

***OFFICE OF ADJUDICATIONS***

***IN THE MATTER OF***

***: APPLICATION # 126/9604-300A***

***INDIAN WELL  
WATER SKI CLUB, INC.***

***: APRIL 25, 2000***

***PROPOSED FINAL DECISION***

***SUMMARY***

The Indian Well Water Ski Club, Inc. has filed an application with the Department of Environmental Protection (DEP) pursuant to §15-134(f)(1) of the General Statutes<sup>1</sup> seeking a permit to place markers for a water ski slalom course on Lake Housatonic in Shelton, Connecticut. The parties to this proceeding are the Indian Well Water Ski Club, Inc. and the DEP Boating Division, Navigation Safety/Boating Access Unit. The Boating Division supports the issuance of the permit in accordance with specific conditions contained in the draft permit. The record contains no evidence of any opposition to the application.

I conducted a site visit on March 22, 2000; representatives of both parties were present. That evening, I conducted a public hearing at the Shelton Town Hall, Shelton, Connecticut. Appearing for the applicant were its President, Albert Treadwell, and its Secretary/Treasurer, Michael Udall. Representing the DEP was R. Michael Payton, Supervisor, Navigation

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<sup>1</sup> General Statutes §15-134(f)(1) provides in relevant part that “[n]o individual, association or corporation shall place or cause to be placed on the waters of the state any marked course or jump ramp for use by any water skier or vessel without written authorization of the commissioner except on lakes or ponds owned by, and whose access is entirely

Safety/Boating Access Unit. I requested post-hearing submissions; staff filed a memorandum on March 23, 2000. The record in this matter closed on April 7, 2000.

Prior to issuing or denying the requested authorization, the Commissioner shall, after a public hearing in the town in which authorization is sought, consider the following criteria in accordance with ' 15-134(f)(2):

- (a) the completeness, accuracy and detail of the application;
- (b) public safety;
- (c) any environmental impacts; and
- (d) the possible conflicts with other water uses.

The record demonstrates that the application, supplemented by the evidentiary record, is complete and accurate; that placement and use of the course in accordance with the draft permit, as amended and modified, would have no adverse impacts on public safety or significant adverse impacts on the environment; and that there would be no conflicts with other uses of the lake.

Accordingly, I recommend that the Commissioner issue a permit for the placement of a marked water ski course on Lake Housatonic in accordance with the amended draft permit as modified herein. I further recommend authorization of this permit for a term of nine years, with two three-year reporting periods more thoroughly described herein.

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under the control of, private landowners or lessees who all agree to the establishment of such course or ramp.”

## **FINDINGS OF FACT**

1. On September 6, 1999, the Indian Well Water Ski Club, Inc. (the applicant), a Connecticut corporation, filed an application with the DEP Boating Division, Navigation Safety/Boating Access Unit (staff), seeking authorization under ' 15-134(f) of the General Statutes to place water ski slalom course markers on the waters of the state. The course would be used for recreational and athletic training purposes. The applicant has had a permit for a course in the same location since 1991 and has been in compliance with DEP slalom course guidelines since that time. Most recently, the applicant was issued a permit in 1996 for the 1997 through 1999 seasons (1996 permit). (Exs. APP-1 – 14; Ex. DEP –8, Attachment D; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00; see also *In the Matter of Application of Indian Well Water Ski Club, Inc., Final Decision*, October 4, 1996.)
2. Staff reviewed the application, considered it to be complete and accurate, and concluded that placement and use of the course would have no adverse impacts on public safety, on the environment, and on other uses of the lake. Accordingly, staff has recommended that the permit be approved in accordance with specific conditions contained in the draft permit. (Exs. DEP-5, 8; test. M. Payton, 3/22/00)
3. Staff submitted a draft permit with two revisions that was admitted into evidence at the hearing. (See *Attachment A*, attached. On my motion, this is marked as a “draft” permit.) Condition #3 was revised to allow for the use of wire or metal cable in the anchoring system. Condition #9 was revised to allow the anchoring system to remain in place when the buoys

on the course are removed. These revisions conform to the 1996 permit currently held by the applicant. (Ex. DEP-8; Ex. App-7, Attachment B; test. M. Payton, 3/22/00; test. M. Udall, 3/22/00)

4. The applicant does not contest any of the terms and conditions of the draft permit. (Test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)
5. The applicant is affiliated with the USA Water Ski Association (also known as the American Water Ski Association), the national governing body for the sport of water-skiing. The applicant would maintain current effective liability insurance as offered to all clubs affiliated with this Association throughout the term of this permit. (Ex. APP-6; Ex. DEP-8; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)
6. The draft permit incorporates by reference DEP safety and environmental guidelines for water ski slalom courses and the safety and operational requirements contained in the American Water Ski Association Official Tournament Rules. (Ex. DEP-8, Attachments C and D)
7. Lake Housatonic has a surface area of 328 acres. The course would be located at the widest end of the lake in that portion of the lake situated in Shelton. The course would be placed along the west shore of the lake approximately three-tenths of a mile from the Derby Dam. (Exs. APP-2, 4, 5, 8; Exs. DEP-2, 3, 4, 8; test. M. Udall, 3/22/00)
8. The course would be marked with twenty-two spherical or cylindrical lightweight vinyl or similar smooth soft plastic buoys of not over twelve inches in diameter or height. All buoys would be international orange or yellow in color. The course would be secured by submerged anchoring structures made of wire or metal cables. The layout and design of the

anchoring system would be such that it would be sufficiently submerged and would not interfere with boats using the course or with other boat traffic, water skiers, or swimmers.

This would be the same anchoring structure that has been used safely by the applicant and approved by staff under the applicant's permit since 1991. (Ex. DEP-8, Attachments A and B; test. M. Payton, 3/22/00; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)

9. Whenever the course is not in use, the applicant would remove all of it except two marker buoys to mark each of its end points. Each marker buoy would be spherical, twelve inches in diameter, constructed of lightweight vinyl or similar soft smooth plastic, international orange in color, and would have the words "Submerged Slalom Course" in 1-inch black, block letter on the exposed section of each buoy for the sole purpose of identifying the course location. (Ex. APP-7; Ex. DEP- 8, Attachments A and B; test. M. Payton, 3/22/00; test. M. Udall, 3/22/00)
10. There have been no changes in placement or location of the course since the 1996 permit was issued. The southwestern-most gate buoy would mark the beginning of the course and would be located on approximate magnetic bearings of 334 degrees northwest to the McManus Construction Company building on the east shore, and 217 degrees west to the culvert under the railroad track on the west bank. The course would run from this buoy northwest on an approximate magnetic bearing of 304 degrees for approximately 850 feet. (Exs. APP-3, 5, 7, 8; test. M. Udall, 3/22/00)
11. The length of the course is 850 feet and the width is 75 feet, with a turning area at each end of approximately 150 feet. The minimum distance of the course from shore is 230 feet; the turning areas are approximately 190 feet from shore. Distances on each side of the course

would adequately accommodate general navigation on the lake. The water depth in the area of the course is approximately eleven to eighteen feet. The lake ranges in width from approximately 675 feet to 800 feet in that same area. (Exs. APP-5, 7, 8; Ex. DEP-8, Attachment A; test. M. Udall, 3/22/00)

12. The placement of the buoys in the course and its overall layout would be consistent with the international configuration standards necessary for training for competitive events and acceptable for recreational skiing. The course design would conform to the current official tournament rules of the USA Water Ski Association regarding size and layout. (Ex. DEP-8, Attachment C; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)
13. The towboats used in the course would be tournament style ski boats, which are designed to produce a minimal wake. The boats would run the course at approximately 28 to 36 miles per hour. The decibel level would be approximately 73 decibels at a distance of 150 feet. (Exs. APP-4, 8, 11)
14. The applicant has a membership that averages ten to fifteen persons. Seven or 8 members, in five or six boats at most, would likely use the course on a regular basis. Typically, one boat would run the course while other boats wait for their turn in the course. How quickly the waiting boats use the course would vary according to the number of boats using the course at any given time. (Test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)
15. The applicant would ensure that use of the course would not conflict with other uses of the lake, including use by other organizations and other boat traffic. The applicant would specifically ensure that use of the course would not jeopardize the safety of other boaters or users of the lake. The Yale University Department of Athletics, the New Haven Rowing

Club, and the Lake Housatonic Authority, the four-town governing body of the lake, attest to a cooperative relationship with the applicant and support the issuance of the permit. (Exs. APP-10 –12; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)

16. To avoid conflict with other uses of the lake and to ensure the safety of other boaters and the public, the applicant would use the course during the following hours, with a thirty (30) minute set up/breakdown preceding/following each use. The permit would prohibit the applicant from using the course and/or leaving the course set up at any unauthorized time. The times of operation represent a long-standing agreement among the applicant, the staff, marine police in the area of the course and other concerned parties to prevent interference with boating traffic and to ensure safe operation. I have modified the language of these listed times and dates (see *Recommendations* section below) to clarify the “Labor Day” deadline and the “Holidays” restriction.

Weekdays

May 1<sup>st</sup> to Labor day                      8:00 a.m. to sunset

Labor Day to October 31<sup>st</sup>              8:00 a.m. to 6:00 p.m.

Saturdays                                      6:30 a.m. to 11:00 a.m. and 6:00 p.m. to sunset

Sundays or Holidays                      6:30 a.m. to 11:00 a.m. and 4:00 p.m. to sunset

After Labor Day, use of the course would be suspended during permitted marine events or whenever Yale University conducts crew team practice. (Exs. DEP-8, 10- 12; test. M. Udall, 3/22/00)

17. The applicant would ensure that the buoys marking the course are removed from the lake whenever the course is not in use except for the two marker buoys authorized and described in the draft permit. The applicant would ensure that all buoys are removed no later than November 1<sup>st</sup> and reinstalled no earlier than May 1<sup>st</sup> of each year the permit is in effect. (Ex. DEP-8; test. M. Payton, 3/22/00; test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)
18. The shoreline near the course is resistant to erosion. A railroad embankment dominates the shore; a track runs along the bank nearest the course. The lakeshore is buttressed with large boulders and riprap along the base of the railroad embankment. The lakeside homes are located beyond the railroad embankment; no private docks or beach areas are on the shore near the course. Private and commercial properties are on the shoreline on the other side of the lake; this shoreline is stabilized by sea walls. (Ex. APP-8; test. A. Treadwell, 3/22/00)
19. The Town of Shelton is located within the state's "coastal area" as that term is defined in §22a-94 of the General Statutes. Section 22a-98 requires a determination that the proposed activities are consistent with the goals and policies of the Coastal Management Act. These goals and policies include the promotion of the use of existing developed shoreline areas for recreational boating activities and the regulation of water uses to reduce erosion, preserve tidal wetlands, and protect the natural habitats of indigenous bird, plant and animal species. See §22a-92. The tidal portion of the Housatonic River ends at the Derby Dam. There are neither inland wetlands nor tidal wetlands that would be affected by the location of the proposed course. (Ex. APP-8)



20. Plant beds in the lake are limited to some shallow areas close to the eastern shoreline. Dense strands of Eurasian Watermilfoil (*Myriophyllum spicatum*) dominate aquatic plants. It is very unlikely that there would be any effect on this invasive plant population resulting from the boating activities of the applicant. (Ex. APP-8)
21. The Natural Diversity Data Base records indicate that Atlantic Sturgeon may be present in the Housatonic River below the Derby Dam. There would be no adverse impacts on any fish populations below the Dam from boating activities in the lake upstream. The course would also have no adverse impacts on fish spawning activities or recreational fishing in the lake. (Exs. APP-8, 14; test. M. Udall, 3/22/00)
22. Waterfowl use various areas of the lake, but there are no wetland habitats for nesting in the vicinity of the course. (Ex. APP-8)
23. There are no underwater cable crossings in the area of the course installed or maintained by United Illuminating & Company. There are overhead transmission/distribution wires in the area of the course, however, the use of the course would not interfere with these wires. (Exs. APP-4, 13; test. M. Udall, 3/22/00)
24. The staff submitted a post-hearing memorandum supporting the issuance of a permit for a term of nine years with required three-year reporting periods. In this memorandum, staff recommended various conditions of this permit, some of which are incorporated in the draft permit attached hereto. (On my own motion, I have marked this memorandum as Ex. DEP-9) The Applicant would support the issuance of a permit with a nine-year term with the three-year reporting requirement. (Test. A. Treadwell, 3/22/00; test. M. Udall, 3/22/00)

25. The permit conditions require that the permittee, before making any of the types of listed changes, submit to the Commissioner for his review and approval detailed plans regarding any such change. Further, no such change shall be made until the permittee receives written approval from the Commissioner. (Ex. DEP-8)

## **CONCLUSIONS OF LAW**

Based on the above findings of fact, I conclude as follows:

- A. The application is complete and accurate and provides the requisite detail.
- B. Placement and use of the course would have no adverse impacts on public safety, provided the applicant adheres to the terms of the issued permit with the modifications recommended below.
- C. Placement and use of the course would have no significant adverse impacts on the environment, provided the applicant adheres to the terms of the issued permit with the modifications recommended below.
- D. Use of the course does not conflict with other uses of the lake.
- E. By satisfying the criteria in ' 15-134(f) of the General Statutes, the applicant has also satisfied the substantially similar requirements of § 15-121-A5 of the Regulations of Connecticut State Agencies.
- F. The placement and use of the course is consistent with the goals and polices of the Coastal Management Act. General Statutes §22a-92.

## **RECOMMENDATIONS**

In consideration of the preceding conclusions, I respectfully recommend that the Commissioner approve the application of the Indian Well Water Ski Club, Inc. for a permit to place markers for a water ski slalom course on Lake Housatonic in Shelton, Connecticut. I also recommend that this permit be issued for a period of nine years, with a reporting period every three years. The requirement that the permittee comply with the conditions of these three-year reporting periods, listed below, would fulfill the intent of §15-134(f). I therefore recommend the following modifications to the draft permit:

Condition #13 of the draft permit is deleted; the following Condition #13 is substituted:

“This permit is valid for nine (9) years and shall expire on October 31, 2008. This permit is subject to the following conditions.

- a) On or before May 1, 2002, and again on or before May 1, 2005, the Permittee shall submit to the DEP Boating Division, a report from a certified environmental specialist with diagrams and all other necessary supporting information indicating whether, during the 3-year reporting period, the conditions of the permit and course conditions have changed under the criteria set out in ' 15-134(f)(2) of the General Statutes. The Boating Division shall have the right to require proof of the expertise of the specialist submitting the report. This report shall include, but not be limited to, information as to whether continued operation of the course under the conditions of the permit would have any adverse impacts on public safety or the environment, or on other uses of the lake.

- b) The Boating Division shall conduct a site inspection of the course location within thirty (30) days of the receipt of the 3-year report.
- c) If either the report submitted by the Permittee or the site inspection of the course location do not provide information that demonstrates that continued operation of the course under the conditions of the permit would not have any adverse impacts on public safety or the environment or on other uses of the lake, a public hearing shall be held on the permit within sixty (60) days of the receipt of the report.
- d) At the time the Boating Division receives the permittee's 3-year report, the Boating Division shall post public notice giving the public thirty (30) days to provide general comments and/or comments on the permittee's report. A public hearing on the permit shall be held within sixty (60) days of the receipt of the comments if the Boating Division receives a petition signed by twenty-five persons or more requesting such a hearing. A hearing shall also be held if a written request is received by an official of one of the towns in which Housatonic Lake is located (i.e., Derby, Oxford, Seymour, Shelton). Said hearing shall be held within sixty (60) days of receipt of such a request.
- e) All other conditions of the permit remain unchanged, including the requirement for a hearing and/or suspension of the use of the course when, in the opinion of the DEP Boating Division or the DEP Conservation Law Enforcement Division, conditions warrant either action."

For clarification purposes, Condition #8 is deleted and the following Condition #8 is substituted in its place:

Weekdays

May 1<sup>st</sup> to the Friday before Labor Day weekend 8:00 a.m. to sunset

The Tuesday after Labor Day to October 31st 8:00 a.m. to 6:00 p.m.

Saturdays 6:30 a.m. to 11:00 a.m. and 6:00 p.m. to sunset

Sundays or Legal Holidays 6:30 a.m. to 11:00 a.m. and 4:00 p.m. to sunset

April 25, 2000  
Date

/s/ Janice B. Deshais  
Janice B. Deshais, Hearing Officer