

CWCS

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

Conservationists
with Common
Sense



SPRING 2004 NEWSLETTER

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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 hearing held on Chain of Lakes issue

A hearing on the motion for a summary judgment in the Chain of Lakes permit quota lawsuit was held in U. S. District Court on Wednesday, February 11, 2004 before Judge John Tunheim.

Conservationists with Common Sense (CWCS) is participating in the federal court case defending the U. S. Forest Service’s determination that there was a definite need to adjust day use motor permit levels on several lake chains (Moose Lake, Farm Lake and Seagull River chains). CWCS President, Nancy McReady and Mike Madden attended the hearing at the Minneapolis courthouse.

The Forest Service, for over 20 years, 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.

The Friends of the Boundary Waters took the 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* and their entry shall not be counted in determining such use.

Therefore, the USFS was required to calculate this use into the basis of their system in order to be consistent with the other permit quota levels in the BWCA. This adjustment by the USFS is equal to the amount of use found appropriate in their current management plans for the BWCA.

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.

Since the USFS had used the original interpretation of the law, which did not require the property owners and their guests to fall under the permit system, they did not attempt to calculate this use

during the 1976-1978 time-period. After the appeals court ruling redefined the areas that the exempt user groups were allowed to travel, the USFS then attempted to reconstruct the level of use those areas had seen in the base years of 1976-78. This was done in order to come up with a rep-

resentative quota level consistent with other permit quota level determinations.

At the hearing, Betsy Schmiesing from the Faegre Law Firm represented the Friends of the Boundary Waters. She stated that the numbers the Forest Service used

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Why the Chain of Lakes issue matters

To explain the Chain of Lakes permit quota lawsuit, you must go all the way back to the 1978 BWCA Wilderness Act. This law, like the 1964 Wilderness Act, allows limited motor uses on several of the larger lakes within the Boundary Waters. Since its passage, the Friends of the Boundary Waters have repeatedly challenged various parts of the law, which they wrote.

First it was the three truck portages in 1989. The Friends sued on the definition of the word ‘feasible’ and the courts defined it to mean ‘possible’. This issue wasn’t settled until Congressman Jim Oberstar included the return of trucks to only two of the portages in the fall of 1998. Trucks re-

turned to Prairie and Trout Lake portages in the spring of 1999. Four Mile Portage still does not have the use of trucks on it.

The Friends of the Boundary Waters moved on to their next lawsuit in 1999, with their goal of eliminating all motors from the Boundary Waters publicly stated by their attorney, Brian O’Neill in 1998 – “*we will embark on a 10-year campaign to get every single motor out of the Boundary Waters.*” This time they challenged the definition of ‘that particular lake’ as it applied to the exempt permit status of resort and property owners on the three chains of lakes, (Moose Lake, Farm

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Why Chain of Lakes matters

(Continued from Page One)

Lake and Seagull River chains). The Friends of the Boundary Waters also challenged the definition of the word 'guest', with the court's definition meaning anyone who stays over night.

The Forest Service, for over 20 years, had determined in several decisions and management plans, that resort owners and home-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. For over 20 years, the chains of lakes had been viewed as continuous bodies of water.

Court hearing held

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to increase the permit quotas were overly inflated, resulting in more motor use in the Boundary Waters. Schmiesing said that resort and property owners and their guests are not being denied access to the lakes they are located on. These property owners still have exempt permits for this use. Schmiesing failed to acknowledge the use of the remaining chain of lake waters, beyond the first lake. These property owners are now required to obtain a permit for these waters, which they never had to before.

Representing Conservationists with Common Sense, David Oberstar from the Fryberger Law Firm in Duluth contended that the Forest Service numbers were conservative, as they did not accurately reflect the numerous resorts and property owners (and their guests) who

A 1999 court ruling found that these property owners and their guests were no longer exempt on these lake chains. Because of this 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 property owners or their guests.

Since the USFS had used the original interpretation of the law, which did not require

sold their properties because of the restrictions of the 1978 BWCA Wilderness Act. Oberstar said the increase of permits to rectify the problems caused by the redefining of the law does not indicate an increase in the number of motors in the Boundary Waters.

Joan Humes, from the US Attorneys office in Minneapolis, represented the Forest Service. Humes said that the Forest Service did the best job they could, based on the limited resources available showing the actual use during the permit cap period of 1976, 1977 and 1978. She said as a result of the appeals court ruling, the permit quota had to be refigured to include the previously exempt users on the chains of lakes.

There was no time frame given as to when Judge Tunheim will give his decision in this matter.

these property owners and their guests to fall under the permit system, they did not attempt to calculate this use during the 1976-1978 time periods. After the appeals court ruling redefined the areas that the exempt user groups were allowed to travel, the USFS then attempted to reconstruct the level of use those areas had seen in the base years of 1976-78. This was done in order to obtain a representative quota level consistent with other permit quota level determinations.

The Friends of the Boundary Waters filed a lawsuit against the Forest Service on the grounds the number of permits added to accommodate the previously exempt user groups were too high. Even though Conservationists with Common Sense feels the numbers should be higher, CWCS is participating in this lawsuit as an intervenor, defending the need of the USFS to adjust day use motor quotas to be consistent with their current plan of management and the 1978 law.

Win-Win land management

There is a new pilot project for addressing resolution to land use management issues for the northern counties of Minnesota, sponsored by the Northern Counties Land Use Coordinating Board (NCLUCB).

NCLUCB consists of commissioners from the following counties: Cook, Koochiching, Lake, Lake of the Woods, Marshall, Pennington, Roseau, and St. Louis. Minnesota state legislators passed the pilot project in 2002.

The *Getting to Win-Win Land Management Decisions* was compared to the Quincy Library Group in California – a group of county commissioners and citizens representing diverse interests that developed a plan for national forests. Congress approved their plan.

Don Parmeter, with the Northern Resources Center,

said local environmental groups in California were supportive of the Quincy Library Group's plan; it wasn't until the plan was made known to national environmental groups that there were objections, the main reason being the loss of power.

"They have a perception that more say at the local/state level will hurt the environment," said Parmeter.

Several of the issues that the pilot project will be addressing include the Rainy River and Lake Superior Basin Plans; ATV regulations; Governor's Water Initiative; Agassiz National Wildlife Refuge Management Plan; and snowmobile issues.

At mention of the Agassiz Refuge, the commissioners were asked if they were aware that a portion of the refuge, as well as the

(Continued on Page Three)

ATV legislation tops Northern Counties discussion

The ATV portion of the Omnibus Bill came out of conference committee, and many of the northern county commissioners are not very happy that they did not have an opportunity for input in this matter. The overall consensus of NCLUCB was the ATV legislation is a bad bill that needs several changes, or repealing all together.

Commissioners agree, as with snowmobiles, there is a need for ATV regulations and a way to enforce them. Designated trails are another need.

Laurie Martinson, the new head of Trails & Waterways said one aspect of the bill wouldn't even be enforced – the provision of restricting ATV use on public wetlands to access private lands. Other concerns that need clarifying are the restrictions of ATVs over Type 8 (bog) wetlands and determining what is 'frozen' wetlands.

Commissioners from Koochiching and Lake of the Woods (LOW) stated that 80% of their public wetlands is bog.

Commission Wade Pavleck from Koochiching County said, "No law has impacted Koochiching County so negatively as this ATV law. The law has to be changed. The way it was written, there is no solution. Counties need to implement their own wetlands regulation, as every county is unique. Koochiching County has 1 million acres of Type 8 wetlands."

St. Louis Commissioner, Mike Forsman brought up the question of required licensing on public lands. The bill requires out of state Motorcross Racers to have a Minnesota DNR sticker. "No other state

requires this," said Forsman. "Motorcross racing is a big money event. There is a proposal for a motorcross-racing track, not a trail in the Hibbing area. Licenses are not required for motorcycles used for racing."

Martinson said that in order to operate vehicles off-road a sticker is needed, but the law hasn't been enforced. With changing forest classifications, stickers would be required when on inventoried roads for vehicles used for deer hunting, berry picking, sightseeing, even logging equipment.

"People are worried where this law is going," said Forsman. "The law is so broad, it needs to be corrected, or it needs to be enforced."

Washington County, where the main concern over ATV use came from has only 424 square miles of wetlands. It was noted that Washington County shouldn't be an example for the entire state. St. Louis County has over 7000 square miles of wetlands; Cook County has 1481 square miles; Lake County has 2000 square miles; and Koochiching County has 3000 square miles of wetlands.

LOW Commissioner Kim Bredeson added, "We don't have an ATV problem yet. We need to see if the law can be adopted, as counties need it. If the goal is to prevent damage, address the problem where it exists. If the goal is to prevent access, then address that."

Cook County Commissioner Bob Fenwick said that ATVs are paying their share. "The permit issue shouldn't be a financial issue," said Fenwick. "Bike trail users

don't pay their share." Fenwick also said that a permit system implies restricted access, as with the BWCA permit system which is set up to limit the number of people going into the Boundary Waters.

The need for additional ATV parks, as in Gilbert, was stressed. In the Bemidji and Brainerd area where it is heavily developed there is the problem of where to use ATVs. An ATV park could be built in that area on Con-Con Lands.

Minnesota's Consolidated Conservation areas resulted from legislative action to prevent default on drainage bonds in seven counties in northern Minnesota. Income from the lands (primarily timber sales and agricultural and gravel leases) was shared by

the state and the respective counties and "consolidated" into one fund—hence the name Consolidated-Conservation or "Con-Con" lands.

In an effort to prevent further legislation from being passed without input from all parts of the state, Koochiching County Commissioner Chuck Lepper suggested a 'Light of Day Bill', requiring any bill to remain on the table for 3 to 5 days before being passed. This would give elected officials and the public an opportunity for input.

Another matter discussed was the Conservation Reserve Enhancement Program (CREP – explained in previous article). NCLUCB expressed opposition to the concept of a perpetual easement of private lands.

Win-Win land management

(Continued from Page Two)

Tamarack National Wildlife Refuge, had been designated as wilderness in 1976. They were not.

The Win-Win Project will promote cooperative efforts among county, state, federal and local units of government, along with private citizens and participation of ten state agencies.

The project requires cooperation with Canadian of-

ficials and with organizations representing recreational, agricultural, mining, forestry, and tourism interests.

Objectives of the project include documentation of instances when land use regulations and policies are incompatible with local authority; documentation when regulations and policies interfere with private property rights; and identifying and promoting a means of resolving differences.



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newsletter with a friend!

Northern Minnesota's Way of Life & Culture UNDER ATTACK, AGAIN!

Are your Hunting, Fishing and Recreation Areas Next on the List?

Let your Senators and Congressmen know – ENOUGH IS ENOUGH!
Say 'NO' to more wilderness in northern Minnesota!
Say 'NO' to more restrictions of public lands and waters!

Friends of the Boundary Waters have proposed
90,000 acres of more wilderness!

For a summary of where these acres are located,
go to the CWCS website at: www.cwcs.org

See the full Friends' wilderness proposal at:

<http://www.friends-bwca.org/pdfs/WildernessReport.pdf>

- 12,673 acres in the Orr/Buyck/Crane Lake area
- 7,933 acres in the Tower/Cook/Vermilion area
- 8,418 acres in the Ely/Echo Trail area
- 14,200 acres in the Hoyt Lakes area
- 8,360 acres in the Isabella/Finland area
- 20,086 acres in the Lutsen/Tofte area
- 17,558 acres in the Grand Marais/Gunflint area

Conservationists with Common Sense *needs your continuing support!!!*

We can no longer afford to be complacent on public land & water issues! Presently, CWCS's expenses for the Chain of Lakes Lawsuit to preserve **6000 BWCAW permits** for the Seagull/Saganaga, Moose Lake & Farm Lake Chains have exceeded

\$25,000!

Join CWCS Today!

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

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All Donations are Tax Deductible! Thank you!

Smokey Bear celebrates 60th birthday with new slogan

This year, Smokey Bear celebrates his birthday. For 60 years, the national icon has been telling us that "Only You, Can Prevent Forest Fires."

Some think this constant message of preventing all forest fires is responsible for the massive fuel buildups that created such great infernos as the Cedar Fire in California and the Aspen Fire in Arizona.

But Smokey has been misunderstood, according to Dave Schuller, a community fire prevention specialist with the Minnesota Department of Natural Resources (DNR). The forest fires Smokey wants to prevent are actually the wild-fires that cause damage to resources and property.

To make his message clearer, the message has been changed slightly to "Only You, Can Prevent Wildfires."

Controlled fires are useful to reduce fuel buildup, renew native prairie and regenerate some forest types.

Smokey remains dedicated to the prevention of unwanted fires; fires caused by careless people that burn down homes.

Firewise Minnesota is a community-based program designed to educate and assist the public in preventing their homes from burning down. The program has been helping homeowners reduce fuels around their homes, properly landscape to prevent fires from reaching their homes and promote maintenance to keep properties green. These actions are all done in preparation for a wildfire.

"Smokey is a great partner to this effort," Schuller said. "The only thing more effective than preparing your home for the wildfire, is preventing the fire in the first place." For more information about Firewise Minnesota and Smokey's 60th Birthday, visit the DNR's Web site at www.dnr.state.mn.us/firewise.

Increased fuel loads on the forest floors throughout the Boundary Waters, along with dry conditions have created unusually high fire dangers in the Boundary Waters. PLEASE be careful with your campfires! Make sure they are completely out when breaking camp

Message from the President

It has been very busy the past several months.

In February, Mike Madden and I attended the court hearing on the Chain of Lakes permit quota lawsuit. **CWCS court costs have exceeded \$25,000!** Jim Smrekar and Rob Nopola in the Twin Cities, representing CWCS on the Minnesota Outdoor Heritage Alliance (MOHA) board, have brought the issue of the chain of lakes permit quotas to MOHA and will seek their support.

People from the Grand Marais area have raised concerns about the 'right of first refusal' letter mailed to them last fall by the U. S. Forest Service. This was the first time any such letter has been received by property owners all across northeastern Minnesota who have property on lakes that are partially in the Boundary Waters.

Another concern has been the way in which the Forest Service has changed their enforcement of the '78 Act. A snowmobile trail from McFarland to South Fowl that has been in use for over 25 years now has posts preventing passage. Some Forest Service employees have said the trail goes within the '400-foot buffer zone' of the Boundary Waters. There is no buffer zone!

I spoke with Forest Service Supervisor Jim Sanders about the McFarland trail and was told three re-route options are being considered, as a portion of the trail does cross into the Boundary Waters. I also asked Sanders about snowmobile use off Gunflint Lake via portages to Canada. If the portages go across U.S. land, which is included in the Boundary Waters, snowmobiles are not allowed! As stated in another article, by law, **there are only two** allowable snowmobile routes through the Boundary Waters to access Canada. The law would have to be changed to add these routes.

CWCS members have asked for clarification on the use of sled dogs and horses in the Boundary Waters. Their impact to area lakes, especially those in the Boundary Waters, has been questioned at township meetings, yet the Minnesota Department of Natural Resources and the Forest Service have yet

to conduct an Environmental Impact Study (EIS) on these uses in the BWCA. With such a great concern about ecoli bacteria that is responsible for the closure of so many beaches throughout the state, CWCS would like to see a greater concern for protecting the waters of the Boundary Waters, and some consistency in recreational uses in the Boundary Waters.

One of the claims made by preservationist groups is that restrictions are to be increased, not decreased. According to the '64 Act management plan, pack animals were banned in the Boundary Waters. The Boundary Waters Management Plan does state that sled dogs and horses are allowed. It states: Use of pack or riding stock on hiking trails is not permitted. Horseback riding is an appropriate use in wilderness and can occur off designated trails and portages. Both, sled dogs and horses are pack animals. Why were management policies relaxed to allow such liberal use of sled dogs? They were not even an established use in northern Minnesota, other than the sled dog races, until well into the 1980s.

CWCS does not want to ban another use in the Boundary Waters, but there should be consistency in the rules and restrictions of sled dog use and horses. Members, who have inquired about using their horses to take trips into the Boundary Waters for trout fishing, have not been given a consistent message by the USFS. **CWCS needs input on these issues from our members.**

CWCS sent a letter to the Forest Service correcting their claim that there was no established motor use in the area of a proposed hiking/non-motorized trail to Stub Lake from the Fall Lake Campground. After snowmobiles were banned from the Boundary Waters with the 1978 BWCA Wilderness Act, the Forest Service was mandated to build trails outside of the Boundary Waters. In 1984-85, a snowmobile trail was roughed out from Fall Lake campground to Moose Lake, going up the Stub Lake creek. Now the Forest Service says the creek is in the Boundary Waters. CWCS has informed the Forest Service that we still want the snowmobile trail to Moose

Lake, as well as the snowmobile trail proposed by the late Senator Paul Wellstone, following the Echo Trail to Buyck.

CWCS will be involved with a Canadian Lynx study in northeastern Minnesota. Various user groups and people were contacted, along with members of the Ely Igloo Snowmobile Club, by the Forest Service to be a part of this study. It's too late to begin the study this year, but will more than likely start at the beginning of next winter.

In regards to the 90,000 acres of new wilderness that the Friends of the Boundary Waters are proposing, an alternate plan may be that School Trust Lands within the Boundary Waters be traded for these designated lands. Trade out at least 30,000 acres of School Trust Lands for these 90,000 acres and have a buffer zone that can be managed by the state for timber and multiple use recreation, protecting our privileges of hunting, fishing and trapping in the Boundary Waters.

CWCS needs input on the possibility of supporting a new land designation – Backcountry Designation – proposed by Blue Ribbon Coalition.

With this designation, land management uses, as well as recreation uses would be preserved, with development of the land restricted.

In closing, remember, all paid memberships will receive *free* CWCS bumper stickers. Additional bumper stickers may be ordered for \$2 each. Check out these bumper stickers on our website at: www.cwcs.org, along with the beautiful '*Boundary Waters Camp*' print. **CWCS court costs for the Chain of Lakes lawsuit have exceeded \$25,000!** CWCS needs your support now, more than ever. We need your membership dues and special donations, all which are **tax deductible!**

Also, look for CWCS at the '*MOHA Step Outside and Celebrate the Outdoors Family Expo*' and TWINS game on May 2, 2004! Order tickets today!

Thanks for your continuing support.
Nancy McReady
CWCS President

We're into another MN wildfire season

It has been five years since the 4th of July blow-down of nearly 500,000 acres of trees in the Boundary Waters. Although extensive efforts have been made to reduce the threat of wildfire in northeastern Minnesota, the risk will remain for decades.

More than 30,000 acres of dead and dying trees have been removed from the blowdown areas outside the Boundary Waters. Forest management tools such as logging and controlled fires have worked well in achiev-

ing this effort. The Forest Service has plans to continue forest floor fuel reductions in the coming years with another 70,000 acres scheduled for controlled burns.

The Forest Service and Minnesota Department of Natural Resources ask that the public refrain from burning until later in the summer.

CWCS asks that all visitors to the Boundary Waters be extra careful with their campfires. Make sure the fire is completely out before breaking camp.

Wilderness designation set for Apostle Islands

After three years and nearly 10,000 public comments, the National Park Service (NPS) has recommended that 80% of the Apostle Islands be designated as wilderness.

NPS has recommended Alternative C as their preferred alternative.

Alternative C proposes that 80% of the park's land

base be permanently protected as wilderness. This alternative is intended to ensure that there will be outstanding opportunities for people to learn both the stories of the people who settled and altered these islands and the story of the subsequent restoration of the park's "wilderness" qualities. It also strives to minimize the number of

small, fragmented areas of wilderness or non-wilderness. All of the Lake Superior waters within the park will remain outside of wilderness.

If Congress votes to designate wilderness at the Apostle Islands National Lakeshore, the area would remain a unit of the National Park System, and since most of the park is already managed as wilderness, most visi-

tors would notice very little change, if any.

Visitors will still be able to use the park's public docks, anchor off the islands, and beach their boats, just as they have in the past. All of the park's public docks, lighthouses, and visitor centers were kept outside of the wilderness boundaries.

For more information, go to: www.nps.gov/apis/wstudy.htm

Seaplane service returns to Isle Royale

The National Park Service has announced an agreement with Duluth, Minn.-based Royale Air Service, Inc. to reinstate seaplane services to the island during the summer.

The island has been without plane service since 2002, when Isle Royale Seaplane Service ended flights after 37 years. The company cited higher insurance rates following the Sept. 11 terrorist attacks as the main reason.

Jon Safstrom, owner and pilot for Royale Air Service, said he was pleased that the service would return.

"I'm really looking forward to it," he said. "I'm excited about the prospect of working with the folks at the park and supplying a needed service to Isle Royale."

The business marks a new venture for Safstrom, who spent 17 years as a military and commercial pilot. The service will make flights to Isle Royale up to six days a week from May 18 to Sept. 15. Safstrom's Cessna 206 plane is capable of holding five passengers in addition to the pilot, as was the case with the previous seaplane.

Water protection proposed by Pawlenty

To help curb runoff, while restoring wildlife habitat, Governor Tim Pawlenty announced that up to 100,000 acres would be set aside to improve water quality along three of the state's major rivers.

The \$226-million proposal, which includes local, state and federal money, is the centerpiece of a clean water initiative Pawlenty outlined in June. Areas to be considered include 42,500 acres in the Red River Watershed in the northwest; 42,500 acres in the Mississippi River Watershed in the southeast; and 15,000 acres in the Missouri River Watershed in southwest Minnesota. The proposal has been submitted to Secretary of Agriculture Ann Veneman. If approved, farmers could begin voluntarily signing up to put their land in the program as early as March 2004.

CWCS 15th Annual Meeting Picnic/Fund Raiser

Saturday, August 21st, 2004 at Winton Longbranch

In conjunction with the Ely/Winton Rod & Gun Club's

Hawg Fishing Contest

\$5 CWCS BOAT RAFFLE \$5

Raising money for the Chain of Lakes lawsuit - 2500 maximum tickets

1st Prize:

Lund SSV-16', Johnson 25HP 4-Stroke &
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Boundary Waters Camp Print

Tickets Available May 1st, 2004!

CWCS no longer mails boat raffle tickets to our membership, as in the past. We have limited the number of tickets to be sold to 2500, each at \$5. You may purchase them by contacting board directors directly, filling out the ticket order form or by making your request for tickets by email at: info@cwcs.org. Tickets will also be sold at Ely area retailers Skube's Bait, Joe's Marine, Britton's Cafe, Wilderness Outfitters, Ely Shopper, and Latourell's Resort.



Order boat raffle tickets by filling out and returning the form below. To help us fill out your ticket stubs, **including address labels**. Ticket/stub halves will be mailed upon request.

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