

Committee on Transportation and Infrastructure

"Status of the Nation's Waters, including Wetlands, Under
the Jurisdiction of the Federal Water Pollution Control Act"

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My name is Marcus Hall and I am the Public Works Director/County Engineer for St. Louis County, Minnesota. I want to thank Chairman Oberstar and Ranking Member Mica and the Transportation and Infrastructure Committee for allowing me to testify today and I hope to give you a glimpse of the national wetland issues from a county highway department perspective. St. Louis County is located in the northeastern part of Minnesota and it is a very large county. It extends from the most westerly tip of Lake Superior and goes north to the Canadian border. It is the largest county east of the Mississippi River, covering over 7,000 square miles with a population of around 200,000. We have some urban areas, such as Duluth, Hibbing, and Virginia, Minnesota and we have pristine wildlife areas such as the Boundary Waters Canoe Wilderness Area. Between the rivers, lakes, marshes, and swamps, over 35 percent of our county is covered in wetlands. The major industries in the county include mining, wood and paper products, shipping, and tourism. Covering this vast region is an extensive state and county transportation system. St. Louis County itself is responsible for over 3,000 miles of roadway. We have an annual highway construction budget of between \$25 and \$30 million. I realize that for around here that is not a lot of money, but for most local units of government, counties and cities, that is a very large amount of money. It typically takes three to five years to go from the conception of a highway construction project through a public input phase, preliminary design phase, environmental permitting phase, final plans, and right-of-way acquisition to just get to the point when one can bid a project. During this whole time, our constituents are watching this process and most of the time shaking their heads on how long it takes.

Minnesota recognizes the importance of wetland to our natural environment and economy. We adopted the comprehensive Wetland Conservation Act in 1991. In many

cases, our state and local regulations are more restrictive than the Army Corps or the PCA regulations.

I believe that the Rapanos and Carabell decisions (or non-decisions) have thrown the federal regulatory agencies into turmoil and both the EPA and Army Corps of Engineers into a scramble on how to implement the new rulings. The latest agency guidelines (dated June 5, 2007) are very complex. The typical 60 to 120 day permit process has now slowed to a crawl. What the guidelines do is take a one-step process consisting of applying for the permit and turn it into a two-step process consisting of (1) applying for a review of your project to see if it falls under their jurisdiction and then (2) applying for the permit.

Imagine asking a police officer to first determine if they have jurisdiction over each and every person before they take action to enforce the law. Our current best estimate is that this will add anywhere from four to six months to the process, more than doubling the current process time. In northern states, this will mean a delay of our project for a full construction season. With construction inflation typically running between 4 percent and 7 percent, this represents an annual cost of between \$1 and \$2 million in delays for St. Louis County. Please remember that in the state of Minnesota the local and state requirements are more restrictive than the Corps so this delay comes with no or limited increase in environmental benefits.

A typical St. Louis County reconstruction project is our County State Aid Highway 47 project. It is a 4.7 mile project that is scheduled for reconstruction in 2008. The current estimate is \$5.4 million. Under the new guidelines (the two-step process) it is my understanding that the Corps will have to perform a jurisdictional determination for each of 36 separate individual wetland crossings. With numerous projects like this in our area, the local Army Corps of Engineers field personnel are currently overwhelmed by the amount of field work and paperwork.

Even though state regulations are more restrictive, the permit process is much faster to work through because there are no

jurisdictional determinations to go through. Actually the state process is completed in 60 to 90 days.

I believe that the long-term solution to the issue is legislative action that clearly defines which wetlands fall under the Corps jurisdiction, eliminating the current first step of the two-step process. However, a short-term solution would be to allow the permittee to waive the analysis portion and, on an individual case-by-case basis, concede the Corps jurisdiction and move right to the permit phase (legislative action maybe needed for this to take place). Needless to say, either solution is preferable to the current guidelines, which are presently unworkable.

In summary, I want to point out that county engineers understand the importance of our environment and understand that our society has placed great value on our wetlands. However, they have also placed a great value on a good transportation system and it is up to us to balance these values and to come up with a system and process that produces a great transportation system without harming our environment in the process. Thank you.