

From Commissioner Emily Boedecker, sent January 11, 2018 at 3:52 pm

Good afternoon.

I am writing to share with you the decision on formal rulemaking and possible next steps in the continued effort to resolve use conflicts on Great Hosmer Pond in Craftsbury. The conflict on Great Hosmer Pond has, at times, been oversimplified as an issue between motorboating and sculling. Fundamentally it is an issue of residency, investment and the carrying capacity of a waterbody.

On land, permission for access and use is granted by the landowner. Public waters on the other hand are held in the public trust, for the use and enjoyment of all. The Department of Environmental Conservation (DEC) took on responsibility for the Use of Public Waters rule when the Water Resources Board was disbanded in 2012. The Use of Public Waters (UPW) rule provides guidelines for conflict resolution.

The rule states that waters should be managed so that:

- Various uses may be enjoyed in a reasonable manner, in the best interest of all the citizens of the State
- Conflicts should be managed using the least restrictive approach practicable
- Priority be given to resolve conflict by separating the conflicting uses, such as designating specific times or places.

Over the last two years, DEC has organized several public meetings and taskforce discussions, met with interested parties, and spoken with residents and recreational users about use conflicts on Great Hosmer Pond. During this period several hundred comments have been received and reviewed by the Agency.

Great Hosmer Pond is just under 150 acres. With its small size and narrow shape, there is no viable geographic separation that would allow for 'all normal uses to the greatest extent possible'. A draft rule released in 2017 attempted to resolve conflict between users by regulating the times at which various uses could be conducted. Discussions prompted by the release of the draft rule failed to yield a viable schedule to allocate hours during the most-sought after times - weekday mornings, weekday evenings, and summer weekends.

The Department has determined that proceeding to formal rulemaking at this time will not advance a resolution for the conflicts that are occurring on Great Hosmer Pond.

The root of the conflict lies in the residency and investment made by both homeowners and the Craftsbury Outdoor Center, and in the inherent space limitations of the pond. When overall user numbers are aligned with the pond's carrying capacity, different uses can co-exist more easily within the framework of existing safety rules. When numbers exceed the carrying capacity of the pond, conflicts escalate. To address the conflict, we must have a mechanism that addresses root causes.

Three approaches raised during the last few months are worthy of further exploration, and in some instances, may require legislative change:

- **Consider Public Waters Use in Land Use Determinations:** When new land use or significant change in land use triggers Act 250 review, include conditions in permits regulating the use of adjacent public waters. Consider the proposed land use's impact on the public resource.

- **Group Permitting:** Revise the UPW Rules to define a threshold carrying capacity for public waterbodies, and implement a group permitting process that considers the frequency, size and type of activity that would require a recreational use permit. Apply permit requirements to private, for-profit and non-profit recreational user groups.
- **Community Forum:** Pursue rebuilding a portion of the Water Resources Board to provide a citizen forum to explore and develop consensus-based resolutions for user conflicts.

Agreements can be formalized, where applicable, through the UPW rulemaking process.

Any individual can submit a petition to request changes to the Use of Public Waters Rule. This provision continues to be available to any interested party. In the coming weeks, I will be reaching out to legislators, and to individuals and entities, to discuss the opportunities and challenges afforded by these approaches.

As we invest in growing the outdoor recreation economy, and as we invest in cleaning up Vermont's ponds and lakes, we need to have a consistent mechanism to weigh the economic potential and investment with the impact on current residents, individuals and organizations. We must ensure that Vermont's water continue to be a resource for everyone.

With appreciation for your interest and engagement on this issue.

A handwritten signature in black ink that reads "Emily Boedecker". The signature is written in a cursive, flowing style.

Emily Boedecker, Commissioner, Dept. of Environmental Conservation, Agency of Natural Resources