



File Code: 2320/1570

Date: April 18, 2011

Kevin Proescholdt  
Issac Walton League  
1619 Dayton Avenue  
St. Paul, MN 55104

APR 21 2011

Dear Mr. <sup>Kevin</sup>Proescholdt:

I am writing to let you know that the Forest Service has met the requirements of Judge Tunheim's order contained in his decision in *Friends of the Boundary Waters Wilderness v. Bosworth*, also known as the "Chain of Lakes Decision." The steps we have taken are described below.

#### Day Use Motor Quotas on the Chain of Lakes

As you may recall, in February 2002, I signed the Chain of Lakes Decision Notice and Finding of No Significant Impact. I decided to implement Alternative 2 which would have increased the day use motor quotas for the Moose Lake, Saganaga Lake, and South Farm Lake entry points into the Boundary Waters Canoe Area Wilderness. In January 2003, my decision was challenged in court by a coalition of interest groups. Since that time, we have been working to address specific points raised during litigation.

In August 2006, Judge John R. Tunheim (United States District Court) ruled that the Forest Service's attempt to recalculate the actual motor boat use by homeowners and resort guests during 1976, 1977 and 1978 was arbitrary and capricious. Judge Tunheim directed the Forest Service to recalculate the base period use (cap) and motor boat quotas<sup>1</sup> consistent with the Boundary Waters Canoe Area Wilderness ("BWCAW") Act and the 8th Circuit Court of Appeal's opinion in *Friends of the Boundary Waters Wilderness v. Bosworth*, 437 F.3d 815, 829 (8th Cir. 2006).

During 2007, the Forest Service took the following steps to determine if there was additional information that would assist us in calculating the average actual annual motorboat use in 1976, 1977, and 1978.

- Contacted Cook and Lake County lands departments for verification of information on properties that appeared to have lakeshore cabins or homes in 1976-78 on Moose, Farm, White Iron and Garden Lakes in Lake County and on Seagull River and Gull Lake in Cook County.

<sup>1</sup> The "cap" is defined as the average actual annual motorboat use during 1976-1978. The 1978 BWCAW Act required the setting of entry point quotas for the use of motorboats within the wilderness. The "quota" for any one year shall not exceed the average actual annual motorboat use of the calendar years 1976, 1977, and 1978. Quota is the limit of overnight or day use permits issued for each entry point each day (weekly for day use motor quotas). (Chain of Lake Environmental Assessment pp. 81 and 82)



- Mailed a letter and attachments to interested parties that outlined the process for determining motorboat use on the three chains in 1976-1978 and asked for comments on the data used to determine the numbers.
- Reviewed responses to the above letters to determine if any new information was available that would substantiate or verify the actual amount of motorboat use.

Neither the counties nor the interested parties provided new information that would give us more accurate information in determining the actual amount of use that occurred in 1976-1978. I do not know of any other actions we can take to more accurately determine the **actual use** that occurred in 1976-1978. I believe we used the best information we had available when I signed the Chain of Lakes Decision Notice in 2002.

However, Judge Tunheim's ruling states that this information is not accurate enough for him to uphold in his ruling. Because we were not able to identify any new or more accurate information, I do not believe there is any way for the Forest Service to reach a new decision which would overcome the arbitrary and capricious standard set by the Eighth Circuit Court of Appeals and Judge Tunheim in their rulings. Therefore, I have decided that the motorboat quotas for Moose to Newfound and Sucker Lakes, Saganaga Lake, and South Farm Lake will not be changed. They will remain the same levels as the numbers listed in the 1993 Wilderness Management Plan. The 2004 Superior National Forest Land and Resource Management Plan will be modified to reflect the following quotas for the affected entry points.

<b>Entry Point (EP)</b>	<b>Quota</b>
Moose to Newfound and Sucker (EP F)	538
South Farm Lakes (EP I)	267
Saganaga (EP J)	1571

I understand the concerns, on both sides of this issue, by keeping these quotas at their current levels. We worked hard to determine the actual use from 1976-78. However, the court has determined our attempt to recalculate the actual use is not acceptable and we have no better information or procedure to replace those processes.

#### Changes to Day Use Motor Permit Reservation System

One of those issues we want to improve is the day use motor permit system. During our review of the Chain of Lakes issue, I directed staff to evaluate the day use motor permit system to determine if there were changes we could make to better manage the system. We also reviewed permit data from the past several years. Through this review, we identified changes which I believe will be more fair and equitable for everyone. These changes will also make it easier for people to cancel reservations they do not plan to use, so others can have an opportunity to enjoy time in the BWCAW. The changes are outlined below:

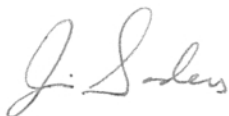
1. **Eliminate overbooking for all day use motor quotas starting permit season 2012.**
2. **Allow cancelled day use motor permits to be put back into the system immediately and made available for use later in the week.**

Eliminating overbooking will make the day use motor permit system consistent across the Forest as well as consistent with overnight permits, which are not overbooked. Overbooking was established because the permit system was not capable of putting all cancelled permits back into the system and the Agency wanted to make all of the permits available for use. Permits that were cancelled within two days of the use week were not available because of system limitations. The current reservation system is capable of putting all canceled permits back in the system and making them available to the public at a random time within the same use week. Therefore, there is no longer a need to overbook.

Our data shows that the majority of no shows come from cooperators. Therefore, we will be working with the cooperators, in addition to other users, to encourage them to cancel unused permits so they can be made available for other users, as well as other cooperators. This will allow all visitors the opportunity to obtain the permits that otherwise were not available for use.

I recognize there will still be permits that are not used and not cancelled. However, if even a small number of "no shows" are cancelled and made available for others to use, the actual day use motor permits will be better utilized. This will help address some of the concerns raised about the lack of permit availability on the Chain of Lakes. We will continue to monitor the permit system and look for other changes we can make that will enhance the fairness, equitability, and use of the permit system. If you have ideas for other changes we could consider, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Sanders".

JAMES W. SANDERS  
Forest Supervisor