

Opinion: Government tried to take away our dream

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(Photo: Courtesy of Sylvania Wilderness Cabins, Courtesy of Sylvania Wilderness Cabins)

Few things in America can match the experience of spending summers on the lakes in the Upper Peninsula. The U.P. occupies a special place in Michigan's DNA, and has been celebrated by the likes of Hemingway, Longfellow, and Henry Ford.

After spending many summers on Crooked Lake in the U.P., we finally purchased our own lakefront property in 2010. Like generations of Michiganians before us, we planned to use the water for boating and fishing. We were living our dream. Until one day the federal government tried to turn our dream into a crime.

Most of Crooked Lake lies in the federally owned Sylvania National Wilderness, but there are several private homes, such as ours, on the north end of the lake.

Under Michigan law, all lakefront property owners — including the federal government — share the entire surface of the lake. Landowners and visitors have used motorboats on Crooked Lake since the 1940s.

For decades, the U.S. Forest Service, backed by environmental special interests, has tried to criminalize something as innocent as a motorboat. In other words: they want the entire surface of the lake to themselves.

This battle has been going on for 25 years.

Our neighbor, Kathy Stupak-Thrall, began her legal battle back in 1993 when the Forest Service prohibited the use of sailboats and houseboats on all portions of the lake within the wilderness. She filed a lawsuit but ultimately lost when the court of appeals deadlocked.

In 1995, the Forest Service issued another rule effectively banning motorboat use on the lake over 5 miles per hour. Kathy and her neighbors fought back and won in 1997.

We purchased one of the few remaining available properties in 2010. And for the first three years it was paradise. We were respectful neighbors and good stewards of the environment. The Forest Service not only allowed motorboat use on the lake, but facilitated it by selling boat permits and allowing motorboat access through its public boat landing just outside the wilderness area.

But the Forest Service couldn't leave well enough alone. In 2013, they stopped offering motorboat access and sent us a letter saying that it was a crime to use our boat on the lake.

How could this be possible?

When Congress created the Sylvania National Wilderness with the 1987 Michigan Wilderness Act, it said that the agency could not interfere with longstanding property rights. And under well-established Michigan law, lakefront property owners retain the right to reasonably use the entire surface of a lake.

Apparently, the Forest Service believed it was above the law.

The Forest Service tried to argue that we were not protected because we didn't buy our property until 2010 — after their latest attempt at a boating ban had gone into effect.

With the help of Mountain States Legal Foundation, a nonprofit, public interest law firm, we decided to fight the Forest Service — and their army of government lawyers — in federal court.

We went all the way to the U.S. Court of Appeals for the 6th Circuit — and won. The court concluded that we “plainly have such rights under state law.” On Oct. 1, the U.S. Supreme Court rejected an attempted appeal.

Today this victory stands for our family and our heirs, our neighbors on Crooked Lake, and all Michigan property owners.

Our rights cannot be taken away on a whim — this is at the core of what it means to be an American. And even an agency as powerful as the Forest Service has to respect the rule of law.

When the court of appeals addressed concerns from environmental groups about motorboat noise, it noted that “the serenity of nature comes at a price.” Our family has certainly paid it.

David and Pamela Herr were the prevailing party in Herr v. U.S. Forest Service at the U.S. Court of Appeals for the 6th Circuit. They have a home in Watersmeet.