

February 23, 2015 Testimony submitted by Nate Smead, who is the co-founder of Friends of Berlin Pond, and a member of the Vermont Traditions Coalition.

I have followed this saga for more than 5 years now. After the SCOV sent down its ruling, a handful of landowners around the pond were stunned. A few of them took action and began to organize a methodical scheme to return "their" pond to what it once was.....off limits. I started studying and dissecting every step that this group took. Early in my investigation, I found an email posted on a public Google group called "Council of All Beings". The following email can be found on that site. It was written on May 19, 2012 by an individual that owns land near the pond. I have intentionally deleted the last names of any individual named in the email. You should be able to do an internet search and view the document with full names disclosed, if desired. It's a matter of public record (in the public domain).

"Hello Susan and friends,

There is a lot to discuss and options to explore after the Supreme Court ruling last week opening Berlin Pond

to all recreational activities; to include swimming, fishing, and boating (even jet skiing??)

I think we need to gather as a group independently after the 2 meetings this week (Monday night Berlin Select Board at 7:15 and Wednesday Montpelier City Council Meeting, not sure of the time).

Afterward we may begin the task of working as a group to "Save Berlin Pond."

We need to let our elected officials (both local and state) and state bureaucrats know there is a convincing groundswell to return the pond to it's former protected status. We need to avoid the nimby (not in my backyard) approach. Instead let's look to engage people from around the entire state. This ruling affects more than those of us that live on the pond.

Who do you know at Audubon, VNRC, the Nature Conservancy, the National Wildlife Federation, Green Mountain Club, and other conservation groups? Who do you know that loves the pond the way it was? Ask them to join us. Network with Barre and Montpelier residents.

Let's talk to the multitudes walkers, runners, and bikers that use the pond daily. Tell them about the increased traffic we're witnessing this weekend. Tell them about the garbage left behind. Educate everyone to the changes our pond habitat will endure. No more solitary dogs walks, as the sound and conversations of boaters carries across the water. Can you imagine the sound of motorized boats? It makes me nauseous.

How about asking influential business owners to take a stand? It is important to get known people in the community to support returning this pristine habitat to what it once was.

One of few undisturbed beautiful bodies of water in our state.

I can envision a full page add in the Times Argus, the Bridge, and the Washington World stating the pond's case

with 500 signatures (and contributing donors!) We can pressure the elected officials to take a stand if we organize an intelligent, well thought out strategy that step by step states the case and presents a clear cut rationale to protect the vegetation and wildlife that is now threatened.

There is hope. I remember back to the days of working with a group of Berlin residents in changing the city of Montpelier's position from building the water treatment plant on the pond to it's present site on

Paine Turnpike North, and how important it was to have the expert legal advice from Jerry T in that process.

*Thanks for considering the environment and our precious resources,
Phil*

----- Forwarded message -----

From: **Susan**>

Date: Sat, May 19, 2012 at 7:42 AM

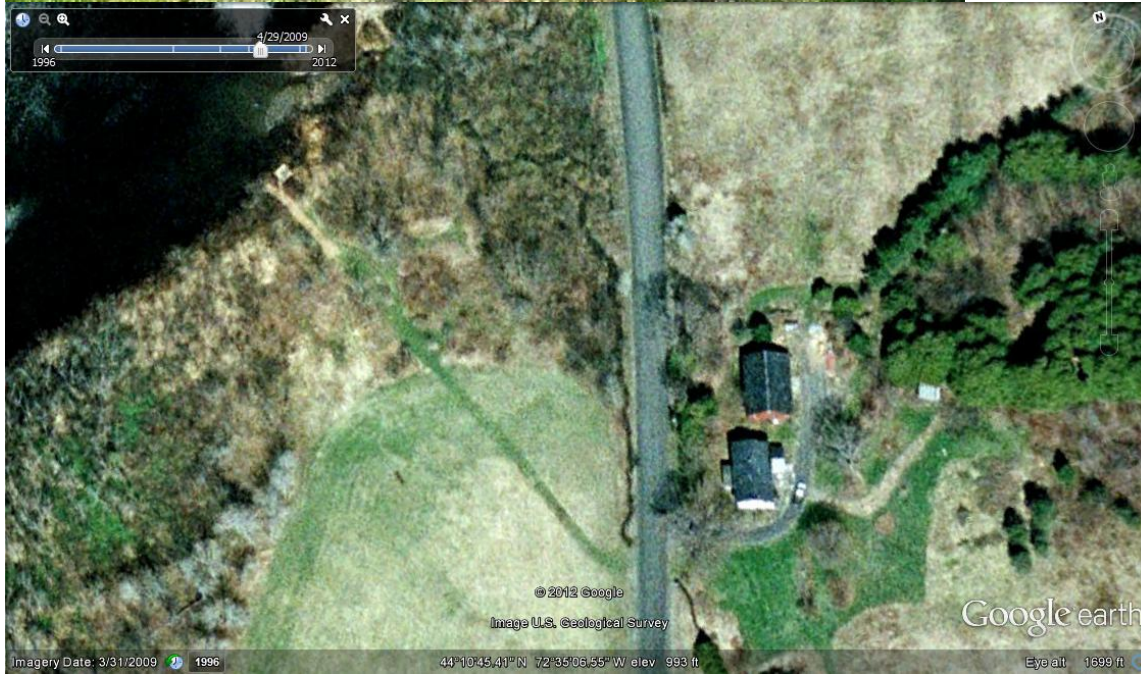
Subject: Re: Fw: Berlin Pond

To: phil g''

The following pictures were taken in the summer of 2009

along the shores of Berlin Pond, at the southeastern most part of the pond.





The person that wrote that email is the same person that owned the dock and the cabin. The cabin was installed 83 feet from the water's edge, on Montpelier's posted property, in a mapped class 2 wetland.

The following outlines a methodical progression, leading up to H.33.

Step 1-Fishermen are trashing the pond. The group began taking and posting pictures of any piece of litter they could find along the road around the pond. Historically, the city of Montpelier has picked up 2 truckloads of trash per year around the pond. Once fishing was allowed, all of the litter was blamed on fishermen. I took exception to that! Members of the group tried to paint a picture that all fishermen were slobs. That bothers me. There are slobs in all walks of life across all sectors of society. Blaming it all on fishermen is WRONG! One summer afternoon 2 ½ years ago one of the landowners was seen walking along Mirror Lake Road collecting every piece of litter alongside the road. She gathered all of it, placed it in a pile beside the road. Took a picture of it, then walked away and left it. The angler that witnessed this went over and picked up the trash, which was primarily McDonalds wrappers and other items that are NOT associated with fishing.

Step 2-The wildlife are threatened. The loons have left the pond. I took exception to this as well because I had been out on the pond and witnessed the loons swim by on numerous occasions very close to me without being bothered. In fact, 2 of the last 3 years after the pond was opened to fishing, the loons have nested successfully. That hadn't happened for 12 years prior to the Supreme Court's ruling! This is something that should have been celebrated, but nobody talked about it because it contradicts all of the fearful propaganda and didn't align well with the agenda to keep anglers off the pond.

Step 3-Was to lay claim that the pond should be a place only for a specific group to recreate. Namely those that DON'T fish and DON'T paddle. One resident spoke up at a public meeting and said that her *"Sights and her sounds had been disturbed"* by seeing and hearing fishermen on Mirror Lake Road. She said her recreation is *"Not fishing and not boating"* and that her *"rights to recreate the way that she does had been violated"*.

Step 4-The battle went on in meetings and letters to the editor, then the Berlin Select board decided to put the issue to a town wide vote. The results were that the residents of Berlin voted overwhelmingly for recreational access.

Step 5-After the town wide vote, the battle began to shift. About this time, a group of landowners became more organized and called themselves "Citizens to Protect Berlin Pond". The leader of this group lives on the pond and other pond land owners and friends comprised the group. They began to shift the focus away from the idea that Berlin Pond was a wildlife sanctuary. They started focusing on

Water Quality. Turbidity was a word that was thrown around a lot. Poisonous skin flakes, or coliform was one of the talking points. The group spent months preparing a petition to ban all forms of recreation on the pond. ANR looked at the petition with science and rule of law and found no merit. The petition was denied....in its entirety. ANR gave a very detailed explanation, leaving no room for doubt. They did a great job explaining the ruling!

Step 6-So now we come to the end.....H33. This legislation was promised to a small group of pond land owners and friends at a rally last summer by Warren Kitzmiller. It was developed as a direct result of the petition denial. This bill is not about water quality. This bill is about pandering to small group of very vocal and active landowners. Science does not support the claims. Our state ANR has the resources to decipher the issues and separate fact from fiction. I can look you in the eyes today and tell you that most of the claims are not based on facts.

This bill would give municipalities the authority to regulate hunting, angling, and trapping and that's contrary to the law know as the Sportsmen's bill of rights.

24 VSA 2295 "except as provided by law, no town, city, or incorporated village, by ordinance, resolution or other enactment, shall directly regulate hunting, fishing, and trapping....."

At the end of the day....ask yourselves what are the most likely substances that an angler or paddler would introduce that would contaminate the water.

Turbidity?

Poisonous human skin flakes?

If turbidity is such a threat, are we counting the migrating geese that land on the pond each fall?

If poisonous skin flakes are so dangerous, why isn't there a push to keep all humans away from Mirror Lake road? Why isn't there a push to install a high fence all the way around the pond? Why have we let people with their dogs, bird watching equipment, cameras, bikes and cars within breathing distance of the pond.....if skin flakes are such a threat?

I will leave you with this thought....if we allowed all the different user groups across the state to stake out their claim on an area and exclude others....what would our state look like? Should hunters have the sole right to recreate on public land? We are talking about a public natural resource here and this attempt to exclude one specific group of people goes against our constitution and the Public Trust Doctrine. I urge you to turn down H33 Thank You-Nate Smead