

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 07-2593 (MJD/SRN)

SIERRA CLUB NORTH STAR CHAPTER, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) **MOTION TO DISMISS**  
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 )  
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 )  
 ) MARY PETERS, Secretary of )  
 ) Transportation, et al., )  
 )  
 )  
 ) Defendants. )

Defendants Mary Peters, Secretary of Transportation, Richard Capka, Federal Highway Administrator (Peters and Capka hereafter "the FWHA"), Dirk Kempthorne, Secretary of the Department of the Interior, and Mary Bomar Director of the National Park Service (Kempthorne and Bomar collectively the "NPS") (all defendants collectively the "Defendants") move for an order dismissing this action for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1) and 12(h), because (1) Plaintiff failed to file its complaint within the statutory 180 day limitations period and (2) as to the NPS, the complaint does not challenge a final agency action as required by the Administrative Procedure Act ("APA").

This motion is based on the pleadings; the Declaration of Kate Hanson with exhibits thereto; and the entire record of proceedings herein.

The Defendants also submit a memorandum of law and a proposed order herewith.

Dated: December 20, 2007

RACHEL K. PAULOSE  
United States Attorney

s/ Friedrich A.P. Siekert

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