

EMAIL SENT 2-26-2015 by Cedric Sanborn

H. 33

Following is copy of the testimony I am going to give tomorrow.

Representatives:

I am strongly opposed to H.33 This bill is really just the latest effort by the City of Montpelier to circumvent the Vermont Constitution, a recent Supreme Court Ruling, numerous State statutes (Title 10) related to managing the waters of the State, the so-called "Public Trust Doctrine", and a 2014 ruling by the Agency of Natural Resources, in order gain full control of a publicly owned and controlled body of water (Berlin Pond).The City's goal is to close the pond to all public access. Having failed to gain control of the pond through procedures contained in Title 10, Montpelier is now trying to get Legislature to re-write these statutes for their own benefit. There is a very clear theme in Title 10 when it comes to state waters, including drinking water supplies, that provisions SHALL be made to accommodate public use of the water including swimming , fishing, and boating.

And when it comes to fishing, which is regulated solely by the Fish and Wild Life Department, I believe that there is not a single body of water in the state that is closed to fishing. We should not be starting now to fragment our resources. Nor should we be trampling on the Vermont Constitution which very clearly gives us the right to fish on all boatable waters (now navigable waters) subject to season and limit as set by the General Assembly (now the Fish and Wild Life Department).

Health Threats to the public water supply -

If the currently allowed recreational uses (swimming, fishing, hunting, and boating) posed a health threat to the drinking water supply or the treatment plant then there would have been a prompt and immediate action taken in 2012 by the "elephant in the room" - the United State Environmental Protection Agency. To date there has not. Prior to the Supreme Court ruling the USEPA had been silent on recreational use of the pond. Being that they are the ultimate authority mandated with protecting public drinking water supplies and making sure that safe water is provided to the public from the treatment plants, I gather this is viewed as a non-issue by the USEPA. It was after all the USEPA who over 15 years ago mandated that both Montpelier and Barre City construct a proper treatment for their municipal water supply. The USEPA paid for the bulk of the costs.

Likewise our own DEC Water Supply Division of the Agency of Natural resources has State oversight over drinking supplies and the quality of the water exiting the treatment plant. If there was some aspect of pond related recreation that would cause the treatment plant to fail, pretty sure appropriate actions to restrict recreational activities on or adjacent to the pond would have occurred immediately after the Supreme Court ruling. In fact Commissioner Mears is on record as supporting the proposed Fish and Wildlife boat access efforts on the pond. Science trumps elitism every time.

And in the what it is worth department, our boats: kayaks, row boats, and canoes are not a threat to the water supply. They are constructed of fiberglass, aluminum, wood, and polyethylene (same material a milk jug is made of). Nothing there to contaminate the water.

Turbidity -

Berlin Pond is primarily man made pond located in an upland basin. It has a soft “muddy” bottom, as evidenced by the many wetlands surrounding it. A muddy bottom leads to high levels of turbidity (suspended solids) - which would be comprised of fine soil particles, decayed vegetation, wildlife excrement (think of what goes on in your fish tank), etc. I would bet there was a turbidity issue before the treatment plant was built, when it was built, ever since it was built and will be going into future. The particles are constantly being stirred up due to currents from the many streams that feed the pond (which also bring in more fines to add to the turbidity), wave action caused by wind impacting 5 miles of shoreline, wave turbulence in the shallower water, and there are bound to be some springs. And lastly a significant current moves through the lake south to north (towards the treatment plant inlet). There are millions of gallons of water per day that exit the pond (treatment plant and natural outlet) on the north end, and hence so there must be millions of gallons moving daily through the pond to replenish it.

Against this back drop the petitioners would have us believe that boats and shore fishing should be banned because of increased turbidity that will overwhelm the treatment plant. Really? Most canoes and kayaks have a very shallow draft (less than a foot). and paddles and oars operate well with in the top 2’ of the surface. The top water in the pond is not where the bulk of the turbidity is - it would be settled in the lower extremes. As we can’t play submarine with the canoes and kayaks, we will never disturb the heavy turbidity layer. And the amount of water disturbed by a boat pales compared to the natural forces on the pond. The amount of disturbance a kayak makes on a more or less 300 acre body of water, containing in excess of 1.5 billion gallons water (number pulled from Montpelier water quality report) is negligible at best.

And speaking of turbidity. This is a parameter that is monitored at the outlet of the water treatment facility and should be a reportable item. For example the annual City of Barre Water Quality Report lists turbidity as being measured in NTU's (Nephelometric Turbidity Units), lists the EPA maximum contaminant level, and levels measured at the facility for each year. Turbidity is defined as "a measure of cloudiness in the water. We monitor it as a good indicator of the quality of water and the effectiveness of our filtration process". That being said, a review of the Montpelier City Water Quality report (which uses the same format as Barre City), has no posting at all of turbidity levels at the treatment plant. If I believed in conspiracy theories, I would believe that Montpelier's turbidity levels are really very low, and are not included in the annual report, because it is hard to cry wolf if there are no tracks in the mud.

Drinking Water Supply -

We are all cognizant that Berlin Pond is Montpelier’s drinking water supply, but that doesn’t mean the pond has to be closed to non-motorized recreational activities. The State through probably what was then the Water Resources Board took action decades ago to place the following restrictions on the pond - a) no vessels with internal combustion engines, b) no personal water craft (jet skis), c) 5 mph speed limit, d) and aircraft can’t land there in the summer. No one is asking to restore any of these conditions, nor should we. In addition the 2014 ruling by the ANR added additional restrictions, prohibiting all internal combustion engines (motor vehicles, ATV's, and power ice augers) from the pond.

NIMBY -

One of the other underlying components of this bill is to prohibit boaters so that those who walk and live around the pond will have an undisturbed view of the pond. This group of folks (many who live on the south end of the pond) who view the pond as “theirs”, and they do not want to see boats on the water. This stance was very clearly stated during a public meeting held at the Berlin Elementary School in 2012, between the Berlin Select Board and the Montpelier City Council where some testimony was

taken regarding providing access to the pond. In fact they referred to boaters/fishermen on the pond as "a bunch of beer drinkers from Barre". I am not sure they meant that as a compliment, but I think it was nice of them to notice me in the crowd.

In their petition they state that thousands of people walk, jog, and bike around the pond every year, compared to a few hundred pond users. Thus the pond users must yield the entire area (pond and watershed) to the road users. After all we have other ponds in Vermont to recreate on - they want " just this one" for themselves. A majority rules kind of thing I guess. Not sure that is the intent of the Public Trust Doctrine. This majority rules argument blatantly ignores the will of the residents of Berlin who voted overwhelmingly in a town wide referendum to have the Town's 85' of pond frontage opened for pond access and to have a boat access developed.

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