

State of Vermont
WATER RESOURCES BOARD

Re: Johnson State College (Upper Pond)
No. WET-03-04

ADMINISTRATIVE DETERMINATION

(Issued Sept. 26, 2003)

A petition to reclassify a wetland from Class Two to Class Three is granted.

I. Background

On August 6, 2003, pursuant to Water Resources Board (Board) Rule of Procedure 17 and section 7 of the Vermont Wetland Rules, Vermont Agency of Natural Resources (ANR) Watershed Coordinator Jim Ryan, on behalf of Johnson State College (JSC), filed a petition to reclassify a wetland known as the Upper Pond at JSC in Johnson, Vermont from Class Two to Class Three.

Pursuant to section 7.4.a of the Vermont Wetland Rules, the Board provided actual notice of the petition to persons required to be so notified on August 11, 2003 and published notice of this petition in *News and Citizen* on August 14, 2003. As provided by the Board's actual and published notice of the petition, and in accordance with section 7.4.a of the Vermont Wetland Rules, the deadline for submitting comments or requesting a hearing on the petition was September 15, 2003. No comments or requests for a hearing were received by the September 15, 2003 deadline, and the Board did not determine on its own initiative that a hearing would be necessary. Accordingly, the Board deliberated on the petition at its September 24, 2003 meeting, and this matter is now ready for decision.

The Board's standard of review of a petition to reclassify a wetland is governed by section 7.4.b of the Vermont Wetland Rules, which directs the Board to determine whether a wetland is significant on the basis of the functional criteria for evaluating wetlands set forth in section 5 of the Vermont Wetland Rules. In accordance with section 7.6 of the Vermont Wetland Rules, the Board's decision on a wetland-reclassification petition must include "a written explanation of the basis for the Board's decision." The basis for the Board's decision in this matter, which rests on JSC's undisputed reclassification petition and supporting documentation, follows:

II. Facts

1. An existing Class Two wetland, known as the Upper Pond, is located on the campus of JSC, approximately 2.5 miles east of the main campus entrance.
2. The unofficial 1994 Vermont Significant Wetland Inventory (VSWI) map for the Town of Johnson (map 32A) that is attached to the petition classifies the Upper

Pond as PUBH (palustrine, unconsolidated bottom, permanent). The official 1993 VSWI map for the Town of Johnson (map 32) classifies this wetland as POWH (palustrine, open water, permanent).

3. No properties owned by anyone other than JSC are located in or adjacent to the wetland in question or its buffer zone. The Upper Pond is not part of or contiguous to a larger wetland complex.
4. The Upper Pond was created by the construction of an earth-embankment dam in the 1960's on an unnamed tributary to the Gihon River, which in turn drains into the Lamoille River. The Upper Pond was most likely created to enhance the appearance of the campus entrance. The drainage area at the Upper Pond is about 86 acres. The pond area at the normal pool is about 0.7 acres with storage of about six acre-feet. At the top of the dam, the pool area would be about 1 acre with storage of 12 acre-feet.
5. The earth-embankment dam is now in poor condition and threatens downstream properties. Based on the recommendations of the Dam Safety Division of ANR's Department of Environmental Conservation (DEC), JSC drew down the impoundment in the fall of 2002, and the impoundment has remained drawn down since that time.
6. A high-gradient stream existed on the site of the Upper Pond prior to the creation of this impoundment. There is no evidence that a wetland existed on this site prior to the creation of the impoundment.
7. With technical assistance from DEC, JSC is pursuing the removal of the dam structure and the restoration of the pre-pond natural stream channel and riparian buffer corridor. Reclassification of the Upper Pond from Class Two to Class Three is necessary for this restoration project to proceed.
8. Selective dam removal and restoration of natural stream channels is one of the top priorities in the Lamoille River watershed planning initiative that DEC is undertaking to improve water quality, restore fisheries habitat, and improve fisheries passage.
9. The Upper Pond is a wetland, but its wetland functions and values are marginal. Even if the dam structure were in good condition, the Upper Pond would have only marginal value as a wetland in an artificial, highly maintained system. As described in detail in JSC's petition, the Upper Pond does not serve any of the

wetland functions described in section 5 of the Vermont Wetland Rules at a significant level.

III. Analysis

Based on the facts contained in the petition filed by ANR Watershed Coordinator Jim Ryan on behalf of JSC, and supported by ANR District Wetland Ecologist Shannon Morrison, the Board concludes, pursuant to sections 4.4.a and 7.1.a of the Vermont Wetland Rules, that the Upper Pond at JSC does not serve any of the wetland functions described under section 5 of the Vermont Wetland Rules at a significant level. Accordingly, the Board grants JSC's reclassification petition, reclassifies the subject wetland from Class Two to Class Three, and directs the Wetlands Office of ANR to remove the Upper Pond from the VSWI maps for the Town of Johnson.

IV. Order

It is hereby Ordered:

1. JSC's petition to reclassify the Upper Pond at JSC in Johnson, Vermont from Class Two to Class Three is granted;
2. The Upper Pond at JSC in Johnson, Vermont, as described in this decision, is reclassified from Class Two to Class Three; and
3. ANR's Wetlands Office is directed to remove the Upper Pond at JSC in Johnson, Vermont from the VSWI maps for the Town of Johnson.

Dated at Montpelier, Vermont, this 26th day of September, 2003.

WATER RESOURCES BOARD

/s/ John D.E. Roberts

John D.E. Roberts, Vice-Chair*

Concurring:

Lawrence H. Bruce, Jr., Member
Michael Hebert, Member
Jane Potvin, Member

*Board Chair David J. Blythe recused himself from this matter and took no part in this decision because his wife serves on the Board of the Vermont State Colleges.