



WHITE EARTH RESERVATION

VICE CHAIR & DISTRICT III Eugene "Umsy" Tibbetts SECRETARY-TREASURER Leonard Alan Roy
DISTRICT I Raymond Auginaush, Sr. DISTRICT II Kathy Goodwin

May 17, 2019

SENT VIA EMAIL TO:

commissioner.dnr@state.mn.us

Sarah Strommen, Commissioner
Minnesota Department of Natural Resources
Attn: Line 3 Pipeline Replacement Applications
500 Lafayette Road
St. Paul, MN 55155

Re: **Comments on Enbridge Line 3 Replacement** environmental impacts to
Chippewa Treaty Protected Resources and Cultural Properties

Dear Commissioner Strommen,

Please find attached a copy of the January 25, 2019 letter from Chairman Terry Tibbetts (with attachments) to Governor Walz regarding: Chippewas of the Mississippi *Rights of Manoomin* and co-management to protect common, environmental resources. The Chairman's letter shows courtesy copies to yourself, Minnesota Pollution Control Agency Commissioner Laura Bishop and Attorney General Keith Ellison. The important message in the letter gives notice that "we challenge the State of Minnesota's unilateral authority to grant Section 401 Clean Water Act permits for Enbridge's Line 3R pipeline activities, without our consent, and request full hearing, with contested case proceedings, if Minnesota plans to exercise primary jurisdiction."

Since that time Chairman Tibbetts passed on March 17, the DNR has provided a 60-day comment period ending today, but the DNR has not acknowledged or responded to the Chairman's letter. The DNR website shows Enbridge is seeking Public Waters Work Permits as part of the overall State of Minnesota 401 clean water act permitting process. Websites show that neither the DNR nor MPCA has accepted Enbridge's Line 3 applications as complete. It also appears MPCA will be doing a more thorough public process.

The White Earth Band of Ojibwe understands that the bulk of the waters of the United States, the other party to the Chippewa treaties, have predominantly become public waters of Minnesota, under Section 401 review of the Clean Water Act by the

DNR and MPCA and which Minnesota public waters are where most of the wild rice grows. Consequently the White Earth Band of Ojibwe cannot ignore that *Climate change affects lakes, walleye in complex ways*¹ and that years later an *Ojibwe leader says Mille Lacs walleye have not recovered yet*². The White Earth Band of Ojibwe understands that any increase in tar sands extraction will only speed up climate change and compound environmental and aquatic problems in Minnesota, and when walleye fishing people can't fish Mille Lacs, they usually shift further north to Big Sandy, Pokegama, Big Winnie, Cass Lake and Leech Lake, which are all original 1855 reservations.

As part of the Line 3 environmental review process the White Earth Band of Ojibwe helped develop and has adopted the Minnesota Chippewa Tribe's Anishinabe Cumulative Impacts Assessment as the White Earth Band's environmental risk and evaluation tool for the meaningful assessment of the short and long term impact of the abandonment of the existing Line 3 pipeline, as well as the impacts from tar sands extraction, greenhouse gases, climate change and additional, future pipeline abandonment from the decreased demand for crude oil. The White Earth Band of Ojibwe did FIND that the Minnesota Chippewa Tribe's Anishinabe Cumulative Impacts Assessment is superior to the EIS that has been approved by the Minnesota PUC in examining the cumulative impacts from the proposed Line 3 project upon surface waters, groundwater, fish, wildlife, waterfowl, wild rice, plants, as well as the broader environmental consequences resulting from the proposed Line 3 project, which necessarily requires prohibiting the Line 3 Pipeline Replacement, new route corridor for the replacement pipeline across the 1855 ceded territory in violation of White Earth Band of Ojibwe and 1855 Treaty Authority established codes, laws and customs required consent as co-owners.

For the Chippewas of the Mississippi, clean water is inextricably linked to the self-sufficiency, economic development and security of present and future generations of northern Minnesota's tribal communities. The upper Mississippi watershed, from the Headwaters adjacent to White Earth Reservation through the various 1855 reservations and ceded territories through Brainerd and St. Cloud, needs to be understood as one, long, continuous, first in time, priority quality water property rights for the Chippewas of the Mississippi to enjoy and protect in perpetuity.

The White Earth Band of Ojibwe in exercise of original, retained jurisdiction and sovereignty of the thousands of treaty beneficiaries and the jurisdiction of the federally recognized reservation with tribal regulatory authorities for the reserved, priority, water quality

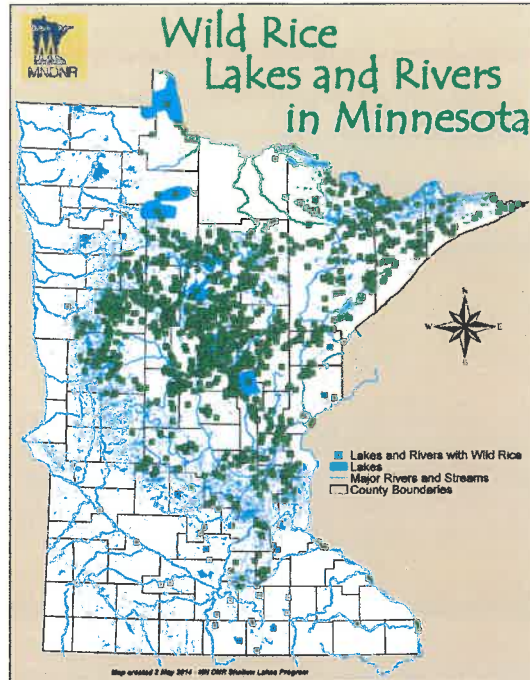
¹ See *Climate change affects lakes, walleye in complex ways*, by Elizabeth Dunbar on Minnesota Public Radio, Sept. 9, 2015 at <https://www.mprnews.org/story/2015/09/09/walleye-climate-change>

² See *Ojibwe leader says Mille Lacs walleye have not recovered yet* by Tony Kennedy Star Tribune OCTOBER 1, 2017 at <http://www.startribune.com/ojibwe-leader-says-mille-lacs-walleye-have-not-recovered-yet/448842053/>

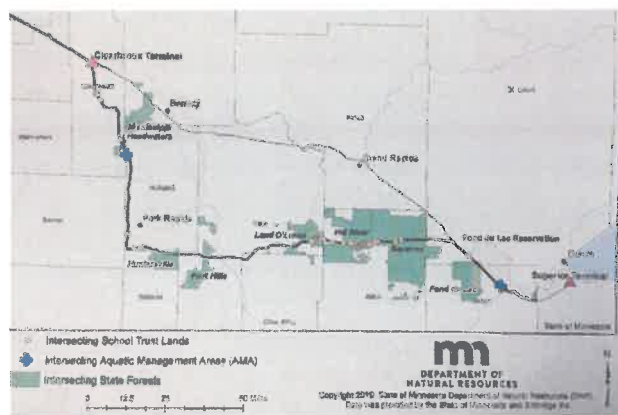
property rights and *Rights of Manoomin* now requires that the Minnesota Department of Natural Resources fulfill its legal obligation under federal laws to honor and respect the White Earth Band's and *Chippewas' of the Mississippi* rights to parity recognition of usufructuary property rights in the 1855 treaty ceded territory, same as the 1837 and 1854, and more importantly include all of the "off reservation" interconnected waters quality property rights as describe and provided for in the Winter's Doctrine for the upper Mississippi River in Minnesota, for the same environmental protection treatment and as "on reservation" for the Line 3 Clean Water Act permitting under Section 401 with appropriate consultation and *required consent* of the *Chippewas of the Mississippi*.



Of particular, direct, environmental concern is that the preferred pipeline route crosses some of the most important wild rice waters, streams, rivers, lakes and aquifers.



According to the DNR Line 3 Route Map, multiple state forests will be crossed as well, which after federal lands are the primary, off-reservation public lands and waters where tribal members' usufructuary property rights to hunt, fish, trap and gather will be directly impacted by the new pipeline route corridor.



The White Earth Band understands that the federal law, Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360) does not authorize state regulation of the use of such property [including water rights] in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Consequently, the White Earth Band of Ojibwe requires written confirmation by the State of Minnesota, DNR and MPCA that separate, free and prior, informed consent (as required by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)) is required by and from the Chippewas of the Mississippi as co-owner, for this Line 3 pipeline project, as original owners of the undivided, one-half interest in the ceded territories' natural resources and waters that unite them, within the State of Minnesota regarding eminent domain over public waters and lands within the 1855 ceded territory.

Further consultation will be necessary. If you have any questions or need of further information about Rights of Manoomin and consent, please call on me at 218-935-2488 and/or Frank Bibeau, attorney at law representing White Earth for consultation on Line 3 and 1855 treaty rights at 218-760-1258 or frankbibeau@gmail.com.

Sincerely,



Monica M Hedstrom, Director
Natural Resources

Attachment: Chairman Tibbett's Jan. 25, 2019 letter to Governor Walz

cc: Laura Bishop, Minnesota Pollution Control Agency Commissioner
Keith Ellison, Minnesota Attorney General
Eugene "Umsy" Tibbetts, acting Chairman, White Earth
Alan Roy, Secretary/Treasurer, White Earth
Ray Auginaush, Sr., District 1 White Earth
Kathy Goodwin, District 2, White Earth
Randy Goodwin, Executive Director, White Earth
Frank Bibeau, Executive Director 1855 Treaty Authority