

National Forest Law Newsletter

by Ryan Woody

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This monthly electronic newsletter is a service provided by Attorney Ryan L. Woody for the benefit of clients and forest stakeholders. The vagaries and complexity of the laws and current issues in National Forest Management have, for many lawyers, and professionals alike, made keeping current laws an arduous and laborious task. It is the goal of this electronic newsletter, to assist in the dissemination of new legal developments as they occur within the National Forests. If anyone has co-workers, associates or other individuals who wish to be placed on this e-mail mailing list, please provide their e-mail addresses to Ryan Woody at rwoody@mwl-law.com. I appreciate your friendship and your business.

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Boundary Waters Litigation

IZAAK WALTON LEAGUE V. KIMBELL (2007)

By Ryan L. Woody

In a pair of recent opinions the U.S. District Court for Minnesota addressed significant issues that may have impacts both locally in northeastern Minnesota and nationally. The case, *Izaak Walton League of America v. Kimbell* 06-CV-3357, (D.Minn.2007) involves a challenge by environmental groups to the Forest Service's decision to construct a snowmobile trail between McFarland Lake and South Fowl Lake in northeastern Minnesota. The Forest Service had originally proposed the South Fowl Trail project after identifying an illegal trail connecting McFarland and South Fowl Lakes that encroached into the Boundary Waters Wilderness. The agency sought to replace the illegal trail with one that would not enter into the wilderness. Environmental groups challenged that project.



In the lawsuit, environmental groups alleged that the Forest's approval of the trail violated the Boundary Waters Canoe Area Wilderness ("BWCAW") Act, because they believed both South and North Fowl Lakes

were designated as wilderness under the Act. The Forest Service countered that the Fowl Lakes were never part of the BWCAW. In a decision dated August 31, 2007, the court was called to determine whether the Fowl Lakes were originally designated as wilderness in 1978. If the Fowl Lakes were designated wilderness, the Forest Service would be forced to implement motorboat quotas and comply with all portions of the Wilderness Act. However, the court easily brushed aside the plaintiffs' arguments after reviewing a September 1978 map produced by the Forest Service, which clearly excluded both Fowl Lakes. The court bolstered its conclusion, noting that "the BWCAW boundaries have gone largely unchallenged for nearly 30 years...such a mistake is unlikely to have gone unnoticed and litigation over the BWCAW boundaries would have commenced long ago." This decision is a clear victory for the Forest Service and those who enjoy recreation near the Boundary Waters and on the Fowl Lakes.

Conversely, the court's September 28, 2007 decision resulted in what could turn out to be a significant victory for environmental groups. Having decided the boundary issues in its prior decision, the court focused on the plaintiffs' NEPA and Wilderness Act challenges to the South Fowl Trail decision. The plaintiffs challenged the new snowmobile trail on the basis that it would "project the sights and sounds of snowmobiles into the BWCAW." The Forest Service countered that this would create "buffer zone" that would expand wilderness protections far beyond originally contemplated. The court found this question to be one of first impression in the 8th Circuit. Similarly, the BWCAW Act provided little guidance on the "buffer zone" question. As such, the court established a test for whether activities outside the wilderness could violate the proscriptions of the Act. According to the court, the test is "*whether the action degrades the wilderness character of a designated wilderness area.*" If the proposed action increases the amount and frequency of negatives sights and sounds within the wilderness then the action may violate the Act. However, the court refrained from deciding whether the South Fowl Trail would violate the Act, because the administrative record was devoid of sufficient data on decibel levels within the BWCAW.

Likewise, the court criticized the Forest Service for failing to comply with NEPA by not disclosing sound impacts from the new trail in their EA. Although the EA noted that the trail would project the sights and sounds of snowmobiles into the wilderness, the agency failed to produce any data regarding the intensity of that impact. Instead, the agency merely decided that the impact would not significantly impact the wilderness. The court sympathized with the plaintiffs finding that "[t]he sounds of snowmobiles and ATV's from a snowmobile trail on the perimeter of the BWCAW, high above a wilderness lake will surely impact the solitude of the wilderness." Therefore, the court ordered the agency to assess and disclose the full sound impact of the proposed trail in a full blown EIS.

The impact of this decision could be very significant to the future of management of federal and private lands surrounding not only the BWCAW but also other wilderness areas throughout the country. Should the Forest Service decide not to appeal, it will be required to conduct an EIS on the sound impact of the trail on the wilderness. Throughout that process the public will be asked to comment again, and litigation will undoubtedly commence following a decision. If and when this issue comes before the court again, it will certainly be to decide the issue buffer zones around the BWCAW. Essentially, the court could decide that areas directly adjacent to wilderness areas are entitled to be managed not for multiple use, but instead as de facto wilderness. Interested groups should monitor this case and future agency action closely and provide written comments to the agency at the appropriate time.

I will continue to follow this decision and keep you informed of any significant developments. Should you have any specific questions, feel free to contact me at rwoody@mwl-law.com

LACEY ACT AMENDMENT WOULD TARGET ILLEGAL LOGGING



By Ryan Woody

Due to depressed timber prices and global deforestation concerns, legislators will seek to introduce the Combat Illegal Logging Act of 2007. The proposal would come as an amendment to the Lacey Act and appears to have the support of both environmental and timber industry groups.

The Lacey Act is a 1900 law that prohibits the trade of fish, wildlife, and plants obtained in violation of any foreign law. Specifically, it provides that it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law whether in interstate or foreign commerce. Violation of this federal act can result in civil penalties up to \$10,000 per each violation or maximum criminal sanctions of \$20,000 in fines and/or up to five years imprisonment. All plants or animals taken in violation of the Act are subject to forfeiture as well as all vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained where the owner should have known of the illegal transgression. 16 U.S.C. §§ 3371-3378.

The 2007 Amendment would add illegally harvested timber to that list. The law appears to be aimed at reducing the rampant illegal harvesting in Asia and South America. Two versions of the Amendment have been offered in each chamber. The House bill, H.R. 1497, introduced by Rep. Earl Blumeauer (D-Ore), would require companies to show that they took “due care” to ensure they were not using illegal timber. The Senate Bill, S.1930, introduced by Sen. Ron Wyden (R-Ore), however, would go farther by confiscating illegal timber from companies regardless of whether the company was merely an “innocent owner” of the timber. This “innocent owner” defense seems to be the main sticking point between the two bills.

Should the Amendment become law, it would require timber importers to certify and produce documentation that its wood imports were legally harvested overseas. The hope among the bills supporter seems to be that by removing illegal timber from the marketplace, domestic timber prices will rise and jobs would return to a depressed sector.

Should you have any questions or comments please do not hesitate to contact Ryan Woody at rwoody@mwl-law.com

This electronic newsletter is intended for the clients and friends of Attorney Ryan L. Woody. It is designed to keep our clients generally informed about developments in the law relating to National Forests and affiliated areas of practice and should not be construed as legal advice concerning any factual situation.. Should you wish to be removed from this email list, please contact Ryan Woody at rwoody@mwl-law.com.