

**STATEMENT OF PEGGY O'DELL, DEPUTY DIRECTOR, NATIONAL PARK SERVICE,
DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL
PARKS OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE,
CONCERNING S. 1134, TO AUTHORIZE THE ST. CROIX RIVER CROSSING PROJECT
WITH APPROPRIATE MITIGATION MEASURES TO PROMOTE RIVER VALUES.**

July 28, 2011

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior (Department) regarding S. 1134, a bill to authorize the St. Croix River Crossing Project with appropriate mitigation measures to promote river values. This bill would allow construction of a new extradosed bridge crossing the St. Croix River if the mitigation items are included as enforceable conditions.

The Department cannot support this legislation, as the NPS determined that the St. Croix River Project would have a direct and adverse impact to the river and that these impacts cannot be mitigated, as documented in its Section 7(a) Wild and Scenic Rivers Act evaluation of October 15, 2010. We are very concerned about the precedent that such legislation would establish given that the Department found the bridge project would have a direct and adverse effect on the designated river. In its May 4, 2011 testimony NPS did not support a similar bill – H.R. 850, which would facilitate a proposed project in the Lower St. Croix National Scenic Riverway. S. 1134 differs from H.R. 850 with the inclusion of mitigation measures for the project.

This bill requires that the mitigation items described in paragraph 9 of the 2006 St. Croix River Crossing Project Memorandum of Understanding for Implementation of Riverway Mitigation Items, signed by the Federal Highway Administration on March 28, 2006, and by the National Park Service on March 27, 2006, are included as enforceable conditions.¹ It also states that any subsequent amendments to the Memorandum of Understanding are included as enforceable conditions.

The Lower St. Croix National Scenic Riverway (Riverway) received protection as a “study river” with passage of the Act in 1968. Congress subsequently designated the upper 27-mile segment of the Lower St. Croix River as a Wild and Scenic River in 1972 and provided that if the Governors of the States of Minnesota and Wisconsin submit an application for the lower 25-mile segment, the Secretary of the Interior upon his approval shall designate that segment. The Governors did submit an application and the Secretary designated the lower segment in 1976. The Act established a method for providing Federal protection for some of our country's remaining free-flowing rivers, preserving them and their immediate environments for the use and enjoyment of present and future generations.

In Section 7(a) of the Act, Congress expressed the clear intent to protect river values. The Act prohibits Federal agencies from assisting in the construction of any water resources project that would have a direct and adverse effect on the values of a designated river. Section 7(a) states:

¹ A copy of the Memorandum of Understanding may be found at <http://www.dot.state.mn.us/metro/projects/stcroix/pdfs/Memounder/Riverway%20MOU%204-11-06.pdf>

...no 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...

Pursuant to that statute, if the Department determines a direct and adverse impact would occur, the project cannot proceed absent congressional action.

The Riverway is administered by the states of Minnesota and Wisconsin for 25 miles and the National Park Service (NPS) for 27 miles. However, the Department of the Interior, through the NPS, has responsibility for evaluation of proposed Federal projects for the entire 52 miles of the designated river. The NPS is responsible for evaluating water resources projects under Section 7(a) of the Act to determine whether those Federal projects, including bridges, will have a direct and adverse effect on the Riverway's free-flowing condition, water quality, and outstandingly remarkable values. Each water resources project is evaluated independently on its own merits.

The Riverway runs fast over sections of exposed bedrock, slow and deep over great depositional sediments left by the last glaciers, and throughout its course to the Mississippi River, the river carves through steep forested bluffs and rich valley bottomlands. Although solitude in natural settings is increasingly rare so close to a major metropolitan area, the Riverway offers natural solitude and abundant recreation.

In 1995, the Federal Highway Administration (FHWA) released a Record of Decision to construct a new bridge over the Lower St. Croix National Scenic Riverway and in June 1996, the Sierra Club and Voyageurs Region National Park Association commenced a lawsuit against the United States Department of Transportation, the Federal Highway Administration, the Department and the NPS to enjoin construction of the project. They alleged that the Department had violated Section 7(a) of the Act by failing to determine whether the new bridge would have a direct and adverse effect upon the values for which the Riverway was established. In September 1996, the FHWA and its lead partner—the Minnesota Department of Transportation (MnDOT)—applied for a Section 10/404 permit to place fill in the waters of the United States for bridge construction. Subsequently, the NPS prepared a Section 7(a) evaluation and determined that the project would have a direct and adverse effect on the Riverway's scenic and recreational values because of its visual impacts and that no available mitigation measures could significantly reduce the negative effects of the proposed bridge. Therefore, permits could not be issued and the bridge project could not go forward. MnDOT, the Wisconsin Department of Transportation (WisDOT) and the City of Stillwater, Minnesota, intervened in the lawsuit as defendants. They alleged that the 1996 NPS Section 7(a) determination was arbitrary, capricious, and in excess of statutory authority. The court upheld the 1996 NPS Section 7(a) determination, establishing case law that bridges are water resources projects subject to Section 7(a) of the Wild and Scenic Rivers Act.

In 1998, after discussions with legislators and other interested parties, the FHWA, MnDOT and WisDOT decided to revisit the issue of a river crossing near Stillwater. MnDOT facilitated a consensus-building process for a new bridge crossing of the Riverway. This process resulted in a new bridge alignment and design as well as a mitigation package.

In 2000, the NPS prepared a Draft Section 7(a) evaluation for inclusion in FHWA's Environmental Impact Statement (EIS). This evaluation determined that the proposed bridge would have a direct

and adverse effect on scenic and recreational values; however, the adverse effects were adequately offset by the mitigation package developed by the stakeholders.

In 2001, the FHWA suspended that EIS process short of a final decision, citing insufficient funds for the implementation of the mitigation measures.

In 2002, the FHWA and its two state partners again re-initiated a St. Croix River Crossing EIS process. A “Stakeholders Group,” made up of 28 representatives of diverse interests was formed to provide input to the transportation agencies in their decision-making process. This process resulted in a new proposed bridge alignment (similar to the original 1996 alignment), a bridge design, and a mitigation package.

In 2005, the NPS prepared an updated Section 7(a) evaluation that determined that the proposed crossing, when taken along with its mitigation package, would not have a direct and adverse effect on the scenic and recreational values, provided that the mitigation package remained intact.

In 2006, the FHWA issued a new record of decision to allow the bridge to be built. The Sierra Club again sued the Secretaries of Transportation and the Interior, alleging violations of the National Environmental Policy Act, Section 4(f) of the Department of Transportation (DOT) Act of 1966 (40 U.S.C. 1653(f)), and the Wild and Scenic Rivers Act.

On March 11, 2010, the U.S. District Court of Minnesota found the 2005 NPS Section 7(a) evaluation “arbitrary and capricious” and vacated it.

On April 6, 2010, the FHWA requested that the NPS prepare a new evaluation in response to the court’s decision. The NPS released its latest Section 7(a) evaluation on October 15, 2010. The evaluation determined that, due to visual impacts, the St. Croix River Crossing Project would have a direct and adverse impact to the river and that those impacts cannot be mitigated.

The NPS transmitted the 2010 Section 7(a) evaluation to the FHWA, stating that, “While the NPS believes the mitigation measures are not sufficient to eliminate the direct and adverse effects of the Project on the Lower St. Croix National Scenic Riverway’s designated scenic and recreational values, the NPS strongly supports their implementation if Congressional action is taken to allow the Project to move forward. The mitigation measures are essential to meet the requirements of Section 4(f) of the DOT Act of 1966 and help the states of Minnesota and Wisconsin protect and enhance river values under Section 10(a) of the Act.”

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions from members of the committee.