

**State of Vermont
Water Resources Board**

**Re: Pike's Falls (ORW)
Docket No: 89-01**

Authority: 10 V.S.A. § 1424a

Findings of Fact, Conclusions of Law, and Order

The Stratton Area Citizens Committee petitioned the Water Resources Board to designate a portion of the North Branch including Pikes Falls, located in the Town of Jamaica, as Outstanding Resource Waters (ORW) pursuant to 10 V.S.A. § 1424a.

Upon consideration of the evidence in the record the Board, on January 8, 1991, designated approximately 4,000 feet of the North Branch, beginning at its confluence with Kidder Brook and continuing down stream to its confluence with an unnamed tributary which drains the Winhall Municipal Forest, as ORWs pursuant to 10 V.S.A. § 1424a, because of their exceptional natural, recreational, and scenic values.

Findings of Fact

1. The Pike's Falls petition was the first of its kind to seek designation of waters as an ORWs pursuant to 10 V.S.A. § 1424a.
2. On November 29, 1990, the Board conducted a hearing on the petition to designate a portion of the North Branch including Pike's Falls as ORWs. The request for ORWs is for that portion of the North Branch between the point where Kidder Brook enters the brook above Pikes Falls to the point below the falls where an unnamed tributary, which originates from the Winhall Municipal Forest, enters the North Branch. This segment is approximately 4,000 feet in length and within this distance the stream descends 140 feet, much of the drop occurring within Pikes Falls.
3. No party at the hearing entered an appearance in opposition to designating a portion of the North Branch including Pike's Falls as ORWs. All prefiled testimony and all oral testimony at the hearing was entered into the record as evidence.

Natural Values

4. The North Branch segment including Pike's Falls, as described above, have exceptional Natural Values that merit designation.
5. Pike's Falls, classified as a cascade, is located in a natural hemlock-hardwood forest setting. Although Pike's Falls is not the largest or highest cascade in Vermont, it is significant for its water cleanliness, accessibility, public use and setting.

6. The Falls provide an especially good location to observe detailed characteristics of the bedrock formations that prevail in the region. This not only adds to the natural value of the site but contributes to the public interest in visiting Pike's Falls for educational purposes.

7. The North Branch including Pike's Falls is an exceptional fishery because of its ability to provide high-quality nursery habitat for Atlantic Salmon, formerly extinct, and high-quality habitat for brook trout and brown trout.

8. This exceptional habitat is provided by the confluence of several natural features in the same waters. These features include cool water temperatures, spawning sites, diversity of rock formations and pools, spawning gravel, as well as food quality and quantity necessary to support a healthy salmonid population.

9. The North Branch is used as a stocking site for newly hatched fry. This is part of a project to restore salmon to the region. The Atlantic Salmon Restoration Project (ASRP) is a joint venture among utilities, government, fishermen and citizen volunteers for purposes of stocking waters with fry, promoting the sport of fishing and educating the public about these once extinct anadromous fish. In 1990, 12,800 fry were stocked in the North Branch.

10. On July 19, 1990 an adult male Atlantic salmon was discovered in a tributary of the West River.

11. The water quality of Pike's Falls has been monitored since 1984 as part of the West River Watch Program. This program is part of the West River Water Quality Monitoring and Protection Program sponsored by the Windham County Natural Resources Conservation District (WGNRCD). The River Watch Program objectives are the following: (1) to regularly collect water samples from established stations along the river and analyze them for various water quality indicators; (2) to identify areas of unsuitable water quality and to work with appropriate local and state officials to improve it; (3) to teach high school students water quality analysis techniques and about local, state and federal water quality policies and programs; and (4) to develop a historical profile of the West River's water quality to assist in local, regional and state water quality planning efforts.

12. Since 1985 thirty-nine sites have been sampled and tested regularly by teachers, students of Leland and Gray High School, and volunteers. Two of the sites are in the proposed ORW designation and are located at the top and below Pike's Falls. Information from these two sites shows the following: (1) at all times, the fecal coliform count was significantly less than the standard for Class B waters; (2) beginning in December of 1987, samples were

also tested for turbidity and these indicate very little turbidity at the Pike's Falls sites (average NTU was 2.05); (3) large volumes of clean water from Kidder Brook dilute the enriched and at times sediment-laden waters of the Upper North Branch of Ball Mountain Brook; and (4) pH is within acceptable range for Vermont rivers and streams. The waters of the North Branch including Pike's Falls, as described in the petition, continue to be suitable for fishing and swimming.

Recreational Values

13. The waters of the North Branch segment including Pike's Falls have exceptional recreational values that merit designation.

14. Due to its accessibility, suitability, and scenic qualities, Pike's Falls provides exceptional recreational opportunities. It is heavily used by the public for fishing, swimming, hiking, and picnicking. Hemlocks and other trees provide welcome shade during the day.

15. The large pool, located at the base of the falls, can accommodate a dozen swimmers at one time. Numerous small children can play and wade along the edges of the pool. A jutting ledge beside the waterfall provides platforms at various heights for those wanting to dive. The combination of rushing and quiet clear water, natural rock formations, shade trees, and warm sunshine at this location contributes to the exceptional recreational value of Pike's Falls.

16. In addition to swimming opportunities, the North Branch segment, including Pike's Falls, is utilized by anglers. It is accessible, scenic, and has a good trout population. The Department of Environmental Conservation has identified populations of brook and brown trout as well as other fish in the North Branch and Kidder Brooks, with the brown trout confined to the North Branch downstream of Pike's Falls. The water quality, summer flows, and aquatic habitat are important qualities for anglers and contribute to the exceptional recreational, as well as natural values of the North Branch.

17. Small brook trout streams, like this segment of the North Branch, are often the first place young anglers get exposure to the sport of fishing.

18. The North Branch has a very good potential for producing salmon smolts, as more fully discussed above.

Scenic Values

19. The waters of the North Branch segment, including Pike's Falls, have exceptional scenic values that merit designation.

20. The sound of rushing water, the visual effects of rock

formations, and natural surrounding of trees provide a meditative atmosphere conducive to in-stream and out-of-stream viewing. Because of the beauty of the viewing opportunities available at the falls, Pike's Falls is exceptional among Vermont rivers for its scenic values.

21. A user of the North Branch described the scenic qualities of the brook as follows: "I have a wealth of memories, of the shapes and forms of rock and water, of sensations of sun, warm rocks, cold mountain water, of sounds of the rushing falls, all from many days spent at Pike's Falls. The unspoiled beauty has a magic and power of its own that has nourished me in my childhood and adult life. I want the beauty of Pike's Falls to remain for the generations to come."

Cultural Values

22. The evidence before the Board is insufficient to conclude that the waters of the North Branch segment, including Pike's Falls, has exceptional cultural values.

23. The waters of that portion of the North Branch, including Pike's Falls, described above, have exceptional natural, recreational and scenic values, and accordingly, merit designation as outstanding resource waters.

Conclusions of Law

The petition to designate waters of a portion of the North Branch, including Pike's Falls as Outstanding Resource Waters was the first of its kind filed with the Water Resources Board. Under 10 V.S.A. § 1424a the Water Resources Board is vested with the authority to determine whether particular waters should be designated as outstanding resource Waters. 10 V.S.A. § 1424a (a). The Board is required to designate the waters as outstanding resource waters if the Board finds that the waters "have exceptional natural, recreational, cultural or scenic values." 10 V.S.A. § 1424a (e) (emphasis added). After a public hearing and upon consideration of the evidence, the Board must designate the waters as outstanding resource waters if the Board finds that the waters in question are exceptional for any one of the four values listed in subsection "e."

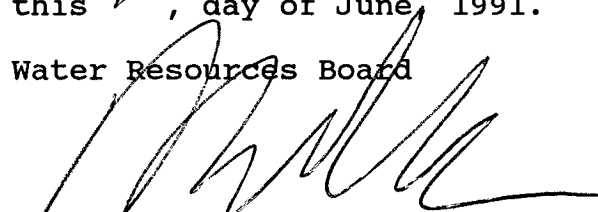
The statute also provides a series of fourteen (14) advisory guideposts that the Board may consider in making its decision. 10 V.S.A. § 1424a (d). This list of fourteen factors is not intended to be exhaustive. The statute directs that the Board "may consider, but shall not be limited to considering the following." Id. However, the inquiry is not limitless. The Board can not consider irrelevant or immaterial evidence. 3 V.S.A. § 810. There is no indication that the Legislature intended the Board to make findings under these considerations as if they were criteria, rather they provide guidance as to the nature and breadth of the inquiry intended by the legislature. Therefore, the Board has organized the findings under the headings of the four values listed in section 1424a (e) - natural, recreational, cultural, and scenic. Findings relating to any of the fourteen guideposts, if applicable, have been subsumed under the more general headings.

Order

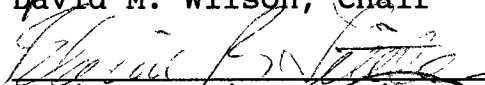
The waters of a portion of the North Branch, including Pike's Falls, are exceptional for their natural, recreational and scenic values, and are accordingly outstanding resource waters.

Dated at Montpelier, Vermont, this 21st, day of June, 1991.


Water Resources Board



David M. Wilson, Chair



Elaine B. Little, Vice-Chair



David Deen