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## Lakefront Property: Sixth Circuit Court of Appeals Addresses Whether Riparian Rights Trump U.S. Forest Service Wilderness Area Restrictions

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The United States Sixth Circuit Court of Appeals addressed in a June 15th opinion a challenge to regulations promulgated by the United States Forest Service ("Service") prohibiting certain activities on a wilderness area lake. See *Herr v. United States Forest Service*, 2017 WL 3160845.

The action in United States District Court was brought by owners of a lakefront property located in a wilderness area created by the federal Michigan Wilderness Act ("MWA").

David and Pamela Herr had previously purchased lakefront property on Crooked Lake in the Upper Peninsula of Michigan. One of the Herr's intended uses of the property was recreational boating and fishing.

Crooked Lake is described as being encompassed in the federally owned Sylvania Wilderness ("Wilderness"). Regardless, the Wilderness did encompass some private property such as the Herrs'.

A Congressional enactment of the MWA gave the Service the authority to regulate any use of Crooked Lake and nearby lakes "subject to valid existing rights." The Service promulgated two regulations providing a:

- Prohibition on gas-powered motorboats
- Speed limitation (no-wake) on electrically powered boats

The Herrs filed an action against the Service under the Administrative Procedures Act seeking to enjoin the restrictions against them. The federal district court held that the Herrs' right to use Crooked Lake did not "exist" at the time of the MWA enactment. Therefore, this was deemed to mean a "reservation of rights" did not apply to them."

The Sixth Circuit Court of Appeals reversed. It held that both regulations exceeded the Service's power as applied to the Herrs and other private property owners on the lake.

The rationale for this conclusion was based on a review of Michigan riparian-rights law (under littoral-rights law lakeside property owners were deemed to have use of all the lake). The Court determined that the Herrs' right to use all of the lake in reasonable ways was a "valid existing right" that the Service had no ability to override. As a result, the Service was held to lack the authority to prohibit use of certain electric motors and restrict watercraft to no-wake speed.

[A copy of the opinion can be downloaded here.](#)

