

**State of Vermont  
WATER RESOURCES BOARD**

**Re:     The Orvis Company, Inc.  
          Town of Manchester, Vermont  
          Docket No. WET-01-06**

**ADMINISTRATIVE DETERMINATION**

This decision pertains to a petition filed by The Orvis Company, Inc. (“Orvis”), with the Water Resources Board (“Board”), seeking reclassification of two wetlands located on Orvis’s property in the Town of Manchester, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A. §905(7) to (9) and Section 7 of the Vermont Wetland Rules (“VWR”). The subject wetlands are man-made casting ponds located on Orvis’s property off Historic Route 7, south of Manchester Center, Vermont. As explained below, the Board concludes that these wetlands are not significant wetlands and therefore reclassifies these wetlands from Class Two to Class Three.

**I.       PROCEDURAL HISTORY**

The petition was filed by Orvis on August 17, 2001. The petition was prepared for Orvis by wetland consultant, Errol C. Briggs of William D. Countryman Environmental Assessment and Planning, Northfield, Vermont, who has served as Orvis’s representative throughout this proceeding.

On August 29, 2001, the Board’s Executive Officer determined that Orvis’s petition was in substantial compliance with VWR § 7 and the Board’s Rules of Procedure, and he docketed the petition as WET-01-06. In his letter acknowledging receipt of the petition, dated August 29, 2001, the Board’s Executive Officer advised Mr. Briggs that while the petition was substantially complete, additional information was needed to document his authority to represent Orvis and to support or clarify some of the assertions made in the petition regarding wetland functions and contiguity with adjacent wetland resources. The Executive Officer set a deadline of September 14, 2001, for the filing of this supplemental information.

On September 14, 2001, Orvis’s Executive Vice-President filed a letter confirming that Mr. Briggs was authorized to represent Orvis in this wetland reclassification proceeding. Also on September 14, 2001, Mr. Briggs filed the requested supplemental information, including a completed WET evaluation form for the Orvis property.

On September 17, 2001, a Notice of Petition was sent to all persons required to receive notice pursuant to VWR §§ 7.3 and 7.4. The Notice of Petition was published by the Board in the *Bennington Banner* on September 21, 2001. The Notice of Petition indicated that the Board was treating the petition as both a request to reclassify the subject wetlands and, in the alternative, a petition for a declaratory ruling that the ponds are not a wetland. The Notice of Petition set a deadline of October 25, 2001, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

On October 16, 2001, Alan Quackenbush, District Wetlands Ecologist for the Department of Environmental Conservation, Agency of Natural Resources (“ANR”) filed a letter with the Board, indicating that ANR had no objections to the reclassification request. No other written comments were filed by the October 25, 2001, deadline, nor did any person request a hearing.

Accordingly, the Board did not hold a public hearing in this matter, but instead considered the petition in deliberations on November 20, 2001, based solely on the information filed by Orvis and the ANR. As discussed in more detail below, the Board determines that the two ponds located on Orvis’s property are wetlands, but they lack significance for all ten of the wetland functions identified in VWR §5. Therefore, the Board concludes that reclassification of the subject wetlands from Class Two to Class Three is warranted and it so orders, along with other appropriate relief.

## **II. FINDINGS OF FACT**

1. The subject wetlands are located on the grounds of the Orvis Retail Store on Historic Route 7 south of Manchester Center, Vermont. The wetlands consist of two ponds, approximately ½ acre together in size, located exclusively on property owned by Orvis. However, a small strip of buffer zone extends onto the real property of Combe Properties (Village Properties, Inc.), located to the north of Orvis’s property. See Attachment A.
2. Orvis is in the business of selling sporting equipment including fishing gear. The first of the two ponds was constructed prior to 1966, the other shortly thereafter, as locations for fly casting demonstrations and practice.
3. The Vermont Significant Wetland Inventory Map #18C (“VSWI Map”) shows a polygon in the area of the two casting ponds identified as Intermittently Exposed Permanent Palustrine Open Water (POWZ) wetlands adjacent to Munson Brook. See Attachment B.
4. There are Class Two wetlands to the south/southeast of the two casting ponds along Munson Brook, but they are not contiguous to the two casting ponds. However, the lower of the two casting ponds is in the buffer zone of a forested and shrub dominated Class Two wetland.
5. Although the two casting ponds were formerly fed by water from Munson Brook, this is no longer the case. There is an underground outflow pipe from the lower pond to Munson Book.
6. The subject wetlands are largely devoid of wetland plants. Photographs of the ponds reveal that the lands immediately adjacent to the ponds is managed as lawn.

7. The substrate or bottom of the subject wetlands is likely composed of impermeable soils, which may or may not be hydric soils.
8. Alan Quackenbush, an ANR District Wetlands Ecologist, conducted a site visit of the Orvis property on October 5, 2001. He generally agrees with the assessment of Orvis's wetland consultant that the two ponds wetlands lack significance for the ten functions identified in VWR §5 and therefore ANR does not object to Orvis's reclassification request.
9. The two wetlands due to their small size, locations, and lack of wetland vegetation do not serve functions 5.1 (Water storage for flood water and storm runoff), 5.2 (Surface and ground water protection), 5.4 (Wildlife and migratory bird habitat); 5.5 (Hydrophytic vegetation habitat), 5.6 (Threatened and endangered species habitat), 5.7 (Education and research in the natural sciences), and 5.10 (Erosion control through binding and stabilizing the soil).
10. The two wetlands serve the following three functions, but not at a significant level:

Function 5.3 (Fisheries habitat) - The two wetlands are not accessible to natural fish populations in adjacent water bodies. To the extent that there are fish in these two ponds, it is because they are stocked and maintained by Orvis.

Function 5.8 (Recreational value and economic benefits) - The two wetlands have some recreational and economic value, but only because they are maintained by Orvis as casting ponds for fly casting demonstrations and practice for the benefit of its customers.

Function 5.9 (Open space and aesthetics) - The two wetlands can be observed by the general public from Historic Route 7 and by customers from the Orvis property. They provide some aesthetic value, but are largely devoid of special or unique wetland characteristics due to the fact that the upland surrounding the two ponds is maintained as lawn.

### **III. CONCLUSIONS OF LAW**

The Board may determine whether to reclassify any wetland to a higher or lower classification. VWR §§ 4.4 and 7.1. It may do so upon receipt of a petition from an affected property owner. VWR §7.1. Orvis is an affected property owner for purposes of VWR § 7.1.

A wetland appearing on a National Wetlands Inventory map for the State of Vermont (1978) is presumed to be a Class Two wetland, unless determined otherwise by the Board as

provided by VWR § 7. VWR §4.2.b. The National Wetlands Inventory map for the Manchester Center area is VSWI Map #18C and the subject wetlands are located in a wetland polygon on this map.

A Class Two wetland is presumed, unless the Board determines otherwise, to serve all the functions specified in VWR § 5. VWR § 4.2.b(2). Accordingly, unless otherwise determined by the Board, the subject wetland is presumed to serve all the functions in VWR § 5 at a significant level.

A Class Three wetland, on the other hand, is a wetland “determined not to be sufficiently significant to merit protection” under the VWR. VWR § 4.1.c. The Board may determine that a mapped, Class Two wetland is not sufficiently significant to merit protection under the VWR based on an evaluation of that wetland’s functions. If the Board concludes that the wetland does not serve any of the ten functions at a significant level, it may reclassify the Class Two wetland to a Class Three wetland. See Re: New England Container Company, Docket No. WET-01-05, Administrative Determination (Sept. 18, 2001); Re: Hogback/ Hollister Wetland, Docket No. WET-90-05, Administrative Determination (July 23, 1991).

According to the ANR, the two casting ponds located on Orvis’s property are wetlands within the meaning of VWR § 2.29, but not significant wetlands meriting protection under the VWR. Based on the assessment conducted by Orvis’s wetland consultant, the only wetland functions that the two ponds perform are functions 5.3, 5.8, and 5.9, and to the extent that the ponds perform these functions it is not because of natural wetland processes, but rather the intervention of Orvis in maintaining these man-made ponds for their intended purpose – as casting ponds for fly casting demonstrations and practice.

Thus, the Board has considered the uncontroverted assessment of the wetland functions performed by Orvis and concludes that the subject wetlands are not significant wetlands meriting protection under the VWR. Accordingly, the Board determines that the subject wetlands should be reclassified from Class Two to Class Three and that the Wetlands Office, ANR should remove the subject wetlands from VSWI Map #18C.

#### **IV. ORDER**

It is hereby ordered:

1. The two wetlands described above and located on Orvis’s property in the Town of Manchester, Vermont, are Class Three Wetland; and

Re: The Orvis Company, Inc.  
Docket No. WET-01-06  
Administrative Determination  
Page 5

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2. The Wetlands Office, ANR, is directed to remove the subject wetlands from VSWI Map #18C.

Dated at Montpelier, Vermont, this 21st day of November, 2001.

WATER RESOURCES BOARD

/s/ David J. Blythe  
David J. Blythe, Chair

Concurring:

Lawrence H. Bruce, Jr.  
Jane Potvin  
John D.E. Roberts  
Mardee Sánchez

Re: The Orvis Company, Inc.  
Docket No. WET-01-06  
Administrative Determination  
Page 6

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