

Like A Dock: NPS Decision to Modify Dock Locations Holds Solid In Sixth Circuit

Isle Royale National Park, covering a series of islands in northern Lake Superior, was established in 1931 and certain areas of it were designated as a national wilderness area in 1976. Since 1963, the park had been governed by a “master plan.” In 1995, the National Park Service (NPS) began the process for formulating a General Master Plan (GMP) to govern activities and guide NPS decisionmaking at the park. After public hearings and the issuance of a draft GMP in March 1998, which was followed by an additional public comment period, the final GMP was issued in August 1998.

In response to several public complaints about high noise levels within the park, and in recognition of the park’s status as a wilderness area, the GMP aimed to “separate motorized and nonmotorized uses in some areas” of the park. The GMP sought to achieve this goal, in part, by eliminating some docks, relocating others, and building five new ones in different areas. The cumulative effect of those changes would increase the park’s total number of docks from 20 to 22. Despite the increase in numbers, the changes would have made it more inconvenient for boaters to access the park’s shelters and trails. For example, docks would be moved farther away from many shelters, and a trail connecting one dock with the main trail was slated to be eliminated entirely. Additionally, four of the five new docks would be on surrounding islands, many with no existing shelters, instead of on the main island.

The Isle Royale Boaters Association (IRBA) filed suit in federal district court in 1999 to block the GMP, claiming that its adoption violated the Wilderness Act, the 1916 Organic Act (which established the NPS and governs national parklands), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA). In 2001, the district court granted judgment before trial to the NPS, dismissing all of the IRBA’s claims. Concerning the

Wilderness Act, the court held that the Act gave the NPS Secretary the authority to regulate boat use. The court additionally observed that the contemplated dock changes would result in an overall increase in dockage, and noted that boaters could still access the park's trails by "hiking, kayaking, and canoeing, just as other island visitors did."

The IRBA appealed only the district court's decision on the Wilderness Act claim. Although the IRBA did not challenge the district court's Organic Act decision, the Sixth Circuit Court of Appeals (Sixth Circuit) observed that the IRBA was challenging the removal of three docks that were within the national parkland, but not within the wilderness area. Because those dock locations were governed by the Organic Act rather than the Wilderness Act, the Sixth Circuit decided to address the issue of whether the planned removal of those docks would violate the Organic Act. On both the Wilderness and Organic Act counts, the court could overturn the NPS's decision only if it was "arbitrary and capricious."

ORGANIC ACT (NATIONAL PARKLAND)

The Sixth Circuit observed that the Organic Act authorizes the NPS Secretary to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System," but the Act does not mention the placement of docks or access that docks must provide to parkland. The Act's stated objectives are to "conserve the scenery and the natural and historic objects and the wild life [sic] therein and to provide for the enjoyment of future generations." The Sixth Circuit held that the planned dock removal was "well within" the broad authority granted by the Organic Act, and also observed that the stated goals to protect scenery and reduce noise would facilitate "the enjoyment of the scenery, natural objects, and wild life [sic] that the island offers," and thus, the removal was consistent with the objectives of the Act.

WILDERNESS ACT (WILDERNESS AREA)

The court noted that the Wilderness Act does not affect the other obligations of the NPS, for example, the duty under the Organic Act to conserve the scenery and enjoyment of national parklands. Instead, the Wilderness Act requires “greater protections” than would apply to ordinary national parklands. Therefore, the court held, if the NPS’s decision was consistent with the Organic Act, it must be consistent with the Wilderness Act.

The court also held that the NPS’s decision was valid under the stated goals of the Wilderness Act, which include ensuring that “the earth and its community of life are untrammelled by man,” that the land “retain its primeval character,” and to encourage a “contrast to those areas where man and his own works dominate the landscape.” Furthermore, the court observed that the Act does not mention docks, but does ban motorboats unless the Secretary allows a pre-existing motorboat use to continue; the court did not believe “that Congress would *ban* motorboats but *require* docks.”

LEGISLATIVE HISTORY

Although the relevant statutes supported the GMP, the court noted that legislative history, such as statements by legislators, Congressional reports, and agency correspondence concerning the passage of the statute at issue, can establish further guidelines for the interpretation of the statute. However, legislative history can only be used to vary from the explicit words of a statute in the “rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.”

The IRBA argued that the legislative history of the statute designating the Isle Royale National Park as a wilderness area (IRNP Wilderness Act) established that Congress did not

intend to allow the NPS to limit boater access in the way proposed in the GMP. In support of its argument, the IRBA referred to the statements of individual legislators concerning boat docks and the maintenance of boat access to the park. The court responded to the IRBA's argument by stating that "[t]his case presents a clear example of why Congress's intent is better derived 'from the words of the statute itself than from a patchwork record of statements inserted by individual legislators and proposals that may never have been adopted by a committee, much less an entire legislative body.'" The court also noted that other statements not cited by the IRBA indicated an intent to preserve the NPS's discretion to manage dock locations as usual. "Although statutory language can sometimes be ambiguous," the court stated, "legislators' statements are almost always cacophonous, and we decline to rely on them here."

The IRBA also pointed to committee reports indicating that legislators contemplated that the NPS would be required to maintain the docks at the park. The court recognized that the sources cited by the IRBA did evidence that some legislators sought to require the NPS to maintain the docks; however, the court observed, other legislators opposed such a restriction. In light of this ambiguity, the court refused to vary from the explicit terms of the Wilderness Act.

Finally, the IRBA produced NPS correspondence within which the NPS stated that the IRNP Wilderness Act "specifically mandated that existing docks...remain and be maintained" by the NPS. The court observed that those letters were not enforceable "final rulings" of the NPS, and furthermore, that the NPS Secretary "has the inherent authority to reconsider an earlier agency decision."

In conclusion, the court held that the legislative history cited by the IRBA did not evidence that a literal interpretation of the Wilderness Act and Organic Act, allowing the dock

changes, would be “demonstrably at odds” with the intention of those Acts. Thus, the court held that the GMP was valid under those statutes, and affirmed the district court’s granting of judgment before trial to the NPS.

Isle Royale Boaters Association v. Norton, 330 F.3d 777 (6th Cir. 2003).

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