

RWVL's Final Comments to LCAR and ANR – 2/14/24

LCAR members, please approve the proposed final rule and insist that it is implemented for the 2024 summer boating season. This will result in the immediate protection of 43 lakes by eliminating wakesports altogether, placing operational restrictions on the remaining 30 lakes, and limit the spread of aquatic invasive species with the home lake rule.

For the legislative and administrative record, RWVL wants to clarify its interpretation of the application and the importance of the term “normal use.” The February 8, 2024, LCAR meeting created confusion on what should be a very straightforward interpretation of statute and ANR rules.

As legislative counsel noted at the hearing, the term normal use occurs once in 10 V.S.A. §1424(c) which states:

§ 1424. Use of public waters

(c) The Secretary 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 Secretary shall provide for all normal uses. (emphasis added)

ANR's Use of Public Water Rule (UPW) uses the term normal use fourteen (14) times. It defines a normal use:

§5.6 Normal Use is any lawful use of any specific body of public water that occurred on a regular, frequent, and consistent basis prior to January 1, 1993.

Protection of normal uses is of paramount importance and central to ANR's authority to regulate public water resources. Making a determination of whether a use is considered a normal use is fundamental when ANR is called upon to resolve a conflict among various uses.

The following subsections of the UPW establish the overarching duty to protect normal uses, identifies the types of activities that can constitute normal uses, and the deference that shall be afforded to normal uses when resolving conflicts of use.

§1.1 The Rules establish a number of general management rules *to protect normal uses* on all lakes, ponds, and reservoirs. (emphasis added)

§2.3 Recreation-related criteria. In evaluating *normal recreational and other uses*, the following uses shall 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. (emphasis added)

§2.6 Use conflicts. (a) *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. (emphasis added)

RWVL agrees with legislative counsel that a use does not have to be deemed a normal use to be permitted to occur. Indeed, legislative counsel's example that paddleboarding is not a normal use is illustrative, but the explanation offered to LCAR was incomplete. Paddleboarding is a very popular and common recreational use, however, it is not a normal use because it did not occur on a regular, frequent, or consistent basis prior to January 1, 1993. The reason ANR has not made a determination of whether paddleboarding is or is not a normal use (and why it must make a determination that wake boats and wake sports are not a normal use) is *because paddleboarding does not create a conflict with other uses*.

RWVL further agrees with legislative counsel and ANR that when a use is not a normal use that does not mean it is automatically prohibited. However, when ANR is tasked with resolving a conflict between a normal use and another use, pursuant to 10 V.S.A. §1424(c) and UPW § 2.6(a) ANR must *provide for normal uses to the greatest extent possible*. This means that normal uses should receive deference over other uses where necessary in resolving conflicts.

In conclusion, the statutes and rules governing the use of public waters require ANR to provide and protect normal uses to the greatest extent possible.