

# CWCS

Preserving access to and multiple-use of  
public lands & waters

Conservationists  
with  
Common  
Sense



FALL 2008 NEWSLETTER

CWCS • P.O. BOX 1046 • VIRGINIA, MN 55792-1046 • [www.cwcs.org](http://www.cwcs.org)

**CWCS mission statement:** To educate the public in order to preserve reasonable access to and sensible, multiple-use recreation of public lands and waters (**including motorized uses**) in Northeastern Minnesota, especially the Boundary Waters Canoe Area Wilderness (BWCAW), with care for the environment.

**Why CWCS continues to fight:** “(We will) embark on a 10 year campaign to get every single motor out of the Boundary Waters” – Brian O’Neill, quoted in May 20, 1998 Minneapolis Star-Tribune

## Court still debating South Fowl trail

Thirty years after the passage of the 1978 Boundary Waters Canoe Area Wilderness Act, the boundaries of the wilderness were once again disputed in a hearing at the 8th Circuit Court of Appeals in St. Paul. The boundary dispute arose as the result of a lawsuit filed in 2007 by several groups opposed to a proposed US Forest Service reroute of a snowmobile trail between McFarland and South Fowl Lakes in the Hovland area.

US Forest Service plans to construct the South Fowl snowmobile access were halted by a lawsuit filed by plaintiffs Sierra Club North Star Chapter, Wilderness Watch and Northeastern Minnesotans for Wilderness. Cook County, the Conservationists with Common Sense of Ely and the Arrowhead Coalition for Multiple Use of Grand Marais joined the lawsuit as interveners, supporting the Forest Service’s trail reroute. Also involved with the lawsuit is the Grand Portage Band of Lake Superior Chippewa and the State of Minnesota, which filed Amicus, or Friend of the Court briefs, lending support to the US Forest Service position.

On Thursday, October 16, 2008, Attorney Brian O’Neill of Fagre & Benson, Inc., representing the plaintiffs, argued against construction of the trail because it would lead to South Fowl Lake, which O’Neill argued is within the wilderness boundary and thereby not open to snowmobiles—or to unrestricted motor boat usage.

US Forest Service maps show the North and South Fowl Lakes outside of the wilderness boundary line, however, O’Neill argued that since the lakes within the Boundary Waters which allow 10 hp motor uses are colored pink on the Forest Service maps, both North and South Fowl Lakes must be within the wilderness as they too are colored pink. O’Neill said plaintiffs were suing to

enforce wilderness restrictions on North and South Fowl Lakes just as they are on other Boundary Waters lakes. O’Neill further argued that the two lakes were wilderness lakes because the Wilderness Act lists them in Section 4 of the Act as lakes with motor restriction.

Judges hearing the 8th Circuit appeal were James Loken, Kermit Bye and Laven-ski Smith. Judge Loken asked for clarification of snowmobile use around the two lakes. He noted that under the plaintiffs’ theory of the law, since the shoreline is not wilderness, snowmobilers could drive all around the lake shore, but not across the ice.

Also questioned was whether the claims were barred by the statute of limitations, since almost 30 years have elapsed from passage of the Act and publication of the map showing the boundary. O’Neill said up until 2005, “everyone assumed North and South Fowl were within the Boundary Waters.” He cited a case that listed all the lakes in the Act subject to motor restrictions, including North and South Fowl Lakes.

Robert Oakley, from the US Department of Justice, representing the U.S. Forest Service, disputed O’Neill’s statement, citing an earlier brief from another Fagre & Benson attorney and a 2005 letter from Forest Service Supervisor James Sanders. Oakley said the documents demonstrate that the lakes were not managed as wilderness and that the plaintiffs have known that since 1978. Finally, Oakley said, snowmobiling has been occurring on the lakes for many years.

David Oberstar, from the law firm of Fryberger, Buchanan, Smith & Frederick in Duluth, argued on behalf of the interveners. Oberstar said the plaintiffs’ claim that North and South Fowl Lakes are within the wilderness generates very strong feelings

in northeastern Minnesota, pointing to the State of Minnesota and Grand Portage Band amicus briefs, and Cook County’s support of the Forest Service.

“A generation of people has accessed their private property on North and South Fowl Lakes and they’ve done so with motor-

*(Continued on Page Seven)*

**“Everyone has a listening-point somewhere. It does not have to be in the north or close to the wilderness, but some place of quiet where the universe can be contemplated with awe.”**

*Passage from Listening Point  
by Sigurd Olson*

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# Non-ferrous mining informational forum held at VCC in August

Over the past three years there have been several informational forums about the various mining proposal for the Iron Range. Another such forum was held in August at Vermilion Community College, sponsored by the White Iron Chain of Lakes Association and Eagle Nest Lake Association.

As was the case at several other such meetings, the theater was packed. Frank Ongaro, Executive Director of Mining Minnesota, spoke of the vast deposits of copper, nickel and Platinum Group Metals (PGM) in the region.

Mining companies have known about the deposits since the 1960s, but until recently they didn't know just how large.

With a conservative four billion tons of minerals in the Duluth Complex on the East Range, the deposits include the second largest deposit of copper in the United States, the third largest deposit of nickel in the world and the second largest deposit of PGM in the United States.

Ongaro said the reason there is so much interest in mining these minerals now is demand and also because of the new technology to mine the minerals. He asked the question "can the mining be done safely" and then answered the question with a "yes," citing Minnesota's strict environmental standards. Ongaro said the new technology does not use a smelter, but rather an autoclave – a high pressure cooker.

The ore body is largely sulfur deficient. There is zero water discharge, no additional tailings, waste rock is placed on liners and capped, and there is care to assure water quality, according to Ongaro. In addition, financial assurance is required by the DNR to address any problems and clean up.

"Over an individual's lifetime," said Ongaro, "each person will need 3.6 million pounds of these minerals. Most critical to the U.S. economy is the consumption of 2.3 million tons of copper, while we produce only 1.9 million tons. And the demand continues to grow." Ongaro went on to say as long as there are catalytic converters, computers, cell phones, iPods, etc. the need for these precious metals isn't going to go away. There will be even more of a demand as the world economy grows.

Addressing the economic issues, Ongaro said the mining projects would stabilize

communities' economies, provide good paying jobs with long term careers, would prevent the flight of young people to urban areas and there would be numerous construction and spin-off jobs as well.

This mining would be for the next 100 years with \$200 billion benefit to Minnesota. There would be tens of millions of tax dollars for cities and schools, with \$1.4 billion going into the School Trust Fund.

Ongaro encouraged people to talk to the regulators - the DNR, the Minnesota Pollution Control Agency and the Environmental Protection Agency.

"This has been a three-year process," said Ongaro. "There is no fast track. Be part of the process. Be involved. Find out the information for yourselves and learn from the facts." He said the Sky Blue Water group has said they don't care what the EIS says, (which is due this fall for a comment period), they will oppose the PolyMet Project.

"The mind is like a parachute," said Ongaro. "It only works when it is open."

Gary Glass, a retired senior research chemist and presently an Adjunct Professor at UMD spoke on his experience of working with the EPA in the 1970s and said we have learned what not to do to prevent acid leakage. He said there are 10,000 mines in Canada and every one has acid concerns.

Glass agreed that the extraction process can be done right, but he admonished the mining companies to do what they say they will do and not ask for variances.

"Make sure we have all the pieces in place," said Glass. He said that PolyMet would be the first sulfide mine in Minnesota, and it remains to be seen if Minnesota can do it right the first time. A big concern to Glass was to have bankruptcy-proof protection.

The written questions and answering session was moderated by Carol Orban. This was notably different than other informational mining forum where oral questions were asked by citizens and answered by the various mining company reps.

Ongaro answered the majority of the questions. Asked if any safe non-ferrous mines are in operation in the United States, Ongaro answered that other mines differ from the PolyMet process which will not use smelters. The majority of PolyMet will not generate acid rock. Glass agreed that

this is possible.

Another question asked was why Canadian companies are the main investors. Ongaro said taconite companies are 50/50 owned by U.S. companies and global companies. Canada may be more aggressive. PolyMet's \$600 million project requires money on the table for reclamation that is to be adjusted each year.

Ongaro said there will be a two percent tax return to cities and schools and that PolyMet already has a purchase agreement with Minnesota Power.

Orban said Vermilion Community College, as well as other community colleges on the Iron Range, has a new Industrial Technology with Mining Emphasis program to train people for the skilled jobs needed in the non-ferrous mines.

Conservationists with Common Sense supports the proposed mining projects. The new technology for safer, cleaner mining of the vast amount of mineral deposits in northern Minnesota is something to embrace. Russian mines are using smelters, with little care for the environment. Here in northern Minnesota, we can do better.

CWCS encourages our members to submit comments on the PolyMet EIS when it comes out.

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## Message from the President

It has been a most interesting summer and fall for Conservationists with Common Sense.

The summer started with the Gunflint Greenup, which was a great event for replanting the affected area after the Ham Lake fire. It was great to see so many people with varying points of view working together, and the celebration at the end of the day of planting trees was first class.

The day before the fishing opener, my husband, Doug, and I attempted to walk the Four Mile Portage. My new knee is doing fine, but the old knee prevented me from walking further than half way across the portage. As it turned out, Doug was unable to walk all the way to Hoist Bay as the Forest Service has not been maintaining the portage as a wheel portage. There were many downed trees, beaver dams and flooding that was too deep to walk through.

On Memorial Day weekend there was excitement on the Newton Lake rapids, as two boats got caught in the fast current at the top of the dam on Fall Lake and went over. The Ely Fire Department, along with Forest Service personal helped rescue the boaters.

In July, I did an interview with Pat Kelly from KDLH-Channel 3 out of Duluth on the 30th Anniversary of the '78 BWCA Wilderness Act. I also was filmed by KQDS-Channel 21 the Fox station in Duluth for a 'Small Towns' piece on the Dorothy Molter Museum. Later in the summer I gave a special tour of the museum to a dozen Vermilion Community College students. Their instructor, Theresa Neufelder, wanted the students to have a more in depth presentation about Dorothy's life in the Boundary Waters, and about the creation of the Boundary Waters.

In July, I also attended the Vermilion Community College forum on mining in northeastern Minnesota. The forum was well attended. It focused on much of what has been presented to public in numerous other public hearings.

At the Blueberry Arts Festival and the Harvest Moon Festival in Ely, we found that there is still great interest in resolving the inadequate Chain of Lakes permit quotas. CWCS gathered 200 names of people over the two 3-day festivals that want this situation resolved.

October has been very busy. I was interviewed again about the 30th Anniversary of the '78 BWCA Wilderness Act. This time it was by Alyssa Johnson for Wilderness News. I told her that CWCS would like to convey that we all love the Boundary Waters and we do care about what happens in and around the wilderness. Our members would like to see a return to the common sense management of the area without the endless lawsuits that seem to hamstring the area.

Whether it is the proper management of the wilderness in our area, the management of timber sales or the licensing of area mining projects, extreme environmental groups have attempted to place roadblocks to anything being managed in all but an extreme preservationist viewpoint. It is our hope that science and logic could

once again be the guiding factor in managing this special area.

CWCS also has a great concern of the overall health of the surrounding communities and the need for good paying jobs.

In October, I attended the South Fowl Snowmobile hearing in St. Paul (see article). I attended the Winton Hydroelectric Annual meeting, but was unable to attend the general meeting of the Heart of the Continent Partnership (HOCP). I did, however, attend a lecture on the future of northern Minnesota forests presented by Dr. Peter Reich and hosted by HOCP at the Great Lakes Aquarium in Duluth. It was an interesting presentation by Dr. Reich, Dept. of Forest Resources University of Minnesota, until he made it political. He blamed Republicans for not doing enough, and brought the Iraq war into the presentation by saying the amount of money spent on the war in Iraq could be used to solve climate change. This was very disappointing, along with his comment that a commission on climate change had been formed to address issues, "even though it was at the request of a 'Republican' governor."

Can you believe it! Conservationists with Common Sense has been fighting to preserve access to and multiple use of public lands and waters for close to 20 years! And, in those twenty years, we have made some good progress.

Some of the issues CWCS has been involved with: 1992 BWCAW Management Plan; Voyageurs National Park (VNP) Management; Re-Opening the Lost Lake SNA to hunting; Vermilion River Plan; Opposed Little Alfie Logging Protest with Pro-Logging Rally; Supports logging in National Forests; Instrumental in obtaining designated ATV trails and Gilbert OHV Park; Re-Licensing of the Winton Hydro Electric Plant; Opposed Snowmobile ban in National Parks; Returning vehicle use to Prairie & Trout Lake Portages; Management & Maintenance of Trout Lake Portage; Rainy River Basin Plan; On Community Readiness Committee supporting safer economic development of Mining Projects/Coal Gasification Plants; Opposes the Friends of the Boundary Waters proposal for 90,000 acres of more wilderness in northeastern Minnesota; Chain of Lakes Permit Quota Lawsuit, Appeal & recalculation; Oppose Roadless Areas, Buffer Zones & SPNM Areas including Big Lake & Vegetable Lakes SPNM; Supports northern South Fowl Lake Snowmobile Trail Re-route & South Fowl Lawsuit; Supports Echo Trail Timber Management Plan

CWCS is in the first stages of planning an event to celebrate this anniversary, but we would like to know if you would be interested in attending such an event at Fortune Bay in early October 2009. CWCS would appreciate hearing from all our supporters as to your thoughts on attending an event of this nature. Please send me an email at: cwcs@2z.net

Thank you for your past and future support of CWCS.

Nancy McReady  
CWCS President

## Washington man indicted for Ham Lake fire

More than a year after the May 2007 Ham Lake wildfire, the U.S. Dept. of Justice finally released information on the possible cause of the fire. A 64-year-old man from Washington D.C. has been indicted in federal court for allegedly starting the fire that burned for more than a week, destroyed more than 75,000 acres of forest land and cost approximately \$11 million.

Stephen George Posniak was charged

Oct. 20 in Minneapolis with one count of setting timber afire, one count of leaving a fire unattended and unextinguished, and one count of giving false information to a United States Forest Service officer.

Posniak's indictment alleges he burned paper trash and other items that ignited the fire. It also alleges that Posniak knowingly gave false information to Forest Service officers by stating that he camped overnight on

Cross Bay Lake, not Ham Lake, on May 4. Posniak allegedly told officers he encountered an out-of-control fire already burning at a Ham Lake campsite on the morning of May 5 while paddling back through Ham Lake to Tuscarora Lodge.

If convicted, Posniak faces a potential maximum penalty of five years in prison on the setting timber afire count, and six months each on the other two counts.

## Motorheads and treehuggers work together

People may disagree about the recreational uses of the Boundary Waters, but the Gunflint Greenup proved that there is common ground and people with opposing views can come together for the greater good.

On May 3, one year after the devastating Ham Lake fire that burned over 75,000 acres in northern Minnesota and Canada, close to 450 volunteers, from near and far, came together at various starting points on the Gunflint Trail to plant trees. The goal was to plant 75,000 seedlings, one for every acre burned in the fire. The volunteers, along with Forest Service personnel, planted almost 60,000 red and white pine seedlings.

The day got off to a slow start with three inches of fresh snow all along the unplowed Gunflint Trail. This didn't deter the volunteers. They had come to plant trees and that's just what they did, and the snow gave the ground the added moisture to help give each tree a good start. The Forest Service predicts at least 80 percent will take root.



*Lots of volunteers at the Gunflint Greenup thank you celebration at Gunflint Lodge.*

The Gunflint Greenup was a cooperative effort spearheaded by Gunflint Trail business owner Nancy Seaton, owner of Hungry Jack Outfitters, with a lot of help from Luana Brandt, owner of the Nor'Wester, Sue Webster McDonnell and many more from the Gunflint Trail Association. In fact, the entire Gunflint Trail community and surrounding neighbors played a big part in this tree planting event. These people, from various backgrounds and views about recreational uses of the Boundary Waters, came together to make the Gunflint Greenup

a huge success.

At the end of the day, a thank you celebration for all the volunteers was hosted by Bruce, Sue and Lee Kerfoot at Gunflint Lodge with dinner, honor awards and music. A gigantic party tent was erected to shelter the event. In typical Gunflint Lodge tradition, it was first class. The tables were set with white linens, and tables filled as exhausted volunteers filed into the tent.

Good job everyone!

## CWCS on 30th Anniversary of '78 Act

Once again there is interest in the 1978 BWCA Wilderness Act as this fall marks the 30th anniversary of its passage.

In July, Pat Kelly with KDLH Channel 3 out of Duluth, MN came to Ely and interviewed several people (including Conservationists with Common Sense) about the '78 Act and how it affected the surrounding communities. The piece was more of a perspective of the people who live and work in these surrounding communities rather than on the wilderness protection of the Act.

Most notable about the three-part piece was the visit to Four Mile Portage as Kelly told how the courts redefined the definition of the word 'feasible' to mean 'possible'. The Four Mile Portage is one of the three truck portages the Friends of the Boundary Waters filed a lawsuit against the use of trucks to haul boats, motors, canoes, gear and people from one motorized lake to another motorized lake of the Boundary Waters. Trucks were eventually returned to Prairie and Trout Lake Portages, but not to Four Mile.

The passage of the '78 Act was a devastating blow to the people and businesses of northern Minnesota, and Kevin Proescholdt brags about how the Friends of the Boundary

Waters got it passed in his book 'Troubled Waters'. It took close to ten years for businesses to change their focus and recover.

A big indicator of how well our communities are doing is shown by the decrease in school enrollment. Back in the '70s, graduating classes topped 150 students. Today we have kindergarten enrollment of less than 40.

Had restrictions and uses of the Boundary Waters been left with what was outlined in the '78 Act life in the communities bordering this wilderness would have been peaceful after the ten year healing period. But that was not the case. The Friends came right back after that recovery with the removal of trucks from three portages. And, when trucks were returned to only two of the portages in 1999, the Friends were right there again attacking the Chain of Lakes permit quotas. And let us not forget about the countless lawsuits these preservation groups file against the Forest Service over the management of the area, especially timber management. All this does is tie the hands of the Forest Service and keep them from doing their job – 'Caring for the land and serving people.'

Northern Minnesota has tried our best

to adapt to the restrictions of the '78 Act, but any mention of good paying jobs with benefits coming to the area is met with resistance from preservationists who say it's too close to the Boundary Waters to even consider. CWCS realizes it's a tough balancing act between environmental protection and economic development.

In these tough economic times we must put our support behind new technology to provide the jobs we need in the future. 'Think globally and act locally.' We can do that with the new, cleaner, safer technology that is available today. We need to give some of these projects a chance, rather than letting other countries, with no pollution regulations, continue to harm our global environment. CWCS's concern is for the overall health of our communities to provide those good paying jobs that keep our young people in our communities, rather than exporting all our youth.

The Friends of the Boundary Waters or other preservation groups challenge the '78 BWCA Wilderness Act every ten years with something different. We are still waiting for a resolution to the Chain of Lakes permit quotas, and currently CWCS is involved in the South Fowl snowmobile lawsuit.

## Enviro group targets Polymet EIS

A Twin Cities environmental group now claims that the DNR and the PolyMet mining company are violating Minnesota law because they haven't considered an alternative to the open pit copper/nickel/precious metals mine proposal.

The Minnesota Center for Environmental Advocacy said in a letter sent to the DNR staff working on the draft Environmental Impact Statement for the non-ferrous mining project that the agency should look at "an underground mine."

"Underground mining may be environmentally safer and may provide economic benefits such as more jobs," a news release from the group read in part.

The \$602 million project slated for the footprint of the former LTV Mining Co. site near Hoyt Lakes would provide 400 good paying permanent jobs, 1.5 million man hours of construction work and more than 500 spin-off jobs.

The draft EIS has been delayed several times and is scheduled for release by the DNR at the end of October.

PolyMet officials always have proposed an open-pit mine because the copper is so close to the surface.

PolyMet officials say the company has already spent over \$15 million on the environmental review process. It will be another month before the release of a draft environmental impact statement on the proposed PolyMet mining project near Babbitt.

A Sept. 30 release date has been scrapped and the EIS should be out before the end of October, according to representatives of both PolyMet and the Minnesota Department of Natural Resources.

The release of the EIS is another key step in a long process toward gaining state permits for the state's first copper, nickel and precious metals mine. It will lead to a 45-day public comment period.

At issue is a long-discussed project that, according to estimates, would create 400 permanent jobs as well as more than 500 spin-off jobs.

Hundreds of construction jobs will be created during the construction phase of the \$600 million initiative, which calls for use of the former LTV site near Hoyt Lakes.

## Leadership changes at Forest Service in Duluth

The Forest Service announced there will be a change in three key leadership positions on the Superior National Forest this fall.

Sandy Skrien from the Tongass National Forest in Alaska has accepted the Public Service Team Leader position and will be responsible for the lands, recreation, heritage, wilderness, and public affairs programs on the Forest.

Skrien has worked for the past 20 years in various locations and positions on the Tongass National Forest in the recreation, wilderness, lands, and minerals programs as well as an acting District Ranger assignment.

Her responsibilities included managing the Mendenhall Glacier Visitor Center in Juneau and the Southeast Alaska Discovery Center in Ketchikan.

At Wrangell, Skrien managed a well known bear viewing site: Anan Creek Wildlife Observatory. This involved implementing the fee program, capacity limits and a prospectus allowing commercial guided use at the site.

Her current program of work includes two wilderness areas: LeConte Glacier which is the most southernmost tidewater glacier in North America and Stikine River,

the longest free-flowing navigable river in North America.

Skrien also served on the Tongass Fee Board and the Alaska Region Fee board. Prior to her time in Alaska, Skrien worked on the Superior National Forest at the Gunflint Ranger District where she has family roots.

She is the daughter of Rolf Skrien of Grand Marais.

Mary Shedd has accepted the Natural Resource Team Leader position and will oversee the aquatics, air quality, soils, minerals, timber, wildlife, fisheries, planning, environmental analysis, and monitoring programs.

Shedd has served in many capacities, at different units on the Superior National Forest, including the Isabella work station, Kawishiwi Ranger District, and Forest Headquarters.

Over the years, Shedd has worked in the wildlife, soils, reforestation, timber, and wilderness programs.

This included leading vegetation and wildlife analysis for Forest Plan Revision, Acting Natural Resource Team Leader, and most recently, Forest Biologist.

Before coming to the Superior National Forest, Shedd worked at the Forest Service

North Central (now Northern Research Center) Forest Experimental Station at Ely where she was involved in a study of forest biomass as well as research on white-tailed deer, black bear, and wolves.

Prior to her Forest Service experience, Shedd worked on wildlife research projects in Africa, Greenland, and Canada.

These two team leader positions have been vacant for many months – the Public Service Team leader position since August 2007 when Barb Soderberg retired and the Natural Resource Team leader position since Mike Miller retired in November 2007.

In other news, current Deputy Forest Supervisor Pam Brown will begin a new assignment in November as the Forest Supervisor for the Manti-La Sal National Forest, in Utah. Brown has been Deputy Forest Supervisor on the Superior National Forest the past two years.





## Four Mile Portage not passable... again

*Each year Doug and Nancy McReady try walking the Four Mile Portage to see if it is usable as a wheel portage. Once again, the four-mile long portage was not passable from Fall Lake to Hoist Bay of Basswood Lake. The Forest Service has not been maintaining this portage for use and there are numerous trees across the portage and the beavers have dammed areas that have caused severe flooding.*



## Still waiting for Chain of Lakes permits

For over 20 years, the U.S. Forest Service had determined in several decisions and management plans, that property owners and their guests on the affected chains of lakes were not required to obtain a permit to use the entire lake chains, not just the first lake in the chain. The chains of lakes had been viewed as continuous bodies of water. This interpretation was the deciding factor as to whether or not property owners would sell their land to the U.S. Forest Service, which was an option with the passage of the 1978 BWCA Wilderness Act.

The Friends of the Boundary Waters took their case to the appeals court, whose 1999 ruling re-interpreted the 1978 BWCA Wilderness Act, Public Law 95-495 - 4(f) ... That on each lake homeowners and their guests and resort owners and their guests on that particular lake shall have access to that particular lake (the first lake of the chain) and their entry shall not be counted in determining such use.

With the 1999 court ruling, the USFS determined that the permit system needed to be adjusted to account for the addition of the formerly exempt property owners into the equation. The USFS recognized that the permit system had become dysfunctional when they were forced to include the previously exempt parties into the quota system, originally designed for parties that were not property owners or their guests on the three

chain of lakes.

On February 15, 2006, the Eighth Circuit Court of Appeals gave its ruling in the Chain of Lakes permit case. The judges' decision stated: We remand to the district court with directions to remand to the USFS for a recalculation of the base period use and motorboat quotas consistent with the BWCAW Act and the opinion. The agency should do so at the earliest practicable time and include the Friends, Conservationists with Common Sense, and other affected parties in the rule-making process.

The court's opinion directs and empowers the USFS to recalculate current quota cap levels that were to be based on the actual use during a base year period in the 1970's as spelled out by the 1978 BWCAW Act. The court ruled that the current permit cap levels and a USFS first attempt at adjusting these quotas were not consistent with the BWCAW law.

Quota levels are currently set at a level which does not count the use of the homeowners, outfitters, resort owners, and their guests on the affected lakes in the original cap numbers. The original numbers were compiled prior to the 1978 law, and at that time did not include any of this use since the USFS considered all of this use "exempt" from permits. This use accounted for a large portion of the actual use, thus creating the need for the USFS to include this use in

their quota cap.

These affected parties - homeowners, outfitters, resort owners, and their guests - have been waiting since 1999 to work with the Forest Service to correct the currently dysfunctional system as quickly as possible so that the law and intent of the law is upheld. The 2006 Eighth Circuit Court of Appeals decision further remanded to the Forest Service to recalculate the permits for the three lake chains.

During the two summer festivals held in Ely, MN - the 3-day Blueberry Arts Festival and the 3-day Harvest Moon Festival - Conservationists with Common Sense gathered 200 names of individuals who are demanding the Forest Service resolve the Chain of Lakes permit issue. Letters have been sent to the Forest Service, as well as to State and Federal Representatives and Senators, urging resolution to this problem.

CWCS urges the USFS to finally address this issue, as is their duty, and correct this grossly mismanaged part of the BWCAW quota system. If all CWCS members would contact their elected representatives and the USFS, and call for this long awaited action, perhaps we may finally see some progress in this matter.

# Court still debating South Fowl trail

*(Continued from Page One)*

ized vehicles,” said Oberstar. “These lakes have never been designated as wilderness lakes, and they have reasonably relied on having access to their land over these years,” said Oberstar.

Oberstar added that half the lakes are controlled by Canada. “They can land float-planes on the Canadian side of the lakes, they have full motorized use, full snowmobile use,” said Oberstar. “They’re basically regular, recreational lakes.”

Oberstar acknowledged that Congress has the power to regulate non-wilderness land, but there had to be a “nexus” between the restriction and the need to protect the wilderness. Since South Fowl lies so far from the wilderness boundary, Oberstar argued that the horsepower limit serves no reasonable purpose. The nearest wilderness is on the northwest edge of North Fowl Lake. With the nearby Canadian recreational use, the 10 hp limit doesn’t limit the noise already existing on the lake. So, he said, the horsepower limit does not protect wilderness values.

“In my opinion,” said Oberstar, “In regulating North and South Fowl Lake, Congress went too far. No nexus exists to justify the regulation....”

In O’Neill’s two-minute rebuttal, he reiterated that North and South Fowl Lakes were properly regulated.

At the end of the hearing, Judge Loken asked about the 2007 ruling by U.S. District Court Judge John Tunheim that the Forest Service should have conducted additional analysis on the impact of sound on the wilderness from the proposed snowmobile trail. O’Neill said the Forest Service didn’t prepare a proper sound impact analysis.

Judge Loken said, “Maybe I’ve been naïve. I thought the Wilderness Act meant we conserve wilderness. But the District Court’s analysis strikes me that what we’re protecting is the few people with the skills and financial resources to be there.”

Loken asked if there was another aspect to the sound analysis other than if people in the wilderness can hear snowmobiles. O’Neill said wilderness was established for quietude and solitude. “In wildness is the salvation of the world,” said O’Neill.

The conflict started in 2002, when the Forest Service closed a snowmobile trail which had been used to travel from McFarland to South Fowl Lake, after it was determined to be within the wilderness. On

February 21, 2006, the Forest Service issued a decision to build an alternative route. In August 2006, the plaintiffs filed the lawsuit protesting the reroute and Judge Tunheim

first heard arguments in the case in December 2006. A decision from the 8th Circuit Court is expected in early 2009.



## CONGRATULATIONS to the 2008 CWCS Raffle Winners!

**Boat, motor & trailer - Paul Bernier - Grand Marais, MN**  
**Trolling motor - Dessie Kolosky - Beaver Bay, MN**  
**2-night stay at Nor'Wester Lodge - Jim Maki - Ely, MN**

*Thank you to all who bought raffle tickets and support Conservationists with Common Sense.*

Thank you to the area businesses for selling the raffle tickets.

**Thank you for supporting CWCS!**

*Special thanks to:*

**Aronson Boat Works in Tower for providing the boat package**  
**Wilderness Outfitters in Ely for donating the trolling motor**  
**Luana & Carl Brandt in Grand Marais for donating the 2-night stay at their Nor'Wester Lodge**

Jeana & Tom Kapczynski from Ellettsville, Indiana were the winners of the Minnesota Bird House Early Bird Drawing for sending in their CWCS dues before July 1, 2008.



## NEW CWCS SHIRTS!!

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