



FROM THE QUETICO-SUPERIOR FOUNDATION • FALL 1982

U.S. SUPREME COURT UPHOLDS BWCA ACT

by Nelson French

Over three years of legal controversy over the constitutionality of the 1978 Boundary Waters Canoe Area Wilderness Act (P.L. 95-495) came to an end on Monday, March 8, 1982. On that day, the U.S. Supreme Court decided, on an 8 to 1 vote, not to review the earlier rulings of Judge Miles Lord of the U.S. District Court (July, 1980) and the Eighth U.S. Circuit Court of Appeals (September, 1981). This decision represents a major victory for continued protection of this national wilderness treasure.

The history of this most recent challenge to the protection of the Boundary Waters Canoe Area dates back to July of 1979, when the National Association of Property Owners and several northern Minnesota interest groups filed a lawsuit in Washington, D.C. seeking to have the law ruled unconstitutional. This suit was later withdrawn from the D.C. court and refiled in Duluth, Minnesota. The State of Minnesota filed a separate suit in December of 1979 seeking to overturn the section of the law regulating use of motorized vehicles within the wilderness.

Through this historic action the Supreme Court has upheld the following:

- *Motor Restrictions* — The Court upholds motorboat and snowmobile restrictions on the basis of the property clause of the Constitution which permits Congress to "make all needful rules and regulations respecting that ... property belonging to the United States ..." The Court held that Congress clearly has the power to dedicate federal land for particular purposes and that "as a necessary incident of that power, Congress must

have the ability to insure that these lands be protected against interference with their intended purposes."

- *Right of First Refusal* — The Court held that the right of first refusal is not an unconstitutional taking of property without just compensation.

- *The Webster-Ashburton Treaty* — The Claims of Campbell's Cabins and Trading Post, Ltd. and the Lac La Croix Indian Band are rejected on the grounds that treaties do not preclude each country from enacting reasonable regulations affecting commerce along the waterways, and that the citizens of each country are treated equally by the treaties.

- *Other Claims* — The court disposed of the claim by NAPO that an environmental impact statement should have been prepared by Congress, that the buy-out of resorts is arbitrary because some lakes are excluded, that the boundaries of the BWCA are unconstitutional because no map existed at the time the Act passed (such a map did exist), that the definition of "resort" is too vague, and that Judge Lord is biased.

The environmental community owes a great debt to those who have worked hard to preserve the BWCA Wilderness.



TWO WILDERNESS ADVOCATES LEAVE OUR MIDST

Our spring issue noted with sadness the passing of Sigurd F. Olson. Late winter saw the death of two other conservation leaders, Bill Magie and Calvin Rutstrum.

Bill Magie

Bill Magie, a noted woodsman and story teller of the canoe country, died at Solon Springs, Wisconsin in early March. Much of his life was directed toward protection of our north woods wilderness.

Bill Magie was the son of a Duluth physician. He went to prep school at Lawrenceville near Princeton University. In later life he assured friends that he had been "excommunicated" from some of the best schools in the East. He took a job on a surveying crew with the U.S. Army Corps of Engineers in 1925. That project provided the first detailed maps of the canoe country. In 1948 Bill was the founder of Friends of Wilderness. He was very successful in helping to persuade the federal government to restrict the flight of seaplanes into the BWCA.

Bill Magie was a man of many interests and talents — a miner, a pilot and a U.S. Marine. He worked as a canoe guide from 1962 until the summer of 1978. His story telling of the canoe country on the canoe trips was legendary. Bill recalled in "A Wonderful Country": "In 1922 a bunch of guys from Princeton had heard me talk about the canoe country at school all winter. They finally said, 'Let's go up there this summer.' So, six of us, myself and five others, we started out. They all say Wilderness Outfitters is supposed to be the oldest outfitters in Ely, but that isn't true. Otto Sakapedo was the first outfitter. We used to rent stuff from him. Two dollars a week for a canoe, and a dollar a day for the outfit and your food."

Calvin Rutstrum

In February Calvin Rutstrum, Minnesota writer and conservationist, died in Osceola, Wisconsin. Rutstrum, 86, was the author of 15 books on wilderness and canoeing. The background for Mr. Rutstrum's writings came from his extensive trips into the Canadian wilderness at all seasons of the year. Rutstrum often wrote of the need to protect our fragile wilderness.

His first book "The Way of the Wilderness", was published in 1946. Other books included "The Wilderness Cabin", "Back Country", and "Paradise Below Zero". Much of Mr. Rutstrum's writing was done at his home near Marine on St. Croix, on Lake Superior and in his remote cabin in the Ontario wilderness.

In one of his books "North American Canoe Country", Rutstrum wrote: "What do you consider your most impressive wilderness experience? is a question often posed. There can be no illusion about this for me. I must seriously hark back to the impressions at age eighteen, when I made my first significant canoe voyage — three and one-half months — traveling by canoe until freeze-up, and coming out by sled. Later in life I have experienced a nostalgic passion to recapture the thrill of the wilderness as I felt it at eighteen."



Bill Magie with one wolf out of a pack of seven which followed Magie for three days.

ONTARIO HYDRO REDUCES ATIKOKAN PROPOSAL

In the early 1970's Ontario Hydro, owned by the provincial government, proposed to build an 800-megawatt plant at Atikokan which would have cost at least \$800 million.

Ontario Hydro decided in 1979 to scale down the plant to a \$600 million plant because of a decline in demand for electricity in Ontario. The reduced plant was to consist of two 200-megawatt generating units. Work on the plant began in 1978.

In December 1981 the electric utility announced that it had decided to delay indefinitely the completion of one of the two 200-megawatt generating units. The decision was apparently made because existing plants can produce far more electricity than provincial customers can use. Some Canadian officials suggested that the second power plant might never be built.

This decision will have a significant effect in reducing the emission of harmful pollutants into the fragile lakes of the BWCA. Horray for progress!

WATT'S WILDERNESS PROTECTION

by Elmer L. Andersen

Conservation groups are calling it a monumental act of cynicism. Former U.S. Senator Gaylord Nelson, now chairman of the Wilderness Society says, "The proposal is a sham from the first line to the last. Instead of preserving wilderness, it will destroy it."

Reference is to "The Wilderness Protection Act of 1982" (HR 5603) prepared by Secretary of the Interior James Watt and introduced by Congressman Manuel Lujan Jr. (R-New Mexico). When first publicized it was taken to be a reversal of Watt's previous positions and people wondered just what had happened. More careful reading of the proposal convinces them it is not intended to protect but rather to dismantle present protections at a future date.

On its face the measure would tighten regulations and restrict exploration until the year 2000. At that

time, however, there would be an opening of all presently protected lands to personal decision of the president for development if he found an "urgent national need". Preservationists argue that any time there was a valid urgent national need the Congress could be depended upon to act promptly. In fact, a war powers act puts a president in a position to do almost anything that is needed.

It is also argued that if the changes are that valid why not propose putting them into effect now? Why wait until the year 2000? It is hard to avoid the conclusion that a proposal to do something that won't be in effect until the year 2000, relies on public indifference about the future to escape the scrutiny it would get if made immediately operative.

If what is proposed is not considered to be needed until the year 2000 why not wait until then, size up the

situation prevailing at that time, and do the necessary. Once again Mr. Watt is generating controversy and attack on an administration proposal. Whatever his intention it is coming out badly and we would join with those who would urge staying with the Wilderness Protection Act of 1964 as now in effect and not begin major modification to be effective in the year 2000, particularly if it means relaxing the provisions that have been hard won over a period of 50 years.

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THE NEW CHIEF



Clay G. Beal

Clay G. Beal has been selected as forest supervisor of the Superior National Forest. He replaces Robert O. Rehfeld who retired in June.

Beal was born in Lewiston, Maine, and graduated from the University of Maine in 1954 with a degree in forestry. He served for two years in the U.S. Army and began his Forest Service career as a forester on the Siuslaw National Forest in western Oregon.

For the past nine years, Beal has been forest supervisor of the six-million-acre Chugach National Forest in Anchorage, Alaska. He has also served as district ranger on the Siuslaw and on the Gifford Pinchot National Forest in western Washington. Other positions he has held include fire, recreation, and lands staff officer for the Okanogan National Forest in northern Washington and fire management branch chief in the Regional Office in Portland, Oregon.

Beal is a member of the Society of American Foresters, is married, and has two children.

MOTOR USE VIOLATIONS INCREASE IN BWCA

The illegal use of motors in the BWCA is increasing, according to the Superior National Forest Service.

"Violations are increasing significantly in certain areas along the International Border," said Robert Rehfeld in early 1982. "These violations threaten the quality of the wilderness experience provided for by the U.S. Congress."

Enforcement has been difficult because many of the lakes border on Canada where some lakes do not prohibit motorboat use. Rehfeld said that the number of violations in 1981 was nearly 15 a week compared to a top of six violations per week in 1980. A particular problem area has been Lac La Croix.

Traditionally, compliance has been achieved merely by explaining BWCA rules to the public and citing those few who insisted on violating them. "If violations continue at the frequency noted last summer again this year, we'll have no choice but to step up our enforcement efforts," Rehfeld said.



SO LITTLE FOR SO MANY

There are roughly 3,400,000 acres, an area equal to about half the size of the state of Maryland, designated as wilderness east of the Mississippi River. This area includes the Boundary Waters Canoe Area which accounts for almost one third of

the total. This wilderness serves 147,000,000 people or two-thirds of the population of the United States. This statistic was discovered by Tom Watkins the editor of "Wilderness", the magazine of the Wilderness Society.

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