

Management Act (“NFMA”), 16 U.S.C. §§1600-1687, and its implementing regulations; and the Administrative Procedure Act, 5 U.S.C. §§ 553-559 and §§ 701-706.

3. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201.

II. VENUE

4. Venue in this case is proper in the United States District Court for the District of Minnesota under 28 U.S.C. § 1391(e). Defendant Brenda Halter, the Forest Supervisor for the Superior National Forest, has her office in Duluth, Minnesota. Furthermore, a substantial part of the events or omissions giving rise to the claims in this action occurred in this District.

III. SUMMARY

5. This case challenges the Forest Service’s authorizations of (1) excessive commercial towboat operations within the BWCAW that exceed the quota cap set by the BWCAW Management Plan; (2) non-exempt, general motorboat use permits within the BWCAW that exceed the quota cap set by the BWCAW Management Plan; and (3) total motorboat use, including commercial towboat use and non-exempt, general motorboat use, within the BWCAW that exceeds the statutory cap¹ imposed by the BWCAW Act.

¹ Throughout this Complaint, the term “statutory cap” refers to the specific motorboat use restrictions set by statute in the BWCAW Act. Pub. L. No. 95-495, T92 Stat. 1649 (1978). The “statutory cap” was adjusted over time following mandatory motorized use phase-outs on particular lakes. The term “quota cap” refers to the additional motorboat restrictions imposed by the BWCAW Management Plan, as incorporated into the Superior National Forest Plan.

The Forest Service has authorized or otherwise allowed, and continues to authorize or otherwise allow, each of those categories of motorized use within the BWCAW in excess of the amount allowed by applicable laws.

6. The Forest Service's permit authorizations for motorboat use, including commercial towboat use, within the BWCAW constitute final agency action and/or agency action unlawfully withheld or unreasonably delayed and are subject to this Court's review under the APA, 5 U.S.C. §§ 702, 704, and 706.

7. Wilderness Watch seeks declaratory and injunctive relief to protect its interests at law, including its interests in the Forest Service's compliance with the Wilderness Act's mandate to protect wilderness character.

8. Wilderness Watch requests that the Court issue a declaratory order and judgment holding that the Forest Service is violating the law by authorizing (1) excessive commercial towboat operations within the BWCAW that exceed the quota cap set by the BWCAW Management Plan; (2) non-exempt, general motorboat use within the BWCAW that exceeds the quota cap set by the BWCAW Management Plan; (3) total motorboat use, including commercial towboat use and non-exempt, general motorboat use, within the BWCAW that exceeds the statutory cap imposed by the BWCAW Act; and (4) motorboat and commercial use within the BWCAW at a level that degrades wilderness character beyond the amount allowed by law.

9. Wilderness Watch requests that the Court enjoin the Forest Service from authorizing further motorboat permits until Defendants comply fully with the Wilderness Act, the BWCAW Act, the BWCAW Management Plan (NFMA), and the APA.

10. Wilderness Watch also requests an order requiring the Forest Service to create and implement a new permitting process for commercial towboat operations that will ensure clarity, accountability, and compliance with the law. Wilderness Watch specifically requests the opportunity for separate remedy briefing to fully address commercial towboat permitting details, including specific definitions for terms such as “trip,” specific use restrictions and boat and client limitations, and specific reporting and administration requirements.

11. Wilderness Watch seeks the award of costs of suit, including attorney and any expert witness fees pursuant to the Equal Access to Justice Act, and such other relief as this Court deems just and proper.

IV. PARTIES

12. Plaintiff Wilderness Watch is a Montana based tax-exempt, nonprofit organization with satellite offices in Minnesota and Idaho. Wilderness Watch is dedicated to the protection and proper stewardship of designated Wilderness and Wild and Scenic Rivers. The Forest Service’s unlawful actions adversely affect Wilderness Watch’s organizational interests, as well as its members’ use and enjoyment of the BWCAW. Wilderness Watch brings this action on its own behalf and on behalf of its adversely affected members.

13. Wilderness Watch’s members use and enjoy the BWCAW for hiking, fishing, camping, canoeing, cross-country skiing, photography, solitude, and engaging in other vocational, scientific, spiritual, and recreational activities. Wilderness Watch’s members intend to continue to use and enjoy the BWCAW frequently and on an ongoing

basis in the future. The aesthetic, recreational, scientific, spiritual, and educational interests of Wilderness Watch's members have been and will be adversely affected and irreparably injured if the Forest Service continues to authorize motorboat use in the BWCAW that exceeds the legal limit. These are actual and concrete injuries caused by Defendants' failure to comply with mandatory duties under the Wilderness Act, the BWCAW Act, NFMA, and the APA. The requested relief would redress these injuries, and this Court has the authority to grant Plaintiffs' requested relief under 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. §§ 701-706.

14. Defendant Halter is the Forest Supervisor for the Superior National Forest, and in that capacity is the official representative for the Superior National Forest. She has the ultimate responsibility for ensuring that decisions made at the Forest level are consistent with applicable laws, regulations, and official policies and procedures. She is sued in her official capacity.

15. Defendant United States Forest Service ("Forest Service") is an administrative agency within the United States Department of Agriculture, entrusted with the management of our National Forests and designated Wilderness areas within National Forest boundaries, including the BWCAW and the Superior National Forest.

V. FACTUAL AND PROCEDURAL BACKGROUND

A. BWCAW Designation And Early Regulation

16. The BWCAW is located within the Superior National Forest of Minnesota and stretches one hundred and fifteen miles along the Minnesota-Ontario border. The BWCAW, along with Canada's adjoining Quetico Provincial Park, contains a complex

ecosystem of nearly 3,000 lakes connected by a vast network of streams and portages providing the opportunity for weeks of uninterrupted wilderness travel.

17. This unique ecosystem complex provides habitat for a diverse mix of wildlife, including many sensitive and imperiled species, and is renowned for its opportunities for solitude.

18. These characteristics are also what make the BWCAW one of the most heavily visited Wilderness areas within the National Wilderness Preservation system.

19. The BWCAW was one of the original Wilderness designations in the 1964 Wilderness Act. 16 U.S.C. § 1131-1136.

20. The Wilderness Act generally prohibits motorized and mechanized activities within designated Wilderness. *Id.* at § 1133(c). However, in response to pressure from various motorized use interests and lake residents, Congress created a limited exception from that general ban on motorized use within the BWCAW. *See* 16 U.S.C. § 1133(d)(5) (1976), repealed by Pub.L. No. 95-495, 92 Stat. 1649, 1650 (1978). This limited exception allowed the continuance of already established motorized use as long as such use would not undermine the “primitive character of the area.” *See Friends of the Boundary Waters v. Bosworth*, 437 F.3d 815, 818 (8th Cir. 2006).

21. But the exception was shortlived. Two years later, in reaction to deterioration of the BWCAW from excessive motorized use, Congress repealed the exception and enacted the Boundary Waters Canoe Area Wilderness Act of 1978. Pub. L. No. 95-495, 92 Stat. 1649 (1978) (“BWCAW Act” or “Act”). The BWCAW Act

prohibited all motorized use within the Wilderness except on specifically named lakes. *See* 92 Stat. at 1650, 4(c).

22. On those specifically named lakes, the BWCAW Act imposed a “statutory cap” on motor boat use and directed the Secretary to develop and implement entry point quotas to restrict motorboat use in accordance with the statutory cap. Congress set this statutory cap at “the average actual annual motorboat use of the calendar years 1976, 1977, and 1978 [the “base period use”] for each lake.” 92 Stat. at 1651, 4(f).

23. Pursuant to Congress’s order, the Forest Service set out to calculate the base period use, relying upon computer data and analysis, wilderness permit data, records, and public interviews regarding the average actual annual motorboat use during 1976, 1977, and 1978. The Forest Service calculated the base period use at 14,925 motorboat trips. In the 1981 BWCAW Act Final Implementation Plan, it set that number as the statutory cap.

24. The 1986 Superior National Forest Plan likewise adopted the same statutory cap of 14,925 motorboat trips.

25. Following mandatory statutory phase-outs of motorized use on certain lakes, that statutory cap was later reduced to 10,539 motorboat trips.

26. Notwithstanding attempts to increase the statutory cap, as discussed more fully below, the statutory cap remains set at 10,539 motorboat trips.

B. Prior Proceedings Regarding Motor Boat Use in the BWCAW

27. The 1986 Forest Plan was administratively appealed, and as part of a settlement agreement resolving the appeal, the Forest Service agreed to conduct a visitor

use study and reexamine entry-point quotas for the Wilderness.

28. The visitor use study found that motorized use at the full statutory cap level was “strain[ing] the wilderness environment and [was] tending to degrade the intended primitive and unconfined recreation experience” of the BWCAW. *Friends of the Boundary Waters v. Bosworth*, 437 F.3d at 820.

29. Adding further strain, the Forest Service discovered that commercial towboat outfitters² had been operating in the BWCAW without obtaining permits since the BWCAW Act was enacted.

30. To address these issues, comply with the settlement agreement, and administer the Wilderness according to the Wilderness Act and the BWCAW Act, the Forest Service implemented the Boundary Waters Canoe Area Wilderness Management Plan (“BWCAW Management Plan”) in 1993. The Forest Service now manages the BWCAW in accordance with the Superior National Forest Land and Resource Management Plan (Forest Plan), as amended by the BWCAW Management Plan.

31. In response to concerns raised in the visitor use study, and specifically in response to degradation of wilderness character from motorized use levels, the BWCAW

² The Wilderness Act generally prohibits commercial enterprise in designated wilderness areas, 16 U.S.C. § 1133(c), but provides an exception for commercial services “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1133(d). The Forest Service has interpreted this provision as permitting commercial services for “public services generally offered by packers, outfitters, and guides.” 36 C.F.R. § 293.8.

Management Plan implemented a 75% “quota cap” on the statutory cap. This 75% quota cap resulted in a maximum quota of 7,902³ motorboat permits for the entire BWCAW.

32. The BWCAW Management Plan also required “all towboat operations [to] be authorized by a special use permit” and restricted commercial “[t]owboat use [] to the 1992 levels for numbers of boats, trips, current operators, and specific lakes.” The Management Plan is clear that commercial towboat “[g]rowth will not be permitted beyond these limits.”

33. Accordingly, to implement the BWCAW Act, the BWCAW Management Plan restricts motorboat use within the Wilderness through quota and entry point restrictions, special use permits for commercial towboats, and a special quota exemption for homeowners, resort owners, and their guests. These Management Plan provisions became the subject of litigation.

1. *Friends of the Boundary Waters Wilderness v. Dombeck Litigation*

34. While Section 4(f) of the BWCAW Act exempted homeowners, resort owners, and their guests from motorboat quotas on the “particular lake” on which they reside, the Forest Service, in the BWCAW Management Plan, interpreted a “particular lake” to mean the “chain of lakes” on which homeowners, resort owners, and guests reside for purposes of the quota exemption.

³ While 7,902 is actually slightly less than 75% of the statutory cap of 10,539, it reflects the reduction in permits resulting from statutory phase outs of motorboat use on various lakes. See *Friends of the Boundary Waters v. Bosworth*, 437 F.3d at 829, fn. 6.

35. The Eighth Circuit rejected the Forest Service's interpretation of a "particular lake" in *Friends of the Boundary Waters Wilderness v. Dombeck*. 164 F.3d 1115, 1124-1125 (8th Cir. 1999). The Court held that Congress spoke specifically and clearly in the BWCAW Act when it used the term "particular lake," and as such, "particular lake" referred only to the individual lake that the homeowner's or resort owner's property abuts.⁴

36. The Eighth Circuit noted that "[t]he premise of the BWCA Wilderness Act of 1978 is that motorboat use is prohibited in the wilderness area, except to the extent that Congress specifically authorized motorboat use on specifically designated lakes, portions of lakes, and rivers." *Friends of the Boundary Waters Wilderness v. Dombeck*, 164 F.3d at 1124.

37. During the course of the litigation, the Forest Service calculated the 1992 level of commercial towboat use, resulting in a quota cap of 1,342 towboat trip special use permits.

38. In addition to providing a total commercial towboat permit cap, the document used by the Forest Service to calculate the 1992 commercial towboat usage levels specified commercial towboat outfitters operating in 1992 as well as towboat quotas for each outfitter at specific entry points. The number of boats allowed for each outfitter was not specified.

⁴ Prior to the *Dombeck* case, the Forest Service's continued authorization of truck portages had also been challenged with the Eighth Circuit finding that the continued motorized use in that case was unreasonable and stressing that "congressional intent was to discourage motorized use." *Friends of the Boundary Waters Wilderness v. Robertson*, 978 F.2d 1484, 1487 (8th Cir. 1992).

39. The Eighth Circuit accepted the Forest Service's quota cap calculations authorizing 7,902 general motorboat trip permits and 1,342 commercial towboat special use permits because the total of these permits would remain below the statutory cap of 10,539 total motorboat trips mandated by the BWCAW Act. *Id.* at 1122.

40. After the Eighth Circuit's *Dombeck* opinion, the Forest Service decided to recalculate the base period use figures (and thus the statutory cap and correlated permit quotas) for the entire BWCAW, rationalizing that the *Dombeck* ruling effectively increased demand for permits in a way that was not contemplated in the original base period calculations.

41. However, the Forest Service lost the data it used in 1981 to calculate the base period use for the original statutory cap, so to determine the new figures, the Forest Service estimated total homeowner and resort lake chain use and relied upon homeowner and resort owner surveys to estimate the amount of non-exempt use during 1976-78.

42. The Forest Service's recalculation effort resulted in a significant motorized use increase, including a 290% increase on the lake chains at issue in the *Dombeck* litigation, over the previously calculated quota levels.

43. The Forest Service also intended to recalculate commercial towboat use, rationalizing that towboats were not included in the original 1976-78 base period use calculations. However, on information and belief, no such calculations were ever finalized by the Forest Service.

44. In 2002, the Forest Service amended the BWCAW Management Plan, and thus the Forest Plan, to reflect the Forest Service's new calculations and quota cap

increases. Those amendments and quota cap increases also became the subject of litigation.

2. *Friends of the Boundary Waters Wilderness v. Bosworth* Litigation

45. In 2006, the Eighth Circuit ruled that while, in theory, the Forest Service may have the authority to recalculate the average actual annual motorboat use (base period use) during 1976-78 to correct an error “made manifest by court opinion,” the Forest Service’s actual recalculation was arbitrary and capricious because the “data relied upon and calculations performed by the USFS are so unreliable or inadequately explained as to make reliance on them arbitrary and capricious.” *Friends of the Boundary Waters Wilderness v. Bosworth*, 437 F.3d 815, 824 (8th Cir. 2006).

46. With regard to commercial towboats, the Eighth Circuit noted that “[t]he record is not clear as to whether towboats were included in the original base period use” and that the Forest Service “must explain adequately why it concludes towboat use was exempted or otherwise not counted during the 1981 calculation of actual use before it undertakes any future recalculation of towboat use.” *Friends of the Boundary Waters Wilderness v. Bosworth*, 437 F.3d at 828-29.

47. The Court again reinforced that “towboats are allowed to the extent their use, when added to the homeowner, resort, and guest use, does not exceed the base period use [statutory cap].” *Id.* at 828.

48. The Eighth Circuit likewise emphasized, once again, that the BWCAW Act was passed to ensure preservation of wilderness character and that “[l]imiting motorboat

use is integral to preserving the wilderness values and primitive character of the area.” *Id.* at 819.

49. The Eighth Circuit remanded to the District Court with directions to remand to the Forest Service for a recalculation of the base period use and motorboat quotas consistent with the BWCAW Act and the Eighth Circuit’s opinion. The District Court issued the remand order and instructed the Forest Service to include affected parties in the rule-making process for the recalculation.

C. The Current Statutory Cap And Quota Cap Are Set

50. Following the remand order, on April 18, 2011, the Forest Service issued a notice that it does “not believe there is any way for the Forest Service to reach a new decision which would overcome the arbitrary and capricious standard.” Accordingly, the original base period use calculations (10,539 total motorboat trips) and the associated motorboat quotas detailed in the 1993 BWCAW Management Plan remain in effect.

51. Therefore, all non-exempt motorboat use, including commercial towboat use and general motorboat use, must fall within the statutory cap of 10,539 motorboat trips.

52. Furthermore, to decrease the strain on wilderness character from motorized use at the full statutory cap level, the 1993 BWCAW Management Plan caps the non-exempt, general motorboat use quota at 7,902 trips per year and the commercial towboat use quota at 1992 levels (determined to be 1,324 towboat trips per year) for a total quota cap of 9,244 motorboat trips per year.

D. Current Commercial Towboat Use

53. Actual commercial towboat use regularly exceeds the quota cap of 1,324 trips per year.

54. The Forest Service monitors actual commercial towboat use through self-reporting documentation submitted by the commercial towboat outfitters in October of each year for the entire preceding season.

55. From information obtained through a Freedom of Information Act request, twenty-three commercial towboat outfitters currently operate within and supply use reports for the BWCAW.

56. The Forest Service provided Wilderness Watch with self-reporting documentation from the outfitters covering years 2006 to 2014. Data from the 2015 season is not yet available.

57. Several commercial towboat outfitters currently operating within the BWCAW have failed to provide annual use reports for each year of operation and/or they have failed to provide use reports that provide sufficient detail to enable the Forest Service or the public to know the total number of trips made, the number of boats used for each trip, and the specific entry points and lakes accessed.

58. Twenty-three outfitters reporting nine years of usage data should yield 207 self-reporting forms. However, Wilderness Watch received only 152 reports, indicating that 55 reports were either not completed or were otherwise unavailable.

59. Two of the largest commercial towboat operators, Canadian Border Outfitters and LaTourell, had absent or incomplete data for a number of years. Each of these companies typically completes hundreds of trips per year within the BWCAW.

60. LaTourell noted in its self-reporting documentation that it excluded all Prairie Portage trips without providing any explanation as to why these trips were exempt from reporting. On information and belief, LaTourell should have included Prairie Portage trips in the self-report documentation for commercial towboat operations.

61. Use reporting data varied by outfitter and year, which makes it difficult or impossible to accurately account for all commercial towboat activity in the BWCAW for the 2006-2014 period.

62. Wilderness Watch was unable to obtain from the self-reported data, or from the Forst Service, a definition of the word “trip” as it pertains to commercial towboat quotas, or any indication of the extent of motorboat usage allowed under one commercial towboat permit.

63. One commercial towboat outfitter, Williams and Hall, reported single “trips” that included up to eighteen boats and seventy-two clients.

64. Likewise, it appears that separate drop-off and pick-up trips for individual clients, even if occurring on different days and at different locations, were often counted as one single “trip.”

65. On information and belief based on the self-reporting documents the Forest Service provided Wilderness Watch, the Forest Service issued special use permits for or

otherwise allowed, at a bare minimum,⁵ the following commercial towboat use within the BWCAW during the years 2006 through 2014:

- a. In 2006, the Forest Service authorized at least 1,421 commercial towboat trips (with use of 1,918 towboats reported⁶).
- b. In 2007, the Forest Service authorized at least 1,045 commercial towboat trips (with use of 1,380 towboats reported).
- c. In 2008, the Forest Service authorized at least 1,300 commercial towboat trips (with use of 1,680 towboats reported).
- d. In 2009, the Forest Service authorized at least 1,311 commercial towboat trips (with use of 1,645 towboats reported).
- e. In 2010, the Forest Service authorized at least 1,318 commercial towboat trips (with use of 1,686 towboats reported).
- f. In 2011, the Forest Service authorized at least 1,639 commercial towboat trips (with use of 2,105 towboats reported).
- g. In 2012, the Forest Service authorized at least 1,873 commercial towboat trips (with use of 2,458 towboats reported).
- h. In 2013, the Forest Service authorized at least 1,892 commercial towboat trips (with use of 2,305 towboats reported).

⁵ For consistency, the number of trips reported in paragraph 65 includes only one-way (e.g. a drop-off) of a round-trip because not all outfitters logged both drop-offs and pick-ups in self-report forms. Accordingly, the actual number of trips is likely much higher than the numbers in paragraph 65 indicate.

⁶ The commercial outfitters' self-report forms indicate that some trips required the use of more than one towboat due to the number of clients on that trip.

- i. In 2014, the Forest Service authorized at least 2,124 commercial towboat trips (with use of 2,614 towboats reported).

66. Actual commercial towboat use likely is significantly higher than reported, though, because many use reports (1) are never submitted to the Forest Service as required; (2) are submitted with incomplete information for various years; and/or (3) use inconsistent or unreasonable reporting methodologies (e.g., some outfitters reference “boat days” or “days” rather than “trips”; many outfitters log client drop-offs and pick-ups as a single trip even when they occur on different days).

67. Even with this missing, inconsistent, and unreasonable reporting, the self-report forms indicate that, at a minimum, the Forest Service allowed commercial towboat use in excess of 1,342 trips every year from 2011 to 2014.

68. The self-report forms also indicate that individual commercial towboat outfitters are likely vastly exceeding the use recorded for that particular outfitter in 1992.

69. For example, in 1992, Voyageur North Outfitters was allotted 72 permits for entry point “E” (Four-mile) and 1 permit for entry point “F” (Moose Chain), for a total of 73 permitted entries. However, in 2013, Voyageur North Outfitters reported approximately 135 days of operation on the water, with 252 client drop-offs and 220 client pick-ups made (for a total of 472 out-and-back trips).⁷ The specific entry points for each trip were not clearly identified as either Four-mile or Moose Chain.

⁷ Voyageurs and a few other commercial towboat outfitters provided, in later reporting forms, both drop-off dates and pick-up dates for each client party.

E. Current General Motorboat Use

70. In addition to restrictions placed on commercial towboat use, the BWCAW Management Plan sets the maximum quota for general motorboat use at 7,902 motorboat trips per year.

71. The Forest Service has authorized general motorboat use in excess of 7,902 trips per year.

72. For example, in 2010, the Forest Service authorized 10,633 general motorboat trip permits. Of those permits, 1,659 were not used, either because they were cancelled or the permit holder did not show for the trip, resulting in 8,974 actual general motorboat trips for 2010.

73. In 2011, the Forest Service authorized 9,485 general motorboat trip permits. Of those permits, 1,536 were not used, either because they were cancelled or the permit holder did not show for the trip, resulting in 7,949 actual general motorboat trips for 2011.

CLAIMS FOR RELIEF

CLAIM ONE

The Forest Service is violating the National Forest Management Act and the Boundary Waters Canoe Area Wilderness Management Plan by authorizing commercial towboat use beyond the legal limit.

74. All above paragraphs are incorporated by reference.

75. NFMA requires each National Forest to develop a “Land and Resource Management Plan” (a “Forest Plan”). 16 U.S.C. § 1604 (d).

76. The Forest Service's failure to comply with the provisions of a Forest Plan is a violation of NFMA.

77. The Forest Service manages the BWCAW pursuant to the Superior National Forest Plan, as amended by the BWCAW Management Plan.

78. The BWCAW Management Plan sets the quota cap for commercial towboat permits at "1992 levels for numbers of boats, trips, current operators, and specific lakes."

79. The 1992 level for number of trips is 1,342 commercial towboat trips.

80. The Forest Service is authorizing commercial towboat use in excess of 1,342 trips per year, in violation of the BWCAW Plan, the Forest Plan, and NFMA.

81. The Forest Service is authorizing commercial towboat use in excess of the 1992 level of boats, trips, and specific lakes for particular operators in violation of the BWCAW Plan, the Forest Plan, and NFMA.

82. The Forest Service has not provided data on, and/or is not tracking, total boats, total trips, and total use on specific lakes for commercial towboat operations in violation of the BWCAW Plan, the Forest Plan, and NFMA.

83. The Forest Service's commercial towboat use authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service's failure to track actual motorboat use and impose limits on motorized use pursuant to applicable statutory and quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

CLAIM TWO

The Forest Service is violating the National Forest Management Act and the Boundary Waters Canoe Area Wilderness Management Plan by authorizing general motorboat use beyond the legal limit.

84. All above paragraphs are incorporated by reference.

85. In addition to restrictions placed on commercial towboat use, the BWCAW Management Plan sets the quota cap for non-exempt, general motorboat use at 7,902 trips per year.

86. The Forest Service is authorizing non-exempt, general motorboat use in excess of 7,902 trips per year in violation of the BWCAW Plan, the Forest Plan, and NFMA.

87. The Forest Service's non-exempt motorized use authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service's failure to track actual motorboat use and impose limits on motorized use pursuant to applicable statutory and quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

CLAIM THREE

The Forest Service is violating the Boundary Waters Canoe Area Wilderness Act by authorizing total general motorboat and commercial towboat use at a level that exceeds the statutory cap.

88. All above paragraphs are incorporated by reference.

89. The BWCAW Act imposes a statutory cap for motorboat use at “the average actual annual motorboat use of the calendar years 1976, 1977, and 1978 [the base period use] for each lake.”

90. After statutory phase-outs of motorboat use on certain lakes, the BWCAW Act statutory cap is 10,539 total motorboat trips for the entire BWCAW.

91. The combined commercial towboat use and non-exempt, general motorboat use must stay at or below 10,539 motorboat trips per year.

92. Given the lapses and inconsistencies in commercial towboat use reporting, a precise accounting of actual use is impossible to ascertain. However, from that data available, it appears that actual commercial towboat use, combined with non-exempt general motorboat use, exceeds the statutory cap of 10,539 trips per year, in violation of the BWCAW Act.

93. The Forest Service’s total non-exempt motorized use and commercial towboat use authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service’s failure to track actual motorboat use and impose limits on motorized use pursuant to applicable statutory and quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

CLAIM FOUR

The Forest Service is violating the Wilderness Act by authorizing motorboat use within the Boundary Waters Canoe Area Wilderness at a level that exceeds the amount specifically provided for by law and at a level that degrades wilderness character.

94. All above paragraphs are incorporated by reference.

95. “In order to assure that an increasing population, accompanied by expanding settlement and mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition,” Congress created a National Wilderness Preservation System. 16 U.S.C. § 1131(a).

96. Wilderness, “in contrast with those areas where man and his own works dominate the landscape, [is] an area where the earth and its community of life are untrammelled by man,” where the land retains its primeval character and influence, is protected and managed so as to preserve its natural conditions, and has outstanding opportunities for solitude or a primitive and unconfined type of recreation. 16 U.S.C. § 1131(c).

97. The Wilderness Act requires an administering agency, in this case the Forest Service, to administer designated wilderness in a manner that preserves its wilderness character. 16 U.S.C. § 1133(b).

98. The Wilderness Act prohibits uses of wilderness that are not consistent with this mandate, and specifically provides that “there shall be no [...] use of motor vehicles, motorized equipment or motorboats” within designated wilderness. 16 U.S.C. § 1133(c).

99. While motorboat use is generally prohibited within designated wilderness areas, the BWCAW Act allows motorboat use within the BWCAW subject to specific restrictions (the statutory cap) designed to minimize impacts to wilderness character from excessive motorized use. *See* 92 Stat. at 1650, 4(c); 1651, 4(f); *see also Friends of the*

Boundary Waters Wilderness v. Bosworth, 437 F.3d at 819 (“The BWCAW Act was passed to ensure the BWCAW’s wilderness character would be preserved” and “[l]imiting motorboat use is integral to preserving wilderness values and primitive character of the area.”) (internal punctuation and citations omitted)).

100. The Forest Service is allowing motorized use at a level that exceeds the statutory cap imposed by the BWCAW Act.

101. In addition to the restrictions on motorboat use imposed by the BWCAW Act, the BWCAW Plan further restricts motorboat use because use at the full statutory cap level was “strain[ing] the wilderness environment and [was] tending to degrade the intended primitive and unconfined recreation experience” of the BWCAW. *Friends of the Boundary Waters v. Bosworth*, 437 F.3d at 820.

102. The Forest Service is allowing motorboat use at a level that the Forest Service has found, through its BWCAW Management Plan, excessively degrades the wilderness character of the BWCAW.

103. The Forest Service’s authorization of motorboat use at a level that strains the wilderness environment and degrades the wilderness character of the BWCAW is in violation of the Wilderness Act.

104. The Forest Service’s motorboat use authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service’s failure to track actual motorboat use and impose limits on motorized use pursuant to applicable statutory and

quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

CLAIM FIVE

The Forest Service is violating the Wilderness Act by authorizing commercial enterprise at a level that exceeds the amount specifically provided for by law and at a level that degrades wilderness character.

105. All above paragraphs are incorporated by reference.

106. In addition to the general prohibition on motorized use, the Wilderness Act also prohibits commercial enterprise in designated wilderness areas “[e]xcept as specifically provided for in [the Wilderness Act].” 16 U.S.C. § 1133(c). The Wilderness Act specifically provides that “[c]ommercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1133(d)(6).

107. The Forest Service has interpreted this provision as permitting “public services generally offered by packers, outfitters, and guides.” 36 C.F.R. § 293.8.

108. The BWCAW Management Plan allows commercial towboat services but requires “all towboat operations [to] be authorized by a special use permit” and restricts commercial “[t]owboat use [] to the 1992 levels for numbers of boats, trips, current operators, and specific lakes.” The Management Plan is clear that commercial towboat “[g]rowth will not be permitted beyond these limits.”

109. The Forest Service calculated 1992 commercial towboat levels and set the number of commercial towboat special use permits at 1,342 per year.

110. The Forest Service is authorizing commercial enterprise in excess of the level specifically authorized under the BWCAW Management Plan and thus at a level that exceeds “the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas” in violation of the Wilderness Act.

111. The Forest Service’s commercial enterprise authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service’s failure to track actual commercial use and impose limits on commercial use pursuant to applicable statutory and quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

CONCLUSION

112. The Forest Service’s continued authorization of commercial towboat usage above the legal limit is in violation of the Wilderness Act, the BWCAW Act, and the BWCAW Management Plan (NFMA).

113. The Forest Service’s authorization of non-exempt, general motorboat use above the legal limit is in violation of the Wilderness Act, the BWCAW Act, and the BWCAW Management Plan (NFMA).

114. If actual commercial towboat use, combined with general motorboat use, exceeds the total statutory cap of 10,539 for all non-exempt motorboat use, the Forest Service’s authorization of total motorboat usage above the legal limit is likewise in

violation of the Wilderness Act, the BWCAW Act, and the BWCAW Management Plan (NFMA).

115. These authorizations are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law and thus also constitute a violation of the APA. The Forest Service's failure to track actual motorboat use and impose limits on motorized use pursuant to applicable statutory and quota caps constitutes agency action unreasonably withheld or delayed in violation of the APA.

REQUESTS FOR RELIEF

For all of the above-stated reasons, Wilderness Watch respectfully requests that this Court:

A. Declare that the Forest Service has violated the law by authorizing (1) excessive commercial towboat operations within the BWCAW that exceed the quota cap set by the BWCAW Management Plan; (2) non-exempt, general motorboat use within the BWCAW that exceeds the quota cap set by the BWCAW Management Plan; (3) total motorboat use, including commercial towboat use and non-exempt, general motorboat use, within the BWCAW that exceeds the statutory cap imposed by the BWCAW Act; and (4) motorboat and commercial use within the BWCAW at a level that degrades wilderness character beyond the amount allowed by law.

B. Order the Forest Service to create and implement a new permitting process for commercial towboat operations that will ensure clarity, accountability, and compliance with the law. Plaintiffs specifically request the opportunity for separate remedy briefing to fully address commercial towboat permitting details, including

specific definitions for terms such as “trip,” specific use restrictions and boat and client limitations, and specific reporting and administration requirements;

C. Enjoin further issuance of special use permits for commercial towboat operations until the Forest Service demonstrates compliance with the law;

D. Enjoin further issuance of general motorboat use permits until the Forest Service demonstrates compliance with the law;

E. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under the EAJA; and

F. Grant Plaintiffs such further relief as may be just, proper, and equitable.

Dated: September 25, 2015

s/ Kristen G. Marttila

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