00-01, Decision at 3 (Sep. 19, 2000): “A few shore land property owners have expressed concerns that the proposed rules do not “grandfather” existing moorings. The Board believes that such “grandfathering” is not appropriate and, as a practical matter, unnecessary. All uses of public waters are subject to the police power of the state and, as a consequence, they may be reasonably regulated by the Board or its delegate. Furthermore, while mooring equipment may constitute private property, public waters and the lands lying thereunder to which the moorings are attached are subject to the public trust doctrine and should be managed for the benefit of all the State’s citizens.”

*In re Mallet’s Bay (Lake Champlain, Colchester)*, UPW 91-04, Rules (adopted May 10, 1993) (Board delegates to Town of Colchester the authority to regulate the placement of moorings in certain area of the Mallets Bay MMZ) Decision (Mar. 31, 1993); Letter (Oct. 5, 1994) Board expresses concern that town ordinance that gives preference to shoreline owners in mooring decisions violates the public trust doctrine)

### **7.1.2 Takings**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 16 – 18 (Oct. 25, 2005) (the riparian rights of the shoreline owners do not give them any property interest in the waters of Silver Lake such that a restriction on those rights is the equivalent of a unconstitutional taking of those rights)

## **7.2 Private ownership**

### **7.2.1 Riparian rights**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 13 – 14 (Oct. 25, 2005) (while shoreline owners have riparian or littoral rights in the water bodies that they abut, such rights are defined by state statute or common law; a person’s riparian rights may come into conflict with the public trust doctrine or, as here, the statutory authority of the WRP to promulgate “rules regulating the surface use of public waters.” 10 V.S.A. §6025(d)(4); and see 10 V.S.A. §1424)

*In re Mallet's Bay (Lake Champlain, Colchester)*, UPW 91-04, Decision at 6 (Mar. 31, 1993) (delegation to the Town of Colchester the authority to regulate for five years the placement of moorings in certain area of the Mallets Bay MMZ does not diminish shoreland owners' property rights)

### **7.2.2 Common law rights**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 18 (Oct. 25, 2005) rights derived from the "common law" are abrogated by statutes that are inconsistent with such common law rights)

### **7.2.3 Shoreline owners vs. the general public**

*In re Silver Lake (Barnard)*, No. UPW 05-03, Decision at 20 (Oct. 25, 2005) (Panel will not allow Silver Lake to be transformed into a private enclave; the waters of lakes and ponds are held by the State in trust for *all* the people, not just shoreowners; WRP cannot grant a benefit in a public resource to a particular class of citizens while denying it to others; beyond the fact that this action may very well be illegal, it would be bad public policy to adopt such a position)

*In re: Lake Willoughby (Westmore)*, No. UPW 04-01, Decision at 18 (Nov. 19, 2004): "The Board has rejected in the past the adoption of UPW regulations that impose different regulatory requirements on persons who are 'local' versus persons who are from out-of-state or outside the municipality where the water body in question is located. Such regulations are discriminatory and unenforceable."

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02, Decision at 9 (Aug. 30, 2002) (Board refuses to exempt riparian owners from waterskiing ban, even though they may have better local knowledge of submerged dangers); *affirmed and petition dismissed, Byers v. Water Resources Board*, Dkt. No. 351-6-03 Wncv (Wash. S. Ct. Aug. 22, 2005), Entry Decision; *appeal dktd* (Vt. Sup. Ct.)

*In re City of Newport (Lake Memphremagog)*, No. UPW 00-01, Decision at 3 (Sep. 19, 2000): "A few shore land property owners have expressed concerns that the proposed rules do not "grandfather" existing moorings. The Board believes that such "grandfathering" is not appropriate and, as a practical matter, unnecessary. All uses of public waters are subject to the police power of the state and, as a consequence, they may be reasonably regulated by the Board or its delegate. Furthermore, while mooring equipment may constitute private property, public waters and the lands lying thereunder to which the moorings are attached are subject to the public trust doctrine and should be managed for the benefit of all the State's citizens."

*In re Lake Elmore (Elmore)*, No. UPW 96-02, Rule (adopted Jan. 8, 1997; effective Feb. 28, 1997) (PWC allowed on lake between 10:00 AM and 7:00 PM);

Decision at 5 (Jan. 8, 1997): “Limiting PWC use, or any recreational use for that matter, to the owners of shoreline property is simply inconsistent with the fact that the waters in question are *public* waters. Accordingly, the Board believes that any rules that it adopts must treat all uses of such *public* waters the same.”

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01, Decision at 2 (Nov. 1, 1995) (Board declines to adopt rule prohibiting anchoring or rafting of vessels within 300 feet of shoreline in two specific areas of the lake, because Board will not sanction an “effort to privatize a public resource”)

*In re Holland Pond (Holland)*, No. UPW 94-06 and 95-05, Decision at 2 (Oct. 26, 1994) (Board will not limit use of PWC to only shoreland residents)

*In re Woodward Reservoir (Plymouth)*, No. UPW 94-01, Rule (effective Feb. 14, 1995); Decision at 2 (Oct. 26, 1994), (*repealing all rules adopted in In re Woodward Reservoir (Plymouth)*, No. UPW 71-02, (effective Sep. 28, 1972) (while prior rule had allowed high-speed motorboating by shoreline owners, but not those who launched at public access, Board establishes 5 mph speed limit at all times on entire Reservoir, it is not equitable to establish one rule for lakeshore owners and another for others: “The Board is required under 10 V.S.A. §1424(c) to manage the public waters “in the best interests of *all* citizens of the state” (emphasis added). Having rules that allow some citizens to use the public waters of the Reservoir (by virtue of their access across private shoreland property in ways that other citizens are prohibited from (i.e. high speed motorboat use) clearly does not meet this requirement); Preliminary Memorandum (Sep. 16, 1994)

*In re Mallet’s Bay (Lake Champlain, Colchester)*, UPW 91-04, Decision at 5 (Mar. 31, 1993) (when delegating to the Town of Colchester the authority to regulate for five years the placement of moorings in certain area of the Mallets Bay MMZ there is no basis to allow present moorings to be grandfathered)

*In re St. Albans Bay Mooring Management Zone (St. Albans; Lake Champlain)*, No. UPW 88-00 (Unnumbered), Letter (May 17, 1988) (Board cannot support creation of a MMZ that treats regulation of moorings differently on the basis of shoreline property ownership; St. Albans Bay and Lake Champlain are public waters and use must be regulated in the public interest; ownership of private property cannot be treated as creating any legal right or privilege in adjacent public waters)

*In re: Curtis Pond (Calais)*, No. UPW 80-03, Memorandum at 3 (Jul. 3, 1980) (individuals who own property adjacent to Curtis Pond do not have some special legal rights with respect to the use of the pond; public water bodies are held in trust for the general public and cannot be allowed to be considered as the personal domain of the few. It is the express policy of the State of Vermont that these waters be managed in the public interest to promote the public welfare)

### **VIII. Other State/Federal Laws And Regulations**

*In re: Great Averill and Little Averill Ponds (Norton, Averill)*, No. UPW 03-01, Decision at 2 (Oct. 20, 2003) (Board respects and considers but is not bound by the regulations and determinations of neighboring states; Board's decisions are based on the standards in the Vermont UPW Rules)

*In re: Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05, Decision at 4 (Oct. 26, 1994) (if FERC license issued to power company for regulation of lake requires modifications to Board's rules, Board will consider adopting conforming amendments at that time)

## UPW Cases

### 1971

*In re North Springfield Reservoir (Weathersfield, Springfield) and In re Stoughton Pond (Weathersfield)*, No. UPW 71-01

*In re Woodward Reservoir (Plymouth)*, No. UPW 71-02

*In re Silver Lake (Barnard)*, No. UPW 71-03

### 1972

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 72-01

*In re: Shadow Lake (Glover)*, No. UPW 72-02

*In re Burr Pond (Sudbury)*, No. UPW 72-03

*In re Lake Dunmore (Salisbury, Leicester) and Fern Lake (Leicester)*, No. UPW 72-04

*In re Beebe Pond (Hubbardton)*, No. UPW 72-05

*In re Valley Lake (Woodbury)*, No. UPW 72-06

*In re Lake Raponda (Wilmington)* No. UPW 72-07

### 1973

*In re Little Hosmer Pond (Craftsbury)*, No. UPW 73-01

*In re Stratton Pond (Stratton)*, No. UPW 73-02

*In re Spring Lake (Shrewsbury)*, No. UPW 73-03

*In re Perch Pond (Benson)*, No. UPW 73-04

### 1974

*In re Halls Lake (Newbury)*, No. UPW 74-01

*In re Long Pond (Greensboro)*, No. UPW 74-02

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford)*, No. UPW 74-03

**1975**

*In re Glen Lake (Castleton, Fair Haven, Benson), No. UPW 75-01*

**1976**

*No cases in 1976*

**1977**

*In re Lake Iroquois (Williston, Hinesburg), No. UPW 77-01*

**1978**

*In re Burr Pond (Sudbury), No. UPW 78-01*

*In re Mirror Lake (No. 10 Pond) (Calais), No. UPW 78-02*

**1979**

*There is no 79-01*

*In re Lake St. Catherine (Wells, Poultney), No. UPW 79-02*

**1980**

*In re Lake Paran (Bennington), No. UPW 80-01*

*In re Fern Lake (Leicester), No. UPW 80-02*

*In re: Curtis Pond (Calais), No. UPW 80-03*

**1981**

*In re Shelburne Bay, Lake Champlain (Shelburne), No. UPW 81-01*

**1982**

*In re Echo Lake (Keeler Pond) (Sudbury, Hubbardton), No. UPW 82-01*

**1983**

*In re Huff Pond (Hough Pond) (Sudbury), No. UPW 83-01*

*In re Greenwood Lake (Woodbury), No. UPW 83-02*

*In re Pelot's Bay, Lake Champlain (North Hero), No. UPW 83-03*

**1984**

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex), No. UPW 84-01*

*In re: Lake Raponda (Wilmington), No. UPW 84-02*

**1985**

*In re Lake Hortonia (Hubbardton, Sudbury), No. UPW 85-01*

*In re Black Pond (Hubbardton), No. UPW 85-02*

*In re Shelburne Bay Mooring Management Zone (Lake Champlain, Shelburne), No. UPW 85-03*

**1986**

*In re Burton Island Mooring Management Zone, No. UPW 86-01*

*In re Emerald Lake (Dorset), No. UPW 86-02*

*In re Half Moon Pond (Hubbardton), No. UPW 86-03*

*In re Lake Shaftsbury (Shaftsbury), No. UPW 86-04*

*In re Adams Reservoir (Woodford), No. UPW 86-05*

*In re: Curtis Pond (Calais), No. UPW 86-06*

*In re Burton Island Mooring Management Zone, No. UPW 86-07*

**1987**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford), No. UPW 87-01*

*In re May Pond (Barton), No. UPW 87-02*

*In re Elfin Lake (Wallingford), No. UPW 87-03*

*In re Lowell Lake (Londonderry), No. UPW 87-04*

*In re Cole Pond (Jamaica), No. UPW 87-05*

**1988**

*In re Lake Ninevah (Mt. Holly), No. UPW 88-01*

*In re Mill Pond (Kennedy's Pond) (Windsor), No. UPW 88-02*

*In re: South Pond (Eden), No. UPW 88-03*

*In re Waterbury Reservoir (Waterbury, Stowe), No. UPW 88-04*

*In re Lake Morey (Fairlee), No. UPW 88-05*

*In re Indian Brook Reservoir (Essex), No. UPW 88-06*

**1989**

*In re Halls Lake (West Newbury), No. UPW 89-01*

*In re: Otter Creek, No. UPW 89-02*

*In re Lewis Pond (Lewis), No. UPW 89-03*

*There is no 89-04*

*In re Sunrise Lake, (Benson and Orwell), No. UPW 89-05*

**1990**

*In re Greenwood Lake (Woodbury), No. UPW 90-01*

*In re Cole Pond (Jamaica), No. UPW 90-02*

*In re Gale Meadows Pond (Winhall, Londonderry), No. UPW 90-03*

*In re Lake Willoughby (Westmore), No. UPW 90-04*

**1991**

*In re: Caspian Lake (Greensboro), No. UPW 91-01*

*In re Lake Bomoseen (Castleton, Hubbardton), No. UPW 91-02*

*In re Colchester Pond (Colchester), No. UPW 91-03*

*In re Mallet's Bay (Lake Champlain, Colchester), UPW 91-04*

*In re Echo Lake (Keeler Pond) (Hubbardton, Sudbury)*, No. UPW 91-05

## **1992**

*In re Lewis Pond (Lewis)*, No. UPW 92-01

## **1993**

*In re General Amendments to VUPW Rules Appendix B*, No. UPW 93-01

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 93-02

*In re "Quite Lakes Petition"*, No. UPW 93-03

## **1994**

*In re Woodward Reservoir (Plymouth)*, No. UPW 94-01

*In re: East Long Pond (Woodbury)*, No. UPW 94-02

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 94-03

*In re: Curtis Pond (Calais)*, No. UPW 94-04

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 94-05

*In re Holland Pond (Holland)*, No. UPW 94-06 (same as UPW 95-05)

## **1995**

*1995 General Amendments*, No UPW 95-00

*In re Lake Bomoseen (Castleton, Hubbardton)*, No. UPW 95-01

*In re Arrowhead Mountain Lake (Milton, Georgia)*, No. UPW 95-02

*In re Wrightsville Reservoir (Montpelier, East Montpelier, Middlesex)*, No. UPW 95-03

*In re Somerset Reservoir, (Somerset and Stratton)*, No. UPW 95-04

*In re Holland Pond (Holland)*, No. UPW 95-05 (same as UPW 94-06)

*In re Petition to Limit Comments from Non-Residents*, No. UPW 95-06

## **1996**

*There is no 96-01 lake-specific petition*

*In re Lake Elmore (Elmore), No. UPW 96-02*

*In re Greenwood Lake (Woodbury), No. UPW 96-03*

*In re Kingsland Bay (Lake Champlain, Ferrisburgh), UPW 96-04*

*In re Waterbury Reservoir (Waterbury, Stowe), No. UPW 96-05 and 96-06*

## **1997**

*In re Notch Pond (Ferdinand), No. UPW 97-01*

*In re Fern Lake (Leicester), No. UPW 97-02*

*In re Little Lake (Wells) and Little Pond (Poultney), No. UPW 97-03*

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford), No. UPW 97-04*

## **1998**

*In re Control of Aquatic Nuisances, No. UPW 98-01*

*In re "Narrows" between Providence island and Phelps Point on Grand Isle (Lake Champlain, South Hero), No. UPW 98-02*

*In re Lake Morey (Fairlee), No. UPW 98-03*

*In re Batten Kill (Arlington), No. UPW 98-04*

*In re Star Lake (Mt. Holly), No. UPW 98-05*

*In re Salem Lake (Derby), No. UPW 98-06*

## **1999**

*In re Lake Fairlee (Fairlee, West Fairlee, Thetford), No. UPW 99-01*

*In re Indian Brook Reservoir (Essex), No. UPW 99-02*

*There is no 99-03*

## **2000**

*In re City of Newport (Lake Memphremagog)*, No. UPW 00-01

**2001**

*In re: Caspian Lake (Greensboro)*, No. UPW 01-01

*In re Lake Lamoille (Morristown)*, No. UPW 01-02

**2002**

*In re: Norton Pond (Norton, Warren Gore)*, No. UPW 02-01

*In re: Chittenden Reservoir (Chittenden)*, No. UPW 02-02

**2003**

*In re: Great Averill and Little Averill Ponds (Norton, Averill)*, No. UPW 03-01

*In re Waterbury Reservoir (Waterbury, Stowe)*, No. UPW 03-02

**2004**

*In re: Lake Willoughby (Westmore)*, No. UPW 04-01

*In re Mirror Lake (No. 10 Pond) (Calais)*, No. UPW 04-02

**2005**

*In re City of Newport, (Lake Memphremagog)*, No. UPW 05-01

*In re Echo Lake (Charleston)*, No. UPW 05-02

*In re Silver Lake (Barnard)*, No. UPW 05-03

*In re Somerset Reservoir (Somerset and Stratton)*, No. UPW 05-04

*In re General Amendments*, No. UPW 05-05