

6.21.2001 00:12

## **On Echo Lake, rights revisited**

### **Ruling opens reservoir to public**

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BURRILLVILLE -- The public has the right to use the privately owned Pascoag Reservoir for boating, fishing and other recreational purposes, the state Supreme Court ruled yesterday.

In a 3-to-2 decision, the court said the right was established by the longtime existence of a state boat ramp at the Gloucester end of the 360-acre reservoir, also known as Echo Lake.

The news was hailed by state and local officials, along with lake residents.

"It doesn't get any better than this," said Ray Cloutier, president of the 200-member Pascoag Upper Dam Association, one of a number of neighborhood groups. "This is what we've been hoping and praying for, that we'd have access to the lake."

Barry Kusinitz, the lawyer for the lake's owners, including former state Rep. Vincent Mesoletta Jr., acknowledged they had lost the case but said he would look at whether there were any avenues for appeal.

Access to the lake has been in question since 1997, when Mesoletta posted a "no trespassing" sign at the boat ramp; he later drained the man-made lake to a 35-year low.

Since then, Mesoletta has alternated between granting the public the right to use the lake for periods of time and announcing that such access was cut off. Most recently, he had agreed to keep the two-mile-long waterway open to the public through this summer.

Meanwhile, his company, Pascoag Reservoir LLC, and the state have been locked in the legal battle over the reservoir's fate.

Mesoletta won the first round, in April 2000, when a Superior Court judge ruled the owners of the reservoir had the right to restrict its use.

Yesterday's Supreme Court decision overturned that ruling.

Justice Robert J. Flanders Jr., joined by Chief Justice Frank J. Williams and Justice John P. Bourcier, wrote in an 18-page decision that "innumerable members of the public" had enjoyed access to the lake via the ramp for 32 years before the lake's owners objected. The decision also said that objection had come much too late for the state to have to pay the owners any compensation.

In a nearly equally lengthy dissent, Justices Victoria S. Lederberg and Maureen McKenna Goldberg said the state had not proved it deserved such a broad grant of access to private property.

In a statement, Governor Almond called the ruling "a victory not only for those who own property abutting Pascoag Reservoir but for all Rhode Islanders."

Kusinitz said he would look at whether the case could be appealed to the U.S. Supreme Court. He also questioned what responsibilities the decision gave the state.

"If I read the Supreme Court's decision correctly, the state now has an easement over the lake, and it would follow then that they're responsible for the maintenance of the reservoir and the underlying dam," he said.

But Assistant Attorney General and Environmental Advocate Michael Rubin, one of two lawyers who represented the state, said the case rested on principles of state -- not federal -- law, and he doubted a federal appeal was possible.

And Joseph S. Larisa Jr., Governor Almond's chief of staff and the other lawyer for the state, said the state's responsibilities in relation to the lake had not changed.

"We think they're creating all sorts of red herrings," he said.

The reservoir is a man-made body of water first created in 1860 by mill owners who used it to power their businesses. Mesoletta and a partner consolidated their ownership of the reservoir in the early 1980s by buying up the various mill companies that held

stock in the former Pascoag Reservoir Corp.; they incorporated the current company in 1995.

While the state has discussed buying the lake from Mesolella's company, Larisa said yesterday that the issue was moot.

"Why would you pay for something you already own?" he asked. "If you own a car and it was given to you by your grandma, there's no need to buy the car. It's done."

Burrillville Town Council President Wallace Lees, who has a lakefront home on Camp Dixie Road, said he has used the state ramp to put his own boat in the water for the season and was "very pleased" with the ruling.

"I'll tell you, it takes a huge cloud off the property owners up here," Lees said. "I know people that want to sell their property and they couldn't actually advertise and sell it as waterfront property" because of the pending issues.

"Last year and this year they used [the lake] with permission," Lees said, "but at any given moment [Mesolella] could say, 'That's it, I own it -- off.' "

Lees said the decision also allows the town to continue to tax property along the lake as waterfront property with lake access.

But Rubin said the ability of the roughly 300 land owners around the lake to head straight out onto the lake from their properties was not addressed in the ruling.

"I think that while the public's rights and the individual lot owners' rights are intertwined, the court only addressed the right of the public to use the boat ramp," he said.

Kusinitz said the question of access from other points on the shoreline "may well be an open issue."

State Rep. Robert B. Lowe, whose district includes Burrillville and North Smithfield, said that made him uneasy.

"It answers one question but leaves up in the air what do we do now [for property owners]," he said. "I said it from the beginning, if Vinnie [Mesolella] loses this case, then we don't have a clear decision on Vinnie's rights to the rest of the lake."

Lees, the Town Council president, said he still believed the state should buy the reservoir because the decision leaves Mesolella with legal liability for the property, the tax bills and the responsibility to maintain the dam.

But Rubin said Mesolella's company had profited from other benefits of reservoir ownership, including the sale of waterfront lots that depended on the boat ramp for lake access.

A Superior Court order that prohibited the owners from changing the water level remains in place; Rubin said it was likely the state would return to court to make that order permanent.

Scott George, vice president of the Hidden Shores Homeowners' Association, made up of 19 families on the east side of the lake, hailed the ruling but said he recognized "the parties are still going to have to negotiate some sort of settlement to this issue."

"Hopefully it can be done amicably and to be fair to both sides, so the people who have lived there for generations can have some peace of mind," he said.