

CWCS

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

**Conservationists
with Common
Sense**



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Appeals Court Upholds USFS Authority to Adjust Permit Quotas

Court rules that motor permit quota levels must be recalculated in BWCA "Chain of Lakes" case.

ELY, MN - Feb. 15, 2006 - An opinion was issued by the US Court of Appeals for the Eighth Circuit that upheld the ability and need for the US Forest Service to adjust motor permit quotas on those lakes affected by the "Chain of Lakes" court rulings. The court stated "We reverse the district court insofar as we conclude that the USFS has the authority to recalculate the base period use to correct a significant legal error made manifest by the Dombeck ruling." Several preservation groups had attempted to claim that the USFS did not have the ability to manage the Boundary Waters as spelled out in the 1978 BWCAW Act.

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, 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.

The ruling also directs the USFS to work towards correcting these incorrect numbers "at the earliest practicable time" and to include groups such as, "...Conservationists with Common Sense (CWCS) and other affected parties in the rule making process." These affected parties look forward to working 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.

Upon review of the three-judge panel's ruling, CWCS president, Nancy McReady said, "CWCS is disappointed there will be yet another delay in properly managing the Boundary Waters because of the judges' ruling that the method in which the Forest Service recalculated the base period use on the three chains of lakes was flawed.

"We consider the decision a victory for common sense and the continuation of motorized use in the Boundary Waters, as allowed by law. The judges ruled that the present quotas are inadequate, and the USFS must recalculate and increase the number of permits to accommodate the Chain of Lakes property owners' use."

Historical Perspective:

The Court proceedings that deal with the motor quotas on these Boundary Waters "Chains of Lakes" were initiated by preservationist groups who wish to eliminate the lawful levels of motor use allowed by the BWCAW Law. In the case of the motorized permit quotas on the lakes affected by these rulings, a previous court decision allowed for the drastic reduction of use on these lake chains. Cabin owners, resort owners, and their guests were previously considered exempt from permits in these areas. As the result of this first court ruling, these "exempt" groups were now required to come under the permit quotas.

Since their use was never used to come up with the original permit cap quota levels, this in effect caused a huge cap reduction from the actual use levels that the cap was to be based on. In turn the quota levels on these lake chains were inconsistent with the management of the remainder of the BWCAW, in that this use was disproportionately slashed in comparison with all other uses in the BWCA, with no data to prove a need for any reductions of this drastic nature. Because of this inconsistency with the objectives of the BWCAW Law and the current USFS Plan of Management use levels, the US Forest Service recognized the need to adjust the permit quotas to more accurately reflect the actual use that was present in the years the cap was to be based on. This Court Opinion reaffirms the need for the US Forest Service to adjust these cap levels.

Appeal from the United States District Court for the District of Minnesota

**Friends of the Boundary Waters Wilderness;
Sierra Club;
Superior Wilderness Action Network;
American Lands Alliance,
Minnesota Canoe Association,
American Canoe Association,
Minnesotans for Responsible Recreation,
Plaintiffs/Appellees**

v.

**Dale N. Bosworth, Chief of the United
States Forest Service; Mike Johanns,
Secretary of Agriculture**

Defendants/Appellants

with

**Conservationists with Common Sense;
Ely Outfitters Association;
Gunflint Trail Outfitters Association;
Seagull-Saganaga Homeowners Association**

Intervenor Defendants/Appellants