

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sierra Club North Star Chapter,

Plaintiff,

v.

Mary Peters, Secretary of Transportation; J.
Richard Capka, Federal Highway
Administrator; Dirk Kempthorne, Secretary
of the Interior; and Mary Bomar, Director of
the National Park Service,

Defendants.

Civil No. 07-2593 MJD/SRN

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the federal government's decision to approve the construction of a four-lane highway bridge over the Lower St. Croix River, a federally-designated wild and scenic river.

2. The Lower St. Croix River, which runs along the Minnesota-Wisconsin border near the Twin Cities, is widely recognized for its pristine natural character and scenic qualities. The river cuts through both deep gorges and expansive valleys, and the river corridor hosts an array of plant and animal communities, several of which are critically endangered. The scenic and natural resources of the Lower St. Croix draw more than two million visitors annually, who enjoy using the river corridor for boating, hiking, camping, and many other outdoor activities. Final Cooperative Management Plan for the Lower St. Croix National Scenic Riverway at 155, available at

http://www.nps.gov/sacn/pdfs/Final_St_Croix_CMP_EIS.pdf (hereafter "CMP"). Because of

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U.S. DISTRICT COURT MPLS

its “outstandingly remarkable scenic, recreational, and geologic values,” the Lower St. Croix was designated a wild and scenic river in 1976. *Id.* at iii.

3. Despite the Lower St. Croix’s protected status, state and federal transportation agencies have long clamored to build an additional bridge across the river, even though the Lower St. Croix is already traversed by several bridges, including a two-lane vertical lift bridge in Stillwater, Minnesota, and the eight-lane I-94 crossing eight miles downriver. The transportation agencies claimed that a new bridge was needed to replace the Stillwater lift bridge. Their efforts culminated in a 1995 proposal to build a new four-lane bridge about a mile south of Stillwater. Sierra Club filed suit to stop construction of this bridge, arguing that the project violated the Wild and Scenic Rivers Act (“WSRA”) and Section 4(f) of the Transportation Act.

4. After Sierra Club filed suit, the National Park Service (“NPS”) analyzed the bridge proposal under Section 7 of the WSRA, which prohibits federal assistance for “any water resources project that would have a direct and adverse effect on the values for which such river was established.” 16 U.S.C. § 1278(a). The NPS concluded that this bridge would have a direct and adverse impact on the Lower St. Croix’s scenic and recreational values. The NPS also found that the project would adversely affect the river’s native mussel populations, which the NPS believed “should be protected to the same extent as the outstandingly remarkable scenic and recreational values.” Section 7(a) Evaluation; Wild and Scenic Rivers Act; Proposed New St. Croix River Crossing, dated Nov. 1996, at 37 (“1996 Section 7 Evaluation”).

5. The NPS's Section 7 determination precluded the Federal Highway Administration ("FHWA") from assisting in or authorizing construction of the bridge. The Minnesota and Wisconsin Departments of Transportation subsequently intervened in the case in order to challenge the NPS's decision, but this Court upheld the Section 7 determination. *See Sierra Club North Star Chapter v. Peña*, 1 F. Supp. 2d 971 (D. Minn. 1998).

6. Over the next several years, the transportation agencies attempted to reinstate the project, and in August 2004 the FHWA issued a supplemental draft environmental impact statement ("SDEIS"). The SDEIS identified four "build" alternatives, including one (Alternative B-1) that was in most respects, including size and location, almost identical to the 1995 proposal. Despite the near-identity between the two proposals, the NPS inexplicably reversed its earlier Section 7 decision by concluding that Alternative B-1 would not violate Section 7 of the WSRA. Alternative B-1 ultimately became the Selected Alternative when the FHWA issued its Record of Decision in November 2006.

7. By reversing its prior Section 7 evaluation, the NPS breached its obligations under the WSRA. In addition, the environmental impact statements prepared by the FHWA violate the National Environmental Policy Act, and the FHWA's approval of this project violated Section 4(f) of the Transportation Act.

8. Because the proposed bridge is contrary to federal law, the North Star Chapter of the Sierra Club ("Sierra Club") brings this action against Secretary of Transportation Mary Peters, Federal Highway Administrator J. Richard Capka, Secretary of the Interior Dirk Kempthorne, and Mary Bomar, Director of the National Park Service. Sierra Club seeks a

declaration from this Court that the defendants violated the Wild and Scenic Rivers Act, the Organic Act and General Authorities Act, Section 4(f) of the Transportation Act, the National Environmental Policy Act, and the Administrative Procedure Act by authorizing the proposed bridge. Sierra Club also seeks an injunction to prevent construction of the bridge, and an order vacating the defendants' authorization of this project.

JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under United States law.

10. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to this case occurred in Minnesota. *See* 28 U.S.C. § 1391(e)(2).

PARTIES

11. Plaintiff Sierra Club, the nation's oldest grass-roots environmental organization, is dedicated to the protection of America's natural resources and wildlife, including rivers and their associated shoreline and habitat. Sierra Club has more than 750,000 members nationwide, including 23,000 members in Minnesota's North Star Chapter. Sierra Club and its members are deeply concerned with our country's water resources, including wild and scenic rivers. Sierra Club's official Water Policy favors "[e]ffective wild, scenic, and recreational river protection programs." Sierra Club regularly submits comments to government agencies concerning proposed actions that would affect rivers and other water resources. Sierra Club also publishes a magazine and maintains a website for its members and the general public, and it regularly disseminates information concerning environmental

issues, including government decisions that affect water resources. Sierra Club has long advocated for the protection of the Lower St. Croix River and has submitted numerous comments on proposals to construct a bridge over the Lower St. Croix. Sierra Club's members have both professional and avocational interests in our nation's wild and scenic rivers, including the Lower St. Croix. Members of the Sierra Club use and enjoy the portion of the Lower St. Croix National Scenic Riverway (the "Riverway") where the proposed bridge would be built and would be injured if the Riverway's scenic, recreational, wildlife, and habitat values are impaired or destroyed by construction of the proposed bridge.

12. Defendants Secretary of Transportation Mary Peters and Federal Highway Administrator J. Richard Capka (collectively, "FHWA") are responsible for planning and implementation of federally-funded transportation projects, and have responsibility for ensuring that such projects comply with all applicable laws. They are sued in their official capacities.

13. Defendants Secretary of the Interior Dirk Kempthorne and Director of the NPS Mary Bomar (collectively, "NPS") are charged with the administration of the Wild and Scenic Rivers Act. They are responsible for protecting the values for which wild and scenic rivers are designated and otherwise complying with the WSRA. They are sued in their official capacities.

LEGAL FRAMEWORK

The Wild and Scenic Rivers Act

14. The Wild and Scenic Rivers Act, which was enacted in 1968, established a national policy that rivers with “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values . . . be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. § 1271. The WSRA implemented this policy by creating a national wild and scenic river system and by developing a process so other rivers with “outstandingly remarkable” values could be added to the system.

15. The upper stretch of the St. Croix River was one of eight rivers that were originally included in the wild and scenic river system. *See* 16 U.S.C. § 1274(a)(6). At the time of the Act’s passage, the Lower St. Croix was designated a study river so it could potentially be added to the system at a later date. *Id.* § 1276(a)(21). In 1972, Congress passed the Lower St. Croix Act, which designated the upper portion of the Lower St. Croix as a wild and scenic river and provided a means for the eventual designation of the southernmost stretch. That designation occurred four years later in 1976. 16 U.S.C. § 1274(a)(9).

16. The legislative history of the Lower St. Croix Act underscores this river’s uniqueness and the need for its protection. As one senator explained,

[T]his is one of the last remaining major rivers in the United States which lies within a major metropolitan area and is still relatively unspoiled. The river borders the eastern boundary of the Minneapolis-St. Paul urban area and is

within easy access of over 2 million people. Ironically, it is this accessibility which places in jeopardy the features which make this river an outstanding natural resource, and which makes it imperative that the river quickly receive protection under the Wild and Scenic Rivers Act. . . . Final action on the St. Croix bill is urgently needed. If comprehensive protection is not extended to the riverway, the St. Croix will eventually become one more city river, its waters poisoned with pollution, its shorelines gutted with indiscriminate development.

CMP at 6 (remarks of Sen. Henry Jackson).

Management of the Lower St. Croix

17. Management of the Lower St. Croix Riverway is governed by the Cooperative Management Plan for the Lower St. Croix, which was adopted in 2001. *See* 66 Fed. Reg. 56848 (Nov. 13, 2001) (“Management Plan”). The Riverway is jointly administered by the NPS, Minnesota Department of Natural Resources, and Wisconsin Department of Natural Resources, who manage the Riverway through the Lower St. Croix Management Commission (“Management Commission”).

18. The Management Plan announces a long-term goal of reducing “the number and size of visible river crossings,” including “bridges for roads, railroads, [and] pedestrians.” CMP at 71. In furtherance of that goal, the Plan establishes a policy of “no net increase in the number of transportation corridors.” *Id.* at 72. The Plan stresses the need to locate transportation projects within existing corridors, such as by widening a bridge or building a parallel structure. *Id.* (“In general, transportation corridors would be replaced in or adjacent to the existing corridor.”).

19. The Management Plan sets strict limits on the relocation of transportation corridors. Among other things, “[e]xisting transportation corridors could be relocated only if

. . . all built elements of the existing corridor are removed and the corridor is restored to natural conditions.” *Id.*

Section 7

20. Although the specific mandates of the Management Plan are crucial to protecting the Lower St. Croix River, the principal conservation tool under the WSRA is Section 7. As the Interagency Wild and Scenic Rivers Coordinating Council has noted, none of the provisions designed “to protect and enhance” wild and scenic rivers “is more significant than the restrictions to water resources projects provided in Section 7.” *Wild and Scenic Rivers Act: Section 7*, at 1 (Oct. 2004), <http://www.rivers.gov/publications/section-7.pdf>. As “one of the most important and powerful parts of the Wild and Scenic Rivers Act,” *id.*, the mandates of Section 7 are necessary to ensure that wild and scenic rivers are “protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. § 1271.

21. Section 7 of the WSRA provides:

[N]o department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. . . .

No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration

16 U.S.C. § 1278(a).

22. This provision requires the NPS to evaluate whether a “water resources project” – such as a bank stabilization project, docking facility, or bridge – “would have a direct and adverse effect” on the river’s values. In the case of the Lower St. Croix, the NPS must evaluate whether a water resources project would adversely affect the Riverway’s scenic and recreational values. And, because the Lower St. Croix’s native mussels “should be protected to the same extent as the outstandingly remarkable scenic and recreational values,” Section 7 requires the NPS to ascertain the effects of a project on mussel populations as well. 1996 Section 7 Evaluation at 37.

23. When a water resources project is found to have a “direct and adverse effect” on a river’s values, the project cannot be funded absent congressional intervention. Thus, when the NPS found in 1996 that a four-lane bridge over the Lower St. Croix would adversely affect the Riverway, this Section 7 determination precluded the FHWA from assisting in or authorizing construction of the bridge.

Other Protections for Wild and Scenic Rivers

24. In addition to Section 7, the WSRA and its implementing regulations include several other provisions designed to ensure that wild and scenic rivers are “protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. § 1272(b). For example, the Act requires that

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given

to protecting the esthetic, scenic, historic, archeologic, and scientific features.

16 U.S.C. § 1281(a).

25. Similarly, the WSRA's management guidelines establish a "nondegradation and enhancement policy for all designated river areas, regardless of classification." *Final Revised Guidelines for Eligibility, Classification, and Management of River Areas*, 47 Fed. Reg. 39454, 39458 (Sept. 7, 1982), available at <http://www.rivers.gov/guidelines.html>.

26. In the context of the Lower St. Croix, these provisions require that the Riverway be managed to protect its scenic, recreational, geologic, and wildlife values.

27. The WSRA further protects designated rivers by placing restrictions on the grant of easements and rights-of-way. Specifically, the Act provides:

The Secretary of the Interior . . . may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

16 U.S.C. § 1284(g). Accordingly, any easement granted to cross a wild and scenic river must be conditioned on the preservation of those qualities for which the river was designated.

28. Wild and scenic rivers are also protected by the "non-impairment" policy established in the Organic Act and the General Authorities Act. These statutes and their implementing policies prohibit the NPS from "allow[ing] the impairment of riverway resources and values unless directly and specifically provided for by legislation or proclamation establishing the riverway." 66 Fed. Reg. 56848, 56850 (Nov. 13, 2001); *see*

also 16 U.S.C. 1 (noting that the “fundamental purpose” of the National Park System “is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations”); 16 U.S.C. § 1a-1 (directing that management “shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established”).

29. Thus, the NPS cannot allow impacts that “would harm the integrity of riverway resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.” 66 Fed. Reg. at 56850.

The Transportation Act

30. Section 4(f) of the Transportation Act, 49 U.S.C. § 303, “mandates that the protection of historic properties, parks, recreation areas, and wildlife refuges be given paramount importance in transportation planning.” *Concerned Citizens Alliance v. Slater*, 176 F.3d 686, 693 (3d Cir. 1999); *see also Citizens to Protect Overton Park v. Volpe*, 401 U.S. 402, 412-13 (1971) (noting that the “very existence” of this statute demonstrates that the “protection of parkland was to be given paramount importance”).

31. The statute protects these resources by placing two strict limits on federally-funded transportation projects that use 4(f) properties like the Lower St. Croix National Scenic Riverway. First, the Transportation Secretary cannot approve a project unless “there is no prudent and feasible alternative to using that land.” 49 U.S.C. § 303(c).

32. Second, if 4(f) resources must be used, the project must include “all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” *Id.* This requirement directs the Transportation Secretary to balance the total “harm caused by each alternate route to section 4(f) areas and select[] the option which does the least harm.” *Slater*, 176 F.3d at 694. In choosing between alternatives, the “only relevant factor” is “the quantum of harm to the park or historic site caused by the alternative.” *Id.* (citation omitted). Other “[c]onsiderations that might make the route imprudent, e.g., failure to satisfy the project’s purpose, are simply not relevant to this determination.” *Id.*

National Environmental Policy Act

33. The National Environmental Policy Act (“NEPA”) aims to promote government efforts “which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321.

34. NEPA’s implementing regulations direct federal agencies to “[u]se all practicable means . . . to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(f).

35. To fulfill these goals, NEPA requires all federal agencies to analyze the environmental impact of particular federal activities. 42 U.S.C. § 4332(2)(C).

36. Under NEPA, a federal agency must prepare an environmental impact statement (“EIS”) for all major federal actions significantly affecting the environment. 42

U.S.C. § 4332(2)(C). The analysis required by an EIS is intended to “provide full and fair discussion of significant environmental impacts” associated with a federal action and to “inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

37. An EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14(a).

38. The analysis required by NEPA directs agencies to identify the direct, indirect, and cumulative impacts of each alternative, and consider possible mitigation measures to reduce impacts to the environment. *See* 40 C.F.R. §§ 1502.14, 1502.16, 1508.7.

39. The “indirect effects” of a proposed action are those effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Id. § 1508.8(b).

40. The “cumulative impact” of a proposed action is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

41. In analyzing a proposed action, federal agencies must ensure the “professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24. The information included in the EIS “must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* § 1500.1(b).

42. An agency fails to adequately assess the impacts of a proposed action when it fails to base its analysis on current and scientifically credible data or when it fails to consider relevant factors such as context, intensity, direct and indirect ecological effects, or cumulative impacts.

43. NEPA also includes specific procedural requirements: An agency must prepare a draft EIS and then request comments from other federal agencies, state, local, and tribal governments, the public, and other interested parties. 40 C.F.R. § 1503.1. The federal agency must then assess and consider those comments in preparing the final EIS. *Id.* § 1503.4(a).

The Administrative Procedure Act

44. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 553-59, 701-06, provides for judicial review of final agency action such as the FHWA’s Record of Decision.

45. Under the APA, a reviewing court must hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

46. The APA also requires a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

Statute of Limitations

47. Although the WSRA, NEPA, and Transportation Act do not generally contain statutes of limitation, in 2005 the President signed into law a transportation bill that sharply restricts the applicable statute of limitations. *See generally* Pub. L. 109-59, 119 Stat. 1144, 1857 (Aug. 10, 2005).

48. Under this law, any claim “seeking judicial review of a permit, license, or approval issued by a Federal agency for a highway or public transportation capital project shall be barred unless it is filed within 180 days after publication of a notice in the Federal Register announcing that the permit, license, or approval is final.” 23 U.S.C. § 139(*l*)(1).

49. On December 5, 2006, the FHWA published a notice in the Federal Register that commenced the 180-day statute of limitations for challenging the Lower St. Croix bridge proposal. Accordingly, any claim “seeking judicial review of the Federal agency actions” related to the proposed bridge must be filed on or before June 6, 2007. 71 Fed. Reg. 70580 (Dec. 5, 2006). This statute of limitations “applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken.” *Id.*

50. Because this complaint was filed on or before June 6, 2007, this action satisfies the applicable statute of limitations.

FACTUAL BACKGROUND

The Resources at Stake

51. The Lower St. Croix River, which runs along the Minnesota-Wisconsin border near the Twin Cities, has been widely recognized for its natural and scenic qualities. The Lower St. Croix was formally designated a wild and scenic river due to “its outstandingly remarkable scenic, recreational, and geologic values.” CMP at 9.

52. The Lower St. Croix National Scenic Riverway passes through a variety of landscapes, including a deep, narrow gorge buttressed by sheer rock cliffs and broad river valleys lined with wooded bluffs. The Lower St. Croix Management Commission has noted that this “juxtaposition of landforms and geologic features, including the bluffs, islands, the Dalles, and Lake St. Croix, [is] unique.” CMP at 11. Moreover, the towns along the Lower St. Croix, like Taylors Falls and Stillwater, Minnesota, have “retain[ed] their historic small town character.” *Id.*

53. Because of its unusually pristine condition, the Lower St. Croix is home to a wide variety of animal and plant species and habitats. The Management Commission has emphasized the importance of these unique natural features:

The lower St. Croix Riverway is ecologically significant for many reasons. A mosaic of biological communities occurs along the riverway, including southern hardwood forests, oak savannahs, and lowland forests. . . . Several special habitats are rare or unique in this region: bedrock outcrops, oak savannahs, and floodplain islands harbor their own special plant associations and wildlife populations. . . . [T]he riverway is considered to be a hot spot from a biodiversity standpoint, supporting a rich fauna and flora population.

CMP at 173.

54. Notably, the Lower St. Croix “has one of the richest freshwater mussel communities in the world and serves as a major refuge for both globally and regionally endangered mussel species.” *Id.* at 177. The Lower St. Croix harbors forty species of mussel, including the federally-endangered Higgins’ eye pearl mussel and the winged mapleleaf mussel, whose only known population is in this river. *Id.* at 171, 177.

55. The Riverway is home to many additional wildlife species, including a diverse population of birds (such as the federally-protected bald eagle and peregrine falcon), dozens of fish species, and numerous mammals such as deer, mink, river otter, and beaver. CMP at 174-77. State and federal wildlife agencies have identified many other species of concern that are located within the Riverway. *Id.* at 177. Furthermore, the Riverway provides crucial habitat for migrating waterfowl.

56. The Lower St. Croix has extremely high water quality. The quality of its water has been formally recognized; in Wisconsin, this stretch of the river is classified as either an “exceptional resource water” or an “outstanding resource water,” and in Minnesota the entire Lower St. Croix is designated as “outstanding resource value waters.” CMP at 169. The Lower St. Croix’s exceptional water quality is confirmed by the diversity of animal species within its waters, like the forty mussel species inhabiting the riverbed. *Id.* at 171.

57. Because of its natural attributes, and its proximity to the Twin Cities, the Lower St. Croix is a popular destination for recreational activities, including boating, hiking, skiing, canoeing, swimming, camping, and fishing. The Management Commission has

estimated that the Riverway and its associated state and local parks receive more than 2 million visitors annually. CMP at 155.

58. Despite its many natural and scenic qualities, the Riverway is increasingly under threat from land development and roadbuilding. As the Management Commission has documented, the “fastest-growing land use in the St. Croix basin is urban,” with the amount of urbanized land doubling between 1973 and 1991. CMP at 167. Urbanization has been particularly intense in western St. Croix County, Wisconsin, and Washington County, Minnesota – the location of the proposed bridge. If not properly managed, this increased development, with its loss of farms and forests, and its associated effects of roadbuilding, traffic, and polluted runoff, could threaten the very qualities for which the Lower St. Croix was designated a wild and scenic river.

59. In short, the Lower St. Croix’s proximity to the Twin Cities is both a blessing and a curse. As one supporter of the Lower St. Croix Act of 1972 noted, the Riverway’s accessibility to the Twin Cities “places in jeopardy the features which make this river an outstanding natural resource.” CMP at 6 (quoting Sen. Henry Jackson). For this reason, the Management Commission has warned that “[w]hile many today refer to the Lower St. Croix as a ‘metro river,’ in planning for its future management, it is important to remember that Congress established it specifically to keep it from becoming just ‘one more city river.’” *Id.*

The 1995 Bridge Proposal

60. In recent years, the most serious threat to the Lower St. Croix’s scenic, recreational, and natural values has been an intense effort to construct a large new bridge

over the river. This effort, which has been led by the FHWA, Minnesota Department of Transportation (“MNDOT”), and Wisconsin Department of Transportation (“WDOT”), initially resulted in the release of a final EIS in April 1995.

61. The preferred alternative identified in the EIS was a four-lane bridge that would cross the river about a mile south of Stillwater, Minnesota (the “1995 Proposal”). The total length of the bridge project would be six miles, including a 3930 foot bridge span and several miles of approach highways. *See* 1996 Section 7 Evaluation at 13. The bridge’s width would be 104 feet and its height would range from 72 feet on the Minnesota side to 128 feet on the Wisconsin side. The project called for the construction of eight bridge piers in the riverbed. *Id.* at 14.

62. In June 1996, Sierra Club and another conservation group filed suit to enjoin construction of the project. They alleged violations of Section 4(f) of the Transportation Act and Section 7 of the Wild and Scenic Rivers Act. Among other claims, they alleged that the NPS had failed to discharge its WSRA obligation to analyze whether the 1995 Proposal satisfied the standards of Section 7.

63. After the plaintiffs filed suit, the NPS conducted the necessary Section 7 evaluation, under which the agency must determine whether a proposed “water resources project . . . would have a direct and adverse effect on the values for which such river was established.” 16 U.S.C. § 1278(a).

64. In December 1996, the NPS issued its Section 7 determination, which concluded that the 1995 Proposal would have a direct and adverse impact on the Lower St. Croix's scenic, recreational, and biological values. *See generally* 1996 Section 7 Evaluation.

65. With respect to the Lower St. Croix's scenic values, the NPS analyzed the effects of the 1995 Proposal from three different vantage points. The agency found that this bridge would have significant impacts throughout the viewshed. For example, on the stretch of river closest to the project, "the proposed bridge would be far more visually apparent than the . . . shoreline development." 1996 Section 7 Evaluation at 57. This large, modern bridge would also disrupt "[t]he historic character of the city of Stillwater and the view of the existing historic bridge." *Id.* Regardless of the vantage point, the NPS found that the proposed bridge would have a much greater impact on the Lower St. Croix's scenic values than the existing shoreline development. *Id.* at 53, 58, 60, 61.

66. Indeed, the NPS recognized that this bridge would have a far more significant impact on the Riverway's scenic values than any shoreline development possibly could. The NPS wrote:

Placing a massive bridge where there previously was not one results in a fundamental change in the scenic qualities that existed in this portion of the Riverway at the time of designation. . . . The visual impacts of the existing shoreline development . . . is not comparable to visual impacts which would occur if the proposed bridge is constructed. A bridge cutting across the river is fundamentally different in terms of its visual impacts than the impacts of shore and bank development.

1996 Section 7 Evaluation at 62-63.

67. The NPS further observed that “[o]pportunities to mitigate the visual impacts of the proposed bridge are very limited” because “a four-lane bridge cannot be hidden from view.” *Id.* at 61 (citation omitted). After considering the mitigation possibilities, the NPS concluded that mitigating the bridge’s “design elements *even along with all other available mitigation strategies* would not be sufficient to less[e]n the negative visual impacts of the proposed bridge on the scenic values for which the river was designated.” *Id.* at 63 (emphasis added).

68. The NPS also found that the 1995 Proposal would adversely affect the Lower St. Croix’s recreational values by “negatively impact[ing] recreationists’ enjoyment of the natural and historic scene” along this stretch of the river. The recreational experience would be further degraded by traffic noise and increased instream obstructions. *Id.* at 67.

69. In addition, the NPS concluded that this project would adversely affect the river’s mussel populations, which “should be protected to the same extent as the outstandingly remarkable scenic and recreational values.” *Id.* at 37. Although the 1995 Proposal included mitigation measures for mussels, including relocation, the NPS that warned that “[f]rom a biological viewpoint the movement of mussels is not an effective conservation strategy, and should be avoided in components of the Wild and Scenic River System.” *Id.* at 45. The NPS thus found that “the proposed bridge project would negatively impact native mussels by destroying mussels and their habitat; by increasing the potential for zebra mussel infestations; by increasing habitat fragmentation; and through the mortality and risks associated with the relocation of mussels.” *Id.* at 47.

70. After the Section 7 evaluation was released, the federal government withdrew its support for the project. Without the necessary federal permits and funding, the project could not go forward. In an effort to save the project, MNDOT and WDOT intervened in Sierra Club's lawsuit and directly challenged the Section 7 determination. The state agencies argued that the NPS's decision was arbitrary and capricious because the bridge was not a "water resources project" within the meaning of Section 7, and they disputed the NPS's conclusion "that the Proposed Bridge would have a direct and adverse effect on the values for which the Lower St. Croix was included in the [wild and scenic river system]." *Sierra Club North Star Chapter v. Peña*, 1 F. Supp. 2d 971, 981 (D. Minn. 1998).

71. This Court rejected those arguments, upholding the NPS's conclusion that bridges are "water resources projects" within the meaning of the WSRA. 1 F. Supp. 2d at 976-81. The Court also upheld the NPS's Section 7 determination. *Id.* at 981-83. In doing so, the Court emphasized the NPS's finding that this new bridge "would change the scenic qualities of the Lower St. Croix more than any development since the river's designation," and that "because the Proposed Bridge would cut across the river, it would have a fundamentally greater visual impact than any of the current shoreline development." *Id.* at 982. These observations bear equally on the latest bridge proposal for the Lower St. Croix.

The 2006 Bridge Proposal

72. After this Court's 1998 decision, the FHWA and state transportation agencies began working to revive the project. Eventually, the transportation agencies issued a supplemental draft EIS ("SDEIS") in August 2004. The SDEIS identified four "build"

alternatives, including one (Alternative B-1) that was nearly identical to the 1995 Proposal. Alternative B-1 included two sub-alternatives: Alternative B-1_a proposed closing the Stillwater lift bridge to vehicular traffic and converting it into a non-motorized pathway, while Alternative B-1_b would leave the lift bridge open to local traffic. *See generally* SDEIS at 3-12 to -26.

73. When the transportation agencies released the supplemental final EIS (“SFEIS”) in June 2006, they chose Alternative B-1_a as the Preferred Alternative. This proposal (the “Proposed Bridge” or “Proposed Bridge project”) became the Selected Alternative when the FHWA issued its Record of Decision in November 2006.

Comparison of the 1995 and 2006 Bridge Proposals

74. The Proposed Bridge bears remarkable similarities to the 1995 Proposal that was rejected by the National Park Service. Among other things:

- a) Both the Proposed Bridge project and the 1995 Proposal call for the construction of a massive four-lane highway bridge that would span the Lower St. Croix National Scenic Riverway.
- b) Both the Proposed Bridge project and the 1995 Proposal would locate this bridge in an entirely new transportation corridor, one that had never been previously developed.
- c) Both the Proposed Bridge and the 1995 Proposal would rise more than 100 feet above the river. The 1995 Proposal contemplated a bridge whose height would range from 72 feet on the Minnesota side to 128 feet on the Wisconsin side. This new Proposed Bridge would rise even higher: 113 feet on the Minnesota side and 159 feet on the Wisconsin side.
- d) The width of the two bridges is nearly identical: 104 feet for the 1995 Proposal and a total width of 118 feet (including the cable tie-in areas) for the Proposed Bridge.

- e) The length of the Proposed Bridge is even greater than its 1995 predecessor: 3930 feet for the 1995 Proposal and 4953 feet for the Proposed Bridge.
- f) The Proposed Bridge is in nearly the same location as the 1995 Proposal. The Proposed Bridge would be located 7550 feet south of the Stillwater lift bridge on the Minnesota side and 6450 feet south of the lift bridge on the Wisconsin side, while the 1995 Proposal would have been 7480 feet south on the Minnesota side and 5465 feet south on the Wisconsin side. Record of Decision; St. Croix River Crossing Project, dated Nov. 2006, at 3; 2004 Amended Final Scoping Decision Document, dated Mar. 2004, at 8.
- g) Both the Proposed Bridge and the 1995 Proposal call for the construction of several large piers in the Lower St. Croix riverbed. The 1995 Proposal contemplated eight piers, and while the design for the Proposed Bridge has not been finalized, the FHWA estimates that the Proposed Bridge will require at least four to six piers in the riverbed.

75. In an effort to draw some distinction between these two bridge proposals, the transportation agencies have offered several mitigation items, including the use of a context-sensitive bridge design, the removal of a shoreline barge facility and some nearby industrial buildings, some limited bluffland restoration and purchases, and the conversion of the Stillwater lift bridge from vehicular to pedestrian and bike traffic. Draft Section 7(a) Evaluation; Wild and Scenic Rivers Act; St. Croix River Crossing, dated Oct. 2005, at 8-9 (“2005 Section 7 Evaluation”).

76. But these types of mitigation efforts, nearly all of which focus on shoreline development, have already been found insufficient to mitigate the impact of a massive four-lane bridge. As the NPS previously noted, “[t]he visual impacts of the existing shoreline development . . . [are] not comparable to visual impacts which would occur if the proposed bridge is constructed. A bridge cutting across the river is fundamentally different in terms of

its visual impacts than the impacts of shore and bank development.” 1996 Section 7 Evaluation at 63. Nor can the use of a sensitive bridge design offset the tremendous effects of this bridge, because such bridge “design elements even along with all other available mitigation strategies would not be sufficient to less[e]n the negative visual impacts of the proposed bridge on the scenic values for which the river was designated.” *Id.*

77. Accordingly, these mitigation measures cannot offset the direct and adverse effect of this bridge on the Lower St. Croix. *See* 16 U.S.C. § 1278(a).

The National Park Service Reverses Course

78. Even though the Proposed Bridge is nearly identical to the 1995 Proposal, the NPS reversed its prior decision when it issued a draft Section 7 evaluation of the Proposed Bridge in November 2005.

79. In the 2005 evaluation, the NPS acknowledged that many of the proposed mitigation items would be ineffective. For example, the purchase of offsetting bluffland “would not have the same scenic or wildlife value as that impacted by the preferred crossing,” and although the removal of a large sign on the Wisconsin bluff “is desirable,” doing so “provides very little in the way of restoring scenic values.” 2005 Section 7 Evaluation at 43. The NPS noted the limited impact of removing the barge facility because these structures “are not as visible and do not obstruct views to [the] same degree as would the [Proposed Bridge].” *Id.* And although the NPS noted that it would be nice to convert the Stillwater lift bridge to non-motorized traffic, “the fact that the Lift Bridge would remain if the [Proposed Bridge] is constructed results in two bridges in a section of river where there

was one at the time of designation and would create an increased urban nature to this stretch of the Riverway.” *Id.* at 43-44.

80. The NPS thus recognized the limited effectiveness of using a context-sensitive bridge design along with other mitigation items: “Minimization strategies alone cannot reduce the impact of the proposed bridge on the scenic values of the Riverway to an acceptable level It is apparent that there is no single restorative measure that would completely offset the impact of the preferred crossing on the scenic values of the Riverway.” *Id.* at 40, 41. These observations are consistent with the NPS’s prior determination that bridge “design elements even along with all other available mitigation strategies would not be sufficient to less[e]n the negative visual impacts of the proposed bridge on the scenic values for which the river was designated.” 1996 Section 7 Evaluation at 63.

81. Yet, despite these acknowledgements, the NPS completely reversed its prior Section 7 determination. Inexplicably, the agency found that the use of a sensitive bridge design, together with these mitigation items, *would* adequately “offset[] the impact of the preferred crossing to the scenic resources of the Riverway.” 2005 Section 7 Evaluation at 45. The NPS also found that these measures would offset the Proposed Bridge’s negative impact on the Riverway’s recreational values. *Id.* at 49.

82. Moreover, though the NPS had previously concluded that the Lower St. Croix’s native mussels “should be protected to the same extent as the outstandingly remarkable scenic and recreational values,” 1996 Section 7 Evaluation at 37, its 2005 Section 7 evaluation ignored the effect of the Proposed Bridge on these mussel communities.

83. The NPS indicated that its 2005 Section 7 evaluation would become final once a bridge design had been chosen and assurances were made that the mitigation items would be implemented. *Id.* at 51-52. On information and belief, these contingencies have come to pass, so the NPS's 2005 Section 7 evaluation represents final agency action.

Deficiencies in the NEPA Process

84. Besides the NPS's arbitrary reversal, there were many other problems in the planning and approval process related to the Proposed Bridge. Foremost among these was the FHWA's failure to meet its obligations under NEPA. The FHWA breached NEPA in at least three respects:

85. First, the agency failed to adequately consider alternatives to the construction of a massive four-lane bridge in a new transportation corridor south of Stillwater. The agency developed only one action alternative that did not involve the construction of a new bridge over the Lower St. Croix (Alternative A), and that alternative was discarded even before the preparation of the draft EIS. *See* 2004 Amended Final Scoping Decision at 53-54. In addition, although the FHWA considered the possibility of a two-lane bridge adjacent to the Stillwater lift bridge (Alternative E), the agency failed to consider a bridge with reversible lanes, which would have better met the stated purposes of the project. The FHWA instead narrowed its focus to a one-way bridge for eastbound traffic. SDEIS at 3-47. By refusing to consider a bridge that could accommodate two-way traffic, the rejection of this alternative became a foregone conclusion given the traffic congestion associated with closures of the Stillwater lift bridge. *See id.* at 3-6 to -7.

86. Nor did the FHWA consider other feasible alternatives, like the construction of a smaller, two-lane bridge south of Stillwater, expansion of the preexisting I-94 crossing at Hudson, or other options.

87. Second, the FHWA failed to adequately consider the indirect effects of the Proposed Bridge project. For example, the FHWA failed to discuss the effect that increased land development would have on Wisconsin's water quality and quantity, wildlife, and other natural resources. The SDEIS ignored these impacts entirely, and the discussion in the SFEIS was extremely cursory. *See* SDEIS ch. 9-10; SFEIS at 13-14 to -15, 13-17 to -18. Simply put, the FHWA failed to assess the "growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and *related effects on air and water and other natural systems, including ecosystems.*" 40 C.F.R. § 1508.8(b) (emphasis added).

88. Third, the FHWA failed to properly assess the cumulative impacts of this project. As a federal district court in Wisconsin recently observed,

The cumulative impacts analysis must be sufficiently detailed to be "useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts and must rely on some quantified or detailed information." *Lands Council v. Vaught*, 198 F. Supp. 2d 1211, 1245 (E.D. Wash. 2002). Without quantified or detailed information, "neither the courts nor the public, in reviewing the Forest Service's decisions, can be assured that the Forest Service provided the hard look that it is required to provide." *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998). "General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided."

Habitat Educ. Ctr., Inc. v. Bosworth, 363 F. Supp. 2d 1070, 1079 (E.D. Wis. 2005).

89. Far from providing “quantified or detailed information,” the FHWA merely included a cursory discussion of the possible impacts, supported by little quantitative data. For example, in discussing future land development, the FHWA vaguely observed that the Proposed Bridge, “in combination with other land development and roadway projects, could result in intensification of land use in already developed areas, and could encourage development of areas previously used for agriculture and open space.” SFEIS at 14-9. And although the FHWA acknowledged the possibility that “substantial loss of valuable farmland could occur,” *id.* at 14-11, the agency failed to provide sufficient detail to ensure that the FHWA “provided the hard look that it is required to provide.” *Habitat Educ.*, 363 F. Supp. 2d at 1079 (citation omitted).

The FHWA’s 4(f) Analysis

90. As noted above, under Section 4(f) of the Transportation Act the FHWA cannot approve a project that uses a park, wildlife refuge, or historic property unless: (1) “there is no prudent and feasible alternative to using that land”; and (2) the “project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c). As a wild and scenic riverway, the Lower St. Croix is a resource protected by Section 4(f).

91. Here, the FHWA did not satisfy Section 4(f) because it failed to consider alternatives that could have avoided use of the Riverway. The FHWA claimed that “[t]here are no location or design alternatives that would avoid this Section 4(f) resource, other than the No-Build Alternative.” SFEIS at E-44. But the FHWA previously identified an

alternative – Alternative A – that would have avoided the construction of a new bridge across the Lower St. Croix. Unfortunately, the agency rejected this alternative before it even prepared the SDEIS. Nor did the FHWA consider other possibilities that would have avoided degradation of the Riverway, such as expansion of the preexisting I-94 crossing at Hudson. By refusing to consider these possibilities, the FHWA failed to ensure that there was no “prudent and feasible alternative” to construction of the Proposed Bridge.

92. Even assuming there were no prudent and feasible alternative, the FHWA failed to properly minimize harm to the Riverway. In considering alternatives that would involve use of the Riverway, the FHWA failed to consider less intrusive alternatives, like the construction of a smaller, two-lane bridge south of Stillwater. Because the “only relevant factor” in choosing between such options is “the quantum of harm to the park or historic site caused by the alternative,” the FHWA’s failure to consider a less disruptive option violated Section 4(f). *Slater*, 176 F.3d at 694 (citation omitted).

COUNT I
(Violations of the WSRA and the APA)

93. Plaintiff restates and incorporates the foregoing allegations.

94. Management of the Lower St. Croix National Scenic Riverway is governed by the Cooperative Management Plan for the Lower St. Croix. *See* 66 Fed. Reg. 56848 (Nov. 13, 2001) (“Management Plan”).

95. The Management Plan establishes a policy of “no net increase in the number of transportation corridors.” CMP at 72.

96. Under the Management Plan, existing transportation corridors can be relocated “only if . . . all built elements of the existing corridor are removed and the corridor is restored to natural conditions.” *Id.*

97. The Proposed Bridge project would establish a new transportation corridor over the Lower St. Croix while failing to remove the existing bridge and restore that transportation corridor to natural conditions.

98. By opening up a new transportation corridor without restoring the preexisting corridor to natural conditions, the Proposed Bridge project violates the WSRA and the Management Plan.

99. Because the Proposed Bridge project violates the WSRA and its implementing policies and plans, the NPS and FHWA’s approval of the project is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT II
(Violations of the WSRA and the APA)

100. Plaintiff restates and incorporates the foregoing allegations.

101. Section 7 of the WSRA precludes federal agencies from assisting or authorizing “any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.” 16 U.S.C. § 1278(a).

102. The Proposed Bridge “would have a direct and adverse effect on the values for which” the Lower St. Croix was designated a wild and scenic river, including its scenic, recreational, wildlife, and other natural values.

103. Because the NPS's 2005 Section 7 evaluation wrongly concluded that the Proposed Bridge would not directly and adversely affect the Lower St. Croix's values, this evaluation violates the WSRA and its implementing policies.

104. Because the NPS's Section 7 evaluation violates the WSRA and its implementing policies, the agency's decision is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT III
(Violations of the WSRA and the APA)

105. Plaintiff restates and incorporates the foregoing allegations.

106. Section 7 of the WSRA precludes federal agencies from assisting or authorizing "any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration." 16 U.S.C. § 1278(a).

107. This statutory provision requires the NPS to evaluate whether a proposed water resources project, like a bridge, "would have a direct and adverse effect on the values for which" the Lower St. Croix was designated.

108. In November 2005 the NPS issued a draft evaluation of the Proposed Bridge, which stated that the evaluation would become final once a bridge design had been chosen and implementation of the mitigation items was ensured. 2005 Section 7 Evaluation at 51-52.

109. Sierra Club has been unable to ascertain whether these contingencies have come to pass. On information and belief, Sierra Club believes that the 2005 Section 7

evaluation has been finalized. But even if it has not, Sierra Club cannot wait any longer to challenge this agency decision because any “claim seeking judicial review of the Federal agency actions” related to the Proposed Bridge “will be barred unless the claim is filed on or before June 6, 2007.” 71 Fed. Reg. 70580 (Dec. 5, 2006).

110. Thus, to the extent the NPS’s 2005 Section 7 evaluation has not been finalized, the agency’s failure to render a Section 7 determination violates the WSRA and its implementing policies, which require the agency to make such a determination.

111. And to the extent the 2005 Section 7 evaluation has not been finalized, the NPS’s failure to issue a decision violates the WSRA and APA as “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The agency’s failure to act is also arbitrary, capricious, an abuse of discretion, and not in accordance with law. *Id.* § 706(2)(A).

COUNT IV

(Violations of the WSRA, Organic Act, General Authorities Act, and the APA)

112. Plaintiff restates and incorporates the foregoing allegations.

113. The WSRA requires that “[e]ach component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system.” 16 U.S.C. § 1281(a).

114. Likewise, the management guidelines for wild and scenic rivers include a “nondegradation and enhancement policy for all designated river areas, regardless of classification.” 47 Fed. Reg. 39454, 39458 (Sept. 7, 1982); *see also* 16

115. In addition, the Organic Act, General Authorities Act, and their implementing policies prohibit the NPS from “allow[ing] the impairment of riverway resources.” 66 Fed. Reg. 56848, 56850 (Nov. 13, 2001); *see also* 16 §§ U.S.C. 1, 1a-1.

116. By damaging the Lower St. Croix’s scenic, recreational, wildlife, and other natural values, the Proposed Bridge violates the nondegradation policy established by the WSRA and its implementing policies, as well as the non-impairment policy of the Organic Act and General Authorities Act.

117. Because the Proposed Bridge project violates the WSRA and its implementing policies, as well as the Organic Act, General Authorities Act, and their implementing policies, the NPS’s approval of the Proposed Bridge project is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT V
(Violations of the WSRA and the APA)

118. Plaintiff restates and incorporates the foregoing allegations.

119. The WSRA protects wild and scenic rivers by placing restrictions on the grant of easements and rights-of-way:

The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this chapter.

16 U.S.C. § 1284(g). Accordingly, any easement granted across a wild and scenic river must be conditioned on the preservation of those qualities for which the river was designated wild and scenic.

120. By endorsing the Proposed Bridge project, and by granting a new right-of-way over the Lower St. Croix, the NPS and the Lower St. Croix Management Commission have granted an easement that would not protect the Lower St. Croix's values.

121. Because this new right-of-way violates the WSRA, the NPS and Management Commission's action is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT VI
(Violations of the Transportation Act and the APA)

122. Plaintiff restates and incorporates the foregoing allegations.

123. Section 4(f) of the Transportation Act prohibits the FHWA from approving a project requiring the use of parks, wildlife refuges, or historic properties unless "there is no prudent and feasible alternative to using that land." 49 U.S.C. § 303(c).

124. As a wild and scenic river, the Lower St. Croix is a protected resource under Section 4(f), and the Proposed Bridge would "use" the Riverway within the meaning of this statute.

125. The FHWA violated Section 4(f) by approving the Proposed Bridge without adequately considering prudent and feasible alternatives that could have avoided use of the Riverway.

126. Section 4(f) further requires that the FHWA withhold approval of a transportation project unless the “project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c).

127. Because the Proposed Bridge project does not minimize harm to the Riverway, the FHWA’s approval of that project violated Section 4(f).

128. Because the FHWA’s approval of the Proposed Bridge violates Section 4(f) of the Transportation Act, the agency’s approval is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT VII
(Violations of NEPA and the APA)

129. Plaintiff restates and incorporates the foregoing allegations.

130. NEPA’s implementing regulations require federal agencies undertaking an EIS analysis to “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a).

131. Because the FHWA failed to adequately consider alternatives to the construction of a new four-lane bridge south of Stillwater, the FHWA violated NEPA and its implementing regulations.

132. Under NEPA and its implementing regulations, an EIS must identify the direct, indirect, and cumulative impacts of each alternative. *See* 40 C.F.R. §§ 1502.14, 1502.16, 1508.7.

133. Because the FHWA failed to adequately identify the indirect and cumulative impacts of the Proposed Bridge project, the FHWA's EISs and Record of Decision violate NEPA and its implementing regulations.

134. Because the FHWA violated NEPA and its implementing regulations, the agency's action is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

RELIEF REQUESTED

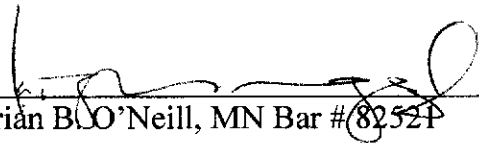
WHEREFORE, Plaintiff requests the following relief:

1. A declaration that either: (a) the NPS violated the WSRA and its implementing plans and policies, and that the NPS's 2005 Section 7 evaluation is arbitrary, capricious, an abuse of discretion, and not in accordance with law, or (b) the NPS violated the WSRA and its implementing plans and policies by failing to issue a final Section 7 evaluation for the Proposed Bridge, and that this failure constitutes agency action unlawfully withheld or unreasonably delayed;
2. A declaration that the FHWA violated Section 4(f) of the Transportation Act by approving the Proposed Bridge project;
3. A declaration that the FHWA violated NEPA and its implementing regulations by issuing the Supplemental Draft and Final EISs and the Record of Decision;
4. A declaration that the NPS violated the Organic Act, the General Authorities Act, and their implementing policies;

5. An injunction preventing the FHWA, the NPS, or the state transportation agencies from implementing any aspect of the Record of Decision;
6. An order vacating the FHWA's Section 4(f) determination, the NPS's Section 7 evaluation, and the Record of Decision;
7. An order that Plaintiff recover its costs, including reasonable attorneys' fees, incurred in connection with this action, as provided for under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), or other applicable law; and
8. Such other relief as the Court deems just and proper.

Dated: June 5, 2007

Respectfully submitted,



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June 5, 2007

RECEIVED
JUN 05 2007
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

BY MESSENGER

Clerk
United States District Court
202 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: **Sierra Club North Star Chapter v. Mary Peters, Secretary of Transportation, et al.**

Dear Clerk:

Enclosed for filing in the above-captioned matter please find the following documents:

1. Civil Cover Sheet;
2. Summons;
3. Complaint;
4. Civil Disclosure Certificate; and
5. A check in the amount of \$350.00 for the filing fee.

Sincerely,

Michael Soules
*Admitted in Michigan and DC;
not yet admitted in Minnesota*

Enclosures
fb.us.2086565.01