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## Addendum to Protecting the Boundary Waters Canoe Area Wilderness: Litigation and Legislation

# ADDENDUM TO PROTECTING THE BOUNDARY WATERS CANOE AREA WILDERNESS: LITIGATION AND LEGISLATION

RICHARD A. DUNCAN

The authors wish to add a short addendum to this reprint of their original 1999 article. It discusses first a lawsuit involving the Boundary Waters Canoe Area Wilderness ("BWCAW") which was not included in the original article as it did not result in any published judicial opinions but which, given the continuing controversy over its subject matter--Air Force training flights over national parks and wilderness--is worthy of further mention. Second, we bring the reader up to date on the political fortunes of the prime movers behind the 1995-1998 truck portages controversy culminating in federal mediation and legislation.

## THE SNOOPY MOA LITIGATION

In 1988 a coalition of environmental groups brought suit under the National Environmental Policy Act,<sup>1</sup> ("NEPA"), challenging the United States Air Force's establishment and steadily increasing use of the Snoopy Military Operations Area ("MOA"). This MOA covered north-eastern Minnesota including the southern portion of the BWCAW and served primarily an Air National Guard unit based in Duluth, flying F-4 jets.<sup>2</sup>

Various military units used Snoopy MOA prior to 1975. In 1975, when the Federal Aviation Administration ("FAA") officially charted Snoopy MOA, neither the FAA nor the Air Force prepared an Environmental Assessment ("EA") or an Environmental Impact Statement ("EIS"), despite the fact that NEPA had been on the books for several years.<sup>3</sup> The Air Force belatedly prepared a short EA in 1977, finding no significant environmental impact based upon assumptions of limited use of the area by Air Force trainers, flying above 10,000 feet.<sup>4</sup> The 1977 EA gave no consideration to the effects of jet fighter overflights on the BWCAW and its visitors. Indeed, there was no recognition that Snoopy MOA overlay a federally designated wilderness.<sup>5</sup>

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1. 42 U.S.C. § 4321, et seq. (2000).

2. Friends of the Boundary Waters Wilderness v. Temple, No. 3-88-423 (D. Minn. 1989).

3. Complaint for Temple, Friends of the Boundary Waters Wilderness v. Temple, No. 3-88-423 (D. Minn. 1989) (No. 3-88-423).

4. *Id.*

5. *Id.*

The use of Snoopy MOA began to increase dramatically after 1983, when the Air Force unit in Duluth shifted its mission from high level reconnaissance to a low level fighter-interceptor mission.<sup>6</sup> From 1983 to 1988, the number of sorties flown leaped from 153 to over 1,100, and increasingly BWCAW visitors complained of Air Force "sky jockeys" flying low over canoe country.<sup>7</sup> A 1988 visitor use survey of BWCAW visitors conducted by the Forest Service showed that over one third of wilderness visitors who returned the surveys complained of aircraft noise as a disturbance to their wilderness experience.<sup>8</sup>

The litigation sought to compel the Air Force to complete an Environmental Impact Statement for Snoopy MOA, and to enjoin Air Force overflights pending completion of such a study.<sup>9</sup> The case proceeded to a day long evidentiary hearing, including expert testimony on the adverse impacts of modern aircraft noise on the wilderness experience by, among others, Bill Worf, the principal draftsman of the Forest Service's Wilderness Act regulations,<sup>10</sup> and Dr. Miron (Bud) Heinselman, a retired Forest Service ecologist.<sup>11</sup>

After the hearing but before any final court ruling the parties settled, largely through the intervention of the Minnesota Air National Guard. The Air Guard sensed that a compromise by which the boundaries of the Snoopy MOA were modified to exclude the BWCAW would meet its need for training air space without jeopardizing the quietude and solitude of the wilderness experience. On Halloween 1989, the district court filed a stipulated settlement order which contained the following material terms:<sup>12</sup>

1. Pending reconfiguration of the Snoopy MOA, the Air Force "will operate no air combat training flights below 18,000 feet Mean Sea Level ('MSL') over the Boundary Waters Canoe Area Wilderness."
2. The boundaries of Snoopy MOA would be moved south of the BWCAW.
3. The Air Force "recognize[s] that the federal actions of establishing Military Operations Areas and scheduling ongoing air combat

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6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. See George Nickas, *Exploring the implementation of the 1964 Wilderness Act by the Forest Service, The Bureau of Land Management, and the National Park Service*, at <http://www.wildwilderness.org/wi/nicka.htm>.

11. *Friends of the Boundary Waters Wilderness v. Temple*, No. 3-88-423 (D. Minn. 1989).

12. *Order, Friends of the Boundary Waters Wilderness v. Temple*, No. 3-88-423 (D. Minn. 1989) (No. 3-88-423).

training operations are subject to the requirements of the National Environmental Policy Act.”<sup>13</sup>

In light of the continuing controversy over aircraft overflights of national parks and wildernesses, notably civil aircraft over the Grand Canyon and military aircraft over Colorado, it is significant that, yet again, the Boundary Waters was on the leading edge of wilderness policy and litigation.

#### CURRENT POLITICAL CURRENTS

The November 2000 elections, and other changes, have affected some of the primary political figures who played roles in the recent Congressional legislative controversy over the BWCAW.

Department store heir Mark Dayton<sup>14</sup> defeated Senator Rod Grams (R-MN) in his effort to win re-election to the United States Senate.<sup>15</sup> Grams' effort to again divide the typically Democratic northern Minnesota vote over wilderness and public lands issues failed in 2000.<sup>16</sup> Dayton won handily in northern Minnesota and statewide.

Senator Paul Wellstone (D-MN) continues his service in the Senate.<sup>17</sup> His current term expires in early 2003; he had announced earlier that he would not serve for more than two terms, however, he has now announced that in light of the close political balance in the U.S. Senate, he will seek re-election in 2002.<sup>18</sup>

Representative Jim Oberstar (D-MN) easily won re-election to the House of Representatives to his 14th term by winning nearly 70% of the vote in Minnesota's 8th Congressional District.<sup>19</sup> The 66-year-old Oberstar retains his powerful seat as the ranking Democrat on the House Transportation and Infrastructure Committee.<sup>20</sup>

And Representative Bruce Vento (D-MN), the long-time champion of the BWCAW, died on October 10, 2000, from malignant mesotheli-

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13. *Id.*

14. See Gregory L. Giroux and Adam Graham-Silverman, *Quirky Minnesota Voting has some Incumbents on edge*, Congressional Quarterly, Nov. 4, 2000, at <http://www.washingtonpost.com/ac2/wp-dyn/A15880-2000Nov4?language=printer.html>.

15. See *Tremendous Victory for Choice in Minnesota: Dayton defeats anti-choice incumbent, wins U.S. Senate seat*, Nov. 8, 2000, at [http://www.naral.org/mediaresources/press/pr110800\\_dayton.html](http://www.naral.org/mediaresources/press/pr110800_dayton.html).

16. See Amy Radil, *Environmental Issues Lead Senate Debate*, Oct. 16, 2000, at [http://news.mpr.org/features/200010/16\\_radila\\_sendebate/](http://news.mpr.org/features/200010/16_radila_sendebate/).

17. See Paul Wellstone, at <http://www.senate.gov/~wellstone/Biography/biography.htm>.

18. See *Minnesota Senator to seek 3rd term*, at <http://jsonline.com/election2000/ap/jan01/ap-wellstone-senat011701.asp>.

19. See *Election results*, at [http://news.mpr.org/features/199908/01\\_newsroom\\_campaign2000/8thdistrict.shtml](http://news.mpr.org/features/199908/01_newsroom_campaign2000/8thdistrict.shtml).

20. See James L. Oberstar, at [http://wwwa.house.gov/oberstar/bio\\_ober.htm](http://wwwa.house.gov/oberstar/bio_ober.htm).

oma, a rare lung cancer associated with exposure to asbestos.<sup>21</sup> His elected successor, Representative Betty McCollum (D-MN), a strong environmentalist, has pledged to carry on Vento's legacy of protecting the Boundary Waters.<sup>22</sup>

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21. See *Oberstar expresses great sadness at the passing of Bruce Vento*, at <http://wwwa.house.gov/oberstar/ventodeath.htm>.

22. See *Lori Sturdevant: Another woman whose campaign fell short of St. Paul mayor's office*, Sept. 27, 2001, at [http://www.startribune.com/viewers/qview.php?slug=LORI27&template-print\\_a](http://www.startribune.com/viewers/qview.php?slug=LORI27&template-print_a).